

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:
Hon'ble Justice Shampa Sarkar

C.O. 1698 of 2023

Eagle wood Equipments & Engg. (P) Ltd.

Vs.

Sabita Ray & Ors.

For the petitioner : Mr. Debdipto Banerjee,
Mr. Soumen Banerjee

For the opposite parties : Mr. S.N. Mitra
Mr. Debjit Mukherjee,
Mr. Kaustav Bhattacharya

Hearing concluded on: 08.06.2023

Judgment on: 22.09.2023

Shampa Sarkar, J.:-

1. This revisional application has been filed challenging the order dated March 27, 2023, passed by the learned Civil Judge (Sr. Division), at Sealdah, in Title Suit No. 124 of 2021.

2. The opposite parties No. 1-3 as plaintiffs, filed a suit for declaration, recovery of Khas possession, damages and permanent injunction, against the petitioner. The petitioner was the defendant No.1 in the said suit.

3. The petitioner entered appearance in the said suit and filed an application under Order 7 Rule 11 of the Code of Civil Procedure. The petitioner prayed for rejection of the plaint on the ground that the suit was barred under the laws of limitation and the plaint did not disclose any cause

of action. The suit was vexatious, and an abuse of the process of court. The plaintiffs filed a written objection to the said application.

4. Upon contested hearing, the learned court below dismissed the application seeking rejection of the plaint. According to the learned court below, the issues raised in the application for rejection of the plaint involved questions of law and facts. It would not be correct to reject the plaint, without a trial. Aggrieved, the petitioner had approached this court.

5. The learned advocate for the petitioner relied upon the plaint and the documents annexed to the plaint. It was submitted that the suit was barred by limitation as the cause of action for filing the suit was the memorandum of agreement dated December 16, 1992 and alleged wrongful possession of the suit property by the petitioner, on the basis of such agreement.

6. The plaint case was as follows:-

i) By a registered deed of conveyance dated September 10, 1987, the plaintiffs/opposite parties Nos. 1 to 3 purchased 6 cottahs, 8 chittacks and 6 sq. ft. of land, being premises No, 287, CIT Scheme VIII, Darga Road, Police Station- Beniapur, Kolkata-700017, more fully described as Schedule-A. The opposite parties Nos. 1 to 3, through the proforma defendant in the suit, developed the premises and raised a six storeyed construction. The defendant/petitioner showed interest to purchase a flat on the first floor (South-Eastern portion), measuring about 1040 sq. ft, super-built area together with undivided proportionate share and interest in the land underneath and in the staircase, passage, lift, common areas and facilities, for a total price of Rs.6,24,000/-. The said flat had been described in Schedule-B of the plaint.

ii) The opposite party No 1 and the proforma defendant as the first party, the petitioner as the third party, and the opposite party Nos. 2 and 3 as the confirming party, executed a memorandum of agreement for sale, dated December 16, 1992.

iii) By the said agreement, the parties undertook to perform their respective obligations, as per the terms. Some of such agreed terms, as per the memorandum of agreement dated December 16, 1992, were as follows:-

- (a) The first party would sell to the third party, the B-Schedule flat along with the common areas at the rate of Rs. 600/- per Sq.ft.
- (b) The third party inspected the premises, construction plans, specifications, title of the first party and being satisfied with the same, had paid a sum of Rs. 6,00,000/-, by A/c payee cheque as earnest money.
- (c) The balance consideration was to be paid as per the terms and conditions of the memorandum.
- (d) Save and except in the flat agreed to be sold, the third party would not have any right, claim or demand of any kind over the open spaces, car parking spaces, terraces etc. Such right would remain with the owners. The common areas and facilities, would be enjoyed by the third party, other intending purchasers and flat owners along with the first party.
- (e) On the receipt of the balance of Rs.24,000/-, within a period of six months from the date of execution of the said memorandum of

agreement, the first party would register a proper conveyance in favour of the third party.

(f) The third party would be entitled to raise objections or to claim abatement in the price of the flat agreed to be purchased by him and also claim compensation and damages, in case of any inconvenience caused to the third party.

iv) The defendant/petitioner failed and neglected to perform his part of the obligations as stipulated in the memorandum of agreement dated December 16, 1992, but continued to possess the flat.

v) Although, the said defendant/petitioner agreed to pay the balance amount and bear the cost of execution and registration of the deed of conveyance in respect of the suit flat, the defendant wilfully and deliberately did not honour the agreement to perform its part. The defendant/petitioner in a clandestine manner, filed a suit before the learned Civil Judge (Junior Division) second court at Sealdah, being Title Suit No 122 of 2005 and prayed for mandatory injunction along with other reliefs.

vi) The memorandum of agreement came to an end after the expiry of the stipulated period on account of wilful violation of the terms and conditions, by the defendant. As the petitioner hopelessly failed to perform its part, the memorandum became void and unenforceable.

vii) Even after a lapse of many years, the petitioner did not bother to pay the agreed balance sum and in a clandestine manner applied for mutation of the flat, before the assessment collection department, Kolkata Municipal Corporation.

viii) The status of the petitioner was nothing better than a trespasser, hence the opposite parties Nos. 1 to 3 were entitled to a decree for recovery of khas possession from the defendant. The opposite parties/plaintiff were also entitled to a decree for damages on account of wrongful use and occupation of the flat in question by the petitioner, without paying a single farthing as occupational charges. Reasonable rent for the said premises would be at least Rs.20,000/- per month, but the defendant had been enjoying the property without fulfilling its obligation to pay the balance amount, as per the agreement. Finding no other alternative, the plaintiff/opposite parties were constrained to file the suit for a declaration that the memorandum of agreement dated December 16, 1992 was illegal, invalid, inoperative and void, for a decree of recovery of khas possession from the defendant/petitioner and other reliefs. The cause of action arose on December 16, 1992, December 17, 1995 and thereafter on diverse dates.

- 7.** The petitioner filed an application for rejection of the plaint on the ground that the challenge to the agreement dated December 16, 1992 and other reliefs were time-barred as the cause of action arose in 1992. The plaint should be rejected as continuation of a meritless suit would be a wastage of court's time.
- 8.** The plaintiffs/opposite parties filed an objection to the application under Order 7 Rule 11 of the Code of Civil Procedure, inter-alia stating that the plaintiffs were entitled to recover possession of the suit flat as the purported agreement for sale had lost its force. That the opposite parties Nos. 1 to 3 could not be left without any remedy. They had the right to

recover the flat, which was wrongfully occupied by the defendant No.1/petitioner. The petitioner, had grossly neglected to perform its obligations as per the memorandum and hence, the suit was maintainable.

9. The learned court below, inter-alia, held that the plaint could not be rejected at such an early stage as the issues involved adjudication of right, title and interest of the respective parties in respect of the suit property. There were mixed questions of facts and law and could be only adjudicated at the trial.
10. Mr Mitra, learned Senior advocate appearing on behalf of the plaintiffs/opposite parties Nos. 1 to 3 supported the order passed by the learned court below and submitted that the plaint did not suffer from non-disclosure of cause of action. Even a defective cause of action could not be treated as non-disclosure of cause of action. Order 7 Rule 11 of the Code of Civil Procedure would come into play only if the plaint did not disclose any cause of action at all. Mr. Mitra further urged that the plaintiffs had the right to recover possession of the property which was being wrongly held by the petitioner. The petitioner failed and neglected to perform its part of the contract and also failed to pay occupational charges. The cause of action for recovery of the premises would survive till adjudication of the petitioner's suit. There was no question of the suit being time barred. If the petitioner's suit failed, the plaintiff could recover possession from the trespasser. Till then, the right to sue survived as the cause of action continued. That the trial court, upon considering the

averments in the plaint, rightly held that the plaint disclosed triable issues.

- 11.** Reliance was placed on the decision of ***Sejal Glass Limited Vs. Navilan Merchants Private Limited***, reported in ***(2018) 11 SCC 780***. Mr. Mitra contended that even assuming that the first prayer for a declaration that the memorandum of agreement dated December 16, 1992 was illegal, invalid, inoperative and void, was a time-barred claim, partial rejection of a plaint was not permissible in law. The other reliefs were available, to the opposite parties Nos. 1 to 3. There should not be partial rejection of the plaint and the suit should proceed on the entire claim. Further reference was made to the decisions of ***Sri Biswanath Banik and Anr. vs Sulanga Bose and Others*** reported in ***(2022) 7 SCC 731*** and ***Jageshwari Devi and Others vs Shatrughan Ram*** reported in ***(2007) 15 SCC 52***, in support of the proposition that if the reliefs were interconnected, provisions of Order 7 Rule 11 would not have any application. The suit should go to trial as a whole.
- 12.** Mr. Mitra submitted that limitation was a mixed question of law and fact and should be decided at the trial, in the light of the facts of each case and the evidence available. In deciding whether the plaint deserved to be rejected on the ground of limitation alone, the averments stated in the plaint were to be considered. The merits and demerits of the case was to be adjudicated at the trial. In the case in hand, the averments in the plaint did not indicate that suit was time barred. On this issue, Mr. Mitra relied on paragraph Nos 15 to 17 of the decision in ***Urvashiben and Anr.***

vs. Krishnakant Manuprasad Trivedi reported in **(2019)13 SCC 372**.

The paragraph is quoted below:-

“15. It is fairly well settled that, so far as the issue of limitation is concerned, it is a mixed question of fact and law. It is true that limitation can be the ground for rejection of plaint in exercise of powers under Order 7 Rule 11(d)CPC. Equally, it is well settled that for the purpose of deciding application filed under Order 7 Rule 11 only averments stated in the plaint alone can be looked into, merits and demerits of the matter and the allegations by the parties cannot be gone into. Article 54 of the Limitation Act, 1963 prescribes the limitation of three years, for suits for specific performance.

- 13.** This court is to decide whether, on a meaningful reading of the plaint, the same was liable to be rejected. The cause of action as pleaded, arose on December 16, 1992, December 17, 1995 and thereafter on diverse dates (not mentioned). The relevant paragraph of the plaint is quoted below:-

“16) The cause of action in filing the above suit arose on 16.12.1992, 17.12.1995, and thereafter on diverse dates at the suit flat at premises No. 287, Darga Road, Police Station Beniapukur, Post Office Circus Avenue, Kolkata – 700017, within the jurisdiction of this Ld. Court.”

- 14.** The prayers in the plaint are quoted below:-

- “a) For a decree for declaration that the Memorandum of Agreement dated 16.12.1992 is illegal, invalid, inoperative, and void and lost its enforceability;
- b) For a decree for recovery of khas possession of the suit flat against the defendant by removing all obstructions there from;
- c) For a decree for damages for the wrongful occupation of the defendant in the suit flat as would be assessed by this Ld. Court;
- d) For a decree for permanent injunction restraining the defendant, its men, agents and associates from selling, transferring, alienating, letting out or part with possession in respect of the suit flat and an order of temporary injunction on similar terms till the disposal of the above suit;
- e) For appointment of a Receiver;
- f) For costs; and

g) For such other relief or reliefs as the plaintiffs are entitled to under law and equity.”

15. Prayer ‘a’ is expressly barred by law. Applying Article 58 and 59 of the Limitation Act, the period of limitation for the agreement to be declared, invalid, void, inoperative, is three years from the date of entitlement to have the deed cancelled. The plaintiff failed to take recourse to law, within the period of limitation prescribed. The second prayer ‘b’ for recovery of khas possession is also time barred. Under Article 66 of the Limitation Act, such relief should have been prayed for within twelve years from forfeiture or breach of condition. The plaint case clearly discloses that the defendant was put in possession after execution of the agreement for sale and continued to be in alleged wrongful possession of the flat for many years. The date has been suppressed intentionally, in order to bypass the question of limitation.

16. In the plaint of the present suit, the opposite parties Nos. 1 to 3 disclosed that Title Suit No 122 of 2005 had been filed by the petitioner against the opposite parties Nos. 1 to 3. A copy of the said plaint was one of the documents produced along with the plaint of the present suit.

17. The petitioner, as plaintiff in the Title suit No. 122 of 2005, contended as follows:-

(a) that the opposite parties Nos. 1 to 3 had handed over two flats on September 20, 2001, without obtaining the completion certificate. On September 25, 2001, the opposite party No. 1 intimated all the flat owners that she had obtained completion certificate from the Kolkata Municipal Corporation and the flat owners were requested to

contribute Rs. 15,000/- for such purpose. Rs.10,000/- was to be paid on account of sewerage expenses and Rs. 5,000/- was to be adjusted against the money paid for the flat. The petitioner paid the sum of Rs. 10,000/- on October 9, 2001 by a bearer cheque and the money receipt was duly furnished by the opposite party No.1. That the opposite party No1 deliberately avoided to execute and register the deed of sale in accordance with the contract signed between the parties. By a letter dated March 27, 2002, the petitioner requested for supply of a draft deed of purchase and also requested registration of the flat.

- (b) The opposite party No.1 replied to the said letter by denying the allegations and claimed payment of the proportionate municipal taxes in respect of the two flats which were sold to the petitioner. The defendant No. 1 also requested the petitioner to settle the accounts, deposit the registration costs, advocate's fees and other allied costs. The petitioner had been waiting for the opposite parties Nos. 1 to 3 to send the draft deed. When the same was not done, finding no other alternative, the petitioner was compelled to send an advocate's letter asking the opposite party No. 1 to register the deed of sale. The opposite parties got furious with the said letter and thereafter started creating disturbance in the enjoyment of the flat by inducting another person on the second floor, just above the floor in which the petitioner had taken two flats. There was percolation of water, chemicals, etc. as a Zari business was running on the floor above the one purchased by the petitioner. A written complaint was also lodged before the police

station and thereafter, being threatened by the actions of the opposite parties, the suit was filed, inter alia, for the following reliefs:-

- “1) Decree for declaration that by virtue of payment of all the consideration money towards the price of the A & B schedule flat the plaintiff has acquired ownership, title and right over the same and was entitled to enjoy and use the flat without any kind of disturbance and interference from any corner.
- 2) Permanent injunction restraining the defendant from creating any kind of actionable nuisance and annoyance to the plaintiff’s flat in any manner.
- 3) Mandatory injunction directing the defendant No. 1 to execute and register a valid deed of sale in favour of the plaintiff.
- 4) Mandatory injunction directing the defendant No. 1 and 4 to fill up and repair the leakages and cracks in the floor of flat No. 203 mentioned in schedule –C, in case of failure to do so the same be done by the plaintiff through process of court.
- 5) Temporary injunction restraining the defendants from carrying on illegal injurious manufacturing business with acid, chemicals etc. in Ç-Schedule building in the residential premises.
- 6) Cost for further reliefs.
- 7) Leave under Order 2 Rule 2 CPC, recovery of damages.”

18. In Title Suit No 122 of 2005, it had been categorically stated that the flats were handed over in 2001. Documents relating to handing over possession have been mentioned in the plaint. The petitioner relied on the correspondence between the parties to show that several notices were issued to the opposite parties with regard to completion of the registration process, repair of the flats, stopping of seepage of chemical water from the second floor to the first floor etc. Complaints to the police station have also been mentioned with regard to the annoyance and nuisance caused by the opposite parties.

19. Under such circumstances, it is crystal clear that the factum of possession of the petitioner had been asserted from September 2001. As per the settled principles of law, the plaint of the Title Suit No. 122 of

2005 could have been looked into, by the learned trial judge, at the time of deciding the application under Order 7 Rule 11 filed in connection with Title Suit No. 124 of 2021. Reference is made to the decision of **G. Nagaraj and Anr. vs, B.P. Mruthunjayanna and Ors. decided in Civil Appeal No.- 2737 of 2023.** The Hon'ble Apex Court held as follows:-

“6. The law is well settled. For dealing with an application under Rule 11 of Order VII of CPC, only the averments made in the plaint and the documents produced along with the plaint are required to be seen. The defence of the defendants cannot be even looked into. When the ground pleaded for rejection of the plaint is the absence of cause of action, the Court has to examine the plaint and see whether any cause of action has been disclosed in the plaint.

- 20.** In the decision of ***Dahiben v. Arvinbhai Kalyanji Bhanusali***, reported in **(2020) 7 SCC 366** also, the Hon'ble Apex Court upon consideration of the plaint and documents relied upon in the plaint, arrived at the conclusion that the suit was meritless, vexatious and did not disclose any right to sue. The suit was an abuse of the process of court.
- 21.** The entire plaint case of Title Suit No. 122 of 2005 indicates that the petitioner was in possession of the flat in question since 2001. Hence, the suit for recovery of possession ought to have been brought within 12 years from the said date mentioned in the plaint or in the worst case scenario, within 12 years from filing of the Title Suit No. 122 of 2005 as assertion of possession by the petitioner was clear from the filing of the suit. The defendant also did not file a counter claim in Title Suit No. 122

of 2005, but filed the instant suit in which the cause of action and the reliefs claimed, appear to be expressly barred by limitation. Moreover, the provisions of Section 53A of the Transfer of Property Act would also operate as a bar. The fact of payment of part consideration and handing over possession of the flat in terms of the agreement, have been averred. The fact that the petitioner was in possession of the flat upon paying part of the consideration amount is available from the pleadings. The pleadings indicate that the suit was essentially filed alleging failure on the part of the petitioner to perform its obligation in terms of the memorandum of agreement dated December 16, 1992. Then, by way of clever drafting, and by suppression of relevant dates as to when the petitioner was put in possession, etc., the reliefs were couched in a different language. The appropriate remedy of the opposite party would have been to file a suit for specific performance of the contract, within the prescribed period of limitation. In any case, the prayers in the present suit are time barred. The relevant paragraphs of the plaint are quoted below:-

“5) The plaintiffs state that in spite of specific commitment, the defendant hopelessly failed and neglected to perform its part and obligations so stipulated in the said Memorandum of Agreement dated 16.12.1992.

6) The plaintiffs further state that as the defendant categorically agreed and assured to pay the balance agreed consideration money within the time stipulated and pay or bear the agreed cost for execution and registration of the deed of conveyance in respect of the suit flat, the defendant hopelessly failed and neglected willfully and deliberately to honour the commitment or to perform its part and obligations.

7) That the defendant with clandestine intention filed a speculative suit before the Learned Civil Judge (Jr. Divn.) 2nd Court at Sealdah being Title Suit No. 122 of 2005 against the plaintiffs purely on speculation and to mislead the Learned Court as the reliefs as prayed

for by the defendant in the form of mandatory injunction referred in paragraph - 3 & 4 of the plaint of the said Title Suit No.122 of 2005 while neither the court nor the defendant had any right for such decree as prayed for or referred in paragraph 3 & 4 of the plaint in respect of the suit flat.

8) The plaintiffs state that the said Memorandum of Agreement automatically came to an end after the expiry of the stipulated period and on account of willful and deliberate violation of the specific agreed terms so agreed upon and recorded in the said Memorandum of Agreement dated 16.12.1992.

9) The plaintiffs further state that as the defendant has hopelessly failed and neglected to perform its part and obligations, the Memorandum of Agreement dated 16.12.1992 has become void and lost all its enforceability. The conduct of the defendant shows that they were never ready and willing to perform their duties and obligations.”

22. Reference is made to the decision of ***Dahiben v. Arvinbhai Kalyanji***

Bhanusali, reported in **(2020) 7 SCC 366**. The Hon’ble Apex Court held

as follows:-

“24.4. If, however, by clever drafting of the plaint, it has created the illusion of a cause of action, this Court in Madanuri Sri Rama Chandra Murthy v. Syed Jalal [Madanuri Sri Rama Chandra Murthy v. Syed Jalal, (2017) 13 SCC 174 : (2017) 5 SCC (Civ) 602] held that it should be nipped in the bud, so that bogus litigation will end at the earliest stage. The Court must be vigilant against any camouflage or suppression, and determine whether the litigation is utterly vexatious, and an abuse of the process of the court.”

23. In the decision of ***Mayar (H.K.) Ltd. v. Owners & Parties, Vessel***

M.V. Fortune Express, reported in **(2006) 3 SCC 100**, the Hon’ble Apex

Court held that suppression of material facts would be a ground for

rejection of the plaint and the intention of the plaintiff should be gathered

from the tenor and terms of the pleadings. Relevant paragraphs are

quoted below:-

11. Under Order 7 Rule 11 of the Code, the court has jurisdiction to reject the plaint where it does not disclose a cause of action, where the

relief claimed is undervalued and the valuation is not corrected within the time as fixed by the court, where insufficient court fee is paid and the additional court fee is not supplied within the period given by the court, and where the suit appears from the statement in the plaint to be barred by any law. Rejection of the plaint in exercise of the powers under Order 7 Rule 11 of the Code would be on consideration of the principles laid down by this Court. In *T. Arivandandam v. T.V. Satyapal* [(1977) 4 SCC 467] this Court has held that if on a meaningful, not formal reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, the court should exercise its power under Order 7 Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. In *Roop Lal Sathi v. Nachhattar Singh Gill* [(1982) 3 SCC 487] this Court has held that where the plaint discloses no cause of action, it is obligatory upon the court to reject the plaint as a whole under Order 7 Rule 11 of the Code, but the rule does not justify the rejection of any particular portion of a plaint. Therefore, the High Court therein could not act under Order 7 Rule 11(a) of the Code for striking down certain paragraphs nor the High Court could act under Order 6 Rule 16 to strike out the paragraphs in the absence of anything to show that the averments in those paragraphs are either unnecessary, frivolous or vexatious, or that they are such as may tend to prejudice, embarrass or delay the fair trial of the case, or constitute an abuse of the process of the court. In *ITC Ltd. v. Debts Recovery Appellate Tribunal* [(1998) 2 SCC 70] it was held that the basic question to be decided while dealing with an application filed by the defendant under Order 7 Rule 11 of the Code is to find out whether the real cause of action has been set out in the plaint or something illusory has been projected in the plaint with a view to get out of the said provision. In *Saleem Bhai v. State of Maharashtra* [(2003) 1 SCC 557] this Court has held that the trial court can exercise its powers under Order 7 Rule 11 of the Code at any stage of the suit before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial and for the said purpose the averments in the plaint are germane and the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage. In *Popat and Kotecha Property v. State Bank of India Staff Assn.* [(2005) 7 SCC 510] this Court has culled out the legal ambit of Rule 11 of Order 7 of the Code in these words: (SCC p. 516, para 19)

“19. There cannot be any compartmentalisation, dissection, segregation and inversions of the language of various paragraphs in the plaint. If such a course is adopted it would run counter to the cardinal canon of interpretation according to which a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense. The intention of the

party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. At the same time it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair-splitting technicalities.”

20. In *S.J.S. Business Enterprises (P) Ltd. v. State of Bihar* [(2004) 7 SCC 166] this Court has accepted the principle that the: (SCC p. 173, para 13)

“suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. This rule has been evolved out of the need of the courts to deter a litigant from abusing the process of court by deceiving it. But the suppressed fact must be a material one in the sense that had it not been suppressed it would have had an effect on the merits of the case. It must be a matter which was material for the consideration of the court, whatever view the court may have taken.”

24. In the decision of *K. Akbar Ali vs. K. Umar Khan & Ors.* reported in **2021(2) ICC 15 (S.C.)**, the Hon’ble Apex Court held as follows:-

5. It is well settled that while considering an application under Order VII Rule 11 of the CPC, the question before the Court is whether the plaint discloses any cause of action or whether the suit is barred by any law, on the face of the averments contained in the plaint itself. While considering an application under Order VII Rule 11 of the CPC the Court is not to look into the strength or weakness of the case of the plaintiff or the defence raised by the defendant.

6. In this case, the Petitioner/Plaintiff has, as stated above, asserted that the Power of Attorney was given to Mr. Zahir Ali to maintain and administer the suit property. There is no assertion in the plaint that the Power of Attorney authorized Mr. Zahir Ali to execute any pre-emption agreement.

7. In any case, an application under Order VII Rule 11 of the CPC for rejection of the plaint requires a meaningful reading of the plaint as a whole. As held by this Court in *ITC v. Debts Recovery Appellate Tribunal* reported in AIR 1998 SC 634, clever drafting creating illusions of cause of action are not permitted in law and a clear right to sue should be shown in the plaint. Similarly the Court must see that the bar in law of the suit is not camouflaged by devious and clever drafting of the plaint. Moreover, the provisions of Order VII Rule 11 are not exhaustive and the Court has the inherent power to see that frivolous or vexatious litigations are not allowed to consume the time of the Court.

8. In this case, a meaningful reading of the plaint as a whole makes it abundantly clear that the relief claimed in the suit is barred in view of

the restricted scope of the Power of Attorney given by the first Defendant to Mr. Zahir Ali.”

25. In the decision of ***Ramisetty Venkatanna and Another vs Nasyam Jamal Saheb and Others*** reported in **2023 SCC Online 521**, the Honble Apex Court held as follows:-

“**25.** In the case of *Sopan Sukhdeo Sable v. Charity Commr.*, (2004) 3 SCC 137 in paras 11 and 12, this Court has observed and held as under:

“11. In *ITC Ltd. v. Debts Recovery Appellate Tribunal [ITC Ltd. v. Debts Recovery Appellate Tribunal, (1998) 2 SCC 70]* it was held that the basic question to be decided while dealing with an application filed under Order 7 Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 of the Code.

12. The trial court must remember that if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise the power under Order 7 Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order 10 of the Code. (See *T. Arivandandam v. T.V. Satyapal [(1977) 4 SCC 467].*)”

26. Real cause of action has been explained to mean a bundle of material facts which are relied upon by the plaintiff in order to get the reliefs claimed in the suit. The same should not be limited to the actual infringement of a right. There must be a clear right to sue.

27. ***Dahiben (Supra)*** is a decision on similar point. Relevant paragraphs are quoted below:-

“**24.** “Cause of action” means every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment. It consists of a bundle of material facts, which are

necessary for the plaintiff to prove in order to entitle him to the reliefs claimed in the suit.

24.1. In *Swamy Atmananda v. Sri Ramakrishna Tapovanam* [Swamy Atmananda v. Sri Ramakrishna Tapovanam, (2005) 10 SCC 51] this Court held : (SCC p. 60, para 24)

“24. A cause of action, thus, means every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts, which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act, no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded.”

24.2. In *T. Arivandandam v. T.V. Satyapal* [T. Arivandandam v. T.V. Satyapal, (1977) 4 SCC 467] this Court held that while considering an application under Order 7 Rule 11 CPC what is required to be decided is whether the plaint discloses a real cause of action, or something purely illusory, in the following words : (SCC p. 470, para 5)

“5. ... The learned Munsif must remember that if on a meaningful—not formal—reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7 Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing...”

The question of limitation and when the right to sue first arises have been explained in *Dahiben* as follows:-

25. The Limitation Act, 1963 prescribes a time-limit for the institution of all suits, appeals, and applications. Section 2(j) defines the expression “period of limitation” to mean the period of limitation prescribed in the Schedule for suits, appeals or applications. Section 3 lays down that every suit instituted after the prescribed period, shall be dismissed even though limitation may not have been set up as a defence. If a suit is not covered by any specific article, then it would fall within the residuary article.

26. Articles 58 and 59 of the Schedule to the 1963 Act, prescribe the period of limitation for filing a suit where a declaration is sought, or cancellation of an instrument, or rescission of a contract, which reads as under:

“Description of suit	Period of limitation	Time from which period begins to run
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58. To obtain any other declaration.	Three years	When the right to sue first accrues.
59. To cancel or set aside an instrument or decree or for the rescission of a contract.	Three years	When the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him.”

The period of limitation prescribed under Articles 58 and 59 of the 1963 Act is three years, which commences from the date when the right to sue first accrues.

27. In *Khatri Hotels (P) Ltd. v. Union of India* [Khatri Hotels (P) Ltd. v. Union of India, (2011) 9 SCC 126 : (2011) 4 SCC (Civ) 484] this Court held that the use of the word “first” between the words “sue” and “accrued”, would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. That is, if there are successive violations of the right, it would not give rise to a fresh cause of action, and the suit will be liable to be dismissed, if it is beyond the period of limitation counted from the date when the right to sue first accrued.

28. A three-Judge Bench of this Court in *State of Punjab v. Gurdev Singh* [State of Punjab v. Gurdev Singh, (1991) 4 SCC 1 : 1991 SCC (L&S) 1082] held that the Court must examine the plaint and determine when the right to sue first accrued to the plaintiff, and whether on the assumed facts, the plaint is within time. The words “right to sue” mean the right to seek relief by means of legal proceedings. The right to sue accrues only when the cause of action arises. The suit must be instituted when the right asserted in the suit is infringed, or when there is a clear and unequivocal threat to infringe such right by the defendant against whom the suit is instituted. Order 7 Rule 11(d) provides that where a suit appears from the averments in the plaint to be barred by any law, the plaint shall be rejected.

29.16. The present case is a classic case, where the plaintiffs by clever drafting of the plaint, attempted to make out an illusory cause of action, and bring the suit within the period of limitation. Prayer (1) of the plaint reads as:

“(1) The suit property being agricultural land of old tenure of Revenue Survey No. 610 whose Block No. is 573 situated at Village Mota Varachha, Sub-District : Surat City, District Surat has been registered by Opponent 1 of this case in Office of the Sub-Registrar

(Katar Gam) at Surat vide Sl. No. 5158 in Book No. 1. Since, the same is illegal, void, ineffective and since the amount of consideration is received by the plaintiffs, and by holding that it is not binding to the plaintiffs and to cancel the same, and since the sale deed as aforesaid suit property has been executed by Opponent 1 to Opponents 2, 3, it is registered in the Office of Sub-Registrar, Surat (Rander) on 1-4-2013 vide Sl. No. 443 which is not binding to we, the plaintiffs. Since, it is illegal, void, ineffective and therefore, this Hon'ble Court may be pleased to cancel the same and this Hon'ble Court may be pleased to send the Yadi in that regard to the Sub-Registrar, Surat (Karat Gam) and the Sub-Registrar (Rander) in regard to the cancellation of both the aforesaid documents.”

29.17. The plaintiffs deliberately did not mention the date of the registered sale deed dated 2-7-2009 executed by them in favour of Respondent 1, since it would be evident that the suit was barred by limitation. The prayer however mentions the date of the subsequent sale deed i.e. 1-4-2013 when the suit property was further sold by Respondent 1 to Respondents 2 and 3. The omission of the date of execution of the sale deed on 2-7-2009 in the prayer clause, was done deliberately and knowingly, so as to mislead the court on the issue of limitation.

29.18. The delay of over 5 and ½ years after the alleged cause of action arose in 2009, shows that the suit was clearly barred by limitation as per Article 59 of the Limitation Act, 1963. The suit was instituted on 15-12-2014, even though the alleged cause of action arose in 2009, when the last cheque was delivered to the plaintiffs. The plaintiffs have failed to discharge the onus of proof that the suit was filed within the period of limitation. The plaint is therefore, liable to be rejected under Order 7 Rule 11(d) CPC.

29.19. Reliance is placed on the recent judgment of this Court rendered in Raghwendra Sharan Singh v. Ram Prasanna Singh [Raghwendra Sharan Singh v. Ram Prasanna Singh, (2020) 16 SCC 601 : 2019 SCC OnLine SC 372] wherein this Court held that the suit would be barred by limitation under Article 59 of the Limitation Act, if it was filed beyond three years of the execution of the registered deed.

29.20. The plaintiffs have also prayed for cancellation of the subsequent sale deed dated 1-4-2013 executed by Respondent 1 in favour of Respondents 2 and 3; since the suit in respect of the first sale deed dated 2-7-2009 is rejected both under Clauses (a) and (d) of Order 7 Rule 11, the prayer with respect to the second sale deed dated 1-4-2003 cannot be entertained.

30. The present suit filed by the plaintiffs is clearly an abuse of the process of the court, and bereft of any merit. The trial court has rightly exercised the power under Order 7 Rule 11 CPC, by allowing the application filed by Respondents 2 and 3, which was affirmed [Dahiben v. Arvindbhai Kalyanji Bhanusali, 2016 SCC OnLine Guj 10017] by the High Court.”

28. In this case, the opposite parties prayed for declaration that the deed dated December 16, 1992 was void, illegal and inoperative. Opposite party No.1 was an executant. The period of limitation would be three years from the date when the right to sue first accrued or when the right to seek recession or cancellation thereof, arose. The cause of action as per plaint arose on December 16, 1992 and December 17, 1995.

29. With regard to the prayer for recovery of possession, the plaintiffs at least had notice of assertion of title and possession by the petitioner, when Title Suit No. 122 of 2005 had been filed. No suit for specific performance which could have been brought within three years from the knowledge of refusal of performance, had been filed. Prayers ‘c’, ‘d’ and ‘e’ are ancillary,/consequential prayers and the suit cannot go to trial on such reliefs alone. In the decision of **Rajpal Singh vs Saroj (Deceased) Through Lrs and Anr.** reported in **2022 SCC Online SC 638**, the Hon’ble Apex court held that a suit seeking cancellation of a deed was required to be filed within a period of three years from the date of knowledge of the deed. The substantive reliefs should be considered to

ascertain whether the suit was time barred and not the consequential reliefs. Paragraph 26 of the said decision is quoted below:-

“26. Therefore, the subsequent present suit filed by the original plaintiff in Civil Suit No. 419/2007 can be said to be clearly barred by the law of limitation. The suit seeking cancellation of the sale deed was required to be filed within a period of three years from the date of the knowledge of the sale deed. Therefore, when the name of the appellant herein-original defendant No. 1 was mutated in the revenue records in the year 1996 on the basis of the registered Sale Deed dated 19.04.1996 and when he was found to be in possession and cultivating the land since then, the suit was required to be filed by the original plaintiff within a period of three years from 1996. The submission on behalf of the original plaintiff (now represented through her heirs) that the prayer in the suit was also for recovery of the possession and therefore the said suit was filed within the period of twelve years and therefore the suit has been filed within the period of limitation, cannot be accepted. Relief for possession is a consequential prayer and the substantive prayer was of cancellation of the Sale Deed dated 19.04.1996 and therefore, the limitation period is required to be considered with respect to the substantive relief claimed and not the consequential relief. When a composite suit is filed for cancellation of the sale deed as well as for recovery of the possession, the limitation period is required to be considered with respect to the substantive relief of cancellation of the sale deed, which would be three years from the date of the knowledge of the sale deed sought to be cancelled. Therefore, the suit, which was filed by the original plaintiff for cancellation of the sale deed, can be said to be a substantive therefore the same was clearly barred by limitation. Hence, the learned Trial Court ought to have dismissed the suit on the ground that the suit was barred by limitation. As such the learned First Appellate Court was justified and right in setting aside the judgment and decree passed by the learned Trial Court and consequently dismissing the suit. The High Court has committed a grave error in quashing and setting aside a well-reasoned and a detailed judgment and order passed by the First Appellate Court dismissing the suit and consequently restoring the judgment and decree passed by the Trial Court.”

30. In the decision of *N.V. Srinivasa Murthy and Others vs Mariyamma (Dead) By Proposed Lrs. and Ors.* reported in **(2005) 5 SCC 548**, the Hon’ble Apex court held that averments with regard to the mutation proceedings would not furnish a fresh cause of action for the suit as they

appeared to be a camouflage, to get over the bar of limitation. The foundation of the suit was the registered sale deed. The ratio can also be applied to the facts of this case. Paragraph 12 of the said decision is quoted below:-

“12. The averments in para 12 of the plaint concerning the mutation proceedings before the Revenue Authorities did not furnish any fresh cause of action for the suit and they appear to have been made as a camouflage to get over the bar of limitation. The dispute of mutation in the Revenue Court between the parties arose only on the basis of registered sale deed dated 5-5-1953. The orders passed by the Tahsildar/Assistant Commissioner did not furnish any independent or fresh cause of action to seek declaration of the sale deed of 5-5-1953 to be merely a loan transaction. The foundation of suit does not seem to be the adverse orders passed by the Revenue Courts or Authorities in mutation proceedings. The foundation of suit is clearly the registered sale deed of 1953 which is alleged to be a loan transaction and the alleged oral agreement of reconveyance of the property on return of borrowed amount.”

31. The submission of Mr. Mitra that it was only when the petitioner wanted to mutate their name in respect of the flat in question, the right to sue arose, is neither pleaded nor is such plea tenable in law. The suit is for rescission or cancellation of the agreement dated December 16, 1992. On failure on the part of the petitioner to fulfil further obligation under the agreement, recovery of possession of the flat allegedly wrongfully occupied by the petitioner was also prayed for.

32. The pleadings indicate that the cause of action arose on December 16, 1992, December 17, 1995 and thereafter on several days. An illusion was created to overcome the laws of limitation. The dates have been intentionally suppressed. The learned court below failed to appreciate that this was a case of clever drafting and should have been nipped at the

bud. The plaint of the earlier suit should have been looked into while deciding the application. The proceeding is vexatious and mala fide.

33. In the decision of *Dahiben (Supra)*, the Hon'ble Apex Court held as follows:-

“23.13. If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order 7 Rule 11 CPC.

23.14. The power under Order 7 Rule 11 CPC may be exercised by the court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial, as held by this Court in the judgment of Saleem Bhai v. State of Maharashtra [Saleem Bhai v. State of Maharashtra, (2003) 1 SCC 557] . The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in Azhar Hussain case [Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC 315. Followed in Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba, 1998 SCC OnLine Guj 281 : (1998) 2 GLH 823] .

23.15. The provision of Order 7 Rule 11 is mandatory in nature. It states that the plaint “shall” be rejected if any of the grounds specified in clauses (a) to (e) are made out. If the court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the court has no option, but to reject the plaint.

- 34.** Thus, the order impugned is set aside. The plaint is rejected.
- 35.** Under such circumstances, the revisional application is allowed.
- 36.** There will be no order as to costs.
- 37.** Parties are directed to act on the server copy of this judgment.

(Shampa Sarkar, J.)