



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SECOND APPEAL NO. 273 of 2017

With

CIVIL APPLICATION NO. 1 of 2017

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE J.B.PARDIWALA

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO
	CIRCULATE THIS JUDGEMENT IN THE SUBORDINATE JUDICIARY.	

LAXMIBEN MAFATLAL PATEL... Petitioner

Versus

JAYANTIBHAI MAFATBHAI PATEL & 10.... Respondents

Appearance:

MR ZUBIN F BHARDA(159) for the PETITIONER(s) No. 1

MR MEHUL S. SHAH, SENIOR ADVOCATE for the Respondents

MR ANSHIN DESAI, SENIOR ADVOCATE for the Respondents

MR. BHAUMIK DHOLARIYA(7009) for the RESPONDENT(s) No. 10,11,4.1,4.3,8,9

MR. JAIMIN R DAVE(7022) for the RESPONDENT(s) No. 4.2,5,6

NOTICE SERVED BY DS(5) for the RESPONDENT(s) No. 2,3

NOTICE SERVED(4) for the RESPONDENT(s) No. 1

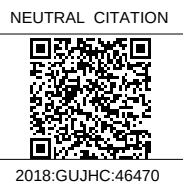
UNSERVED EXPIRED (N)(9) for the RESPONDENT(s) No. 7

CORAM: HONOURABLE MR.JUSTICE J.B.PARDIWALA

Date : 15/10/2018

ORAL JUDGMENT

1 This Second Appeal under Section 100 of the Civil Procedure



Code, 1908 (for short, 'the C.P.C.') is at the instance of the original plaintiff and is directed against the judgment and decree passed by the 11th Adhoc Additional District Judge, Ahmedabad (Rural), Mirzapur dated 11th April 2017 in the Regular Civil Appeal No.36 of 2016 arising from the judgment and decree passed by the 11th Adhoc Additional Civil Judge and J.M.F.C., Ahmedabad (Rural) dated 31st August 2016 below Exhibit : 52 in the Regular Civil Suit No.1064 of 2015.

2 For the sake of convenience, the appellant herein shall be referred to as the 'original plaintiff' and the respondents herein shall be referred to as the 'original defendants'.

3 The subject matter of this Second Appeal is an order passed by the Trial Court rejecting the plaint under the provisions of Order VII Rule 11 of the C.P.C. This order passed by the Trial Court rejecting the plaint came to be affirmed by the lower Appellate Court and that is how the original plaintiff is here before this Court with this Second Appeal against the concurrent findings of two Courts.

4 As the subject matter of this Second Appeal is one relating to rejection of plaint, it is necessary to concentrate on the contents of the plaint. The plaint reads as under:

“(2) The suit property is ancestral property of the plaintiff and father of respondent no.1, 1/1 to 1/4 and respondent no.2 and entry to that effect is also made in the village records in Village Form No.6. Wherein, Entry No.5726 was made on 28/04/1994 for the said suit property paiki property no.9 and another entry was made for co-partnership of other two numbers by Entry no.5727. Thus, the plaintiff had undivided share in the right and interest in the suit property. Moreover, the plaintiff was residing



at in-laws house after marriage and the parents of the plaintiff were also residing with the plaintiff. Respondent no.1 and 2 of this case were not taking their due care. After demise of the father of the plaintiff, the respondent no.1 and 2 had not maintained any relation with me but as it was required to sell the share of the plaintiff in January-2007, the plaintiff had approached respondent no.1 and respondent no.2 and they had declined to provide the details thereof at that time. Therefore, I met the Talati-cum-Mantri and inquired about my father's property. At that time, I was surprised to know that the respondent got approved the entry on the same day i.e. on 28/04/1994 for waiving the right of the plaintiff from the suit property. I made an application before the Prant Officer, Viramgam Prant that the said entry was false and illegal and my share was illegally removed from the suit property and the respondent no.1 and respondent no.2 had distributed the suit property mutually. Thereafter, I came to know from entry no.6941 that out of the suit properties, respondent no.2 executed document no.1846 on 27/04/2000 in favour of respondent no.3 for the property bearing Survey no.878/2 and 878/3 and subsequently, the respondent no.3 executed document no.3389 on 12/07/2000 for the said property in favour of the respondent no.4, which was reflected in village form no.6 in village records. Moreover, the respondent no.1, 1/1 to 1/4 executed document no.1691 on 21/04/2003 in favour of respondent no.5 for the property bearing Survey no.877/3, 877/6 and 878/6, entry to that effect was made in village record by entry no.7515. Moreover, the respondent no.1, 1/1 to 1/4 executed document no.6784 on 22/06/2000 in favour of respondent no.6 for the property bearing Survey no.875/1, entry to that effect was made in village record by entry no.6902. Therefore, I met the respondents except of respondent no.1, 1/1 to 1/4 and respondent no.2 and asked for my share and the respondents had stated to give me my share after disposal of case filed before the Prant Officer and therefore, I had not taken any action against them, but, recently the Prant Officer dismissed the appeal of the plaintiff and ordered to seek the relief with the Civil Court if right is removed



illegally. Thereafter, I had contacted the respondent no.3 to 6 and they refused to give my share and threatened me to do anything. Therefore, the cause of action to file the suit and injunction application has arisen for the plaintiff.

(3) Cause of Suit :-

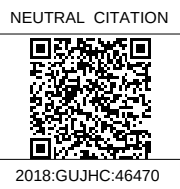
In connection with the property in dispute, respondent No.1, 1/1 to 1/4 and respondent No. 2 got false and illegal mutation entry posted regarding the property of our joint sharing by keeping me i.e. the plaintiff in dark and on the basis of that entry, out of the property in dispute, the respondent No. 3 to 6 transferred, the property bearing survey No. 878/2, 878/3, 877/3, 877/6, 878/6 by way of sale deed. As I came to know about the same in January - 2007, I initiated the procedure to get the false entry cancelled regarding waiving my right, interest and share. During the said procedure, the respondents No. 3 to 6 told me orally to return my share of the land. But, on the basis of the order dated 30/05/2008 passed by the Prant Officer, Viramgam, in connection with R.T.S. Appeal No. 46/2007, I was threatened and since then, the cause of the suit has arisen and it still continues.

(4) This Ld. Court has jurisdiction to hear this suit.

(5) This suit is within time limit.

(6) Therefore, it is prayed that,

- (a) Names of respondent no.1 and 2 are on record in property bearing survey no. 250, 878/11, 878/12, 878/17 and 910/3 out of the suit property. It is prayed to pass order and decree to divide 1/3 share of me – the plaintiff from therein by metes and bound.*
- (b) Out of the suit property, the respondent no.2 executed deed of sr. no. 1846 for consideration of Rs. 141285/- in favour of respondent no.3 on 27.04.2000 and in this connection, respondent no.3*



executed deed bearing sr. no. 3389 dated 12.07.2000 for consideration of Rs. 160000/- in favour of respondent no.4. Moreover, respondent no.1 and 1/1 to 1 / 4 executed deed bearing sr. no. 1691 for consideration of Rs. 1,41,500/- on 21.04.2003 for survey no. 877/3, 877/6 and 878/6 and respondent no. 1 and 1/1 and 1 /4 executed deed bearing sr. no. 6784 for consideration of Rs. 1,80,000/- on 22.06.2006 in favour of respondent no.6 for survey no. 875/1. It is prayed to pass order and decree declaring that these six registered sale deed executed by the respondents for total 6 (six) survey numbers out of the total suit property, are false and unlawful for my 1/3 share and they are not binding to me.

- (c) It is prayed to pass permanent injunction order restraining the respondents and his men from causing hindrance, obstacle or obstruction in my possession of this suit property and restraining all the respondents from entering into the suit property and restricting all the respondents, their agents, servants or representatives from selling, mortgaging, gifting or transferring in any manner or to execute banakhat or enter into any other transaction with respect to the suit property in favour of any third party.*
- (d) Grant the cost of this suit.*
- (e) Grant any other relief which may deem fit and proper.”*

5 Thus, it appears that the plaintiff instituted the Special Civil Suit No.442 of 2008 against her brothers and the purchasers of the suit properties claiming 1/3rd share in the suit properties. The plaintiff also prayed for cancellation of the sale deeds executed by her brothers in favour of the other defendants.

6 The original defendants Nos.7 to 11 i.e. the purchasers of the suit



properties preferred an application Exhibit : 52 with a prayer to reject the plaint on the ground that the suit filed by the plaintiff is hopelessly time barred and the suit also fails to disclose any cause of action.

7 The application Exhibit : 52 came to be adjudicated by the Trial Court, and vide order dated 31st August 2016, the plaint came to be rejected. The Trial Court, while rejecting the plaint, has observed as under:

“Upon considering the facts of the case it is evident that she has not shown at which point of time she claimed her rights from the defendant no.1 and 2. She demanded her share from defendant no. 3-6, who have later on purchased the properties by registered sale deed and had no direct relation with the plaintiff. The defendant no. 3-6 are secondary and are only liable once the rights against the defendant no. 1 & 2 are established. There exist no express denial on the part of the plaintiff. The part specially needs to be mentioned here is that the plaintiff has specifically stated that the cause of action arose from the order dated 30.05.2008 in R.T.S. Appeal No. 46/2007 after which the defendant no. 3-6 have denied her rights which they orally agreed before. But the plaintiff has not submitted the copy of the aforesaid order with her plaint. The copy of the order has been brought on records by the defendant 1. This shows that the plaintiff has not come to the court with clean hands. As the cause of action of the plaintiff lies upon the aforesaid order it needs to be considered into here. Here in the order, it is held by the Deputy Collector that the plaintiff has made statements at the time of the disputed revenue entries. And further her thumb impression are there in 135-D notice. Therefore Deputy Collector has rejected her allegation that she had no knowledge. Further it was held that if the plaintiff finds that the signatures or the thumb impression are forged then she may move to the civil court for relief. And has rejected her appeal on ground of limitation. But the plaintiff has in here para 2 of the plaint last 10 lines submitted that the Deputy Collector has ordered that if the release is wrongly made then she should move to the court. This is a clear case of malafide suppression of facts. In her plaint no pleadings are which show that her signatures or thumb impressions were forged. In the document submitted by the plaintiff by Mark 3/13, i.e. revenue entry no. 5728, specifically states that the concerned officer took statements and only after it the concerned entry was made. And in the pleadings the signatures or the thumb impression have not been challenged and therefore the plaintiff cannot deny that she had no Knowledge of the entry no. 5728.

The relevant properties were further sold by the defendant no. 1 &



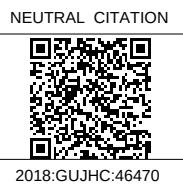
2 since 1998 by the registered sale deeds which also is considered to be deemed knowledge of the facts of sale.

As for the part of cause of action also the plaintiff has no where in her plaint specifically shown that she had made demand of her rights from the defendant no. 1 & 2 and they have denied her rights. This does not shows at what point of time the specific cause of action for declaration accrued in favour of the plaintiff. She demanded rights from the other defendants who were not directly related with her. But the cause of action also is persons who are interested in denying the rights. This does not require specific denial.

On the basis of above discussion it is clear that the plaintiff had knowledge of the revenue entry no. 5728 and therefore had deemed knowledge of the registered sale deeds also. And she has come to court in 2008 which is around 13-14 years after the date of entry. Such a time gap is barred by the limitation. And the plaint of the plaintiff is required to be rejected as for being barred by law of limitation.”

8 As the plaint came to be rejected, the plaintiff, being dissatisfied with the same, preferred the Regular Civil Appeal No.36 of 2016 in the District Court at Ahmedabad (Rural). The lower Appellate Court dismissed the appeal and thereby affirmed the judgment and decree passed by the Trial Court rejecting the plaint. The lower Appellate Court, while dismissing the appeal filed by the plaintiff, has observed as under:

“(20) Looking to the provisions of order-VII, Rule-11, it appears that, when the plaint does not disclose a cause of action or when the relief claimed is undervalued or the suit is barred by any law, the plaint can be rejected. After the entry of waiver of rights was mutated in the record of rights 1994, the plaintiff has instituted the suit in the year 2008, that means the Plaintiff instituted the suit after a period of 14 years. In such circumstances, the plaintiff should clearly mention in his plaint as regards the facts and reasons for filing of the suit after such period. But, the plaintiff has not mentioned such facts in his plaint, and the plaintiff has sought the relief against the subsequent purchasers and not from the co-



sharers. She has pleaded that, as they denied, the cause of action arose. She has not pleaded anywhere in the plaint that the notice received for the procedure to be undertaken as regards the entry mutated in the year 1994, is false. She has also not challenged the alleged false thumb impressions made in it. No such fact in this regard is mentioned in the plaint. The plaintiff has only averred that, as the order of the Prant Officer was passed and she was threatened, the cause of action arose. But, considering the order of the Prant Officer produced with the original suit vide mark-14/5 and looking to the order of the Deputy Collector and its contents, it has been stated that as the lady has alleged that she has been cheated by fabricating her signature and thumb impressions, she can seek the relief by approaching the Civil Court. When the plaintiff avers in her plaint vide Exhibit-1 that, she was threatened on the basis of the order passed in Appeal No. 46/07 dated: 30/05/2008 by the Prant Officer, Viramgam. The plaintiff does not clearly disclose the cause of action against the original sharers i.e. the defendants No.1, 2 and she has also not averred that she asked for the share from them. Therefore, the cause of action is not clearly disclosed as per Order-VII, Rule-11.

(21) Considering the provisions of the Limitation Act, the present suit has been filed regarding the share of the plaintiff and the share was waived in favour of the defendants No.1, 2 in the year 1994 through the entry. Therefore, as per the provisions of Section 110 of the Limitation Act, the period of limitation for a suit by a person excluded from a joint family property to enforce a right to share therein is twelve years.

(22) In the case on hand, as the Suit has been filed after 14 years, it clearly appears that, the Suit of the plaintiff is barred by limitation.

(23) It is submitted for the plaintiff that the said fact cannot be determined at present stage and only the plaint can be considered for the



relief under the Limitation Act. Looking to all the established principles, dispute can be raised at any stage within the time limit and while redressing the dispute in connection with the time limit. It is written in the plaint of the plaintiff that a cause of suit has arisen against the defendants nos. 3 to 6. Though the plaintiff knew about sale of the said properties and it became clear that the partition cannot be made as per the provisions under the Specific Reliefs Act and it was required to seek an alternative relief. Despite the same, no alternative relief has been sought for in the plaint. At this stage, the suit of the plaintiff is barred by the provisions of law and the principles of authorities relied upon by the plaintiff are admissible. But, its fact is not entirely relevant to present case. Looking to all the produced judgments, when the plaintiff became aware of the same, he did not challenge service of notice or his thumb impression or the procedure at the relevant point of time and even at present. It is stated that the reason of filing of the plaint arose due to direct threats administered by the defendants nos. 3 to 6. Therefore, it is clear from the suit that the plaintiff has not filed the suit with all the relevant facts and proper reasons and the same is filed beyond limitation and looking to provisions under Order 7 Rule 11, the suit of the plaintiff is not triable and it is barred by law of limitation and when the cause of action is not clear, the issue No.1 is not proved by the plaintiff and therefore the issue no.1 is answered in negative.

(24) The plaintiff has stated that the order of the lower Court is erroneous and against the settled principles of law. Looking to the entire records and the facts discussed above, when the plaint of the plaintiff is not tenable, the order rejecting plaint of the plaintiff is found just and proper warranting no interference, the issue no.2 is answered in negative and the following order is passed for issue no.3.”



9 Being dissatisfied with the judgment and decree passed by the lower Appellate Court, the plaintiff is here before this Court with this Second Appeal under Section 100 of the C.P.C.

10 The following questions have been formulated as the substantial questions of law in the memorandum of the Second Appeal:

“1. Whether the trial court had pecuniary jurisdiction to try and disposed of an application under Order 7 Rule 11 of CPC even after amendment having been allowed, if not whether appellant court could have decided the application on merit?”

2. Whether both the Courts below had travel beyond the scope of Inquiry under Order 7 Rule 11 of CPC and decided by entering into area of appreciation of Material / evidence and merit and demerit of the ease?

3. Whether appellant was required to plead that signature / thumb impression was bogus and should pray for declaration to the said effect without Respondent first pleading and proving the said documents to be genuine in view of the ratio laid down by Hon’ble Supreme Court in matter of Joseph John Peter Sandy V/s Veronica Thomas Rajkumar?

4. Whether suit be dismissed on the ground of knowledge / deemed knowledge of the mutation entry?

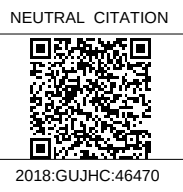
5. Whether the demand of a threat to civil rights is a condition precedent for filing a suit for partition and can it be said, in the absence thereof the plaint does not disclose the cause of action?

6. Whether finding recorded in the order passed in revenue proceedings will bind the Civil Court?

7. Whether the deletion of name from the revenue record will relinquish the right of the appellant from the suit property?”

● **SUBMISSIONS ON BEHALF OF THE PLAINTIFF:**

11 The learned counsel for the plaintiff vehemently submitted that



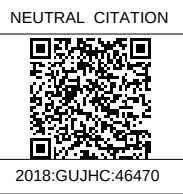
the Trial Court committed a serious error in rejecting the plaint on the ground of the suit being barred by law of limitation and frivolous cause of action. The learned counsel would further submit that the lower Appellate Court also committed a serious error in affirming the order passed by the Trial Court rejecting the plaint.

12 It is submitted that in order to consider an application filed under Order VII Rule 11 of the C.P.C. for rejection of the plaint, the Court has to look into the averments made in the plaint only. The pleadings taken by the defendants are wholly irrelevant and the matter should be decided only on the plaint's averments.

13 The learned counsel vehemently submitted that the plaintiff had no idea about the sale transactions and the day she learnt about the same, the suit came to be filed. In such circumstances, the plaint could not have been rejected on the ground that the suit has been filed after a period of fourteen years from the date of the sale transactions. According to the learned counsel, it is the date of knowledge that is important. According to the learned counsel, the *bona fide* of the plaintiff in instituting the suit cannot be looked into while deciding the application under Order VII Rule 11 of the C.P.C. The learned counsel submitted that the plaint discloses cause of action, and in such circumstances, the two Courts below committed a serious error in taking the view that the plaint fails to disclose any cause of action.

14 The learned counsel appearing for the plaintiff, in support of his submissions, has placed strong reliance on the following two decisions of the Supreme Court:

[1] Chhotanben and another vs. Kiritbhai Jaikrushnabhai Thakkar and others [2018(3) GLR 2308]



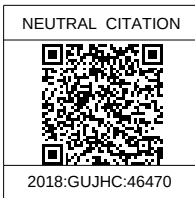
**[2] Mayar (H.K.) Ltd and others v. Owners and Parties, Vessel
M.V. Fortune Express and others [AIR 2006 SC 1828]**

15 The learned counsel appearing for the plaintiff has not argued anything with regard to the pecuniary jurisdiction of the Trial Court to try the suit. It is necessary for this Court to say so because the very first question of law formulated in the memorandum of the Second Appeal is one relating to the pecuniary jurisdiction. The learned counsel appearing for the plaintiff only argued on the provisions of Order VII Rule 11 of the C.P.C.

● **SUBMISSIONS ON BEHALF OF THE DEFENDANTS:**

16 Mr. Mehul S. Shah and Mr. Anshin Desai, the learned senior counsel appearing for the defendants vehemently submitted that no error, not to speak of any error of law could be said to have been committed by the two Courts below in taking the view that the plaint deserves to be rejected.

17 The learned senior counsel appearing for the defendants vehemently submitted that the institution of the suit by the plaintiff claiming 1/3rd share in the suit properties is nothing, but gross misuse or abuse of the process of law. It is further submitted that the dishonesty or lack of *bona fide* on the part of the plaintiff is writ large on the face of the record. It is pointed out by the learned senior counsel that the plaintiff has admitted that she was aware about the mutation entries Nos.5726 and 5727, whereas she derived right over the suit properties. However, dishonestly, she has pleaded ignorance with respect to the mutation entry No.5728, which came to be mutated on the same date

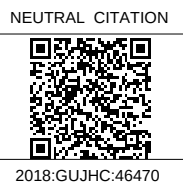


whereby she relinquished her right in the suit properties.

18 It is further argued on behalf of the defendants that during the pendency of the suit, the plaintiff settled the suit as regards the land bearing survey Nos.878/11, 878/12, 878/17 and 910/3. These parcels of land were not sold by her brother. It is pointed out that this fact is apparent from the *pursis* Exhibit : 61 filed before the Supreme Court. It is submitted that the suit has been filed with the sole intention to extort money from the defendants, who are *bona fide* purchasers of the suit properties.

19 It is further submitted that the defendants, after purchasing the parcels of land, have invested huge amount in the development of the same. The plaintiff did not raise any objection against the registered sale deeds or the development for a period of nine years from the date of the first sale. The plaintiff, for the first time, in the year 2008, instituted the suit claiming 1/3rd share in the parcels of land and cancellation of the sale deeds. The learned senior counsel pointed out that the suit properties have been fully developed and several flats have been constructed and most of those have already been sold.

20 It is submitted that under Order VII Rule 11 of the C.P.C., the plaint can be rejected where it does not disclose a cause of action or where the suit appears from the statement made in the plaint to be barred by any law. It is submitted that for the purpose of deciding whether the plaint discloses a cause of action, the Courts would generally look only at the plaint. However, according to the learned senior counsel, there is an exception to this rule that when the plaint is based on documentary evidence, the same can also be looked into.



21 The learned senior counsel appearing for the defendants invited the attention of this Court to Order VI Rule 16, which empowers the Court to strike out the pleadings at any stage of the proceedings if the suit is found to be frivolous or vexatious or is otherwise an abuse of the process of Court. It is submitted that the civil suit instituted by the plaintiff is nothing, but clever drafting creating an illusion of a cause of action. The litigation initiated by the plaintiff is inspired by an oblique motive and is not *bona fide*.

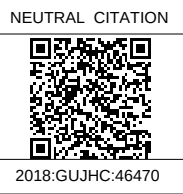
22 In the last, the learned senior counsel submitted that this being a Second Appeal, the concurrent findings recorded by the two Courts below may not be disturbed. The Trial Court as well as the lower Appellate Court are convinced that the suit has been preferred with an oblique motive and is not *bona fide* and is barred by law of limitation. Having regard to such concurrent findings, it is submitted that this Court may not disturb the same in a Second Appeal.

23 It is submitted that none of the questions formulated in the memorandum of the Second Appeal could be termed as the substantial questions of law.

24 In such circumstances referred to above, the learned senior counsel submitted that there being no merits in this Second Appeal, the same be dismissed.

25 Mr. Shah as well as Mr. Desai, the learned two senior counsel has placed strong reliance on the following decisions in support of their submissions:

[1] T. Arivandandam vs. T.V. Satyapal and others [(1977) 4



SCC 467]

[2] Raj Narain Sarin (dead) Through LRS. and others vs. Laxmi Devi and others [(2002) 10 SCC 501]

[3] Hardesh Ores (P) Ltd vs. Hede and Company [(2007) 5 SCC 614]

[4] Fatehji and company and another vs. L.M. Nagpal and others [(2015) 8 SCC 390]

[5] ITC Limited vs. Debts Recovery Appellate Tribunal and others [(1998) 2 SCC 70]

[6] Smt. Dilboo (Dead) by Lrs. others vs. Smt. Dhanraji (dead) and others [AIR 2000 SC 3146]

[7] Sopan Sukhdeo Sable and others vs. Assistant Charity Commissioner and others [AIR 2004 SC 1801]

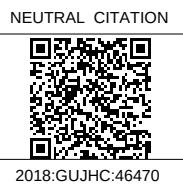
[8] Ram vs. Janak Singh and others [AIR 2012 SC 3023]

[9] Harkirat Singh vs. Amrinder Singh [AIR 2006 SC 713]

[10] N.V. Srinivasa Murthy and others vs. Mariyamma (dead) by proposed Lrs. and others [AIR 2005 SC 2897]

● **POSITION OF LAW:**

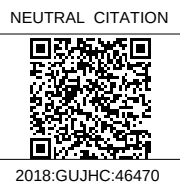
26 It is a settled rule of law that the plea of rejection of plaint is founded on the "PLEA OF DEMURRER". A person raising such plea in



law has to take the facts as stated by the opponent as correct. Despite tentative admission of such correctness, the plaint does not disclose a complete or even partial cause of action or the relief claimed is barred by law and thus, the plaint is liable to be rejected within the provisions of Order VII, Rule 11 of the Code of Civil Procedure. Plain language of this rule shows that for determination of an application under this provision, the Court has to look into the plaint. This concept has been extended by judicial pronouncement of various Courts so as to take within its ambit even the documents filed by the plaintiff along with plaint or subsequent thereto but prior to the hearing of such application. It would be more so where the documents have been referred to in the plaint itself. But the defence raised by the defendants in his written statement or the documents filed along therewith certainly falls beyond the zone of consideration, where an application for rejection of a plaint is being considered by the Court. The language of the rule does not admit any scope for doubt that the written statement filed by the defendant cannot be referred or relied upon by the applicants for decision of such application. Whether the plaint discloses any cause of action or not, is a question founded on the basic cause of action pleaded by the plaintiff in his plaint. It must thus necessarily be construed that language of Rule 1 is circumscribed by the limitation of reading the plaint at best with its supporting documents. [See : **ABN – AMRO Bank vs. PUPDA, AIR 2000 P & H 44**].

27 A Full Bench of the Punjab and Haryana High Court in the case of **Harnam Singh v. Surjit Singh, AIR 1984 Punj and Hary 126**, held as under:

"It is well settled that a cause of action means every fact which, if traversed, would be necessary for the plaintiff to prove in order to support the right to a judgment in his favour. 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 tenant. Negatively it does not comprise the evidence necessary to prove the bundle of facts and equally has no relation whatsoever to the defence, which may be set up by the defendant nor does it depend on the character of the relief prayed for by the plaintiff."

28 The well accepted canons of civil jurisprudence makes a clear distinction between "plaintiff has no cause of action" and "the plaint does not disclose cause of action" in the earlier part, there is complete absence of a right to sue. While in the latter, the right to sue may exist, but it is not well founded on the basis of the averments made in the plaint. The plaint lacks essential and material particulars which would give an effective cause of action to the plaintiff. Where on the face of it, the plaint does not disclose any cause of action, the plaint may be liable to be rejected, but where the parties are to produce oral and documentary evidence to substantiate and support their cause of action and relief claimed for in the plaint, the Court has to consider the entire material placed on record and the suit would be liable to be decided on merit.

29 The above distinction was clearly stated by a Full Bench of Allahabad High Court in the case of **Jagannath Prasad vs. Smt. Chandrawati** [AIR 1970 All 309 (FB)].

30 In the case of **State of Orissa vs. Klockner and Company**, AIR 1996 SC 2140, the Supreme Court while approving the following view taken by the learned single Judge of the High Court dismissed the Special Leave Petition.

"From the discussions in the order it appears that the learned trial Judge has not maintained the distinction between the plea that there was no cause of action for the suit and the plea that the plaint does not disclose a cause of action. No specific reason or ground is stated in the order in support of the finding that the plaint is to be rejected under Order 7, Rule 11(a). From the averments in the plaint, it is clear that the plaintiff has



pleaded a cause of action for filing the suit seeking the reliefs stated in it. That is not to say that the plaintiff has cause of action to file the suit for the reliefs sought that question is to be determined on the basis of materials (other than the plaint) which may be produced by the parties at appropriate stage in the suit. For the limited purpose of determining the question whether the suit is to be wiped out under Order 7, Rule 11(1) or not the averments in the plaint are only to be looked into. The position noted above is also clear from the petition filed by defendant No. 1 under Order 7, Rule 11 in which the thrust of the case pleaded is that on the stipulations in the agreement of 20-4-1982 the plaintiff is not entitled to file a suit seeking any of the reliefs stated in the plaint."

31 The Supreme Court, in **T. Arivandandam (supra)**, has observed something very important and which should not be lost sight of while deciding a matter arising under the provisions of Order VII Rule 11 and 10 of the C.P.C. I may quote the relevant observations as under:

"5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints. 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 O. VII R. 11, C. P. C. 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 by examining the party searchingly under O. X. C.P.C. An activist Judge is the answer to irresponsible law suits. The trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Ch. XI) and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi.

"It is dangerous to be too good."

6. The trial Court in this case will remind itself of S. 35-A, C. P. C. and take deterrent action if it is satisfied that the litigation was inspired by vexatious motives and altogether groundless. In any view, that suit has no survival value and should be disposed of forthwith after giving an immediate hearing to the parties concerned."

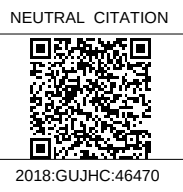


32 Thus, if a meaningful – not formal reading of the plaint, it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, the Trial Court should exercise its power under Order VII Rule 11, C.P.C. taking care to see that the grounds mentioned therein is fulfilled. If a clever drafting like one in the case on hand 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 C.P.C. In my view, the aforesaid observations are squarely applicable to the conduct of the plaintiff herein.

33 The Delhi High Court in **M/s. Sakthi Sugars Limited vs. Union of India**, AIR 1981 Delhi 212 relying upon the aforesaid observations of the Supreme Court held thus :- (Para 12)

"12. But the law in this respect is laid down by the Supreme Court in T. Arivandandam v. T.V. Satyapal, AIR 1977 SC 2421. It is laid down that if on a meaningful and not formal reading of a plaint it is manifest that the plaint is vexatious or meritless in the sense of not disclosing a clear right to sue trial Court should exercise its power under Order VII, Rule 11. Code of Civil Procedure, and should reject the plaint. So it is meaningful reading of the plaint which is required. It is to be seen if actually according to law. On the allegations contained in the plaint, defendant No.2 was agent of the Union of India or not . Mere formal allegation of the plaintiff that defendant No.2 was agent of the Union of India is not to be accepted. In view of the Supreme Court authority, it is the duty of the Court to probe whether allegations made in the plaint make defendant No.2 as agent and the Union of India as the principal according to law. I have already held that according to law defendant No.2 was not agent of the Union of India and that being so plaint does not disclose any cause of action against the latter."

34 The Supreme Court in **Azhar Hussein vs. Rajiv Gandhi, 1986 (supp) SCC 315 : (AIR 1986 SC 1253)**, though while dealing with the question relating to rejection of an election petition with reference to Order VII, Rule 11, CPC held that the purpose of conferment of power of rejection of plaint is to ensure that a litigation which is meaningless and



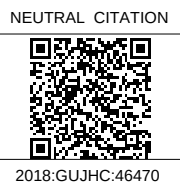
bound to prove abortive should not be permitted to occupy the time of the Court and the concerned litigants are relieved of the psychological burden of the litigation. The Apex Court observed that since the Court has the power to act at the threshold, the power must be exercised at the threshold itself in case the Court is satisfied that it is a fit case for the exercise of such power.

35 The Supreme Court in **ITC Limited (supra)**, while referring to its earlier judgment in **T. Arinandandam (supra)** observed, "the question 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, CPC. 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."

36 In **Mohan Rawale vs. Damodar Tatyaba, (1994) 2 SCC 392 : (1994 AIR SCW 2028)**, the Supreme Court held that if some cause of action is disclosed, a pleading cannot be struck out merely because the case is weak and not likely to succeed. The Supreme Court drew distinction between the "material facts" and "full particulars" with reference to the provisions of Section 83 (1) (a) and (b) of the Representation of the People Act, 1951 and further held that the distinction between "material facts" and "full particulars" is not sharp, but is one of degree. The material facts are those which party relies upon and which, if he does not prove, he fails at that time.

37 In **William vs. Wiloox (1838 (8) Ad and El 331)**, Lord Denman, C.J. said thus :

"It is an elementary rule in pleading that, when a state of facts is relied it

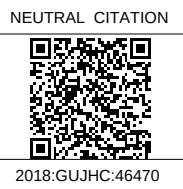


is enough to allege it simply, without setting out the subordinate facts which are the means of providing it, or the evidence sustaining the allegations."

38 The learned single Judge of Rajasthan High Court in **Ranjeet Mal vs. Poonam Chand, AIR 1983 Rajasthan 1**, held, "what is to be determined by the Court at the stage of deciding as to whether the plaint discloses any cause of action or not, is to find out from the allegations of the plaint itself as to whether a bogus, wholly vexatious or frivolous litigation was sought to be initiated under the garb of ingenious drafting of the plaint and to guard against the mischief of a litigant misusing the process of the Court, by entering into a false litigation, merely for the purposes of harassing the other party and obtaining undue advantage of the process of the Court by adopting tactics and in starting sham and shady actions."

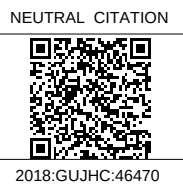
39 While dealing with provisions of order 33, Rule 5 clause (a), the Supreme Court in **Vijay Pratap Singh vs. Dukh Haran Nath Singh [AIR 1962 SC 941]**, held in paragraph 9 of the report thus :

"(9).....By the express terms of R.5 Cl. (d), the Court is concerned to ascertain whether the allegations made in the petition show a cause of action. The Court has not to see whether the claim made by the petitioner is likely to succeed; it has merely to satisfy itself that the allegations made in the petition, if accepted as true, would entitle the petitioner to the relief he claims. If accepting those allegations as true no case is made out for granting relief no cause of action would be shown and the petition must be rejected. But in ascertaining whether the petition shows a cause of action the Court does not enter upon a trial of the issues affecting the merits of the claim made by the petitioner. It cannot take into consideration the defences which the defendant may raise upon the merits; nor is the Court competent to make an elaborate enquiry into doubtful or complicated questions of law or fact. If the allegations in the petition, prima facie, show a cause of action, the Court cannot embark upon an enquiry whether the allegations are true in fact, or whether the petitioner will succeed in the claims made by him. By the Statute, the jurisdiction of the Court is restricted to ascertaining whether on the allegations a cause of action is



shown: the jurisdiction does not extend to trial of issues which must fairly be left for decision at the hearing of the suit."

40 Thus, the cause of action has a well defined legal connotation, though not defined, which means bundle of essential facts, if traversed, has to be proved by the plaintiff to entitle him to the relief. It reflects to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved to entitle the plaintiff to the decree. The consistent legal position which is also mandatorily enacted by Order VII, Rule 11 (a) CPC is, that the Court must reject the plaint which does not disclose cause of action. Obviously there is a difference between the non-disclosure of cause of action in the plaint and the absence of cause of action for the suit. The ground for rejection of plaint is failure to disclose a cause of action and not that there is no cause of action for the suit. It is not competent for the Court to go into the correctness or otherwise of the allegations constituting the cause of action. In other words, the correctness or otherwise of the allegations constituting the cause of action is beyond the purview of Order VII, Rule 11(a), CPC. However, to find out whether the plaint discloses cause of action or not, the Court has to consider the allegations made in the plaint intelligently and meaningfully and need not be influenced by ingenious and clever drafting creating illusion of cause of action. The ritual of repeating a word or creation of an illusion in the plaint can certainly be unravelled and exposed by the Court while dealing with an application under Order VII, Rule 11(a). The Court must scan and scrutinise the allegations made in the plaint to find out whether forensic cleverness while drafting the plaint has been employed to get out of the clutches of Order VII, rule 11, C.P.C. and if on a careful scan and scrutiny of the pleading the



conclusion of the Court is in affirmative, the consequence of rejection of plaint must follow. The Court has to see while exercising its power for rejection of plaint, which it must whether, the allegations in the plaint as they stand, fail to prove the cause of action. While considering the question whether the plaint discloses any cause of action or not, the Court has to find out from the allegations made in the plaint itself and not beyond it as to whether a bogus, wholly vexatious or frivolous litigation has been initiated by the plaintiff or that the claim made by the plaintiff is a legally recognisable claim. What is required to be disclosed by the plaintiff is a clear right to sue and failure to do so must necessarily entail in rejection of the plaint.

41 The scope of Order VII, Rule 7, C.P.C. has been elaborately considered in **Sopan Sukhdeo Sable vs. Asstt. Charity Commissioner, (2004) 3 SCC 137 : (AIR 2004 SC 1801)**, wherein the Supreme Court held as under:

"10. In Saleem Bhai v. State of Maharashtra ((2003) 1 SCC 557) : (AIR 2003 SC 759) it was held with reference to Order 7 Rule 11 of the Code that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power 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. For the purposes of deciding an application under clauses (a) and (d) of Order 7 Rule 11 of the Code, the averments in the plaint are germane: the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage."

42 The above **Sopan Sukhdeo Sable case, (2004) 3 SCC 137 : (AIR 2004 SC 1801)** has been referred to in the subsequent judgment - **Popat and Kotecha Property vs. State Bank of India Staff Assn., (2005) 7 SCC 510**. As held by the Supreme Court in **Popat and Kotecha Property vs. State Bank of India Staff Assn., (2005) 7 SCC 510**, the real object of Order VII, Rule 11 of the Code is to keep out of courts irresponsible



suits. Therefore, Order 10 of the Code is a tool in the hands of the courts by resorting to which and by searching examination of the party in case the court is *prima facie* of the view that the suit is an abuse of the process of the court in the sense that it is a bogus and irresponsible litigation, the jurisdiction under Order 7, Rule 11 of the Code can be exercised.

43 In **Balasaria Construction (P) Ltd. v. Hanuman Seva Trust, (2006) 5 SCC 658**, the Supreme Court considered the question whether words ".... barred by law...." in Rule 11(d) would also include bar by the law of limitation. Referring to various judgments and conflict of views, the Supreme Court held as under:

"4. This case was argued at length on 30-8-2005. Counsel appearing for the appellant had relied upon a judgment of this Court in **N.V. Srinivasa Murthy v. Mariyamma** (2005) 5 SCC 548 : (AIR 2005 SC 2897) for the proposition that a plaint could be rejected if the suit is *ex facie* barred by limitation. As against this, counsel for the respondents relied upon a later judgment of this Court in **Popat and Kotecha Property v. SBI Staff Assn.** (2005) 7 SCC 510. in respect of the proposition that Order 7, Rule 11(d) was not applicable in a case where a question has to be decided on the basis of fact that the suit was barred by limitation. The point as to whether the words barred by law occurring in Order 7 Rule 11(d) CPC would include the suit being barred by limitation was not specifically dealt with in either of these two judgments, cited above. But this point has been specifically dealt with by the different High Courts in **Mohan Lal Sukhadia University v. Priya Soloman** AIR 1999 Raj 102, **Khaja Quthubullah v. Govt. of A.P.** AIR 1995 AP 43, **Vedapalli Suryanarayana v. Poosarla Venkata Sanker Suryanarayana** (1980) 1 An LT 488 : (1980) 1 APLJ 173 (HC), **Arjan Singh v. Union of India** AIR 1987 Del 165, wherein it has been held that the plaint under Order 7 Rule 11(d) cannot be rejected on the ground that it is barred by limitation. According to these judgments the suit has to be barred by a provision of law to come within the meaning of Order 7 Rule 11 CPC. A contrary view has been taken in **Jugolinija Rajia Jugoslavija v. Fab Leathers Ltd.** AIR 1985 Cal 193, **National Insurance Co. Ltd. v. Navrom Constantza** AIR 1988 Cal 155, **J. Patel and Co. v. National Federation of Industrial Co.op.Ltd.** AIR 1996 Cal 25 and **State Bank of India Staff Assn. v. Popat and Kotecha Property** (2001) 2 Cal LT



34. The last judgment was the subject-matter of challenge in **Popat and Kotecha Property v. SBI Staff Assn.**(2005) 7 SCC 510. This Court set aside the judgment and held in para 25 as under: (SCC P.517)

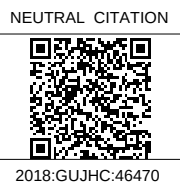
“25. When the averments in the plaint are considered in the background of the principles set out in **Sopan Sukhdeo case (2004) 3 SCC 137 : (AIR 2004 SC 1801)** the inevitable conclusion is that the Division Bench was not right in holding that Order 7, Rule 11, CPC was applicable to the facts of the case. Diverse claims were made and the Division Bench was wrong in proceeding with the assumption that only the non-execution of lease deed was the basic issue. Even if it is accepted that the other claims were relatable to it they have independent existence. Whether the collection of amounts by the respondent was for a period beyond 51 years needs evidence to be adduced. It is not a case where the suit from statement in the plaint can be said to be barred by law. The statement in the plaint without addition or subtraction must show that it is barred by any law to attract application of Order 7 Rule 11. This is not so in the present case.”

5. Noticing the conflict between the various High Courts and the apparent conflict of opinion expressed by this Court in **N.V. Srinivasa Murthy v. Mariyamma (2005) 5 SCC 548 : (AIR 2005 SC 2897)** and **Popat and Kotecha Property v. State Bank of India Staff Assn.**(2005) 7 SCC 510 the Bench referred the following question of law for consideration to a larger Bench:

“Whether the words "barred by law" under Order 7, Rule 11(d) would also include the ground that it is barred by the law of limitation. In **Balasaria Construction (P) Ltd. v. Hanuman Seva Trust**,(2006) 5 SCC 662, keeping in view the importance of question and the conflict of opinion, the Supreme Court referred the matter to a larger Bench.”

44 However, it appears from what has been observed in para 6 by the Supreme Court in **Balasaria Construction (supra)** that as the question referred to the Larger Bench became academic, the case was, therefore, sent back to the Bench for disposal on merits based on the facts of the case. Para 6 in **Balasaria Construction (supra)** reads as under:

“..... It is not the case of either side that as an absolute proposition an application under Order 7 Rule 11 (d) can never be based on the law of limitation. Both sides state that the impugned judgment is based on the



facts of this particular case and the question whether or not an application under Order 7 Rule 11(d) could be based on law of limitation was not raised and has not been dealt with. Both sides further state that the decision in this case will depend upon the facts of this case.”

45 Order VII Rule 11 of the C.P.C. casts a duty upon the Court to reject the plaint if the circumstances indicates therein are found to be existing. It cannot be the law that this power of the Court would be curtailed in any manner even if the Court proceeds with the suit to some length, without application of mind, on this point. The rule itself does not indicate anywhere that the power is to be exercised upon an application or, if such an application is filed, it should be at a particular stage. I may only add that an action under Order VII Rule 11 of the C.P.C. does not await an application by any party. It is the duty of the Court to reject the plaint if reasons, therefore, are found to be existing from a reading of the plaint itself and other documents relied upon by the plaintiff and annexed with the plaint.

46 In the aforesaid context, I may refer to and rely upon a decision of the Allahabad High Court in the case of **ITC Limited vs. Rakesh Srivastava** reported in **AIR 1997 Allahabad 323**, wherein it has been observed as under:

“8...Order 7, Rule 11, C.P.C. casts a duty on the Court and it cannot be left to the event of an objection in this respect to be raised by one party. It is the duty of the civil Court, from the contents of the plaint, to find if there was any disclosure of a cause of action or if at all it was barred under the provisions of any law. The defendant could, at best, assist the Court to indicate that how these clauses (a) and (d) would apply.”

“10. I shall engage myself now on the true import of Order 7, Rule 11, C.P.C. This order deals with the plaint and the rules herein speak about the particulars that are to be contained in a plaint, how the plaintiffs and the defendants are to be described and how a ground of exemption from limitation law is to be pleaded and how the reliefs are to be framed. In the context of this back ground of Order 7 the provisions of Rule 11



thereunder ought to be looked into. Thus, Rule 11 speaks of rejection of the plaint and requires that the plaint shall be rejected where it does not disclose a cause of action. The plaint shall also be rejected where the suit appears from the statement in the plaint to be barred by any law. To decide whether the plaint discloses a cause of action or not, the Court is to look into only the allegations in the plaint and as such allegations should be assumed at that stage to be correct and only thereupon the Court is to see if the assertions did disclose a cause of action or not. The facts necessary to be proved for claiming the reliefs ought to be stated in the plaint although the evidence may not be pleaded. The very language of Order 7, Rule 11, C.P.C. indicates that the provisions are mandatory. The only condition is that the defendant's case is not to be looked into at this stage. The plaint is to stand or fall on its own merits or demerits without any reference to the defendant's case. The absence of cause of action is not the sole ground for rejection of a plaint, there are three other grounds also as mentioned in Order 7, Rule 11, C.P.C. The provisions of Order 7, Rule 11(a) have been indicated above where the plaint is to be rejected on the ground of absence of a disclosure of cause of action. The plaint is liable to be rejected also when from the plaint averments the suit is found prima facie not maintainable being barred under any law..."

47 At this stage, I may refer to a decision of the Rajasthan High Court in the case of **Bhagwan Das vs. Goswami Brijesh Kumarji [AIR 1983 Rajasthan 3]**. In para 7 of the said judgment, it is observed as follows:

"7. Learned counsel for the opposite party may be right in urging that if the plaint is based on a document, then such a document may be considered as forming part of the plaint itself and the document can also be looked into, while considering the averments of the plaint, for the purpose of deciding the question that the plaint discloses a cause of action or not. But it has to be remembered that the averments made in the plaint as well as the contents of the document which may constitute part of the plaint, can be looked into on the face value thereof and the question relating to the validity or invalidity of the document cannot be considered at the stage of deciding an application under O. 7, R. 11, CPC."

48 I may also refer to and rely upon a decision of the Bombay High Court in the case of **SNP Shipping Services Pvt Ltd and others vs. World Tanker Carrier Corporation and another [AIR 2000 Bombay 34]**. His Lordship S.S. Nijjar, J. (as His Lordship then was) has observed



as under:

"Order VI. Rule 16. Striking out pleadings :- The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading -

(a) which may be unnecessary, scandalous, frivolous or vexatious, or

(b)

(c) which is otherwise an abuse of the process of the Court."

"Order VII. Rule 11 Rejection of plaint :-

The plaint shall be rejected in the following cases :-

(a) where it does not disclose a cause of action.

(b)

(c)

(d) where the suit appears from the statement in the plaint to be barred by any law."

The aforesaid provisions have been subject-matter of discussion by the Indian Courts in a number of cases. Analogous provisions have also been examined by Courts in England. In India under Order 7, Rule 11 the plaint can be rejected where it does not disclose a cause of action or where the suit appears from the statement made in the plaint to be barred by any law. For the purpose of deciding that the plaint "does not disclose a cause of action", the Courts generally look only at the plaint. However, there is a rider to this rule, that when the plaint is based on a document, the same can also be looked into. This proposition has been recognised by the Rajasthan High Court in the case of **Bhagwan Das v. Goswami Brijesh Kumarji**, (AIR 1983 Rajasthan 3). In paragraph 7 of the aforesaid judgment, it is observed as follows :-

"7. Learned counsel for the opposite party may be right in urging that if the plaint is based on a document, then such a document may be considered as forming part of the plaint itself and the document can also be looked into, while considering the averments of the plaint, for the purpose of deciding the question that the plaint discloses a cause of action or not. But it has to be remembered that the averments made in the plaint as well as the contents of the document which may constitute part of the plaint, can be looked into on the face value thereof and the question relating to the validity or invalidity of the document cannot be considered at the stage of deciding an application under O. 7, R.



11, CPC.""

Similar proportion is laid down in the case of **Wenlock v. Moloney, (1965) 2 All ER 871**. In this case the observations of Lord Herschell in **Lawrance v. Lord Norreys (1886-90) All ER rep. at p. 863** have been reproduced which are as under :

"It cannot be doubted that the Court has an inherent jurisdiction to dismiss an action which is an abuse of the process of the Court. It is a jurisdiction which ought to be very sparingly exercised, and only in very exceptional cases. I do not think its exercise would be justified merely because the story told in the pleadings was highly improbable, and one which it was difficult to believe could be proved."

There is a slight difference between the law in England and the law in India with regard to the rejection of the plaint at the initial stage. In India, plaint can only be rejected, inter alia, if it discloses no cause of action. On the other hand, in England the plaint can be rejected if it discloses no "reasonable cause of action". The provision is contained in RSC O. 18 R. 19, which is as under :

"(1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any writ in the action, or anything in any pleading or in the indorsement, on the ground that -

(a) it discloses no reasonable cause of action or defence, as the case may be; or

(b) it is scandalous, frivolous or vexatious; or

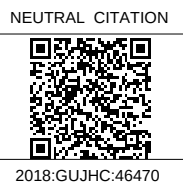
(c) it may prejudice, embarrass or delay the fair trial of the action; or

(d) it is otherwise an abuse of the process of the Court;

and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

(2) No evidence shall be admissible on an application under paragraph (1)(a)....."

A perusal of the aforesaid provision would show that, literally speaking, the power is a little wider in England. But judicial interpretation has virtually equated the term "no reasonable cause of action" occurring in RSC Order 18, R. 19 to the phrase "no cause of action" occurring in Order VII, Rule 11(a) of the CPC. The Indian as well as the English Courts are very reluctant to reject the plaint at the threshold. Analysing the aforesaid provision in the case of **Drummond Jackson v. British Medical Association, (1970) 1 All ER 1094** Lord Pearson observes :



"Over a long period of years it has been firmly established by many authorities that the power to strike out a statement of claim as disclosing no reasonable cause of action is a summary power which should be exercised only in plain and obvious cases....."

Similar views expressed by other Judges are also noticed, as follows :

In Nagle v. Feilden (1966) 1 All ER 689 at page 695) Danckwerts Ltd. observes :

"The summary remedy which has been applied to this action is one which is only to be applied in plain and obvious cases, when the action is one which cannot succeed or is in some way an abuse of the process of the Court."

Salmon LJ at page 697 observes :

"It is well settled that a statement of claim should not be struck out and the plaintiff driven from the judgment seat unless the case is unarguable".

Thus the Rule appears to be that the plaint can be rejected in plain and obvious cases when the action is one which cannot succeed or is in some way an abuse of the process of the Court. The plaint should not be struck out unless the case is unarguable. In the same judgment Sir Gordon Willmer at page 1105 observed as follows :-

"The question whether a point is plain and obvious does not depend on the length of time it takes to argue. Rather the question is whether when the point has been argued, it has become plain and obvious that there can be but one result."

49 I have to my advantage a Division Bench decision of this Court in the case of **Chandrakant Kantilal Jhaveri and another vs. Madhuriben Gautambhai and another** reported in **AIR 2011 Gujarat 27**, wherein the Division Bench has observed as under:

"6. The aforesaid shows that if it is found that the plaint does not disclose the cause of action, the Court has no option but to reject the plaint. But for deciding such aspects of cause of action, the Court should take into consideration the averments made in the plaint for, the purpose of deciding the question as to whether the averment made in the plaint



discloses the cause of action or not and while doing so, it cannot be said that the Court is precluded from applying the statutory provisions or case law to the averments made in the plaint. If the assertion made in the plaint is contrary to the statutory law or case law, it cannot be considered as the valid cause of action.”

“8. Under these circumstances, if there is no details whatsoever for any alleged fraud or collusion by the defendants, it can be said that the provisions of Order VII, Rule 11 of the Civil Procedure Code would apply. The pertinent aspect is that if the averments stated in the plaint is considered as it, it does not disclose any cause of action for the prayers made in the suit.”

“We find that here also, except again and again using the word "collusion" and "fraud" in the plaint, no details have been given nor it is demonstrated in the manner in which any prejudice in law by breach of any rights in law has been caused resulting into valid cause of action.”

“15A. It was submitted by the learned counsel for the appellant Mr. Gandhi that the plaint can be rejected under Order VII, Rule 11 of the Civil Procedure Code only when the suit is barred by any statutory provisions.

16. It is true that the same is one of the requirements as provided under Order VII, Rule 11, clause (d) of the Civil Procedure Code, but thereby it cannot be said that the suit if does not disclose the cause of action. Order VII, Rule 11 of the Civil Procedure Code will have no applicability and the reason being that the clause expressly provides for disclosure of the cause of action.”

50 I may also refer to and rely upon one another Division Bench decision of this Court in the case of **Maharaj Shri Manvendrasinhji R. Jadeja vs. Rajmata Vijaykunverba Wd/o Maharaja Mahendrasinhji**, reported at **1999 (1) GLR 261** at paras 14, 15 and 16, which reads as under:

"14. Having noticed brief summary of the plaint and prayers earlier, it would be relevant to refer to the provisions of Order 7, Rule 11(a) of the CPC and the scope thereof. Order 7, Rule 11 (a) of the CPC provides that the plaint shall be rejected in case where it does not disclose a cause of action. Order 7, Rule 11 (a) of the CPC is mandatory and if it is found that the plaint does not disclose a cause of action, the Court has no option but to reject the plaint. To find out whether a plaint discloses a cause of action or not, the Court has to look only to the averments made in the



plaint. When a plaint is based on a document filed along with the plaint, it can, however, be considered to ascertain if plaint discloses any cause of action. Cause of action means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment. The words "cause of action" mean the whole bundle of material facts which are necessary for the plaintiff to prove in order to entitle him to the reliefs claimed in the suit. What is to be done by the Court at the stage of deciding as to whether the plaint discloses any cause of action or not is to find out from the allegation of the plaint itself as to whether a bogus, wholly vexatious or frivolous litigation is sought to be initiated under the garb of ingenuous drafting of the plaint or not because it is the duty of the Court to guard against the mischief of a litigant misusing the process of court by entering into a false litigation merely for the purpose of harassing the other party and to nip in the bud the litigation which is sham and shabby in character. In order to find out whether the plaint discloses a cause of action or not, the averments made in the plaint and documents annexed thereto should be scrutinised meaningfully and if on such scrutiny it is found that the plaint does not disclose cause of action, it has got to be rejected in view of the provisions of Order 7, Rule 11(a) of the CPC. When it is said that the Court should take into consideration the averments made in the plaint for the purpose of deciding the question whether the averments made in the plaint disclose cause of action or not, it does not mean that the Court is precluded from applying the statutory provisions or case-law to the averments made in the plaint. If an assertion made in the plaint is contrary to statutory law or case-law, it cannot be considered as disclosing cause of action. In ITC Ltd., (AIR 1998 SC 634) (supra), bank had filed suit against the appellant and others and claimed relief for a sum of Rs. 52,59,639-66 ps. After the suit was filed, it was transferred to the Debt Recovery Tribunal. Before the Tribunal, an application was filed by the appellant under Order 7, Rule 11 of the CPC for rejecting the plaint, so far as appellant was concerned, on the ground that no valid cause of action had been shown against the appellant. That application was rejected by the Tribunal. Against the said order, an appeal was filed before the Debts Recovery Appellate Tribunal. The appeal was dismissed in limine. Thereupon a writ petition was filed by the appellant, which was dismissed holding that the question should be decided at the trial. Against that judgment, the appellant had filed an appeal before the Division Bench of the High Court, which was also dismissed. The matter was thereafter carried before the Supreme Court. After taking into consideration the decided cases on the point whether there was fraudulent movement of goods under which letter of credit was obtained which in turn entitled the bank to file the suit, the Supreme Court held that that point was already decided by decision of the Supreme Court in U.P. Co-operative Federation's case and, therefore, the allegation of non-supply of goods by the sellers to the buyers did not by itself amount, in law, to a plea of "fraud" as understood in this branch of the law and hence by merely characterising alleged non-movement of goods as "fraud", the bank



was not entitled to claim that there was a cause of action based on fraud or misrepresentation. While allowing the appeal, what is emphasised by the Supreme Court is that the question 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, R. 11 of the CPC has to be decided with reference to averments made in the plaint and 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. In view of this decision of the Supreme Court, it is evident that if something purely illusory has been stated with a view to get out of Order 7, Rule 11 of the CPC by resorting to clever drafting, it cannot be said that the plaint discloses a cause of action and if a clear right to sue is not shown in the plaint, it is liable to be rejected.

15. In the light of scope of Order 7, Rule 11 (a) of the CPC, we would now proceed to examine different submissions made on behalf of the appellant. The submission that the plaint was presented on December 26, 1978, whereas issues for determination were framed by the learned Judge on July 21, 1981 and therefore the application filed by the respondent under Order 7, Rule 11(a) of the CPC on June 26, 1996 should not have been entertained at such a long distance of time, has no substance. As noted earlier, the provisions of Order 7, Rule 11(a) of the Code of Civil Procedure are mandatory in nature. It is the duty of the Court to reject the plaint which does not disclose cause of action. If a plaint can be rejected at threshold of the proceedings, we do not see any reason as to why it cannot be rejected at any subsequent stage of the proceedings. Even if after framing of issues, the basic defect in the plaint persists, namely, absence of cause of action, it is always open to the contesting defendants to insist that the plaint be rejected under Order 7, R. 11 of the CPC and the Court would be acting within its jurisdiction in considering such a plea. Order 7, Rule 11 of the CPC does not place any restriction or limitation on the exercise of the court's power. It does not either expressly or by necessary implication provide that power under Order 7, Rule 11 of the CPC should be exercised at a particular stage only. In the view we are taking, we are fortified by the judgment of the Supreme Court rendered in the case of ITC Ltd., (AIR 1998 SC 634) (supra). Therein, the suit was filed by the Bank in the year 1985. In 1995, it was transferred to Debt Recovery Tribunal and thereafter an application was filed by the appellant under the provisions of Order 7, Rule 11 of the CPC for rejection of the plaint as not disclosing any cause of action against the appellant. The application filed by the appellant was rejected not only by the Tribunal and Appellate Tribunal, but also by the High Court. When the matter reached before the Supreme Court in the year 1997, it was contended that the power under Order 7, Rule 11 of the CPC should not be exercised after such a long lapse of time, more particularly when issues were framed. That plea has been negated by the Supreme Court in following terms:-

"13. We may state that in the context of Order 7, Rule 11, CPC, a



contention that once issues have been framed, the matter has necessarily to go to trial has been clearly rejected by this Court in **Azhar Hussain v. Rajiv Gandhi**, (AIR 1986 SC 1253) (SCC p.324) as follows: (SCC para 12): (Para 12 of AIR)

"In substance, the argument is that the court must proceed with the trial, record the evidence, and only after the trial... is concluded that the powers under the Code of Civil Procedure for dealing appropriately with the defective petition which does not disclose cause of action should be exercised. With respect to the learned counsel, it is an argument which is difficult to comprehend. The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the court..."

The abovesaid judgment which related to an election petition is clearly applicable to suits also and was followed in Samar Singh v. Kedar Nath, (AIR 1987 SC 1926). We, therefore, hold that the fact that issues have been framed in the suit cannot come in the way of consideration of this application filed by the appellant under Order 7, Rule 11, CPC."

16. In view of settled legal position, plea that powers under Order 7, Rule 11 (a) of the CPC should not have been exercised after framing of issue cannot be upheld and is hereby rejected."

51 On the cause of action, I have to my advantage a decision of the Supreme Court in the case of **Church of Christ Charitable Trust and Educational Charitable Society** represented by its Chairman **vs. Ponniamman Educational Trust** represented by its Chairperson / Managing Trustee, reported in (2012) 8 SCC 706, wherein the Supreme Court has observed in paras 12 to 18 as under:

"12. It is also useful to refer the judgment in T. Arivandandam v. T.V. Satyapal and Anr., (1977) 4 SCC 467 : (AIR 1977 SC 2421), wherein while considering the very same provision, i.e. Order VII, Rule 11 and the duty of the trial Court in considering such application, this Court has reminded the trial Judges with the following observation:

"5. ...The learned Munsif must remember that if on a meaningful - for 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 VII, Rule 11, C.P.C. 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 by examining the party searchingly under Order X, C.P.C. An activist Judge is the answer to irresponsible law suits. The trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Cr.XI) and must be triggered against them"

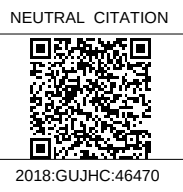
It is clear that if the allegations are vexatious and meritless and not disclosing a clear right or material(s) to sue, it is the duty of the trial Judge to exercise his power under Order VII, Rule 11. If clever drafting has created the illusion of a cause of action as observed by Krishna Iyer J., in the above referred decision, it should be nipped in the bud at the first hearing by examining the parties under Order X of the Code.

Cause of action:

13. While scrutinizing the plaint averments, it is the bounden duty of the trial Court to ascertain the materials for cause of action. The cause of action is a bundle of facts which taken with the law applicable to them gives the plaintiff the right to relief against the defendant. Every fact which is necessary for the plaintiff to prove to enable him to get a decree should be set out in clear terms. It is worthwhile to find out the meaning of the words "cause of action". A cause of action must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue.

*14. In **A.B.C. Laminart Pvt. Ltd. and Anr. v. A.P. Agencies, Salem (1989) 2 SCC 163 : (AIR 1989 SC 1239)**, this Court explained the meaning of "cause of action" as follows:*

"12. A cause of action 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. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend



upon the character of the relief prayed for by the plaintiff."

15. It is useful to refer the judgment in **Bloom Dekor Ltd. v. Subhash Himatlal Desai and Ors. (1994) 6 SCC 322**, wherein a three Judge Bench of this Court held as under:

"28. By "cause of action" it is meant 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, (Cooke v. Gill, 1873 LR 8 CP 107). In other words, a bundle of facts which it is necessary for the plaintiff to prove in order to succeed in the suit."

It is mandatory that in order to get relief, the plaintiff has to aver all material facts. In other words, it is necessary for the plaintiff to aver and prove in order to succeed in the suit.

Forms 47 and 48 of Appendix A of the Code

16. Mr. K. Parasaran, learned senior counsel by taking us through Form Nos. 47 and 48 of Appendix A of the Code which relate to suit for specific performance submitted that inasmuch as those forms are statutory in nature with regard to the claim filed for the relief for specific performance, the Court has to be satisfied that the plaint discloses a cause of action. In view of Order VII, Rule 11(a) and 11(d), the Court has to satisfy that the plaint discloses a cause of action and does not appear to be barred by any law. The statutory forms require the date of agreement to be mentioned to reflect that it does not appear to be barred by limitation. In addition to the same, in a suit for specific performance, there should be an agreement by the defendant or by a person duly authorized by a power of attorney executed in his favour by the owner.

17. In the case on hand, the plaintiff-respondent to get a decree for specific performance has to prove that there is a subsisting agreement in his favour and the second defendant has the necessary authority under the power of attorney. Order VII, Rule 14 mandates that the plaintiff has to produce the documents on which the cause of action is based, therefore, he has to produce the power of attorney when the plaint is presented by him and if he is not in possession of the same, he has to state as to in whose possession it is. In the case on hand, only the agreement between the plaintiff and the second defendant has been filed along with the plaint under Order VII, Rule 14(1). As rightly pointed out by the learned senior counsel for the appellant, if he is not in possession of the power of attorney, it being a registered document, he should have filed a registration copy of the same. There is no such explanation even for not filing the registration copy of the power of attorney. Under Order VII, Rule 14(2) instead of explaining in whose custody the power of attorney is, the plaintiff has simply stated 'Nil'. It clearly shows non-compliance of Order



VII, Rule 14(2).

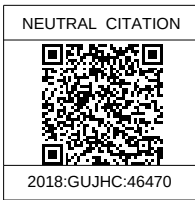
18. *In the light of the controversy, we have gone through all the averments in the plaint. In paragraph 4 of the plaint, it is alleged that the 2nd defendant as agreement holder of the 1st defendant and also as the registered power of attorney holder of the 1st defendant executed the agreement of sale. In spite of our best efforts, we could not find any particulars showing as to the documents which are referred to as "agreement holder". We are satisfied that neither the documents were filed along with the plaint nor the terms thereof have been set out in the plaint. The above-mentioned two documents were to be treated as part of the plaint as being the part of the cause of action. It is settled law that where a document is sued upon and its terms are not set out in the plaint but referred to in the plaint, the said document gets incorporated by reference in the plaint. This position has been reiterated in U.S. Sasidharan v. K. Karunakaran and another (1989) 4 SCC 482 : (AIR 1990 SC 924) and Manohar Joshi v. Nitin Bhaurao Patil and another (1996) 1 SCC 169 : (AIR 1996 SC 796 : 1996 AIR SCW 145)."*

The Supreme Court has further reminded the Trial Judges' of the observations in *T. Arivandandam (supra)* observing as under:

"It is clear that if the allegations are vexatious and meritless and not disclosing a clear right or material(s) to sue, it is the duty of the trial Judge to exercise his power under Order VII, Rule 11. If clever drafting has created the illusion of a cause of action as observed by Krishna Iyer J., in the above referred decision, it should be nipped in the bud at the first hearing by examining the parties under Order X of the Code."

● **ANALYSIS:**

52 Before adverting to the rival submissions canvassed on either side, I am constrained to observe that this litigation, *prima facie*, appears to be a sponsored one. It appears that there is some external force working behind the plaintiff. The plaintiff appears to be a rustic illiterate lady and *prima facie* playing to the tune of the persons interested in the parcels of suit land. *Prima facie*, I have gathered an impression that only with a view to create trouble and thereby extort money from the *bona fide* purchasers, the suit seems to have been filed. The plaintiff, *prima facie*,



appears to be just a stooge.

53 It appears from the materials on record that the suit properties were owned by the father of the plaintiff namely *Mafatbhai Patel*. On 28th April 1994, vide mutation entry No.5726 and 5727, the name of the plaintiff was entered as one of the co-owners as regards the parcels of land along with her brothers namely *Jayantibhai Mafatbhai Patel* and *Ranchhodbhai Mafatbhai Patel*.

54 The documents annexed with the plaint further indicates that on the very same day i.e. on 28th April 1994, vide mutation entry No.5728, the plaintiff relinquished her right, title and interest over the parcels of land in question. This entry No.5728 also came to be certified vide order dated 7th June 1994.

55 The record further indicates that the three entries being Nos.5726, 5727 and 5728 were mutated in the record of rights after due service of notice under Section 135D of the Bombay Lands Revenue Code. It also appears that at the time of mutation of the entries referred to above, the statement of the plaintiff was also duly recorded in which she specifically admitted as regards the relinquishment of her right, title and interest in the suit properties. This particular statement bears the thumb impression of the plaintiff. It is important to note that even while mutating the entries Nos.5726 and 5727, the thumb impressions of the plaintiff were obtained. She is not disputing her thumb impressions with regard to entries Nos.5726 and 5727, but, very conveniently, has disputed her thumb impression with regard to the entry No.5728 on the premise that she can put her signature. The recording of such facts in this judgment are necessary because the litigation initiated by the plaintiff is frivolous and is nothing, but an abuse of the process of law. It



may appear that this Court, in the Second Appeal, is appreciating the facts and that too when the subject matter is one relating to rejection of plaint, but time is ripe to come down heavily on such litigants who try to abuse the process of law and that too with an oblique motive.

56 In the year 1997, the father of the plaintiff namely *Mafatbhai Patel* passed away. The brother of the plaintiff entered into several transactions with respect to the different parcels of law with the defendants the details whereof are as under:

Sr. No.	Date of sale deed	Survey No.	Registered Sale deed No.	Seller	Purchaser
1	'27.01.1998	250	354	Ranchodbhai Mafatbhai Patel (defendant no.2 – brother of Laxmiben - plaintiff)	1) Ghanshyambhai Patel 2) Narayanbhai Patel 3) Rameshbhai Patel 4) Vinodbhai Patel 5) Ashwinbhai Patel (newly added defendants)
2	'27.04.2000	878/3 878/2	1846	Ranchodbhai Mafatbhai Patel (defendant no.2)	Dahyabhai Patel (Defendant no.3)
3	'12.07.2000 (second sale)	878/3 878/2	3389	Dahyabhai Patel	Dashrathbhai Shivabhai Patel (defendant no.4)
4	'21.04.2003	877/3 877/6 878/6	1691	1) Jayantibhai Mafatbhai Patel (defendant no.1) 2) Mukeshbhai Patel 3) Bharatbhai Patel 4) Bhartiben Patel 5) Shardaben Patel	Dashrathbhai Ashabhai Patel (defendant no.5)
5	'22.06.2000	875/1	6784	Jayantibhai Mafatbhai Patel	Shaileshbhai Patel (defendant no.6)



57 The suit came to be filed almost after a period of fourteen years. I am not impressed by the submission of the learned counsel appearing for the plaintiff that although the suit is filed after a period of fourteen years, yet from the date of knowledge of the sale transactions, the suit has been filed within the period of limitation. The entire plaint has been reproduced in para 4. All that has been averred in the plaint is that the plaintiff came to learn about the sale transactions in the year 2007, and that is how she thought fit to institute the suit proceedings in 2008. The cause of action pleaded in the plaint is also as vague as anything. It may happen in a given case that the suit may be filed even after more than fifty years from such transactions and a simple averment with an oblique motive is made in the plaint that the plaintiff learnt about the same on a particular date. If this is the only averment, which is necessary to be looked into, then, in my opinion, the provisions of Order VI Rule 16 and Order VII Rule 11 of the C.P.C. would be rendered otiose. At this stage, I deem fit to once again refer to the decision of the Supreme Court in the case of **T. Arivandandam (supra)**.

58 From the ratio of the aforesaid decision, it can be deduced that the plaintiff must have a cause of action to sue and the same must have arisen within the prescribed period of limitation. Both the concepts are in away inseparable. If the cause of action on a meaningful reading of the entire plaint does not disclose a clear right to sue and creates an illusion of cause of action, it should be nipped in the bud. Similarly, if a cause of action giving rise to a grievance is no more remediable because of prescript of the law of limitation, the plaintiff cannot approach a Court of law.

59 The effect of the submission of Mr. Desai and Mr. Shah, the learned senior counsel appearing for the defendants is that a clear right

to sue or the cause of action has to be found out on a meaningful reading of the plaint and while doing so it is also obligatory on the part of the Court to find out if the case can be adjudicated or the same has become no more adjudicate being barred by limitation. Emphasis has been laid by the learned senior counsel that a plaintiff cannot create a mirage and clothe his *lis* in such a manner to persuade a court to entertain a vexatious litigation and the court has to exercise its jurisdiction to scrutinise the plaint in its entirety, whether the suit has been filed within the period of limitation or not; and whether the cause of action is revealed on a meaningful manifestation of the plaint or not. If, after uncurtaining and undrapping the plaint and scanning the averments in their conceptual eventuality it is found that a clear cause of action not only exists but survives to be adjudicated in a Court of law without being hit by the prescription of limitation, the Court should admit the suit, otherwise law has to take its own course.

60 I may also refer to very important apt observations of a Division Bench decision of the Madras High Court in the case of **N. Ravindran vs. V. Ramachandran** reported in **AIR 2011 Madras 136**. R. Banumathi, J. (as Her Ladyship then was), speaking for the Bench, has observed in para 16 as under:

“It cannot be contended that the learned single Judge committed an error in taking into account the materials (plaint in O.S.No.6514 of 2002) to hold that the plaintiff's case is barred by limitation. As pointed out by the learned single judge, when the plaintiff's case prima facie appears to be vexatious the Court is not powerless to examine the averments with reference to the plaintiff's documents. Of course, it is not permissible to cull out one sentence here and one sentence there. But when specific reference has been made to the plaint in O.S.No.6514 of 2002, in our considered view, the learned single Judge was justified in looking into the plaint in O.S.No.6514 of 2002.”

61 I also have a Delhi High Court decision in the case of **Kamal**



Gupta vs. Uma Gupta and others reported in **AIR 2006 Delhi 182**. S.K. Kaul, J. (as His Lordship then was), while dealing with a matter under the provisions of Order VII Rule 11 C.P.C. has made few important observations. His Lordship dealt with Article 58 of the Limitation Act vis-a-vis Order VII Rule 11 C.P.C. The relevant observations are as under:

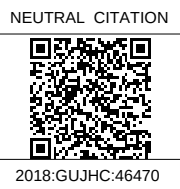
“31. The plaintiff has sought a relief of declaration in respect of the property in question on the basis that no Relinquishment Deed was validly executed by the plaintiff or accepted by defendant No.1. The cause of action for setting aside such Relinquishment Deed would arise on the date of its execution. The incorporation of this relief itself shows that the plaintiff is conscious of deprivation of his title by the execution of Relinquishment Deed. This happened in the year 1988. The plaintiff admittedly did not execute a registered document to cancel the same. Is it permissible for the plaintiff to file the suit by merely alleging in the cause of action paragraph that the failure to give NOC in respect of the property would give rise to the cause of action ? In my considered view, the answer to this question is in the negative.

32. There can be no doubt that the relevant Article of the Limitation Act, which would apply in the present case, would be Article 58 and the same reads as under :-

"Part - III Suits related to Declarations"

Article 58		
Description of Suit	Period of Limitation	Time from which period begins to run
To obtain any other declaration	Three years	When the right to sue first accrues.

*33. The right to sue arose when the document was executed and duly registered. This document was acted upon to seek release of plaintiff from guarantee to the Bank. The suit has been filed 16 years after execution of the Deed and, in my considered view, is ex facie barred by limitation even on the averments made in the plaint. The suit is, thus, clearly barred by the law of limitation. It would be relevant to note that the Apex Court in **T. Arviandandam v. T. V. Satyapal and Anr.**, **AIR 1977 SC 2421** has decided that where a plaint is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, the trial Court should exercise its powers under Order VII Rule 11 of the Code and bogus litigation should not be permitted to go on.”*



62 Let me now look into the decisions relied upon by the learned counsel appearing for the plaintiff.

63 In **Chhotanben (supra)**, the Supreme Court has observed as under:

“15. What is relevant for answering the matter in issue in the context of the application under Order VII Rule 11(d), is to examine the averments in the plaint. The plaint is required to be read as a whole. The defence available to the defendants or the plea taken by them in the written statement or any 14 application filed by them, cannot be the basis to decide the application under Order VII Rule 11(d). Only the averments in the plaint are germane. It is common ground that the registered sale deed is dated 18th October, 1996. The limitation to challenge the registered sale deed ordinarily would start running from the date on which the sale deed was registered. However, the specific case of the appellants (plaintiffs) is that until 2013 they had no knowledge whatsoever regarding execution of such sale deed by their brothers - original defendant Nos.1 & 2, in favour of Jaikrishnabhai Prabhudas Thakkar or defendant Nos.3 to 6. They acquired that knowledge on 26.12.2012 and immediately took steps to obtain a certified copy of the registered sale deed and on receipt thereof they realised the fraud played on them by their brothers concerning the ancestral property and two days prior to the filing of the suit, had approached their brothers (original defendant Nos.1 & 2) calling upon them to stop interfering with their possession and to partition the property and provide exclusive possession of half (1/2) portion of the land so designated towards their share. However, when they realized that the original defendant Nos.1 & 2 would not pay any heed to their request, they had no other option but to approach the court of law and filed the subject suit within two days therefrom. According to the appellants, the suit has been filed within time after acquiring the knowledge about the execution of the registered sale deed. In this context, the Trial Court opined that it was a triable issue and declined to accept the application filed by respondent No.1 (defendant No.5) for rejection of the plaint under Order VII Rule 11(d). That view commends to us.

*16. The High Court on the other hand, has considered the matter on the basis of conjectures and surmises and not even bothered to analyse the averments in the plaint, although it has passed a speaking order running into 19 paragraphs. It has attempted to answer the issue in one paragraph which has been reproduced hitherto (in paragraph 7). The approach of the Trial Court, on the other hand, was consistent with the settled legal position expounded in **Saleem Bhai and Others Vs. State of***



Maharashtra and Others [(2003) 1 SCC 557], Mayar (H.K.) Ltd. and Others Vs. Owners & Parties, Vessel M.V. Fortune Express and Others (2006) 3 SCC 100 and also T. Arivandandam Vs. T.V. Satyapal and another (1977) 4 SCC 467.

17. These decisions have been noted in the case of **Church of Christ Charitable Trust and Educational Charitable Society Vs. Ponniamman Educational Trust (2012) 8 SCC 706**, where this Court, in paragraph 11, observed thus:

“11. This position was explained by this Court in **Saleem Bhai vs. State of Maharashtra**, in which, while considering Order 7 Rule 11 of the Code, it was held as under: (SCC p. 560, para 9)

“9. A perusal of Order 7 Rule 11 CPC makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order 7 Rule 11 CPC 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. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order 7 CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order 7 Rule 11 CPC cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court.”

It is clear that in order to consider Order 7 Rule 11, the court has to look into the averments in the plaint and the same can be exercised by the trial court at any stage of the suit. It is also clear that the averments in the written statement are immaterial and it is the duty of the Court to scrutinise the averments/pleas in the plaint. In other words, what needs to be looked into in deciding such an application are the averments in the plaint. At that stage, the pleas taken by the defendant in the written statement are wholly irrelevant and the matter is to be decided only on the plaint averments. These principles have been reiterated in **Raptakos Brett & Co. Ltd. v. Ganesh Property (1998) 7 SCC 184** and **Mayar (H.K.) Ltd. v. Vessel M.V. Fortune Express (2006) 3 SCC 100**”.

18. The High Court has adverted to the case of **Church of Christ Charitable Trust and Educational Charitable Society (supra)**, which had occasion to consider the correctness of the view taken by the High Court in ordering rejection of the plaint in part, against one defendant, on the ground that it did not disclose any cause of action qua that defendant. The High Court has also noted the decision relied upon by the contesting respondents in



the case of Mayur (H.K.) Ltd. and Ors. (supra), which has restated the settled legal position about the scope of power of the Court to reject the plaint under Order VII Rule 11(d) of CPC.

19. In the present case, we find that the appellants (plaintiffs) have asserted that the suit was filed immediately after getting knowledge about the fraudulent sale deed executed by original defendant Nos.1 & 2 by keeping them in the dark about such execution and within two days from the refusal by the original defendant Nos.1 & 2 to refrain from obstructing the peaceful enjoyment of use and possession of the ancestral property of the appellants. We affirm the view taken by the Trial Court that the issue regarding the suit being barred by limitation in the facts of the present case, is a triable issue and for which reason the plaint cannot be rejected at the threshold in exercise of the power under Order VII Rule 11(d)."

64 In **Chhotanben (supra)**, the Supreme Court on facts did not find the conduct of the plaintiff doubtful or rather lacking in *bona fide*. The facts of each case should be looked into before applying the ratio laid down in any judgment. Besides the same, in **Chhotanben (supra)**, the Trial Court itself came to the conclusion that the issue of limitation was a triable issue.

65 In the case on hand, not only the Trial Court is convinced that the plaint deserves to be rejected, but such finding of the Trial Court has been affirmed by the lower Appellate Court too. In my view, the principles laid down by the Supreme Court in **Chhotanben (supra)** should not be applied as straight-jacket formula in all cases with regard to Order VII Rule 11 of the C.P.C. I find it extremely difficult to accept the submission of the learned counsel appearing for the appellant that having regard to the decision of the Supreme Court in the case of **Chhotanben (supra)**, there is no scope now for the court to consider whether the plaint is manifestly vexatious and whether the clever drafting has created the illusion of a cause of action. At the cost of repetition, I state that **Chhotanben (supra)** has been decided on the



facts of its case. If the argument of the learned counsel appearing for the appellant, as referred to above, is to be accepted, then the same would render the provisions of Order VII Rules 10 and 11 absolutely otiose.

66 In **Mayar (H.K.) Ltd (supra)**, the Supreme Court has observed as under:

*“10. Under Order VII, 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 a 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 VII, Rule 11 of the Code would be on consideration of the principles laid down by this Court. In **T. Arivandandam v. T. V. Satyapal and Another, (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 VII Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. In **Roop Lal Sethi 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 VII, Rule 11 of the Code, but the rule does not justify the rejection of any particular portion of a plaint. Therefore, the High Court could not act under Order VII, Rule 11(a) of the Code for striking down certain paragraphs nor the High Court could act under Order VI, Rule 16 to strike out the paragraphs in 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 VII, 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 and Others v. State of Maharashtra and Others, (2003) 1 SCC 557**, this Court has held that the trial court can exercise its powers under Order VII 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***

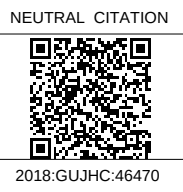


of India Staff Association, (2005) 7 SCC 510, this Court has culled out the legal ambit of Rule 11 of Order VII of the Code in these words :

"There cannot be any compartmentalization, 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 of 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."

11. From the aforesaid, it is apparent that the plaint cannot be rejected on the basis of the allegations made by the defendant in his written statement or in an application for rejection of the plaint. The Court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does, then the plaint cannot be rejected by the Court exercising the powers under Order VII, Rule 11 of the Code. Essentially, whether the plaint discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to misrepresentation, fraud, wilful default, undue influence or of the same nature. So long as the plaint discloses some cause of action which requires determination by the court, mere fact that in the opinion of the Judge the plaintiff may not succeed cannot be a ground for rejection of the plaint. In the present case, the averments made in the plaint, as has been noticed by us, do disclose the cause of action and, therefore, the High Court has rightly said that the powers under Order VII, Rule 11 of the Code cannot be exercised for rejection of the suit filed by the plaintiff-appellants."

67 In **Mayar (H.K.) Ltd (supra)**, the Supreme Court, after going through the averments made in the plaint, found that the plaint did disclose a cause of action. **Mayar (supra)** has also been decided on the facts of its case.



68 Let me now look into the case law, which has been relied upon on behalf of the defendants.

69 In **N.V. Srinivasa Murthy (supra)**, the Supreme Court has observed as under:

“16. The High Court does not seem to be right in rejecting the plaint on the ground that it does not disclose any 'cause of action'. In our view, the trial Court was right in coming to the conclusion that accepting all averments in the plaint, the suit seems to be barred by limitation. On critical examination of the plaint as discussed by us above, the suit seems to be clearly barred on the facts stated in the plaint itself. The suit as framed is prima facie barred by the law of limitation, provisions of Specific Relief Act as also under Order 2, Rule 2 of the Code of Civil Procedure.

*17. This is a fit case not only for rejecting the plaint but imposing exemplary costs on the appellant on the observations of this Court in the case of **T. Arvindam v. T. V. Satyapal, (1977 (4) SCC 467)** :-*

"The trial Court must remember that if on a meaningful - no 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 its power under 'Order VII, Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. If clear drafting has created the illusion of a cause of action, the Court must nip it in the bud at the first hearing by examining the party searchingly under Order X, CPC. An activist judge is the answer to irresponsible law suits. The trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men (Ch. XI) and must be triggered against them."

70 In **Sopan Sukhdeo Sable (supra)**, the Supreme Court had drawn a fine distinction between “material facts” and “particulars”:

“17. Keeping in view the aforesaid principles the reliefs sought for in the suit as quoted supra have to be considered. The real object of Order VII Rule 11 of the Code is to keep out of Courts irresponsible law suits. Therefore, the Order X of the Code is a tool in the hands of the Courts by resorting to which and by searching examination of the party in case the Court is prima facie of the view that the suit is an abuse of the process of the Court in the sense that it is a bogus and irresponsible litigation, the jurisdiction under Order VII Rule 11 of the Code can be exercised.



18. As noted *supra*, the Order VII Rule 11 does not justify rejection of any particular portion of the plaint, Order VI Rule 16 of the Code is relevant in this regard. It deals with, 'striking out pleadings'. It has three clauses permitting the Court at any stage of the proceeding to strike out or amend any matter in any pleading i.e. (a) which may be unnecessary, scandalous, frivolous or vexatious, or, (b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or (c) which is otherwise an abuse of the process of the Court.

19. Order VI Rule 2 (1) of the Code states the basic and cardinal rule of pleadings and declares that the pleading has to state material facts and not the evidence. It mandates that every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved.

20. There is distinction between 'material facts' and 'particulars'. The words 'material facts' show that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement or plaint becomes bad. The distinction which has been made between 'material facts' and 'particulars' was brought by Scott. L. J. in **Bruce v. Odhams Press Ltd., (1936) 1 KB 697** in the following passage :

The cardinal provision in Rule 4 is that the statement of claim must state the material facts. The word "material" means necessary for the purpose of formulating a complete cause of action; and if any one "material" statement is omitted, the statement of claim is bad; it is "demurrable" in the old phraseology, and in the new is liable to be "struck out" under R.S.C. Order XXV, Rule 4 (see Philipps v. Philipps ((1878) 4 QBD 127)); or "a further and better statement of claim" may be ordered under Rule 7.

The function of "particulars" under Rule 6 is quite different. They are not to be used in order to fill material gaps in a demurrable statement of claim - gaps which ought to have been filled by appropriate statements of the various material facts which together constitute the plaintiff's cause of action. The use of particulars is intended to meet a further and quite separate requirement of pleading, imposed in fairness and justice to the defendant. Their function is to fill in the picture of the plaintiff's cause of action with information sufficiently detailed to put the defendant on his guard as to the case he had to meet and to enable him to prepare for trial.

*The dictum of Scott. L.J. in Bruce case (supra) has been quoted with approval by this Court in **Samant N. Bal-krishna v. George Fernandez**,*



(1969 (3) SCC 238), and the distinction between "material facts" and "particulars" was brought out in the following terms :

The word 'material' shows that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of particulars is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet.

Rule 11 of Order VII lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objection can be raised, and also does not say in express terms about the filing of a written statement. Instead, the word "shall" is used clearly implying thereby that it casts a duty on the Court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even without intervention of the defendant.

In any event, rejection of the plaint under Rule 11 does not preclude the plaintiffs from presenting a fresh plaint in terms of Rule 13."

71 In **ITC Ltd. (supra)**, the Supreme Court observed as under:

*"16. The question 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 C.P.C. 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. (See **T. Arivandandam vs. T.V. Satyapal and another** [1977 (4) SCC 467])."*

72 In **ITC Ltd (supra)**, the Supreme Court reiterated what has been observed in **T. Arivandandam (supra)**.

73 In **Hardesh Ores (supra)**, the Supreme Court has referred to its decision in the case of **ITC Ltd (supra)**.

74 In **Raj Narain Sarin (supra)**, once again, the Supreme Court reiterated what has been observed in **T. Arivandandam (supra)**.



75 In the overall view of the matter, I am convinced that I should not disturb the concurrent findings recorded by the two Courts as regards its decision to reject the plaint on the ground that not only the suit is hopelessly time barred, but the cause of action pleaded is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue. The cause of action pleaded in the plaint is nothing, but a clever drafting creating an illusion of a cause of action.

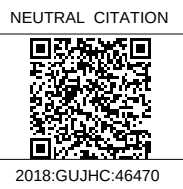
76 Before I close this judgment, the attention of the Trial Courts is drawn to Chapter II of the Civil Manual (Volume – I). Chapter II of the Civil Manual is with regard to the '**Institution of Suits**'. Rules 8, 9, 10, 11 and 12 are relevant. The Rules are reproduced hereinbelow:

“8. The next step is the examination of the plaint in order to determine whether it should be-

- (a) admitted; or*
- (b) rejected (Order VII, rule 11), or*
- (c) returned for presentation to the proper Court (Order VII, rule 10); or*
- (d) returned for amendment on the ground that it is not framed as required by law.*

This examination should be particularly directed to ascertaining-

- (i) whether the forms provided in appendix A of the Code are followed as far as is reasonably possible (Order VI, rule 3);*
- (ii) whether the plaint is properly signed (Order VI. Rule 14):*
- (iii) whether it is duly verified (Order VI. Rule 15);*
- (iv) whether it complies with the requirements of Order VII. Rules 2, 4 and 6;*
- (v) whether it is properly stamped,*
- (vi) whether the provisions of section 135 H (1) of the Bombay*



Land Revenue Code, V of 1879, are complied with; or the extract from the Property Register Card is produced or not where the suit is in respect of immovable property bearing City Survey No.;

(vii) whether the provisions of Order II, rules 4 and 5 are infringed;

(viii) whether the necessary Court fee stamps or the necessary postal charges for the service of the summons on the defendant have been affixed to it;

(ix) whether the document or documents on which the plaintiff sues or the documents in his possession or power are produced along along with the plaint;

(x) whether the certificate required by the Pensions Act, XXIII of 1871, is produced in suits to which that Act appears to apply;

(xi) whether the provisions of rules 2 and 4 of Order III as to the production of a power of attorney and Vakalatnama with the plaint are complied with or not;

(xii) whether the plaintiff has filed with the plaint a memo in writing giving an address which service of notice or summons or other process may be made on him;

(xiii) whether a certificate of the Charity Commissioner is filed or not in a suit filed under the Bombay Public Trusts Act as required by section 51(1) of that Act.

9. While examining the plaint; it is also necessary to (a) verify the list of documents produced along with the plaint; (b) ascertain the correctness of the concise statements, if any (Order VII rule 9); and (c) compare with the original any copy of account book produced under Order VII, rule 17 and mark the relevant entries therein.

The Officer should also see that for every Indian date mentioned in the plaint, the corresponding date according to the Gregorian Calender has been given.



10. If the Officer examining the plaint finds that it complies with all the requirements and is correct in all respects, he should make the endorsement on the plaint - "Examined, and ordered to be registered" with the date and his signature. If he thinks that the Plaint should be returned for amendment or for presentation to the proper Court, or be rejected under Order VII, rule 11, he should refer the matter to the Judge for orders.

11. Where, upon examination, the plaint is found to be correct and in order, it should be entered in one of the three Registers of Suits according to the category to which it belongs. Three types of Registers should be maintained viz., (i) Regular suits, (ii) Small Cause Suits; and (iii) Special Suits.

12. After examination and registration, the plaint should be placed before the Judge for orders as to the issue of summons or otherwise. It will then be for the Judge to deal with the matter.

[5] When the plaint is found to be defective in any material particular, or not to comply substantially with the requirements of Order VI, it would be competent to the Judge to direct that the necessary amendment should be made."

77 It is hightime and is very much necessary that the Trial Courts keep in mind what has been highlighted in the Civil Manual referred to above.

78 For the foregoing reasons, this Second Appeal fails and is hereby dismissed.

79 In view of the disposal of the Second Appeal, the connected civil application would not survive and the same is also dismissed.

(J. B. PARDIWALA, J.)

CHANDRESH