

**IN THE HIGH COURT OF MADHYA PRADESH**

**AT JABALPUR**

**BEFORE**

**HON'BLE SHRI JUSTICE SANJAY DWIVEDI**

**ON THE 18TH OF JUNE, 2025**

**MISC. APPEAL NO. 6825 OF 2023**

***JAGJEET WADHWA***

**VS.**

***SMT. SUNITA AND OTHERS***

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**Appearance:**

***Shri Sanjay K. Agrawal – Senior Advocate assisted by Shri Anmol Dubey – Advocate for the appellant.***

***Shri Mohd Ali – Advocate with Ms Niyati Tiwari – Advocate for the respondent Nos. 1 to 5.***

***Shri R.K. Sanghi – Senior Advocate assisted by Shri Siddharth Kumar Sharma – Advocate for the respondent Nos. 6 to 10.***

***Shri Vineet Singh – Government Advocate for the respondent No.12-State.***

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***Reserved on: 05.03.2025***

***Pronounced on: 18.06.2025***

**ORDER**

Appellant has filed this appeal under Order 43 Rule 1(u) of the Code of Civil Procedure, 1908 assailing the judgment dated 13.09.2023 passed by the III District Judge Damoh, District Damoh in RCA No. 72/2022 whereby the judgment and decree dated 18.10.2022 passed by

the III Additional Civil Judge, Damoh in Civil Suit No. 96-A/2019 has been reversed and the matter has been remitted back to the trial court for *de-novo* trial.

**2.** For the purpose of clarity, hereinafter the respondent Nos. 1 to 4 shall be addressed as plaintiffs and, the appellant, respondent Nos. 6 to 10 and the State shall be addressed as defendants.

**3.** As per the facts of the case, the plaintiffs had filed a civil suit bearing RCS-A No. 96/2019 for declaration of the sale deeds executed in favour of the defendants as null and void and for permanent injunction restraining the defendants from interfering with their possession.

**3.1** The dispute was with regard to Khasra No. 115 (new Khasra Nos. 188 and 189) area 8.09 hectares which was further sub-divided into Khasra Nos.115/1, 115/2 and 115/3 and during the process of settlement its area was reduced to 6.93 hectares and as such the reduced area i.e. 1.449 hectares numbered as Kh. No. 83 is the subject matter of dispute and claimed to be ancestral property of the plaintiffs.

**3.2** As per the averments made in the plaint, Roopchand Dhobi, father of the plaintiff-Paramlal Rajak, died on 22.11.1990. Father of Rupchand Dhobi was Nannai Dhobi. Plaintiff-Paramlal Rajak died on 17.11.2010. The suit property was the ancestral property and after settlement, the area of the said property got reduced, in respect of which, a Revenue Case No. 57-A-6(Pra)/2017-18 was tried by the then Sub Divisional Officer, Damoh and as such the reduced area i.e. 1.449 hectare of Kh. No. 83 was

also considered to be the ancestral property, which is the disputed land herein.

**3.3** The plaintiffs alleged that the defendant No. 1 (present appellant) was an ostentatious person and was in the habit of grabbing the property of others and as such he was facing several cases of similar nature. He also tried to grab the property of the plaintiffs and this fact came to their knowledge only when the defendants in association with the revenue authorities, even without issuing any notice to the plaintiffs, came over the Kh. No. 83 area measuring 1.449 hectare and tried to get the said land demarcated. The plaintiffs reached on the spot and objected the demarcation proceedings and thereafter the defendant No.1/present appellant avoided the said demarcation proceeding and asked the revenue officers that the same would be done afterwards. The plaintiffs doubted the act of the defendants and checked the revenue record and then they came to know that there were manipulations in the revenue record and the entries in respect of the suit property were tampered, although it is claimed that the correction in the revenue record would not create any title in favour of the defendants and the title of the plaintiffs would not be disturbed and as such they filed a suit for declaration and permanent injunction.

**3.4** Written statement was filed by the defendants denying the claim of the plaintiffs.

**3.5** During the course of the proceedings, an application under Order 7 Rule 11 read with Section 151 of the Code of Civil Procedure was filed by the defendant No. 1 claiming dismissal of the suit. In the application,

the suit was claimed to be dismissed on the ground that it was barred by time and no cause of action accrued in favour of the plaintiffs to file a suit.

**3.6** The said application was replied and the contention made therein by the defendants denied by the plaintiffs. The defendant Nos. 2 to 6 also supported the application submitted by the defendant No.1 and also sought dismissal of the plaint.

**3.7** The trial court after hearing the arguments put forth by the counsel for the parties and discussing all the material aspects of the matter, allowed the application filed under Order 7 Rule 11 of CPC by order dated 18.10.2022 holding that the suit deserved to be dismissed as no cause of action accrued in favour of the plaintiffs and also on the ground that the suit filed by the plaintiffs is barred by time as per Article 58 of the Limitation Act.

**3.8** Thereafter, an appeal was preferred against the order dated 18.10.2022. The Additional District Judge vide order dated 13.09.2023 allowed the appeal and set aside the order dated 18.10.2022 passed by the trial court and remitted the matter back for fresh adjudication.

**3.9** The appellate court while setting aside the order dated 18.10.2022 also dismissed the application filed by the defendant No.1 under Order 7 Rule 11 CPC on the ground that the finding, as has been given by the trial court, could not have been given without conducting a trial and appreciating the evidence, if any, adduced during the trial. As per the appellate court, without recording evidence adduced by the parties, the

application under Order 7 Rule 11 read with Section 151 CPC cannot be considered and the suit cannot be dismissed on the grounds mentioned in the application.

4. The present appeal, therefore, has been filed assailing the order dated 13.09.2023 passed by the first appellate court reversing the order of the trial court and remitting the matter for fresh trial.

5. Shri Agrawal appearing for the appellant has submitted that the appellate court has committed illegality in holding that the question of limitation and cause of action, if any, accrued in favour of the plaintiffs, in the facts and circumstances of the case could be decided only after recording the evidence. He has submitted that it is not mandatory that on each and every occasion when suit is said to have been dismissed as per the provision of Order 7 Rule 11 (a) and (d) of CPC, the same should be decided only after recording the evidence. He has submitted that if the court, on the basis of averments made in the plaint and other material available on record, concludes that the suit is apparently barred by limitation then no further adjudication is required and the suit can be dismissed even without recording the evidence. According to him, if the averments made in the plaint especially in paragraphs 6 and 8 are seen, it can be easily gathered that in view of the said averments and admission of the plaintiffs therein, the suit was apparently beyond the limitation.

6. Shri Sanghi appearing for the respondent/defendant Nos. 6 to 10 has submitted that Paramlal after knowing about the fact that the sale deed of the land was executed fabricating his signature, he made an application before Tahsildar and consequently a revenue case i.e.

Revenue Case No. 8/A/70 of 2009-10 was registered and he also submitted a complaint that Dr. Anil Tandan could take possession of his land, but that case was dismissed by Tahsildar vide order dated 26<sup>th</sup> March, 2010 and against the said order, Paramlal filed an appeal before the Sub Divisional Officer, which was registered as Appeal No. 46A/70 of 2009-10. Vide order dated 21<sup>st</sup> August, 2010 the said authority decided the appeal and remanded the matter, but during the proceeding of remand, Paramlal died, but the Tahsildar without bringing the legal heirs of Paramlal on record passed the final order on 21<sup>st</sup> March, 2011 against the dead person and as such the said order was illegal and void. He has submitted that it clearly indicates that Paramlal had knowledge about the alleged illegality, but he did not file the suit and as such the plaintiffs did not acquire any right to file suit after such a long time and it deserved to be dismissed in pursuance to the application filed under Order 7 Rule 11 CPC.

7. In support of their submission, learned counsel for the appellant and as also the respondent Nos. 6 to 10 have relied upon several judgments of the Supreme Court and also of the High Court, which are as under:-

1. **2024 (3) MPLJ 279 – Anil Vs. Pappu and others**
2. **(2020) 7 SCC 366 – Dahiben vs. Arvindbhai Kalyanji Bhanusali (Gajra) Dead through Legal Representatives and others.**
3. **(2014) 14 SCC 254 – Suresh Kumar Dagla vs. Sarwan and another.**
4. **(2020) 16 SCC 601 – Raghwendra Sharan Singh vs. Ram Prasanna Singh (Dead) by Legal Representatives.**

5. (2011) 9 SCC 126 – Khatri Hotels Private Limited and another vs. Union of India and another.
6. 2011 SCC OnLine Guj 27 – State of Gujrat & 2 others vs. Patel Mahendrakumar Ramdas and five others.
7. (2017) 13 SCC 174 – Madanuri Sri Rama Chandra Murthy vs. Syed Jalal.
8. (2005) 10 SCC 51 – Swamy Atmananda and others vs. Ramkrishna Tapovanam and others.
9. AIR 2011 Guj 27 – Chandrakant Kantilal Jhaveri vs. Madhuriben Gautambhai.
10. Civil Appeal No. 14807 of 2024 arising out of SLP © No. 18977 of 2016 – Shri Mukund Bhavan Trust and ors vs. Shrimant Chhatrapati Udayan Raje Pratapsinh Maharaj Bhonsle and another.
11. Civil Revision No. 732/2022 – Smt. Richa Barsaiya vs. Shivam Mishra and others decided on 15.03.2024.

8. In rebuttal to the submissions made by the learned counsel for the appellant and the respondent Nos. 6 to 10, Shri Ali, appearing for the respondent Nos. 1 to 5/plaintiffs has submitted that the appellate court has given a well reasoned finding while rejecting the application filed under Order 7 Rule 11 CPC by the impugned order and has rightly directed that the said application can be decided only after recording the evidence adduced by the parties. He has submitted that it is a settled principle of law that application filed under Order 7 Rule 11 CPC can be decided only on the basis of averments made in the plaint. As per Shri Ali, in the present case, from the averments made in the plaint and the cause of action shown by the plaintiffs, it is evidently clear that the limitation for filing the suit would start from the date of the knowledge and as such the suit was well within limitation. He has submitted that from the cause of action shown in the plaint, it is clear that the plaintiffs came to know about the fact of manipulation in the revenue record only

in the month of June-July, 2019 and as such the suit was well within limitation. According to Shri Ali, the cause of action shown in paragraph -9 by the plaintiffs would be treated to be started point of limitation that too from the date of knowledge and as per Article 110 of the Limitation Act, the suit is within limitation and that can be decided on the basis of evidence adduced during the trial and the application under Order 7 Rule 11 of CPC cannot be decided only on the basis of averments made in the plaint and the issue with regard to limitation requires evidence and as such the appellate court has rightly set aside the order passed by the trial court. According to him, no interference in the impugned order is called for. Shri Ali has placed reliance upon the following cases:-

- 1. 2025 SAR (Civ) 250 – Daliben Valjibhai & others vs. Prajapati Kodarbhai Kachrabhai and another.**
- 2. Civil Revision No. 414/2021 – Jagjit Singh Wadhwa and others vs. Sunil Rajak and others.**
- 3. SA No. 525/2015 – Municipal Council Khajuraho vs. Brajkishor Agrawal and others decided on 03.10.2024.**

**9.** Taking into consideration the rival contentions of the learned counsel for the parties and after perusal of record, the following questions emerge to be adjudicated:-

- (i) Whether the application under Order 7 Rule 11 of the Code of Civil Procedure seeking rejection of plaint under Order 7 Rule 11(d) and under Order 7 Rule 11 (a) of CPC can be decided even without framing issues and recording evidence or not?
- (ii) Whether the cause of action for determining the limitation would be counted from the averments made in the plaint in the column of cause of action or it starts from the date when cause of action first accrued?



10. Shri Agrawal appearing for the appellant and Shri Sanghi appearing for the respondent Nos. 6 to 10 have supported the order passed by the trial court rejecting the plaint by allowing the application filed by appellant/defendant No.1 under Order 7 Rule 11 CPC and criticized the order passed by the appellate court setting aside the order passed by the trial court and remitting the matter to decide the application under Order 7 Rule 11 CPC after framing the issues and recording the evidence of the parties. It is submitted by them that from the averments made in the plaint itself it can be gathered that the cause of action though shown to have been accrued in favour of the plaintiffs in the month of June-July, 2019, particularly from 05.08.2019, when certified copy of the sale deeds was received by them and those sale deeds were subject matter of the suit seeking decree of declaration for quashing those sale deeds, but as per Shri Agrawal and Shri Sanghi, the cause of action stated in the plaint cannot be treated as the actual cause of action when other facts on record indicate that the said date is not when the cause of action first accrued, but rather that it arose at a different point of time. According to them, the cause of action, as has been mentioned in the plaint itself, arose somewhere in the year 2009 when Paramlal, father of the plaintiffs, moved an application before the Tehsildar, Damoh and on his application, a Revenue Case No. 8/A/70 year 2009-10 was registered. In the said application it was alleged that Dr. Anil Tandon (Defendant No. 6) was illegally trying to encroach his land, but when defendant Nos. 2 to 6 appeared before the Tehsildar, considering their objection, the application moved by Parasmal was rejected by the Tehsildar by order dated 26<sup>th</sup> March, 2010. Thereafter, an

appeal was preferred by Paramlal before the Sub Divisional Officer, which was registered as Appeal No. 46A/70 year 2009-10 and vide order dated 21<sup>st</sup> August, 2010, the said authority remitted the matter to the Tehsildar, but, during the said proceedings, Paramlal died, although the Tehsildar passed the order on 21<sup>st</sup> March, 2011 and that order has now been assailed in the present civil suit.

**11.** According to the counsel for the appellant, the alleged sale deeds were executed between 1990 to 1997 by Paramlal, who had approached the revenue authorities against the purchaser of the land. This indicates that Paramlal was well aware of the said sale deeds and the cause of action to challenge it first accrued to him at that particular point of time. However, despite having knowledge of the said fact, no suit was filed.

**12.** I have perused the plaint. From the plaint, it is evident that there are five plaintiffs. Plaintiff Nos. 1 and 2 are daughters, 3 and 4 are the sons of Paramlal and plaintiff No. 5 is the son of plaintiff No. 1. All the plaintiffs are above the age of 35 years except plaintiff No.5. In the plaint it is stated that the plaintiff No. 4-Akhilesh was residing with his father Paramlal, who died in the year 2010. In the year 2007, Akhilesh was sent to jail in a case of murder and was released from jail in the year 2019. As far as Kamlesh-Defendant No. 3 is concerned, he was ousted by his father in the year 1997 and thereafter he started residing in Jabalpur and for plaintiff Nos. 1 and 2, it is stated that after their marriage, they started residing in their in-laws house, but nowhere it is disclosed whether they had any knowledge about the said sale deeds or not, although in paragraph-8 of the plaint, it is mentioned that Paramlal moved an

application before Tehsildar, Damoh in the year 2009 and sought relief against Dr. Anil Tandon (Defendant No. 6), who is respondent No. 10 herein, and in that revenue proceeding, Dr. Anil Tandon appeared alongwith other defendants and the application of Paramlal was rejected and the order passed in that revenue proceeding is also sought to be quashed in the plaint. Thus, the trial court has found that the cause of action accrued first in favour of Paramlal when he got knowledge of the fact that the alleged sale deeds were executed between 1990 to 1997, but, the appellate court did not consider this aspect and simplicitor set aside the order of the trial court holding that as stated in the plaint, the cause of action arose in the year 2019 and as such the application under Order 7 Rule 11 CPC cannot be decided without framing the issue and recording the evidence and remitted the matter.

**13.** In **Swamy Atmananda & Others (supra)**, the Supreme Court has explained as to what is the meaning of ‘Cause of Action’ and observed as under:

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

In view of the aforesaid observation made by the Supreme Court defining ‘Cause of Action’, it would be relevant to reproduced paragraph-8 of the plaint, which reads as under:-

"8. यह कि जुलाई 2019 को यह भी पता चला कि चूंकि प्रतिवादी क्रमांक 2 से 5 के विक्रय पत्र फर्जी थे इस कारण उक्त विक्रय पत्रों की परमलाल को भी जानकारी नहीं थीं इस कारण उन्होंने एक आवेदन पत्र न्यायालय तहसीलदार दमोह-1 को दिनांक 16 अक्टूबर 2009 को दिया था जिसका राजस्व प्रकरण क्रमांक 8/अ/70 वर्ष 2009-10 कायम हुआ था और यह शिकायत की थी कि डॉक्टर अनिल टंडन उसकी जमीन पर कब्जा कर सकते हैं यह प्रकरण प्रतिवादी क्रमांक 2 से 6 से प्रभावित होकर तहसीलदार दमोह-1 ने दिनांक 26 मार्च 2010 को निरस्त कर दिया था जिसके खिलाफ परमलाल ने अनुविभागीय अधिकारी को अपील क्रमांक 46अ/70 वर्ष 2009- 10 की थी जिसमें आदेश दिनांक 21 अगस्त 2010 को आदेश कर प्रकरण रिमांड कर किया गया था रिमांड की कार्यवाही के दौरान परमलाल की मृत्यु हो गई परंतु तहसीलदार दमोह-1 ने परमलाल के बारिसों को अभिलेख पर लाए बगैर ही मृत व्यक्ति के खिलाफ अंतिम आदेश दिनांक 21 मार्च 2011 कर दिया जो कि अवैध एवं शून्य है। मृत व्यक्ति के खिलाफ हर कार्यवाही और आदेश अवैध एवं शून्य होती हैं। प्रतिवादी अनुज और डॉक्टर अनिल के पिता प्रभु नारायण टंडन मध्य प्रदेश शासन के कैबिनेट मिनिस्टर रहे थे और उनके चाचा चंद्र नारायण टंडन नगर पालिका दमोह के लंबे वर्षों तक अध्यक्ष रहे हैं इस प्रकार के सभी लोग राजनीतिक प्रभाव वाले और अत्यंत धनाढ्य व्यक्ति हैं बस स्टैंड पर चलने वाला टंडन पेट्रोल पंप इन्हीं लोगों का हैं।"

Paragraph-8 of the plaint otherwise includes the act of the defendants objecting the application of the father of the plaintiff-Paramlall, who is said to have executed the sale deeds, which are said to be quashed in the suit and as such it can be easily seen that the cause of action first accrued in favour of Paramlall, as has been rightly observed by the trial court. As far as cause of action and suit for declaration is concerned, the limitation is provided under Article 56 and 58 of the Limitation Act and it provides that the limitation will begin to run from the date when right to sue first accrues.

14. The Supreme Court has also considered this aspect in case of **Khatri Hotels Private Limited (supra)** and observed as under:-

“30. While enacting Article 58 of the 1963 Act, the legislature has designedly made a departure from the language of Article 120 of the 1908 Act. The word “first” has been used between the words “sue” and “accrued”. This would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. To put it differently, successive violation of the right will not give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued.”

Thus, in view of the above enunciation of law, it is clear that the limitation starts from the date when cause of action first accrues, but, successive cause of action will not provide a fresh period of limitation.

15. The Supreme Court in case of **Dahiben (supra)** has considered elaborately the legal position required to be seen at the time of deciding the application under Order 7 Rule 11 CPC and observed as under:-

“23. We have heard the learned counsel for the parties, perused the plaint and documents filed therewith, as also the written submissions filed on behalf of the parties.

23.1. We will first briefly touch upon the law applicable for deciding an application under Order 7 Rule 11 CPC, which reads as under:

“11. **Rejection of plaint.**—The plaint *shall* be rejected in the following cases—

- (a) *where it does not disclose a cause of action;*
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;
- (c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and

the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the court, fails to do so;

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

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of Rule 9:

Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff.”

(emphasis supplied)

**23.2.** The remedy under Order 7 Rule 11 is an independent and special remedy, wherein the court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.

**23.3.** The underlying object of Order 7 Rule 11(a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

**23.4.** In *Azhar Hussain v. Rajiv Gandhi* [*Azhar Hussain v. Rajiv Gandhi*, 1986 Supp SCC 315. Followed in *Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba*, 1998 SCC OnLine Guj 281 : (1998) 2 GLH 823] this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be

permitted to waste judicial time of the court, in the following words : (SCC p. 324, para 12)

“12. ... 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, and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary civil litigation, the court readily exercises the power to reject a plaint, if it does not disclose any cause of action.”

**23.5.** The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order 7 Rule 11 are required to be strictly adhered to.

**23.6.** Under Order 7 Rule 11, a duty is cast on the court to determine whether the plaint discloses a cause of action by scrutinising the averments in the plaint [*Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I*, (2004) 9 SCC 512] , read in conjunction with the documents relied upon, or whether the suit is barred by any law.

**23.7.** Order 7 Rule 14(1) provides for production of documents, on which the plaintiff places reliance in his suit, which reads as under:

**“14. Production of document on which plaintiff sues or relies.—**(1) *Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.*

(2) Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.

(3) A document which ought to be produced in court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not,

without the leave of the court, be received in evidence on his behalf at the hearing of the suit.

(4) Nothing in this Rule shall apply to document produced for the cross-examination of the plaintiff's witnesses, or, handed over to a witness merely to refresh his memory.”

(emphasis supplied)

**23.8.** Having regard to Order 7 Rule 14 CPC, the documents filed along with the plaint, are required to be taken into consideration for deciding the application under Order 7 Rule 11(a). When a document referred to in the plaint, forms the basis of the plaint, it should be treated as a part of the plaint.

**23.9.** In exercise of power under this provision, the court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.

**23.10.** At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration. [*Sopan Sukhdeo Sable v. Charity Commr.*, (2004) 3 SCC 137].

**23.11.** The test for exercising the power under Order 7 Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in *Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I* [*Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I*, (2004) 9 SCC 512] which reads as : (SCC p. 562, para 139)

“139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed.”



**23.12.** In *Hardesh Ores (P) Ltd. v. Hede & Co.* [*Hardesh Ores (P) Ltd. v. Hede & Co.*, (2007) 5 SCC 614] the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact. *D. Ramachandran v. R.V. Janakiraman* [*D. Ramachandran v. R.V. Janakiraman*, (1999) 3 SCC 267; See also *Vijay Pratap Singh v. Dukh Haran Nath Singh*, AIR 1962 SC 941] .

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

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

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

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

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

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

(emphasis supplied)

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

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

(emphasis supplied)

**24.3.** Subsequently, in *ITC Ltd. v. Debts Recovery Appellate Tribunal* [ITC Ltd. v. Debts Recovery Appellate Tribunal, (1998) 2 SCC 70] this Court held that law cannot permit clever drafting which creates illusions of a cause of action. What is required is that a clear right must be made out in the plaint.

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

In the aforesaid case, in regard to deciding application under Order 7 Rule 11 CPC and also the cause of action, the Supreme Court has observed that if by clever drafting of the plaint, it has created the illusion of a cause of action, it should be nipped in the bud, so that bogus litigation ends at the earliest stage. The Court must be vigilant against any camouflage or suppression, and also determine whether the litigation is utterly vexatious, and an abuse of the process of the court.

**16.** Further, in **Raghvendra Sharan Singh (supra)**, the Supreme Court has observed as to how on the basis of facts mentioned in the plaint the application under Order 7 Rule 11 CPC can be decided for. The observation made by the Supreme Court is as under:-

“7. Applying the law laid down by this Court in the aforesaid decisions on exercise of powers under Order 7 Rule 11 CPC to the facts of the case in hand and the averments in the plaint, we are of the opinion that both the courts below have materially erred in not rejecting the plaint in exercise of powers under Order 7 Rule 11 CPC. It is required to be noted that it is not in dispute that the gift deed was executed by the original plaintiff himself along with his brother. The deed of gift was a registered gift deed. The execution of the gift deed is not disputed by the plaintiff. It is the case of the plaintiff that the gift deed was a showy deed of gift and therefore the same is not binding on him. However, it is required to be noted that for

approximately 22 years, neither the plaintiff nor his brother (who died on 15-12-2002) claimed at any point of time that the gift deed was showy deed of gift. One of the executants of the gift deed, brother of the plaintiff during his lifetime never claimed that the gift deed was a showy deed of gift. It was the appellant herein-original defendant who filed the suit in the year 2001 for partition and the said suit was filed against his brothers to which the plaintiff was joined as Defendant 10. It appears that the summon of the suit filed by the defendant being TS (Partition) Suit No. 203 of 2001 was served upon Defendant 10-plaintiff herein in the year 2001 itself. Despite the same, he instituted the present suit in the year 2003. Even from the averments in the plaint, it appears that during these 22 years i.e. the period from 1981 till 2001/2003, the suit property was mortgaged by the appellant herein-original defendant and the mortgage deed was executed by the defendant. Therefore, considering the averments in the plaint and the bundle of facts stated in the plaint, we are of the opinion that by clever drafting the plaintiff has tried to bring the suit within the period of limitation which, otherwise, is barred by law of limitation. Therefore, considering the decisions of this Court in T. Arivandandam [T. Arivandandam v. T.V. Satyapal, (1977) 4 SCC 467] and others, as stated above, and as the suit is clearly barred by law of limitation, the plaint is required to be rejected in exercise of powers under Order 7 Rule 11 CPC."

*Emphasis supplied*

17. The Supreme Court recently in **Shri Mukund Bhavan Trust & others (supra)** relying upon the observation made in the case of **Dahiben (supra)** has observed as to in what manner question of limitation can be considered, if application under Order 7 Rule 11 CPC is moved. The observation made by the Supreme Court is as under:-

“26. At this juncture, we wish to observe that we are not unmindful of the position of law that limitation is a mixed question of fact and law and the question of rejecting the plaint on that score has to be decided after weighing the evidence on record. However, in cases like this, where it is

glaring from the plaint averments that the suit is hopelessly barred by limitation, the Courts should not be hesitant in granting the relief and drive the parties back to the trial Court. We again place it on record that this is not a case where any forgery or fabrication is committed which had recently come to the knowledge of the plaintiff. Rather, the plaintiff and his predecessors did not take any steps to assert any title and rights in time. The alleged cause of action is also found to be creation of fiction. However, the trial Court erroneously dismissed the application filed by the appellants under Order VII Rule 11(d) of CPC. The High Court also erred in affirming the same, keeping the question of limitation open to be considered by the trial Court after considering the evidence alongwith other issues, without deciding the core issue on the basis of the averments made by the Respondent No.1 in the Plaint as mandated by Order VII Rule 11 (d) of CPC. The Spirit and intention of Order VII Rule 11(d) of CPC is only for the Courts to nip at its bud when any litigation *ex facie* appears to be abuse of process. The Courts by being reluctant only cause more harm to the defendants by forcing them to undergo the ordeal of leading evidence. Therefore, we hold that the plaint is liable to be rejected at the threshold.”

**18.** In view of the law laid down by the Supreme Court in the above referred cases and the facts and circumstances of the case at hand, I am of the opinion that the appellate court without considering the existing legal position that the application under Order 7 Rule 11 can be decided at any stage and the question of limitation cannot be always considered to be a mixed question of law and fact and therefore, the appellate court was not right in remitting the matter and setting aside the order of the trial court directing that the application be decided after framing issues and recording evidence of the parties. In **Madanuri Sri Rama Chandra Murthy (supra)**, the Supreme Court has considered this aspect and observed as under:-

“7. The plaint can be rejected under Order 7 Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that the power under Order 7 Rule 11 CPC can be exercised by the Court at any stage of the suit. The relevant facts which need to be looked into for deciding the application are the averments of the plaint only. If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under Order 7 Rule 11 CPC. Since the power conferred on the Court to terminate civil action at the threshold is drastic, the conditions enumerated under Order 7 Rule 11 CPC to the exercise of power of rejection of plaint have to be strictly adhered to. The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. It is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. The averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when the allegations made in the plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under Order 7 Rule 11 CPC can be exercised. If clever drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage.”

**19.** This Court in case of **Smt. Richa Barsaiya (supra)** has also considered this aspect and taking note of catena of judgments of the Supreme Court observed as under:-

**“15.** Conclusively, considering the arguments advanced by the learned counsel for the parties, the circumstances of the case as a whole, especially the averments made in the plaint and in the application filed by the petitioner/defendant under Order 7 Rule 11 CPC and taking note of the legal position as

enunciated by the Courts in the cases referred herein above, this Court is also of the opinion that the land, which is in question, purchased by the sale deed in question in the name of the plaintiff by his father namely, Sitaram Mishra-defendant No.3 claiming himself to be the natural guardian because the plaintiff was a minor at the relevant point of time and immediately thereafter the said purchased part of the land was sold in favour of Smt. Richa Barsaiyya, present petitioner. The said sale deed is very specific and the sale was made jointly by Sitaram and plaintiff in which father of the plaintiff claimed himself to be the natural guardian of the plaintiff. The plaint itself makes it clear that the land, which was purchased by the present petitioner from the father of the plaintiff in the year 2006, was adjoining to the land of the plaintiff. Nowhere it is stated that the defendant No. 3 and the plaintiff had no relation after execution of the sale deed on 28.09.2006 and as such it is something unacceptable that the plaintiff was not aware of the said sale even after attaining the age of majority in the year 2013, but in the plaint very cleverly the cause of action is shown to be accrued in the year 2020 when the plaintiff went to his land adjoining to the land in question for raising construction. The land got mutated in the name of defendant No. 1/present petitioner in the year 2006 itself. Thus, it is clear that a fictitious cause of action has been shown by the plaintiff so as to bring the suit within limitation and to bring it under Article 59 of the Limitation Act. It is a settled legal position that if clever drafting of the plaint creates illusion of a cause of action, it should be nipped in the bud, so that bogus litigation will end at the earliest stage. The Court must be vigilant against any camouflage or suppression and would not entertain such type of bogus litigation. Correspondingly, I find that it is a vexatious litigation filed by the plaintiff with an intention to get his land returned only on the ground that his father did not get any permission and he was never declared to be his guardian to sale his land. However, from the averments made in the plaint and the documents available on record it is clear that the land was purchased in the name of the plaintiff by the father claiming himself to be the natural guardian of the plaintiff and sold the said land in favour of defendant No. 1, present petitioner. As such after lapse of such a long time, the suit for seeking declaration that the said sale deed be declared void cannot be entertained because it is admittedly barred by time



and accordingly the plaint is liable to be rejected. In this view of the matter, it is held that the suit filed by the plaintiff governs with Article 60 of the Limitation Act and the court below committed error in not deciding the application saying that the same can be decided only after recording the evidence.”

**20.** The trial court in its order has observed that the plaintiffs on the one hand are claiming that their father-Paramlal, who is said to have executed the alleged sale deeds, had no right to execute the same because the said property was an ancestral property and he could have executed the sale deeds confining to his own share only, but, on the other hand, they are also claiming that Paramlal had never executed the sale deeds and although the share of minors could have been sold by their father being a Karta of the family but for the said purpose he did not seek any permission from the competent court and therefore, the said sale deeds were not binding upon them.

**21.** The Division Bench of the Gujrat High Court in case of **Chandrakant Kantilal Jhaveri vs. Madhuriben Gautambhai** reported in **2010 SCC OnLine Guj 12122** has observed as under:-

“17. In view of the above, we find that when the plaint does not disclose any valid cause of action for the relief prayed in the suit/plaint, no useful purpose would be served in entertaining the contention that the Trial Court did not consider the matter in detail on the aspects which we have considered hereinabove or that the Trial Court has not recorded proper valid reason for such purpose. We find that the present proceedings are by way of appeal and therefore appeal being continuous proceedings of the Suit, it would not be outside the jurisdiction of this Court to consider the case on the aspects other than those which are considered by the Trial Court for examining as to whether the order for



dismissal of the plaint under Order VII Rule 11 can be maintained or not. We find that such being the position, as referred to hereinabove, our conclusion would be that as no averments are made in the plaint which disclose valid cause of action for the reliefs prayed in the plaint/suit. Hence, the order for rejection of the plaint has to follow under Order VII Rule 11 of the Code of Civil Procedure Code, which ultimately has been passed by the Trial Court.”

**22.** In my opinion also, in the present case the suit hopelessly barred by limitation has been filed by the plaintiffs pleading that the cause of action arose in the year 2019, but from the bundle of facts available in the plaint itself, it can be easily seen that the plaint has been drafted very cleverly so as to hide and suppress the actual cause of action whereas father of the plaintiffs-Paramlal was fully aware of the sale deeds executed between 1990 to 1997 and challenge to the same was made by him before the revenue authority knowing fully well about the sale deeds executed and therefore, the plaintiffs in the instant suit have also sought declaration to set aside the order passed by the revenue authority in a proceeding initiated by their father. Thus, it is a clear-cut case of clever drafting so as to hide and suppress the actual cause of action and to promote illusory cause of action so as to create camouflage, but this practice is highly deprecated by the Supreme Court and also by this court in the cases considered hereinabove.

**23.** Although Shri Ali appearing for the respondent Nos. 1 to 5 has submitted that the appellate court has rightly set aside the order of the trial court and remitted the matter for recording the evidence because cause of action as per the plaint arose in 2019 and it is a settled principle of law that the application under Order 7 Rule 11 CPC is decided

considering the averments of the plaint. I fully agree with the submission made by Shri Ali, but, at the same time, the Court has also to see whether the cause of action shown in the plaint is the real cause of action or it is an illusion created before the court and if it is found that the suit is barred by limitation on the basis of the facts available in the plaint, the application can be decided at any stage and even without framing the issues. It is also not in dispute that the averments of the plaint are required to be seen while deciding the application under Order 7 Rule 11 CPC. This Court has also followed the settled legal position on which Shri Ali is relying upon but even though it is found that the application under Order 7 Rule 11 has rightly been decided by the trial court and even in the opinion of this Court the application had to be allowed. The plaint filed by the plaintiff was rightly rejected by the court below allowing the application under Order 7 Rule 11 and therefore, I am of the opinion that this appeal deserves to be allowed.

**24.** Shri Ali has also placed reliance upon a decision rendered in the case of **Jagjit Singh Wadhwa (supra)**, but the facts of the said case are altogether different from the facts involved in the present case and the legal issues involved in the present case have not been answered in the said case and consequently, the said case has no application in the present case.

**25.** *Ex-consequencia*, this appeal is **allowed**. The order dated 13.09.2023 passed in RCA No. 72/2022 by the appellate court, which is impugned in this petition, is hereby set aside and consequently the order

dated 18.10.2022 passed by the III Additional Civil Judge, Damoh in Civil Suit No. 96-A/2019 is hereby affirmed.

**Appeal allowed.**

**(SANJAY DWIVEDI)**  
**JUDGE**

Reghvendra