

[2026 LiveLaw \(SC\) 383](#)

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

**B.V. NAGARATHNA; J., UJJAL BHUYAN; J.**

CIVIL APPEAL NO.3624 OF 2024; APRIL 16, 2026

**S. VALLIAMMAI & OTHERS versus S. RAMANATHAN & ANOTHER**

**Code of Civil Procedure, 1908 – Order VII Rule 11(d) vs. Order II Rule 2 – Rejection of Plaintiff – Distinction between "Bar to Sue" and "Suit Barred by Law" – The Supreme Court held that the application of Order II Rule 2 (relinquishment of part of claim or omission to sue for one of several reliefs) cannot be a ground for rejection of a plaintiff under Order VII Rule 11(d) - While Order VII Rule 11(d) applies when a suit is barred by an express or implied law (e.g., Section 34 of the SARFAESI Act), Order II Rule 2 pertains to the "right to sue" for specific claims or reliefs - A plea under Order II Rule 2 must be established by the defendant through evidence, requiring a comparative analysis of the plaintiffs in the former and subsequent suits to determine identity of the cause of action.**

**Code of Civil Procedure, 1908 – Order VII Rule 11(d) – Statement in the Plaintiff – For the purpose of deciding an application under Order VII Rule 11(d), the Court must only look at the "statement in the plaintiff," which includes a meaningful reading of the averments and the documents appended thereto - The written statement or any other materials produced by the defendant are wholly irrelevant at this stage.**

**Code of Civil Procedure, 1908 – Order II Rule 2 – Tests for Applicability – To invoke the bar under Order II Rule 2, the defendant must satisfactorily establish that: (i) the subsequent suit is in respect of the same cause of action as the previous suit; (ii) the plaintiff was entitled to more than one relief for that cause of action; and (iii) the plaintiff omitted to sue for such relief in the earlier suit without the leave of the Court - The technical bar cannot be presumed based on inferential reasoning. [Relied on *Mohammad Khalil Khan vs. Mahbub Ali Mian*, 1948 SCC OnLine PC 44; *Cuddalore Powergen Corporation Ltd. vs. Chemplast Cuddalore Vinyls Limited*, 2025 SCC OnLine 82; *T. Arivandandam vs. T.V. Satyapal*, (1977) 4 SCC 467; Paras 6-8]**

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**J U D G M E N T**

**NAGARATHNA, J.**

The appellants herein are aggrieved by the impugned order dated 11.07.2019 passed by the High Court of Judicature at Madras in C.R.P.(PD) No.4472 of 2013 whereby the Civil Revision Petition filed by the respondents herein was allowed and the order dated 24.06.2013 passed by the VIth Assistant Judge, City Civil Court, Chennai (hereinafter referred to as "trial court") in O.S. No.2320 of 2013 (hereinafter called the 'second suit' for the sake of convenience) was set aside. Consequently, the plaintiff in the second suit was rejected. The trial court, by the said order, had rejected I.A. No.7712/2013 filed by the respondents under Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as "Code") and allowed I.A. No.6381/2013 filed by the appellants herein under Order XXXIX Rules 1 and 2 of the Code.

1.1 For the sake of convenience, the parties shall be referred to in terms of their status and position before the trial court in O.S. No.2320 of 2013 (the second suit).

1.2 Briefly stated, the facts of the case are that Late Shri M. Sokkalingam (“original owner”) and his wife S Valliammai appellant No.1 herein (hereinafter referred to as plaintiff No.1) entered into a partition of family properties by way of oral settlement dated 01.11.2011 with their children, i.e., two daughters namely Meena – appellant No.2 herein (hereinafter referred to as plaintiff No.2) and Muthumeena – appellant No.3 herein (hereinafter referred to as “plaintiff No.3”) and son namely, S. Ramanathan - respondent No.1 herein (hereinafter referred to as defendant No.1). According to the oral settlement, plaintiff Nos.2 and 3 received Rs.9,00,00,000/- (Rupees Nine Crores) each through cheques and executed deeds dated 02.11.2011, relinquishing their share in the properties in favour of their brother-defendant No.1.

1.3 Thereafter on 04.11.2011, the original owner executed a registered Power of Attorney bearing Document No.724 of 2011 in favour of Shri E.J. Ayyappan - respondent No.2 herein (herein referred to as “defendant No.2”), with respect to the following properties:

i) Regent Place bearing R.S. No.3907/2A, Survey No.C-263 (part) New Survey No.43 situated in Ward E, Block No.6, admeasuring 1 acre 56 cents, situated at 374, 375 and 376, Peyton Road, Opposite Ratan Tata Officer’s Home, Ootacamund, Nilgiris (“Ooty (Nilgiris) property”, for the sake of convenience) (Schedule ‘A’ Property).

ii) Vacant land situated at Door No.1/29, Rayavaram Main Road, (Kadiyapatti village), Ramachandrapuram, Panangudi, Vettam, Thirumayam Taluk, Pudukottai District, comprised in Old Survey No.177 (Natham) New Survey No.90/11 (“Pudukottai property”, for the sake of convenience) (Schedule ‘B’ Property)

1.4 Pursuant thereto, settlement deeds dated 09.11.2011 and 10.11.2011 with respect to the aforesaid properties were executed in favour of defendant No.1 by defendant No.2, as the power of attorney of the original owner.

1.5 Subsequently, on 30.07.2012, plaintiff No.1 and the original owner instituted O.S. No.4722 of 2012 (‘first suit’) before the VIIth Assistant Judge, City Civil Court, Chennai against defendant No.1 (in the second suit), seeking the relief of permanent injunction and peaceful possession and enjoyment of:

i) property situated at Old Door No.23, Harrington Avenue, subsequently at Door No.48, fifth avenue and presently Door No.2, fifth avenue, Harrington road, Chetpet, Chennai-600031 (“Chennai property”, for the sake of convenience) (“Schedule ‘A’” therein); and

ii) operation of the cash deposits, stocks, shared, debentures, mutual fund deposit etc lying in A/c No.access plus 42710180701, 42710180698, 42705092018 with Standard Chartered Bank, No.1, Rajaji Salai, Parrys, Chennai-600104 (“Schedule ‘B’” therein).

1.6 In the aforesaid suit, it was alleged that defendant No.1, by intimidating the original owner as well as plaintiff No.1 in the second suit and by exploiting their emotions, forced them to execute some documents on 04.11.2011. Further, defendant No.1 compelled them to execute the settlement deed dated 04.11.2011, settling the property described in Schedule ‘A’ therein to the son of defendant No.1 after reserving life interest for plaintiff No.1.

1.7 During the pendency of the aforesaid first suit, the original owner, M. Sokkalingam, passed away on 13.03.2013.

1.8 Subsequently, the appellant-plaintiffs herein (wife and the daughters of plaintiff No.1 in the first suit) instituted O.S. No.2320 of 2013 ("second suit") on 08.04.2013 before the trial court, seeking a declaration that the Power of Attorney dated 04.11.2011, registered as Doc. No.724/2011 was illegal, null and void, and the same was obtained by sheer misrepresentation, coercion, fraud and undue influence together with all consequential acts and deeds if any made on the strength of the power of attorney dated 04.11.2011 and for permanent injunction restraining the defendant, his men, agents and servants from alienating the Schedules 'A' and 'B' properties. Further, the plaintiffs also filed I.A. No.6381/2013 under Order XXXIX Rules 1 and 2 of the Code seeking an interim injunction, restraining the defendants from alienating or encumbering the suit properties pending disposal of the suit.

1.9 Subsequently, the respondent-defendants preferred I.A. No.7712 of 2013 in the second suit under Order VII Rule 11 of the Code seeking rejection of the plaint by contending that the said suit was barred under Order II Rule 2 of the Code.

1.10 The trial court by common order dated 24.06.2013, dismissed I.A. No.7712/2013 filed by the defendants being not maintainable and allowed I.A. No.6381/2013 filed by the plaintiff, granting temporary injunction against the defendants restraining alienation and encumbrance of the suit properties pending disposal of the suit. It was held that the second suit was not barred on account of Order II Rule 2 of the Code as the causes of action and properties involved in the two suits were distinct and separate and that the plaintiffs came to know about the General Power of Attorney only after the written statement was filed by the defendant No.1 in the first suit and at that juncture, the cause of action arose. The trial court further doubted the manner in which the suit properties had been settled through a third party i.e., defendant No.2.

1.11 Being aggrieved, the defendants preferred C.R.P.(PD) No.4472 of 2013 before the Madras High Court. By way of impugned order dated 11.07.2019, the High Court allowed the revision petition filed by the defendants and set aside the Trial Court's order in O.S. No.2320 of 2013 and thereby rejected the plaint under Order VII Rule 11 of the Code. The Court observed that upon perusal of the plaint in O.S. No.4722/2012, it was apparent that the plaintiffs were aware of the execution of the Power of Attorney dated 04.11.2011. It was further observed that the cause of action for both the suits was one and the same and that the plaintiffs were parties and privy to all the events, including the oral settlement and subsequent execution of the Power of Attorney. It was further held that the trial court deviated from its jurisdiction by going into the aspect of why and for what purpose the Power of Attorney was executed, brushing aside the fact that the plaintiff Nos.2 and 3 were witnesses to the said document. The High Court expressed that the trial court did not appreciate the fact that plaintiff No.2 herself wrote a letter requesting the SubRegistrar, Periamet, to undertake a home visit to register the Power of Attorney in favour of defendant No.2, and therefore she subsequently could not be allowed to take a contradictory stand to contend that she came to know about the Power of Attorney only after filing of the written statement by defendant No.1 in the first suit.

1.12 Being aggrieved, the appellants have preferred the present civil appeal.

**2.** Before proceeding further, it is necessary to distill the averments of the plaint in O.S. No.4722 of 2012 which is the first suit and O.S. No.2320 of 2013 which is the second suit.

***Averments of Plaint in O.S. No.4722 of 2012 (First Suit):***

2.1 The plaintiffs in the said suit are the parents of the defendant therein (defendant No.1 in the second suit). They averred that they are residing at Door No.2, Vth Avenue,

Harrington Road, Chennai600031; the property more fully described in Schedule 'A' thereunder which is the absolute property of plaintiff No.1 and he is in continuous possession and enjoyment of the same. The plaintiffs have three children, namely, two daughters and defendant-son who is an advocate. The plaintiffs were residing in Schedule 'A' property and their daughters are married and settled in USA.

2.1.1 That their defendant-son had been insisting the plaintiffs to part with all their properties including properties mentioned in Schedules 'A' and 'B'.

2.1.2 That plaintiff No.2 was sick and bedridden most of the times and the plaintiffs are helpless as they have to live in constant fear and anxiety because of the intimidating tactics of the defendant who was none other than their son. That the plaintiff No.2 has several ailments and suffered from disorientation and had suffered a heart attack in the month of July 2011 and was also hospitalized. Instead of attending to his parents, the defendant - son has been insisting on the plaintiffs parting with their properties. On 24.08.2011, the defendant physically assaulted and verbally abused plaintiff No.2 for not settling the property on him.

2.1.3 That owing to the intimidation of the defendant, plaintiff No.2 was forced to execute some documents on 04.11.2011 when the Registrar took the thumb impression of the plaintiff No.2 on a settlement deed dated 04.11.2011 settling Schedule 'A' property in favour of defendant - son after reserving life interest in the said property for plaintiff No.1. The defendant has also taken away the original title deeds and documents from the house of the plaintiffs.

2.1.4 Further, the plaintiffs had valuable shares and securities which they had liquidated and divided the amount by giving their two daughters a lesser amount as compared to the defendant-son and a small balance was deposited in the bank account of plaintiff No.1 for the last stages of their life. The plaintiffs are residing in Schedule 'A' property therein and they do not have any independent source of income except the interest income from the bank account more fully described as Schedule 'B' in the plaint.

2.1.5 That the defendant was pestering the plaintiffs to change the Schedule 'B' account into a joint account by including him as a joint account holder along with the plaintiffs which the plaintiffs were not willing to do so. That the plaintiffs were a respectable family from Chettinad and therefore had not lodged any police complaint.

2.1.6 It was also averred that the greed of the defendant had not been satisfied with the settlement deed executed by compelling plaintiff No.1 to part with properties such as 1.5 acres of land in Ooty with the Bungalow and several valuable properties at Pudukottai District belonging to plaintiff No.2. Hence, he was now eyeing the bank account. That on 23.07.2012, the defendant demanded plaintiff No.1 to include his name also in the bank account.

2.1.7 The defendant was living in his own house at Mylapore and the plaintiffs were residing in the Schedule 'A' property and even according to the settlement deed dated 04.11.2011, plaintiff No.1 was entitled for life interest over the said property. However, the defendant frequently visited the plaintiffs and bothered them mentally affecting their peace and coming in the way of their enjoyment of their property.

2.1.8 The cause of action arose when the defendant demanded his parents to part with all their properties and a settlement deed was executed on 04.11.2011 and later on 23.07.2012 when the defendant came to the house and demanded the plaintiff to convert the bank account into a joint account. Plaintiffs were entirely dependent upon the interest yield from the bank account and the plaintiffs were in constant fear of the defendant.

2.1.9 The plaintiffs sought the following reliefs (in the first suit):

- a) Permanent injunction restraining the defendant, his men, agents and servants from interfering with the plaintiffs peaceful possession and enjoyment of the Schedule 'A' mentioned property;
- b) Permanent injunction restraining the defendant, his men, agents and servants from interfering with operation of Schedule 'B' bank account;
- c) Permanent injunction restraining the defendant against exercising any undue influence, coercion, threat, blackmailing against the plaintiff for transfer or opening of joint bank account in respect of Schedule 'B' bank account;
- d) To pay the cost of this suit; and
- e) Grant such other relief the Court may deem fit and proper in the circumstances of this case.

***Averments in O.S. No.2320 of 2013 (Second Suit):***

**3.** This suit has been filed by the widow of late M. Sokkalingam as plaintiff No.1 and their two daughters as plaintiff Nos.2 and 3 against defendant No.1 who is the son of late M. Sokkalingam and defendant No.2 who is his power of attorney holder.

3.1 According to the plaintiffs, M. Sokkalingam died intestate on 13.03.2013 leaving the plaintiffs and defendant No.1 to jointly inherit the properties. Defendant No.2 was the friend of defendant No.1 who has acted as the power agent of late M. Sokkalingam under an illegal and invalid power of attorney deed dated 04.11.2011 which is challenged.

3.2 That M. Sokkalingam had heart and kidney ailments and was suffering from diabetes and other ailments. He had undergone knee and heart surgeries and had been hospitalized for a number of months and was in altered state of consciousness from mid 2010 to February, 2012. Often he would be disoriented and later gain his consciousness after some interval. Around October 2011 to December, 2011, the problem became acute when he had altered levels of consciousness for two to three months. He was hospitalized in the month of July 2011 due to heart attack. That late M. Sokkalingam and plaintiff No.1 were residing at Door No.2, Vth Avenue, Harrington Road, Chennai-600031 and plaintiff Nos.2 and 3, being their daughters were married and settled in the United States of America and they used to visit their parents now and then. Defendant No.1, who is the son, has been greedy and moneyminded and insisted plaintiff No.1 and her husband to part with all the properties to the exclusion of his two sisters. Defendant No.1 has been adopting a hostile attitude and tactics to take control of all the properties of his father by blackmailing and threatening that he would commit suicide if all the properties were not conveyed to him. That plaintiff No.1 and her husband were stripped of all their moveable and immoveable properties except the amount lying in the bank account of plaintiff No.1 in Standard Chartered Bank, Chennai. That defendant No.1 was continuously pestering plaintiff No.1 and her husband to convert the said bank account into a joint bank account by including his name and by frequently calling the officials of the Standard Chartered Bank by giving unnecessary instructions to convert the bank account into a joint account but the account holders being the parents of defendant No.1 were not willing to do so. Hence, they filed O.S. No.4722 of 2012 (first suit) on the file of the VIIth Assistant City Civil Court, Chennai seeking the relief for permanent injunction against defendant No.1 from interfering with their possession of the property and the bank account. The said suit is still pending. That the parents of defendant No.1 had to live in constant fear and anxiety because of the intimidating tactics of defendant No.1 who is none other than their own son.

3.3 That plaintiff No.1 is a heart patient and her husband was also a heart patient and defendant No.1, instead of lending any help and being of solace to them was insisting on them for parting with their properties. That on one occasion dated 24.08.2011, defendant No.1 came home at around 08:00 PM and physically assaulted and verbally abused the handicapped father for not settling the properties on him. Considering the reputation of the family, no criminal complaint was lodged. That defendant No.1 by intimidating plaintiff No.1 and her husband (M. Sokkalingam) forced them to execute some documents on 04.11.2011 when her husband was in a semi-conscious state of mind. The Registrar was brought to the house and the thumb impression of M. Sokkalingam was obtained by force. He was thus compelled to execute the settlement deed dated 04.11.2011 setting the property described in Schedule 'A' in the said plaint to the defendant after reserving the life interest for the plaintiff No.1. Defendant No.1 has also taken away all the original title deeds and documents of the Schedule mentioned properties from the house of the plaintiffs even earlier.

3.4 That on 04.11.2011, defendant No.1 got the thumb impression of M. Sokkalingam without his knowledge on various papers and the signatures of the plaintiff Nos. 2 and 3 were also obtained on various papers as witnesses to the documents in which thumb impression of M. Sokkalingam were obtained by force, fraud and without his knowledge since at that time he was in a semiconscious state of mind. That the rude behaviour and inexorable greed of defendant No.1 prompted plaintiff No.1 and her husband to file the suit i.e. O.S. No.4722 of 2012 (first suit) to allay their immediate apprehension. That M. Sokkalingam made an inquiry with the help of plaintiff Nos.2 and 3 herein in the Registrar's office about any document alleged to have been executed by him on 04.11.2011, when the Registrar visited the house of plaintiff No.1 for the purpose of the execution of the settlement deed. It is to the utter shock and dismay the power of attorney dated 04.11.2011, bearing Document No.724 of 2011 on the file of Sub-Registrar's office (SRO), Periamet in favour of defendant No.2 was brought to his notice. M. Sokkalingam had instructed his counsel to prepare the case to declare the power of attorney dated 04.11.2011 on the file of SRO, Periamet as invalid but before the suit could be instituted he died.

3.5 That defendant No.1 was not invited by his father (M. Sokkalingam) for his 80<sup>th</sup> birthday and his father wanted his wife to perform his last rites but defendant No.1 ultimately performed his last rites.

3.6 Defendant No.2 was stated to be appointed as the power agent of M. Sokkalingam to execute the settlement deed in favour of defendant No.1. That, M. Sokkalingam during the said period was in a semi-conscious state of mind and defendant No.1 had threatened and coerced all the family members to put signature on the documents. That M. Sokkalingam never intended to settle the Schedules 'A' and 'B' properties upon defendant No.1 as the relationship between them was not cordial; rather was very much strained. That the father was beaten by his son-defendant No.1 and there was no love and affection between them.

3.7 That, M. Sokkalingam was a reputed member of the Chettiar Community having trustworthy friends and relatives and there was no occasion for him to choose defendant No.2, who is an advocate and friend of defendant No.1 as the power agent for the execution of the settlement deed. If at all, any such document had to be executed by M. Sokkalingam, it would have been done so at Chennai by appointing power agent to present the settlement deed for registration. That the power of attorney dated 04.11.2011, bearing Document No.724 of 2011 on the file of SRO, Periamet is *per se* illegal and void

and the same was executed by fraud, coercion and further as the executant at the time of the execution was not in a sound state of mind. Therefore, any consequential act on the strength of the said power of attorney is also illegal and invalid. That defendant No.1 is not entitled to have any absolute right over the suit properties.

3.8 That the cause of action for the suit arose when M. Sokkalingam died intestate on 13.03.2013 leaving the plaintiffs and the defendant No.1 to jointly inherit the properties. On 04.11.2011, when M. Sokkalingam was in a semi-conscious state of mind, was compelled to put his thumb impression on some documents. Hence, the plaintiffs sought following reliefs:

- a) Declare the Power of Attorney deed dated 04.11.2011 registered as Doc. No.724 of 2011 on the file of SRO, Periamet, Chennai-600003 as illegal, null and void and the same is obtained by sheer misrepresentation, coercion, fraud and undue influence together with all consequential acts and deeds if any made on the strength of the power of attorney dated 04.11.2011;
- b) Permanent injunction restraining the defendant, his men, agents and servants from alienating the Schedules 'A' and 'B' properties;
- c) Grant such other relief as deemed fit and proper under the circumstances of the case; and
- d) To pay the cost of the suit.

**Order VII Rule 11 of the Code:**

4. Since the issue in this appeal pertains to the correctness or otherwise of the impugned order granting rejection of the plaint, at this stage, we deem it necessary to extract Order VII Rules 11 and 13 of the Code which deal with the grounds for rejection of a plaint, 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 provision of rule 9:

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper 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 for correcting the valuation or supplying the requisite stamp-paper, 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.

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**13. Where rejection of plaint does not preclude presentation of fresh plaint.**—The rejection of the plaint on any of the grounds hereinbefore mentioned shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action."

4.1 In the instant case, an application was filed under Order VII Rule 11(d) of the Code where the ground of rejection of the plaint was that the suit appears from the statement in

the plaint to be barred by any law. In this regard, various decisions of this Court with regard to rejection of plaint under Order VII Rule 11 of the Code could be discussed as follows:

- a) In ***T. Arivandandam vs. T.V. Satyapal, (1977) 4 SCC 467***, this Court while examining the aforesaid provision held that the trial court must remember that if on a meaningful and not a formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise the power under Order VII Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order X of the Code.
- b) The object of the said provision was laid down by this Court in ***Sopan Sukhdeo Sable vs. Assistant Charity Commissioner, (2004) 3 SCC 137***. Similarly, in ***Popat and Kotecha Property vs. State Bank of India Staff Association, (2005) 7 SCC 510***, this Court has culled out the legal ambit of Order VII Rule 11 of the Code.
- c) It is trite law that not any particular plea has to be considered, but the whole plaint has to be read. As was observed by this Court in ***Roop Lal Sathi vs. Nachhattar Singh Gill, (1982) 3 SCC 487***, only a part of the plaint cannot be rejected and if no cause of action is disclosed, the plaint as a whole must be rejected. Similarly, in ***Raptakos Brett & Co. Ltd. vs. Ganesh Property, (1998) 7 SCC 184***, it was observed that the averments in the plaint as a whole have to be seen to find out whether clause (d) of Order VII Rule 11 of the Code is applicable.
- d) It was further held with reference to Order VII Rule 11 of the Code in ***Saleem Bhai vs. State of Maharashtra, (2003) 1 SCC 557*** 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 i.e. 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 VII Rule 11 of the Code, 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.
- e) In ***R.K. Roja vs. U.S. Rayudu, (2016) 14 SCC 275***, it was reiterated that the only restriction was that the consideration of the application for rejection should not be on the basis of the allegations made by the defendant in his written statement or on the basis of the allegations in the application for rejection of the plaint. The court has to consider only the plaint as a whole and in case the entire plaint comes under the situations covered by Order VII Rules 11(a) to (f) of the Code, the same has to be rejected.
- f) In ***Kuldeep Singh Pathania vs. Bikram Singh Jaryal, (2017) 5 SCC 345***, this Court observed that the court can only see whether the plaint, or rather the pleadings of the plaintiff, constitute a cause of action. Pleadings in the sense where, even after the stage of written statement, if there is a replication filed, in a given situation the same also can be looked into to see whether there is any admission on the part of the plaintiff. In other words, under Order VII Rule 11 of the Code, the court has to take a decision looking at the pleadings of the plaintiff only and not on the rebuttal made by the defendant or any other materials produced by the defendant.
- g) In an application under Order VII Rule 11 of the Code, a plaint cannot be rejected in part. This principle is well established and has been continuously followed since the 1936 decision in ***Maqsd Ahmad vs. Mathra Datt & Co. AIR 1936 Lah 1021***. This principle is also explained in another decision of this Court in ***Sejal Glass Ltd. vs. Navilan***

***Merchants Private Ltd., (2018) 11 SCC 780*** which was again followed in ***Madhav Prasad Aggarwal vs. Axis Bank Ltd., (2019) 7 SCC 158.***

h) In ***Sri Biswanath Banik vs. Sulanga Bose, (2022) 7 SCC 731***, this Court discussed the issue regarding the suit being barred by limitation or not and observed that at that stage, what is required to be considered are the averments in the plaint. Only in a case where on the face of the plaint, it is seen that the suit is barred by limitation, then and only then a plaint can be rejected under Order VII Rule 11(d) of the Code on the ground of limitation. At that stage what is required to be considered is the averments in the plaint. For the aforesaid purpose, the Court has to consider and read the averments in the plaint as a whole.

### ***Order II Rules 1 and 2 of the Code:***

5. Order II Rules 1 and 2 of the Code are extracted as under:

#### **“Order II – Frame of Suit: -**

**1. Frame of suit.—** Every suit shall as far as practicable be framed so as to afford ground for final decision upon the subjects in dispute and to prevent further litigation concerning them.

**2. Suit to include the whole claim.—** (1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) **Relinquishment of part of claim.—** Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) **Omission to sue for one of several reliefs.—** A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

*Explanation.—* For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action.”

5.1 Order II of the Code deals with frame of suit. Order II Rule 1 states that every suit shall as far as practicable be framed so as to afford ground for final decision upon the subjects in dispute and to prevent further litigation concerning them. Thus, the fundamental aim of Order II Rule 1 is to avoid multiple suits which may be founded on the same cause of action or may be relating to the same subject-matter. Similarly, Order II Rule 2 of the Code elaborates the objective of Order II Rule 1 thereof by stating the suit to include the whole claim and deals with the consequences of relinquishment of a part of claim and omission to sue for one of several reliefs. The object of Order II Rule 2 is also to avoid multiplicity of suits. This is because the litigant who does not include all the grounds available to him on the subject in dispute in one suit and institutes several suits against the same parties on the same subject in dispute, would abuse the process of the Court.

5.2 The difference between Order II Rule 1 and Order II Rule 2 of the Code is, that in Order II Rule 1, the phrase used is “subjects in dispute” whereas in Order II Rule 2, the phrase used is “cause of action”. Secondly, Order II Rule 2 provides that failure of a plaintiff to abide by the mandate of the said Rule results in the plaintiff being debarred from instituting a fresh suit for that claim. However, Rule 1 does not provide for the consequences that will result for non-compliance except possibly under Order VII Rule 1(a). Thus, under Order II Rule 2, the bar is with regard to the right to sue in the context

of relinquishment of a part of the claim and omission to sue for one of several reliefs [Order II Rule 2 (sub-rules (2) and (3)].

5.3 Where a person is entitled to more than one relief in respect of the same cause of action, he may sue for all the reliefs or he may sue for one or more of them and reserve his right with the leave of the court to sue for the rest. It is only when more than one relief is claimed under a particular cause of action sued on, that the plaintiff can reserve one or some of them with the leave of the court.

5.4 It is for the defendant who raises the plea of bar under Order II Rule 2 of the Code to establish that:

- (i) the subsequent suit was in respect of the same cause of action on which the earlier suit was based;
- (ii) in respect of such a cause of action the plaintiff was entitled to more than one relief; and
- (iii) without the leave of the court he had omitted to claim such a relief in the earlier suit, claimed by him thereafter in the subsequent suit [**B. Shambumal vs. State Bank of Mysore, AIR 1971 Mys. 156**].

However, if the right to relief in respect of which a further suit is brought did not exist at the date of institution of the former suit, the subsequent suit is not barred [**State of Uttar Pradesh vs. Mool Chand, AIR 1972 All. 413**].

5.5 While filing the first suit, if the plaintiff reserves his right with the leave of the court to sue for the rest of the reliefs then he can file a second suit for the remaining reliefs. On the other hand, if no such leave is obtained, he will be precluded from afterwards suing for any relief so omitted. Certain judgments of this Court could be referred to only in the context of rejection of the plaint under Order VII Rule 11(d) of the Code later as the controversy in the present case is in the above context.

5.6 Order II Rule 2 of the Code deals with the reliefs sought in a suit by the plaintiff in respect of a cause of action. Order II Rule 2(1) thereof states that every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any court. Order II Rule 2(2) of the Code states that where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished. Order II Rule 2(3) of the Code states that a person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, to sue for all such reliefs, except with the leave of the court, he shall not afterwards sue for any relief so omitted.

5.7 The expression “same cause of action” is significant. On the basis of a cause of action, if a plaintiff is entitled to several reliefs but he omits to sue for all such reliefs, he is forbidden to sue for such relief unless he has reserved his right to sue thereafter by a separate suit. The object of Order II Rule 2 of the Code is based on the principle that the defendants should not be vexed twice for the same cause of action which is a principle akin to the principle of *res judicata*. Therefore, there cannot be splitting of claims and splitting of remedies which arise on the same cause of action. Secondly, the principle applies between the same parties. Therefore, the test is the identity of cause of action for the principle under Order II Rule 2 of the Code to be applied. If a cause of action enables

the person to ask for larger and wider reliefs and if the plaintiff limits his claim, then subsequently, he cannot seek the remaining reliefs by filing fresh proceedings.

5.8 However, it is necessary to bear in mind that it is not incumbent that the suit should include all the reliefs even though the cause of action has not arisen for seeking certain reliefs inasmuch as a suit may be filed for an appropriate relief and if a subsequent cause of action arises additional reliefs could be sought by filing a subsequent suit. Thus, in order to apply Order II Rule 2 of the Code, the earlier suit should have been founded on the same cause of action on which the subsequent suit is based and if, in the earlier suit, the plaintiff had omitted to sue in respect of or intentionally relinquished any portion of his claim, he will not subsequently be entitled to sue in respect of the portion of his claim so omitted or relinquished.

5.9 The tests for determining whether Order II Rule 2 of the Code would apply in a particular case is, whether, the relief sought in the second suit or the subsequent suit is, in fact, founded upon a cause of action distinct from that which was the foundation for the former suit. If the answer to this question is in the affirmative, then the bar under Order II Rule 2 of the Code would not apply. Therefore, if there are different causes of action arising even out of the same transaction, the plaintiff is not obliged to bring a suit with regard to all of them. Similarly, when the cause of action on the basis of which the earlier suit was brought, does not form the foundation for the subsequent suit and in the earlier suit, the relief sought in the subsequent suit could not have been claimed, then, the subsequent suit is not barred. Thus, the applicability of the bar under Order II Rule 2 of the Code revolves on the meaning to be given to the expression 'cause of action'.

5.10 In ***Mohammad Khalil Khan vs. Mahbub Ali Mian, 1948 SCC OnLine PC 44 ("Mohammad Khalil Khan")***, the Privy Council noted that the expression 'cause of action' has not been legislatively defined in any enactment but observed that the said expression means every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court. That, the expression 'cause of action' does not comprise every piece of evidence and has no relation whatsoever to the defence that may be set up by the defendant but it references to the media upon which plaintiff requests the court to arrive at a conclusion in his favour.

5.11 In ***Mohammad Khalil Khan***, it was observed that what would constitute the cause of action in a suit must always depend upon the particular facts of the case. Further, in order to determine the question whether cause of action in the two suits is the same or not, one of the tests that could be applied is, whether, the same evidence would support the claims in both suits; if the evidence required to support the claims is different, then the causes of action are also different. In the said case, the following principles were laid down after discussing a number of judicial precedents on the applicability of Order II Rule 2 of the Code in the following way:

"The principles laid down in the cases thus far discussed may be thus summarised:—

(1) The correct test in cases falling under O. 2, R. 2, is "whether the claim in the new suit is in fact founded upon a cause of action distinct from that which was the foundation for the former suit." [*Moonshee Buzloor Ruheem v. Shumsunnissa Begum, (1867) 11 Moo. I.A. 551, 605*].

(2) The cause of action means every fact which will be necessary for the Plaintiff to prove if traversed in order to support his right to the judgment. [*Read v. Brown, (1888) 22 Q.B.D. 128, 131*].

(3) If the evidence to support the two claims is different, then the causes of action are also different. [*Brunsdon v. Humphrey, (1884) 14 Q.B.D. 141, 146*].

(4) The causes of action in the two suits may be considered to be the same if in substance they are identical. [*Brunsdon v. Humphrey, (1884) 14 Q.B.D. 141, 146*].

(5) The cause of action has no relation whatsoever to the defence that may be set up by the Defendant nor does it depend upon the character of the relief prayed for by the Plaintiff. It refers... to the *media* upon which the Plaintiff asks the Court to arrive at a conclusion in his favour. [*Mst. Chand Kour v. Partab Singh, (1888) L.R. 15 I.A. 156, 157*]. This observation was made by Lord Watson in a case under S. 43 of the Act of 1882 (corresponding to O. 2, R. 2) where Plaintiff made various claims in the same suit.”

5.12 Recently, in ***Cuddalore Powergen Corporation Ltd. vs. Chemplast Cuddalore Vinyls Limited, 2025 SCC OnLine 82***, this Court speaking through Pardiwala J. observed in paragraph 47 as under:

“47. On a conspectus of the aforesaid discussion, what follows is that:

i. The object of Order II Rule 2 is to prevent the multiplicity of suits and the provision is founded on the principle that a person shall not be vexed twice for one and the same cause.

ii. The mandate of Order II Rule 2 is the inclusion of the whole claim arising in respect of one and the same cause of action, in one suit. It must not be misunderstood to mean that all the different causes of action arising from the same transaction must be included in a single suit.

iii. Several definitions have been given to the phrase “*cause of action*” and it can safely be said to mean - “*every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court*”. Such a cause of action has no relation whatsoever to the defence that may be set up by the defendant, nor does it depend upon the character of the relief which is prayed for by the plaintiff but refers to the *media* upon which the plaintiff asks the Court to arrive at a conclusion in his favour.

iv. Similarly, several tests have been laid out to determine the applicability of Order II Rule 2 to a suit. While it is acknowledged that the same heavily depends on the particular facts and circumstances of each case, it can be said that a correct and reliable test is to determine whether the claim in the new suit is in fact founded upon a cause of action distinct from that which was the foundation of the former suit. Additionally, if the evidence required to support the claims is different, then the causes of action can also be considered to be different. Furthermore, it is necessary for the causes of action in the two suits to be identical in substance and not merely technically identical.

v. The defendant who takes shelter under the bar imposed by Order II Rule 2(3) must establish that (a) the second suit was in respect of the same cause of action as that on which the previous suit was based; (b) in respect of that cause of action, the plaintiff was entitled to more than one relief; and (c) being thus entitled to more than one relief, the plaintiff, without any leave obtained from the Court, omitted to sue for the relief for which the second suit had been filed.

vi. The defendant must also have produced the earlier plaintiff in evidence in order to establish that there is an identity in the causes of action between both the suits and that there was a deliberate relinquishment of a larger relief on the part of the plaintiff.

vii. Since the plea is a technical bar, it has to be established satisfactorily and cannot be presumed merely on the basis of inferential reasoning.”

(Underlining by us)

On a reading of the above, what emerges is that the defendant must establish that the second suit was in respect of the same cause of action on which the previous suit was based. The defendant must produce the plaintiff in the earlier suit in evidence in order to establish that there is an identity in the causes of action between the two suits and there was a deliberate relinquishment of a larger relief on the part of the plaintiff. The defendant

in a suit must establish satisfactorily the issue and the technical bar cannot be presumed merely on the basis of an inferential reasoning.

5.13 Bar to sue is distinct from a suit being barred by any law. In the former, a suit cannot be commenced at all and, therefore, would have to be dismissed on the application of Order II Rule 2 of the Code, while in the latter case, a suit can be commenced but is not entertainable owing to a bar in law. Under Order II Rule 2, a suit can be dismissed after recording evidence depending upon the facts and circumstances of the case and on the analysis of the cause of action in a former suit and a subsequent suit. In the case of rejection of a plaint, recording of evidence on the bar to file a suit may not be necessary in all circumstances. It all depends on the nature of the bar.

5.14 To sue, according to Webster Dictionary, is “to seek justice or right by legal process”. According to Strouds’ Judicial Dictionary, (Fifth Edition, p.2540) the words “to sue” is said to have meaning generally speaking, ‘of bringing action’. Thus, the word ‘sue’ means to institute or commence a proceeding and has reference to the point of time when the suit is instituted and not to any subsequent stages of the suit. The word ‘sue’ means to take any legal proceedings in accordance with the provisions of the Code.

5.15 Thus, the right to sue is circumscribed by what is stated under Order II Rules 1 and 2 of the Code. Order II Rule 2(1) states that every suit **shall** include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of the court. With regard to relinquishment of part of the claim and omission to sue for one of several reliefs, the consequences are stated in sub-rules (2) and (3) of Order II Rule 2 of the Code. Thus, under the said sub-rules the right to sue in respect of relinquishment of a claim or omitted reliefs in the absence of conditions occurring therein would not arise. Therefore, sub-rules (2) and (3) of Order II Rule 2 deal with claims and reliefs.

5.16 Further, on a comparative analysis of the plaint in the first suit and the second suit, the following aspects have to be considered:

- (i) Whether parties and their privies are the same in the two suits?
- (ii) Whether the cause of action in the two suits is identical or distinct?
- (iii) Whether the subject matters of the two suits are different?
- (iv) Any such other point of identity or distinction.

5.17 Turning to Order VII Rule 11 (d), it deals with rejection of plaint and not the right to sue being barred. A rejection of a plaint is as per clauses (a) to (f) mentioned in Order VII Rule 11. Order VII Rule 11 (d) states that the plaint shall be rejected where the suit appears from the statement in the plaint to be barred by any law. Therefore, the crucial words are, the filing of the suit being barred by any law. The issue, whether the suit is barred by any law has to be determined from the statement in the plaint. The expression “statement in the plaint” would mean not only a meaningful reading of the averments in the plaint but also a meaningful reading of the documents appended to the plaint. Thus, it is on a meaningful reading of the plaint and the annexed documents, the suit should appear to be barred by any law. Hence, the written statement or any other document cannot be taken into consideration in order to ascertain whether the suit is barred by any law.

5.18 When the expression “barred by any law” is read in juxtaposition with Order II Rule 2 of the Code, it is already noted that Order II Rule 2 does not bar the filing of any suit but sub-rules (2) and (3) forbids the suing for certain claims which have been relinquished or certain reliefs which have been omitted to sue in the earlier suit in respect of which a plaintiff cannot sue for those claims or reliefs by filing a subsequent suit.

5.19 On the other hand, the bar to filing of any suit in law under Order VII Rule 11(d) is distinct. The law must bar the filing of a suit either by an express bar or by an implied bar. An example of an express bar of a suit is in Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, “SARFAESI Act, 2002”) which reads as under:

**“34. Civil court not to have jurisdiction.—**No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993).”

If Section 34 of the SARFAESI Act, 2002 applies in a case, then, such a suit is barred in law. If on a meaningful reading of the plaint a suit is barred in law, then the plaint itself has to be rejected. In other words, the suit can be filed but the plaint has to be rejected for reasons enumerated in Order VII Rule 11 of the Code such as the suit being barred by any law. When a plaint is rejected, a fresh suit could be filed only in terms of Order VII Rule 13 which is extracted above. The said provision would however not apply, if there is absence of a cause of action, the suit is hit by limitation or on the principle of *res judicata* or is otherwise barred by law.

5.20 As opposed to the above, under Order II Rule 2 of the Code, the right to sue is taken away in terms of sub-rules (2) and (3) thereof which means that the suit could not have been filed at all. On the other hand, under Order VII Rule 11(d), there is “no bar to sue” but “the suit is barred by law from being filed”. There is a subtle but distinct difference between the two. If the conditions under sub-rules (2) and (3) of Order II Rule 2 of the Code are satisfied in a case, it would be a case of there being a curtailment of the right to sue for the claims relinquished or omitted in the earlier suit. It is not a case where the plaint has to be rejected as it is barred by the provision of Order II Rule 2 [sub-rules (2) and (3)]. In other words, the application of Order II Rule 2 of the Code to a case can result in rejection of reliefs being granted to a plaintiff which may, in certain cases, also result in dismissal of the suit itself. But it does not result in rejection of the plaint under Order VII Rule 11 (d) of the Code.

5.21 We think that in a case where Order II Rule 2 of the Code applies, there is no legal bar to filing a suit but the reliefs sought for or the claims made therein cannot be granted if the conditions mentioned therein apply. For arriving at such a conclusion, there has to be evidence let in in order to determine whether the provision of Order II Rule 2 would apply to the suit or not. On the other hand, in the case of Order VII Rule 11(d), if there is express or implied bar for filing of a suit under any law then on a meaningful reading of the plaint, it has to be rejected. The suit need not proceed to record evidence on merits but only to the extent where evidence is necessary to be recorded for the purpose of rejection of the plaint such as on the ground of the suit being hit by law of limitation or on the principle of *res judicata*. Thus, the bar created by any law to the filing of a suit is different from a plaintiff suing for certain claims or reliefs which he could not have claimed or sued having regard to Order II Rule 2 of the Code. Therefore, in our view, the application of Order II Rule 2 cannot be construed to be a ground for rejection of the plaint under Order VII Rule 11(d) of the Code.

6. The judgments relied upon by learned senior counsel for the respondent have mainly dealt with Order II Rule 2 of the Code. We refer to the two judgments which deal in the context of Order II Rule 2 as well as Order VII Rule 11 of the Code.

6.1 In the case of ***N.V. Srinivasa Murthy vs. Mariyamma (Dead) by proposed LRs, (2005) 5 SCC 548***, the facts were that the appellant-plaintiff therein had earlier filed a suit bearing Civil Suit No.557/1990 seeking the relief of permanent injunction against the defendants from interfering with the possession and enjoyment of scheduled lands. A subsequent suit was filed on 26.08.1996, by the very same plaintiff against the defendant seeking a declaration that the registered sale deed dated 05.05.1953 was a loan transaction and also sought for permanent injunction and specific performance of the oral agreement of reconveyance of the property by a registered instrument.

6.1.1 In the said plaint it was contended that the father of the plaintiffs had incurred some debts and had therefore borrowed a sum of Rs. 2000 from the predecessor-in-title of the defendants. By way of security for the loan advanced, a registered sale deed was executed on 05.05.1953 with an oral agreement that on return of the borrowed sum with interest, a registered reconveyance deed shall be executed in favour of the borrower. Thereafter, the defendant executed receipts in favour of the plaintiff, acknowledging the return of loan amount. However, it was alleged that the defendants made an attempt to interfere with the plaintiffs' possession and enjoyment of the suit lands. Answering the issue of whether the subsequent suit was barred under Order II Rule 2 of the Code, this Court observed that whatever relief the plaintiffs desired to claim from the civil court on the basis of averment with regard to the registered sale deed of 1953 could and ought to have been claimed in original Civil Suit No. 557 of 1990 which was pending at that time and therefore it was held that the second suit claiming indirectly relief of declaration and injunction was barred by Order II Rule 2 of the Code. It was held that the plaint in the subsequent suit was liable to be rejected, if not on the ground that it does not disclose "cause of action", on the ground that from the averments in the plaint, the suit was barred by law within the meaning of clause (d) of Order VII Rule 11 of the Code.

6.1.2 In the aforesaid case, the issue of suit being barred by limitation was accepted as the registered sale-deed dated 05.05.1953 was the basis for instituting the suit by taking recourse to orders passed in the mutation proceedings by the Revenue Courts. Hence, it was stated that on a critical examination of the plaint, the suit was clearly barred on the facts stated in the plaint itself. In the above context, it was also observed that the second suit indirectly claimed the relief of declaration and injunction, and hence it was apparently barred by Order II Rule 2 of the Code. What primarily impressed this Court in the aforesaid case was the fact that the second suit was barred by the law of limitation and hence Order VII Rule 11(d) of the Code applied.

6.2 In ***State Bank of India vs. Gracure Pharmaceuticals Ltd., (2014) 3 SCC 595-602***, respondent-plaintiffs therein had availed of various credit facilities from the appellant-defendant bank therein. The plaintiffs had an export order from M/s Medipharma Company, France, which had opened two letters of credit (for short, "LCs")- one was opened with Credit du Nord Paris (for short, "CDN") and another was opened with BNP-Paribas S.A, Ivry-Sur-Seine (for short, "BNP"). The date of issue of the first LC by CDN was 16.01.2001 and it was to expire on 10.04.2001. Similarly, a second LC opened with BNP was issued on 16.01.2001 and was to expire on 30.04.2001. The proceeds of the export deal were paid by the appellant bank honouring the bills of exchange against the LC opened with CDN and BNP and credited the same to the account of the respondent-plaintiffs therein subject to realisation of the Letter of Credit ("LCs"). Since the amounts of the LCs were not received with the issuing bank, the amounts were debited to the account of the respondent on account of non-receipt of the LCs. The Bank sent various letters to the respondent to regularise the accounts. Since the accounts were not regularised, the appellant-bank decided not to grant further facility. The closure of the account was done

on 20.03.2002 due to the fault of respondent-plaintiffs therein on non-regularisation of their accounts i.e. after non-receipt of payment of the LCs, the account became irregular and remained so continuously. Plaintiffs therein filed the first suit dated 15.05.2003 before the High Court seeking recovery of Rs.44,30,994 with interest, alleging wrongful debits relating to the LCs. Subsequently, a second suit dated 21.05.2003 was filed before the District Court seeking damages of ₹3,09,000 with interest, alleging wrongful withdrawal of credit facilities by the bank. This Court held that both suits arose from the same cause of action, the relief claimed in the second suit could have been claimed in the first suit, and therefore the second suit was barred under Order II Rule 2 of the Code. It was observed that the facts, on the basis of which the subsequent suit was filed, existed on the date on which the earlier suit was filed. The earlier suit was filed on 15.03.2003, and the subsequent suit was filed on 21.05.2003. No fresh cause of action arose between the first suit and the second suit. The closure of the account, as already indicated, was intimated on 20.03.2002 due to the alleged fault of the respondent – plaintiff therein in not regularising their accounts, i.e. after nonreceipt of payment of LC, the account became irregular. When the first suit for recovery of dues was filed, i.e. on 15.03.2001 for alleged relief, damages sought for in the subsequent suit could have also been sought for. It was therefore held that the respondent had omitted certain reliefs which were available to it at the time of filing of the first suit and after having relinquished the same, it could not have filed a separate suit in view of the provisions of subrule 2 of Order II Rule 2 of the Code.

6.2.1 In this case, it was observed that the earlier suit was filed on 15.03.2003 and the subsequent suit was filed on 21.05.2003 and there was no fresh cause of action which arose between the first and the second suit. Therefore, the respondent therein was not entitled to split the cause of action into parts by filing separate suits. However, it is necessary to note that although Order II Rule 2 of the Code may have been applied to the facts of the said case, the plaint was not rejected under Order VII Rule 11(d) thereof as such but possibly under Order VII Rule 11(a) of the Code as in paragraph 17, it was noted by this Court as under:

“17. When we go through the abovequoted paragraph it is clear that the facts on the basis of which the subsequent suit was filed, existed on the date on which the earlier suit was filed. The earlier suit was filed on 15.03.2003 and subsequent suit was filed on 21.05.2003. No fresh cause of action arose in between the first suit and the second suit. The closure of account, as already indicated, was intimated on 20.03.2002 due to the alleged fault of the respondent in not regularising their accounts i.e. after non-receipt of the payment of the LC, the account became irregular. When the first suit for recovery of dues was filed i.e. on 15.03.2001 for alleged relief, damages sought for in the subsequent suit could have also been sought for.”

(Underling by us)

Therefore, the aforesaid two decisions of this Court could be distinguished from the facts applicable to the present case.

7. A juxtaposition of the above discussion with the discussion for rejection of a plaint under Order VII Rule 11(d) of the Code must be made. On a conjoint reading of Order II Rule 2 with Order VII Rule 11(d) of the Code, it emerges that the plea under Order II Rule 2 of the Code cannot be a basis or a ground for rejection of the plaint. In other words, it is for the defendant to establish by way of evidence, the bar of the subsequent suit under Order II Rule 2 of the Code filed by the very same plaintiff. In such an event, on a comparative analysis of the plaint filed in the first suit and the plaint filed in the second suit, if the Court comes to the conclusion that the second suit was filed on an identical cause of action which led to the filing of the first suit and there was an omission to make the claim or to reserve the reliefs to be claimed in the first suit in a subsequent suit, then

the bar under Order II Rule 2 of the Code would apply to the subsequent suit or the second suit. Then the claims or reliefs not maintainable would be rejected as the plaintiff could not have sued for those reliefs by filing a second suit, although technically, the filing of such a suit was not barred by any law. On the other hand, if the cause of action for filing the second suit is totally distinct from the cause of action from filing the first suit and the reliefs claimed are distinct, subject-matter of the suits are different and if the parties to the suit are also different then in such a case, the plea under Order II Rule 2 of the Code would not arise at all. The above are, *inter alia*, the heads of distinction to be analysed while analysing the plaints in the first/former suit and a subsequent suit.

**8.** In the present case, the defendant was not successful in getting his application under Order VII Rule 11(d) of the Code allowed. Consequently, the defendant filed civil revision petition under Section 115 of the Code before the High Court. The High Court, after narrating the respective contentions of the parties, has analysed the averments in the plaint filed in OS No.4722 of 2012 (first suit) in juxtaposition with the plaint in OS No.2320 of 2013 (second suit). On a conjoint reading of the two plaints, the High Court has observed that on a reading of the averments in paragraph 7 of the plaint in OS No.4722 of 2012 that S Valliammai (plaintiff No.1 in the second suit) was aware that the properties in the present suit were already given to the share of defendant No.1 in the said suit (revision petitioner No.1 before the High Court). That the power of attorney dated 04.11.2011 was not challenged by M. Sokkalingam during his lifetime (plaintiff No.2 in the first suit). That the second suit was filed after the demise of M. Sokkalingam by his widow and his two daughters challenging the power of attorney in favour of defendant No.2 in the said suit. The High Court has also gone into the merits of the prayers sought for by the plaintiff in the second suit. The High Court has further observed that the first plaintiff in the second suit did not seek leave to file another suit and that there was an omission to assail the power of attorney in the first suit and that there was no separate cause of action to file another suit. That the plaintiffs in the second suit were aware of the execution of the power of attorney dated 04.11.2011, hence, the cause of action for both the suits were one and the same. The High Court has further analysed the averments in the second suit, as if it is evidence. The High Court has also considered the implication of the release letters executed by the daughters and consequently, held that the Trial Court erred in concluding that the cause of action for the two suits is different and distinct.

8.1 The above approach of the High Court in analysing the averments made in the second suit as if it is evidence, in juxtaposition with the averments made in the first suit is improper in view of our aforesaid discussion. Therefore, the High Court was not justified in allowing the Civil Revision Petition.

**9.** In the result, the appeal is allowed and the judgment and order of the High Court is set-aside. The order of the trial court in O.S. No.2320 of 2013 is restored along with the plaint.

All observations made in this appeal are only for the purpose of disposal of this appeal and would not have a bearing on the merits of the suit to be tried by the trial court.

The parties to bear the respective costs.