



**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

CIVIL REVISION No. - 48 of 2025

Shashwat Kesarwani and another

.....Revisionist(s)

Versus

Anil Kumar Singh and others

.....Opposite Party(s)

Counsel for Revisionist(s)	: Pritish Kumar, Shivansh Agrawal
Counsel for Opposite Party(s)	: Alok Yadav, Arun Kumar Dwivedi, Piyush Kumar Agarwal

Court No. – 34 (Through Video Conferencing At Allahabad)

HON'BLE AVNISH SAXENA, J.

1. Heard Sri. Pritish Kumar, learned Senior Advocate assisted by Sri Shivansh Agrawal, learned counsel for the revisionist; Sri Piyush Kumar Agarwal and Sri Ashish Chaturvedi, learned counsel for the respondent no.1. None appeared for respondent nos. 2 and 3.

2. The revisionists are newly impleaded defendants no. 3 and 4 in the suit for specific performance and permanent injunction instituted by respondent no.1, initially against respondents no. 2 and 3.

3. The revisionist, on being aggrieved by order dated 10.7.2025 passed by the trial court (Court of Civil Judge, Senior Division, FTC, Lucknow) in regular Suit No. 1857 of 2016 (Anil Kumar Singh Vs. Pappu and others), whereby the application moved by the revisionist under Order VII Rule 11 CPC has been rejected, preferred the present revision petition.

4. Before deliberating on the arguments raised by the learned counsel for the parties, it would be explicit to put a brief conspectus of the case

shun unnecessary details, arose out of plaint averment, which is to be considered while applying the provisions of Order VII Rule 11 CPC.

5. For the shake of clarity, hereinafter, the revisionists will be termed as 'impleaded defendants'; respondent no.1 will be termed as 'plaintiff'; and respondents no. 2 and 3 will be termed as 'original defendants'.

FACTS OF THE CASE

6. The suit was instituted on 5.10.2016 by the plaintiff against original defendants for the decree of specific performance to command original defendants to execute sale deed in favour of plaintiff and the decree in the nature of permanent injunction to restraint the original defendants from alienating the suit property in favour of any third person. It is averred in the body of plaint that the original defendants including their mother Smt. Janak Dulari were being allotted a Plot No.18 D/K57 ad-measuring 360 sq. mt. at Vrindavan Scheme Raibareilly Road Lucknow from Avas Evam Vikas Parishad, which they in turned, agreed to sell in faovur of plaintiff, consequently, executed an agreement to sell on 8.5.2015, which was registered in the office of Sub-Registrar-I, Lucknow in Book No.1, Volume 18968 on pages 373-396 at Serial No.8820. The agreed consideration amount was Rs.43 lakhs. The advance of Rs.9 lakhs was paid prior to the execution of agreement to sell and part of consideration amounting to Rs. 9,37,500/- has been paid to the original defendants between 14.5.2015 to 1.8.2016 in cash and through bank transaction, thus, a sum of Rs. 18,37,500/- was paid by the plaintiff to the original defendants out of the promised consideration amount of Rs. 43 lakhs. It is further averred that the plaintiff was ready and willing to perform his part of contract pursuant to the agreement to sell. The subsequent event is the death of Smt. Janak Dulari on 16.3.2016. The plaintiff has consistently pursuing the original defendants to take the balance consideration amount and got the sale deed registered in favour of plaintiff, for which a notice was sent to the original defendants on 29.8.2016, which was not received by the original defendants, led to another notice dated 19.9.2016, which was served on

the original defendants. Subsequently averred that through one property dealer Sri Ram Chandra Yadav, the plaintiff came to know on 3.10.2016 that the original defendants are intending to transfer the suit property to someone else after execution of sale deed in their favour from UP Avas Evam Vikash Parishad. This intended transfer of the suit property dehors the tenets of the agreement to sell was the cause of action arose for institution of suit by the plaintiff. Thus, the cause of action arose firstly, on 20.8.2016, when the plaintiff had requested the original defendant to execute sale deed after receiving the balance payment of consideration; subsequently, on 29.8.2016 and 19.9.2016 when the plaintiff sent the registered notice for executing the sale deed; and lastly, when the intention of original defendant to sell the property to someone else came to the knowledge of the plaintiff on 3.10.2016. Hence, the suit.

7. The impleaded defendants have moved an application under Order I Rule 10 CPC on 03.08.2019 with an assertion that they have purchased the suit property in sale deed dated 23.11.2016 registered in the office of Sub-Registrar-I, Lucknow in Book No.1, Volume No. 21788 on pages 215 to 232 at Serial No. 21578 and therefore, they seek impleadment in the suit.

8. The aforesaid application was allowed on 31.10.2019 by the Trial Court, which was challenged in Civil Revision No. 102 of 2019 (Anil Kumar Singh Versus Pappu and Others) before the coordinate Bench of this Court and by order dated 10.01.2022, the coordinate Bench has dismissed the revision moved by the plaintiff and the order of the Trial Court became final with a clarification that the impleaded defendants shall not be permitted to raise any defence inconsistent to the defence raised by the original defendants. The plaintiff has challenged the order of the coordinate Bench of this Court before Hon'ble the Supreme Court in SLP No. 6656 of 2022 (Anil Kumar Singh Versus Pappu and Others) which was dismissed in order dated 30.01.2023. It is thereafter that the impleaded defendants have moved an application for dismissing the plaint invoking Order VII Rule 11 CPC on 26.07.2023, which was

opposed by the plaintiff and by way of impugned order the application was dismissed. Hence, the present revision.

ARGUMENTS

9. Learned senior advocate has raised mainly two grounds for rejection of plaint. First, that the suit is premature as the cause of action at the time of institution of suit did not arise in favour of the plaintiff; and second, that the period of limitation is not available to the plaintiff as a suit being premature. Learned senior advocate has drawn the attention of this Court towards the tenets of agreement to sale, particularly condition number three, which was couched in the language that the right of plaintiff for getting the sale deed executed in his favour by the original plaintiff arose only when the Avas Evam Vikas Parishad, Lucknow will enter the deed of registration, transferring the property in favour of original defendants. This sale deed in favour of original defendants was executed and registered by Avas Evam Vikas Parishad, Lucknow on 05.11.2016, whereas the suit was filed by the plaintiff on 05.10.2016, i.e. before the accrual of cause of action and merely on the basis of apprehension that the original defendants would transfer the property in favour of some other person. It is further contended that the plaintiff is a property dealer and he got executed agreement to sale not only with the original defendants but with twenty other persons, who were allotted the plots by the Avas Evam Vikas Parishad, Lucknow. Hence, submitted that the agreement to sale is a sham document as the plaintiff has no right to purchase all the properties against which he entered the agreement to sale because the plots are of Avas Evam Vikas Parishad, Lucknow. Further submits that the suit is also barred by the provisions of Section 17 and 19 of Specific Relief Act. Learned counsel to fortify his argument has relied on the following judicial precedents.

1. Dharmabiri Rana vs. Pramod Kumar Sharma (Dead) Through Legal Representatives and Another reported in (2018) 11 SCC 554. (Paras 11,14,16,17)

“11. It is relevant to notice that before the trial court in spite of there being denial of title to the property by the defendants, no finding was returned by the trial court that the defendants are the

owner of the property, competent to enter into agreement to sell. The trial court also noticed that Defendant 1 in the written statement has pleaded that he has no right, title or interest of any nature in the suit property but no finding was returned that Defendant 1 is the owner of the property.

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14. In para 12 of the judgment, after considering the entire oral evidence, the first appellate court held that it is not established that the agreement had actually been executed by Appellant 2 (Defendant 2). Further, following findings have been recorded in para 15:

“The result of the aforesaid discussion is that in the absence of any evidence coming on record that Appellant 1 was the owner of the suit property or Appellant 2 was having any power of attorney on behalf of Appellant 1 to execute the agreements in favour of the respondent, no documents for transfer of title in respect of suit land can be directed to be executed by the appellants by way of a decree for specific performance of agreement to sell vide Exts. PW 1/1 and PW 1/3. The agreements are thus illegal, unenforceable and decree for specific performance can therefore be passed in favour of the respondent.”

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16. The Court can order specific performance of an agreement only when it is proved that a person allegedly executing an agreement to sell has right of transferring the property. When the defendants have denied their entitlement and right, title and interest in the suit property, the said question was necessary to be answered before decreeing the suit. The trial court after noticing the said pleading on behalf of the defendants did not enter into this question or returned any finding that the defendants are owner of the suit property. Further, essential findings pertaining to right of the defendant to transfer the property being not there, the passing of a decree of specific performance was clearly erroneous. The appellate court has rightly set aside the decree of specific performance of contract after recording the finding that Defendant 1 is not the owner of the property. It is not proved that any power of attorney was executed so as to enable Defendant 2 to enter into agreement to sell and further the execution of agreement has also not been proved. Although, copy of alleged power of attorney dated 4-11-1986 which is admittedly an unregistered document has been filed by the appellant before this Court as Annexure P-12, but both the courts having not considered the same, it is not necessary for this Court to consider the same in this civil appeal.

17. In view of the above findings recorded by the first appellate court, the suit was rightly dismissed. The High Court has also rightly dismissed the regular second appeal holding that it does not contain any substantial question of law. We do not find any

substance in the submissions of the learned counsel for the appellant. With the result, the civil appeal is dismissed.”

2. Swamy Atmananda and Others vs. Sri Ramakrishna Tapovanam and Others reported in (2005) 10 SCC 51. (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.”

3. T Arvindandam vs. T V Satyapal and Another reported in (1977) 4 SCC 467. (Para 5)

“5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentently resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints. The learned Munsif must remember that if on a meaningful — not formal — reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under 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 by examining the party searchingly under Order 10, CPC. An activist Judge is the answer to irresponsible law suits. The trial courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Cr. XI) and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi:

“It is dangerous to be too good.”

4. M/s Ganesh Trading Co vs. Moji Ram reported in (1978) 2 SCC 91. (Para 5)

“5. It is true that, if a plaintiff seeks to alter the cause of action itself and to introduce indirectly, through an amendment of his pleadings, an entirely new or inconsistent cause of action, amounting virtually to the substitution of a new plaint or a new cause of action in place of what was originally there, the Court will refuse to permit it if it amounts to depriving the party against which a suit is pending of any right which may have accrued in its favour due to lapse of time. But, mere failure to

set out even an essential fact does not, by itself, constitute a new cause of action. A cause of action is constituted by the whole bundle of essential facts which the plaintiff must prove before he can succeed in his suit. It must be antecedent to the institution of the suit. If any essential fact is lacking from averments in the plaint the cause of action will be defective. In that case, an attempt to supply the omission has been and could sometimes be viewed as equivalent to an introduction of a new cause of action which, cured of its shortcomings, has really become a good cause of action. This, however, is not the only possible interpretation to be put on every defective state of pleadings. Defective pleadings are generally curable if the cause of action sought to be brought out was not ab initio completely absent. Even very defective pleadings may be permitted to be cured, so as to constitute a cause of action where there was none, provided necessary conditions such as payment of either any additional Court fees, which may be payable, or, of costs of the other side are complied with. It is only if lapse of time has barred the remedy on a newly constituted cause of action that the Courts should, ordinarily, refuse prayers for amendment of pleadings.”

5. State of Punjab and others vs Gurdev Singh reported in (1991) 4 SCC 1. (Para 6)

“6. First of all, to say that the suit is not governed by the law of limitation runs afoul of our Limitation Act. The statute of limitation was intended to provide a time limit for all suits conceivable. Section 3 of the Limitation Act provides that a suit, appeal or application instituted after the prescribed “period of limitation” must subject to the provisions of Sections 4 to 24 be dismissed although limitation has not been set up as a defence. Section 2(j) defines the expression “period of limitation” to mean the period of limitation prescribed in the Schedule for suit, appeal or application. Section 2(j) also defines, “prescribed period” to mean the period of limitation computed in accordance with the provisions of the Act. The court's function on the presentation of plaint is simply to examine whether, on the assumed facts, the plaintiff is within time. The court has to find out when the “right to sue” accrued to the plaintiff. If a suit is not covered by any of the specific articles prescribing a period of limitation, it must fall within the residuary article. The purpose of the residuary article is to provide for cases which could not be covered by any other provision in the Limitation Act. The residuary article is applicable to every variety of suits not otherwise provided for. Article 113 (corresponding to Article 120 of the Act of 1908) is a residuary article for cases not covered by any other provisions in the Act. It prescribes a period of three years when the right to sue accrues. Under Article 120 it was six years which has been reduced to three years under Article 113. According to the third column in Article 113, time commences to run when the right to sue accrues. The words “right to sue” ordinarily mean the right to seek relief by means of legal proceedings. Generally, the right to sue accrues only

when the cause of action arises, that is, the right to prosecute to obtain relief by legal means. The suit must be instituted when the right asserted in the suit is infringed or when there is a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted (See (i) *Mt. Bolo v. Mt. Koklan* [AIR 1930 PC 270 : 57 IA 325 : 1930 ALJ 1188] and (ii) *Gannon Dunkerley and Co. Ltd. v. Union of India* [(1969) 3 SCC 607 : AIR 1970 SC 1433 : (1970) 3 SCR 47]).”

6. Dahiben vs. Arvindbhai Kalyanji Bhanusali (Gajra) (Dead) Through Legal Representatives and Others reported in (2020) 7 SCC 366. (Paras 24,24.1, 24.2, 24.3, 24.4)

“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.”

7. Madanuri Sri Rama Chandra Murthy vs. Syed Jalal reported in (2017) 13 SCC 174. (Para 7)

“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.”

8. K Akbar Ali vs. K Umar Khan and Others reported in (2021) 14 SCC 51. (Para 7)

“7. In any case, an application under Order 7 Rule 11CPC for rejection of the plaint requires a meaningful reading of the plaint as a whole. As held by this Court in *ITC Ltd. v. Debts Recovery Appellate Tribunal* [ITC Ltd. v. Debts Recovery Appellate Tribunal, (1998) 2 SCC 70 : AIR 1998 SC 634] , clever drafting creating illusions of cause of action are not permitted in law and a clear right to sue should be shown in the plaint. Similarly the Court must see that the bar in law of the

suit is not camouflaged by devious and clever drafting of the plaint. Moreover, the provisions of Order 7 Rule 11 are not exhaustive and the Court has the inherent power to see that frivolous or vexatious litigations are not allowed to consume the time of the Court.”

9. H.D.F.C. Bank Limited vs. Kishore K. Mehta (Dead) Thr. Lrs reported in AIR 2026 SC 3484. (Paras 16,18)

“16. To support this conclusion, we rely on Rameshwar v. Jot Ram¹⁷, which quoted P. Venkateswarlu v. Motor & General Traders¹⁸: “it is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding”. This Court further went on to observe that it is an emphatic statement that the right of a party is determined by the facts as they exist on the date the action is instituted. Granting the presence of such facts, then he is entitled to its enforcement. Later developments cannot defeat his right because, had the court found his facts to be true the day he sued he would have got his decree. The Court's procedural delays cannot deprive him of legal justice or right crystallised in the initial cause of action

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18. If denying a suitor relief based on accrual of post-natal events because of the Court's delay to decide the lis is impermissible, by the same logic, the converse must also hold. A claim which was untenable on the date the suitor entered the portals of the Court cannot become tenable simply because a fortuitous event during the pendency of the trial has made it so. The lis must be decided on the basis of rights and liabilities as they stood on the date of institution, unless the statute or equity of the case otherwise requires.”

10. Learned counsel for the plaintiff has countered the arguments and at the very threshold submits that the coordinate Bench while deciding the issue of impleadment of impleaded defendants has made specific clarification in the order of trial court to the extent that the impleaded defendants shall not take any defence contrary to the defence taken by the original defendants. He further submits that the suit was not premature, the cause of action is disclosed in the plaint averment, which is required under the provisions of order VII Rule 11 CPC. In the plaint the specific name of a person is disclosed who gave the information that the original defendants are in agreement with the impleaded defendants to alienate the property, which was initially under the agreement with the plaintiff. He further submits that the original defendants are the

ostensible owner of the property and there is a registered agreement to sale existing between the plaintiff and the original defendants. When the plaintiff received credible information about the transfer of the suit property de-hors the agreement between plaintiff and the original defendants, he has instituted a suit for specific performance and permanent injunction. The specific performance of contract was prayed in the plaint because the agreement to sale was existing and another relief sought was to restraint original defendant not to alienate the suit property in favour of any other person in contravention to the agreement to sale. It is further contended that the agreement to sale clearly shows that the total consideration amount of Rs. 43 lakhs was agreed between the parties and a substantial amount has been transferred by the plaintiff in favour of original defendants, which creates a civil right in favour of plaintiff against the original defendants. Further submits that the bar of Sections 17 and 19 of Specific Relief Act does not operate in the present set of fact. The trial court had rightly considered the principles of law on the point of rejection of plaint and dismissed the application, which is required to be affirmed. Learned counsel has relied on the following judgments.

1. Virgo Industries (Eng.) Private Limited vs. Venturetech Solutions Private Limited, reported in (2013) 1 SCC 625. (Para 15)

“15. Furthermore, according to the plaintiff, which fact is also stated in the plaints filed in CSs Nos. 831 and 833, on the date when the aforesaid two suits were filed the relief of specific performance was premature inasmuch as the time for execution of the sale documents by the defendant in terms of the agreements dated 27-7-2005 had not elapsed. According to the plaintiff, it is only after the expiry of the aforesaid period of time and upon failure of the defendant to execute the sale deeds despite the issuance of legal notice dated 24-2-2006 that the cause of action to claim the relief of specific performance had accrued. The above stand of the plaintiff found favour with the High Court. We disagree. A suit claiming a relief to which the plaintiff may become entitled at a subsequent point of time, though may be termed as premature, yet, cannot per se be dismissed to be presented on a future date. There is no universal rule to the above effect inasmuch as “the question of a suit being premature does not go to the root of the jurisdiction of the Court” as held by this Court in *Vithalbhai (P) Ltd. v. Union Bank of India* [(2005) 4 SCC 315].”

2. Pushpa Sahakari Avas Samiti Limited vs. Gangotri Sahakari Avas Samiti Limited, reported in (2012) 4 SCC 751. (Para 17)

“17. We have referred to the aforesaid dictum in extenso as we find that the Bench in Vithalbhai case [(2005) 4 SCC 315] has given emphasis on various aspects, namely, an issue getting into the root of the jurisdiction of the court; causing of irreparable and manifest injustice; adjustment of equities; concept of statutory bar; presentation that invites a void action and anything that affects the rights of the other party; and obtaining of leave of the court or authority where it is a mandatory requirement, etc. On a perusal of the various provisions relating to execution as enshrined under Order 21 of the Code, we do not find anything which lays down that premature filing of an execution would entail its rejection. The principles that have been laid down for filing of a premature suit, in our considered opinion, do throw certain light while dealing with an application for execution that is filed prematurely and we are disposed to think that the same can safely be applied to the case at hand.”

3. Ram Singh and Others vs. Bhupinder Pal Singh and Others reported in 2014 SCC OnLine P&H 9987.

4. Vithalbhai (P) Ltd. vs. Union Bank of India, reported in (2005) 4 SCC 315. (Para 9)

“9. In our opinion, a suit based on a plaint which discloses a cause of action is not necessarily to be dismissed on trial solely because it was premature on the date of its institution if by the time the written statement came to be filed or by the time the court is called upon to pass a decree, the plaintiff is found entitled to the relief prayed for in the plaint. Though there is no direct decision available on the point but a few cases showing the trend of judicial opinion may be noticed.”

5. Neelam Sharma and Others vs. Amita Passan and Others, reported in 2026 SCC OnLine SC 1690. (Paras 5, 6)

“5. It is well-settled principle that while considering the prayer in the application under Order [VII Rule 11, CPC](#), the court has to consider the averments in the plaint only. Given this trite position of law, when in the instant case, the averments in the plaint are looked at in their entirety, more particularly, in paragraph 4 of the plaint quoted hereinabove, there is no gainsaying that it is stated by plaintiffs that after purchase of the suit property, along with defendants they resided therein, thereby pleading unequivocally that they were in joint possession. The whole suit and the prayers were based on the possession of the plaintiffs of the suit property. Prima facie, therefore, no aspect existed which would have persuaded the court to reject the plaint at the threshold by accepting the case of defendant No. 2 in his application under Order [VII Rule 11, CPC](#), that the ad-valorem court fee was payable.

6. Now, considering the suit averments and the suit prayers in the instant case, as also the proposition of law emanating from the decision in *Suhrid Singh* (supra), the Court is of the view that looking to the suit averments, the plaint is not liable to be rejected on the ground pleaded under Order VII Rule 11, CPC. The Trial Court was justified in law in refusing to reject the plaint. The High Court, however, fell in error in issuing the impugned directions.”

6. HS Deekshit vs. M/s Metropoli Overseas Limited and Others reported in 2022 LiveLaw (SC) 703.

7. Sri Biswanath Banik and Another vs. Sulanga Bose and Others, reported in (2022) 7 SCC 731. (Paras 7, 7.2, 12)

“7. Now, so far as the issue whether the suit can be said to be barred by limitation or not, at this stage, what is required to be considered is the averments in the plaint. Only in a case where on the face of it, it is seen that the suit is barred by limitation, then and then only a plaint can be rejected under Order 7 Rule 11(d)CPC on the ground of limitation. At this 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. As observed and held by this Court in *Ram Prakash Gupta* [*Ram Prakash Gupta v. Rajiv Kumar Gupta*, (2007) 10 SCC 59] , rejection of a plaint under Order 7 Rule 11(d)CPC by reading only few lines and passages and ignoring the other relevant parts of the plaint is impermissible. In the said decision, in para 21, it is observed and held as under : (SCC p. 68)

“21. As observed earlier, before passing an order in an application filed for rejection of the plaint under Order 7 Rule 11(d), it is but proper to verify the entire plaint averments. The abovementioned materials clearly show that the decree passed in Suit No. 183 of 1974 came to the knowledge of the plaintiff in the year 1986, when Suit No. 424 of 1989 titled *Assema Architect v. Ram Prakash* was filed in which a copy of the earlier decree was placed on record and thereafter he took steps at the earliest and filed the suit for declaration and in the alternative for possession. It is not in dispute that as per Article 59 of the Limitation Act, 1963, a suit ought to have been filed within a period of three years from the date of the knowledge. The knowledge mentioned in the plaint cannot be termed as inadequate and incomplete as observed [*Ram Prakash Gupta v. Rajiv Kumar Gupta*, 2006 SCC OnLine Del 488] by the High Court. While deciding the application under Order 7 Rule 11, few lines or passages should not be read in isolation and the pleadings have to be read as a whole to ascertain its true import. We are of the view that both the trial court as well as

the High Court failed to advert to the relevant averments as stated in the plaint.”

7.2. Applying the law laid down by this Court in Ram Prakash Gupta [Ram Prakash Gupta v. Rajiv Kumar Gupta, (2007) 10 SCC 59] to the facts of the case on hand and on going through the entire plaint averments, it cannot be said at this stage that the suit is barred by limitation on the face of it. The necessary averments in the plaint on the cause of action are in paras 6, 7 and 10, which read as under:

“ 6. That the aforesaid defendant now consequent upon the escalation of the land value of the area has been more aggrieved to drive out the plaintiffs from the suit property by hook and crook and various insertion in the newspapers dated 10-8-2010, 24-8-2010 at the Ananda Bazar Patrika and on 22-8-2010 at The Telegraph, coming up from the different parts with intent to purchase and get transfer of the property by the third party.

7. That the aforesaid defendant and his men and agent concretely on 29-8-2010 tried to forcefully enter into the suit property and manhandle the “Durwan” but owing to the resistance the defendant did not succeed in their attempt to dispossess, but defendant with his associate is determined to dispossess the plaintiffs from his lawful possession by any means even by using force and violence. That the pro forma defendants have made parties in the suit without any claim against them but for proper adjudication of the said matter.

10. That the cause of action for this suit arose on 29-8-2010 at Premises No. 3/3A, formerly 3, Gurudas Dutta Garden Lane, PS Ultadanga, Kolkata-700 067, which is within the jurisdiction of this learned Court.”

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12. In view of the above and for the reasons stated above, the High Court has committed a grave error in allowing the application under Order 7 Rule 11CPC and rejecting the plaint. The High Court has exceeded in its jurisdiction in rejecting the plaint while exercising the powers under Order 7 Rule 11CPC. The impugned judgment and order [Sulagna Bose v. Biswanath Banik, 2017 SCC OnLine Cal 7421] passed by the High Court is unsustainable both, on law as well as on facts.”

8. Shaukathussain Mohammed Patel vs. Khatunben Mohmmmedbhai Polara in CIVIL APPEAL NO.8197 OF 2019 (Arising out of SLP (C) No.12979 OF 2019).

9. Kuldeep Singh Pathania vs. Bikram Singh Jaryal, reported in (2017) 5 SCC 345. (Para 7)

“7. The whole purpose of trial on preliminary issue is to save time and money. Though it is not a mini trial, the court can and has to look into the entire pleadings and the materials available on record, to the extent not in dispute. But that is not the situation as far as the enquiry under Order 7 Rule 11 is concerned. That is only on institutional defects. 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 7 Rule 11, 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.”

10. Srihari Hanumandas Totala vs. Hemant Vithal Kamat and Others,
reported in (2021) 9 SCC 99. (Paras 25, 26, 27)

“25. On a perusal of the above authorities, the guiding principles for deciding an application under Order 7 Rule 11(d) can be summarised as follows:

25.1. To reject a plaint on the ground that the suit is barred by any law, only the averments in the plaint will have to be referred to.

25.2. The defence made by the defendant in the suit must not be considered while deciding the merits of the application.

25.3. The defence made by a suit is barred by res judicata, it is necessary that (i) the “previous suit” is decided, (ii) the issues in the subsequent suit were directly and substantially in issue in the former suit; (iii) the former suit was between the same parties or parties through whom they claim, litigating under the same title; and (iv) that these issues were adjudicated and finally decided by a court competent to try the subsequent suit.

25.4. Since an adjudication of the plea of res judicata requires consideration of the pleadings, issues and decision in the “previous suit”, such a plea will be beyond the scope of Order 7 Rule 11(d), where only the statements in the plaint will have to be perused.

26. In the present case, a meaningful reading of the plaint makes it abundantly clear that when the first respondent instituted the subsequent suit, he had been impleaded as the second defendant to the earlier suit (OS No. 103 of 2007) that was instituted on 13-3-2007. The first respondent instituted the subsequent suit, OS No. 138 of 2008 though he had knowledge of the earlier suit. The plaint in the subsequent suit which was instituted by the first respondent indicates that he was aware of the mortgage executed in favour of KSFC, that KSFC had executed its charge by selling the property for the recovery of its dues and that the property had been sold on 8-8-2006 in favour of the predecessor of the appellant. As a matter of fact, the plaint contains an averment that there was every possibility that the first respondent may suffer a decree for possession in

OS No. 103 of 2007 which “has forced” the first respondent to institute the suit for challenging the legality of the sale deed. Given the fact that an argument was raised in the previous suit regarding no challenge having been made to the auction and the subsequent sale deed executed by the KSFC, it is possible that the first respondent then decided to exercise his rights and filed the subsequent suit.

27. Be that as it may, on a reading of the plaint, it is evident that the first respondent has not made an attempt to conceal the fact that a suit regarding the property was pending before the civil court at the time. It is also relevant to note that at the time of institution of the suit (OS No. 138 of 2008) by the first respondent, no decree had been passed by the civil court in OS No. 103 of 2007. Thus, the issues raised in OS No. 103 of 2007, at the time, had not been adjudicated upon. Therefore, the plaint, on the face of it, does not disclose any fact that may lead us to the conclusion that it deserves to be rejected on the ground that it is barred by principles of res judicata. The High Court and the trial court were correct in their approach in holding, that to decide on the arguments raised by the appellant, the court would have to go beyond the averments in the plaint, and peruse the pleadings, and judgment and decree in OS No. 103 of 2007. An application under Order 7 Rule 11 must be decided within the four corners of the plaint. The trial court and the High Court were correct in rejecting the application under Order 7 Rule 11(d).”

11. Kamala vs. K.T. Eshwara Sa and Others, reported in (2008) 12 SCC 661. (Para 22)

“22. For the purpose of invoking Order 7 Rule 11(d) of the Code, no amount of evidence can be looked into. The issues on merit of the matter which may arise between the parties would not be within the realm of the court at that stage. All issues shall not be the subject-matter of an order under the said provision.”

12. Rakesh Khanna @Babbu vs. Gulzari Lal & Ors in CR No. 1933 of 2022(O&M) of Punjab and Haryana High Court Decided on 20.05.2022.

13. Gurdev Singh vs. Harvinder Singh reported in 2022 LiveLaw (SC) 963. (Para 1)

“1. The application preferred by the petitioner to reject the plaint under Order [7 Rule 11](#) of the [Code of Civil Procedure, 1908](#) (CPC) has been dismissed by the Trial Court which has been confirmed by the High Court. It is the case on behalf of the petitioner that the plaintiff is not entitled to any relief in the suit. The aforesaid cannot be a ground to reject the plaint at the threshold in exercise of powers under Order [7, Rule 11](#) of the [CPC](#). The learned Trial court has rightly rejected the application under Order [7, Rule 11](#) of the [CPC](#), which is

rightly not interfered with by the High Court. We are in complete agreement with the view taken by the High Court. The Special Leave Petition stands dismissed.”

14. Sajjan Singh vs. Jasvir Kaur & Others, reported in 2023 LiveLaw (SC) 517. (Paras 5, 7)

“5. To that extent, we take note that the prayer, as made, in any event, had been valued and the court fee has been paid. Whether an appropriate prayer should have sought, is a matter ultimately to be decided in the suit and not an issue to be considered while deciding the application under Order [VII Rule 11](#) of [CPC](#), in the manner in which it had been done in the facts and circumstances arising in the instant case. Therefore, to that extent, we are of the opinion that the High court was not justified.

.....

7. The contentions, as put forth by the respondents herein, in the Order VII Rule 11 application, is open to be taken up in the written statement and the Trial Court will frame appropriate issues in that regard and all contentions are left open for the parties to be urged in that regard.”

15. Salim D. Agboatwala and Others vs. Shamalji Oddhavji Thakkar and Others reported in 2021 SCC OnLine SC 735. (Para 10)

“10. We are not dealing here with a case where notices were ordered to be issued, but were not or could not, be served on necessary and proper parties. We are dealing with a case where the plaintiffs assert in no uncertain terms that notices were never ordered to them nor served on them. Therefore, the answer to the issue regarding limitation, will depend upon the evidence with regard to the issuance and service of notice and the knowledge of the plaintiffs. Hence, the trial court as well as the High Court were not right in rejecting the plaint on the ground of limitation, especially in the facts and circumstances of this case.”

16. Shakti Bhog Food Industries vs. Central Bank of India and Another, reported in (2020) 17 SCC 260. (Para 22)

“22. It is well-established position that the cause of action for filing a suit would consist of bundle of facts. Further, the factum of the suit being barred by limitation, ordinarily, would be a mixed question of fact and law. Even for that reason, invoking Order 7 Rule 11 CPC is ruled out. In the present case, the assertion in the plaint is that the appellant verily believed that its claim was being processed by the regional office and the regional office would be taking appropriate decision at the earliest. That belief was shaken after receipt of letter from the Senior Manager of the Bank, dated 8-5-2002 followed by another letter dated 19-9-2002 to the effect that the action taken by the Bank was in

accordance with the rules and the appellant need not correspond with the Bank in that regard any further. This firm response from the respondent Bank could trigger the right of the appellant to sue the respondent Bank. Moreover, the fact that the appellant had eventually sent a legal notice on 28-11-2003 and again on 7-1-2005 and then filed the suit on 23-2-2005, is also invoked as giving rise to cause of action. Whether this plea taken by the appellant is genuine and legitimate, would be a mixed question of fact and law, depending on the response of the respondents.”

17. D. Naveen Premkumar vs. 2 M.E. Mariappan Decided on 11.04.2017 in A.S. No. 783 of 2012, M.P. No.1 of 2012 and C.M.P. No. 7724 of 2016 of Madras High Court. (Para 35)

“35. In our considered opinion, Section 19(B), *ibid*, cannot serve as a ground to reject the plaint at the threshold and the issue as to whether the property was purchased by the second defendant in good faith or not, can be adjudicated upon, only after appreciation of evidence and it is not proper for the Trial Court to reject the plaint before that stage. Further, we are of the considered opinion that if interpretation of any of the provisions is involved, the same can be argued only after the completion of full trial and it cannot serve as a ground for rejection of the plaint. In this regard, useful reference could be made to the judgment in R.K. Mohammed Ubaidullah (*supra*), wherein it was held as under:

4. Section 19 of the Specific Relief Act, 1963, to the extent it is relevant, reads:

“19. *Relief against parties and persons claiming under them by subsequent title.*—Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against—

(a) either party thereto;

(b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;

(c)-(e)***”

As can be seen from Sections 19(a) and (b) extracted above specific performance of a contract can be enforced against (a) either party thereto; and (b) any person claiming under him by a title arising subsequent to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract. Section 19(b) protects the bona fide purchaser in good faith for value without notice of the original contract. This protection is in the nature of exception to the general rule. Hence the onus of proof of good faith is on the purchaser who takes the plea that he is an innocent

purchaser. Good faith is a question of fact to be considered and decided on the facts of each case. Section 52 of the Penal Code emphasises due care and attention in relation to good faith. In the General Clauses Act emphasis is laid on honesty.”

18. G. Nagaraj & Anr. vs. B.P. Mruthunjayanna & Ors. reported in 2023 LiveLaw (SC) 311. (Paras 6, 9)

“6. A perusal of the judgments of the trial court and the High Court [G. Nagaraj v. B.P. Mruthunjayanna, 2019 SCC OnLine Kar 4011] will show that the Courts have gone into the question of correctness of the averments made in the plaint by pointing out inconsistent statements made in the plaint. The Courts have referred to the earlier suits filed by the appellants and have come to the conclusion that the plaint does not disclose a cause of action.

.....

.....

9. Hence, we set aside both the impugned orders and restore Original Suit No. 4252 of 2016 to the file of the City Civil Court. We direct that the suit shall be decided in accordance with law. We make it clear that we have dealt with averments made in the plaint only for the purposes of ascertaining whether any cause of action is disclosed in the plaint. Therefore, all issues on merits are left open. The appeal is accordingly allowed.”

19. Sandeep Polymers (P) Ltd. vs. Bajaj Auto Ltd. And Others, reported in (2007) 7 SCC 148. (Para 14)

“14. In Om Prakash Srivastava v. Union of India [(2006) 6 SCC 207 : (2006) 3 SCC (Cri) 24] it was held as follows : (SCC pp. 211-13, paras 9-17)

“9. By ‘cause of action’ it is meant every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In other words, a bundle of facts, which it is necessary for the plaintiff to prove in order to succeed in the suit. (See Bloom Dekor Ltd. v. Subhash Himatlal Desai [(1994) 6 SCC 322] .)

10. In a generic and wide sense (as in Section 20 of the Civil Procedure Code, 1908) ‘cause of action’ means every fact, which it is necessary to establish to support a right to obtain a judgment. (See Sadanandan Bhadran v. Madhavan Sunil Kumar [(1998) 6 SCC 514 : 1998 SCC (Cri) 1471] .)

11. It is settled law that ‘cause of action’ consists of a bundle of facts, which give cause to enforce the legal inquiry for redress in a court of law. In other words, it is a bundle of facts, which taken with the law applicable to them, gives the plaintiff a right

to claim relief against the defendant. It must include some act done by the defendant since in the absence of such an infraction coupled with the right itself. Compendiously, as noted above, the expression means every fact, which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court. Every fact, which is necessary to be proved, as distinguished from every piece of evidence, which is necessary to prove each fact, comprises in 'cause of action'. (See Rajasthan High Court Advocates' Assn. v. Union of India [(2001) 2 SCC 294] .)

13. The expression 'cause of action' has sometimes been employed to convey the restricted idea of facts or circumstances which constitute either the infringement or the basis of a right and no more. In a wider and more comprehensive sense, it has been used to denote the whole bundle of material facts, which a plaintiff must prove in order to succeed. These are all those essential facts without the proof of which the plaintiff must fail in his suit. (See Gurdit Singh v. Munsha Singh [(1977) 1 SCC 791] .)

14. The expression 'cause of action' is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a court or a tribunal; a group of operative facts giving rise to one or more bases of suing; a factual situation that entitles one person to obtain a remedy in court from another person (see Black's Law Dictionary). In Stroud's Judicial Dictionary a 'cause of action' is stated to be the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact, which if traversed, the plaintiff must prove in order to obtain judgment. In Words and Phrases (4th Edn.) the meaning attributed to the phrase 'cause of action' in common legal parlance is existence of those facts, which give a party a right to judicial interference on his behalf. (See Navinchandra N. Majithia v. State of Maharashtra [(2000) 7 SCC 640 : 2001 SCC (Cri) 215] .)

15. In Halsbury's Laws of England (Fourth Edn.) it has been stated as follows:

‘ “Cause of action” has been defined as meaning simply a factual situation, the existence of which entitles one person to obtain from the court a remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse. “Cause of action” has also been taken to mean that a particular act on the part of the defendant which gives the plaintiff his cause of complaint, or the subject-matter of grievance founding the action, not merely the technical cause of action.’

16. As observed by the Privy Council in Payana Reena Saminathan v. Pana Lana Palaniappa [(1913-14) 41 IA 142] the rule is directed to securing the exhaustion of the relief in respect of a cause of action and not to the inclusion in one and the same action or different causes of action, even though they arise from the same transaction. One great criterion when the question arises as to whether the cause of action in the subsequent suit is

identical with that in the first suit, is whether the same evidence will maintain both actions. (See Mohd. Khalil Khan v. Mahbub Ali Mian [(1947-48) 75 IA 121 : AIR 1949 PC 78] .)

17. It would be appropriate to quote para 61 of the said judgment, which reads as follows : (Mohd. Khalil Khan case [(1947-48) 75 IA 121 : AIR 1949 PC 78] , AIR p. 86)

‘61. (1) The correct test in cases falling under Order 2 Rule 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. Shumsoonnissa Begum [(1867) 11 MIA 551 : 2 Bar 259 (PC)])

(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 QBD 128 : 58 LJQB 120 : 60 LT 250 (CA)])

(3) If the evidence to support the two claims is different, then the causes of action are also different. (Brunsden v. Humphrey [(1884) 14 QBD 141 : 53 LJQB 476 : 51 LT 529 : (1881-85) All ER Rep 357 (CA)])

(4) The causes of action in the two suits may be considered to be the same if in substance they are identical. (Brunsden v. Humphrey [(1884) 14 QBD 141 : 53 LJQB 476 : 51 LT 529 : (1881-85) All ER Rep 357 (CA)])

(5) The cause of action has no relation whatever 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. (Chand Kour v. Partab Singh [(1887-88) 15 IA 156]) This observation was made by Lord Watson in a case under Section 43 of the Act of 1882 (corresponding to Order 2 Rule 2) where plaintiff made various claims in the same suit.’ (IA pp. 139-40)”act no cause of action would possibly accrue or would arise. [See South East Asia Shipping Co. Ltd. v. Nav Bharat Enterprises (P) Ltd. [(1996) 3 SCC 443]]

12. The expression ‘cause of action’ has acquired a judicially settled meaning. In the restricted sense ‘cause of action’ means the circumstances forming the infraction of the right or the immediate occasion for the reaction. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but also the infraction coupled with the right itself. Compendiously, as noted above, the expression means every fact, which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court. Every fact, which is necessary to be proved, as distinguished from every piece of evidence, which is necessary to prove each fact, comprises in

‘cause of action’. (See Rajasthan High Court Advocates' Assn. v. Union of India [(2001) 2 SCC 294] .)

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(5) The cause of action has no relation whatever 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. (Chand Kour v. Partab Singh [(1887-88) 15 IA 156]) This observation was made by Lord Watson in a case under Section 43 of the Act of 1882 (corresponding to Order 2 Rule 2) where plaintiff made various claims in the same suit.’ (IA pp. 139-40)”

20. Popat and Kotecha Property vs. SBI Staff Association, reported in (2005) 7 SCC 510. (Para 10)

“10. Clause (d) of Order 7 Rule 7 speaks of suit, as appears from the statement in the plaint to be barred by any law. Disputed questions cannot be decided at the time of considering an application filed under Order 7 Rule 11 CPC. Clause (d) of Rule 11 of Order 7 applies in those cases only where the statement made by the plaintiff in the plaint, without any doubt or dispute shows that the suit is barred by any law in force.”

POINT OF DETERMINATION AND DISCUSSION

11. The point of determination in the present revision is whether the averments made in the plaint attracts the provisions of Order VII Rule 11 CPC, particularly the provisions regarding the cause of action and limitation?

12. Before analyzing the averments of the plaint averment and the documents relied on by the plaintiff in support of the plaint averment, it

would be expedient to consider the principles enunciated in the provisions of Order VII Rule 11 CPC, which provides for the rejection of plaint. On six conditions the plaint could be rejected at the very threshold of its institution; (i) if the plaint does not disclose cause of action; (ii) if the plaint contained the relief being undervalued and despite the direction of the court to correct its value, the plaintiff has failed to do so; (iii) if the plaint does not carry sufficient stamp duty and despite a clear direction of the court, the plaintiff failed to supply requisite stamp papers; (iv) if the plaint averments are such that the suit is barred by any law; (v) where the plaint is not filed in duplicate; and (vi) where the plaintiff failed to comply the provisions of Rule 9 of Order VII, which provides a specific direction to the plaintiff to serve on defendants the summons with copy of plaint upon the defendant in view of Rule 9 Order V CPC. The relevant provisions of Order VII Rule 11 CPC is reiterated underneath:-

*“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 sub-rule (2) 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.”

13. This Court while dealing with this case is concerned with two provisions, those are Sub-Rule (a) and Sub-Rule (d) of the Rule 11, which pertains to non disclosure of cause of action and the suit is barred by law, respectively. In this case, the 'law' is Limitation Act, 1963.

14. In the celebrated case of **Dahiben (supra)**, Hon'ble Supreme Court in paragraph 23 (sub-paras 23.1 to 23.15) has laid down the principles governing rejection of plaint. The judgment has also dealt with the necessity of the provisions as it would be necessary to take into consideration the above provisions of law to put an end to the sham litigation so that judicial time be not wasted.

15. As such, the plaint averments are required to be taken into consideration to arrive at a decision whether the plaint contains the averments, which attracts Order VII Rule 11 CPC for rejecting the plaint.

16. The suit for specific performance and permanent injunction has been instituted by the plaintiff on 05.10.2016 pertaining to the suit property measuring 360 sqmt. situated at Vrindavan Scheme, Raibareilly Road, Lucknow (hereinafter referred to as 'scheduled suit property'). The first relief is in the shape of decree for specific performance to command the original defendants to execute a sale deed. The second relief is a decree in the nature of permanent prohibitory injunction to restrained original defendants not to alienate scheduled suit property to any third party. The basis for the relief disclosed in the averment of plaint is the execution of agreement to sell by original defendants and their late mother Smt. Janak Dulari in favour of plaintiff, which was executed and registered on 08.05.2015 with the agreed consideration amount of Rs. 43 lakhs on advance payment of Rs. 9 lakhs. The agreement to sell, which is the part of plaint contains recital that the scheduled suit property has been allotted in the name of original defendants by UP Awas Evam Vikas Parishad, Lucknow on 28.7.2014. It creates an interest on the original defendants over the property; since the inception of agreement to sale, the suit scheduled property is allotted to

them. Though, further recital in the agreement to sell reveals that the original defendants may execute a sale deed in favour of the plaintiff within six months from the date when Avas Even Vikas Parishad would execute a sale deed in favour of original defendants (Condition no.3). It is further agreed that in case the original defendants failed to execute the sale deed within the specified period the plaintiff shall be at liberty to move the court for getting executed a sale deed in their favour (Condition no.4). The plaint averment further reveals that the plaintiff has subsequently paid Rs. 9,37,500/- to the original defendants and their mother late Smt. Janak Dulari. The chart showing the dates on which the amount has been paid and the mode of transfer of money. In paragraph 4 of the plaint, there is specific averment made by the plaintiff that the plaintiff is ready and willing to perform his part of contract in pursuance to the terms of agreement to sell dated 08.05.2015. It is further averred that Smt. Janak Dulari passed away on 16.03.2016. Thereafter, the plaintiff had informed the original defendants that sale deed be executed in their favour, but when not getting any response, the plaintiff has issued notice to original defendants on 29.08.2016, which has not been received. Subsequently, on 19.09.2016, the notice has been served on the original defendants.

17. In paragraph 7 of the plaint the plaintiff has specifically disclosed that the property dealer Mr. Ram Chandra Yadav on 03.10.2016 has intimated the plaintiff that the original defendants intent to sell the property to some third persons. It is then that the suit has been instituted on 05.10.2016, apprehending transfer to third party as notice was not answered.

18. The heavily relied on Condition No.3 of the agreement to sell, is quoted hereinbelow:-

“3- यह कि मियाद बयनामा रजिस्ट्री इस तौर से है कि उक्त भूखण्ड की समस्त किश्ते द्वितीयपक्ष द्वारा आवास विकास परिषद लखनऊ मे प्रथमपक्ष के नाम द्वितीयपक्ष अपने हस्ताक्षर से जमा करेगा, जब आवास विकास परिषद लखनऊ द्वारा प्रथमपक्ष के हक में रजिस्ट्री हो जायेगी, उसकी लिखित सूचना प्रथमपक्ष द्वारा द्वितीयपक्ष को दी जायेगी उससे मियाद अंदर मुदत छः माह है।”

The above clause clearly evinces a burden on the plaintiff to deposit installments in the name of original defendants and after the sale deed was executed in favour of original defendants, then they by way of a notice in writing will intimate the plaintiff and within six months sale deed be executed, but neither the notice is given nor the sale deed was executed. However, prior to the fulfillment of condition plaintiff came to know about the intention of original defendants and instituted the suit, now the point of concern is whether the suit is premature and the Limitation Act does not provide such exigency to institute the suit and therefore, the plaint be rejected being barred by law.

19. Both the parties have relied on the judicial precedents, the paragraphs cited is already reiterated. The principles have already been taken into consideration and discussed herein below wherever required.

20. It is a settled principle of law that the cause of action is a bundle of facts coupled with legal rights of the plaintiff for relief against defendant. It is not limited to the actual infringement of the right but includes all the material facts on which it is founded. There is no point in discussing all the judgments, the relevant paragraphs already reiterated, relied on by both the parties in **Swamy Atmananda (supra)**, **M/s Ganesh Trading Co. (supra)**, **Dahiben (supra)**, **Shakti Bhog Food Industries (supra)** and **Sandeep Polymers (P) Ltd. (supra)**. The point of concern is whether the plaint discloses cause of action. The above discussion and averment of the plaint shows that the plaint discloses the cause of action.

21. Now the point of concern is whether the suit is premature. To deal with this point, Article 54, Schedule 1 of the Limitation Act, 1963 is reiterated underneath:-

“54.	For performance of a contract.	specific of a	Three years	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused. ”
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22. In the present set of facts, no time is provided for specific performance of a contract, and therefore, the time which is taken to consideration for filing of suit is when plaintiff has notice that the

performance is refused. The meaning of ‘date fixed’ is dealt with in the judgment of Hon’ble the Supreme Court in the case of *Ahmadsahab Abdul Mulla (2) (dead) by proposed LRs v. Bibijan and others*, reported in (2009) 5 SCC 462 (Paras 10-12), while dealing with a reference. The relevant paragraphs are reiterated underneath :

“10. “Fixed” in essence means having final or crystallised form or character not subject to change or fluctuation.

11. The inevitable conclusion is that the expression “date fixed for the performance” is a crystallised notion. This is clear from the fact that the second part “time from which period begins to run” refers to a case where no such date is fixed. To put it differently, when date is fixed it means that there is a definite date fixed for doing a particular act. Even in the second part the stress is on “when the plaintiff has notice that performance is refused”. Here again, there is a definite point of time, when the plaintiff notices the refusal. In that sense both the parts refer to definite dates. So, there is no question of finding out an intention from other circumstances.

12. Whether the date was fixed or not the plaintiff had notice that performance is refused and the date thereof are to be established with reference to materials and evidence to be brought on record. The expression “date” used in Article 54 of the Schedule to the Act definitely is suggestive of a specified date in the calendar. We answer the reference accordingly. The matter shall now be placed before the Division Bench for deciding the issue on merits.”

23. The agreement to sale on the basis of which the suit is instituted does not contain a fixed date of performance, which is reflected from the bare reading of the entire agreement to sale. It is only the occurrence of an event, which provides the time for performance of contract, i.e. the execution of sale deed by Avas Evam Vikas Parishad in favour of original defendant and the time provides is six months from the date of that sale deed after issuance of notice. As such, the second provision of Article 54 reiterated above is applicable in the present set of facts that the plaintiff has noticed that the performance is refused. This notice of refusal of performance is explicitly averred in paragraph 7 of the plaint disclosing the name of the source, who has intimated that the original defendants are in agreement with other persons to transfer the scheduled suit property. As such, it cannot be considered that the suit for specific

performance is barred by the provisions of Limitation Act in reference to first relief.

24. So far as the point of cause of action is concerned Rule 11 of Order VII CPC provides that it is non disclosure of cause of action, which attracts rejection of plaint. The cause of action is very much provided in the plaint averment. More over the information of the plaintiff that the original defendants are trying to transfer the property to the third person came out to be correct as the impleaded defendants got a sale deed executed in their favour pertaining to suit scheduled property on 23.11.2016, soon after the execution of sale deed by Avas Evam Vikas Parishad in favour of original defendants.

25. There are many points pertaining applicability to the provisions of Specific Relief Act argued before this court, which need not to be dealt with. As the same has no bearing while dealing with the application under Order VII Rule 11 CPC, which are subject matter of trial and will not directly attracted for rejection of plaint.

26. The trial court while dealing with the application of the impleaded defendant has rightly appreciated the facts and the law, which need not be interfered with and therefore, the order impugned is liable to be affirmed.

27. The revision petition is devoid of merit, liable to be dismissed and hence revision petition is **dismissed**.

(Avnish Saxena,J.)

October 7, 2026

Abhishek Sri/-