[2025] 4 S.C.R. 2006 : 2025 INSC 598

P. Kumarakurubaran
v.
P. Narayanan & Ors.

(Civil Appeal No. 5622 of 2025)

29 April 2025

[J.B. Pardiwala and R. Mahadevan,* JJ.]

Issue for Consideration

Whether the High Court was justified in rejecting the plaint filed by the appellant under Order VII Rule 11 of the Code of Civil Procedure, 1908 on the ground that the suit was barred by limitation.

Headnotes†

Code of Civil Procedure, 1908 – Or.VII, R.11(d) – Limitation Act, 1963 – Art.59 – On 05.05.1974, appellant herein was assigned a vacant site by the special tahsildar – He executed a power of attorney (registered on 06.01.1978) in favour of his father for purpose of construction – Contrary to which, father of appellant executed a sale deed on 10.10.1988 in favour of second respondent/defendant no.1/grand daughter – On coming to know of the same, the appellant filed a complaint on 09.12.2011 under land grabbing cell against family of defendant no.1 – Thereafter, in 2014 appellant instituted a suit to seek declaration and other consequential reliefs – Respondents/defendants filed an application u/Or.VII, R.11 CPC and sought rejection of plaint on the ground that it was undervalued and was barred by limitation – Application was dismissed by the trial Court – However, the High Court allowed the civil revision petition and held that suit was barred by limitation – Correctness:

Held: It is well-settled that Article 59 of the Limitation Act, 1963, governs suits seeking cancellation of an instrument and prescribes a period of limitation of three years from the date when the plaintiff first had knowledge of the facts entitling him to such relief – The emphasis under Article 59 is not on the date of the transaction *per se*, but on the accrual of the cause of action, which, in cases involving allegations of fraud or unauthorized execution of documents, hinges upon the date on which the plaintiff acquired knowledge of such facts – In the instant case, appellant specifically

* Author

averred in the plaint that upon becoming aware of registration of documents, he immediately lodged a land grabbing complaint on 09.12.2011 – On the other hand, the respondents/defendants stated in their application filed u/Or.VII R.11 CPC that the appellant had knowledge of the execution of the sale deed by his father in favour of defendant No.1 at the earliest point of time and hence, the suit instituted by the appellant was barred by limitation – The issue as to whether the appellant had prior notice or reason to be aware of the transaction at an earlier point of time, or whether the plea regarding the date of knowledge is credible, are matters that necessarily require appreciation of evidence – At this preliminary stage, the averments made in the plaint must be taken at their face value and assumed to be true – Once the date of knowledge is specifically pleaded and forms the basis of the cause of action, the issue of limitation cannot be decided summarily – It becomes a mixed question of law and fact, which cannot be adjudicated at the threshold stage u/Or.VII R.11 CPC – Therefore, rejection of the plaint on the ground of limitation without permitting the parties to lead evidence, is legally unsustainable. [Paras 11, 12, 12.1]

Case Law Cited

Dahiben v. Arvindbhai Kalyanji Bhanusali **[2020] 5 SCR 694 : (2020) 7 SCC 366;** *Salim D. Agboatwala & Others v. Shamalji Oddhavji Thakkar & Others* **[2021] 9 SCR 103 : (2021) 17 SCC 100;** *Shakti Bhog Food Industries Ltd. v. Central Bank of India & Another* **[2020] 6 SCR 538 : (2020) 17 SCC 260 – relied on.**

N. Thajudeen v. Tamil Nadu Khadi and Village Industries Board, **2024 INSC 817 : [2024] 10 SCR 952;** *Raghwendra Sharan Singh v. Ram Prasanna Singh (Dead) by LRs.* **[2019] 4 SCR 1069 : (2020) 16 SCC 601;** *Shri Mukund Bhavan Trust and Others v. Shrimant Chhatrapati Udayan Raje Pratapsinh Maharaj Bhonsle and Another,* **2024 INSC 1025 : 2024 SCC OnLine SC 3844;** *Daliben Valjibhai & Others v. Prajapati Kodarbhai Kachrabhai & Another,* **2024 INSC 1049 : 2024 SCC OnLine SC 4105 – referred to.**

List of Acts

Code of Civil Procedure, 1908; Limitation Act, 1963.

List of Keywords

Order VII Rule 11 of CPC; Rejection of plaint; Suit barred by limitation; Article 59 of Limitation Act, 1963; Prior notice of

transaction; Accrual of cause of action; Mixed question of law and fact; Preliminary stage; Plaint at their face value; Appreciation of evidence; *Prima facie*; Power of attorney; Misuse of authority.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5622 of 2025

From the Judgment and Order dated 03.09.2020 of the High Court of Judicature at Madras in CRPNPD No. 131 of 2018

Appearances for Parties

Advs. for the Appellant:
K. K. Mani, Ms. T.archana, Rajeev Gupta.

Advs. for the Respondents:
S. Nandakumar, Sr. Adv., M/s. Ksn & Co., Siddharth Naidu, V Balachandran, Ms. Deepika Nandakumar, Viresh Kumar Bhawra, Sandhya Dutt, Aakash Elango, Naresh Kumar.

Judgment / Order of the Supreme Court

Judgment

R. Mahadevan, J.

Leave granted.

2. This Civil Appeal arises out of the final judgment and order dated 03.09.2020 passed by the High Court of Judicature at Madras[1] in CRP (NPD) No. 131 of 2018, whereby the High Court allowed the Civil Revision Petition filed by Respondent No.1 and rejected the plaint filed by the appellant under Order VII Rule 11 of the Code of Civil Procedure, 1908[2] on the ground that the suit was barred by limitation.

3. Originally, the appellant / plaintiff instituted a suit bearing O.S. No. 310 of 2014 before the Principal District Court, Chengalpet, against the respondents / defendants and the Government authorities for the following reliefs:

1 For short, "the High Court"

2 For short, "CPC"

(i) Declaring that the appellant is the legal owner of the suit schedule property,

(ii) Issuing a permanent injunction against Defendant Nos. 1 to 3 restraining them from causing any interruption on the peaceful possession and enjoyment of the suit schedule property by the appellant,

(iii) Declaring the sale deed bearing No. 303/1993 dated 10.10.1988 registered in Pudukottai Sub Registration Office, Tuticorin District, in favour of Defendant No. 1 with respect to the suit schedule property as null and void,

(iv) Declaring the Settlement Deed bearing No. 1493/2012 dated 16.04.2012 registered in Alandur Sub Registration Office executed by Defendant No.1 in favour of Defendant No. 2 with respect to the suit schedule property as null and void,

(v) Declaring the General Power of Attorney Deed bearing No. 3725/2012 dated 31.12.2012 registered in Alandur Sub Registration Office executed by Defendant No. 2 in favour of Defendant No. 3 with respect to the suit schedule property as null and void,

(vi) Issuing a permanent injunction that Defendant No. 5 should not register any document created by Defendant Nos. 1 to 3 with respect to the suit schedule property except the appellant,

(vii) Issuing a permanent injunction directing Defendant No. 5 not to issue building plan permit to Defendant Nos. 1 to 3 except the appellant for the construction of new building in the suit schedule property, and

(viii) Cost of the suit to be paid by the Defendants to the appellant.

4. It was alleged in the plaint that the appellant was assigned a vacant site by the Special Tahsildar, Saidapet, Tamil Nadu, on 05.05.1974. He constructed a roof house and was in possession and enjoyment of the said property by paying tax and other charges. While so, he executed a Power of Attorney in favour of his father, K. Pothikannu Pillai, which was registered on 06.01.1978 as Document No. 04-11-101-102-3/1978 in the Office of the Sub-Registrar, Thallakulam, Madurai, for the purposes of putting up construction, entering into agreement, and performing other relevant activities. Contrary to

the same, the father of the appellant executed a sale deed on 10.10.1988, in favour of the second respondent / Defendant No.1 / granddaughter *vide* Document No. 303/1993 on the file of the Sub-Registrar, Pudukottai, which according to the appellant, was illegal, as the Power of Attorney did not authorize his father to alienate the property. After coming to know about the same, the appellant approached the Additional Commissioner of Police, Chennai and gave a complaint on 09.12.2011 under Land Grabbing Cell against the family of Defendant No. 1. Subsequently, the appellant applied for the individual patta to the Special Tahsildar, Alandur, on 24.02.2012 and also made a representation to Defendant No. 4 not to register any document with respect to the suit schedule property. In the meanwhile, the father of the appellant had died. Following the same, the second respondent / Defendant No.1 executed a settlement deed in favour of the third respondent / Defendant No.2 *vide* Document No. 1198/2012 on 16.04.2012. Subsequently, the third respondent / Defendant No.2 executed a General Power of attorney deed in favour of the first respondent / Defendant No.3 on 31.12.2012. Thereafter, the defendants made application for building permission on 05.07.2013, to which, the appellant filed his objection. In the said circumstances, the appellant came forward with the suit for the reliefs stated supra.

5. During the pendency of the aforesaid suit, the respondents / defendants filed an interlocutory application bearing I.A. No. 151 of 2015 in O.S. No. 310 of 2014 under Order VII Rule 11 CPC seeking rejection of the plaint, on the ground that the suit was undervalued and was barred by limitation.

6. After hearing both sides, the Additional District and Sessions Judge, Kancheepuram District at Chengalpet, by order dated 04.10.2017, dismissed the aforesaid application, observing that the grounds raised by the defendants can only be addressed after conducting a detailed trial based on the material facts, records, and other related issues, and therefore, the plaint cannot be rejected at the threshold. Challenging the same, the appellant / plaintiff preferred a Civil Revision Petition bearing No. 131 of 2018 before the High Court.

7. By order dated 03.09.2020, the High Court allowed the aforesaid Civil Revision Petition after having held that the suit was barred by limitation. Aggrieved by the same, the appellant / plaintiff is before us with the present appeal.

8. The learned counsel for the appellant submitted that the High Court erred in allowing the application filed under Order VII Rule 11 CPC and in rejecting the plaint on the ground of limitation, particularly while exercising its revisional jurisdiction. Adding further, it is submitted that the question of limitation - especially in matters involving the knowledge or notice of the impugned transaction- is a mixed question of law and fact, which cannot be conclusively determined without a full-fledged trial. The Additional District Judge, upon a careful consideration of the pleadings, rightly held that the suit raised triable issues requiring evidence, and therefore, correctly declined to reject the plaint at the preliminary stage. It is also submitted that the plaint contains specific averments challenging the alienation of the suit property by the appellant's father, who had no authority to do so; and that, the appellant, being a third party to the document, has duly and correctly valued the suit in accordance with the provisions of the Tamil Nadu Court Fees and Suit Valuation Act, 1955; and hence, the rejection of the plaint either on the ground of limitation or valuation, without affording the appellant an opportunity to adduce evidence, is contrary to the settled principles of law.

   8.1. It is also submitted that a suit seeking a declaration along with a consequential relief of injunction cannot be construed as a suit for declaration simpliciter. Such a suit is one for declaration with further relief as contemplated under section 34 of the Specific Relief Act. Therefore, it cannot be dismissed solely on the basis that one of the prayers may not be maintainable or barred. The dismissal of the entire suit on the strength of a single prayer without examining the merit and maintainability of the consequential relief is legally untenable. In this regard, reliance was placed on the decision of this court in *N. Thajudeen v. Tamil Nadu Khadi and Village Industries Board*[3] in which, it was held that the suit for a declaration of a right cannot be held to be barred so long as right to property subsist.

   8.2. The learned counsel submitted that the power of attorney relied upon is specific in nature and is confined solely to matters relating to construction and obtaining necessary approvals. It did not confer any authority upon the appellant's father to

3 2024 INSC 817

execute a sale deed or enter into a sale agreement. In the absence of such authority, the execution of the sale deed and the settlement deed by the respondents is wholly without jurisdiction and stands vitiated by fraud.

8.3. The learned counsel further pointed out that the appellant has sought the relief of declaration of title and permanent injunction by expressly disputing the right, title, and possession claimed by the respondents. The plaint contains specific allegations regarding fraudulent alienation, subsequent encumbrance, and the absence of authority on the part of the appellant's father to effect the transfer of the suit property. These are serious and contested issues that necessitate a detailed adjudication based on oral and documentary evidence. At the threshold stage, it is impermissible for the Court to assess the truth or falsity of these averments or to summarily reject the suit on the ground of limitation. Furthermore, the Additional District Judge, in declining the application under Order VII Rule 11 CPC committed no jurisdictional error, as the plaint disclosed triable issues requiring full-fledged trial. However, the High Court while exercising revisional jurisdiction, has erroneously interfered with the order of the trial Court and proceeded to reject the suit at the preliminary stage.

8.4. Stating so, the learned counsel prayed to allow this appeal by setting aside the order passed by the High Court.

9. Per contra, the learned counsel for Respondent No.1, at the outset, submitted that the present appeal is liable to be dismissed as per the judgment of the High Court, which rightly held that the suit filed by the appellant was hopelessly barred by limitation. Continuing further, it is submitted that in the plaint, the appellant failed to establish the date of knowledge of the alleged transaction, which was a significant and material fact necessary to corroborate the cause of action for filing the suit. On the other hand, the certified copy of the sale deed dated 10.10.1978 executed by the power of attorney holder, namely, the father of the appellant, was alleged to have been received by the appellant on 28.07.2011. If the said date is construed as the date of knowledge, the suit ought to have been instituted within a period of three years therefrom i.e., on or before 27.07.2014, in accordance with Article 59 of the Limitation Act, 1963. However, the plaint

came to be filed only on 03.12.2014. Consequently, the High Court upheld the maintainability of the interlocutory application filed by the respondents under Order VII Rule 11 CPC for rejection of the plaint.

9.1. It is also submitted that the appellant and the respondents are closely related, as the power of attorney holder was the father of the appellant, and the respondents are the appellant's sister, nephew, and niece. Therefore, the appellant's contention that he remained unaware of the alleged transaction for a period of 26 years is untenable in law.

9.2. Further, the learned counsel referred to the power of attorney and submitted that the terms 'signing and filing of all applications and agreement and Indemnity Bonds' clearly indicate that the appellant's father, acting as the power of attorney holder, was duly authorized to execute lawful agreements. Accordingly, he executed the sale deed dated 10.10.1988 in favour of the second respondent / Defendant No.1 under the authority of the said document.

9.3. The learned counsel also submitted that a bare perusal of the averments in the plaint reveals that the suit is barred by limitation. In this regard, reliance was placed on the decisions of this Court in *Dahiben v. Arvindbhai Kalyanji Bhanusali*[4] and *Raghwendra Sharan Singh v. Ram Prasanna Singh(Dead) by LRs*[5] wherein, it was held that when the foundational facts, as pleaded, squarely attract the bar of limitation, no trial is warranted and the suit is liable to be dismissed at the threshold. That apart, the learned counsel referred to the decision of this Court in *Shri Mukund Bhavan Trust and Others v. Shrimant Chhatrapati Udayan Raje Pratapsinh Maharaj Bhonsle and Another*[6], wherein, it was clearly held that the spirit and intention of Order VII Rule 11(d) CPC is only for the courts to nip at its bud when any litigation ex-facie appears to be a clear abuse of process.

9.4. Thus, according to the learned counsel, the respondents / defendants being the absolute owners of the property, have been in peaceful possession and enjoyment thereof. However,

4 (2020) 7 SCC 366

5 (2020) 16 SCC 601

6 2024 SCC OnLine SC 3844

the appellant, having suppressed material facts, deliberately instituted the suit after an inordinate delay of 26 years. Therefore, the impugned order passed by the High Court rejecting the plaint does not warrant any interference by this Court.

10. Having heard the learned counsel for the parties and upon careful perusal of the pleadings, the material on record, and the impugned judgment, we find it necessary to examine whether the rejection of the plaint under Order VII Rule 11(d) CPC was justified in the facts and circumstances of the present case. It is to be pointed out at this juncture that though the respondents / defendants sought to reject the plaint on two grounds - valuation of the suit and limitation - the High Court rejected the plaint solely on the ground that it was time-barred. Accordingly, we shall confine our consideration in this appeal to the issue of limitation.

11. It is well-settled that Article 59 of the Limitation Act, 1963, governs suits seeking cancellation of an instrument and prescribes a period of limitation of three years from the date when the plaintiff first had knowledge of the facts entitling him to such relief. The emphasis under Article 59 is not on the date of the transaction *per se*, but on the accrual of the cause of action, which, in cases involving allegations of fraud or unauthorized execution of documents, hinges upon the date on which the plaintiff acquired knowledge of such facts.

12. In the present case, the appellant has specifically averred in the plaint that upon becoming aware of registration of documents allegedly carried out among the defendants in relation to the suit property, he immediately approached the Additional Commissioner of Police, Chennai and lodged a land grabbing complaint on 09.12.2011 against the family of Defendant No.1. Subsequently, he applied for patta in his favour on 24.02.2012, and raised objections on 05.03.2012 to Defendant No. 4 stating that the suit property belonged to the plaintiff and that no registration concerning the same should be carried out. He has also submitted an objection petition to Defendant No. 5 requesting that no planning permit be granted to anybody except the appellant in respect of the suit property. Thereafter, the appellant instituted the suit on 03.12.2014 seeking a declaration and consequential reliefs. On the other hand, the respondents / defendants stated in their application filed under Order VII Rule 11 CPC that the appellant had knowledge of the execution of the sale deed by his father in favour of Defendant No.1 at the earliest point of time and hence,

the suit instituted by the appellant was barred by limitation. While the trial Court rejected the said application holding that the issue of limitation involved a mixed question of law and fact, the High Court in revision, took a contrary view and allowed the application filed under Order VII Rule 11 CPC and rejected the plaint solely on the ground that the suit was barred by limitation.

12.1. However, we are of the considered view that the issue as to whether the appellant had prior notice or reason to be aware of the transaction at an earlier point of time, or whether the plea regarding the date of knowledge is credible, are matters that necessarily require appreciation of evidence. At this preliminary stage, the averments made in the plaint must be taken at their face value and assumed to be true. Once the date of knowledge is specifically pleaded and forms the basis of the cause of action, the issue of limitation cannot be decided summarily. It becomes a mixed question of law and fact, which cannot be adjudicated at the threshold stage under Order VII Rule 11 CPC. Therefore, rejection of the plaint on the ground of limitation without permitting the parties to lead evidence, is legally unsustainable.

12.2. In this regard, we may usefully refer to the following decisions of this Court, which have consistently held that when the question of limitation involves disputed facts or hinges on the date of knowledge, such issues cannot be decided at the stage of Order VII Rule 11 CPC:

(i) Daliben Valjibhai & Others v. Prajapati Kodarbhai Kachrabhai & Another[7]

> ***"10.*** *The First Appellate Court came to the conclusion that the defendants made an application for correcting the revenue records only in the year 2017 and on the said application the Deputy Collector issued notice to the plaintiffs in March 2017 and that was the time when the plaintiffs came to know about the execution of the sale deed. It is under these circumstances that the suit was instituted in the*

7 2024 SCC OnLine SC 4105

year 2017. While the High Court came to the correct conclusion that under Article 59 of the Limitation Act, a suit can be instituted within 3 years of the knowledge, it proceeded to return a finding that in cases where the document is registered, the knowledge must be presumed from the date of registration.

11.

12. *Further, in Chhotanben v. Kirtibhai Jalkrushnabhai Thakkar where again a suit for cancellation of sale deed was opposed through an application under Order 7 Rule 11, on ground of limitation, this Court specifically held that limitation in all such cases will arise from date of knowledge. The relevant portion is as follows:*

"15. What is relevant for answering the matter in issue in the context of the application under Order 7 Rule 11(d) CPC, is to examine the averments in the plaint. The plaint is required to be read as a whole. The defence available to the defendants or the plea taken by them in the written statement or any application filed by them, cannot be the basis to decide the application under Order 7 Rule 11(d). Only the averments in the plaint are germane. It is common ground that the registered sale deed is dated 18-10-1996. The limitation to challenge the registered sale deed ordinarily would start running from the date on which the sale deed was registered. However, the specific case of the appellant-plaintiffs is that until 2013 they had no knowledge whatsoever regarding execution of such sale deed by their brothers, original Defendants 1 and 2, in favour of Jaikrishnabhai Prabhudas Thakkar or Defendants 3 to 6. They acquired that knowledge on 26-12-2012 and immediately took steps to obtain a certified copy of the registered sale deed and on receipt thereof they realised the fraud played on them by

their brothers concerning the ancestral property and two days prior to the filing of the suit, had approached their brothers (original Defendants 1 and 2) calling upon them to stop interfering with their possession and to partition the property and provide exclusive possession of half (½) portion of the land so designated towards their share. However, when they realised that the original Defendants 1 and 2 would not pay any heed to their request, they had no other option but to approach the court of law and filed the subject suit within two days therefrom. According to the appellants, the suit has been filed within time after acquiring the knowledge about the execution of the registered sale deed. In this context, the trial court opined that it was a triable issue and declined to accept the application filed by Respondent 1-Defendant 5 for rejection of the plaint under Order 7 Rule 11(d). That view commends to us.

…

19. In the present case, we find that the appellant-plaintiffs have asserted that the suit was filed immediately after getting knowledge about the fraudulent sale deed executed by original Defendants 1 and 2 by keeping them in the dark about such execution and within two days from the refusal by the original Defendants 1 and 2 to refrain from obstructing the peaceful enjoyment of use and possession of the ancestral property of the appellants. We affirm the view taken by the trial court that the issue regarding the suit being barred by limitation in the facts of the present case, is a triable issue and for which reason the plaint cannot be rejected at the threshold in exercise of the power under Order 7 Rule 11(d) CPC."

(emphasis supplied)

13. *In view of the above, there was no justification for the High Court in allowing the application under Order 7 Rule 11, on issues that were not evident from the plaint averments itself. The High Court was also not justified in holding that the limitation period commences from the date of registration itself. In this view of the matter the judgment of the High Court is unsustainable."*

(ii) *Salim D. Agboatwala & Others v. Shamalji Oddhavji Thakkar & Others*[8]

"11. *As observed by this Court in P.V. Guru Raj Reddy v. P. Neeradha Reddy [(2015) 8 SCC 331: (2015) 4 SCC (Civ) 100], the rejection of plaint under Order 7 Rule 11 is a drastic power conferred on the court to terminate a civil action at the threshold. Therefore, the conditions precedent to the exercise of the power are stringent and it is especially so when rejection of plaint is sought on the ground of limitation. When a plaintiff claims that he gained knowledge of the essential facts giving rise to the cause of action only at a particular point of time, the same has to be accepted at the stage of considering the application under Order 7 Rule 11.*

12. *Again as pointed out by a three-Judge Bench of this Court in Chhotanben v. Kiritbhai Jalkrushnabhai Thakkar [(2018) 6 SCC 422 : (2018) 3 SCC (Civ) 524], the plea regarding the date on which the plaintiffs gained knowledge of the essential facts, is crucial for deciding the question whether the suit is barred by limitation or not. It becomes a triable issue and hence the suit cannot be thrown out at the threshold.*

13*…*

14. *But a defendant in a suit cannot pick up a few sentences here and there from the plaint and*

8 (2021) 17 SCC 100

contend that the plaintiffs had constructive notice of the proceedings and that therefore limitation started running from the date of constructive notice. In fact, the plea of constructive notice is raised by the respondents, after asserting positively that the plaintiffs had real knowledge as well as actual notice of the proceedings. In any case, the plea of constructive notice appears to be a subsequent invention."

(iii) Shakti Bhog Food Industries Ltd. v. Central Bank of India & Another[9]

*"**6.** The central question is: whether the plaint as filed by the appellant could have been rejected by invoking Order 7 Rule 11(d) CPC?*

7. Indeed, Order 7 Rule 11 CPC gives ample power to the court to reject the plaint, if from the averments in the plaint, it is evident that the suit is barred by any law including the law of limitation. This position is no more res integra. We may usefully refer to the decision of this Court in Ram Prakash Gupta v. Rajiv Kumar Gupta [(2007) 10 SCC 59]. In paras 13 to 20, the Court observed as follows: (SCC pp. 65-66)

"13. As per Order 7 Rule 11, the plaint is liable to 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

9 (2020) 17 SCC 260

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

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

(e) where it is not filed in duplicate;

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

14. In Saleem Bhai v. State of Maharashtra [Saleem Bhai v. State of Maharashtra, [(2003) 1 SCC 557] it was held with reference to Order 7 Rule 11 of the Code that:

'9. … the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power … at any stage of the suit — before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 Order 7 CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage.…' (SCC p. 560, para 9).

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

16. "The trial court 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, it should exercise its power under Order 7 Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, [it has to be nipped] in the bud at the first hearing by examining the party searchingly under Order 10 CPC." (See T. Arivandandam v. T.V. Satyapal [(1977) 4 SCC 467] , SCC p. 468.)

17. It is trite law that not any particular plea has to be considered, and the whole plaint has to be read. As was observed by this Court in Roop Lal Sathi v. 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.

18. In Raptakos Brett & Co. Ltd. v. 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 Rule 11 Order 7 was applicable.

19. In Sopan Sukhdeo Sable v. Charity Commr. [(2004) 3 SCC 137] this Court held thus: (SCC pp. 146-47, para 15)

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

terms of his pleadings taken as a whole. At the same time it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair-splitting technicalities.'

20. For our purpose, clause (d) is relevant. It makes it clear that if the plaint does not contain necessary averments relating to limitation, the same is liable to be rejected. For the said purpose, it is the duty of the person who files such an application to satisfy the court that the plaint does not disclose how the same is in time. In order to answer the said question, it is incumbent on the part of the court to verify the entire plaint. Order 7 Rule 12 mandates where a plaint is rejected, the court has to record the order to that effect with the reasons for such order."

8. *On the same lines, this Court in Church of Christ Charitable Trust & Educational Charitable Society v. Ponniamman Educational Trust [(2012) 8 SCC 706: (2012) 4 SCC (Civ) 612], observed as follows: (SCC pp. 713-15, paras 10-12)*

"10. … It is clear from the above that where the plaint does not disclose a cause of action, the relief claimed is undervalued and not corrected within the time allowed by the court, insufficiently stamped and not rectified within the time fixed by the court, barred by any law, failed to enclose the required copies and the plaintiff fails to comply with the provisions of Rule 9, the court has no other option except to reject the same. A reading of the above provision also makes it clear that power under Order 7 Rule 11 of the Code can be exercised at any stage of the suit either before registering the plaint or after the issuance of summons to the defendants or at any time before the conclusion of the trial.

11. This position was explained by this Court in Saleem Bhai v. State of Maharashtra [(2003) 1 SCC 557], in which, while considering Order 7 Rule 11 of the Code, it was held as under: (SCC p. 560, para 9)

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

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

and Mayar (H.K.) Ltd. v. Vessel M.V. Fortune Express [(2006) 3 SCC 100].

12. It is also useful to refer the judgment in T. Arivandandam v. T.V. Satyapal [(1977) 4 SCC 467], wherein while considering the very same provision i.e. Order 7 Rule 11 and the duty of the trial court in considering such application, this Court has reminded the trial Judges with the following observation: (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 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, (Chapter XI) and must be triggered against them.'

It is clear that if the allegations are vexatious and meritless and not disclosing a clear right or material(s) to sue, it is the duty of the trial Judge to exercise his power under Order 7 Rule 11. If clever drafting has created the illusion of a cause of action as observed by Krishna Iyer, J. in the abovereferred decision [T. Arivandandam v. T.V. Satyapal, (1977) 4 SCC 467], it should be nipped in the bud at the first hearing by examining the parties under Order 10 of the Code."

14. *All these events have been reiterated in Para 28 of the plaint, dealing with the cause of action for filing of the suit. Indeed, the said para opens with the expression "the cause of action to file the suit accrued in favour of the plaintiff and against the defendants when the illegal recoveries were noticed and letter dated 21-7-2000 was sent to the defendants to clarify as to how the interest was being calculated". This averment cannot be read in isolation.*

....

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."*

13. In this backdrop, the approach of the High Court in reversing the well-reasoned order of the trial Court warrants interference. The trial Court had rightly held that the issue of limitation necessitated adjudication upon evidence, particularly in view of the appellant's assertion that the Power of Attorney executed by him did not confer any authority upon his father to alienate the suit property and that the impugned transaction came to his knowledge only at a much later point in time. In such circumstances, the determination of limitation involved disputed questions of fact that could not be summarily decided without the benefit of trial. The High Court, however, proceeded to reject the plaint solely on a *prima facie* assumption that the suit was barred by limitation, without undertaking any examination as to whether the plea regarding the date of knowledge was demonstrably false or inherently improbable in light of the record. In the opinion of this Court, such an approach amounts to an error of law and constitutes a misapplication of the well-established principles governing the exercise of power under Order VII Rule 11 CPC. For the same reasons, the decisions relied upon by the learned counsel for the respondents are inapplicable, being factually distinguishable.

14. It is also to be noted that the appellant has categorically averred in the plaint that he executed the registered power of attorney in favour of his father solely for the limited purpose of constructing a house and carrying out related activities. There is no express clause authorizing his father to sell the suit property to any person without the appellant's consent and knowledge. Yet, the appellant's father executed a sale deed in favour of his granddaughter, going beyond the scope of the power of attorney, which raises serious doubt about misuse of authority and potential fraud. Such assertions cannot be rejected in the application under Order VII Rule 11 CPC. Accordingly, we are of the view that the plaint discloses a cause of action which cannot be shut out at the threshold. Thus, the trial Court acted within its jurisdiction in refusing to reject the plaint and in holding that the matter ought to proceed to trial. The High Court, while exercising its revisional jurisdiction under Section 115 CPC, ought not to have interfered in the absence of any jurisdictional error or perversity in the trial court's order. Rejecting the plaint where substantial factual disputes exist concerning limitation and the scope of authority under the Power of Attorney, is legally unsustainable.

15. In light of the foregoing, the judgment and order dated 03.09.2020 passed by the High Court in CRP (NPD) No. 131 of 2018 is set aside and the order dated 04.10.2017 passed by the Additional District Judge, Chengalpattu in I.A. No. 151 of 2015 in O.S. No. 310 of 2014 is affirmed. As a sequel, the suit is restored for trial on its merits. It is, however, made clear that the trial Court shall proceed without being influenced by any of the observations made by the High Court.

16. This appeal stands allowed in the above terms. There shall be no order as to costs. Consequently, connected Miscellaneous Application(s), if any, shall stand closed.

Result of the case: Appeal allowed.

†*Headnotes prepared by:* Ankit Gyan