

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on: 01 December 2022**
Judgment pronounced on: 06 December 2022

+ CS(OS) 146/2020 & I.A. 5966/2022

MR. AKASH MOHAN GUPTA Plaintiff

Through: Mr. Vivek Kohli, Sr. Adv. with
Ms. Yeshi Rinchen, Mr. Akash
Yadav, Advs.

versus

MRS. NEERA BURRA & ANR. Defendants

Through: Mr. Rajshekhar Rao, Sr. Adv.
with Mr. Anand Singh, Mr. S.
Santanam Swami, Mr. Kartik
Malhotra, Mr. Srisankar S.,
Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA

J U D G M E N T

I.A. 7028/2020(Rejection of Complaint)

1. By means of the present order, the Court proceeds to dispose of the instant application which is purported to have been made under Order VII Rule 11 of the **Code of Civil Procedure, 1908**¹ read with Section 151 of the Code. The foundation of the instant application is the assertion of the defendants that the instant suit is utterly vexatious, in abuse of the process of Court and barred by limitation.

¹ Code

2. The defendants assert that the instant suit seeks a declaration in respect of the last Will and Testament dated 08 October 1998 stated to have been made by the late Madan Mohan Gupta and has evidently been instituted more than 16 years after the plaintiff had obtained knowledge of the aforesaid Will. It is asserted that the instant suit is in gross abuse of the process of Court and has been laid only to harass the defendants who are all senior citizens.

3. Before proceeding to deal with the grounds on which the present application is sought to be pressed, it would be pertinent to advert to the following facts leading up to the institution of the suit itself.

4. The suit is one for declaration in respect of the Will of the father of plaintiff dated 08 October 1998. It further seeks the drawl of a preliminary decree of partition of the suit property demarcating and allocating the same between the plaintiff and the defendants to the extent of 1/3rd share each. Apart from other ancillary reliefs, it also seeks a decree of partition and permanent injunction restraining the defendants from selling, alienating, transferring, parting with the whole of/or any portion of the suit property. The plaint averments identify the property to be situate at 27, Friends Colony, West, Mathura Road, New Delhi.

5. It is averred that the plaintiff and the defendants are the descendants of the late Shri Dalip Singh who was their paternal grandfather. The plaintiff and the defendants are the children of the late Sh. Madan Mohan Gupta and the late Smt. Shakti Madan Gupta.

The plaintiff is the youngest of the three children of the late Sh. Madan Mohan Gupta and late Smt. Shakti Madan Gupta while the defendants are the two sisters.

6. The plaint further asserts that the suit property was originally allotted to the grandfather of the parties namely Sh. Dalip Singh. The grandfather is stated to have gifted the aforesaid plot along with the residential building standing upon it to his wife and the late Shri Madan Mohan Gupta. The aforesaid Gift Deed dated 27 February 1958 stands duly registered in the office of the Sub-Registrar, New Delhi. After the demise of the grandfather, the property is stated to have passed on to the late Sh. Madan Mohan Gupta and Smt. Munga Devi [the grandmother] who became joint owners of the suit property. The aforesaid two parties are stated to have executed a Registered Deed of Partition on 07 September 1972 in terms of which the suit property was partitioned by metes and bounds as a consequence of which the front portion of the plot admeasuring 2374 square yards fell to the share of late Madan Mohan Gupta and the balance 1882 square yards came to the late Smt. Munga Devi.

7. Smt. Munga Devi who breathed her last on 20 March 1989 is stated to have executed a Will dated 26 November 1981 whereby she bequeathed her absolute share in the property in favour of the plaintiff here. It becomes pertinent to note that her share came to be allotted property number "27A". The plaintiff on the basis of the aforesaid Will is stated to have had his name mutated on the property on 27 July 1989.

8. According to the plaintiff, the late Madan Mohan Gupta died on 12 August 2004 intestate leaving behind four legal heirs namely Smt. Shakti Madan Gupta, the mother of the plaintiff and the defendants, and the three contesting parties in the present suit. It is in the aforesaid backdrop that the plaintiff asserts that the surviving legal heirs inherited 1/4th unpartitioned and undivided share in the suit property.

9. The plaintiff further avers that he went through a period of serious illnesses from the early 1990's and suffered a brain stroke on 08 September 1996. He is also stated to have suffered facial palsy as a consequence of the aforesaid stroke. He is stated to have suffered another brain stroke on 01 March 2002. In paragraph 14 of the plaint, it is asserted that while the petitioner was recuperating and was also emotionally traumatized by the death of the father, the defendants, in whom he had complete trust, obtained his signatures on various blank papers and stamp papers stating that they were required for continuance of the tenancy of American Express who were the tenants of the suit property. It is averred that the aforesaid papers were obtained on the pretext of enabling the mother of the parties to receive the rental cheques.

10. The plaintiff further alleges that in October 2004, the defendants and their respective spouses again required him to sign some documents. It is however alleged that the wife of the plaintiff insisted that photocopies of the documents and the contents thereof be made known to the plaintiff. This request is stated to have been refused by the defendants. The plaintiff thereafter again suffered a

major stroke in October 2004. He alleges that he was again approached by the defendants for obtaining his signatures on various papers in 2008. The plaint further alleges that on this occasion also, copies of the documents that may have been drawn were not provided.

11. The plaint goes on to assert that on 24 November 2018, the defendants again called upon the plaintiff to affix his signatures for the purposes of bifurcation of plot number 27 which was refused. The mother of the contesting parties is stated to have passed away on 30 June 2019. According to the plaintiff, the defendants for the first time by a letter of 08 October 2019 informed him that she had left behind a Will dated 10 March 2005.

12. Thereafter, and on 22 August 2019, the plaintiff asserts that the defendants by way of an e-mail of the said date informed the plaintiff of the Will alleged to have been executed by their late father on 08 October 1998. According to the plaintiff, it was in terms of the aforesaid email that for the first time the plaintiff came to derive knowledge of the Will stated to have been executed by the late father on 08 October 1998.

13. As per the averments contained in paragraph 36 of the plaint, the cause of action arose for the first time on 22 August 2019 when he derived knowledge of the Will dated 08 October 1998. The plaintiff asserts that the alleged Will is shrouded by suspicious circumstances and in anyway appears to have been manufactured by the defendants. It was in the aforesaid backdrop that the instant suit thereafter came to be lodged before this Court.

14. The defendants who have also filed their written statements in the present suit, have alleged that the plaintiff was well aware of the Will executed by their late father and this would be evident from the serious and apparent inconsistencies which are evident from the averments made in the plaint when compared with the documentary evidence which has been brought on the record.

15. Mr. Rao, learned Senior Counsel appearing in support of the present application, had contended that the entire stand of the plaintiff as has been taken in the instant suit is based on manifest falsehood, suffers from evident inconsistencies and is clearly vexatious. The submissions addressed along this line are noted hereinafter.

16. Learned Senior Counsel contended that the plaintiff has in his email of 25 August 2019 categorically admitted that he was aware that the mother of parties enjoyed a life interest in the subject property. According to Mr. Rao, this would clearly constitute evidence of the plaintiff being fully aware of the disposition made by the father in terms of the Will dated 08 October 1998. It was further argued that the email of 25 August 2019 would further indicate that the plaintiff admits that the stamp paper upon which he was persuaded to affix his signatures was essentially to ensure that the rental income derived from the property goes to the mother. This according to Mr. Rao is clearly contrary to the stand taken in the plaint where it is alleged that the plaintiff was made to sign on blank papers and stamp paper.

17. Mr. Rao further submitted that the plaintiff had prior to the institution of the present suit never raised any objection to the long

and uninterrupted use and occupation of the suit property by the late mother and the defendants. It was further submitted that the plaintiff had also not raised any dispute when the defendants obtained mutation orders in their favour. Mr. Rao points out that the aforesaid mutation was neither questioned nor assailed by the plaintiff. In view of the aforesaid facts, it was the contention of Mr. Rao that the allegation that the plaintiff came to know about the existence of the Will only in August 2019 and by virtue of the email which was addressed is clearly untenable and the plaint thus deserves to be rejected on the aforesaid grounds.

18. Continuing along this thread, Mr. Rao further contended that the plaintiff had not only signed various documents in connection with the continuance of the tenancy of American Express in the suit premises, he had also willingly affixed his signature to the family settlement which was drawn up on 24 August 2004. Based on the documents which form part of the record and are numbered as Document Nos. 41, 42, 62, 66 and 74, Mr. Rao would submit that despite having full knowledge and notice of the Will of the late father as well as the consequential steps taken pursuant thereto, the plaintiff chose to sleep over his rights and has instituted the present suit after more than 16 years.

19. Mr. Rao submitted that not only is the plaint liable to be rejected on the traditional and well settled principles underlying Order VII Rule 11 of the Code, it is also and additionally liable to be rejected on the ground of being wholly vexatious. Mr. Rao submitted

that the plaintiff has clearly sought to overcome the factum of various documents which were signed by him and which were in consonance with the terms of the last Will and Testament of their father, by now alleging that he was made to sign on blank papers.

20. Learned Senior Counsel further submitted that the plaintiff has also failed to either make appropriate disclosures in respect of the various documents drawn up and signed by him in the plaint nor has he filed copies of the same. According to learned Senior Counsel, the non-disclosure of facts which were well within the knowledge of the plaintiff is a clear attempt to overreach the process of Court and would constitute sufficient ground for rejection of the plaint. Insofar as the submission with respect to vexatious suits being liable to be rejected is concerned, learned Senior Counsel placed reliance upon the decision rendered by a Division Bench of the Court in **Raj Kumari Garg v. S.M. Ezaz**².

21. In **Raj Kumari Garg**, the Division Bench had while considering the validity of a suit which came to be instituted eleven years after the execution of an agreement to sell and while dealing with an application made under Order VII Rule 11 of the Code had observed thus: -

“40. Learned counsel for the appellant canvassed before us that while deciding an application under Order 7 Rule 11 of the said Code, the plaint and the documents filed along with the plaint alone can be looked into and not the defence or the documents filed with the written statement. Interestingly, this grievance is made qua the document, the agreement to sell & purchase dated

²2012 SCC OnLine Del 4184

7.7.1998, which the appellant deliberately kept away while filing the plaint though it was referred to in the plaint. In fact, this document is the very basis of cause of action of the appellant. The document undoubtedly was filed by the defendants but it is an undisputed document. The law required the appellant to file all the documents referred to in the plaint and relied upon along with the plaint. Thus, in a way the plaint suffers from breach of mandate of Order 7 Rule 14 of the said Code, which reads as under:

“Order VII. Plaint

.....

[14. Production of document on which plaintiff sues or relies

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

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

[(3) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.];

(4) Nothing in this rule shall apply to document produced for the cross examination of the plaintiffs witnesses, or, handed over to a witness merely to refresh his memory.]”

41. We are fortified, in our view, by the pronouncement of the Supreme Court in Civil Appeal No. 4841/2012 titled *The Church of Christ Charitable Trust & Educational Charitable Society, represented by its Chairman v. Ponniamman Educational Trust represented by its Chairperson/Managing Trustee* decided on 3.7.2012 where it has been held that Order 7 Rule 14 of the said Code mandates the plaintiff to produce all the documents on which the cause of action is based, therefore, he has to produce the power of attorney when the plaint is presented by him and if he is not in possession of the same, he has to state as to in whose possession it

is. While deciding an application under Order 7 Rule 11 of the said Code, such documents are to be treated as part of the plaint and, thus, can be relied upon. The appellant cannot be, thus, permitted to keep away the documents on the basis of which she sues and then state, when those undisputed documents are filed by the defendants, that they should not be relied upon for the purposes of Order 7 Rule 11 of the said Code.

Vexatious Litigation.

42. We are of the view that apart from the fact that the plaint of the appellant is barred by law and, thus, is liable to be rejected under Order 7 Rule 11 of the said Code, the suit is a perfect example of vexatious litigation. The appellant transferred the rights in the suit and appropriated full consideration in 1998. The registered agreement to sell & purchase was executed along with collateral documents like the GPA, SPA, Will. There is not a whisper thereafter on the part of the appellant disputing these documents right till 2004. The property was in possession of a licensee who attorned in favour of the purchasers, respondents 3 & 4 and started paying them rent since July, 1998. The deposit kept with the appellant was refunded to the licensee and thereafter given to respondents 3 & 4. These are all acts in furtherance of the agreement. The notional possession was handed over and ultimately the physical possession also came to respondents 3 & 4 by surrender from the licensee. The specific rights were given in favour of respondents 3 & 4 under the agreement to sell & purchase to transfer the property further and clear declaration was made on the document that the rights in the property were exclusively of the said respondents.”

22. It was then contended that the plaintiff never instituted any proceedings in respect of the alleged blank papers and stamp papers which were purportedly got signed from him by the defendants. According to learned counsel the failure on the part of the plaintiff to take any legal recourse in respect of such alleged acts of the defendants, is clear and stark evidence not only of the plaintiff having been indolent, but more importantly of the instant suit being a mere afterthought and an example of clever drafting in order to overcome the statute of limitation. According to learned senior counsel, the

Court on a cumulative consideration of the aforesaid factors would find that the litigation is wholly vexatious and the plaint is thus liable to be rejected.

23. Refuting the aforesaid contentions, Mr. Kohli, learned Senior Counsel appearing for the plaintiff, submitted that the application purporting to be under Order VII Rule 11 of the Code is clearly based on pleas taken in the written statement and the various documents that have been produced in the suit proceedings by the defendants. According to Mr. Kohli that material cannot possibly be looked into or considered for the purposes of deciding the application bearing in mind the well settled principle that the power to reject a plaint must be exercised based on a holistic reading of the plaint averments alone. Mr. Kohli submitted that the defense that a party may choose to raise would clearly be of little relevance when it comes to deciding an issue of whether the plaint is liable to be rejected in terms of the provisions made under Order VII Rule 11 of the Code.

24. According to learned Senior Counsel, while the aforesaid proposition is well settled and has been the consistent view taken by our Courts on the aforesaid issue, it would be pertinent to note the following succinct observations as they appear in the decision of the Supreme Court in **Shakti Bhog Food Industries Ltd. v. Central Bank of India.**³

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

³(2020) 17 SCC 260

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* [*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 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* [*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* [*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* [*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.* [*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* [*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* [*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* [*Raptakos Brett & Co. Ltd. v. Ganesh Property*, (1998) 7 SCC 184] and *Mayar (H.K.) Ltd. v. Vessel M.V. Fortune Express* [*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* [*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 above referred 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.”

9. We may also advert to the exposition of 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] . In para 7 of the said decision, this Court has succinctly restated the legal position as follows: (SCC pp. 178-79)

“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.”

25. According to Mr. Kohli, **Shakti Bhog Food Industries** reiterates the well settled position in law that it is the averments contained in the plaint alone which are relevant and material for deciding the aforesaid issue. Learned Senior Counsel would submit that it would be wholly impermissible for a Court to exercise its powers conferred by Order VII Rule 11 of the Code based on a *prima facie* examination of the averments contained in a written statement or on the basis of material or evidence that may have been produced by the defense. These, according to Mr. Kohli, must necessarily be left to be considered and evaluated at the stage of trial of the suit. In any case, he would submit, that embarking down the path as suggested on behalf of the defendants would be clearly contrary to the limited exercise which courts are obliged to undertake while examining an application under Order VII Rule 11 of the Code.

26. Turning then to the factual allegations which were leveled, Mr. Kohli contended that although the plaintiff was named as one of the

executors under the Will dated 08 October 1998, he was never made aware of the same by either his parents or the defendants who were his sisters. It was submitted that the various provisions in the aforesaid Will were also never adhered to or implemented by the defendants or the late mother of the plaintiff. The latter contention was made in light of the submission of learned Senior Counsel that the last rites of the testator were not performed as per his wishes, no steps for the donation of his organs taken or the stipends paid to the son of the plaintiff as envisaged under the Will. Mr. Kohli further highlighted the fact that the witnesses of the Will were the spouses of the defendants. All of the above, according to Mr. Kohli raises serious doubts and questions with respect to the veracity of the Will and which would clearly merit trial.

27. Learned Senior Counsel argued that it is mystifying and incomprehensible why the plaintiff was never made aware of his appointment as the executor of the Will in all these years and prior to the disclosures made in the email which was sent in August 2019. It was further argued that the defendants never invited the plaintiff for taking further steps by virtue of being the executor appointed under the Will. Mr. Kohli contended that all correspondence in connection with the suit property clearly appears to have been undertaken by the defendants of their own volition and without the involvement of the plaintiff which would have been the normal course to adopt in light of he being one of the executors of the estate.

28. Mr. Kohli further argued that an *ex facie* examination of the documents which are sought to be relied upon by the defendants would also give rise to serious doubts with respect to their genuineness. Mr. Kohli highlighted the fact that the alleged deed of family settlement did not bear the signatures of any witnesses. It was further pointed out that the witnesses to the alleged deed of relinquishment executed by the plaintiff were the same as those in the deed of relinquishment purported to have been executed by the mother of the parties. Similar doubts were raised with respect to the documents which are stated to have been signed and executed by parties in connection with the continuance of the tenancy in favour of American Express.

29. Mr. Kohli submitted that the aforesaid contentions are without prejudice to the fundamental stand of the plaintiff that the various allegations made in the written statement and evidence which is sought to be led by the defendants cannot possibly constitute material relevant for the purposes of considering an application made under Order VII Rule 11 of the Code.

30. Having heard learned Senior Counsels for respective parties, the Court at the outset notes that for the purposes of invoking its powers under Order VII Rule 11 of the Code, it must at the outset and from a plain and composite reading of the plaint averments come to the conclusion that the suit either does not disclose a cause of action or appears to be barred by any law including the law of limitation which applies. The various judgments rendered on Order VII Rule 11 of the

Code have consistently taken the position that for the purposes of evaluating whether a plaint is liable to be rejected, it is the plaint averments alone which are determinative and decisive.

31. A plea in support of invocation of Order VII Rule 11 of the Code cannot be founded on either the defense which is proposed to be set up nor can it rest on the averments contained in the written statement or the evidence that may be proposed to be led. These principles were succinctly explained by the Supreme Court in **Church of Christ Charitable Trust & Educational Charitable Society v. Ponniamman Educational Trust**⁴ in the following terms: -

“10. Since the appellant herein, as the first defendant before the trial Judge, filed application under Order 7 Rule 11 of the Code for rejection of the plaint on the ground that it does not show any cause of action against him, at the foremost, it is useful to refer the relevant provision:

Order 7 Rule 11 CPC

“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;

⁴(2012) 8 SCC 706

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

Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp 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 from 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.”

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 of Order 7 CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order 7 Rule 11 CPC cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court.”

It is clear that in order to consider Order 7 Rule 11, the court has to look into the averments in the plaint and the same can be exercised by the trial court at any stage of the suit. It is also clear that the averments in the written statement are immaterial and it is the duty

of the Court to scrutinise the averments/pleas in the plaint. In other words, what needs to be looked into in deciding such an application are the averments in the plaint. At that stage, the pleas taken by the defendant in the written statement are wholly irrelevant and the matter is to be decided only on the plaint averments. These principles have been reiterated in *Raptakos Brett & Co. Ltd. v. Ganesh Property* [(1998) 7 SCC 184] and *Mayar (H.K.) Ltd. v. Vessel M.V. Fortune Express* [(2006) 3 SCC 100] .

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 above referred decision, it should be nipped in the bud at the first hearing by examining the parties under Order 10 of the Code.”

32. It is the aforesaid principles which stand reaffirmed and reiterated in **Shakti Bhog Food Industries**. However, the issue whether a plaint fails to disclose a cause of action or an illusion of a cause of action has been sought to be created by clever draftsmanship,

a suit is barred by law or is otherwise vexatious are ultimately questions which have to be decided based upon the facts of a particular case. The principles enunciated in the decisions of the Supreme Court noticed above, would ultimately have to be applied and tested against the facts of each particular case. The Court thus proceeds to decide whether the plaint in the present case warrants rejection bearing in mind the precepts which govern the exercise of power under Order VII Rule 11 of the Code.

33. As this Court goes through the various averments which are made in the plaint, it is evident that the plaintiff asserts that it was by virtue of the email dated 22 August 2019 when for the first time the plaintiff derived knowledge of the purported Will dated 08 October 1998. The plaint also alleges that while the plaintiff was undergoing a period of serious medical illness, various blank papers and stamp papers were got signed by the defendants.

34. The Court is of the considered opinion that if it were to proceed to decide a plea founded on Order VII Rule 11 of the Code, based upon a *prima facie* assessment of the defense, it would not only be contrary to the well settled rules set by a long line of precedents rendered on the subject, it would also amount to the adoption of a test which would not only be precarious but also inappropriate. This the Court observes because the stage of consideration of an Order VII Rule 11 application is not one where a preliminary or a “*mini*” trial is liable to be conducted. At that stage the Court is neither obliged to nor should it undertake an evaluation of the merits of the rival claims. It is also not

a stage where the Court is called upon to consider whether the plaintiff is ultimately likely to succeed. The scope of the power conferred by Order VII Rule 11 has been consistently explained to be confined to considering whether a cause of action is evidenced or whether the suit is barred by law. For the purposes of finding an answer to the aforesaid issues, the Court must necessarily confine itself to the case set forth by the plaintiff and arrive at a conclusion based upon its own admitted case.

35. Viewed in light of the aforesaid fundamental principles, the Court is of the firm opinion that it would be wholly incorrect if not impermissible for this Court to either render a finding with respect to the various defense exhibits which have been placed on the record at the behest of the defendants nor would it be appropriate for it to undertake an exercise to examine whether the said documents and the contents thereof are genuine and decisively conclude the rights of parties. These are clearly issues which would warrant examination in the course of trial especially when the documents themselves are not admitted.

36. The documents which have been relied upon by the defendants in support of the present application and the contents thereof are also liable to be viewed bearing in mind the allegations made by the plaintiff that various blank papers and stamp papers were got signed at a time when he was seriously ill. The positioning of his signature and other related aspects which were alluded to by Mr. Rao clearly cannot be gone into by the Court while considering an application made

under Order VII Rule 11 of the Code. That question must necessarily be answered in the trial where parties would have the right to lead evidence and prove their respective claims.

37. The Court also takes note of the allegations and counter allegations which have been made by the parties with the defendants on the strength of the various documents which have been filed in these proceedings seeking to assert that the plaintiff must be presumed to have had knowledge of the Will and the stand of the plaintiff, on the other, who alleges that his signatures had been obtained on blank papers and that he had no knowledge of the Will prior to the receipt of the email of 22 August 2019. The disputes which exist between the parties on the aforesaid issues and the competing stand which is struck, clearly convinces the Court that while they may merit determination in the course of trial, it would be incorrect to rest a decision under Order VII Rule 11 on an *ex facie* or *prima facie* evaluation of the issues which have been canvassed and noticed above.

38. The various inconsistencies which were sought to be highlighted by Mr. Rao also fails to convince the Court that this is a matter which can be said to be vexatious or in abuse of the process of Court. The Court at the outset notes that this is not a case where the alleged falsity of the claim set up by the plaintiff could be said to be established from the contents of an admitted document or fact. The present case is also not one where it could be said that an *ex facie*

evaluation of a document or the pleadings establishes that the claim of the plaintiff is a fabrication or is based on utter falsehood.

39. A vexatious litigation would be one where the claim set up is found to be patently untruthful, an invention or an artifice created by clever drafting. There may be cases where the Court finds that the action instituted is contrary to the admitted position which flows from the material relied upon by the plaintiff. A vexatious action may also be exemplified by a suit where undisputed evidence has been withheld or disclosures not made. However, where two plausible views can exist on due examination of the material placed on the record, it would be incorrect to stifle the litigation at the outset based upon what may appear to the Court to be the more credible or believable position. Courts would be well advised to desist from invoking their Order VII Rule 11 power where the veracity of the competing stand struck by parties warrants trial. In such a situation it must be left for the parties to prove their respective cases in the course of trial.

40. In **Raj Kumari Garg**, the issue which arose was whether the plaint was liable to be rejected in light of an agreement to sell and purchase dated 07 July 1998 which was relied upon by the plaintiff herself and yet kept away and not placed for the examination of the Court. It was in the aforesaid backdrop that the Division Bench observed that it would not be open for the litigant to keep away documents on which the suit itself was based and thereafter assert that the aforesaid undisputed documents cannot be looked into merely because it had been brought on the record by the defendants. It was in

the aforesaid facts and on a consideration of the agreement to sell being in the knowledge of the plaintiff and upon the Division Bench coming to note that it had been acted upon that it was observed that the litigation was clearly vexatious.

41. The facts in the present case however stand on a completely distinct pedestal. Neither the Will of 08 October 1998 nor the various documents which were relied upon by Mr. Rao would fall within the ambit of what the Court in **Raj Kumari Garg** described as “undisputed documents”.

42. The Court deems it apposite to notice the decision of the Supreme Court in **Urvashiben v. Krishnakant Manuprasad Trivedi**,⁵ which clearly appears to be more apt to the issues which arise in the present case. In the aforesaid decision, a suit for specific performance with respect to an agreement to sell dated 13 March 1992 came to be instituted in 2017 and thus evidently after more than 25 years of the instrument having come into existence. The plaintiff there is noted to have asserted that the agreement to sell did not include any stipulation specifying a time period for execution of the sale deed. He had asserted that although he had waited for a period of 25 years, when no further action was taken by the proposed vendors to fructify the sale, he visited the site in May 2017 when he found that third party rights had been created. The suit was instituted thereafter. The aforesaid facts and submissions are duly noted in paragraphs 7 and 8 of the report which are extracted hereinbelow: -

⁵[(2019) 13 SCC 372

“7. In these appeals, it is contended by Shri Desai, learned Senior Counsel appearing for the appellants that the alleged agreement to sell is dated 13-3-1992 and the suit is filed in the year 2017 i.e. after a period of 25 years and even according to the case of the respondent-plaintiff there is no communication at all in between the period from 1992 to 2017. It is submitted that except stating that he had visited the site on 25-5-2017 on which date he has come to know the said plot is sold to third parties, there is nothing on record to show that the suit is within limitation.

8. Referring to Article 54 of the Limitation Act, 1963 it is contended by the learned counsel that even in the absence of prescribing time for executing the sale deed, the period of three years is to be computed from the date of refusal. It is submitted that by waiting for a period of 25 years and by merely stating that he had visited the site on 25-5-2017 on which date, the appellants have refused to execute the sale deed, such a suit is filed. It is submitted that the suit filed is frivolous, vexatious and ex facie barred by limitation. It is contended that even in the absence of fixing any period for executing the sale deed, it is not open to the respondent-plaintiff to file the suit after 25 years of alleged sale deed/agreement to sell. It is further stated that the so-called agreement to sell is unregistered one, not supported by any payments through cheque. Vaguely stating that entire amount of consideration is paid, by way of cash during the period from 15-1-1990 to 5-9-1991, the said suit is filed.

43. While considering the issues which arose the Supreme Court in **Urvashiben**, noted that undisputedly limitation for the institution of the suit would have to be necessarily computed from May 2017 when the appellants before it had refused to execute the sale deed. It was therefore observed that the facts clearly did not warrant the plaint being rejected in terms of Clause(d) of Order VII Rule 11. It would be pertinent to extract the following passages from the aforesaid decision: -

“15. It is fairly well settled that, so far as the issue of limitation is concerned, it is a mixed question of fact and law. It is true that limitation can be the ground for rejection of plaint in exercise of powers under Order 7 Rule 11(d) CPC. Equally, it is well settled that for the purpose of deciding application filed under Order 7

Rule 11 only averments stated in the plaint alone can be looked into, merits and demerits of the matter and the allegations by the parties cannot be gone into. Article 54 of the Limitation Act, 1963 prescribes the limitation of three years, for suits for specific performance. The said Article reads as under:

<i>Description of suit</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
*	*	*
54. For specific performance of a contract	3 years	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.

From a reading of the aforesaid Article, it is clear that when the date is fixed for performance, limitation is three years from such date. If no such date is fixed, the period of three years is to be computed from the date when the plaintiff, has notice of refusal. When rejection of plaint is sought in an application filed under Order 7 Rule 11, same is to be considered from the facts of each case, looking at the averments made in the plaint, for the purpose of adjudicating such application.

16. As averred in the plaint, it is the case of the plaintiff that even after payment of the entire consideration amount registration of the document was not made and prolonged on some grounds and ultimately when he had visited the site on 25-5-2017 he had come to know that the same land was sold to third parties and the appellants have refused performance of contract. In such event, it is a matter for trial to record correctness or otherwise of such allegation made in the plaint. In the suits for specific performance falling in the second limb of the Article, period of three years is to be counted from the date when it had come to the notice of the plaintiff that performance is refused by the defendants. For the

purpose of cause of action and limitation when it is pleaded that when he had visited the site on 25-5-2017 he had come to know that the sale was made in favour of third parties and the appellants have refused to execute the sale deed in which event same is a case for adjudication after trial but not a case for rejection of plaint under Order 7 Rule 11(d) CPC.

20. By applying the aforesaid principles in the judgments relied on by Shri Dushyant A. Dave, learned Senior Counsel appearing for the respondent, we are of the considered view that merits and demerits of the matter cannot be gone into at this stage, while deciding an application filed under Order 7 Rule 11 CPC. It is fairly well settled that at this stage only averments in the plaint are to be looked into and from a reading of the averments in the plaint in the case on hand, it cannot be said that the suit is barred by limitation. The issue as to when the plaintiff had noticed refusal, is an issue which can be adjudicated after trial. Even assuming that there is inordinate delay and laches on the part of the plaintiff, same cannot be a ground for rejection of plaint under Order 7 Rule 11(d) CPC.”

44. As would be manifest from the aforesaid principles as enunciated by the Supreme Court, the power comprised in Order VII Rule 11 of Code is not liable to be invoked or exercised merely because inordinate delay or laches has occurred. The issue of whether a suit is barred under the law of limitation must necessarily be guided and answered at least at the stage when the provisions of Order VII Rule 11 are invoked on the basis of the plaint allegations. In the facts of the present case, the Court notes that the seminal issue which warranted evaluation was whether it could be said that the plaintiff had knowledge of the Will executed by his late father prior to the receipt of the email in August 2019. The material which has been referred to by and on behalf of the applicants has failed to conclusively establish the aforesaid. From the plaint allegations also it cannot be said that the plaintiff had notice or knowledge of the Will

prior to August 2019. The applicants have also not rested their plea for rejection of the plaint on any material which was admitted or undisputed and which could be said to conclusively settle the issue against the plaintiff.

45. On an overall conspectus of the aforesaid, the Court finds no merit in the application. It shall consequently stand dismissed.

YASHWANT VARMA, J.

DECEMBER 06, 2022

Neha