



# THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

Dated : 5<sup>th</sup> May, 2025

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**SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE**  
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RFA No.04 of 2024

**Appellant** : Devi Prasad Sharma

**versus**

**Respondents** : State of Sikkim and Others

Appeal under Order XLI Rules 1 and 2 of  
 the Code of Civil Procedure, 1908

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**Appearance**

Mr. N. Rai, Senior Advocate (Legal Aid Counsel) with Mr. Pradeep Tamang, Advocate for the Appellant.

Mr. S. K. Chettri, Government Advocate for the State-Respondents No.1 to 5.

Mr. Karma Thinlay, Senior Advocate with Mr. Yashir N. Tamang, Advocate for the Respondents No.6 and 7.

Respondent No.8 in person.

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## **JUDGEMENT**

Meenakshi Madan Rai, J.

**1.** The Defendants No.2 and 3 jointly, Defendants No.4 and 5 jointly, Defendant No.6 individually and Defendant No.7 individually (Respondents No.2 and 3, Respondents No.4 and 5, Respondent No.6 and Respondent No.7 herein), filed applications respectively, under Order VII Rule 11 read with Section 151 of the Code of Civil Procedure, 1908 (CPC), with Defendants No.6 and 7 specifically mentioning the provision of sub-Rule (a) and (d) of Order VII Rule 11 of the CPC, before the Learned Principal District Judge, Gangtok, in Title Suit No.32 of 2022, seeking rejection of the Plaint filed by the Plaintiff (Appellant herein). The Learned Court vide the impugned Order, dated 14-09-2023, concluded that although the Plaint disclosed a cause of action, but it was barred by

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the law of limitation and rejected the Plaint. Aggrieved thereof, the Plaintiff/ Appellant is before this Court assailing the Order.

**2.** The parties shall hereinafter be referred to as per their litigative status before the Learned Trial Court.

**3.** To comprehend the matter in its correct perspective, a brief summation of facts are essential. The Plaintiff filed a Suit for declaration, recovery of possession, injunction and other consequential reliefs valued at ₹ 50,00,00,000/- (Rupees fifty crores) only, before the Court (*supra*). The Plaintiff and Defendant No.8 are brothers. The Plaintiff's case is that when he was a minor, his father, Late Churamani Sharma had sold an area measuring 2.30 acres, bearing Plot No.571, situated at West Pendam Block, Gangtok District, Sikkim, to Defendant No.2, the Horticulture Department, Government of Sikkim. His father passed in the year 1989. From 2012 to 2018 when the Defendant No.8 was posted as Assistant Engineer at Pakyong District, he was told by one Churamani Dhakal that, papers regarding land, belonging to their father "Churamani Sharma" was sent to him by the Defendant No.2, mistaking him to be Churamani Sharma. As he had cordial relations with Churamani Sharma, he informed his namesake of the above facts. Their father, however suffered a stroke and consequent speech impairment, but prior in time he had mentioned to the Plaintiff that compensation had not been paid to him by Defendant No.2 for the property acquired (*supra*) from him, although compensation for standing crops had been paid. Pursuant to the information from Churamani Dhakal, Defendant No.8 made enquiries relating to the land acquisition of their father and payment of compensation thereof. After wending through official procedure, including an application

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filed under the Right to Information Act, 2005, before the Defendant No.3, a joint verification of the records was carried out with the concerned officials of the Defendant No.2, Defendant No.4 and the Defendant No.8 on 20-12-2019. The records with Defendant No.3 revealed that, the property was recorded in their late father's name during 1950-52 as Plot No.571 measuring 2.30 acres. During 1979-80 the said landed property was re-numbered as Plot No.2233, 2229/P, 2234/p and 2235/p, of which only Plot No.2233, measuring a total area of 1.60 acres, was found to be recorded in the name of the Defendant No.2. The other three plot numbers were found to be recorded in the name of the private Defendants No.6 and 7. It was also found that, vide communication dated 16-03-1997, of the then Secretary, Land Revenue Department, to the District Collector, a sum of ₹ 3,910/- (Rupees three thousand and ten) only, was to be disbursed to the Plaintiff's father. Further, communication dated 18-09-1976 of the Defendant No.3, to the Defendant No.4, reflected the requirement to acquire the land of Churamani Sharma, bearing Plot No.571, measuring 2.30 acres. The remarks therein indicated that, the property had already been handed over to the Defendant No.2. Communication dated 08-02-1977, addressed to Churamani Sharma, by the District Collector, indicated that ₹ 13,800/- (Rupees thirteen thousand and eight hundred) only, had been 'sanctioned' in favour of Churamani Sharma for the land transaction, directing him to collect the same from the office of the District Collector. The Defendant No.5 was however unable to furnish any receipt of payment, signed by the Plaintiff's father for the land transaction as the above communications are not receipts of payment of compensation. Hence, the Suit.

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4. Learned Senior Counsel appearing for the Plaintiff before this Court urged that the inability of the Department to furnish any documentary evidence, indicates non-payment for the land acquisition, although compensation for the standing crops thereon was duly received by the Plaintiff's father. That, the Learned Trial Court was of the view that the Plaintiff despite being a major in the year 1989 when his father passed, failed to take steps with regard to the claims now being advanced. That, this is an erroneous assumption as knowledge of the non-payment arose only in 2018, after Churamani Dhakal told the Defendant No.8 of it. Subsequent thereto, after making necessary enquiries the Suit was filed in 2023. To fortify his submissions, Learned Counsel drew strength from the decision of ***Vidya Devi vs. State of Himachal Pradesh and Others***<sup>1</sup>, wherein the Supreme Court observed that, Article 300A of the Constitution of India provides that, no person shall be deprived of his property save by authority of or procedure established by law. The obligation to pay compensation though not expressly included in Article 300A can be inferred. Hence, the impugned Order be set aside and the Suit be ordered to be taken to its logical conclusion.

5. Learned Government Advocate appearing for the State-Respondents No.1 to 5, urged that, the Plaintiff was about 22 years old in 1989 and well aware that his father had received the compensation, despite which the Suit has been filed 47 years later, which is an inordinate delay, the cause of action having arisen in 1976-77 after which the land has been in continuous, uninterrupted and peaceful possession of the Defendants No.2 and 3 till date. Hence, the Suit being barred by limitation was correctly dismissed.

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<sup>1</sup> (2020) 2 SCC 569

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6. Learned Senior Counsel appearing for the Respondents No.6 and 7 endorsing the arguments advanced by Learned Government Advocate, emphasised on the legal import of Order VII Rule 11(a) and (d) of the CPC and contended that even if the pleadings are to be taken at face value, it is clear that the Plaintiff was aware, during his minority, of the alleged non-payment as his father repeatedly voiced a grievance about non-receipt or inadequacy of compensation. He was aware that his father regularly visited the concerned Department. Admittedly, these events occurred well before his father's demise in 1989. A reading of the Complaint would indicate that the Plaintiff was born in 1967, thereby attained majority in 1985 and would have been 22 years when his father passed. Therefore, the limitation commenced from 1985 when he turned 18. The Suit is thus belated by 37 years. That, the pleadings also reveal a fabrication of events as it is suggested that Churamani Dhakal communicated with the father of the Plaintiff, before their father suffered a stroke. It is also suggestive of the fact that, the said communication was made in 2018, nearly 30 years after his death, undermining the credibility of the Complaint and revealing clever drafting to create an artificial and non-existent cause of action. That, in a Suit for declaration the limitation commences from the point at which the right is violated. Even assuming that the Plaintiff acquired knowledge of the non-payment in 2018, the Suit having been filed in 2023 is still barred by limitation as a declaratory relief prescribes a period of three years for filing of Suits. This has been propounded by the Hon'ble Supreme Court in **C. Natrajan vs. Ashim Bai**<sup>2</sup>. To buttress his

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<sup>2</sup> (2008) 6 SCC 674

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submissions, reliance was also placed on the decisions of the Supreme Court, viz., (i) ***Shri Mukund Bhavan Trust and Others vs. Shrimant Chhatrapati Udayan Raje Pratapsinh Maharaj Bhonsle and Another***<sup>3</sup>; (ii) ***Nikhila Divyang Mehta and Another vs. Hitesh P. Sanghvi and Others***<sup>4</sup>; and (iii) ***State of Punjab and Others vs. Bhagwantpal Singh alias Bhagwant Singh (deceased) through Lrs.***<sup>5</sup>. That, the reliefs sought in the Plaint are interdependent, as the main declaratory relief is barred by limitation, the remaining reliefs also have no legs to stand. Hence, the Appeal deserves to be rejected.

**7.** Defendant No.8 (Respondent No.8 herein) had no arguments to advance.

**8.** Having heard the rival contentions, it is imperative to examine the reasons for the Learned Trial Court having allowed the Petition under Order VII Rule 11(d) of the CPC and dismissing the Plaint as barred by limitation, while at the same time holding that there was cause of action and rejecting the application under Order VII Rule 11(a) of the CPC. The Learned Trial Court reasoned *inter alia* as follows;

“.....

**O.VII R.11(d)- Whether the suit is barred by any statute:** *It would appear from paragraph (6) of the plaint, that the impetus given to the plaintiff to pursue this suit was – an information which one Churamani Dhakal of Duga gave to proforma defendant (at the end of 2018) regarding certain land papers of Late Churamani Sharma which was received by him from the office of defendant no.2. The second reason was his father’s frequent complaint about not receiving full compensation until his death in 1989.*

*If this is taken to be correct, than the plaint would have contained the said ‘land papers’ of late Churamani Sharma which Shri Churamani Dhakal of Duga had purportedly received from defendant no.2. It would otherwise seem that this averment has been included only to support the plaintiff’s claim that he came to know about the matter only in 2018. Hence, is within limitation. Further, it would be seen from*

<sup>3</sup> 2024 SCC OnLine SC 3844

<sup>4</sup> 2025 SCC OnLine SC 779

<sup>5</sup> 2024 SCC Online SC 1700

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*paragraph (4) of the plaint that the plaintiff had knowledge about his father not been fully compensated by the State defendants since 1989, when his father passed away. **In this context, the argument of the defendants makes sense as to why the plaintiff had to wait from 1989 until 2023 to file the present suit. Had there been any infringement of the plaintiff's right (as asserted), he ought to have approached the proper forum well within time since he was already an adult in 1989.***

.....” [emphasis supplied]

**9.** Pausing here, pertinently, it is seen that the Learned Trial Court, relying on the arguments of the Defendants, arrived at the conclusion that not only was the Plaintiff an adult in 1989, but also imputed knowledge on him, that he was aware that his father had not been fully compensated and he ought to have taken steps in 1989 itself instead of waiting till 2023. On this aspect, it is no more *res integra*, that, while considering an application under Order VII Rule 11 CPC, the averments in the Plaint are to be examined and read as a whole. The defence available to the Defendants or the plea taken by them in their written statements or in the application filed by them cannot be the anvil on which the averments in the Plaint (*supra*) are tested. It is only the averments in the Plaint that are relevant and germane. The Supreme Court in ***Saleem Bhai and Others vs. State of Maharashtra and Others***<sup>6</sup> while considering the provision of Order VII Rule 11 of the Code, held as follows;

**"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

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<sup>6</sup> (2003) 1 SCC 557

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CPC cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court.”

[emphasis supplied]

**10.** These principles have been reiterated in ***Raptakos Brett & Co. Ltd. vs. Ganesh Property***<sup>7</sup> and ***Mayar (H.K.) Ltd. and Others vs. Owners & Parties, Vessel M.V. Fortune Express and Others***<sup>8</sup> wherein it is observed that, it is clear that in order to consider Order VII 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. 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. 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.

**11.** On the bedrock of these observations, in the instant matter, the Learned Trial Court dismissed the Plaint under Order VII Rule 11(d) of the CPC, taking into consideration the averments made in the application, instead of confining it to the averments in the Plaint and without considering that the plea of limitation is not always a pure question of law. As seen from the averments in the Plaint, the Plaintiff claims to have had knowledge of non-payment of compensation for land acquisition in the year 2018. Without testing the plea regarding the date of knowledge, by means of evidence, to verify whether it was inherently improbable or otherwise, the Learned Trial Court failed to appreciate that shutting out the case of the Plaintiff at the threshold would be a travesty of justice and is a radical step.

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<sup>7</sup> (1998) 7 SCC 184

<sup>8</sup> (2006) 3 SCC 100



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**12.** That having been said, it is essential to notice that in ***Mukund Bhavan Trust*** (supra) relied on by Learned Senior Counsel for the Defendants and 6 and 7, it was held as follows;

**"12.** As settled in law, when an application to reject the plaint is filed, the averments in the plaint and the documents annexed therewith alone are germane. **The averments in the application can be taken into account only to consider whether the case falls within any of the sub-rules of Order VII Rule 11 by considering the averments in the plaint. The Court cannot look into the written statement or the documents filed by the defendants.** The Civil Courts including this Court cannot go into the rival contentions at that stage. Keeping in mind the legal position, let us examine whether the suit filed by the Respondent No. 1 is barred by limitation, in the light of the averments contained in the plaint filed by him." [emphasis supplied]

It may be noticed that the instant matter is distinguishable from ***Mukund Bhavan Trust*** (supra), for the reason that the Plaintiff therein had not produced any documentary evidence to show that he was entitled to the relief of declaration of the suit properties, except by way of reliance on resolutions of the Government which had lost its force, in view of the decree of the Civil Court and subsequent compromise decrees which had attained finality as neither the Plaintiff, nor his ancestors had challenged the same time. As already seen, the claims of the Plaintiff (supra) herein are quite different and are not being reiterated for the sake of brevity.

**(i)** In ***Nikhila Divyang Mehta and Another*** (supra) also relied on by Defendants No.6 and 7, the Supreme Court was of the view that limitation has to run from the date when the cause of action first accrued or on any subsequent date. The concerned Learned Trial court had dismissed the Plaint under Order VII Rule 11 of the CPC and the High Court had reversed the Order by distinguishing between 'having knowledge' and 'full knowledge' to hold that the Suit is not barred by limitation as the limitation would reckon from

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the date of full knowledge. The Supreme Court observed that it is a complete fallacy to make any distinction between 'knowledge' and 'full knowledge' as according to the Plaintiff himself, the cause of action for the Suit had arisen much earlier. Secondly, the Plaintiff had not pleaded any date on which he acquired 'complete knowledge' and that such an argument was only an afterthought and a creation of the High Court. Lastly, it was found that the Appellate Court had ruled that the Plaintiff had claimed different reliefs and even if the Plaint is barred by limitation in respect of one of the reliefs it cannot be rejected in toto. The Supreme Court propounded that the primary relief claimed was to declare the Will and Codicil to be null and void and also all subsequent proceedings thereto. The other reliefs were depending upon the first relief and cannot be granted unless the Plaintiff succeeds in the first relief. As can be seen from the facts and circumstances of the present matter at hand, the date of knowledge in the case of the Plaintiff is said to be 2018 and includes the relief for recovery of possession. It is distinguishable from what has been laid down in ***Nikhila Divyang Mehta (supra)***.

**(ii)** ***Bhagwantpal Singh (supra)***, relied on by Defendants No.6 and 7 is irrelevant for the present purposes as it is a Civil Appeal before the Supreme Court, assailing the correctness of the Judgment and Order passed in a Regular Second Appeal.


**13.** It is evident from the impugned Order that the Learned Trial Court erroneously concluded that, Churamani Dhakal had made over the "land papers" of Churamani Sharma to Defendant No.8, having purportedly received it from Defendant No.2. On this facet,

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it is essential to reproduce hereinbelow Paragraph 6 of the averments in the Plaint;

*"6. That the brother of the Plaintiff Shri Gopal Prasad Sharma (Proforma Defendant) is a government employee currently ranked as Divisional Engineer under the Social Welfare Department, Government of Sikkim. He served as an Assistant Engineer at Duga Block Administrative Centre, Sikkim under Rural Development Department, Government of Sikkim for eight years (2012-2018). Towards the end of his tenure in the said place, one Churamani Dhakal from Duga who would frequent the office of Proforma Defendant Shri Gopal Prasad Sharma talked about his father Late Churamani Sharma. He made a reference to two different incidents: 1) **He told the Proforma Defendant Shri Gopal Prasad Sharma that some time ago he had received certain land papers of the father of the plaintiffs sent by the Office of the Defendant No.2 mistaking him to be Late Churamani Sharma. Since they were in good relation the same was communicated to the father of the Plaintiff when he met. The father of the plaintiff, just before he suffered the stroke and his speech was impeded, also mentioned about not getting his compensation money from Horticulture Department, Government of Sikkim even though the compensation amount for the standing crop was given to him.**" [emphasis supplied]*

**(i)** It is not the case of the Plaintiff that, Churamani Dhakal gave any documents pertaining to the disputed land to the Defendant No.8 as incorrectly understood and interpreted by the Learned Trial Court. In fact, Churamani Dhakal informed Defendant No.8 of the receipt of the documents by him from Defendant No.2, on account of mistaken identity. As Churamani Dhakal had good relations with Churamani Sharma, he communicated it to him (Churamani Sharma). The question of Churamani Dhakal having handed over documents received by him from Defendant No.2, to Defendant No.8 or to anyone else does not arise. The Learned Trial Court was also of the view that, if the documents were made over by Churamani Dhakal to the Defendant No.8, then the Plaint would have contained the "land papers" of Churamani Sharma. This is clearly a misunderstanding by the Learned Trial Court of Paragraph

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6, as already explained hereinabove. Similarly, Learned Senior Counsel for Defendants No.6 and 7 argued that from a reading of Paragraph 6, Churamani Dhakal communicated with the father of the Plaintiff, before he suffered a stroke, but that the communication was in 2018, 30 years after his death. In my considered view, this is also a misinterpretation of the paragraph as it is clear that the communication was made by Churamani Dhakal to Churamani Sharma in his life time, before Churamani Sharma suffered the stroke, impairing his speech. It is the Plaintiff's case that in 2018 Churamani Dhakal informed the Defendant No.8 of the information he had shared with his father. Hence, it is apparent that both the Learned Trial Court and the Learned Senior Counsel have misinterpreted Paragraph 6 of the Plaint.

**(ii)** While considering the observation of the Learned Trial Court regarding furnishing of "land papers", it is worthwhile noticing the provisions of Order VII Rule 14 of the CPC which reads as follows;

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

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

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

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

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The provision is self-explanatory. Suffice it to state that, the Plaintiff has to furnish documents that he relies upon if in his possession, along with the Plaint. When it is not in his possession, he shall state in whose possession it is and if the document which ought to be produced in Court by the Plaintiff is not produced or entered, he cannot do so without the leave of the Court. This provision leaves room for the Plaintiff to furnish documents subsequently, provided the caveats enumerated therein are fulfilled.

**14.** The second limb of the Plaintiff's case is that, when the office of the Defendant No.5 was approached seeking documents pertaining to the transaction and payments thereof, the office issued another extract from the Register, with details of payments made to those persons whose land had been acquired by the Defendants No.2 and 3. The said extract however mentioned the owner's name of the disputed property as "Churamani Pradhan". The response to the Right to Information Act, 2005, application of the Defendant No.8 before the State Public Information Officer of the Defendant No.4, revealed that area measuring 2.30 acres, bearing plot no.571, was acquired by the Horticulture Department, Government of Sikkim, in 1976-77. However, as per the 1979-80 survey operations, the plots were re-numbered. Some area therein was found to be mutated in the name of Defendant No.2 and others in that of the private Defendants No.6 and 7.

**15.** In the impugned Order, the Learned Trial Court referred to Paragraph 22 of ***Esha Bhattacharjee vs. Raghunathpur Nafar Academy***<sup>9</sup> and ***Dahiben vs. Arvindbhai Kalyanji Bhanusali (Gajra)***

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<sup>9</sup> (2013) 12 SCC 649


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**(Deceased) through Legal Representatives and Others**<sup>10</sup>, of the Hon'ble Supreme Court, without elucidating how the Judgments were relevant for the present purposes.

**(i)** In **Dahiben** (*supra*), the Supreme Court observed that, the agricultural land in question, which was in the ownership of the Plaintiffs was under restrictive tenure as per Section 73-AA of the Land Revenue Code. The Plaintiffs filed an application in 2008 before the Collector, to obtain permission to sell the suit land to Respondent No.1-Defendant No.1, stating that they had no objection to the sale of the suit property. The Collector after carrying out verification of the title of the Plaintiffs, passed an Order in 2009, permitting sale of the property as per the 'jantri', issued by the State Government @ ₹ 2,000/- (Rupees two thousand) only, per square metre, which would work out to ₹ 1,74,02,000/- (Rupees one crore, seventy four lakhs and two thousand) only. The Collector granted permission for the sale, subject to the terms and conditions contained in Section 73-AA of the Land Revenue Code. It was stipulated that the purchaser shall make the payment by cheque, and reference of the payment shall be made in the sale deed. The Plaintiffs then sold the suit property to Respondent No.1 vide the registered sale deed, dated 02-07-2009, who in turn issued 36 cheques for a total of ₹ 1,74,02,000/- (Rupees one crore, seventy four lakhs and two thousand) only, towards payment of the sale consideration, the details of which were set out in the registered sale deed. **The Plaintiffs in the sale deed expressly and unequivocally acknowledged that, the consideration was paid by Defendant No.1-Respondent No.1 to the plaintiffs, through cheques, which were issued prior to the execution of the sale**


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<sup>10</sup> (2020) 7 SCC 366

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deed, during the period 07-07-2008 to 02-07-2009. It was further stated that the vendors would not raise any dispute in future denying receipt of the sale price or alleging receipt of only a part amount and if they did so "then, the same would be void by the sale deed". Respondent No.1 subsequently sold the said property to the Respondents No.2 and 3, vide registered sale deed, dated 01-04-2013, for a sale consideration of ₹ 2,01,00,000/- (Rupees two crore and one lakh) only. The Plaintiffs on 15-12- 2014, vide the special suit against the Respondent No.1, impleading the subsequent purchasers, Respondents No.2 and 3 as Defendants, prayed that the sale deed, dated 02-07-2009 be cancelled and declared as illegal, void and not binding on the ground that, the sale consideration fixed by the Collector, had not been paid in entirety by the Respondent No.1. That, an amount of ₹ 40,000/- (Rupees forty thousand) only, was paid to them and the remaining 31 cheques were false. That, the limitation commenced from 21-11-2014, when they obtained a copy of the index of the sale deed dated 02-07-2009 and discovered the alleged fraud. The Respondents No.2 and 3 filed an application for rejection of the Plaint as the suit was barred by limitation and no cause of action has been disclosed in the Plaint. The Trial Court held that the period of limitation for filing the suit was three years from the date of the execution of the sale deed, dated 02-07-2009, whereas the suit was only filed on 15-12-2014. Hence, the Suit was barred by limitation. Besides, before purchasing the suit property, Respondents No.2 and 3 had issued public notice on 14-08-2012 to which the Plaintiff did not raise any objection.

**(ii)** The Supreme Court elaborately discussed the law applicable for deciding an application under Order VII Rule 11 of the

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CPC and observed that the remedy under Order VII Rule 11 of the CPC is an independent and special remedy, wherein the Court is empowered to summarily dismiss the suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision. That, the underlying object of Order VII Rule 11(a) of the CPC is that if in a Suit, no cause of action is disclosed, or the suit is barred by limitation, under Order VII Rule 11(d) of the CPC, the Court would not permit the Plaintiff to unnecessarily protract the proceedings in the suit, to prevent wastage of judicial time. That, the documents filed along with the Plaint are required to be taken into consideration for deciding the application under Order VII Rule 11(a) of the CPC. When a document referred to in the Plaint, forms the basis of the plaint it should be treated as part of the Plaint. It was further held that the Court would determine if the assertions made in the Plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the Plaint at the threshold is made out. **At Paragraph 23.10, it was observed that "At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant and cannot be adverted to, or taken into consideration."** That, the test for exercising the power under Order VII Rule 11 of the CPC is that, if the averments made in the Plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. That, "cause of action" means every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to Judgment. It consists of a bundle of



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material facts which are necessary for the Plaintiff to prove, in order to entitle him to the reliefs claimed in the Suit. The Plaint should disclose the real cause of action and not something illusory. That, should clever drafting create an illusion of a cause of action, it should be nipped at the bud so that bogus litigation will end at the earliest stage.

**(iii)** Agreeing with both the findings of the Learned Trial Court and that of the High Court for the foregoing reasons, the Supreme Court observed that, the Suit filed by the Plaintiffs is clearly an abuse of the process of the Court and bereft of any merit. That, the Learned Trial Court has rightly exercised the power under Order VII Rule 11 of the CPC by allowing the application filed by the Respondents No.2 and 3, which was affirmed by the High Court. The Civil Appeal was dismissed with costs of ₹ 1,00,000/- (Rupees one lakh) only, payable by the Appellant to Respondents No.2 and 3, within the stipulated period.

**(iv)** The facts herein are clearly distinguishable from the case of **Dahiben** (*supra*) as the averments in the Plaint allege that no payment was made to the Plaintiff's father at any point in time for acquisition of Plot No.571, measuring an area of 2.30 acres and knowledge of non-payment is claimed to be in 2018.

**16.** The Learned Trial Court had observed that although the Plaintiff had put forth a cause of action, however the limitation only with regard to 'declaration' was three years as provided under Article 58 of the Limitation Act, 1963. It was also found that even if Articles 64 and 65 of the Limitation Act were invoked, the period of limitation would lapse after 12 years. The Suit being filed after 34 years was one hopelessly barred by limitation. The Learned Trial

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Court and the Learned Counsel for the Defendants, individually, are of the view that the Plaintiff was a major the age of the Plaintiff as given in the Plaint forming the basis of their conclusion which admittedly is also vacillating between 55 and 60 years.

**17.** In light of all the above, it is worth reverting back to of what the pronouncement of the Supreme Court in *Dahiben (supra)* with regard to Order VII Rule 11 CPC. At Paragraph 23.5, it was observed that the power conferred on the Court to terminate a civil action is however a drastic one and the conditions enumerated in Order VII Rule 11 of the CPC are required to be strictly adhered to. In Paragraph 23.6, the Supreme Court also held *inter alia* that, under Order VII Rule 11 of the CPC a duty is cast on the Court to determine by scrutinising the averments in the Plaint, read in conjunction with the documents relied upon, as to whether the Suit is barred by any law.

**18.** In *Hardesh Ores (P) Ltd. vs. Hede & Co*<sup>11</sup> the Supreme Court observed that it is not permissible to cull out a sentence or a passage, and to read it in isolation. The Plaint has to be constructed as it stands, without addition or subtraction of the words. **If the allegations in the plaint *prima facie* show a cause of action, the Court cannot embark upon an enquiry whether the allegations are in fact true.**

**19.** That having been said, it must be borne in mind that although the right to property is no longer a fundamental right, nevertheless, under Article 300A of the Constitution the rule of law protects it and the Courts are to be the jealous protector of the people's rights ensuring that they are not unlawfully deprived of their property. The Supreme Court in *B. K. Ravichandra and Others*

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<sup>11</sup> (2007) 5 SCC 614

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vs. *Union of India and Others*<sup>12</sup> observed that although the right to property is not a fundamental right protected under Part III of the Constitution of India, it remains a valuable constitutional right. At Paragraph 35, it was specified as follows;

**"35.** It is, therefore, no longer open to the State : in any of its forms (executive, State agencies, or legislature) to claim that the law — or the Constitution can be ignored, or *complied at its convenience*. **The decisions of this Court, and the history of the right to property show that though its pre-eminence as a fundamental right has been undermined, nevertheless, the essence of the rule of law protects it.** The evolving jurisprudence of this Court also underlines that it is a valuable right ensuring guaranteed freedoms and economic liberty. The phrasing of Article 300-A is determinative and its resemblance with Articles 21 and 265 cannot be overlooked, they in effect, are a guarantee of the supremacy of the rule of law, no less. To permit the State : whether the Union or any State Government to assert that it has an indefinite or overriding right to continue occupying one's property (bereft of lawful sanction) — whatever be the pretext, is no less than condoning lawlessness. The courts' role is to act as the guarantor and jealous protector of the people's liberties : be they assured through the freedoms, and the right to equality and religion or cultural rights under Part III, or the right against deprivation, in any form, through any process other than law. Any condonation by the court is a validation of such unlawful executive behaviour which it then can justify its conduct on the anvil of some loftier purpose, at any future time, aptly described as a "loaded weapon ready for the hand of any authority that can bring forward a plausible claim of an urgent need."

**20.** In *D. B. Basnett (Dead) through Legal Representatives vs. Collector, East District, Gangtok, Sikkim and Another*<sup>13</sup> where the Plaintiff filed the Suit after almost 22 years after the alleged land acquisition, before the Learned Trial Court, the Supreme Court approved the findings of the High Court that the lands were never acquired because the procedure prescribed was not followed, notice of acquisition had not been given nor was any amount proved to have been received. At Paragraph 20, it was observed as follows;

**"20.** We are conscious that the land is being used by the respondent State through Respondent 2

<sup>12</sup> (2021) 14 SCC 703

<sup>13</sup> (2020) 4 SCC 572



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Department. That, however, does not give such a licence to the State Government. We had endeavoured to refer the matter for mediation, to find an amicable solution, but that did not fructify. We, however, would like to give some time to the respondent State to analyse the consequences of this judgment, and, in case they so desire, to acquire the land through a proper notification under the said Act, and to take proper recourse in law so as to enable them to keep the land. We grant three (3) months' time from the date of the judgment for the respondent State to make up their mind as to what they want to do. Would they still like to retain the land by issuing a proper notification, or would they like to surrender possession of the land. In either eventuality, the question of payment for use and occupation would still arise, which will have to be determined in accordance with law. Mesne profits would be determined by a Court Commissioner, to be appointed by the trial court, as a relief in that behalf has been sought in the plaint itself.” **[emphasis supplied]**

**21.** I hasten to clarify that noticing the above pronouncements and making a reference to them herein does not tantamount to forming an opinion on the merits of the instant matter. Nonetheless, I am of the considered view that the Court has to in circumstances of acquisition of private property be circumspect more especially where the question of limitation as in the instance case is a mixed question of law and facts. The Learned Trial Court thereby erred in dismissing the Plaint on grounds that it was barred by limitation. In my considered view, the Plaintiff ought to be afforded sufficient opportunity to establish whether the Suit was barred by limitation or not by striking issues and leading evidence in the matter.

**22.** Resultant, the Appeal is allowed.

**23.** The impugned Order of the Learned Trial Court is accordingly set aside.

**24.** The Title Suit be restored to its original number in the Register of Civil Suits and determined in accordance with law.

**25.** Parties to bear their own costs.

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**26.** Copy of this Judgment be transmitted to the Learned Trial Court forthwith along with its records.

**( Meenakshi Madan Rai )**  
**Judge**  
05-05-2025

Approved for reporting : **Yes**

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