



2026:CGHC:2350

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CR No. 279 of 2025

1 - Sourabh Bodani S/o Late Ramesh H. Bodani Aged About 28 Years
R/o Hemu Colony Chowk, Sindhi Colony, Gondiya, District Gondiya
(Maharastra)

2 - Kapil Bodani S/o Late Ramesh H. Bodani Aged About 26 Years
General Power of Attorney Holder Of The Applicant No. 1, 3 to 5, R/o
Hemu Colony Chowk, Sindhi Colony, Gondiya, District Gondiya
(Maharastra)

3 - Smt. Shalini Bodani D/o Late Ramesh H. Bodani Aged About 30
Years R/o Hemu Colony Chowk, Sindhi Colony, Gondiya, District
Gondiya (Maharastra)

4 - Smt. Reshma Bodani D/o Late Ramesh H. Bodani Aged About 35
Years R/o Hemu Colony Chowk, Sindhi Colony, Gondiya, District
Gondiya (Maharastra)

5 - Smt. Seema Bodani W/o Late Ramesh H. Bodani Aged About 30
Years R/o Hemu Colony Chowk, Sindhi Colony, Gondiya, District
Gondiya (Maharastra)

... Applicant

versus

1 - Kanhaiyalal Gidwani S/o Late Bhagwandas Gidwani Aged About 59
Years R/o Behind Shiv Talkies, V I P Colony, Tahsil And District Bilaspur,
Chhattisgarh

2 - Tahsildar Bilaspur, Tahsil Office, District- Bilaspur, C.G.

3 - State Of Chhattisgarh Through The Collector, Bilaspur, Tahsil And
District Bilaspur, Chhattisgarh

... Non-applicants

(Cause-title taken from Case Information System)

For Applicants	:	Mr. Saurabh Sharma and Ms. Harneet Kaur Khanuja, Advocates
For Non-applicant No.1		Mr. Gaurav Singhal, Advocate
For State/Non-applicants No.2 and 3		Mr. Hariom Rai, Panel Lawyer

Hon'ble Shri Amitendra Kishore Prasad, Judge

Order on Board

14.01.2026

1. By way of this civil revision, the applicants have prayed for following relief:-

“It is, therefore, prayed that the Hon’ble Court may kindly be pleased to allow the instant revision and set aside the impugned order dated 08/10/2025 (ANNEXURE A/1) and further be pleased to dismiss the suit filed by plaintiff by allowing the application filed under order 7 rule 11 of the cpc, in the interest of justice.”

2. The brief facts of the case are that respondent No.1/plaintiff has instituted a civil suit for specific performance on the basis of an alleged oral agreement dated 10.11.2009 and a subsequent written agreement to sell dated 15.04.2010, purportedly executed by the applicants'/defendants' father/husband in respect of land bearing Khasra Nos. 235/21 and 235/22 situated at Juna Bilaspur, Tahsil and District Bilaspur (C.G.). It is pleaded that a sum of ₹51,000/- was paid as earnest money and the remaining amount of ₹12,00,000/- was allegedly paid in cash at the time of execution of the written agreement, whereafter possession of the suit land

was handed over to the plaintiff. The executant is stated to have expired on 06.11.2018. After a long and unexplained delay, respondent No.1/plaintiff issued a legal notice to the applicants/defendants on 03.05.2025 seeking execution of the sale deed and thereafter filed the present suit on 09.05.2025, i.e. more than fifteen years after the alleged agreement dated 15.04.2010.

3. The applicants/defendants filed an application under Order VII Rule 11 CPC contending that no agreement for sale was ever executed by their father/husband; that the alleged agreement is forged and fabricated; and that, in any case, the suit is *ex facie* barred by limitation under Article 54 of the Limitation Act, 1963, which prescribes a period of three years for filing a suit for specific performance from the date fixed for performance or, in the absence thereof, from the date when performance is refused. Despite the plaint itself disclosing the dates of the alleged agreement and the inordinate delay of over fifteen years, the learned Trial Court, by order dated 08.10.2025, rejected the application holding that the objections raised involved mixed questions of fact and law. Hence, the present Civil Revision.
4. Learned counsel for the applicants submits that the impugned order passed by the learned trial Court is *per se* illegal, arbitrary and unsustainable in the eyes of law and, therefore, deserves to be set aside. It is contended that while rejecting the application

under Order VII Rule 11 of the Code of Civil Procedure, the learned Trial Court has committed a clear jurisdictional error by failing to exercise the jurisdiction vested in it in accordance with law. It is further submitted that, primarily, the civil suit itself is barred by limitation on the face of the plaint. As per the pleadings of the plaintiff, the written agreement for sale was executed on 15.04.2010, whereas the suit for specific performance has been instituted only on 14.05.2025. Thus, the suit has been filed after more than fifteen years from the date of the alleged agreement and is hopelessly barred by limitation under Article 54 of the Schedule to the Limitation Act, 1963, which provides a period of only three years for filing a suit for specific performance of contract. The learned Trial Court failed to appreciate that the bar of limitation was apparent from the plaint itself and, therefore, the plaint was liable to be rejected at the threshold under Order VII Rule 11 CPC.

5. Learned counsel further submits that under Sections 3 and 9 of the Limitation Act, 1963, it is the bounden duty of the Court to first examine whether the suit is barred by limitation and to dismiss the same if it is so barred, even if no specific plea of limitation has been taken by the defendants. The learned Trial Court has failed to discharge this statutory obligation. It is contended that once the period of limitation commences, the running of time cannot be arrested. From the plaint averments, the right to sue accrued when the plaintiff claims to have paid the entire consideration and

the executant allegedly failed to execute the sale deed. Despite such alleged default, the plaintiff remained completely silent for several years, both during the lifetime of the executant and even after his death. No contemporaneous demand, legal notice or any overt act showing continuous readiness and willingness was pleaded for over a decade, which itself demolishes the plaintiff's case.

6. Learned counsel also submits that the learned Trial Court failed to examine the plaint to determine when the "right to sue" first accrued to the plaintiff and whether, on the admitted pleadings, the suit was within limitation. The expression "right to sue" means the right to seek relief by way of legal proceedings, which accrues only when the cause of action arises and not at a time arbitrarily chosen by the plaintiff. Mere issuance of a legal notice in the year 2025 cannot revive or extend a cause of action which had long since become barred by limitation. It is further submitted that apart from being barred by limitation, the plaint does not disclose any subsisting or legally enforceable cause of action for filing the civil suit. The entire cause of action pleaded is illusory, stale and based on a self-serving assertion after an unexplained delay of more than fifteen years. In the absence of a live cause of action, the suit is liable to be rejected under Order VII Rule 11(a) CPC as well.

7. Lastly, it is urged that the impugned order has been passed without due application of judicial mind and without any meaningful discussion of the plaint averments and settled legal principles. The learned Trial Court has mechanically observed that the issue raised is a mixed question of fact and law, which is wholly perverse in the facts of the present case and frustrates the very object and purpose of Order VII Rule 11 CPC, which is to weed out hopelessly barred and vexatious litigation at the inception. Therefore the impugned order dated 08.10.2025 (Annexure A-1) deserves to be set aside, and the present Civil Revision be allowed in the interest of justice.
8. On the other hand, learned counsel for non-applicant No.1/plaintiff submits that the impugned order does not suffer from any illegality or perversity and has been passed after due consideration of the pleadings on record. It is contended that the question of limitation in the present case involves mixed questions of fact and law, which cannot be decided at the stage of an application under Order VII Rule 11 CPC without leading evidence. Learned counsel submits that, as per the averments made in the plaint, the cause of action arose in the year 2025 when the defendants refused to execute the sale deed, and therefore the suit is within limitation and maintainable. It is further argued that since the plaint discloses a cause of action, the application under Order VII Rule 11 CPC was rightly rejected and no interference is warranted.

9. Learned counsel appearing for the State/non-applicants Nos.2 and 3 submits that the impugned order passed by the learned Trial Court is just, legal and in accordance with law. It is contended that no jurisdictional error or material irregularity has been committed by the Trial Court while rejecting the application under Order VII Rule 11 CPC. Learned State counsel further submits that, at the stage of considering an application under Order VII Rule 11 CPC, the Court is required to confine itself to the averments made in the plaint, and since the plaint discloses a cause of action, the Trial Court has rightly rejected the application. It is, therefore, submitted that the present petition is devoid of merits and is liable to be dismissed.

10. I have heard learned counsel appearing for the parties and perused the documents along with this civil revision.

11. Scope of Order 7 Rule 11 of CPC: Order 7 Rule 11 of CPC provides for rejection of a plaint at the threshold on certain specific legal grounds. These grounds are purely procedural in nature and are limited to examining the pleadings in the plaint alone, not the defence of the defendant or disputed questions of fact. The grounds include:

- When the plaint does not disclose a cause of action;
- When the relief claimed is undervalued and the plaintiff fails to correct it despite opportunity;

- When the plaint is insufficiently stamped and the deficiency is not rectified despite opportunity;
- When the suit appears barred by law.

12. It is well-settled that for deciding an application under Order 7 Rule 11 of CPC, only the averments made in the plaint are to be considered, and not the defence or any disputed facts raised by the defendant.

13. A mixed question of fact and law is one where the answer depends not solely on the application of legal principles, but also requires determination of disputed factual issues through evidence. Examples include disputes about title, possession, fraud, undue influence, valuation of property, and whether the plaintiff is in possession or not. When such questions arise, they cannot be conclusively decided at the threshold stage without trial, because the Court cannot assume facts or evaluate evidence while deciding an application under Order 7 Rule 11 of CPC.

14. Very recently in the matter of ***P. Kumarakurubaran v. P. Narayanan and others*** passed in ***Civil Appeal No. 5622 of 2025 (Arising out of SLP (C) No. 2549 of 2021)***, decided on **29.04.2025**, reported as **2025 INSC 598**, wherein the Hon'ble Supreme Court has reiterated that the issue of limitation cannot be adjudicated at the stage of Order VII Rule 11 CPC when the question hinges upon disputed facts or the date of knowledge. The Court has further held that unless the averments in the plaint

itself ex facie establish that the suit is barred by limitation, the plaintiff cannot be rejected without permitting the parties to lead evidence, as the plea of limitation ordinarily involves a mixed question of fact and law and observed as follows :-

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

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

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

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

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

*(i) **Daliben Valjibhai & Others v. Prajapati Kodarbhai Kachrabhai & Another, 2024 SCC OnLine SC 4105***

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

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

11.

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

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

it was a triable issue and declined to accept the application filed by Respondent 1-Defendant 5 for rejection of the plaint under Order 7 Rule 11(d). That view commends to us.

...

19. In the present case, we find that the appellant plaintiffs have asserted that the suit was filed immediately after getting knowledge about the fraudulent sale deed... We affirm the view taken by the trial court that the issue regarding the suit being barred by limitation in the facts of the present case, is a triable issue and for which reason the plaint cannot be rejected at the threshold in exercise of the power under Order 7 Rule 11(d) CPC.”

(emphasis supplied)

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

(ii) *Salim D. Agboatwala & Others v. Shamalji Oddhavji Thakkar & Others, (2021) 17 SCC 100*

“11. As observed by this Court in *P.V. Guru Raj Reddy v. P. Neeradha Reddy*, the rejection of plaint under Order 7 Rule 11 is a drastic power... When a plaintiff claims that he gained knowledge of the essential facts giving rise to the cause of action only at a particular point of time, the same has to be accepted at the stage of considering the application under Order 7 Rule 11.

12. Again as pointed out by a three-Judge Bench of this Court in *Chhotanben v. Kiritbhai Jalkrushnabhai Thakkar (supra)*, the plea regarding the date on which the plaintiffs gained knowledge of the essential facts, is crucial for deciding the question whether the suit is barred by limitation or not. It

becomes a triable issue and hence the suit cannot be thrown out at the threshold.

13...

14. But a defendant in a suit cannot pick up a few sentences here and there from the plaint and contend that the plaintiffs had constructive notice of the proceedings and that therefore limitation started running from the date of constructive notice. In fact, the plea of constructive notice is raised by the respondents, after asserting positively that the plaintiffs had real knowledge as well as actual notice of the proceedings. In any case, the plea of constructive notice appears to be a subsequent invention.”

(iii) *Shakti Bhog Food Industries Ltd. v. Central Bank of India & Another, (2020) 17 SCC 260*

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

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

“13. As per Order 7 Rule 11, the plaint is liable to be rejected in the following cases:

‘(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;

(c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the

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

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

(e) where it is not filed in duplicate;

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

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

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

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

16. *"The trial court must remember that if on a meaningful—not formal—reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise its power under Order 7 Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, [it has to be nipped] in the bud at the first*

hearing by examining the party searchingly under Order 10 CPC." (See *T. Arivandandam v. T.V. Satyapal* [(1977) 4 SCC 467], SCC p. 468.)

17. *It is trite law that not any particular plea has to be considered, and the whole plaint has to be read.* As was observed by this Court in *Roop Lal Sathi v. Nachhattar Singh Gill* [(1982) 3 SCC 487], only a part of the plaint cannot be rejected and if no cause of action is disclosed, the plaint as a whole must be rejected.

18. In *Raptakos Brett & Co. Ltd. v. Ganesh Property* [(1998) 7 SCC 184] it was observed that the averments in the plaint as a whole have to be seen to find out whether clause (d) of Rule 11 Order 7 was applicable.

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

'15. There cannot be any compartmentalisation, dissection, segregation and inversions of the language of various paragraphs in the plaint. If such a course is adopted it would run counter to the cardinal canon of interpretation according to which a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction or words or change of its apparent grammatical sense. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. At the same time it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair-splitting technicalities.'

20. For our purpose, clause (d) is relevant. It makes it clear that if the plaint does not contain necessary averments relating to limitation, the same is liable to be rejected. For the said purpose, it is the duty of the

person who files such an application to satisfy the court that the plaint does not disclose how the same is in time. In order to answer the said question, it is incumbent on the part of the court to verify the entire plaint. Order 7 Rule 12 mandates where a plaint is rejected, the court has to record the order to that effect with the reasons for such order.”

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

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

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

‘9. A perusal of Order 7 Rule 11 CPC makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order 7 Rule 11 CPC at any stage of the suit — before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 Order 7 CPC, the averments in the plaint are germane; the pleas taken by the defendant in

the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order 7 Rule 11 CPC cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court.'

It is clear that in order to consider Order 7 Rule 11, the court has to look into the averments in the plaint and the same can be exercised by the trial court at any stage of the suit. It is also clear that the averments in the written statement are immaterial and it is the duty of the court to scrutinise the averments/pleas in the plaint. In other words, what needs to be looked into in deciding such an application are the averments in the plaint. At that stage, the pleas taken by the defendant in the written statement are wholly irrelevant and the matter is to be decided only on the plaint averments. These principles have been reiterated in Raptakos Brett & Co. Ltd. v. Ganesh Property [(1998) 7 SCC 184] and Mayar (H.K.) Ltd. v. Vessel M.V. Fortune Express [(2006) 3 SCC 100].

12. *It is also useful to refer the judgment in T. Arivandandam v. T.V. Satyapal [(1977) 4 SCC 467], wherein while considering the very same provision i.e. Order 7 Rule 11 and the duty of the trial court in considering such application, this Court has reminded the trial Judges with the following observation: (SCC p. 470, para 5)*

'5. ... The learned Munsif must remember that if on a meaningful — not formal — reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7 Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10 CPC. An activist Judge is the answer to irresponsible law suits. The trial courts would insist imperatively on examining the party at

the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Chapter XI) and must be triggered against them.'

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

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

....

22. It is well-established position that the cause of action for filing a suit would consist of bundle of facts. Further, the factum of the suit being barred by limitation, ordinarily, would be a mixed question of fact and law. Even for that reason, invoking Order 7 Rule 11 CPC is ruled out. In the present case, the assertion in the plaint is that the appellant verily believed that its claim was being processed by the regional office and the regional office would be taking appropriate decision at the earliest. That belief was shaken after receipt of letter from the Senior Manager of the Bank, dated 8-5-2002 followed by another letter dated 19-9-2002 to the effect that the action taken by the Bank was in accordance with the rules and the appellant need not correspond with the Bank in that regard any

further. This firm response from the respondent Bank could trigger the right of the appellant to sue the respondent Bank. Moreover, the fact that the appellant had eventually sent a legal notice on 28-11-2003 and again on 7-1-2005 and then filed the suit on 23-2-2005, is also invoked as giving rise to cause of action. Whether this plea taken by the appellant is genuine and legitimate, would be a mixed question of fact and law, depending on the response of the respondents."

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

14. It is also to be noted that the appellant has categorically averred in the plaint that he executed the registered power of attorney in favour of his father solely for the limited purpose of constructing a house and carrying out related activities. There is no express clause authorizing his father to sell the suit

property to any person without the appellant's consent and knowledge. Yet, the appellant's father executed a sale deed in favour of his granddaughter, going beyond the scope of the power of attorney, which raises serious doubt about misuse of authority and potential fraud. Such assertions cannot be rejected in the application under Order VII Rule 11 CPC. Accordingly, we are of the view that the plaint discloses a cause of action which cannot be shut out at the threshold. Thus, the trial Court acted within its jurisdiction in refusing to reject the plaint and in holding that the matter ought to proceed to trial. The High Court, while exercising its revisional jurisdiction under Section 115 CPC, ought not to have interfered in the absence of any jurisdictional error or perversity in the trial court's order. Rejecting the plaint where substantial factual disputes exist concerning limitation and the scope of authority under the Power of Attorney, is legally unsustainable."

15. Reverting to the facts of the case in the light of the law laid down by the Hon'ble Supreme Court in **P. Kumarakurubaran** (supra), it is quite vivid that while exercising jurisdiction under Order VII Rule 11 CPC, the Court is required to confine itself strictly to the averments made in the plaint and that the question of limitation can be decided at the threshold only when the same is ex facie apparent from the plaint itself. It is equally well-settled that where determination of limitation hinges upon disputed facts or requires appreciation of evidence, the issue partakes the character of a mixed question of fact and law and cannot be conclusively adjudicated without trial.
16. In the present case, it is not in dispute that, as per the plaint averments, the so-called written agreement for sale is stated to

have been executed on 15.04.2010, whereas the civil suit for specific performance has been instituted on 14.05.2025, i.e. after a lapse of more than fifteen years. At the same time, the plaintiff has pleaded that the cause of action accrued subsequently and has sought to justify the filing of the suit within limitation. Whether such plea regarding accrual of cause of action is genuine, sustainable in law, or merely an attempt to give a colour of limitation to an otherwise stale claim, necessarily requires adjudication upon evidence.

17. In view of the aforesaid legal position and keeping in mind the ratio laid down in ***P. Kumarakurubaran*** (supra), this Court is of the considered opinion that though the plaint could not have been rejected outright under Order VII Rule 11 CPC at this stage, the issue relating to limitation and existence of cause of action goes to the very root of the matter. Therefore, the learned Trial Court ought to adjudicate the same at the earliest as a preliminary issue.
18. Accordingly, while declining to interfere with the impugned order dated 08.10.2025 rejecting the application under Order VII Rule 11 CPC, the learned Trial Court is directed to frame an appropriate preliminary issue with regard to limitation and cause of action, permit the parties to lead evidence thereon, and decide the said preliminary issue strictly in accordance with law.

19. In case the suit is apparently barred by limitation, the concerned Trial Court may pass an appropriate order keeping in view the prescribed period of limitation.
20. With these observations and directions, the present Civil Revision stands **disposed of**.
21. It is expected that the learned Trial Court shall make all endeavours to decide the aforesaid preliminary issue expeditiously.

Sd/-

(Amitendra Kishore Prasad)
Judge

Yogesh