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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.75 OF 2024

Jayesh Dinesh Kadam and Anr. .. Applicants

Versus

Andrew David Fernandes
through POA, Balkrishna Ashok Shelar and Ors. .. Respondents

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- Mr. Yuvraj P. Narvankar a/w. R. R. Kad – Deshmukh, Advocates for Applicants.
- Dr. Abhinav Chandrachud a/w. Ms. Unnati Ghia i./by Ms. Dipti Shah, Advocates for Respondent No.1.
- Ms. Kinjal Desai, Advocate for Respondent No.15.

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CORAM : MILIND N. JADHAV, J.
RESERVED ON : JULY 08, 2024
PRONOUNCED ON : AUGUST 09, 2024

JUDGMENT:

1. Heard Mr. Narvankar, learned Advocate for Applicants; Dr. Chandrachud, learned Advocate for Respondent No. 1 and Ms. Desai, learned Advocate for Respondent No. 15. None present for the other Respondents.

2. Applicant No.2 - M/s. Mahabharat Builders in the Civil Revision Application (CRA) is Defendant No. 15 in the suit. Principal contesting Respondent is Respondent No.1 who is Plaintiff in the Suit. Plaintiff filed the suit on 02.05.2023 seeking a declaration that the registered Sale Deed dated 20.03.1969 executed between grandfather of Plaintiff and one Shankarrao Parshuram Jadhav, predecessor-in-title

of Defendant No. 1 to 10 and another registered Sale Deed dated 15.04.2008 executed between Defendant No.1 to Defendant No.10 and Defendant No.11 to Defendant No.15, be declared illegal, null and void and not binding on Plaintiff and be cancelled and set aside.

3. Defendant No. 11 to 15 filed Application below Exhibit [-] under Order VII Rule 11 (a) and (d) of the Code of Civil Procedure, 1908 (for short "CPC") for rejection of the Suit Plaint. By the impugned order dated 29.11.2023, learned Trial Court dismissed the Application on the ground of no cause of action and holding that on reading of the Suit Plaint it was concluded that Plaintiff became aware of the impugned registered Sale Deeds dated 20.03.1969 and 15.04.2008 only in the year 2022 for the first time.

4. Briefly stated, the following facts are necessary for adjudication of the present CRA:-

4.1. Applicant No.2 is the original Defendant No.15 in Special Civil Suit No.281 of 2023. Respondent No.1 is the original Plaintiff while the other Respondents are the remaining Defendants.

4.2. Suit property is part of the larger property ad measuring 7075.20 square meters which was owned by Mr. Domingo C. Fernandes the great grandfather of Plaintiff. Upon his demise on 23.06.1946, Suit property was bequeathed to his 6 sons namely Robert, Cecil, Victor, Eric, Arthur and John as per his Will dated

22.10.1944 which was probated. There was one condition stated in the Will, that the Suit property could not be transferred outside the family. On 20.03.1969, Robert, one of the 6 sons, sold his share in the undivided Suit property to Mr. Shankarrao Parshuram Jadhav through a registered sale deed. Similarly, the other 5 sons of Domingo also sold their undivided share in the larger property which came to their share to the same purchaser, Mr. Shankarrao Parshuram Jadhav by registered sale deeds. Subsequently, the suit property was conveyed and sold further by Defendants Nos.1 to 10 namely legal heirs of Mr. Shankarrao Jadhav to Defendant Nos. 11 to 15 by a registered sale deed dated 15.04.2008. Mutation entries were accordingly carried out in the revenue records pursuant to the aforesaid two registered sale deeds in 1969 and 2008.

4.3. Mr. Victor Fernandes, one of the 6 sons of Mr. Domingo Fernandes filed revenue proceedings in the year 1989 for the first time to challenge the mutation entries effected pursuant to the sale deed dated 20.03.1969. On 23.06.2008, order was passed in Revision proceedings by the Revenue Minister in favour of legal heirs of Shankarrao P. Jadhav (Defendant Nos. 1 to 10) and the challenge to the revenue entries came to be rejected. After 13 years, legal heirs of Mr. David Fernandes (father of Plaintiff) reopened the same proceedings before the Revenue Minister but it stood rejected by order dated 23.03.2021 in favour of Revision Applicants. Some of the

aggrieved Defendants in the Suit filed Writ Petition No. 1958 of 2022 against this order. Plaintiff being one of the Respondent therein received notice of the Writ Petition and hence it is Plaintiff's case that he became aware of the twin sale deeds for the first time in the year 2022.

4.4. Plaintiff therefore filed Special Civil Suit No. 281 of 2023 on 02.05.2023 seeking a declaration that the twin registered sale deeds of 1969 and 2008 be declared null, void and illegal and sought injunction. Defendant Nos.11 to 15 are developing the larger Suit property and have carried out substantial development and construction thereon over the years. On one part of the suit property, the residential bungalow and houses of the 6 sons of Domingo Fernandes and their legal heirs are constructed and they are residing in them since 1960. Defendant Nos.11 to 15 filed Application for rejection of plaint under Order VII Rule 11(a) and (d) of CPC on the ground that no cause of action was made out in the Suit plaint and that the Suit was barred by law. Application was rejected by the Trial Court by order dated 29.11.2023, which is impugned herein.

5. Mr. Narvankar, learned Advocate for the Applicants – Defendant No.15 would submit that in paragraph No.15 of the plaint it is averred that Plaintiff was outside India from 1977 to 2015, however the registered sale deed is of the year 1969. He would submit

that Plaintiff has remained silent about raising any contention about his presence from 1969 to 1977 in India and similarly even after 2015 and until 2023, when the Suit is filed. He would submit that Plaintiff does not plead that he never visited India during 1977 to 2015. He would submit that there is no positive averment on Plaintiff's lack of knowledge about the twin registered sale deeds of 1969 and 2008, which are impugned for the first time in 2023.

5.1. He would submit that Writ Petition No. 1958 of 2022 arises out of an order of the Revenue Minister reopening the RCS proceedings and the Plaintiff participated in these proceeding before the Revenue Minister.

5.2. He would submit that there are no particulars of the alleged fraud stated by Plaintiff in the Suit plaint which do not conform with the provisions of Order VI Rule 4 of CPC. He would submit that pleading of continuous cause of action is alien to a Suit for declaration and should not be countenanced. He would submit that Article 58 of the Limitation Act, 1963 governs suits for declaration and the limitation period for filing a suit for declaration is of 3 years, however in the present case, there is a delay of 54 years and hence the Suit is clearly barred by limitation.

5.3. He would submit that cause of action as stated in the Suit Plaint is manufactured by Plaintiff as he has himself initiated

proceedings before the Revenue Minister through his brother Victor s/o David Fernandes and then projected the 'receipt of notice' as cause of action in the Suit plaint. This is a crucial point and I shall advert to it in detail later as the same Constituted Power of Attorney has filed proceedings before the Revenue Minister and the present Suit before the Trial Court.

5.4. He would submit that Plaintiff has not prayed for relief of possession in the Suit as Section 34 of the Specific Relief Act, 1963 would prohibit the Court from granting only declaratory relief when Plaintiff fails to pray for a consequential relief. Hence, the Suit for declaration is clearly barred by the law of limitation. He would submit that Plaintiff has asserted that there is a right of 'pre-emption' by virtue of the Will of his great grandfather as the said Will barred his successors-in-title from selling the property to outsiders. He would submit that this condition in the Will is against the rule of perpetuity and further, even if any such pre-emption did exist, it was waived by Mr. Robert (his grandfather) and Mr. David (his father) as also by all legal heirs of Domingo Fernandes conjointly and together in favour of the predecessor-in-title of Defendant Nos.1 to 10 in the year 1969.

5.5. He would submit that Section 3 of the Transfer of Property Act, 1882 is not violated as constructive notice in these facts would only apply in the case of 'third parties' and not to the successors-in-

title. He would submit that submission of Plaintiff that notice ought to have been given to the great grandson is a preposterous and an extreme proposition canvassed by the Plaintiff. He would submit that decisions and judgments of the Supreme Court permit rejection of plaint on the ground of limitation and absence of cause of action on reading the Suit Plaint itself and triable issues cannot be imported into the Suit Plaint.

5.6. Mr. Narvankar has referred to and relied upon the following decisions of the Courts in support of his submissions for rejection of the Suit Plaint and setting aside the impugned order:-

(i) *C.S Ramaswamy Vs. K. Senthil & Ors.*[1]

(ii) *Dahiben Vs. Arvindbhai Bhanusali & Ors.*[2]

(iii) *Raghwendra Singh Vs. Ram Prasad Singh & Ors.*[3]

(iv) *Onkar Vs. Shobha Ambadas*[4]

(v) *Kumaran Nair Vs. Mohammed Haneefa & Anr.*[5]

(vi) *Indira Bai Vs. Nand Kishore*[6]

(vii) *Bohru Vs. Khubi & Ors.*[7]

(viii) *Suraj Lamp & Industries Pvt. Ltd. Vs. State of Haryana & Anr.*[8]

(ix) *Jahangir @ Jawahar Kaikashrau Karanjia Vs. Smt. Mehbi Karanjia & Ors.*[9]

(x) *Acchamal Vs. Rajamanickam Karthikeyan & Ors.*[10]

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1 2022 SCC Online SC 130
2 2020 (7) SCC 366
3 (2020) 16 SCC 601
4 [2004(1)Mh.L.J]
5 1989 SCC Online Ker 148
6 (1990) 4 SCC 668
7 2010 SCC Online P&H 5821
8 2009 SCC Online SC 1165
9 2017 (^6 Mh.L.J 270
10 2009 SCC Online Mad 1451

(xi) *Rajenndrabapu Kumar & Ors. Vs. Yashwant Gaikwad & Anr.*[11]

(xii) *Golak Behrai Mandal Vs. Sura Shani Dasi*

(xiii) *Pushpa Aidan Kalantri & Ors. Vs. Purushottam Rathi*[12]

(xiv) Khatri Hotels Pvt. Ltd. & Anr. Vs. UOI & Anr.[13]

6. ***PER CONTRA,*** Dr. Chandrachud, learned Advocate for Respondent No.1 in his reply would submit that while considering an Application for rejection of plaint under Order VII Rule 11 of CPC, it is not permissible for the Court to look into the defence plea raised in the written statement or any piece of evidence. He would strongly advocate that principle of demurrer would apply in this case where one must assume the truth of the case as pleaded by the Plaintiff in the plaint. He would submit that the bar on the Suit should be based solely on reading the pleadings in the plaint. In support of this submission, he would refer to and rely upon the decision of the Supreme Court in the case of ***Ramesh B. Desai Vs. Bipin Vadilal Mehta***[14].

6.1. In the context of gaining knowledge of the sale deeds of 1969 and 2008 in the present case, he would submit that when a Plaintiff claims that he gained knowledge of any essential fact giving rise to a cause of action only at a particular point in time, it has to be accepted as truth by the Court for adjudication of an Application under Order VII Rule 11 of CPC. In the present case, Plaintiff claims to have

11 WP/6519/2023(BHC)
12 2010 (2) Mh.L.J. 813
13 (2011) 9 SCC 126
14 (2006) 5 SCC 638

gained knowledge of the above sale deeds only in the year 2022. According to him the issue of gaining knowledge of a fact is a triable issue and the Suit cannot be thrown out at the threshold stage without permitting Plaintiff to lead evidence in support of his case. In support of this submission he has referred to and relied upon the decision of the Supreme Court in the case of ***Salim D. Agboatwala Vs. Shamalji Oddhavji Thakkar***[15]***.***

6.2. He would submit that the question as to when Plaintiff had actual notice of the sale deed is an issue of fact and can only be decided at the stage of evidence. He would submit that the plea of constructive notice under Section 3 of the Transfer of Property Act, 1882 on the point of limitation cannot be accepted and considered at the stage of rejection of plaint under Order VII Rule 11 of the CPC and it is impermissible for the Court to go into any other fact unless there is suppression of any material fact by the Plaintiff. In support of his above submission, he would refer to and rely upon the decision of the Supreme Court in the case of ***Soumitra Kumar Sen Vs. Shyamlal Kumar Sen***[16].

6.3. By placing reliance on the decision of the Supreme Court in the case of ***Urvashiben Vs. Krishnakant Trivedi***[17], he would submit that averments in the plaint must be accepted as truth at the stage of

15(2021) 17 SCC 100
16(2018) 5 SCC 644
17(2019) 13 SCC 372

deciding an application under Order VII Rule 11 of the CPC. He would state that this judgment has distinguished the judgment in the case of ***T. Arivandanam Vs. T.V. Satyapal***[18] on the point of 'clever drafting' and hence the decision in ***T. Arivandanam*** (*supra*) would be inapplicable to a case of rejection of plaint on the ground of limitation.

6.4. He would submit that a suit cannot be rejected under Order VII Rule 11 on the ground of limitation as it would require proper pleadings, framing of issues and taking evidence. In support of this proposition he would rely on the decision in the case of ***Balsara Construction Ltd. Vs. Hanuman Seva Trust***[19]. Next he would submit that in the light of the decision in the case of ***Tilakdhari Lal Vs. Khetan Lal*** [20], a registered document does not constitute a constructive notice to anybody who had title to the property prior to the registration of the said document. Hence he would argue that the ancestors of the Plaintiff were liable to give notice to the Plaintiff as also all other legal heirs which was not done. At this juncture before proceedings further I would like to deal with this submission at the threshold itself. The submission is *prima facie* absurd and preposterous and does not appeal to common sense. It is dismissed *in limine*. It is an utterly ridiculous proposition advanced by Dr. Chandrachud. He has failed to explain as to how does the Plaintiff acquire title to the Suit property in the year

18 (1977) 4 SCC 467

19 (2006) 5 SCC 658

20 (1920) CWN 49 (PC)

1969 when it was controlled and handled by his grandfather Robert . Arguing is one thing, but such a submission is not even pleaded. According to him, title of Plaintiff in the year 1969 is required to be assumed by the Court. In that case Plaintiff could have filed an appropriate Civil Suit against his own grandfather, rather all the six branches of the children of Domingo Fernandes who sold the entire larger Suit property by registered sale deeds in 1969. All six registered sale deeds have been produced on record by Mr. Narvankar at the time of hearing. However, I will advert to them later in my findings.

6.5. Next, Dr. Chandrachud would submit that not praying for relief of possession in the Suit does not amount to the Suit being barred based on two grounds. Firstly, that there is a difference between statement of fact disclosing cause of action and the reliefs sought for and hence the reliefs prayed for in the Suit do not constitute a cause of action. Secondly, in paragraph No.5 of the Suit plaint, Plaintiff has contended that he is in possession of a bungalow constructed on a portion of the suit land and it is claimed that Defendant has illegally obtained commencement certificate for development of the remaining larger suit property.

6.6. In support of Plaintiff's case, Dr. Chandrachud has referred to and relied upon the following decisions of the Courts:-

(i) Popat & Kotecha Propety Vs. State Bank of INdian Staff

Association[21]

(ii) Kamala Vs. E.T. Eshwara[22]

(iii) Chhotanneben Vs. Kirirtbhai Thakkaer[23]

(iv) Ram Lal Vs. Shiama Lal[24]

(v) Parbhu Lal Vs. Chattar & Ors.[25]

(vi) Pandurang Kalu Patil Vs. State of Maharashtra[26]

(vii) Ameer Bibi Vs. Chinnammal[27]

(viii) Gandhe Vijay Kumar Vs. Muljt[28]

(ix) Devendra Vs. Lata[29]

(x) Sopan Sukhdeo Sable Vs. Asst. Charity Commissioner[30]

(xi) Aurangabad Smart City Development Corporation Vs. Maharashtra State Board of Waqf[31]

(xii) Vishram Vs. Sudesh Govekar[32]

(xiii) Raj Kumar Vs. M/s Modi Spinning and Weaving Co. Ltd.[33]

(xiv) Vidarbha Industries Power Ltd. Vs. Axis Bank[34]

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21 (2005) 7 SCC 510

22 (2008) 12 SCC 661

23 (2018) 6 SCC 422

24 1930 SCC Online All 309

25 1952 SCC Online All 95

26 (2002) 2 SCC 490

27 (20 September 1966) Madras High Court

28 (2018) 12 SCC 576

29 (2017) 6 MhLJ 914

30 (2004) 3 SCC 137

31 2021 SCC Online Bom 630

32 (2017) 11 SCC 345

33 2015 SCC Online All 8402

34 (2022) 8 SCC 352

(xv) Bhagirathi Prasad Singh Vs. Ram Narayan Rai[35]

(xvi) K. Naina Mihamed Vs. A.M. Vasudevan Chettiar[36]

6.7. He would submit that a revision Court must only interfere if there is perversity in the order and in the present case, the order of the Trial Court is based on the principle of demurrer. He would submit that since there is no perversity in the impugned order, it must not be interfered with in revisional jurisdiction.

7. I have heard Mr. Narvankar, learned Advocate for the Applicants, Dr. Chandrachud, learned Advocate for Respondent No.1 and Ms. Desai, learned Advocate for Respondent No.15 and with their able assistance perused the record and pleadings of the case. Submissions made by the learned Advocates have received due consideration of the Court.

8. In the present case, the nucleus of the submissions advanced by both learned Advocates is based on the interpretation of paragraph No.15 as appearing in the suit plaint. This is the paragraph which pertains to the "cause of action". It will be prudent to reproduce the said paragraph in view of substantial submissions having been advanced on its interpretation. Paragraph No.15 reads thus:-

> *"The cause of action for filing this suit first accrued to the plaintiff only after getting notice of a High Court writ petition bearing no. 1958/2022 filed by deft no. 6 to 9.*

35 2010 SCC Online Pat 737

36 (2010) 7 SCC 603

> *Moreover, the plaintiff was away from India at Bahrain and Maskat from 1977 onwards till 2015. Furthermore, the suit is based upon the fraud of the defendants or the mistaken sale deeds. The plaintiff got knowledge of the same only after receiving the notices of High Court writ petition bearing no. 1958/2022. The plaintiff after receiving the notice of the High Court petition bearing no. 1958/2022, gathered all the papers from High Court petition and is filing this suit. In this suit the plaintiff is challenging two sale deeds within three years of getting the said knowledge of fraud or mistake. The right to sue first accrued to the plaintiff only in the dt.14-02-2022 to challenge these sale deeds. Moreover, the sale deeds in question being fraudulent or mistaken have continued in the revenue record and cause of action is therefore continuous in nature as it concerns continuing tort. The suit concerns knowledge of right, title, interest in the property on which the suit is founded which was concealed to the plaintiff by the fraud or mistake of the defendants. The suit is for the relief of the consequences of fraud or mistake. The plaintiff was never made a party to any of the revenue proceedings between the defendants interse and hence, the cause of action for the plaintiff does not begin to run against the plaintiff till 2022 as stated herein above."*

9. The aforesaid paragraph on cause of action is clear and unambiguous as it reads. According to Applicants, the impugned registered sale deed is of 1969 whereas it is averred that Plaintiff was out of India from 1977 to 2015. However, there is no whisper to justify his quietus from 1969 to 1977 before he purportedly left India and post 2015 after he returned back to India as per his own case. It is further argued by Applicants that it is pleaded by Plaintiff in the suit plaint that he is occupying a part of the suit property (his bungalow), but there is no explanation offered by him for his above omission between 1969 to 1977 and 2015 to 2022. Therefore Plaintiff's case on the "cause of action" is on the face of record false. Further, according to Applicants, there is no pleading or assertion that Plaintiff never

visited India between 1977 to 2015. This, the Plaintiff has deliberately omitted to assert when it is his own case that he has a bungalow situated on the suit property. Rather Mr. Narvankar has informed the Court that, Plaintiff visited India for a period of 2-3 months every year between 1977 to 2015 and stayed put in his own bungalow on a part of the suit property itself.

10. In view of the obscure averments by the Plaintiff in the said paragraph under reference leaving to the imagination of the reader, I am inclined to accept the submission of the Applicants. Paragraph on cause of action is vague and clearly insufficient in this regard. There are large gaps. The gaps have been avoided deliberately to justify the cause of action. Several questions remain unanswered and unexplained. Though Dr. Chandrachud has vehemently argued and submitted that even if the plaint lacks the material particulars, Plaintiff cannot be non-suited at the threshold since the objection raised by Applicants is a triable issue and matter of evidence, and if given an opportunity Plaintiff will prove the objections of Applicant to the contrary. However on re-reading the paragraph under reference, in the absence of material particulars, I am inclined to reject the case of Plaintiff. This is because, it is not only the absence and lack of material particulars but absence of material pleadings asserted on behalf of Plaintiff in the facts of the present case and which are argued before me. Plaintiff is stoically silent about his knowledge of the impugned

sale deeds, despite his presence on the Suit property itself all throughout and once that is the *prima facie* case borne out from his own pleadings, the argument advanced by Dr. Chandrachud about it being a triable issue stands completely vanquished. There cannot be any reason whatsoever for a trial on an issue or question of fact which Plaintiff has not pleaded in the suit plaint and he leaving it for the Court's imagination and presumption. Once it is an admitted position that there is no pleading pertaining to Plaintiff's quietus from 1969-1977 and 2015 to 2022, once there is no pleading about he never visiting India during 1977 to 2015, Plaintiff's case lacks *bonafides* and therefore the argument of the Plaintiff about limitation being a mixed question of law and fact in the face of his averments in the Plaint cannot be accepted. On the basis of the above observations, the plaint is clearly barred by the law of limitation on the face of record.

11. It is seen that, in the suit plaint, Plaintiff has pleaded the fact that he learnt or got knowledge of the registered sale deeds of 1969 and 2008 for the first time after receipt of notice in the Writ Petition filed in this Court pertaining to proceedings relating to mutation entries of the Applicants and others in respect of the Suit property. It is Plaintiff's case that right to sue has first accrued to him on 14.02.2022. However, on a bare reading of the suit plaint no significance can be attributed to this date of knowledge when the right to sue first accrued to Plaintiff due to following two reasons:-

(i) The most significant and critical aspect which has been brought to my notice is the fact that in 1989 brother of Plaintiff Mr. Victor filed RTS proceedings to challenge mutation entries of the year 1969. These proceedings were decided in favour of Defendants No. 1-10 on 23.6.2008 by the statutory authorities under the Maharashtra Land Revenue Code, 1966 (for short '**MLRC**'). There was a complete hiatus thereafter for 13 years until on 23.3.2021 RTS proceedings were reopened by virtue of the order passed by the state government. Applicants being aggrieved therefore filed Writ Petition No. 1958 of 2022 in this Court to challenge the order passed by the State Government to reopen the RTS proceedings;

(ii) When the RTS pleadings are seen, a crucial fact is noticed. The real brother of Plaintiff Mr. Victor is represented by his constituted Power of Attorney, Mr. Balkrishna Shelar. The same Mr. Balkrishna Shelar has however filed the present suit in 2022 on behalf of the Plaintiff, Mr. Andrew Fernandes and verified the Suit Plaint as his constituted Power of Attorney. If this is the

factual position then Plaintiff cannot and can never contend that the suit plaint is maintainable as filed in the year 2022 on the cause of action stated in the suit plaint and the fact that he gained knowledge of the twin sale deeds for the first time in the year 2022. There is therefore a clear dichotomy in the Plaintiff's case. When confronted with the above fact, all that Dr. Chandrachud would repeatedly say is that the Plaintiff should still be given an opportunity to disprove the aforesaid fact in evidence. The question that arises in the court's mind is that how can the Plaintiff disprove the fact that Mr. Shelar has represented his brother Mr. Victor to challenge the mutation entries of 1969 and he is the same person now representing the Plaintiff. It is an admitted position of fact. Plaintiff's pleading that he gained knowledge of the sale deeds of 1969 and 2008 for the first time in 2022 is therefore false on the face of record. In view of the above, submission made by Dr. Chandrachud that the plaint must be read as it is and presumed to be true and if there is any issue of fact missing therein, then the Plaintiff should be given an opportunity to lead evidence and should not be ousted at the threshold cannot be indorsed at all.

12. It is seen that the plaint lacks material particulars in as much as the word “fraud” is pleaded in the paragraph pertaining to cause of action but without giving any material particulars of any facts whatsoever to explain the fraud. Provisions of Order VI Rule 4 of CPC mandate such particulars, *inter alia,* as to who committed the fraud, when was it committed, on whom was it committed, nature and material facts of the fraud, etc. The entire Suit Plaint is devoid of this material aspect of the alleged fraud. In paragraph No.15, Plaintiff has used the word “fraud” or “mistake” in the same sentence for pleading the cause of action in sentence no. 3 which reads thus, “*...further more, the suit is based upon the fraud of the defendants or the mistaken sale deeds*” (***emphasis supplied***). It is seen that two specific causes of action have been pleaded in the alternative together which have a completely different nomenclature without any material particulars of the fraud or mistake committed by any of the Defendants being Defendant No.1 to Defendant No.15 to the Suit. If “fraud” is the cause of action then material particulars as alluded to hereinabove to defraud the Plaintiff need to be pleaded along with *mens rea*. But if the cause of action is due to “mistaken sale deeds” then there is no intention to cheat, but even then particulars of the mistake by the party who committed the mistake and on whom it was committed is not pleaded at any place in the plaint. It is averred that the registered sale deed executed by Plaintiff’s grandfather Robert is dated 20.03.1969. From the record, it

appears that inadvertently registered sale deed dated 20.03.1969 is appended to the Suit Plaint which is by Robert's brother. It is seen that there are 8 registered sale deeds / documents executed between 06.07.1968 and 06.10.1970 by the legal heirs of the late Domingo Fernandes in favour of Defendants Nos. 1-10 including one release deed. In a suit for declaration which is governed by Article 58 of the Indian Limitation Act, 1963, the crucial factor is when did the cause of action first arose for seeking the declaratory reliefs for challenging the registered sale deeds of 1969 and 2008. There is absolutely nothing pleaded in the Suit Plaint.

13. Dr. Chandrachud's submission that Plaintiff will prove the same in evidence as a triable issue is unacceptable in the absence of even rudimentary pleadings in the Suit Plaint. That apart, it is seen that by virtue of the impugned sale deed dated 20.03.1969 and the six similarly registered sale deeds of 1968 and one registered sale deed of 1970 the entire larger suit property barring the bungalow / residences of the six branches / family members constructed thereon, was transferred to the Defendants Nos. 1 to 10. Thus there is a gross delay of approximately 54 years in filing the suit for the reliefs claimed by Plaintiff. The first instance of transfer of the suit property is in 1969. The second instance is in 2008 to Defendant Nos.11 to 15. Both instances are governed by registered sale deeds which have been given effect to by mutation entries after following the due process of law.

There is a presumption of title accrued on the basis of long standing mutation entries in favour of the holder of the property. Once this is the fact, rather admitted fact on the basis of registered sale deeds of 1969 and 2008, then there is gross delay and laches in filing the present suit which is hit by the bar of limitation. In my opinion and in the facts of the present case, filing of such a suit can only be construed as an extortionist claim by the Plaintiff, since the Defendant Nos.11 to 15 are developing the Suit property which belongs to them. The reason is obvious.

14. It is vehemently argued by Dr. Chandrachud that under Section 3 of the Transfer of Property Act, 1882, the question as to whether the Plaintiff actually had notice of the sale deeds dated 20 March 1969 and 15 April 2008 or whether he ought to have known of their existence but for willful abstention or gross negligence did not know about them, is a question of fact that can only be decided after evidence. He would submit that in the case of Agboatwala (supra), the Supreme Court has held that the twin ingredients of section 3 of the Transfer of Property Act, 1882, "are matters of fact to be established through evidence." He would submit that, it has been held in the said case that Defendant in a suit cannot pick up a few sentences here and there from the plaint and contend that Plaintiff had constructive notice of the proceedings and that limitation started running from the date of such constructive notice. According to him the Supreme Court in the

said case has held that the plea of constructive notice on the point of limitation "cannot be accepted at the stage of dealing with an application for rejection of the plaint. He has drawn my attention to Section 3 and the Explanation of the said Section and laboured on it. He would submit that Explanation I to Section 3 (i.e., "a person is said to have notice") of the Transfer of Property Act, 1882 is a deeming fiction which requires no evidence and which imputes knowledge of a registered document on all "acquirers" or “subsequent purchasers” of property. According to him, this explanation would apply to acquirers or purchasers of property, and does not apply to those who do not acquire property after the document in question is registered.

14.1. He would argue that despite the amendment to the Transfer of Property Act, 1882 in 1929, one of the proposition laid down by the Privy Council in *Tilakdhari's case (supra)* that a registered document does not constitute constructive notice to anybody who had title to the property prior to the registration of the said document has not been affected by the said amendment. He would argue that it is settled law that judgments of the Privy Council are binding unless they are overruled by the Supreme Court as held in the case of ***Pandurang Kalu Patil v. State of Maharashtra***[37]. He would draw my attention to paragraph Nos.1, 2 and 7 of the above decision in support of his proposition. He would argue that the judgment cited by the Applicant

37 (2002) 2 SCC 490.

that registration constitutes notice to the world at large cannot be read like a statute in the absence of factual conspectus of the case in which the said proposition was laid down in the case of ***Vidarbha Industries Power Ltd. v. Axis Bank Ltd.***[38].

14.2. It is seen that the issue of notice is a completely illusory cause of action. Plaintiff had to file the suit on some cause of action. Hence, Plaintiff filed the suit on the aforementioned illusory cause of action of receipt of notice in the Writ Petition filed by his brother. Such a cause of action can never be countenanced as it is on the face of record a fraudulent cause of action on the part of the Plaintiff. The same person representing the Plaintiff's brother is the Writ Petition and the RTS proceedings has filed the present suit on behalf of Plaintiff, hence the cause of action it completely misplaced.

15. The answer to the above submissions made on behalf of Plaintiff is plain and simple. On a plain reading of Section 3 of the Transfer of Property Act, 1882, it is seen that the issue of notice or constructive notice would be of relevance only in respect of third parties to the instrument. Here, in the present case Plaintiff is not a third party to the registered sale deed in the year 1969, but a successor in title of the Transferor or Vendor. If I have to accept what Dr. Chandrachud has submitted, then his argument is that the grandfather (vendor) of Plaintiff ought to have given prior notice of transfer of the

38 (2022) 8 SCC 352

suit lands to the Plaintiff (grandson) as he cannot be presumed to have notice of the registered sale deed. It is seen that pursuant to registration of the eight sale deeds in respect of the entire suit property coming to the share of the six sons of Domingo Fernandes (except the residential bungalow area occupied by the successor-in-title like the Plaintiff) possession was delivered and mutation of the revenue record took place. Hence the submission of Plaintiff as noted above is inconceivable and unfathomable. Section 3 of the Transfer of Property Act, 1882 stipulates that the person is said to have notice of a fact when he actually knows or would have known it but for willful abstention or gross negligence. In the present facts, filing of the suit after five decades by Plaintiff is a testimony to his willful abstention and gross negligence. However, the law in this regard is well settled. Registration of eight sale deeds between 1968 and 1970 and registration of the 2008 sale deed is a public notice to the world at large including the Plaintiff. The sale deeds have been followed by mutations in the revenue record which have a presumptive value which the Plaintiff has not challenged. There is also an element of suppression on the part of Plaintiff involved in the present case. The plaint does not disclose the true facts.

16. In the Suit Plaint filed in the Trial Court, Plaintiff has not annexed the very sale deed which he seeks to challenge. The sale deed which is annexed to the Suit Plaint is the deed executed by Mr. Victor

Thomas Fernandes. The name of the grandfather of the plaintiff is Robert Albert Fernandes. That sale deed is dated 20.03.1969. During the course of submissions, all eight sale deeds have been placed on record by applicants. When the sale deed executed by Mr. Robert Fernandes dated 20.03.1969 is seen, there is a clear and unambiguous covenant therein which records that the sale deed is clearly binding on Robert Fernandes and his heirs including his sons and grandsons. Execution clause of the sale deed shows that Robert's son i.e. David is an attesting witness to the sale deed. Plaintiff whose name is Andrew is the son of David. In view of the above covenant in the sale deed and Robert and David not maintaining any challenge thereto, Plaintiff is clearly barred by the doctrine of equitable estoppel from maintaining a challenge thereto after more than five decades. Infact the Plaintiff's suit is not maintainable on the above ground itself.

17. I must observe and specifically record that during the course of arguments, every query put forth by the Court to the Plaintiff's Advocate, Dr. Chandrachud was met with one and only one standard answer and that is, it is a triable issue and a matter of evidence and the Plaintiff may even fail in that exercise, but he should not be ousted at the threshold. One such example is a query put forth by the court to the Plaintiff about his abstention from India between 1977 and 2015 and whether he visited India during that period. Another query put forth is that it is averred in the Suit Plaint that the Plaintiff has a

bungalow on a portion of the suit land where he lived and therefore if that was the admitted position, then how could he claim that he gained knowledge only in 2022 for the first time. So also all the other descendants of late Domingo Fernandes have the residential houses / bungalows on a portion of the Suit land which was not transferred by the sale deeds of 1969 and 2008. When this Court asked the Plaintiff why sufficient and adequate material evidence is not produced by him to believe his case that he remained out of India during the aforesaid period or never ever visited India between 1977 to 2015, all that he would submit is that the Plaintiff will produce the necessary evidence at the time of trial. This stance of the Plaintiff is repeatedly voiced in answer to every question put forth by the court to him in the present case. This demeanor of Plaintiff clearly shows that the plaint and the suit is manifestly vexatious and filed with an ulterior motive. It is a clear case of clever drafting by the Plaintiff. All that he would do repeatedly in answer to every question put forth by the Court is to read paragraph No.15 which is the paragraph on the cause of action and would submit that under the extant decisions of the Supreme Court read and cited by him, the Court should only read the averments in the Suit Plaint and permit the Plaintiff to lead evidence at the time of trial without opining anything on merits. It is seen that a plethora of judgments have been cited by Plaintiff / Respondent No.1 but none of them pertain to a relief sought under Article 58 i.e. relief for

declaration. The citations cited by the Plaintiff are clearly distinguishable on facts in as much as none of the facts in the cited decisions are identical or even remotely close to the facts of the present case or the paragraph pertaining to cause of action and hence they are clearly distinguishable. *Per contra*, the decisions which have been cited by the Applicants clearly permit rejection of Suit Plaint on the ground of limitation and absence or an illusory cause of action. Plaintiff / Respondent No.1 has also faintly argued the restrictive covenant on the transfer of the suit property contained in the Will of Domingo Fernandes. It is settled position in law that such restrictions in the will are void and/or in any event subject to the doctrine of waiver. Admittedly in the present case, there are multiple registered transactions executed between 06.07.1968 and 06.10.1970 by predecessors-in-title of Plaintiff and legal heirs of Domingo Fernandes transferring the entire larger suit property to Defendant Nos. 1 to 10. Thus, once all predecessors in title of the Plaintiff having waived their right of pre-emption by execution and registration of the sale deeds during their life time. There is therefore no cause of action available to the Plaintiff to justify maintainability of the present suit proceedings in law. Plaintiff's suit is nothing but an abuse of the due process of law filed with an extortionist bend of mind since development is proceeded with by Defendant Nos.11 to 15 by following the due process of law. Land prices in the city of Kolhapur where this development is taking

place by Defendant Nos.11 to 15 have risen astronomically in the last decade. The greed for money is driving the Respondent to file the Suit proceedings and nothing more is my opinion. By filing such suits, Developers are forced into compromise or they are threatened with such claims which would hamper their interest and development. In the facts of the present case, submissions advanced by Plaintiff / Respondent No.1 cannot be countenanced. The impugned order is on the face of record perverse when it does not countenance the aforementioned facts at all. The findings returned in the present case that limitation is a mixed question of facts and law *qua* the facts alluded to herein above is not only an incorrect finding but a perverse finding. Such a suit can never be allowed to be proceeded with. The impugned order is unsustainable, meritless and proceeds on an incorrect presumption of law. It is quashed and set aside. Resultantly, the Application filed by the Applicant under Order VII Rule 11 stands allowed and the suit stands dismissed.

18. In the present case, the conduct of Plaintiff in filing the suit proceedings therefore needs to be commented upon and punitive action is required to be invoked against such a Plaintiff. It is seen that the cause of action paragraph i.e. paragraph No.15 is on the face of record drafted in a cryptic and vague manner. There is clear suppression in the said paragraph under reference. The cause of action stated by the Plaintiff is the receipt of notice in the Writ Petition filed

by Mr. Victor Thomas Fernandes. The person who has filed the Writ Petition on behalf of Victor has filed the present suit on behalf of the Plaintiff. His name is Mr. Balkrishna Ashok Shelar. It is an admitted position that the same Mr. Shelar is prosecuting the RTS proceedings to challenge the mutation entries of 1969. Hence, filing of the present suit proceedings by him on behalf of the Plaintiff is nothing but a vexatious approach. In the facts of the present case, if such Suit Plaints are countenanced, it will cause mayhem for *bonafide* subsequent purchasers. The verbosity of the pleadings and arguments of the Plaintiff in the present CRA is also required to be commented upon. As noted above, none of the citations cited by the Plaintiff pertain to the relief under Article 58 which is the relief for declaration. The Plaintiff has given an exhaustive note on the Applicants' compilation of judgments. That note is only on the distinguishment of facts and nothing more. The suit of the Plaintiff is hit by gross delay and laches and that itself is an adequate ground for its dismissal. In view of the observations and findings stated herein above, the Plaintiff has not approached the civil court with clean hands. He has suppressed material information which has been disclosed by the opposite party. Such a Plaintiff deserves to be non-suited in the first instance itself by dismissing the suit at the threshold under Order VII Rule 11. The findings returned in paragraph No.21 of the impugned order which have been vehemently argued by Plaintiff / Respondent No.1 are

rejected in view of my observations and findings. There is absolutely no due diligence on the part of the Plaintiff rather, the cause of action pleaded is an act of ingenious and clever drafting of the Suit Plaint and even arguments made before me by taking recourse to pleadings of fraud or mistake without placing any material particulars on record. The findings returned in paragraphs Nos.24 and 25 are hit by the law of limitation and therefore clearly unsustainable. The exercise adopted by the learned Trial Court of merely going through the Suit Plaint rather only paragraph No.15 and accepting it as gospel truth and also commenting upon the Plaintiff suffering the consequences of not claiming any declaration of title and possession are in fact enough to reject the Suit Plaint threadbare. In that view of the matter, the conclusive finding returned in paragraph No.34 is clearly unsustainable and thus the impugned order is quashed and set aside. Resultantly, the Application filed below Order VII Rule 11 of the CPC stands allowed.

19. It is predominantly observed by me in many similar proceedings that successors-in-title from the subsequent generations are filing similar Suits as is the case of the Plaintiff to challenge vintage registered sale deeds. These vintage registered sale deeds are executed by the predecessors-in-title of the Plaintiffs who file such Suits. It is seen that considering that property prices, rather land prices have increased manifold and have reached exceedingly high proportions,

litigants like the Plaintiff file such Suits to create nuisance to the Defendants - Developers who are developing the property with the sole intention and aim of attempting to extract an extra pound of flesh by resorting to filing Suit proceedings on some pretext or the other. The sole intention which drives such litigants who approach the Civil Courts is to extract a deal for the nuisance and delay that they would cause in development, thereby affecting the rights of the flat purchasers in the development and in turn the subsequent purchasers and the developer. Such is the case herein. It is an admitted position that when admittedly the Plaintiff has been residing on a portion of the larger Suit property and similarly when the successors-in-title of the remaining five sons of late Domingo Fernandes are also residing on a portion of the larger Suit property in their respective residences/bungalows, the Plaintiff cannot plead and state that he got knowledge about the twin registered sale deeds of 1969 and 2008 for the first time in the year 2022. In these facts, the above defence of gaining knowledge is not at all open to the Plaintiff.

20. This is a clear case where the Plaintiff by virtue of clever drafting is attempting to overcome the bar of limitation. It is not the Defendants' case that they are developing the larger Suit property just now. Development has been carried out by them over a period of time and is continuing. Hence, the filing of the Suit plaint by Plaintiff is nothing but a vexatious and extortionist claim by the Plaintiff and such

claims are to be nipped in the bud at the threshold itself. If this is not done by the Court of law, litigants like the Plaintiff will end up taking the law into their hands. That is the precise reason for the existence of provisions of Order VII Rule 11 in the CPC.

21. In view of my above observations and findings, I am inclined to impose exemplary costs of Rs. 50,000 on the Respondent No.1 - Plaintiff for filing such vexatious and frivolous plea in the Trial Court which is nothing but an extortionist claim in order to claim his pound of flesh from the ongoing development and construction which is carried out by Defendant Nos.11 to 15 on the suit property. The costs as directed shall be paid to a charity namely **A.K. Munshi Yojana's J.T. Sheth Mandbuddhi Vikas Kendra,** a Special School imparting education and training to the needs of 150 specially abled children in the field of Education (Classes for 6 to 18 years), early intervention (upto 6 years) and vocational training (18 years above) having its school address and building at A.K. Munshi Yojana Chowk, 3rd Panjarapole Lane, C.P. Tank, Mumbai – 400 004 [Contact Nos. 22425513 / 22423654] registered under the Society Registration Act, XXI of 1980 under No. : 387/81 GBBSD and the Public Trust Act, XXIX of 1950 under No. F-6809. RCI Reg. No. 0163. Costs shall be paid by the Respondent No.1 within a period of four weeks from today. If the above costs are not paid by the Respondents, the same shall be recovered by the Collector, Kolhapur from the Respondent No.1 – Plaintiff as arrrears of land

revenue and paid over to the above mentioned charity.

22. With the above directions, Civil Revision Application succeeds and is allowed.

[MILIND N. JADHAV, J.]

23. After the judgment is pronounced, Dr. Chandrachud would request the Court to consider stay of the judgment to enable the Respondent No.1 - Plaintiff to approach the Superior Court. Considering the reasons that I have given for allowing the Civil Revision Application, I am not inclined to accept the request made by Dr. Chandrachud and the same stands rejected.

[MILIND N. JADHAV, J.]

H. H. SAWANT

HARSHADA HANUMANT SAWANT
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