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ORISSA HIGH COURT : CUTTACK

C.R.P. No.19 of 2019

In the matter of an Application under Section 115 of
the Code of Civil Procedure, 1908

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1. M/s. Kalinga Utkal
Buildwell Private Ltd.
Having its Registered Office at
Near Car Fashion
Mani Sahoo Chhak
Buxi Bazar, Cuttack
Represented through its
Director, Mukesh Jain
Aged about 30 years
Son of Madan Jain
Resident of Jivendra
A-52, Sastri Nagar, Jodhpur
Rajasthan.

2. Mukesh Jain,
Aged about 30 years,
Son of Madan Jain
Resident of Jivendra
A-52, Sastri Nagar, Jodhpur
Rajasthan. ...

Petitioners.

-VERSUS-

1. Orissa Textiles and Steels
Employees' Union
Naya Bazar, Cuttack
A Registered Trade Union
Represented by its General Secretary
Sri Hrudananda Pattanayak



Aged about 58 years
Son of Late Dhruba Charan Pattanayak
At: Tinigharia, P.O.: Naya Bazar
P.S.: Madhupatna
District: Cuttack.

2. Orissa Textiles and Steels Ltd.,
Having its Registered Office
At: Naya Bazar, Cuttack
Represented through its
Additional Director
Siba Prasad Mishra
At/P.O.: Nayabazar
P.S.: Madhupatna, Cuttack.

3. Kalinga Textile Corporation,
Represented by its
Partner Siba Prasad Mishra
Aged about 53 years
Son of Late Raghunath Mishra
Resident of HIG-II-C-62
Housing Board Colony
Baramunda
Bhubaneswar - 3.

...

Opposite Parties.

Counsel appeared for the parties:

For the Petitioners	:	M/s. Surya Prasad Misra, Senior Advocate assisted by Ms. Sagarika Sahoo and Mr. A.C. Panda, Advocates
For the Opposite Party No.1	:	M/s. Bamdev Baral, B.K. Jena, G.P. Swain, Ch. B.K. Praharaj, A.N. Dash, T. Lenka and C. Mallick, Advocates
For the Opposite Party No.2	:	Mr. Sougat Dash, Advocate



P R E S E N T:

**HONOURABLE
MR. JUSTICE MURAHARI SRI RAMAN**

Date of Hearing : 27.11.2024 :: Date of Judgment : 03.02.2025

J U D G M E N T

MURAHARI SRI RAMAN, J.—

Assailing the legality and propriety of Order dated 30.09.2019 passed by the learned 2nd Additional Civil Judge (Senior Division), Cuttack in connection with petition under Clauses (a) and (d) of Rule 11 of Order VII of the Code of Civil Procedure, 1908 filed by the defendant Nos.3 and 4 (petitioners herein) with the prayer to reject plaint in the suit, bearing CS No.1039 of 2017, the petitioners have sought to invoke the jurisdiction of this Court under Section 115 of *ibid.* with the following prayer(s):

“It is therefore most respectfully prayed that this Hon’ble Court may graciously be pleased to admit the Revision, call for the Records of CS No.1039 of 2017, from the Court of the 2nd Additional Civil Judge, Senior Division, Cuttack, and after hearing, set aside the impugned Order dated 30.09.2019, at Annexure-1 to the revision petition and the petitioner under Order VII, Rule 11, Civil Procedure Code at Annexure-4 be allowed;



And, may pass any other Order/Orders as this Hon'ble Court may deem fit;

And, for this act of kindness, the petitioners as in duty bound shall ever pray."

Facts:

2. The opposite party No.1, namely, Orissa Textiles and Steels Employees' Union (for convenience hereinafter referred to as "the Union") filed the suit bearing Civil Suit No.1039 of 2017 pending in the file of the Court of the learned 2nd Additional Civil Judge (Senior Division), Cuttack, with the following prayer(s):

- "(a) A decree be passed declaring the RSD No.517, dated 31.01.2006 and RSD No.518, dated 31.01.2006, registered at District Sub-Registrar Office, Cuttack by the Defendant No.1 and 2 in favour of Defendant No.3 as void, in-operative-in-law and not binding upon the plaintiffs;*
- (b) A declaration that Mutation Record-of-Right bearing Khata No.71 and Khata No.659 of Mouza: Nuapada under Cuttack Sadar Police Station of District Cuttack are void documents;*
- (c) The defendants be permanently restrained not to come upon the suit land, not to disturb the peaceful possession of the plaintiff, not to change the nature and character of the suit, not to transfer the suit land in favour of outsiders;*
- (d) A decree be passed for cost of the suit in favour of the plaintiffs;*



(e) *Any other relief/reliefs as may be deemed fit in favour of the plaintiffs.”*

2.1. A chart showing events along with written note of submission has come to be furnished to this Court on behalf of the opposite parties on 11.04.2023 reveals the following factual position leading to filing of aforesaid suit, maintainability of which is the subject matter of this civil revision petition:

- a. An application for permission for closure of the Odisha Textiles and Steels Ltd. under Section 25-O of the Industrial Disputes Act, 1947 has been refused, which fact was published in the Odisha Gazette Notification No.1260, dated 18.07.1984.
- b. In connection with ID Miscellaneous Case Nos. 73/1987, 225/1985, 209/1990, 265/1996 and others filed under Section 33-C(2) of the Industrial Disputes Act before the Labour Court, this Court *vide* Order dated 02.04.2004 passed in OJC No. 6806 of 1995 held that the workmen were entitled to get their wages and other benefits of service as per Section 25-O(6) of *ibid*.
- c. Agreements were executed between the workmen and management for running the unit and for payment of the wages regularly with back wages



and other benefits of service to the workmen on 19.04.2005 and 06.05.2005.

- d. On 10.01.2006, the Union filed suit registered as CS No.12 of 2006 before the 1st Civil Judge, Senior Division, Cuttack for declaration and permanent injunction as the machinery, materials and &c. were tried to be sold by the Management with separate application for temporary injunction.
- e. Registered Sale Deed Nos.517 and 518 were executed on 31.01.2006 transferring the following properties by the Odisha Textiles and Steels Ltd. (opposite party No.2) and the Kalinga Textile Corporation (opposite party No.3) in favour of the petitioners, which are subject matter of suit in CS No.1039 of 2017 out of which the present revision petition arises. Schedules of properties as reflected in the plaint enclosed as Annexure-2 to the revision petition are extracted herein below:

“Schedule of Property— A

A Registered Sale Deed No. 517, dated 31.01.2006, District: Cuttack, SRO & Tahasil: Cuttack, P.S.: Cuttack Sadar, No. 55, Mouza: Nuapada, Hal Khata No. 71, Hal Plot No. 442, area Ac.3.00 dec., Kissam: Gharabari corresponding Sabik Plot No. 357 and further correspondence to Sabik Khata No. 131, Plot No. 946, Mouza: Nuapada,



Schedule of Property— B

Registered Sale Deed No. 518, dated 31.01.2006, District: Cuttack, SRO & Tahasil: Cuttack, P.S.: Cuttack Sadar, No. 55, Mouza: Nuapada, Hal Khata No. 659, Hal Plot No. 430, area Ac.1.770 dec., Kissam: Gharabari corresponding Sabik Plot No. 346 and further correspondence to Sabik Khata No. 224, Plot No. 614, 615, 616, 617, 618, Mouza: Nuapada.”

- f. On 07.02.2006, Interlocutory Application No.07 of 2006 in CS No.12 of 2006 under Order XXXIX, Rules 1 and 2 of the Code of Civil Procedure, 1908 (for brevity, “CPC”) got disposed of by the 2nd Additional Civil Judge (Senior Division), Cuttack with direction to the Orissa Textiles and Steels Ltd. and others to transfer and shift the scrap, machines and materials after furnishing security in the shape of bank guarantees to the tune of an amount equal to statutory dues of the workers of the Orissa Textiles and Steels Ltd. and others.
- g. Appeal against said Order, being preferred, it was registered as FAO No.26 of 2006, and dismissed on 31.03.2006.
- h. However, an Order dated 25.08.2006 came to be passed by this Court in a writ petition, bearing W.P.(C) No.5479 of 2006, in the context of Order dated 17.02.2006 passed in the petition under Order XXXIX, Rules 1 and 2 in CS No.12 of 2006,



CPC by the Civil Judge, Senior Division permitting transfer of the scrap machineries and materials giving liberty to the Management of the Orissa Textiles and Steels Ltd. to sell machineries and materials under the supervision of the learned trial Court and direction was issued for deposit of the sale proceeds with the trial Court. Relevant portion of said Order reads as follows:

“1. Plaintiff is the petitioner before the Court against the Order dated 17.02.2006 passed by the learned Civil Judge (Senior Division), 1st Court, Cuttack in I.A. No.7 of 2006 as well as the Order passed by the learned District Judge, Cuttack in FAO No.26 of 2006 dismissing the appeal and confirming the Order dated 17.02.2006 passed by the learned Civil Judge.

6. Question as to whether the suit is maintainable with such a prayer or not and as to whether the suit has been undervalued or not are matters to be decided in the suit. Undisputedly, before closure of the factory there were employees in the same and they claim of payment of some statutory dues like wages, bonus, etc. Question, therefore, arises as to how the interest of the employees can be protected. The one way to protect the interest of the employees is to restrain the opposite parties from selling away the machineries and materials to that in the event ultimately it is found that the suit is maintainable and the



employees are entitled to some dues, the same can be recovered by selling away the properties. The difficulty in such a direction is that it will take some time for disposal of the suit and likely any decree passed in the suit may be challenged in appeal if the materials are not sold now the prices will go down after few years and by the time it is decided by the court or otherwise to sell the properties, it may not fetch the price that it may fetch now. In that event, there is no guarantee that the amount ultimately found due to the employees can be recovered by selling away the properties of the company. On consideration of the above, I am of the view that the best course open for the present is to allow the machineries and materials to be sold and the sale proceeds to be deposited in the trial court so that at the end of the trial necessary orders can be passed regarding release of the same.

7. *I, therefore, modify the orders passed by the courts below and direct that the opposite parties be permitted to sell the machineries and materials under observation of the trial court and the entire sale proceeds be deposited before the trial court which shall be kept in fixed deposit till disposal of the suit. Depending on the decision taken in the suit, orders shall be passed for release of the said amount.*

The writ application is disposed of accordingly.”



- i. Thereafter, on 11.12.2006 an Order in review petition, being RVWPET No.118 of 2006, came to be passed directing the petitioner to file an application before the learned trial Court seeking direction to the Management of the Orissa Textiles and Steels Ltd. to deposit the entire cost of the machineries and materials so also the landed properties already sold *vide* Registered Sale Deed Nos.517 and 518, dated 31.01.2006. Order dated 11.12.2006 passed in RVWPET No.118 of 2006 of this Court reads thus:

*“This review petition against the order passed by this Court on 25th August, 2006 in W.P.(C) No.5479 of 2006. In the said application the Court directed that the machines and materials be sold under the observation of the trial Court and the sale proceeds be deposited before the trial Court which shall be kept in fixed deposit till disposal of the suit. This application has been filed alleging therein that the machines and materials had already been sold prior to disposal of the aforesaid writ application. If that be so, the opposite parties deposit the same in the trial Court. It will be open for the petitioner to file an application before the trial Court for a direction to the opposite party to deposit the sale proceeds of machines and materials which are alleged to have been sold before disposal of the writ application. **It is also stated that the lands have also been sold. The petitioner may also file an application in that regard before the trial Court. If such applications are filed, the same***



shall be considered and dispose of by the lower court before whom the suit is pending.

The Review application is disposed of.”

- j. An Order dated 30.11.2007 in Civil Miscellaneous Application being CMA No.14 of 2007 in CS No.12 of 2006 was passed by the 2nd Additional Civil Judge, Senior Division, Cuttack directing the Additional Director of the Orissa Textiles and Steels Ltd., namely Siba Prasad Misra, (who represents opposite party Nos.2 and 3 in the present civil revision petition) to deposit entire sale proceeds before the said Court.
- k. An I.A. No.298 of 2006 being filed in CS No.12 of 2006 under Order XXXIX, Rules 1 and 2 of the CPC by the opposite party No.1-Union before the learned 2nd Additional Civil Judge, Senior Division, Cuttack, the following Order dated 08.02.2008 was passed:

“This is a petition filed by the plaintiff/petitioner under Order XXXIX, Rules 1 and 2, CPC praying to pass necessary orders restraining the opposite party from transferring the suit schedule property to any other persons till disposal of the suit.



4. ***Perused the record. The petitioner as plaintiff has filed the original suit i.e. C.S. 12/06 for a declaration that the outstanding statutory dues (under computation) of the employees under defendant No. 1 and 2 be recovered from the properties of their establishment and they be restrained from transferring the sold property so long as the dues of the employees are not settled and for mandatory injunction directing them to restore the properties, if transferred in the meantime.*** During pendency of the suit, defendant No.6 sold away a portion of the suit property to the present opposite parties after receiving the entire consideration amount. Thereafter, the opposite parties invested huge amount to sub-plot the suit land and to sell the same to others. So, the plaintiff/petitioner filed the present petition to restrain the opposite parties from transferring the said land to any other persons till the settlement of statutory dues of the employees of the defendant's establishment. It appears from the record that during pendency of the suit the present petitioner also filed Misc. Case bearing No. CMA 14/07 against the opposite parties under Section 151 of C.P.C. praying to direct the opposite party No. 6, Siba Prasad Mishra, to deposit the entire sale proceeds of the suit property in the Court and to keep the same in the custody of the Court till disposal of the suit. Prior to that the petitioner also filed I.A. 7/06 under Order XXXIX, Rule 1 and 2 C.P.C. which has been disposed of by this Court vide order



dated 17.11.2006 directing the opposite parties to transfer and shift the scrap machineries and materials after furnishing the security in the shape of bank guarantee to the tune of an amount equal to the statutory dues of the workers under opposite party Nos. 1 and 2 But, the said order was modified by the Hon'ble High Court of Orissa vide Order dated 25.08.2006 in W.P.(C) No. 5479/06 directing the opposite parties to sell the machineries and materials under observation of the trial court and to deposit the entire sale proceeds before the trial Court. **Subsequently, the opposite parties transferred and sold away the landed properties.** So, the petitioner filed a review petition before the Hon'ble High Court vide Review Petition No. 118/06 and the Hon'ble High Court vide its order dated 11.12.2006 directed the petitioner to file an application before the trial Court seeking direction to the opposite parties. **To deposit the entire cost of the machineries and materials so also the landed properties already sold by them.** Accordingly, the petitioner filed a petition to direct the opposite party No. 6 to deposit the entire sale proceeds of the suit property in the Court and to keep the same under the custody of the trial court till disposal of the suit. The said petition was disposed of by this Court on 30.11.2007 directing the opposite party No.6 who is the custodian of the entire sale proceeds to deposit the same in the Court and to keep the same under custody of the trial Court till disposal of the suit.



5. ***The present opposite party is a lis pendens purchaser of the suit property. He has purchased the same from defendant No.6, Shiba Prasad Mishra, under a Registered Sale Deed after payment of full consideration amount. As such he became the original owner of the suit property since the date of purchase. He is also possessing the same on his right, title, interest. He is not a party in the original suit. The plaintiff has no claim against him in the original suit. As the plaintiff has filed the suit against the defendants for a declaration that the outstanding statutory dues of the employees under the establishment of defendant No.1 and 2 will be recovered from the properties of their establishment and for temporary injunction against them from transferring the suit properties so long as the dues of the employees are not settled. But during pendency of the suit defendant No.6 sold the same to the present O.P. after receiving the consideration amount under a Registered Sale Deed. So, the O.P. is no way liable for payment of the statutory dues of the employees of defendant No. 1 and 2's establishment. In case, the plaintiff will succeed in the suit, the defendants including the seller of the suit properties (defendant No.6) will become liable for payment of the same. Hon'ble High Court of Orissa, while disposing of the Review petition, it has also directed the petitioner to file an application before the trial court to direct the opposite party to deposit the entire***



sale proceeds of machineries and materials so also the landed property already sold. As per direction of the Hon'ble High Court the petitioner filed a petition which was disposed of by this Court directing the opposite parties including defendant No.6 to deposit the entire sale proceeds of the sold machineries and materials so also the landed properties in the Court. Taking the facts and circumstances of the case in to consideration, I do not think it proper to restrain the present opposite party from transferring the suit properties till disposal of the suit. Hence, it is ordered:

Order

The Miscellaneous Case is dismissed on contest without cost. Pronounced in the open court today this the 8th. Day of February, 2008."

- l. On 23.07.2008¹, in Interlocutory Application No.63 of 2008 and FAO No.34 of 2008 (arising out of Order dated 08.02.2008 in IA No.298 of 2006 in CS No.12 of 2006), the learned District Judge, Cuttack has restrained the petitioners from changing the nature and character of the suit land purchased from other defendants.

¹ Against this Order dated 23.07.2008 the petitioner-Kalinga Utkal Buildwell Private Limited having preferred writ petition being W.P.(C) No.14165 of 2008, the same came to be dismissed by Order dated 18.11.2014.



m. The petitioners herein filed a petition under Order VII, Rule 11 of the CPC in CS No.12 of 2006. Against rejection of said petition *vide* Order dated 09.09.2009 by the learned 2nd Additional Civil Judge, Senior Division, Cuttack, revision under Section 115 of the CPC being preferred by the present petitioner, this Court made the following observations *vide* Judgment dated 08.03.2017² in Civil Revision No.48 of 2009:

“1. This Civil Revision has been filed assailing the impugned order dated 09.09.2009 passed by the 2nd Additional Civil Judge (Senior Division), Cuttack thereby rejecting an application under Order 7, Rule 11 of the Code of Civil Procedure at the instance of the present petitioner by appearing as defendant No.8 in the suit.

3. Pending trial of the suit, the plaintiff i.e. the present opposite party No.1 filed an application for impleading the present petitioner as defendant by way of an application under Order 1, Rule 10 of the Code of Civil Procedure, which application being allowed by the trial court vide order dated 09.10.2006. Consequent upon allowing the application

² Order dated 29.07.2019 of the Hon'ble Supreme Court in S.L.P.(C) No.12545 of 2018 against the Judgment dated 08.03.2017 rendered in CR No.48 of 2009: *“We do not find any ground to interfere in the impugned order. The Special Leave Petition is dismissed. **However, the Trial Court is directed to decide the Suit No. 12 of 2006 on merits in accordance with law at an early date.*** Pending application(s), if any, stands disposed of accordingly”



under Order 1, Rule 10 of the Code of Civil Procedure, the present petitioner was impleaded as defendant No.8 in the suit. On service of notice, the defendant No.8 at the first hand filed an application under Order 7 Rule 11 of the Code of Civil Procedure for rejection of the plaint as against the present petitioner i.e. defendant No.8. This application was decided on contest ultimately rejecting the application of the petitioner under Order 7 Rule 11 of the Code of Civil Procedure on the premises that the petitioner being a subsequent purchaser of the property involved in the suit there may not be an effective adjudication of the suit in absence of the present petitioner. Further, any judgment and decree passed in the suit may also remain ineffective in absence of defendant No.8. It is under the above premises, the trial court also held that there was no scope for rejecting the plaint at that stage.

9. *Law has been fairly well settled that it is mandatory to first to see that the plaint against which a bundle of facts which is necessary for the plaintiff to prove in order to succeed in the suit and there is also necessity not only to aver the facts but also to prove the facts in order to succeed in the suit. **Entire reading of the plaint after amendment even this Court nowhere finds any facts/pleading involving defendant No.8 so as to determination of either of the issues in***



*suit is required in presence of the defendant No.8. ****

Reading the provision at Order 7 Rule 11 of the Code of Civil Procedure, this Court finds that there is a clear provision for rejection of the plaint in absence of disclosure of cause of action, which means there ought to be disclosure of a cause of action in respect of a party involving the prayer made therein in the suit. From the documents involved in the present case, the pleading and as already observed by this Court that there is absolutely no pleading involving the defendant No.8, the present petitioner, in whatsoever manner in the suit, this Court has no hesitation to observe that in absence of any cause of action pleaded in a plaint, the plaint has to be vitiated in respect of such defendant. Continuance of suit against such parties will become only academic and no help and only an harassment to such parties as it will be compelled to force to face an unnecessary litigation the proceeding throughout the trial, which is admittedly to end with no grant of relief against the petitioner i.e. defendant No.8 in the case at hand.

12. *In another decision in the case of A.B.C. Laminart Pvt. Ltd. & Anr. Vrs. A.P. Agencies, Salem (1999) 2 SCC 163, the Hon'ble Apex*



Court defining the meaning of cause of action observed as follows:

'A cause of action means every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relating whether to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff.'

Similarly, in the case in between Bloom Dekor Ltd. Vrs. Subhash Himatlal Desai & Ors, (1994) 6 SCC 322, the Hon'ble Apex Court again dealing with the concept of cause of action in the circumstance observed as follows:

'By 'cause of action' it is meant every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his



right to a judgment of the Court (Cooke Vrs. Gill, 1873 LR 8 CP 107).

In other words, bundle of facts which it is necessary for the plaintiff to prove in order to succeed in the suit.'

It is mandatory that in order to get relief, the plaintiff has to aver all material facts. In other words, it is necessary for the plaintiff to aver and prove in order to succeed in the suit.'

13. *Considering the facts involved in the case, the allegation raised by the respective parties and going through the impugned order vide Annexure-7 to the Civil Revision, this Court finds the trial court after recording the pleadings of the respective parties and the objections therein involving the application under Order 7 Rule 11 of the Code of Civil Procedure and after taking note of the developments taken through the disposal of the writ petition in W.P.(C) No.5479 of 2006, rejected the application under Order 7 Rule 11 of the Code of Civil Procedure solely on the premises that the direction of the High Court for deposit of the sale proceeds and for non-deposit of the said amount in terms of the direction of the High Court, the presence of defendant No.8 is required to confirm the fact of sale and bring forth the amount received towards the sale of the machinery and materials. This Court here finds in absence of any pleading to this effect, there cannot be an issue. Consequently, such information remain inconsequential and even assuming that such*



evidence may be a requirement, then nothing prevents to record the statement of defendant No.8 taking leave of the Court and by making him a witness. The trial court has failed in appreciating the aforesaid legal aspect.

14. *Under the observations and findings made hereinabove and further following the dictum of the Hon'ble Apex Court referred to hereinabove, this Court finds the petitioner had a clear case for dismissal of the plaint and trial court having failed to appreciate above aspect of the matter, the impugned order cannot be sustained. **Thus, in interfering in the impugned order, this Court sets aside the order at Annexure-7 and allows the application under Order 7 Rule 11 of the Code of Civil Procedure at the instance of the defendant No.8, the present petitioner further directs the trial court to treat the suit to have been dismissed as against the defendant No.8, present petitioner.***

15. *In the result, the Civil Revision stands allowed. No order as to cost."*

n. The opposite party No.1-Union has filed suit being CS No.1039 of 2017 before the 1st Civil Judge, Senior Division, Cuttack. By way of amendment to the plaint the present petitioners were impleaded as defendant Nos.3 and 4 to the said civil suit. Said defendants-petitioners have filed petition under Order VII, Rule 11 of the CPC questioning the maintainability of suit being CS No.1039 of 2017



with a prayer to reject the plaint. In the said petition, narrating the factual details with regard to CS No.12 of 1996 and citing the date of knowledge of the opposite party No.1-Union with respect to RSD No.517, dated 31.01.2006 and RSD No.518 dated 31.01.2006, the defendant Nos.3 and 4 (present petitioners) have taken the stance as follows:

“8. What is the case of the plaintiff that the defendant Nos.1 and 2-company with an ulterior motive and without settling the dues of the workers have sold away certain properties described in the Schedule of the plant. The defendant Nos.1 and 2 have transferred the suit Scheduled property vide RSD No.517, dated 31.01.2006 and RSD No.518 dated 31.01.2006 in favour of the defendant Nos.3 and 4 without the knowledge of the plaintiff with a motive to debar the plaintiff from their legitimate dues. Hence such action of transfer of suit land by the defendant Nos.1 and 2 are illegal and the deed of transfer is a void document and inoperative in law under the laws of the country. Such transfer by virtue of the aforesaid sale deals and the mutation Record-of-Rights issued in favour of the defendant Nos.3 and 4 violating the procedure of law by changing the status of the land from factory premises to ‘gharbari’ land is also bad in the eye of law and accordingly such transfer is not binding upon the plaintiff. Hence the plaintiff having no other alternative is coerced



to file the present suit for declaration of the aforementioned sale deeds as void, inoperative in law and not binding upon the plaintiff.

9. *That it is humbly submitted that the suit in its present form is barred by law of limitation. The plaintiff in the present suit seeks for a declaration that the RSD No.517 and RSD No.518 dated 31.01.2006, as void and inoperative in law and not binding upon the plaintiffs. The Limitation Act, 1963 clearly states that the period of limitation for declaration of a sale deed to be void is three years from when their right to sue first accrues³. Hence their right to bring a suit for declaration of the sale deeds to be void accrued in the year 2006 when the defendant Nos.1 and 2 sold the suit scheduled property to the defendant Nos.3 and 4.”*

³ Articles 58, 59 and 113 of the Schedule appended to the Limitation Act, 1963 stand as follows:

	Description of suit	Period of limitation	Time from which period begins to run
PART III.— Suits relating to declarations			
58.	To obtain any other declaration.	Three years.	When the right to sue first accrues.
Part IV.— Suits relating to decrees and instruments			
59.	To cancel or set aside an instrument or decree or for the rescission of a contract.	Three years.	When the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him
PART X.— Suits for which there is no prescribed period			
113.	Any suit for which no period of limitation is provided elsewhere in this Schedule.	Three years	When the right to sue accrues.



- o. The learned 2nd Additional Civil Judge, Senior Division, Cuttack, has passed the Order dated 30.09.2019, as follows:

*“04. After considering the averment made by both the parties and gone through the case record it is found that the present suit has been filed by the plaintiff for declaration of R.S.D. Nos.517, 518 and R.O.R bearing Khata No.71 and Khata No.659 of mouza Nuapada are void and also permanent injunction. The defendants have filed the petition under Order 7, Rule 11 (a) and (d) of C.P.C. The defendants specifically, prays that the plaintiff has no cause of action to file the present suit. The plaintiff in para No.16 mentioned that, the cause of action arose on 12.12.2017 when the defendants tried to evict the plaintiff. Cause of action comprise of bundle of facts and it can be ascertained after adducing evidence from both the parties and after completion of trial. However, the plain reading of plaint does not show that the present suit is bad for non-disclosure of cause of action. The defendants also raised the plea that the suit is barred by the law of limitation. Law is well settled that question regarding limitation cannot be decided at the time of considering an application under Order 7, Rule 11 of C.P.C for deciding such application form in plaint rather, germane and plea taken by defendant is wholly irrelevant. Issue regarding the suit being barred by limitation is a triable issue and for which reason the plaint cannot be rejected at the threshold. **Question of***



limitation is a mixed question of fact and law. Whether the present suit is barred by law of limitation is an issue which will be decided form the evidences of the parties after settlement of issues. However, the plain reading of the plaint does not show that the present suit is expressly barred by any statute/law.

Considering the aforesaid fact and circumstances of the case, I am of the considered view that the present petition filed by defendant No.3 and 4 on dated bears no merit and stands rejected.”

- p. Said Order dated 30.09.2019 of the 2nd Additional Civil Judge, Senior Division, is under challenge on the ground that the learned Court has failed to exercise its jurisdiction and, thereby illegally exercised its jurisdiction in rejecting the petition under Order VII, Rule 11 of the CPC without applying conscientious mind to the fact of the present case *vis-à-vis* glaringly hit by law of limitation.

Question for consideration in this revision petition:

- 3.** With the aforesaid background material, this Court is called upon to decide whether the rejection of petition under Order VII, Rule 11 of the CPC *vide* Order dated 30.09.2019 in CS No.1039 of 2017 questioning the transactions by virtue of Registered Sale Deeds (RSD



Nos.517 and 518, dated 31.01.2006) executed between the petitioner(s) and the opposite party Nos.2 and 3 citing the reason that the point of limitation being mixed question of facts and law can be decided at the stage of consideration of petition under Clauses (a) and (d) of Rule 11 of Order VII?

Hearing:

- 4.** On consent of counsel for both the sides, this matter is taken up for final hearing at the stage of admission.
- 4.1.** Heard Sri Surya Prasad Misra, learned Senior Advocate along with Ms. Sagarika Sahoo, Advocate for the petitioner; Sri Bamadev Baral, learned Advocate for the opposite party No.1 and Sri Sougat Dash, learned Advocate for the opposite party Nos.2 and 3.
- 4.2.** Upon hearing the counsel for the respective parties, the matter stood reserved for preparation and delivery of Judgment/Order thereon.

Submissions of the petitioner:

- 5.** Sri Surya Prasad Misra, learned Senior Advocate being assisted by Ms. Sagarika Sahoo, learned Advocate reiterating the sequence of events urged that when there is no dispute that the opposite party No.1-Union had the knowledge about execution of sale deeds *vide* RSD Nos.517 and 518, dated 31.01.2006, in that year itself



and such sale deeds being executed between the petitioners and the opposite party Nos.2 and 3 were subject matter of dispute in the earlier proceedings which was carried up to the Hon'ble Supreme Court of India, it is *ex facie* manifest from record that questioning the execution of such sale deeds and seeking declaration by the learned 2nd Additional Civil Judge, Senior Division, Cuttack that the same are “void, inoperative in law and not binding upon the plaintiffs (the opposite party No.1 herein)” is clearly barred by law encompassed within the meaning of clause (d) of Rule (11) of Order VII of the CPC.

5.1. Referring to paragraph 16 of the plaint (Annexure-2) in CS No.1039 of 2017, he would submit that the opposite party No.1, citing cause of action having arose on 12.12.2017, *i.e.*, the date “when the defendants tried to evict the plaintiff from the peaceful possession over the suit land and tried to change the nature and character of the suit land to sale the outsiders”, for claiming such a relief from the learned trial Court is misconceived and misdirected.

5.2. He submitted that the owners of the suit schedule properties being the opposite party No.2 and 3 and by virtue of registered sale deeds being executed in favour of the petitioners, the opposite party No.1-plaintiff can at no stretch of imagination be said to be in peaceful



possession or title of the schedule properties. Furthermore, the sale deeds being executed between the petitioners and the opposite party Nos.2 and 3, the opposite party No.1-Union cannot be said to be privy to contract and as such the Union has no *locus standi* to challenge the Registered Sale Deeds dated 31.01.2006. In view of Clause (a) of Rule 11 of Order VII, CPC no cause of action having arisen on 12.12.2017, the suit is liable to be dismissed by rejecting the plaint in CS No.1039 of 2017.

5.3. This Court having considered the interest of Union and having protected the interest of the Union by Order dated 11.12.2006 passed in RVWPET No.118 of 2006 (arising out of Order dated 25.08.1996 in W.P.(C) No.5479 of 2006) and having set at rest the claim as against the present petitioners *vide* Judgment dated 08.03.2017 passed in Civil Revision No.48 of 2009 (which remained undisturbed by the Hon'ble Supreme Court of India), there is no occasion for the opposite party No.1 to maintain further suit being CS No.1039 of 2017.

5.4. Sri Surya Prasad Misra, learned Senior Advocate made valiant attack on the very sustainability and propriety of Order dated 30.09.2019 passed by the learned 2nd Additional Civil Judge, Senior Division, by advancing argument that though the question of limitation



generally involves mixed question of fact and law, when upon meaningful reading of the plaint it can be couched that clever drafting “created illusion of cause of action”. For the suit is hopelessly barred by limitation, the plaint could have been rejected by the said learned trial Court exercising the jurisdiction under Order VII, Rule 11(d) of the CPC.

- 5.5. When this Court has protected the interest of the Union against the properties of the opposite party Nos.2 and 3 in earlier proceeding(s) by directing them to furnish bank guarantee equal to the amount of statutory dues liable to be paid, and the Hon’ble Supreme Court of India while refraining to entertain special leave petition against the Judgment dated 08.03.2017 in CR No.48 of 2009 in connection with CS No.12 of 2006 pending before the 2nd Additional Civil Judge, Senior Division, Cuttack, being couched in the language contained in the plaint, directed for expeditious disposal of said suit.
- 5.6. Instead of cooperating with the said Court in quick disposal of CS No.12 of 2006, the opposite party No.1 has been trying to protract the litigation by filing the suit bearing CS No.1039 of 2017.
- 5.7. Thus, essentially he would submit that the learned 2nd Additional Civil Judge, Senior Division, instead of appreciating scope and ambit of Order VII, Rule 11, CPC



was swayed away by the cleverly drafted pleading by the opposite party No.1. Sri Surya Prasad Misra, learned Senior Advocate submitted that in this respect it would be apposite to refer to *T. Arivandandam Vrs. T.V. Satyapal*, AIR 1977 SC 2421 = (1977) 4 SCC 467 wherein the legal position has been succinctly stated thus:

*“We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentently resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif’s Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving complaints. The learned Munsif must remember that if on a meaningful — not formal — reading of the complaint 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, (Cr. XI) and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi: ‘It is dangerous to be too good.’ ***”*



5.8. Amplifying his arguments, Sri Surya Prasad Misra, learned Senior Advocate with able assistance of Ms. Sagarika Sahoo, learned Advocate made a reference to Article 59 of the Limitation Act, 1963 and contended that the factum of execution of Registered Sale Deeds on 31.01.2006 between the opposite party No.2 and 3 and the present petitioners was well within the knowledge of the opposite party No.1 much prior to three years of the institution of CS No.1039 of 2017 and the opposite party No.1 has been contesting the rejection of petition of the petitioner under Order VII, Rule 11, CPC filed in the CS No.12 of 2006. It is only after this Court allowed said petition filed at the behest of the petitioner in CR No.48 of 2009, the opposite party No.1 has filed the suit being CS No.1039 of 2017 with mischievous motive and pursuing the vexatious litigation to thwart the Order dated 29.07.2019 of the Hon'ble Supreme Court of India passed in *SLP(C) No.12545 of 2017 (Orissa Textiles and Steels Employees' Union Vrs. Kalinga Utkal Buildwell Private Limited)*.

5.9. Having failed to appreciate such factual details, the learned 2nd Additional Civil Judge, Senior Division, Cuttack has refused to exercise his jurisdiction aptly to consider that Section 3 of the Limitation Act, 1963 casts duty upon the Court to dismiss the suit, if made after prescribed period, although the limitation is not set up



as a defence. Order VII, Rule 11(d) of the CPC furthers the cause of the petitioners inasmuch as it is incumbent upon the Court to reject the plaint where the suit appears from the statement in the plaint to be barred by any “law”, which connotation comprehends within it the “law of limitation”. He, therefore, relied upon the decision of the Hon’ble Supreme Court of India rendered in the case of *Kamlesh Babu Vrs. Lajpat Ray Sharma*, (2008) 12 SCC 577.

Submissions of the opposite party No.1:

6. Sri Bamadev Baral, learned Advocate for the opposite party No.1 contending that allowing the civil revision would virtually dismiss the suit, being CS No.1039 of 2017, at the threshold, which is impermissible in terms of the provisions of Order VII, Rule 11 of the CPC.
- 6.1. It is submitted that the Registered Sale Deeds dated 31.01.2006 are sham transactions entered into between the petitioners and the opposite party Nos.2 and 3 only to dissuade payment of legitimate dues to the opposite party No.1-plaintiff in CS No.1039 of 2017. The earlier suit being CS No.12 of 2006 would be rendered ineffective and infructuous, if the relief by way of petition under Order VII, Rule 11, CPC is granted to the petitioners who are the purchasers of immovable properties of the opposite party Nos.2 and 3.



- 6.2. In the event the Union succeeds in CS No.12 of 2006, the dues liable to be paid to the opposite party No.1 can be recovered from the opposite party Nos.2 and 3 from out of the properties which are sold under Registered Sale Deeds dated 31.01.2006. The transactions between the petitioners and the opposite party Nos.2 and 3 are only to mean defrauding the preferential creditors in terms of Section 529A of the Companies Act, 1956.
- 6.3. It is vehemently contended that the cause of action for filing CS No.12 of 2006 arose when the defendants sold the materials, machineries and shed, *etc.* of the factory to outsiders on 19.04.2005 and 06.05.2005; whereas cause of action arose for filling CS No.1039 of 2017 arose on 12.12.2017 when the defendants tried to evict the plaintiffs from the peaceful possession over the suit land. The cause of action for both the suits being distinct and different involving different parties, the plea of the petitioners would not attract purview of clause (a) of Rule 11 of Order VII nor do the provisions of Section 9 and Section 10 of the CPC apply to the fact-situation of the present case.
- 6.4. It is explained by Sri Bamadev Baral, learned Advocate that in order to establish the bar under Order II, Rule 2 of the CPC, the pleadings of earlier suit (CS No.12 of 2006) compared with the present suit (CS No.1039 of 2017) would make it clear that there is no similitude of



facts. To establish so, detailed evidence is required to be laid in the trial of the suit by the party asserting such fact. The cause of action for the two suits being distinct and the parties are different, additional fact would make whole of the claim in CS No.1039 of 2017 maintainable.

- 6.5. Though Sri Bamadev Baral, learned Advocate cited very many decisions during the course of hearing, in essence, the argument went on to suggest that the suit is maintainable as against the petitioners notwithstanding the petition under Order VII, Rule 11 of the CPC filed at the behest of Kalinga Utkal Buildwell Pvt. Ltd. in CS No.12 of 2006 was allowed by this Court in CR No.48 of 2009. It is vehemently contended that Civil Court's jurisdiction to try all suits of civil nature is to be presumed, unless exclusion of jurisdiction is expressly or explicitly spelt out.

Submissions of the opposite party Nos.2 and 3:

7. Sailing on the same boat as that of the petitioners, Sri Sougat Dash, learned Advocate for the opposite party Nos.2 and 3 would submit that the issue with regard to discharge of liability by these opposite parties would be adjudicated in CS No.12 of 2006 which is stated to be pending before the 2nd Additional Civil Judge (Senior Division), Cuttack (now, 5th Additional Civil Judge (Senior Division), Cuttack) and such suit is directed to



be decided on merits in accordance with law “at an early date” by the Hon’ble Supreme Court of India *vide* Order dated 29.07.2019 in SLP(C) No.12545 of 2018, which was filed at the behest of the opposite party No.1.

7.1. By virtue of orders of this Court in connection with CS No.12 of 2006, the interest of the opposite party No.1 has been directed to be well-protected. Therefore, CS No.1039 of 2017 is a vexatious one and need not be entertained at all.

7.2. He further submitted that the opposite party No.1 has no occasion nor does he have *locus standi* to maintain said suit praying for a relief to declare the Registered Sale Deeds dated 31.01.2006 executed between the opposite party Nos.2 and 3 and the petitioners as void and inoperative for the fact could not be disputed by the learned counsel for the opposite party No.1, Sri Bamadev Baral, that said opposite party No.1-Union is not the true owners of the suit properties.

7.3. The terms of the Registered Sale Deeds dated 31.01.2006 being already acted upon way back in the year 2006, the opposite party No.1 has no cause of action to maintain the suit being CS No.1039 of 2017 at this belated stage.

Legal status with regard to limitation in the context of Order VII, Rule 11(d) of the Code of Civil Procedure, 1908:



8. The scope and ambit of Order VII, Rule 11(a) and (d) of the CPC has elaborately been discussed in *Anil Kumar Dalal Vrs. State of Odisha, 2024 SCC OnLine Ori 1898*, which needs no reiteration herein. This Court also finds support in this regard from *Frost International Limited Vrs. Milan Developers and Builders (P) Limited, 2022 LiveLaw (SC) 340*.
9. With respect to Order VII, Rule 11(d) of the CPC *vis-à-vis* consideration of suit being hit by law of limitation, this Court feels it expedient to take note of *Shakti Bhog Food Industries Ltd. Vrs. The Central Bank of India, (2020) 6 SCR 538 = 2020 INSC 413* (cited by the counsel for the opposite party No.1), wherein the Hon'ble Supreme Court of India has been pleased to observe as follows:

“6. The central question is:

whether the plaint as filed by the appellant could have been rejected by invoking Order VII Rule 11(d) of the CPC?

Indeed, Order VII Rule 11 of the 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 Vrs. Rajiv Kumar Gupta, (2007) 10 SCC 59. In paragraph Nos. 13 to 20 of the reported decision, the Court observed as follows:



‘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 Vrs. 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 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,...' (SCC p. 560, para 9).

15. In *I.T.C. Ltd. Vrs. 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— no 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 Vrs. 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 Vrs. 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. Vrs. 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 of Order 7 was applicable.*

19. *In Sopan Sukhdeo Sable Vrs. Assistant Charity Commissioner, (2004) 3 SCC 137 this Court held thus: (SCC pp. 14647, 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.'***

On the same lines, this Court in Church of Christ Charitable Trust & Educational Charitable Society Vrs. Ponniamman Educational Trust, (2012) 8 SCC 706, observed as follows:

'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 vs. State of Maharashtra*, (2003) 1 SCC 557, in which, while considering Order 7 Rule 11 of the Code, it was held as under: (SCC p. 560, para 9)

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



direction to file the written statement without deciding the application under Order 7 Rule 11 CPC cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court.'

It is clear that in order to consider Order 7 Rule 11, the court has to look into the averments in the plaint and the same can be exercised by the trial court at any stage of the suit. It is also clear that the averments in the written statement are immaterial and it is the duty of the Court to scrutinize 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. Vrs. Ganesh Property, (1998) 7 SCC 184 and Mayar (H.K.) Ltd. Vrs. Owners and Parties, Vessel M.V. Fortune Express, (2006) 3 SCC 100.

12. *It is also useful to refer the judgment in T. Arivandandam Vrs. 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 C.P.C. 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, C.P.C. An activist Judge is the answer to irresponsible law suits. The trial courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Chapter XI) and must be triggered against them.’

It is clear that if the allegations are vexatious and meritless and not disclosing a clear right or material(s) to sue, it is the duty of the trial Judge to exercise his power under Order 7 Rule 11. If clever drafting has created the illusion of a cause of



action as observed by Krishna Iyer, J., in the above referred decision, it should be nipped in the bud at the first hearing by examining the parties under Order 10 of the Code.'

We may also advert to the exposition of this Court in *Madanuri Sri Rama Chandra Murthy Vrs. Syed Jalal*, (2017) 13 SCC 174. In paragraph 7 of the said decision, this Court has succinctly restated the legal position as follows:

- ‘7. The plaint can be rejected under Order 7 Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that the power under Order 7 Rule 11, CPC can be exercised by the Court at any stage of the suit. The relevant facts which need to be looked into for deciding the application are the averments of the plaint only. If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under Order 7 Rule 11 CPC. Since the power conferred on the Court to terminate civil action at the threshold is drastic, the conditions enumerated under Order 7 Rule 11 CPC to the exercise of power of rejection of plaint have to be strictly adhered to. ***The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. It is needless to observe that the question as to whether the suit is***



barred by any law, would always depend upon the facts and circumstances of each case. The averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when the allegations made in the plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under Order 7 Rule 11 CPC can be exercised. If clever drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage.’ ***”

10. *Ergo*, whenever the question as to whether the suit is barred by limitation arises, the Court *inter alia* is to bear in mind the following:

- a. the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case;
- b. 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 VII, Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled;



- c. the averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law;
- d. if the plaint does not contain necessary averments relating to limitation, the same is liable to be rejected and 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;
- e. 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 VII, Rule 11 of CPC;
- f. if clever drafting has “created the illusion of a cause of action”, it should be nipped in the bud at the first hearing by examining the parties under Order 10 of the CPC.

Analysis and discussions:

- 11.** Scanning through the contents of the plaint enclosed to this civil revision petition as Annexure-2 reveals that the cause of action for filing suit bearing CS No.1039 of 2017 arose on 12.12.2017, i.e., the date when “the defendants (petitioner and opposite party Nos.2 and 3



herein) tried to evict the plaintiffs from the peaceful possession over the suit land”.

11.1. The averments of the plaint transpire that the suit has been filed on the apprehension that the wages, bonus, provident fund, gratuity and other statutory dues may possibly not be recovered from the opposite party Nos.2 and 3 in the event the opposite party No.1-Union succeeds in CS No.12 of 2006, which is stated to be pending before the 2nd Additional Civil Judge, Senior Division, Cuttack (presently, 5th Additional Civil Judge, Senior Division, Cuttack).

11.2. Scrutiny of plaint of CS No.1039 of 2017 with reference to Order VII, Rule 14, CPC, to ascertain whether the opposite party No.1-plaintiff has made complete disclosure of facts, it is demonstrably lacking in material particulars. Under the heading “Documents relied upon”, it is reflected as follows:

- “1. R.S.D. No.517, dtd. 31.01.2006.
2. R.S.D No.518, dtd.31.01.2006.
3. Hal Khata No.71
4. Hal Khata No.659
5. Mutation Khata No.71
6. Mutation Khata No.659

Any other documents will be filed with the leave of the court.”

11.3. The documents do not evince the fact that the Union was in possession of the suit schedule properties.



Knowing fully well regarding proceedings and the Orders passed in CS No.12 of 2006 (its own suit), such fact has been concealed in CS No.1039 of 2017.

11.4. The subject plaint does not disclose that at any point of time the opposite party No.1-Union was in possession of the suit schedule land and there is non-disclosure regarding circumstances as to how the Union could claim ownership/title over the suit schedule properties. It also does not disclose the date of knowledge of execution of Registered Sale Deeds dated 31.01.2006. Nevertheless, cunningly enough the plaintiff-opposite party No.1 has not made any averment nor brought out factual details with respect to Judgment dated 08.03.2017 of this Court in Civil Revision No.48 of 2009 and Order dated 29.07.2019 of the Hon'ble Supreme Court of India in SLP(C) No.12545 of 2018. For the sake of reiteration, the petition of the present petitioners in CS No.12 of 2006 under Order VII, Rule 11 of the CPC has been allowed by this Court, which attained finality on dismissal of the aforementioned SLP by the Hon'ble Supreme Court. It may be relevant to take note of the fact that the SLP before the Supreme Court of India was filed by the opposite party No.1-Union and in the said case while dismissing, the said Hon'ble Court directed for adjudication of the suit, being CS No.12 of 2006, at an early date.



11.5. Though the fact of execution of Registered Sale Deeds was within the knowledge of the opposite party No.1, having not questioned the validity (though the Union has no *locus standi*) within the period stipulated under the Limitation Act, 1963, this Court feels it apposite to observe that suppression of material fact would tantamount to fraud on the Court as well as on the parties.

11.6. In *Smt. Badami Vrs. Bhali*, (2012) 6 SCR 75, following was the observation:

“21. In the said case⁴ it was clearly stated that the courts of law are meant for imparting justice between the parties and one who comes to the court, must come with clean hands. A person whose case is based on falsehood has no right to approach the Court. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If a vital document is withheld in order to gain advantage on the other side he would be guilty of playing fraud on court as well as on the opposite party.”

11.7. As it appears, the opposite party No.1 has questioned the transfer of suit schedule properties by dint of execution of the Registered Sale Deeds dated 31.01.2006 in favour of the petitioners by opposite party Nos.2 and 3. The opposite party Nos.2 and 3— the Orissa Textiles

⁴ *S.P. Chengalvaraya Naidu (dead) by L.Rs. Vrs. Jagannath (dead) by L.Rs. and others*, AIR 1994 SC 853.



and Steels Ltd. (company) and the Kalinga Textile Corporation (partnership firm) respectively— alleged not to have paid wages, bonus, provident fund, gratuity and other statutory dues to the employees of the opposite party No.1. The suit bearing Civil Suit No.12 of 2006 has been filed before the Court of the Civil Judge (Senior Division) against the said opposite party Nos.2 and 3 for a declaration that the outstanding dues of the employees be recovered from their properties.

11.8.This Court takes cognizance of the Order dated 11.12.2006 passed in RVWPET No.118 of 2006 in connection with the CS No.12 of 2006, wherein the interest of the opposite party No.1 against the opposite party Nos.2 and 3 has been protected.

11.9.Further, as is undisputed, the Orissa Textiles and Steels Employees' Union-opposite party No.1 filed an Interlocutory Application being I.A. No.298 of 2006 in CS No.12 of 2006 under Order XXXIX, Rules 1 and 2, CPC praying to pass necessary orders restraining the opposite parties from transferring the suit schedule properties to any other stranger. The Order dated 08.02.2008 passed therein clearly depicts that direction was issued to the opposite parties to deposit the entire sale proceeds of the sold machineries and materials so also the landed properties in the Court. Therefore, it was not considered appropriate to restrain the opposite party



Nos.2 and 3 from transferring the suit schedule properties. In CS No.12 of 1996, the opposite party No.1 has impleaded M/s. Kalinga Utkal Buildwell Private Limited as defendant No.8.

11.10. In view of such position, the natural corollary would be that, the opposite party No.1 having not been successful in the CS No.12 of 2006 to restrain the opposite parties from transferring the suit schedule properties, *vide* Registered Sale Deeds dated 31.01.2006, attempted to obtain further orders in this regard by way of subsequent suit, being CS No.1039 of 2017. This is clearly playing fraud on the Court and the opposite party No.1 has not come to the Court with clear heart and clean hand.

12. Thus being perceptible factual matrix of the case as discussed in the foregoing paragraphs, there is no ambiguity in the undisputed position with respect to facts and law. It can be culled as follows:

- a. The documents relied on as reflected in the plaint do not have any semblance of title being vested in the Orissa Textiles and Steels Employees' Union (opposite party No.1-plaintiff).
- b. There is not even a scrap of paper available on record (record of CS No.12 of 2006) nor has it been placed before this Court to suggest that the Orissa



Textiles and Steels Employees' Union (opposite party No.1-plaintiff) had the possession over the suit schedule properties, which were stated to have been transferred by dint of the Registered Sale Deeds bearing Nos.517 and 518 dated 31.01.2006.

- c. In view of Order dated 11.12.2006 passed in RVWPET No.118 of 2006 (relating to CS No.12 of 2006) by this Court, application bearing IA No.298 of 2006 being moved by the opposite party No.1 in the said suit, the learned 2nd Additional Civil Judge, Senior Division, Cuttack, has passed Order dated 08.02.2008 declining to restrain the transfer of properties belonging to the opposite party Nos.2 and 3, but directed the defendant No.6 therein, namely Siba Prasad Mishra, Additional Director of Orissa Textiles and Steels Ltd., to deposit entire sale proceeds. On scrutiny of plaint in CS No.1039 of 2017, such vital fact is found missing from being pleaded. As it appears the opposite party No.1 has sought to avoid the judicial order passed in CS No.12 of 2006 way back in the year 2008. In *Firm of Pratapchand Nopaji Vrs. Firm of Kotrike Venkatta Setty & Sons etc.*, (1975) 3 SCR 1 = 1974 INSC 269, it has been emphasised that,

“A question which has been raised before us is whether the plaintiff, who entered into contracts



*with third parties, who appeared as witnesses in the cases now before us, so that these third parties made the purchases and settlements in Bombay, the payments for which are the subject matter of suits, was dealing with them as a principal to principal. The High Court had found that the relationship between the plaintiff and the third parties he employed to conclude the transactions was that of a principal to principal. The question whether the parties through whom the plaintiff actually alleged carrying out of the contract set up between the plaintiff and the defendants could themselves be regarded as principals or agents of the plaintiffs will become quite immaterial if the objects of the contracts are found to be tainted with the kind of illegality which is struck by Section 23 of the Contract Act. Again, the mere fact that the contracts between the plaintiff and the defendants were entered into at Kurnool in the State of Andhra Pradesh would also not make any difference in principle if the objects of the contracts which were to be carried out at Bombay were of such a kind as to be hit by Section 23 of the Act. The principle which would apply, if the objects are struck by Section 23 of the Contract Act, is embodied in the maxim: ‘Qui facit per alium facit per se’ (What one does through another is done by oneself). **To put it in another form that which cannot be done directly may not be done indirectly by engaging another outside the prohibited area.** It is immaterial whether, for the doing of such an illegal act, the agent employed is given the wider powers or authority of the ‘pucca adatia’, or, as the High Court had held, he is clothed with the powers of an ordinary commission agent only.”*



Pertinent may it be to make a reference to maxim, *Quando aliquid prohibetur fieri, prohibetur ex directo et per obliquum* meaning thereby when the doing of anything is forbidden, then the doing of it either directly or indirectly is forbidden. [Reference, *Concise Law Dictionary, by P.G. Osborn, published by Sweet and Maxwell, 1927. Quando aliquid prohibetur, prohibetur omne per quod devenitur ad illud*, meaning thereby whatever is prohibited by law to be done, cannot legally be effected by an indirect and circuitous contrivance. [See, *Super Construction Vrs. ACST, (2008) 18 VST 387 (Ori)*].

In *Sant Lal Gupta Vrs. Modern Cooperative Group Housing Society Ltd., (2010) 13 SCC 336* it has been explained that what cannot be done directly, is not permissible to be done obliquely, meaning thereby, whatever is prohibited by law to be done, cannot legally be effected by an indirect and circuitous contrivance. An authority cannot be permitted to evade a law by 'shift or contrivance'.

Hence, the learned 2nd Additional Civil Judge, Senior Division, Cuttack, having passed Order dated 08.02.2008 in CS No.12 of 2006 on the application of the opposite party No.1 not to restrain transfer of properties by the opposite party Nos.2 and 3, the subterfuge device purportedly



applied by the opposite party No.1 by filing suit to declare the transfer of properties by virtue of the Registered Sale Deeds dated 31.01.2006 in the year 2017 is apparently an attempt to doing the things indirectly which has already been refused by the learned trial Court.

- d. From the sequence of events as is available on record would lead to arrive at a firm conclusion that the opposite party No.1 had had the knowledge about execution of Registered Sale Deeds dated 31.01.2006 much prior to three years of the date of filing of suit being CS No.1039 of 2017. This suit apparently seems to have been filed only to circumvent or nullify the effect of Order dated 08.02.2008 passed by the 2nd Additional Civil Judge, Senior Division, Cuttack in I.A. No.298 of 2006 in connection with CS No.12 of 2006 in pursuance of Order dated 11.12.2006 in RVWPET No.118 of 2006 (arising out of Order dated 25.08.2006 passed in W.P.(C) No.5479 of 2006) of this Court, in obedience of which the present opposite party No.1 (plaintiff in CS No.1039 of 2017 and defendant in CS No.12 of 2006) had moved said interlocutory application. There is no sufficient and reasonable cause shown by the opposite party No.1 for approaching the Court in CS No.1039 of



2017 to question the execution of Registered Sale Deeds dated 31.03.2006 between the opposite party Nos.2 and 3 and the petitioners, more so when its interest to recover the statutory dues, *etc.* claimed in CS No.12 of 2006 is well-protected by Order dated 08.02.2008 of the 2nd Additional Civil Judge, Senior Division, Cuttack.

12.1. Facts are tell-tale. This Court, thus, would wish to make an observation that non-mention of vital facts and suppressing material particulars bearing effect on the very maintainability of the suit in the plaint (CS No.1039 of 2017) would tantamount to playing fraud not only on the Court but also on the parties concerned.

12.2. Article 59 of the Limitation Act, 1963 clearly lays down that for a suit to be entertained or maintainable for the purpose of cancelling or setting aside an instrument or decree or for the rescission of a contract, the period of limitation prescribed is three years “when the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him”. Reference, at this juncture, may be had to *Prem Singh Vrs. Birbal*, (2006) 5 SCC 353, wherein the scope of the Limitation Act, 1963 and interpretation of Article 59 thereof was discussed vividly. The Hon’ble Court held as under:



- “11. Limitation is a statute of repose. It ordinarily bars a remedy, but, does not extinguish a right. The only exception to the said rule is to be found in Section 27 of the Limitation Act, 1963 which provides that at the determination of the period prescribed thereby, limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.*
- 12. An extinction of right, as contemplated by the provisions of the Limitation Act, prima facie would be attracted in all types of suits. The Schedule appended to the Limitation Act, as prescribed by the articles, provides that upon lapse of the prescribed period, the institution of a suit will be barred. Section 3 of the Limitation Act provides that irrespective of the fact as to whether any defence is set out or is raised by the defendant or not, in the event a suit is found to be barred by limitation, every suit instituted, appeal preferred and every application made after the prescribed period shall be dismissed.*
- 13. Article 59 of the Limitation Act applies specially when a relief is claimed on the ground of fraud or mistake. It only encompasses within its fold fraudulent transactions which are voidable transactions.*
- ****
- 16. When a document is valid, no question arises of its cancellation. When a document is void ab initio, a decree for setting aside the same would not be necessary as the same is non est in the eye of the law, as it would be a nullity.*



17. *Once, however, a suit is filed by a plaintiff for cancellation of a transaction, it would be governed by Article 59. Even if Article 59 is not attracted, the residuary article would be.*
18. *Article 59 would be attracted when coercion, undue influence, misappropriation or fraud which the plaintiff asserts is required to be proved. Article 59 would apply to the case of such instruments. It would, therefore, apply where a document is prima facie valid. It would not apply only to instruments which are presumptively invalid. (See Unni Vrs. Kunchi Amma, ILR (1891) 14 Mad 26 and Sheo Shankar Gir Vrs. Ram Shewak Chowdhri, ILR (1897) 24 Cal 77).*
19. *It is not in dispute that by reason of Article 59 of the Limitation Act, the scope has been enlarged from the old Article 91 of the 1908 Act. By reason of Article 59, the provisions contained in Articles 91 and 114 of the 1908 Act had been combined.*
20. *If the plaintiff is in possession of a property, he may file a suit for declaration that the deed is not binding upon him but if he is not in possession thereof, even under a void transaction, the right by way of adverse possession may be claimed. Thus, it is not correct to contend that the provisions of the Limitation Act would have no application at all in the event the transaction is held to be void.*
21. *Respondent-1 has not alleged that fraudulent misrepresentation was made to him as regards the character of the document. According to him, there had been a fraudulent misrepresentation as regards its contents.*



22. *In Ningawwa Vrs. Byrappa, (1968) 2 SCR 797 this Court held that the fraudulent misrepresentation as regards character of a document is void but fraudulent misrepresentation as regards contents of a document is voidable stating:*

‘The legal position will be different if there is a fraudulent misrepresentation not merely as to the contents of the document but as to its character. The authorities make a clear distinction between fraudulent misrepresentation as to the character of the document and fraudulent misrepresentation as to the contents thereof. With reference to the former, it has been held that the transaction is void, while in the case of the latter, it is merely voidable.’

In that case, a fraud was found to have been played and it was held that as the suit was instituted within a few days after the appellant therein came to know of the fraud practised on her, the same was void. It was, however, held:

‘Article 91 of the Limitation Act provides that a suit to set aside an instrument not otherwise provided for (and no other provision of the Act applies to the circumstances of the case) shall be subject to a three years’ limitation which begins to run when the facts entitling the plaintiff to have the instrument cancelled or set aside are known to him. In the present case, the trial court has found, upon examination of the evidence, that at the very time of the execution of the gift deed, Ext. 45 the appellant knew that her husband prevailed upon her to convey Surveys Plots Nos. 407/1 and 409/1 of Tadavalga village to him by undue influence. The finding of the trial court is based upon the admission of the



appellant herself in the course of her 33 evidence. In view of this finding of the trial court it is manifest that the suit of the appellant is barred under Article 91 of the Limitation Act so far as Plots Nos. 407/1 and 409/1 of Tadavalga village are concerned.'

28. *If a deed was executed by the plaintiff when he was a minor and it was void, he had two options to file a suit to get the property purportedly conveyed thereunder. He could either file the suit within 12 years of the deed or within 3 years of attaining majority. Here, the plaintiff did not either sue within 12 years of the deed or within 3 years of attaining majority. Therefore, the suit was rightly held to be barred by limitation by the trial court."*

12.3. With regard to Article 58 and Article 113 of the Limitation Act, 1963, it has been interpreted by the Hon'ble Supreme Court of India in the case of *Shakti Bhog Food Industries Ltd. Vrs. The Central Bank of India*, (2020) 6 SCR 538, which is quoted hereunder:

"9. *The expression used in Article 113 of the 1963 Act is "when the right to sue accrues", which is markedly distinct from the expression used in other Articles in First Division of the Schedule dealing with suits, which unambiguously refer to the happening of a specified event. Whereas, Article 113 being a residuary clause and which has been invoked by all the three Courts in this case, does not specify happening of particular event as such, but merely refers to the accrual of cause of action on the basis of which the right to sue would accrue.*



10. *Concededly, the expression used in Article 113 is distinct from the expressions used in other Articles in the First Division dealing with suits such as Article 58 (when the right to sue “first” accrues), Article 59 (when the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded “first” become known to him) and Article 104 (when the plaintiff is “first” refused the enjoyment of the right). The view taken by the trial Court, which commended to the first appellate Court and the High Court in second appeal, would inevitably entail in reading the expression in Article 113 as— when the right to sue (first) accrues. This would be re-writing of that provision and doing violence to the legislative intent. We must assume that the Parliament was conscious of the distinction between the provisions referred to above and had advisedly used generic expression ‘when the right to sue accrues’ in Article 113 of the 1963 Act. Inasmuch as, it would also cover cases falling under Section 22 of the 1963 Act, to wit, continuing breaches and torts.*
11. *We may usefully refer to the dictum of a three-Judge Bench of this Court in Union of India & Ors. v. West Coast Paper Mills Ltd. & Anr. (2004) 2 SCC 747 = (2004) 2 SCR 145, which has had an occasion to examine the expression used in Article 58 in contradistinction to Article 113 of the 1963 Act. We may advert to paragraphs 19 to 21 of the said decision, which read thus:*

‘***

20. ***It was not a case where the respondents prayed for a declaration of their rights.***



The declaration sought for by them as regards unreasonableness in the levy of freight was granted by the Tribunal.

21. A distinction furthermore, which is required to be noticed is that whereas in terms of Article 58 the period of three years is to be counted from the date when ‘the right to sue first accrues’, in terms of Article 113 thereof, the period of limitation would be counted from the date ‘when the right to sue accrues’. The distinction between Article 58 and Article 113 is, thus, apparent inasmuch as the right to sue may accrue to a suitor in a given case at different points of time and, thus, whereas in terms of Article 58 the period of limitation would be reckoned from the date on which the cause of action arose first, in the latter the period of limitation would be differently computed depending upon the last day when the cause of action therefor arose.’
12. Similarly, in *Khatiri Hotels Private Limited & Anr. Vrs. Union of India & Anr.*, (2011) 9 SCC 126, this Court considered the expression used in Article 58 in contradistinction to Article 120 of the old Limitation Act (the Indian Limitation Act, 1908). In paragraph 24, the Court noted thus:
- ‘24. The Limitation Act, 1963 (for short “the 1963 Act”) prescribes time limit for all conceivable suits, appeals, etc. Section 2(j) of that Act defines the expression “period of limitation” to mean the period of limitation prescribed in the Schedule for suit, appeal or application. Section 3 lays down that every suit instituted, appeal



preferred or application made after the prescribed period shall, subject to the provisions of Sections 4 to 24, be dismissed even though limitation may not have been set up as a defence. If a suit is not covered by any specific article, then it would fall within the residuary article. In other words, the residuary article is applicable to every kind of suit not otherwise provided for in the Schedule.'

The distinction between the two Articles (Article 58 and Article 120) has been expounded in paragraphs 27 to 30 of the reported decision, which read thus

'27. The differences which are discernible from the language of the above reproduced two articles are:

- (i) The period of limitation prescribed under Article 120 of the 1908 Act was six years whereas the period of limitation prescribed under the 1963 Act is three years and,*
- (ii) Under Article 120 of the 1908 Act, the period of limitation commenced when the right to sue accrues. As against this, the period prescribed under Article 58 begins to run when the right to sue first accrues.*

28. Article 120 of the 1908 Act was interpreted by the Judicial Committee in Bolo Vrs. Koklan, (1929-30) 57 IA 325 =



AIR 1930 PC 270 and it was held: (IA p. 331)

‘There can be no ‘right to sue’ until there is an accrual of the right asserted in the suit and its infringement, or at least a clear and unequivocal threat to infringe that right, by the defendant against whom the suit is instituted.’

The same view was reiterated in Annamalai Chettiar Vrs. Muthukaruppan Chettiar, ILR (1930) 8 Rang 645 and Gobinda Narayan Singh Vrs. Sham Lal Singh, (1930-31) 58 IA 125.

29. *In Rukhmabai Vrs. Lala Laxminarayan, AIR 1960 SC 335, the three-Judge Bench noticed the earlier judgments and summed up the legal position in the following words: (Rukhmabai case [AIR 1960 SC 335, AIR p. 349, para 33)*

*‘33. *** The right to sue under Article 120 of the [1908 Act] accrues when the defendant has clearly or unequivocally threatened to infringe the right asserted by the plaintiff in the suit. Every threat by a party to such a right, however ineffective and innocuous it may be, cannot be considered to be a clear and unequivocal threat so as to compel him to file a suit. Whether a particular threat gives rise to a compulsory cause of action depends*



upon the question whether that threat effectively invades or jeopardizes the said right.'

30. *While enacting Article 58 of the 1963 Act, the legislature has designedly made a departure from the language of Article 120 of the 1908 Act. The word "first" has been used between the words "sue" and "accrued". This would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. To put it differently, successive violation of the right will not give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued.'*

Notably, the expression used in Article 113 is similar to that in Article 120, namely, "when the right to sue accrues". Hence, the principle underlying this dictum must apply proprio vigore to Article 113.

13. ***It is well established position that the cause of action for filing a suit would consist of bundle of facts. Further, the factum of suit being barred by limitation, ordinarily, would be a mixed question of fact and law. Even for that reason, invoking Order VII Rule 11 of the 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 07.01.2005 and then filed the suit on 23.02.2005, 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.”

12.4. The present case has distinctive feature. As conceded by Sri Bamadev Baral, learned Advocate for the opposite party No.1 during the course of hearing that the plaint in CS No.1039 of 2017 does not contain material with respect to the orders passed in the interlocutory applications in CS No.12 of 2006. Only explanation he could proffer was that the prayers in both the suits are different. Minute scrutiny of prayers of both the suits would reveal that while CS No.12 of 2006 was for recovery of dues from the properties of the opposite party Nos.2 and 3, in CS No.1039 of 2017 is for a declaration that the Registered Sale Deeds dated 31.01.2006 to be void, inoperative and not binding on the opposite party No.1. In effect, what was refused in Order dated 08.02.2008 in I.A. No.298 of 2006 (CS



No.12 of 2006), in an indirect contrivance, the opposite party No.1 made an dubious attempt to restrain transfer of the properties of the opposite party Nos.2 and 3.

12.5.A meaningful reading of plaint would demonstrate that such a declaration is sought for in order to secure payment for the purpose of recovery of dues (which was subject matter of CS No.12 of 2006) from the suit schedule properties in the event of success on a later date. In essence, the claim in the first suit and the second suit would coincide. However, this Court cannot shut its eyes by ignoring the Orders passed by this Court in review and revision arising out of CS No.12 of 2006. In the Orders of this Court such dues claimed by the Union has been protected. It is pertinent to note that the Hon'ble Supreme Court of India while did not interfere with the Judgment/Order of this Court, yet directed for expeditious adjudication of the suit being CS No.12 of 2006.

12.6.It is manifest from the record that the opposite party No.1 being aware of execution of Registered Sale Deeds on 31.01.2006 and cause of action arose much prior to three years of the date of filing of CS No.1039 of 2017, the suit is glaringly time-barred. Order VII, Rule 11(d) of the CPC states that a plaint shall be rejected if it does not disclose a cause of action or if the suit is barred by any law. This provision empowers Court to dismiss cases



at an early stage when it is evident that they cannot succeed due to setting in period of limitation. The rationale behind this rule is to prevent unnecessary litigation and conserve judicial resources.

12.7. It is trite that the question whether the suit is barred by limitation can be decided at the time of trial for the question of limitation is mixed question of law and facts, but on meaningful reading of the plaint, this Court, having diligently delved into examine the contentions, averments, submissions and arguments of counsel for the respective parties, is of the considered view that under the afore-mentioned premises and material available in the records of CS No.12 of 2006 and CS No.1039 of 2017, the opposite party No.1 has created illusion of cause of action⁵ by devising clever drafting in order to avoid the period prescribed under the Limitation Act, 1963.

12.8. This Court is of the opinion that the learned trial Court could not have closed its eyes while considering the petition under Order VII, Rule 11(d) of the CPC filed in CS No.1039 of 2017, particularly when it was also in seizin of subject matter in CS No.12 of 2006, wherein the petition under Order VII, Rule 11 of CPC filed by the

⁵ The expression “created illusion of cause of action” suggests that a party to the litigation may have manipulated its pleadings to create an appearance of legitimacy or urgency in its claims to circumvent limitations set forth by law. Courts are vigilant about such tactics and will scrutinize pleadings closely to ensure compliance with procedural requirements.



petitioner was allowed and the order of this Court depicted clearly that the interest of the opposite party No.1 was well protected in the event of success in CS No.12 of 2006.

12.9. This Court further finds that the date of cause of action mentioned as “12.12.2017” in CS No.1039 of 2017 as fictional one inasmuch as no material particulars have been put forth on record to demonstrate that the opposite party No.1 was in possession of suit schedule properties. The pleading does not evince the alleged attempt being made by the petitioner to evict the opposite party No.1. It could not be established even *prima facie* that the opposite party No.1 was at any time the owner of the suit schedule properties and as Union it in possession over the properties of the opposite party Nos.2 and 3, which are transferred by dint of Registered Sale Deeds bearing Nos.517 and 518 dated 31.01.2006.

12.10. *Ramisetty Venkatanna Vrs. Nasyam Jamal Saheb*, 2023 SCC OnLine SC 521 quoted as:

“26. *In the case of Madanuri Sri Rama Chandra Murthy Vrs. Syed Jalal*, (2017) 13 SCC 174, this Court observed and held as under:

‘7. *The plaint can be rejected under Order 7 Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that the power under Order 7 Rule 11 CPC can*



be exercised by the court at any stage of the suit. The relevant facts which need to be looked into for deciding the application are the averments of the plaint only. **If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under Order 7 Rule 11 CPC.** Since the power conferred on the court to terminate civil action at the threshold is drastic, the conditions enumerated under Order 7 Rule 11 CPC to the exercise of power of rejection of plaint have to be strictly adhered to. The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. **It is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case.** The averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. **Even when the allegations made in the plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under Order 7 Rule 11 CPC can be exercised. If clever drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud**



at the earliest so that bogus litigation will end at the earlier stage.'

27. *In the case of Ram Singh Vrs. Gram Panchayat Mehal Kalan, (1986) 4 SCC 364, this Court observed and held that **when the suit is barred by any law, the plaintiff cannot be allowed to circumvent that provision by means of clever drafting so as to avoid mention of those circumstances, by which the suit is barred by law of limitation.** Similar view has been expressed by this Court in the case of Raj Narain Sarin Vrs. Laxmi Devi, (2002) 10 SCC 501."*

12.11. Noteworthy here to have regard to *Dilboo Vrs. Dhanraji, (2000) 7 SCC 702*, wherein it has been held,

"20. * Whenever a document is registered the date of registration becomes the date of deemed knowledge.** *In other cases where a fact could be discovered by due diligence then deemed knowledge would be attributed to the plaintiff because a party cannot be allowed to extend the period of limitation by merely claiming that he had no knowledge."*

12.12. This Court, thus, finds substantial force in the submission of Sri Surya Prasad Misra, learned Senior Counsel appearing for the petitioners that the clever drafting of the opposite party No.1 by suppressing material fact with regard to orders passed in connection with interlocutory applications during the pendency of CS No.12 of 2006 created illusory cause of action and the narration of facts by the opposite party No.1



demonstrably indicates that the Orissa Textiles and Steels Employees' Union had the knowledge about the transaction of transfer of immovable properties by the opposite party Nos.2 and 3 in favour of the petitioners for more than three years of the date of filing civil suit being CS No.1039 of 2017.

12.13. It is submitted that flimsy reasons have been ascribed to by the learned 2nd Additional Civil Judge (Senior Division), Cuttack in the impugned order. The learned trial Court fell into error by taking cognizance of the objection raised by opposite party No.1-Orissa Textile and Steels Employees' Union that the cause of action for the suit arose on 12.12.2017, i.e., the date on which the defendants/opposite party Nos.2 and 3 sought to evict opposite party No.1-plaintiff "from peaceful possession over the suit land and tried to change the nature and character of the suit land". Such a stand is vehemently objected to by the learned Senior Counsel, inasmuch as it is a myth that opposite party No.1 had ever been in "peaceful possession over the suit land". To amplify, Sri Surya Prasad Misra, learned Senior Counsel appearing for the petitioners explained that opposite party No.1-Orissa Textiles and Steels Employees' Union can at no stretch of imagination be construed to be the title holder of the properties nor did the Union, at any time possessed such properties. He further added that



after the transfer of immovable property by dint of Registered Sale Deed Nos.517 and 518, dated 31.01.2006, the petitioner No.1 has been in possession of the said properties and the employees of the factory were never in possession of said properties. To refute such assertion of the learned Senior Advocate, no evidence on record could be referred to by Sri Bamadev Baral, learned Advocate representing the opposite party No.1 to suggest that the Union was in possession of the properties notwithstanding the same being transferred by virtue of said Registered Sale Deeds and Order dated 08.02.2008 passed by the learned 2nd Additional Civil Judge, Senior Division, Cuttack in on the petition of Union being I.A. No.298 of 2006 arising out of CS No.12 of 2006 refusing to restrain the opposite party Nos.2 and 3 from transferring such properties.

12.14. It is urged by the learned Senior Counsel that despite falsity of fact affirmed by the opposite party No.1 that cause of action arose on 12.12.2017, the suit bearing Civil Suit No.1039 of 2017 is clearly barred by limitation and the learned 2nd Additional Civil Judge (Senior Division), Cuttack ought to have allowed the petition under Order VII, Rule 11 of the CPC. The records manifestly reveal that opposite party No.1-Plaintiff was very much aware and had knowledge that the Registered Sale Deeds were executed in 2006. Had



the Orissa Textiles and Steels Employees' Union been sanguine about its claims and prejudices, it should have approached the Court concerned within the period prescribed in the Limitation Act.

12.15. Sri Bamadev Baral, learned counsel submitted that during the pendency of the suit bearing Civil Suit No. 12 of 2006, if the petitioners are allowed to go unhindered without facing trial in CS No. 1039 of 2017, in the event that a decree is passed in Civil Suit No. 12 of 2006 in favor of Opposite Party No. 1, which is still pending before the learned 5th Additional Civil Judge (Senior Division), Cuttack, the entire exercise would be rendered futile; ultimately, the decree with respect to statutory dues to be paid by Opposite Party Nos. 2 and 3 would possibly not be executed. But such reply of Sri Bamadev Baral, learned Advocate cannot be found countenanced with inasmuch as this Court in Order dated 11.12.2006 passed in RVWPET No.118 of 2006 (relating to CS No.12 of 2006) protected the interest of the opposite party No.1 by clarifying that “the opposite party to deposit the sale proceeds of machines and materials”. This apart, as it was brought to the notice of this Court, the opposite party No.1-Union was given opportunity to file application. Considering such application, *vide* Order dated 08.02.2008, the learned 2nd Additional Civil Judge, Senior Division, Cuttack has directed for deposit of sale



proceeds not only of the machines and materials, but also the lands. Therefore, the suit being CS No.1039 of 2017 lacks cause of action.

12.16. Thus, the prayer made in said suit for a declaration of Registered Sales Deeds dated 31.01.2006 as void, inoperative in law and not binding in the year 2017 is not only stale but also is hit by law of limitation.

13. Applying the ratio of decisions referred to *supra* and taking into consideration the factual merit of the matter, this Court is of the opinion that the plaint in CS No.1039 of 2017 ought to have been rejected in exercise of power under clauses (a) and (d) of Rule 11 of Order VII, CPC, being vexatious, illusory cause of action and barred by limitation. By clever drafting without disclosing the orders protecting the interest of the opposite party No.1 allowing the petition of the petitioners under Order VII, Rule 11 of the CPC in CS No.12 of 2006 and suppressing to disclose refusal of the learned 2nd Additional Civil Judge, Senior Division, Cuttack to restrain the opposite party Nos.2 and 3 from transferring properties, the relief as sought for in CS No.1039 of 2017 does not stand to reason. For the same reason, considering the averments in the plaint and documents relied upon thereto, the plaint deserves to be rejected. When on scrutiny of germane material facts based on evidence on record clearly establishes that the suit is filed beyond the



period stipulated under the Limitation Act, 1963, there is no restriction on the learned 2nd Additional Civil Judge, Senior Division, Cuttack to exercise power under Order VII, Rule 11 of the CPC.

- 14.** In the wake of the above and for the reasons stated *supra*, the impugned Order dated 30.09.2019 passed in consideration of petition of the petitioners under Order VII, Rule 11 of the CPC for rejection of plaint in CS No.1039 of 2017 is untenable in the eye of law and the same deserves to be quashed and set aside. This Court does so holding that it is a fit case where the 2nd Additional Civil Judge, Senior Division, Cuttack should have exercised power under Order VII, Rule 11 of the CPC.
- 15.** *Ex consequenti*, the petition of the petitioners under Order VII, Rule 11 of the Code of Civil Procedure, 1908 is allowed and consequently, the plaint in the suit, being CS No.1039 of 2017, stated to be pending in the file of the 5th Additional Civil Judge, Senior Division, Cuttack, stands rejected.
- 16.** The Civil Revision Petition stands allowed, but in the circumstances, there shall be no order as to costs.

(MURAHARI SRI RAMAN)
JUDGE

High Court of Orissa, Cuttack
The 03rd February, 2025//MRS/Laxmikant/Suchitra

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