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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**INTERIM APPLICATION (L) NO. 26145 OF 2025
IN
SUIT NO. 422 OF 2012**

Bupendra Damjibhai Tank & Ors. .. Applicants

IN THE MATTER BETWEEN:

Renu Balwant Maru w/o Shri. Balwant Maru .. Plaintiff

Versus

Bupendra Damjibhai Tank & Ors. .. Defendants

Adv. Rohan Cama a/w Adv. Rupesh R. Lanjekar for Plaintiff and Defendant No.1 in IA(L)/937/2025.

Mr. Anil V. Anturkar, Senior Advocate a/w Adv. Joel J. Carlos, Adv. Manish Pradeep Gitay i/b Adv. Joel J. Carlos for Defendant Nos. 1,3 and 4.

Adv. Manish Pradeep Gitay for Defendant Nos. 2(a) to 2(d).

Adv. Anish Karande a/w Adv. Gobinda C. Mohanty i/b M/s. Mohanty & Associates for Defendant Nos. 5 and 6.

Mr. Vishwajit P. Sawant, Senior Advocate a/w Adv. Raju Yamgar & Adv. Yunus Vakharia i/b Adv. Raju Yamgar for Defendant No.7.

CORAM: FIRDOSH P. POONIWALLA, J.

**RESERVED ON : OCTOBER 08, 2025
PRONOUNCED ON: FEBRUARY 23, 2026**

JUDGEMENT:-

1. This Interim Application has been filed by original Defendant Nos. 1, 3 and 4 seeking rejection of the Plaint under Order VII Rule 11 of the Code of Civil Procedure 1908 (the 'CPC') on the ground that it is barred by

law as no leave under Clause XII of the Letters Patent of this Court has been obtained by the Plaintiff.

2. The present Suit has been filed seeking the following final reliefs :

“(a) that this Hon'ble Court be pleased to declare that the property described in Exhibit "C" are properties left behind by the deceased father and the Plaintiff has 1/7th share in the same.

(b) that this Hon'ble Court be please to declare that the Plaintiff is entitled to 1/7th share in the property described in Exhibit "C" and further prays that this Hon'ble Court be pleased to pass a decree of partition, partitioning the suit properties by metes and bounds alongwith agumentations and be pleased to handover to the Plaintiff, her share in the suit properties described in Exhibit "C";

(c) that this Hon'ble Court be pleased to declare that the agreements entered into by Defendants no. 1 to 4 with Defendant no. 7 in respect of the land at Dindoshi and various agreements executed by Defendant Nos. 1 to 4 and 7 with the flat purchasers are not binding on the Plaintiff;

(c)(i) That this Hon'ble Court be pleased to declare that the Agreement dated 30.12.2006 (Exh. "R") and Agreement dated 06.01.2010 (Exh. "S") executed by the Defendant no.1 to 4 in favor or Defendant no.7 are illegal, unlawful and bad in law and the same is not binding upon the plaintiff.

(c)(ii) That this Hon'ble Court be pleased to direct the defendant no.1to 4 to deposit entire amount of sale proceeds of the suit properties to the extent of 1/7th share of the plaintiff in this Hon'ble Court.

(c)(iii)That this Hon'ble Court be pleased to declare that all other agreements and transaction entered into by Defendant no.1 to 4 with Defendant no.7 or any other party after death of deceased father and without consent of

the plaintiff are illegal, unlawful, bad in law and not binding upon the plaintiff ”

3. The properties described in Exhibit ‘C’ are as under:

“LIST OF ANCESTRAL MOVABLE AND IMMOVABLE PROPERTIES HELD BY THE DECEASED FATHER SHRI. DAMODAR (DAMJIBHAI) RAGHAVJI TANK AS THE KARTA OF THE HUF

1. Old S.Nos. 34/1, 31/1, 39/7, 29/2 and 39/4 now bearing New City Survey Nos. 104-A, 104-C, 104-D, 104-E, 104-F, 104-G, 104-H, 104-I and 104-J, admeasuring 68,373.20 sq. mtrs. or thereabouts and situated at Village Dindoshi, Taluka Borivli, Malad, Mumbai.

2) Agricultural land in District Vardha, Nagpur, Maharashtra

3. Landed property and a living house at S.No. 123. Village Talaja, District Bhavtagar, Gujarat.

4. 2 flats in Neelganga CHS, Bandra, Mumbai

5. Savings a/c and fixed deposits at Bank of Baroda, Bandra Branch

6. Gold ornaments in the locker at Bank of Baroda, Bandra Branch.

7. Cash in savings a/c no. 4900 of Bank of Saurashtra situated at Talaja.

8. Cash in saving a/c no. 7626 in Bank of India situated at Talaja.”

SUBMISSIONS OF THE APPLICANTS (ORIGINAL DEFENDANT NOS. 1, 3

AND 4)

4. Mr. Mayur Khandeparkar, the learned counsel appearing on behalf of the Applicants, referred to Exhibit 'C' to the Plaint and stated that it included immovable properties situated outside the original jurisdiction of this Court. Mr. Khandeparkar submitted that the prayers and the averments in the Plaint show that the present Suit is a Suit for partition of immovable properties and therefore is a Suit for land and immovable properties, some of which are situated outside the original jurisdiction of this Court. Therefore, the Suit could have been entertained only by obtaining leave under Clause XII of the Letters Patent of this Court. Mr. Khandeparkar submitted that since the Plaintiff had not obtained leave under Clause XII of the Letters Patent of this Court, the present Suit is barred by law and therefore should be rejected under Order VII Rule 11 of the CPC.

5. In support of his submission that a Suit for partition of immovable properties is a Suit for land and immovable properties, Mr. Khandeparkar referred to the Judgements of this Court in *Shiv Bhagwan Moti Ram Saraoji Vs. Onkarmal Ishar Dass and ors.* 1951 SCC Online Bom 122 and *Vishram Parbat H.U.F. Vs. M/s. Shruti Builders and Others* 1999 SCC Online Bom 434.

6. Mr. Khandeparkar also submitted that the said leave has to be obtained before the institution of the Suit and cannot be obtained after the Suit has been instituted. In this context, Mr. Khandeparkar relied upon a

Judgement of this Court in *Quadricon Pvt. Ltd. Vs. Shri Bajrang Alloys Ltd. 2008 (3) Mh.L.J. 407.*

7. Further in support of the submission as to what is a Suit for land Mr. Khandeparkar also relied upon a Judgement of the Hon'ble Supreme Court in *Adcon Electronics Pvt. Ltd. Vs. Daulat and Ors. (2001) 7 SCC 698.*

SUBMISSIONS OF DEFENDANT NO. 7 SUPPORTING THE APPLICANTS
(ORIGINAL DEFENDANT NOS. 1, 3 AND 4)

8. Mr. Vishwajeet Sawant, the learned Senior Counsel appearing on behalf of Defendant No.7, made submissions in support of the Interim Application. Mr. Sawant submitted that the present Suit is a Suit for possession of land and immovable properties and therefore is a Suit for land and immovable properties under Clause XII of the Letters Patent. In support of his submission, Mr. Sawant relied upon a Judgement of the Hon'ble Supreme Court in *Sumer Builders Pvt. Ltd Vs. Narendra Gorani (2016) 2 SCC 582.*

9. Mr. Sawant further submitted that, in the present case, a perusal of Exhibit 'C' shows that a part of the land and immovable properties are situated outside the original jurisdiction of this Court and a part of the land and immovable properties are situated within the jurisdiction of this Court.

Mr. Sawant submitted that leave under Clause XII of the Letters Patent of this Court is required if part of the land and immovable properties are situated outside the original jurisdiction of this Court, even if all the Defendants reside within the jurisdiction of this Court. In support of this submission, Mr. Sawant relied upon the Judgement of the Calcutta High Court in *Benoy Shankar Dhandani Vs. Choteylal Dhandania & Ors. AIR (39) 1952 Calcutta 343.*

10. Further, Mr. Sawant submitted that it is well settled in law that a Suit for partial partition is not maintainable. Mr. Sawant submitted that therefore the present Suit cannot proceed only in respect of the properties which are within the original jurisdiction of this Court and therefore the Suit is required to be dismissed. In support of this submission, Mr. Sawant relied upon the judgement of the Hon'ble Supreme Court in *Kenchegowda Vs. Siddegowda Alias Motegowda (1994) SCC 294.*

11. Mr. Sawant also relied upon the Judgement of this Court in *Quadricon Pvt. Ltd. (supra)* and submitted that the present Suit has to be dismissed.

SUBMISSIONS ON BEHALF OF THE PLAINTIFF

12. Mr. Rohan Cama, the learned counsel appearing on behalf of the Plaintiff, opposed the present Interim Application.

13. Mr. Cama first submitted that, even if the present Suit is a Suit for land and leave was required for the immovable properties situated outside the original jurisdiction of this Court, the Plaint ought not to be rejected under Order VII Rule 11 of the CPC. Mr. Cama submitted that the Hon'ble Supreme Court has repeatedly held that a Plaint can be rejected under Order VII Rule 11 only as a whole and not in part. It is impermissible to reject certain prayers or reliefs in a Plaint. In order to suffer rejection of a Plaint it must be shown that the entire body of reliefs sought in the Plaint are barred and fall foul under Order VII Rule 11 and therefore the Plaint as a whole is to be rejected.

14. Mr. Cama submitted that even if one of the reliefs is sustainable or maintainable in this Court, then, notwithstanding whatever be the case as far as the others relief is concerned, the Plaint cannot be rejected under Order VII Rule 11, as held by the Hon'ble Supreme Court, and this Court ought not to even to opine on whether any of the other reliefs would fall outside the jurisdiction of this Court. In support of these submissions, Mr. Cama relied upon the following Judgements :

i) Central Bank of India Vs. Smt. Prabha Jain and Ors. (Civil Appeal No. 1876/2016).

ii) Vinod Infra Developers Ltd. Vs. Mahaveer Lunia & Ors. 2025 SCC Online Supreme Court 1208.

iii) Geetha D/o. Late Krishna & Ors. Vs. Nanjundaswamy and Ors. 2023 SCC Online SC 1407.

iv) Sejal Glass Ltd Vs. Navilan Merchants Pvt. Ltd. (2018) 11 SCC 780.

15. Mr. Cama submitted that, in the present case, it is *ex facie* untenable for the Applicants to contend that all the reliefs fall outside the jurisdiction of this Court. In this context, Mr. Cama submitted that it is clear from Exhibit 'C' that there are various assets which very much fall within the territorial jurisdiction of this Court. If this be the case, so far as the partition Suit relates to these immovable properties, it is evidently within the jurisdiction of this Court. A partition Suit for these properties would not lie anywhere but within the jurisdiction of this Court. Mr. Cama submitted that, therefore, at the very minimum, assuming whilst denying, that everything that is contended by the Applicants is correct, the Suit so far as it relates to partition of the properties evidently falling within the jurisdiction of this Court could only lie in this Court.

16. Mr. Cama further submitted that, even otherwise, several of the reliefs, and in particular prayer clauses (c), (c)(i), (c)(ii) and (c)(iii) all pertain only to the property at Malad. This property is very much within the territorial jurisdiction of this Court. The reliefs sought in respect of this property, which are evidently reliefs independent of all the other assets set out in Exhibit 'C' to the Plaint, can only be sought in this Court. There is no

other Court which would have jurisdiction in respect of the Malad property and the steps taken by the Defendants in respect thereof. Thus evidently prayer clauses (c), (c)(i), (c)(ii) and (c)(iii) fall within the jurisdiction of this Court.

17. Mr. Cama submitted that thus it is very clear that, at the very minimum, certain reliefs would eminently fall within the jurisdiction of this Court and therefore there is no question of the Plaintiff being rejected in part.

18. Mr. Cama next submitted that the present Suit is not a Suit for land. In this context, he submitted that a Suit seeking a relief of partition of various properties is not per se a Suit for land. The aspect of receiving a share in properties described in Exhibit 'C' to the Plaintiff does not convert, what is essentially and substantially a Suit for partition against the Defendants, who are all based within the jurisdiction of this Court, into a Suit for land.

19. Mr. Cama further submitted that the reliefs sought in the present Suit are in respect of a declaration qua the Defendants in respect of the Plaintiff's 1/7th share in the estate of her deceased father and for partition and distribution of her 1/7th share to her. The aspect pertaining to the land is only prayed for in respect of her being entitled to a distribution of her 1/7th share, which may either be in land, i.e. in specie, or it may even be in monetary terms, both of which would have nothing to do with seeking possession of the land.

20. Mr. Cama further submitted that this assessment, of whether to decree the 1/7th share in terms of land or money, is an aspect that cannot be definitively determined today. If, at the hearing of the Suit, this Court finds that the Plaintiff is entitled to 1/7th share only in monetary terms, no question of possession arises at all. The plaint cannot therefore, at this stage, be treated as a Suit for possession and therefore a Suit for land.

21. Mr. Cama next submitted that, as regards title, there is no dispute at all. It is the Plaintiff's case in the amendment that the Dindoshi/Malad property devolved by survivorship on the father Damodar as it was a joint tenancy with his father Raghavji. Mr. Cama submitted that this in fact is the case of Defendants as evident from paragraph 5 of the Order dated 7th December, 2016 passed by this Court in Notice of Motion No. 476 of 2012 holding so. Further, Mr. Cama submitted that the fact that it is property forming part of Damodar Tank HUF is also basis the Agreement executed by Defendant Nos. 1 to 4 themselves. Thus, in the present Suit, there is no question of title to be determined.

22. Mr. Cama submitted that it is well settled, as laid down by the Hon'ble Supreme Court in the Judgement of **Sumer Builders (supra)** and in **Adcon Electronics Pvt. Ltd. (supra)** that what is to be tested is if the Suit is in substance, and substantially, a Suit for land, which the present Suit is not.

23. Mr. Cama next submitted that two learned Single Judges of this Court in Orders passed in **Jagneesh Malhotra and Anr. Vs. Kavita Malani and**

Anr. (In Leave Petition No. 328 of 2018 in Suit (L) No. 1426 of 2018) and in Dipika Hitendra Shah Vs. Jitendra Jayantilal Shah (In Leave Petition (L) No. 11286 of 2024 in Suit (L) No. 11278 of 2024) have held that the a Suit for partition is not a Suit for land.

24. Mr. Cama submitted that the reliance placed by the Applicants upon the Judgement of this Court in *Shiv Bhagwan (supra)* is inapposite. Mr. Cama submitted that the said Judgement turns on the facts of its own case where all the immovable properties were outside the Court's jurisdiction on the date of the filing of the Suit, and in any event does not alter the position that if a Suit is substantially one for land then it could be said to be a Suit for land. Mr. Cama submitted that, in the present case, the prayers reflect that the present Suit is not so, and therefore the present Suit cannot be called a Suit for land. Further, Mr. Cama submitted that observations of this Court in paragraphs 12 and 82 of *Shiv Bhagwan (supra)* that a partition Suit is a Suit for land is purely a passing observation, without assessing the legal tests for determining if a Suit is one for land, i.e., if substantially and in substance, the Suit is for adjudication of title and possession. Mr. Cama submitted that without prejudice to the above, in any event, the judgement in *Shiv Bhagwan (supra)* has no binding force as the Hon'ble Supreme Court in *Adcon Electronics (supra)* has now laid down the test for determining if a Suit is a Suit for land, namely :

- i) It is in substance a Suit for title and/or possession of land.

ii) When viewed as a whole, is the purpose of the Suit to obtain a decision on title to the land or is the object different and considerations of title arise indirectly or incidentally.

iii) If it is the latter, i.e. if the title arises incidentally, but the object of the Suit is not determination of title, then the Suit is not a Suit for land.

25. Mr. Cama submitted that if it is not a Suit for land, then there is no infirmity with the present Suit being filed in this Court, including for the two properties which are otherwise outside the territorial jurisdiction of this Court, because no question of leave arises as all the Defendants are within the jurisdiction of this Court.

26. Mr. Cama's next submission was that, in the present case, no leave under Clause XII of the Letters Patent is required. Mr. Cama submitted that it is clear from the first part of Clause XII that if a Suit is a Suit for land then it has to be instituted where the land is situated. If, for the reasons given by him, in the present case, it is not a Suit for land, then there is no question of that portion of Clause XII applying.

27. Mr. Cama further submitted that the second part of Clause XII provides that if a part of the cause of action arises within the jurisdiction of this Court then leave may be necessitated for maintaining the Suit in this Court. However, independent of anything to do with the cause of action, if all the Defendants reside within the territorial jurisdiction of this Court, then

under the third part of Clause XII there is no question of having recourse to that portion of Clause XII which deals with leave for a part of the cause of action being outside the jurisdiction of this Court. The third part of Clause XII is an independent provision which allows a Suit to be filed within the jurisdiction of this Court, regardless of whether a part or a whole of the cause of action is here, purely and simply if all the Defendants are residing or working for gain within the territorial jurisdiction.

28. Mr. Cama submitted that, in the present case, admittedly all the Defendants are within the territorial jurisdiction of this Court, and, hence, if the present Suit is not a Suit for land, then there is no question of requiring to obtain leave under Clause XII and the Suit is maintainable purely on the ground that all the Defendants are within the territorial jurisdiction of this Court, even for the properties situated outside.

29. Mr. Cama submitted that there is no consequence of leave not being obtained qua maintaining the present Suit in this Court. In this context, Mr. Cama submitted that, without prejudice to his other submissions, the only consequence of leave having not been obtained would be that this Court may come to the conclusion at the final hearing of the Suit that no reliefs be granted in respect of those properties following outside its territorial jurisdiction.

30. Mr. Cama submitted that the consequence of leave not being obtained for the part of cause of action following outside the jurisdiction is

only that the Court would not have jurisdiction over that part of the cause of action. This does not, however, make the plaint infirm or liable to be rejected under Order VII Rule 11, of the CPC so far as it relates to that portion of the cause of action which is very much within the territorial jurisdiction of this Court. Mr. Cama submitted that the only consequence of leave not being obtained is that the portion which is outside the jurisdiction of this Court would not be opined on or a decree would not be passed in respect thereof at the final hearing of the Suit. However, so far as the portion that is within jurisdiction is concerned, the present Suit is very much maintainable. Mr. Cama submitted that, for all these reasons, the present Interim Application filed under Order VII Rule 11 of the CPC is liable to be rejected.

SUBMISSIONS OF DEFENDANT NOS. 5 AND 6

31. Mr. Anish Karande, appearing on behalf of Defendant Nos. 5 and 6, supported the arguments of the Plaintiff, as advanced by Mr. Cama.

REJOINDER ON BEHALF OF DEFENDANT NOS. 1, 3 AND 4

(THE APPLICANTS)

32. Mr. Anturkar, the learned Senior Advocate appearing on behalf of the Applicants, made submissions in rejoinder. Mr. Anturkar submitted that it is the case of the Plaintiff that, even if one relief is maintainable in this Court, then regardless of the fate of the other reliefs, the plaint cannot be rejected under Order VII Rule 11 of the CPC.

33. In this context, Mr. Anturkar submitted that, in the present case, not even a single relief is sustainable or maintainable in this Court as regards properties outside its jurisdiction in the absence of leave under Clause XII of the Letters Patent.

34. Mr. Anturkar submitted that reliefs relating to the remaining properties also cannot be granted because such reliefs would amount to entertaining a Suit for partial partition, which is not maintainable. Mr. Anturkar submitted that, in these circumstances, even a single relief cannot be sustained or maintained in this Court.

35. Mr. Anturkar submitted that were it not for Clause XII of the Letters Patent of this Court and Order L (50) of the CPC, such a Suit, like the present Suit, could have been instituted under Section 17(1) of the CPC even in this Court. However, due to the provisions of Clause XII of the Letters Patent, where property is wholly or partly situated outside the jurisdiction of this Court, leave under Clause XII must be obtained to entertain such a Suit. If no such leave is obtained before the Suit was numbered and registered, the maintainability of the Suit is vitiated. No such leave is necessary if the Suit is filed in respect of the land at Talaja, Gujarat (in the Court at Talaja, Gujarat) or in respect of land in Wardha (in the Court at Wardha), where Section 17 applies outright and Clause XII of the Letters Patent is not applicable to those Courts. Mr. Anturkar further submitted that if the Plaintiff seeks to continue the Suit only concerning properties at Malad/Dindoshi and Bandra, then a

Suit for partition, amounting to a partial partition of the properties, is not maintainable.

36. Mr. Anturkar submitted that, as far as the Judgement of this Court in *Shiv Bhagwan (supra)* is concerned, it remains good law for the proposition that a Suit for partition of land or immovable properties is a Suit for land or immovable property. However, on the second point, regarding whether a Suit for partition can be entertained in respect of some properties alone, like the Vikhroli property in the case of *Shiv Bhagwan (surpa)*, the position has changed in view of the principles laid down by the Hon'ble Supreme Court that a Suit for partial partition is not maintainable. In this context, Mr. Anturkar referred to the Judgements of the Hon'ble Supreme Court in *R. Mahalakshmi Vs. A.V. Anantharaman and Ors. (2009) 9 SCC 52* and *Kinchegoda (surpa)* which hold that a Suit for partial partition is not maintainable. Mr. Anthurkar submitted that, if the Plaintiff contends that the Suit should be limited at least to immovable properties at Malad/Dindoshi and Bandra, then, on the alternative ground that the Suit for partial partition is not maintainable, the Plaint is liable to be rejected.

37. Mr. Anturkar next submitted that the contention of the Plaintiff that the Suit is not a Suit for land is totally wrong. The Judgements of this Court in *Shiv Bhagwan (supra)* and *Vishram Parbat (supra)* have clearly held that a Suit for partition is a Suit for land.

38. Further Mr. Anturkar submitted that it is wrongly portrayed by the Plaintiff that she does not seek possession of the land. Mr. Anturkar submitted that this is factually incorrect because prayer Clause (b) expressly seeks an order to hand over to the Plaintiff her share in the Suit property described in Exhibit 'C' of the Plaint. Further, even in paragraph 6 of the Plaint, the Plaintiff has stated that the present Suit is filed to seek a partition and separate possession of the properties left behind by her deceased father.

39. Mr. Anturkar further submitted that there is no substance in the argument of the Plaintiff that, at this stage, the Suit cannot be treated as a Suit for possession. Mr. Anturkar submitted that the prayer for handing over of the property demonstrates that the present Suit is a Suit for possession and thus a Suit for land even at this stage.

40. Mr. Anturkar submitted that in *Sumer Builders (supra)* the Court affirmed that a suit involving a controversy over possession of land is a Suit for land. Mr. Anturkar reiterated that the prayer seeking to handing over possession establishes that the present Suit concerns possession and the controversy is for possession of the land, making it a Suit for land.

41. As far as the Orders in *Jagneesh Malhotra (supra)* and *Deepika Hitindra Shah (supra)* are concerned, Mr. Anturkar submitted that the same do not refer to the binding precedent of the Division Bench of this Court in *Shiva Bhagwan (supra)* and hence are per incuriam.

42. In conclusion, Mr. Anturkar submitted that, in the present case, not a single relief is sustainable or maintainable in this Court as regards properties outside its jurisdiction in the absence of leave under Clause XII of the Letters Patent of this Court. Further, reliefs relating to the properties at Malad/Dindoshi and Bandra ought not to be granted because the same would amount to partial partition, which has been held by the Hon'ble Supreme Court as being not permissible. Mr. Anturkar submitted that it is clear that the present Plaint as a whole is liable to be rejected under Order VII Rule 11 of the CPC for lack of jurisdiction and maintainability and want of leave under Clause XII of the Letters Patent.

SUR-REJOINDER OF THE PLAINTIFF

43. In Sur-Rejoinder, Mr. Cama submitted that it is not pleaded by the contesting Defendants that a claim for partial partition is not maintainable.

44. Further, Mr. Cama submitted that, apart from partition, the Suit involves a challenge to deal with the Dindoshi property without the consent of the Plaintiff. Therefore prayers (c), (c)(i), (c)(ii) and (c)(iii) of the Plaint would survive.

45. As far as the Judgements in *R. Mahalaxmi (supra)* and *Kenchegowda (supra)* are concerned, Mr. Cama submitted that, in these

matters, the Plaintiff did not seek a full partition, whilst, in the present case, the Plaintiff was seeking a full partition.

46. Mr. Cama submitted that, in the light of the submissions made by the Plaintiff, the application under Order VII Rule 11 ought to be rejected.

FINDINGS AND ANALYSIS

47. In the light of the above submissions of the parties, in my view, the following questions arise for the consideration of this Court.

- A) Whether the present Suit is a Suit for land and immovable properties under Clause XII of the Letters Patent of this Court ?
- B) Whether leave under Clause XII of the Letters Patent of this Court is required ?
- C) If the answers to questions (A) and (B) are in the affirmative, can the Plaint be rejected under Order VII Rule 11 of the CPC.

ON QUESTION 'A'- WHETHER THE PRESENT SUIT IS A SUIT FOR LAND UNDER CLAUSE XII OF THE LETTERS PATENT OF THIS COURT ?

48. Before dealing with this issue, it would be appropriate to refer to Clause XII of the Letters Patent of this Court. Clause XII of the Letters Patent of this Court reads as under :

“12. Original jurisdiction as to suits

And We do further ordain that the said High Court of Judicature at Bombay, in the exercise of its ordinary original civil jurisdiction, shall be empowered to receive, try, and determine suits of every description, if, in the case of suits for land or other immovable property such land or property shall be situated, or in all other cases if the cause of action shall have arisen, either wholly, or, in case the leave of the Court shall have been first obtained, in part, within the local limits of the ordinary original jurisdiction of the said High Court or if the defendant at the time of the commencement of the suit shall dwell or carry on business, or personally work for gain, within such limits; except that the said High Court shall not have such original jurisdiction in cases falling within the jurisdiction of the Small Cause Court at Bombay, or the Bombay City Civil Court.”

49. In *Shiv Bhagwan (supra)*, a Division Bench of this Court held that a Suit for partition is a Suit for land. Paragraph 12 of the Judgement of Chief Justice Chagla in *Shiv Bhagwan* reads as under :

“12. The first and the most important question that we have to decide is whether this Court has jurisdiction to try a suit for partition in which the properties to be partitioned are both immovable and movable properties. It is well settled that a suit for partition of immovable properties is a suit for land. And under Cl. 12 of the Letters Patent, the Court would have jurisdiction in the case of suits for land or other immovable property if such land or property is situated within jurisdiction. The construction of Cl. 12 has been responsible for more judicial decisions than perhaps any other clause in the Letters Patent, and many learned Judges have pointed out the various possible constructions to which the language of Cl. 12 lends itself.”

(Emphasis supplied)

Paragraph 82 of the Judgement of Justice Bhagwati in ***Shiv Bhagwan(supra)***

reads as under :

“82. As already observed, a suit for partition of immovable properties is a suit for land, and the suit in so far as it seeks partition of the immovable properties which are comprised in the particulars exh. E to the plaint would therefore be a suit for land. These lands are situated at Karachi, Vikhroli, Amritsar and other places, and even Vikhroli was outside jurisdiction at the commencement of the suit. It could not therefore be urged that any of the suit lands was within jurisdiction at the commencement of the suit. Bombay Act XVII of 1945 had extended the limits of the City of Bombay by including therein some portions of the Bombay Suburban District.”

(Emphasis supplied)

50. Further in Vishram Parbat, a Single Judge of this Court has followed ***Shiv Bhagwan (supra)*** and held that a Suit for partition is a Suit for land. Further, this Court also held that a suit for recovery of possession is also a Suit for land. Paragraphs 20 to 25 of the said Judgement are relevant and read as under :

“20. It is thus clear from all the observations that the earlier concepts of distinguishing causes of action based on an action in rem or in personam is no longer determinative or effective, as in modern times actions in rem are restricted to admiralty jurisdiction and status. Therefore, the test is as to what is the relief sought. Do the reliefs require determination of title to the land? Do they seek recovery of possession of the land or partition and if so, whether these reliefs are incidental or substantial whilst deciding the issue in question.

21. *Useful reference may also be made to the judgment of the Division Bench of this Court in Shiv Bhagwan Moti Ram Saraoji v. Onkarmal Ishar Dass (supra) more specifically to para 6 of the judgment wherein Chagla, C.J., observed as under:*

"It is well settled that a suit for partition of immovable properties is a suit for land. And under Cl. 12 of the Letters Patent, the Court would have jurisdiction in the case of suits for land or other immovable property if such land or property is situated within jurisdiction. The construction of Cl. 12 has been responsible for more judicial decisions than perhaps any other clause in the Letters Patent, and many learned Judges have pointed out the various possible constructions to which the language of Cl. 12 lends itself."

22. *In para 22 of the same judgment Bhagwati, J., as he then was observed as under:*

"A suit for partition of immovable property is a suit for land and this Court had therefore no jurisdiction to entertain the suit for such partition because no part of the land was situated within jurisdiction. The case would, however, be different in regard to the movable properties, and this Court would have jurisdiction to entertain the suit for partition of movable properties if by reason of the suits or location of some of the movables within jurisdiction it could be said that a part of the cause of action had arisen within jurisdiction. In that event with leave under Cl.12 of the Letters Patent being granted this Court would have jurisdiction to entertain the suit for partition of all the movable properties which were the subject-matter of the suit."

23. *I refrain from adding for the sake of adding. To my mind the observations culled out, by themselves, should be the beacon for understanding Clause XII.*

24. *Applying the aforesaid tests to the reliefs as sought for in the suit, can it be said that the suit is basically for enforcing the agreement as sought in prayer Clause (c) and all other reliefs are merely consequential to relief in prayer Clause (c). The plaintiff is seeking a declaration for cancellation of documents, namely prayer Clauses (a) and (b) against defendant No. 1 based on his title to the land along with defendants No. 2 and 3. Plaintiff will, therefore, have to establish his title to the land against defendant No. 1 to get the reliefs in prayer Clauses (a) and (b). These are not incidental questions to be decided or reliefs to be granted to hold that the action is in personam. To my mind if the tests applied by the learned Judges of the Federal Court as also of this Court are applied, the suit involves the following:*

(a) determination of the Plaintiffs title to the land as without such determination the reliefs as prayed for in prayer Clauses (a) and (b) cannot be granted;
(b) partition of land or sub division of sub plots as prayed for in prayer Clause (c);
(c) recovery of possession as has been prayed for in prayer Clause (d).

25. *Therefore, to my mind the suit is a suit substantially for land and as the land situate outside the jurisdiction of this Court, this Court has no jurisdiction to hear and decide the present suit. In the light of that, I answer the issue of jurisdiction in favour of defendant No. 1 and accordingly, direct the plaint to be returned to the plaintiff for presentation before the proper Court.”*

51. In *Adcon Electronics (supra)*, the Hon’ble Supreme Court has held that a Suit for land is a Suit in which the relief claimed relates to title to

or delivery of possession of land or immovable properties. Paragraph 15 of the said Judgement reads as under :

“15. From the above discussion it follows that a "suit for land" is a suit in which the relief claimed relates to title to or delivery of possession of land or immovable property. Whether a suit is a "suit for land" or not has to be determined on the averments in the plaint with reference to the reliefs claimed therein; where the relief relates to adjudication of title to land or immovable property or delivery of possession of the land or immovable property, it will be a "suit for land". We are in respectful agreement with the view expressed by Mahajan, J. in Moolji Jaitha cases”.

(Emphasis supplied)

52. Further in ***Sumer Builders (supra)***, the Hon’ble Supreme Court has held that a suit for possession would be a Suit for land. Paragraph 32 of the said Judgement reads as under :

“32. The seminal issue is whether on the factual score which has been exposted, the application filed under Section 9 of the 1996 Act before the High Court of Bombay can be regarded as a money claim. On a studied scrutiny of the agreement and the MoU it is clear as day that the development agreement indubitably had created certain interests in the land in favour of the appellant. The assertions made in the application along with the relief clause when read in entirety and appreciated in a holistic manner; it becomes luminescent that the core dispute pertains to possession of the land, for the appellant claims to be in exclusive possession and the respondent, per contra, has asseverated that it had taken over possession. It can irrefragably be stated that any order passed under Section 9 of the 1996 Act will have the impact on the land. It is difficult to accede to the submission that it will not conceptually fall within the category of "suit for land" as engrafted under Clause XII of the Letters Patent. It is clearly a dispute with regard to the possession which is evincible

from the correspondences and the averments made in the application preferred under Section 9 of the 1996 Act. Thus, there has to be determination as regards possession and impliedly issue of direction for recovery of possession. Hence, the conclusion arrived at by the Division Bench on the basis of the scrutiny of documents that the dispute is embedded with regard to the possession of the land because the fundamental claim pertains to certain constructed space on the land and, therefore, it would conceptually fall within the conception of "suit for land" appearing in Clause XII of the Letters Patent is unexceptionable. Prayer (a) quoted above seeks restraint by a temporary order or injunction from entering upon the property. It is difficult to accept the submission that it is a money claim and, therefore, the Bombay High Court would also have the territorial jurisdiction and accordingly we unhesitatingly repel the same."

(Emphasis supplied)

53. In the present case prayer (b) of the Plaint seeks a decree of partition for partitioning the Suit properties which are described in Exhibit 'C' and which include land, living house and flats. Since, the present Suit seeks a partition of land and immovable properties, it is a Suit for land.

54. Further, in prayer (b) the Plaintiff, the Plaintiff seeks that her share in the Suit property described in Exhibit 'C' be handed over to her. Therefore, the Plaintiff seeks possession of a part of the land and immovable properties described in Exhibit 'C' to the Plaintiff. For this reason also, the present Suit is a Suit for land and immovable properties.

55. As far as the Orders in Jagneesh Malhotra and Dipika Hitendra Shah referred to by the Plaintiff are concerned, they are only orders granting leave under Clause XII of this Letters Patent of this Court and therefore have no value as precedent. In any case, in *Shiv Bhagwan (supra)*, a Division Bench of this Court has held that a Suit for partition is a Suit for land.

56. In the light of the aforesaid discussion, in my view, the present suit is a Suit for land under Clause XII of the Letters Patent of this Court and therefore question (A) is answered in the affirmative.

**ON QUESTION 'B'- WHETHER LEAVE UNDER CLAUSE XII OF THE
LETTERS PATENT IS REQUIRED ?**

57. The Courts have taken a consistent view that if, in a Suit, a part of land and immovable property are situated outside the jurisdiction of this Court, and a part of the land and immovable property are situated within the jurisdiction, then this Court can entertain that Suit by granting leave under Clause XII of the Letters Patent of this Court.

58. This view has been taken by the Calcutta High Court in *Benoy Shankar Dhandani (supra)* wherein it is held that leave under Clause XII of the Letters Patent of the High Court is required if part of the land is situated outside the jurisdiction of the Court and part of the land is situated within the

jurisdiction of the Court. Paragraph 20 of the said Judgement is relevant in this regard and reads as under :

(20) Mr. Khaitan next contends that no leave was necessary as the defts. were residing within the jurisdiction. He urges that in a suit for land, if a portion of the land is situate, & the defts., re-side, within jurisdiction, it is not necessary to obtain leave of Court for the institution of the suit. He referred to the terms of Cl. 12 in support of his submission. Whatever may be the grammatical construction of Cl. 12, it is now well established that in a suit for land, if the entire land is not situate within jurisdiction, it is necessary that leave of the Court should be obtained before the Institution of the suit in order that the suit may be filed in this Court. It is unnecessary to refer to the authorities which are numerous. I will only set out a passage from the judgment of Rankin C. J. in 'Manindra Chandra v. Lal Mohun', 56 Cal 940. The passage is as follows:

"Clause XII is a clause which, if it was to be construed for the first time according to its grammatical construction & in strict accordance with its wording, might perhaps have to be given a somewhat different meaning to that which is well settled now in all the High Courts of India. The effect of the construction upon which all the High Courts are agreed is that as regards suits for land, the H.C. can take cognizance, if the land is situate wholly within the local limits or where the land is situate in part only within such limits, if leave has been first obtained; and that as regards suits, other than those for land, the High Court has jurisdiction, if the cause of action has arisen wholly within the limits or where the cause of action has arisen in part only within the limits, if the leave of the Court shall have been first obtained or if the deft. dwells or carries on business or personally works for gain within these limits."

(Emphasis supplied)

59. Since, as held by me hereinabove, the present Suit is a Suit for land and immovable property, and admittedly part of the land and immovable property is situated outside the ordinary original jurisdiction of this Court, leave under Clause XII of the Letters Patent of this Court would be required to entertain this Suit.

**ON QUESTION 'C'- IF THE ANSWERS TO QUESTIONS (A) AND (B) ARE
IN THE AFFIRMATIVE CAN THE PLAINT BE REJECTED UNDER ORDER
VII RULE 11 OF THE CPC ?**

60. I have already come to the conclusion that the present Suit is a Suit for land and immovable property, and since part of the land and immovable property are situated outside the original jurisdiction of this Court, leave under Clause XII of the Letters Patent of this Court is required.

61. Admittedly, leave is not obtained by the Plaintiff prior to instituting the present Suit. The Plaintiff cannot now obtain leave. The same is clear from paragraphs 16 and 17 of the Judgement in *Quadricon (supra)* which read as under :

“16. From the above judgments, one thing is clear. As held in Rampurtab's case, the leave must be granted at the time of acceptance of the plaint and cannot be granted afterwards. This judgment was affirmed by the Division Bench in Devidatt's case holding that the leave under Clause XII of the Letters Patent is a condition precedent to the maintenance and entertainment of the suit and that the

leave of the Court should be first obtained i.e. obtained before the institution of the suit. The judgment in Noorjahan's case also inter-alia held that the leave cannot be granted after the suit has been instituted.

17. Admittedly in the present case, the plaint has not only been presented but has also been admitted. In view of the above judgment, leave cannot be granted now at this stage.”

62. The question that therefore arises is what is the effect of the Plaintiff not obtaining leave under Clause XII of the Letters Patent of this Court.

63. As a result of the Plaintiff not obtaining leave under Clause XII of the Letters Patent of this Court, this Court has no jurisdiction over the lands and immovable properties situated outside the original jurisdiction of this Court. The question therefore is whether the present Suit is maintainable in respect of the other movable and immovable properties referred to in Exhibit 'C' of the Plaint which are within the original jurisdiction of this Court.

64. In my view, the answer to that question has to be in the negative as it is well settled in law that a Suit for partial partition is not maintainable. In other words, a Suit for partition of only some properties is not maintainable. This has been held by the Hon'ble Supreme Court in ***Kenchegowda (supra)***. Paragraphs 10 and 16 of ***Kenchegowda (supra)*** read as under :

“10. It is argued on behalf of the appellant that the learned Single Judge went wrong in converting the suits for declaration and injunction into one for partition when all the joint family properties were not made the subject-matter of the suits nor were all the co-sharers impleaded. It is well-settled in law that a suit for partial partition is not maintainable. Merely because the plaintiff came to file an application under Order 6 Rule 17 CPC it would not mean it could be allowed and a preliminary decree for partition be passed. As a matter of fact, the causes of action are different. Therefore, the High Court went wrong in holding the larger relief of declaration of title and injunction even though not available to the plaintiff the smaller relief for partition could be granted.

16. Therefore, what has been held is that the property had not been allotted in favour of the first defendant in the partition. That is very different from holding that the case of partition had not been accepted by the first appellate court. This being so, a decree for partition could not have been passed on a mere application for amendment. In fact, as rightly urged by the learned counsel for the appellant that the causes of action are different and the reliefs are also different. To hold that the relief of declaration and injunction are larger reliefs and smaller relief for partition could be granted is incorrect. Even otherwise, a suit for partial partition in the absence of the inclusion of other joint family properties and the impleadment of the other co-sharers was not warranted in law. Thus, we find no difficulty in allowing these appeals which are accordingly allowed. The judgment and decree of the trial court as affirmed by the first appellate court are restored. However, there shall be no order as to costs.”

(Emphasis supplied)

65. In other words, since, without obtaining leave under Clause XII, the Suit for lands and immovable properties outside the ordinary jurisdiction of this Court is not maintainable, and a Suit for other properties is not maintainable as it would be a Suit for partial partition which is barred by law,

in my view, the entire *Plaint* is barred by law and has to be rejected under Order VII Rule 11 of the CPC.

66. In the light of the aforesaid conclusion, I am not required to deal with the submission of Mr. Cama that a *Plaint* can be rejected under Order VII Rule 11 of the CPC only as a whole and not in part, nor am I required to deal with the Judgements cited in support of that proposition by Mr. Cama. This is because, as held by me hereinabove, I have rejected the *Plaint* as a whole and not in part.

67. I am also unable to accept the submission of Mr. Cama that the only consequence of leave having not been obtained would be that this Court may come to the conclusion at the final hearing of the *Suit* that no reliefs can be granted in respect of those properties falling outside its territorial jurisdiction. As held by me hereinabove, the filing of the *Plaint* in the present *Suit* without obtaining leave under Clause XII of the Letters Patent of this Court leads to this Court not having jurisdiction over the lands and immovable properties situated outside the original jurisdiction of this Court. Further, as held by me hereinabove, a *Suit* for partial partition is not maintainable. Therefore, the *Suit* in respect of lands, movable and immovable property situated within the jurisdiction of this Court is not maintainable and is barred by law. Therefore, the consequence of leave not having been obtained under Clause XII of the Letters Patent of this Court would necessarily be that the *Plaint* would have to be rejected as being barred

by law under Order VII Rule 11 of the CPC. There is no question of the Suit proceeding for a final hearing as it is barred by law under Order VII Rule 11 of the CPC.

68. This leaves me to deal with one more argument addressed by Mr. Cama. It was the submission of Mr. Cama that several reliefs, and in particular prayer clauses (c), (c)(i), (c)(ii) and (c)(iii) all pertain only to property within the territorial jurisdiction of this Court and the reliefs sought in respect of the said property can only be sought in this Court. There is no other Court which would have jurisdiction in respect of the said property and the steps taken by the Defendants in respect thereof. The reliefs sought in prayers (c), (c)(i), (c)(ii) and (c)(iii) are consequential to the reliefs sought in prayers (a) and (b) of the Plaint. Prayer (b) of the Plaint specifically seeks a decree of partition for partitioning the Suit properties as mentioned in Exhibit 'C' which include the property referred to in prayers (c), (c)(i), (c)(ii) and (c)(iii). Granting of the reliefs sought in these prayers would amount to granting relief in a Suit for partial partition which, as held by me hereinabove, is not permissible in law. In these circumstances, I am unable to accept this argument of Mr. Cama also.

ORDER

a) In the light of the above discussion, and for all the reasons stated hereinabove, this Interim Application is allowed in terms of prayer (a) thereof, which reads as under :

“(a) That this Hon'ble Court be pleased to dismiss/reject the present Suit Under Order VII Rule 11 of CPC, 1908, as no leave under Clause XII of Letters Patent after lodging and before admitting the Plaint of the present Suit, has been sought by Plaintiff as required by law.”

b) In the facts and circumstances of the case, there will be no order as to costs.

[FIRDOSH P. POONIWALLA, J.]