IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF JUNE, 2025

BEFORE

THE HON'BLE MR JUSTICE R DEVDAS

CIVIL REVISION PETITION NO. 318 OF 2024

BETWEEN:

M/S SUSHRUTHA VISHRANTHI DHAMA PVT.LTD.,
A COMPANY REGISTERED UNDER
THE COMPANIES ACT, 1956,
HAVING ITS REGISTERED OFFICE
AT NO.202, RASTREEYA VIDYALAYA ROAD,
BASVANAGUDI, BANGALORE- 560 004
REPRESENTED BY ITS MANAGING DIRECTOR,

AND ALSO AT
SY.NO.18/4, THALAGHATTAPURA,
UTTARAHALLI MANAVARTHE KAVAL,
UTTARAHARHALLI HOBLI,
BANGALORE SOUTH TALUK,
BANGALORE DISTRICT,
BANGALORE.

...PETITIONER

(BY MS. NALINA MAYEGOWDA., SR. COUNSEL FOR
SMT. ANUSHA B REDDY, ADVOCATE)

AND

1 . DR.M.P. SOMAPRASAD,
S/O MR.M.K. PRABHAKAHARAN,
AGED ABOUT 72 YEARS,
PRESENTLY RESIDING AT NO.12,
MANTRI ALTIUS,
NO.17, RAJBHAVAN ROAD,
BANGLORE 560 051.

2 . MR. RINNY EAPEN,
S/O LATE P.K.EAPEN,
AGED ABOUT 78 YEARS,
NO. 570, 3RD BLOCK,

KORAMANGALA,
BANGLORE 560 034.

3 . MR.P.G.ALEXANDER,
S/O LATE P.K.EAPEN,
AGED ABOUT 78 YEARS,
NO. 570, 3RD BLOCK,
KORAMANGALA,
BANGALORE- 560 034

4 . DR. R. SUBBARAO,
S/O DR.S.V.RAMARAO,
AGED ABOUT 77 YEARS,
NO. 1631/1, DHATREE,
32ND CROSS, BSK 2ND STAGE,
BENGALURU- 560 070

…RESPONDENTS

(BY SRI. SANJAY NAIR, ADVOCATE FOR R1)

THIS CRP IS FILED UNDER SECTION 115 OF CPC 1908 PRAYS THAT THIS HON'BLE COURT TO BE PLEASED TO CALL FOR RECORDS OF THE O.S.NO.475/2019 PENDING BEFORE THE I ADDITIONAL SENIOR CIVIL JUDGE BANGALORE DISTRICT, BANGALORE AND ETC.

THIS PETITION HAVING BEEN HEARD AND RESERVED ON 18.03.2025 AND COMING ON FOR PRONOUNCEMENT OF ORDERS, THIS DAY, THIS COURT MADE THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE R DEVDAS

CAV ORDER

(PER: HON'BLE MR JUSTICE R DEVDAS)

This Civil Revision Petition is filed by the petitioner-M/s.Sushrutha Vishranthi Dhama Pvt. Ltd., defendant No.4 in O.S.No.472/2019, being aggrieved of the rejection of its application filed under Order VII Rule 11 (a) and (d) of

the Code of Civil Procedure. It is noticed that defendant No.1-respondent No.2 herein had also filed I.A.No.III in O.S.No.472/2019 seeking rejection of the plaint. The Trial Court has passed a common order dated 22.01.2024 while rejecting both the applications in I.A.Nos.III and IV filed by defendant Nos.1 and 4.

2. For the sake of convenience, the parties shall be referred to in terms of their ranking before the Trial Court.

3. The suit is filed by the plaintiff Dr.M.P.Somaprasad, seeking declaration that three registered sale deeds dated 09.10.2001, 22.12.2001 and 22.12.2001 executed by defendant No.2 allegedly, as GPA holder of the plaintiff, in favour of defendant No.1, as void, illegal, bogus, sham, nominal, fabricated and fraudulent documents; a declaration that registered sale deed dated 03.10.2005 executed by defendant No.1 in favour of defendant No.4 is also void and invalid; a direction to defendant No.4 to deliver vacant possession of the suit schedule properties to the plaintiff. The suit schedule properties consists of three items of property, all situated

at Uttarahalli Manvarthe Kaval Village, Uttarahalli Hobli, Bangalore South Taluk, measuring 2 acres, 4 acres and 6 acres respectively.

4. The Trial Court has taken note of the averments made in the plaint that the sequence of events as to how the plaintiff acquired knowledge of alleged fraud played by defendant No.1; that the plaintiff and defendant No.1 are longtime friends and the plaintiff had entrusted defendant No.1 the work of getting the mutation and the pahani registered in the name of the plaintiff pertaining to the suit schedule properties. It is contended by the plaintiff that he left to United States of America in the month of July 1998 and returned to India during May 2002. The plaintiff was in regular contact with defendant No.1 and enquired about khata and pahani, but in the first week of September 2018 when plaintiff personally met defendant No.1 to enquire about the khata and pahani, the plaintiff got suspicious about the evasive answers given by defendant No.1. It is only thereafter that the plaintiff visited the suit schedule properties and found the

developments on the suit schedule properties and on enquiry he came to know of the fraud played by defendant No.1. The Trial Court accepted the contention of the plaintiff that fraud was played on the plaintiff and the knowledge of fraud came to light during September 2018 when the plaintiff visited the suit schedule properties and from the date of knowledge of the fraud coming to the plaintiff, and prima facie the suit appears to have been filed within time. The Trial Court is of the opinion that it is a well settled position of law that question of limitation is a mixed question of law and facts which are required to be gone through after trial. It has opined that on the plain reading of the plaint it does not disclose that on the face of it the suit is barred by limitation.

5. Learned Senior Counsel Smt.Nalina Mayegowda, appearing for defendant No.4 submitted that in paragraph-34 of the plaint, the plaintiff has clearly stated that on 10.09.2018, when he inspected the properties, he found several buildings and constructions put up on the suit schedule properties and also in the lands of Dr.Joseph

Lenz Pendanam and upon enquiry, the plaintiff found that defendant No.3 Dr.R.Subba Rao and others had constructed the buildings between the years 2015 and 2016 and they are running retirement home, resort, treatment centres etc., in the said buildings. Immediately, the plaintiff informed his friend Dr.Joseph Lenz Pendanam about the developments and with the assistance of an Advocate, the plaintiff verified the documents in the office of the Sub-Registrar and the Revenue Officers. The plaintiff came to know that defendant No.2 had executed the sale deeds in favour of defendant No.1 on the basis of an alleged General Power of Attorney said to have been executed by the plaintiff in favour of defendant No.2.

6. Learned Senior Counsel would therefore submit that it is crystal clear from the averments made in the plaint that the plaintiff is aware of the existence of about 100 villas on the suit schedule properties. However, in the schedule to the plaint, while describing the suit schedule properties, nothing is mentioned about the existence of the buildings. Further, the plaintiff has cleverly withheld

information regarding the original documents pertaining the suit schedule properties. It is evident from the plaint that the plaintiff has not produced the original sale deeds and other documents pertaining to the suit schedule properties. Learned Senior Counsel would therefore submit that in catena of decisions of the Hon'ble Supreme Court, it has been held that while considering an application under Order VII Rule 11 of CPC, the Court has to meaningfully read the plaint averments, to understand whether the plaintiff has made a clear disclosure of the facts; or whether the plaintiff has concealed relevant facts; or whether the plaintiff has cooked up a false narrative and a fictitious cause of action.

7. Per contra, learned Counsel for the plaintiff would contend that the trial Court has rightly accepted the contention of the plaintiff that the plaint discloses the sequence of events as to how the plaintiff acquired the knowledge of alleged fraud played by defendant No.1. The Trial Court has rightly concluded that disputed questions of fraud, knowledge of fraud, reasonable diligence/due

diligence are all to be adjudicated on going through full-fledged trial and burden is upon the plaintiff to show that he could not discover fraud/knowledge of fraud inspite of due/reasonable diligence until the date, as pleaded in the plaint. The Trial Court has rightly held that it is a well settled position of law that question of limitation is mixed question of law and fact required to be gone through after trial. The Trial Court has rightly held that on a plain reading of the plaint, it cannot be concluded on the face of it that the suit is barred by limitation. Learned Counsel for the plaintiff has placed reliance on ***Daliben Valjibhai and Others Vs. Prajapati Kodarbhai Kachrabhai and Another***, **2024 SCC OnLine SC 4105** where it was held that there was no jurisdiction for the High Court in allowing the application under Order VII Rule 11, on issues that were not evident from the plaint averments itself. It was held that the High Court was also not justified in holding that the limitation period commences from the date of registration itself. Reliance was placed on ***Geetha And Others Vs. Nanjundaswamy And Others*** **2023 SCC OnLine SC 1407**, where it was held that the High

Court committed an error by examining the merits of the matter. It pre-judged the truth, legality and validity of the sale deed under which the defendants claimed title. It was held that the High Court could not have anticipated the truth of the averments by assuming that the alleged previous sale of the property is complete or that it has been acted upon. Similarly, in ***N.Thajudeen Vs. Tamil Nadu Khadi And Village Industries Board***, **2024 SCC OnLine SC 3037**, it was held that when in a suit for declaration of title, a further relief is claimed in addition to mere declaration, the relief of declaration would only be an ancillary one and for the purposes of limitation, it would be governed by the relief that has been additionally claimed. The further relief claimed in the suit is for recovery of possession based upon title and as such its limitation would be 12 years in terms of Article 65 of the Schedule to the Limitation Act. Learned Counsel would also point out from the prayer in the suit that the plaintiff has also sought for delivery of the vacant and peaceful possession of the suit schedule properties in favour of the plaintiff. Therefore, at any rate, the period of limitation, as held by

the Apex Court would be twelve years, in terms of Article 65 of the Limitation Act.

8. Heard Ms.Nalina Mayegowda, learned Senior Counsel appearing for the defendants and Sri. Sanjay Nair, learned Counsel for plaintiff and perused the petition papers.

9. There can be no manner of doubt that the Court, while considering an application under Order VII Rule 11 of CPC, is required to look into the averments made in the plaint only. The Court cannot look into written statement filed by the defendants. Having said that, a plain reading of the plaint clearly discloses the fact that the plaintiff may have been away from India between July 1998 and May 2002. The three sale deeds in respect of the three items of the suit schedule properties are said to have been fraudulently executed and registered on 09.10.2001, 22.12.2001 and 22.12.2001. Subsequently, sale deed dated 03.10.2005 is executed by defendant No.1 in favour of defendant No.4 in respect of all the suit schedule properties. It has been admitted by the plaintiff that on

10.09.2018, when he visited the suit schedule properties, he found several buildings constructed on the property. However, there is no mention of the buildings in the suit schedule. During the course of the proceedings before this Court, the learned Senior Counsel appearing for the defendants filed a memo along with various orders passed by the Trial Court directing appointment of the Court Commissioner for the purpose of ascertaining the present market value of the suit properties with appurtenant buildings and structures. Pursuant thereto, a valuation report is also filed by the Court Commissioner where it is opined that the lands in question measuring about 12 acres is estimated to value at Rs.15,96,00,000/- and the buildings is estimated to value at Rs.9,96,60,000/- and the total value of the suit schedule properties is estimated at Rs.25,92,60,000/-. However, no information is forthcoming regarding the further directions issued by the Trial Court to the plaintiff to make good the Court fee.

10. Be that as it may, another important aspect of the matter, having regard to Rule 14 of Order VII of CPC,

is that the plaintiff, who relied upon documents of title was required to produce the same along with the plaint. Sub-rule (2) of Rule 14 provides that where any such document is not in the possession or power of the plaintiff, he shall, where possible, state in whose possession or power it is. Therefore, a valid contention was raised at the hands of the defendants that the plaintiff had not stated as to why he had not produced the original title deeds, although the plaintiff contended that he acquired ownership over the suit schedule properties in the year 1986.

11. This question assumes significance, in the light of the averments made in the plaint. The plaintiff has contended that defendant No.2, on an alleged General Power of Attorney said to have been executed by the plaintiff in favour of defendant No.2, sold the properties in favour of defendant No.1. It is contended by the plaintiff that he has not executed any Power of Attorney in favour of defendant No.2 or any other person empowering them to deal with the properties. On the other hand, it is

averred that the plaintiff had requested defendant No.1, a family friend to get the phodi and khata done in favour of the plaintiff. This Court need not go into the veracity of the claim made by the plaintiff. However, as required under Rule 14 of Order VII of CPC, the plaintiff was required to state and produce the original title deeds of the year 1986, if they were in the possession of the plaintiff. On the other hand, as required under sub-rule (2) of Rule 14 of Order VII, if the plaintiff was not in possession of the title deeds, then he was required to state in whose possession the title deeds were, while seeking leave of the Court to produce a photocopy of the title deeds, instead of the original.

12. This aspect of the matter bears significance to the claim made by the plaintiff, that despite due diligence, the plaintiff was not able to unearth the fraud played by the defendants. What is noticeable on a plain reading of the plaint is that the three sale deeds were first executed in the year 2001 and the second set of sale deeds were executed in the year 2005. In this background, having

found that the plaintiff has said nothing about the original title deeds and the fact that the buildings (about 100 Villas) were admittedly constructed on the suit schedule properties between the years 2015 to 2016, it is difficult to accept the contention of the plaintiff that despite due diligence, he was not aware of the fraud played against the plaintiff.

13. Section 17 of the Limitation Act provides that in a suit based upon the fraud of the defendants, the period of limitation shall not begin to run unless plaintiff has discovered the fraud, with reasonable diligence. In this regard, it would be relevant to notice a decision of the Apex Court in ***Chander Kanta Bansal Vs. Rajinder Singh Anand*, (2008) 5 SCC 117**, where it was held in paragraph No.16, as follows:

> *"16. The words "due diligence" have not been defined in the Code. According to Oxford Dictionary (Edn. 2006), the word "diligence" means careful and persistent application or effort. "Diligent" means careful and steady in application to one's work and duties, showing care and effort. As per Black's Law Dictionary (18th Edn.), "diligence"*

means a continual effort to accomplish something, care; caution; the attention and care required from a person in a given situation. "Due diligence" means the diligence reasonably expected from, and ordinarily exercised by a person who seeks to satisfy a legal requirement or to discharge an obligation. According to Words and Phrases by Drain-Dyspnea (Permanent Edn. 13-A) "due diligence", in law, means doing everything reasonable, not everything possible. "Due diligence" means reasonable diligence; it means such diligence as a prudent man would exercise in the conduct of his own affairs."

14. 'Due diligence' would therefore mean reasonable diligence; it means such diligence as a prudent man would exercise in the conduct of his own affairs. This Court is of the considered view that a casual statement being made by the plaintiff that he was not at all aware about the documents created by the defendants till the 1st week of September 2018 and that he came to know about the fraudulent acts committed and documents created by the defendants in the 1st week of September, cannot be taken on face value. The fact that huge constructions were put up on the suit schedule properties, admittedly between the year 2015 and 2016, the plaintiff cannot feign ignorance of

such constructions. Such a contention would also clearly demonstrate that the plaintiff has not exercised his due diligence in respect of such valuable property. This, coupled with the fact that the plaintiff is not in possession of the original title deeds of the year 1986, is sufficient to hold that the plaintiff has not exercised due diligence to protect his valuable property.

15. In the case of ***Shri Mukund Bhavan Trust And Ors. Vs. Shrimant Chhatrapati Udayan Raje Pratapsinh Maharaj Bhonsle And Another*, 2024 SCC OnLine SC 3844,** the Hon'ble Apex Court in paragraph 26 has held that, it is not unmindful of the position of law that limitation is a mixed question of fact and law and the question of rejecting the plaint on that score has to be decided after weighing the evidence on record. However, in glaring cases where the suit is hopelessly barred by limitation, the court should not hesitate to reject the plaint. Paragraph 26 of the judgment reads as follows:

> *"26. At this juncture, we wish to observe that we are not unmindful of the position of law that limitation is a mixed question of fact and law and the question of*

rejecting the plaint on that score has to be decided after weighing the evidence on record. However, in cases like this, where it is glaring from the plaint averments that the suit is hopelessly barred by limitation, the Courts should not be hesitant in granting the relief and drive the parties back to the trial Court. We again place it on record that this is not a case where any forgery or fabrication is committed which had recently come to the knowledge of the plaintiff. Rather, the plaintiff and his predecessors did not take any steps to assert their title and rights in time. The alleged cause of action is also found to be creation of fiction. However, the trial Court erroneously dismissed the application filed by the appellants under Order VII Rule 11(d) of CPC. The High Court also erred in affirming the same, keeping the question of limitation open to be considered by the trial Court after considering the evidence along with other issues, without deciding the core issue on the basis of the averments made by the Respondent No.1 in the Plaint as mandated by Order VII Rule 11 (d) of CPC. The spirit and intention of Order VII Rule11(d) of CPC is only for the Courts to nip at its bud when any litigation ex facie appears to be a clear abuse of process. The Courts by being reluctant only cause more harm to the defendants by forcing them to undergo the ordeal of leading evidence. Therefore, we hold that the plaint is liable to be rejected at the threshold."

16. Coming to the contention of the learned Counsel for the plaintiff who placed reliance on ***N Thajudeen*** (supra), that since the plaintiff has sought for recovery of possession and therefore, Article 65 of the Limitation Act would apply, it is to be noticed that the first cause of action arose in the year 2001, when the three sale deeds were executed and registered and therefore, even if 12 years is to be taken as the period of limitation, the suit should have been filed in the year 2013, latest. However, the suit is filed in the year 2019, long after the period of limitation. In ***Khatri Hotels Private Limited And Another Vs. Vs. Union of India and Another*****, (2011) 9 SCC 126,** it was held that the use of the word 'first' between the words 'sue' and 'accrued' as found in Articles 58 and 59 of the Limitation Act, 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. That is, if there are successive violations of the right, it would not give rise to a fresh cause of action, and the suit will be liable to be dismissed, if it is

beyond the period of limitation counted from the date when the right to sue first accrued.

17. In ***Dahiben Vs. Arvindbhai Kalyanji Bhanusali (Gajra) And Others*****, (2020) 7 SCC 366**, the Apex Court has reiterated the celebrated judgment in ***T Arivandandam Vs. T V Satyapal And Another*** **(1977) 4 SCC 467,** and held that if on a meaningful, not formal, reading of the plaint it is manifestly vexatious and meritless, in the sense of not disclosing of right to sue, Court should exercise its power under Order VII Rule 11 of CPC, taking care to see that the ground mentioned therein is fulfilled. And, if by clever drafting of the plaint, it has created the illusion of a cause of action, it should be nipped in the bud, so that bogus litigation will end at the earliest stage. It was directed that Court must be vigilant against any camouflage or suppression, and determine whether the litigation is utterly vexatious and abuse of the process of the Court.

18. Having regard to the facts narrated hereinabove, and the position of law discussed, this Court is of the

considered opinion that the Interlocutory Application filed by the defendant No.4, under Order VII Rule 11 of CPC was required to be allowed.

19. Accordingly, this Court proceeds to pass the following:

ORDER

(i) The Civil Revision Petition is ***allowed***.

(ii) The impugned order dated 22.01.2024, passed on I.A.No.IV, in O.S.No.472/2019, on the file of the learned I Addl. Senior Civil Judge, Bengaluru Rural District, Bengaluru, is hereby quashed and set aside.

(iii) The Application in I.A.No.IV filed by defendant No.4 under Order VII Rule 11 (a) and (d) of the Code of Civil Procedure, is **allowed**.

(iv) Consequently, the plaint in O.S.No.472/2019, on the file of the learned I Addl. Senior Civil Judge, Bengaluru Rural District, Bengaluru, stands **rejected**.

Ordered accordingly.

20. Pending I.As., if any stand disposed of.

Sd/-
(R DEVDAS)
JUDGE

JT/DL
CT: PS