

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/FIRST APPEAL NO. 476 of 2025****With****CIVIL APPLICATION (FOR ADDITIONAL EVIDENCE) NO. 1 of 2026****In R/FIRST APPEAL NO. 476 of 2025****With****CIVIL APPLICATION (FOR DIRECTION) NO. 2 of 2026****In R/FIRST APPEAL NO. 476 of 2025****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE ILESH J. VORA****and****HONOURABLE MR. JUSTICE R. T. VACHHANI**

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Approved for Reporting	Yes	No
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PRAFULBHAI JAGDISHNARAYAN AGRAWAL**Versus****GOVINDBHAI AMBARAM PATEL & ORS.****Appearance:****MR RAJ A TRIVEDI(7024) for the Appellant(s) No. 1****MR VIRAL K SHAH(5210) for the Appellant(s) No. 1****MR DHRUV R MAKWANA(11745) for the Defendant(s) No. 2****MR VIMAL A PUROHIT(5049) for the Defendant(s) No. 2****MR SUNIL S JOSHI(2925) for the Defendant(s) No. 6****RULE SERVED for the Defendant(s) No. 1,3****RULE UNSERVED for the Defendant(s) No. 4,5****CORAM: HONOURABLE MR. JUSTICE ILESH J. VORA****and****HONOURABLE MR. JUSTICE R. T. VACHHANI****Date : 06/08/2026****ORAL JUDGMENT****(PER : HONOURABLE MR. JUSTICE R. T. VACHHANI)**

1. Being aggrieved and dissatisfied with the judgment and decree dated 12.12.2024 passed by the learned Civil Court, Ahmedabad (Rural) in Special Civil Suit No. 615 of 2019, whereby the application at Exh.-43 filed by the respondent No.2 under Order VII Rule 11(a) and (d) of the Code of Civil Procedure, 1908 was allowed and the suit of the appellant-plaintiff came to be rejected on the ground that it is hit by Section 43 of

the Bombay Tenancy and Agricultural Lands Act, 1948, barred by limitation and that no cause of action had arisen in favour of the plaintiff, the appellant has preferred First Appeal No. 476 of 2025 under Section 96 of the Code of Civil Procedure, 1908 (“the Code” for short).

2. The brief facts leading to the filing of the present appeal are as under:

2.1. Agricultural land bearing Survey/Block No. 286/1 admeasuring 2226 sq. mtrs. (0-22-26 H.A.R., of which 2032 sq. mtrs. old tenure agricultural land) (now Final Plot No. 42 admeasuring 1462 sq. mtrs. of Town Planning Scheme No. 1/B, Bodakdev) situated at Moje Bodakdev, Taluka Ghatlodiya (old Daskroi/City), District Ahmedabad (hereinafter “the suit property”) was owned by Amraji, who died intestate prior to 1956 leaving Budhaji Amraji, Kalaji Amraji and Shakraji Amraji as his legal heirs.

2.2. By partition deed No. 11644 dated 05.08.1982 the suit property came to the share of (i) Shakraji Amraji as Karta of his HUF consisting of himself, his wife Kamlaben and minor sons Pravin, Mann, Ashok and Mahesh, and (ii) Bai Shanta Wd/o Shanaji Varwaji (hereinafter “the original owners”).

2.3. The appellant-plaintiff, engaged in the business of construction under the name of M/s Ashish Builders Pvt. Ltd., entered into an agreement to sell dated 17.02.1990 with the original owners for a total consideration of Rs. 79,860/-. The appellant claimed to have paid Rs.

40,000/- by cheque before execution and a further Rs. 10,000/- against delivery of vacant possession, which was handed over along with a possession receipt of the same date. The balance was payable on execution of the registered sale deed after necessary permissions.

2.4. The plaintiff thereafter paid the balance Rs. 29,860/- by cheque dated 16.02.1990 and an additional Rs. 25,000/- on account of delay, aggregating Rs. 1,04,860/-. On 17.02.1990 the original owners executed a fresh agreement to sell and two irrevocable powers of attorney in favour of the plaintiff authorising him to execute all documents, accept consideration and appear before revenue and other authorities. An additional sum of Rs. 15,000/- was paid. The plaintiff acted under the said powers before various authorities. Construction permissions could not be obtained owing to the plaintiff's prolonged illness, the death of his wife and proceedings initiated by certain joint owners.

2.5. In or about April-May 2019 the plaintiff noticed a board of defendant No. 3 on the suit property. Upon inquiry and obtaining certified copies he discovered that defendant No. 1 had executed registered sale deed No. 372 dated 15.02.2018 in favour of defendant No. 2. The said deed rested on a forged unregistered Will of Laduben Wd/o Somaji Varvaji (who died on 28.04.1994) in favour of defendant No. 1, a stranger, pursuant to which the name of Dhanaji Somaji was deleted by Mutation Entry No. 7116 dated 10.01.2003, a declaration and affidavit dated 31.05.2003 of Shantaben relinquishing her rights leading to Mutation Entry No. 7218 dated 31.05.2003, and a supporting declaration of defendant No. 4. Mutation Entry No. 7685 dated 16.03.2005 recording

the name of defendant No. 1 was cancelled on 18.06.2005. Defendant No. 4 had earlier filed Regular Civil Suit No. 714 of 2013 challenging the relinquishment and obtained an interim injunction, but later settled, the injunction came to be vacated by purshis dated 06.05.2017 (Mutation Entry No. 11558 dated 01.06.2017) and withdrew the suit unconditionally by purshis dated 10.02.2018, whereafter the sale deed was executed.

2.6. The plaintiff thereupon instituted Special Civil Suit No. 615 of 2019 on 24.12.2019 seeking specific performance of the agreements to sell dated 02.04.1985 and 17.02.1990, declaration that the sale deed dated 15.02.2018 is illegal, null and void ab initio and liable to be cancelled, and sought permanent injunction restraining creation of third-party rights, and declaration that Mutation Entries Nos. 7116 and 7218 are illegal, fraudulent and not binding on the plaintiff.

2.7. After service, defendant No. 2 filed written statement and reply to the injunction application. Defendant No. 2 thereafter filed application at Exh. 43 under Order VII Rule 11 of the Code seeking rejection of the plaint on the grounds of bar under the Registration Act, the Transfer of Property Act, Section 43 of the Bombay Tenancy and Agricultural Lands Act, 1948 and limitation, etc. The plaintiff filed reply and written arguments. By the impugned judgment and decree dated 12.12.2024 the Learned Trial Court allowed the application and rejected the plaint.

3. We have heard the Learned Advocates for the respective parties and carefully examined the material documentary evidence adduced before the learned Civil Court.

4. Submissions on behalf of Learned Advocates for the appellant:

4.1. The judgment and decree dated 12.12.2024 below Exh.43 in Special Civil Suit No. 615 of 2019 by the learned 5th Additional Senior Civil Judge, Ahmedabad (Rural) is contrary to law and evidence. The learned Civil Judge erred in allowing defendant No.2's application under Order VII Rule 11(a) & (d) CPC and rejecting the plaint.

4.2. It is further submitted that the suit is not hit by Section 43 of the Tenancy Act. Judgments relied upon by defendant No.2 apply only to pure specific-performance suits of restricted-tenure land, as here the reliefs are multiple: specific performance of agreements dated 02.04.1985 (Mark 3/3) and 17.02.1990 (Mark 3/4), and sought the declaration that sale deed No. 372/2018 (Mark 3/27) is illegal, null and void ab initio, also sought permanent injunction against third-party rights, declaration that Mutation Entries 7116 (10.01.2003) and 7218 (31.05.2003) are fraudulent and not binding, declaration that documents by defendants No.4 & 5 are void, and permanent injunction protecting plaintiff's rights. Those judgments are therefore inapplicable.

4.3. It is further submitted that the plaintiff has been in settled possession since 1985 with knowledge and consent of original owners, evidenced by agreement to sell 02.04.1985 (Mark 3/3), possession receipt 02.04.1985 (Mark 3/2), agreement 17.02.1990 (Mark 3/4) and irrevocable powers of attorney 17.02.1990 (Mark 3/5 & 3/6). Full consideration was paid (Marks 3/1 to 3/6). The irrevocable POAs confer all powers including execution of sale deeds. Hence the judgments cited by

defendant No.2 have no application.

4.4. It is further submitted that the learned Civil Judge erred on limitation. Plaintiff had initiated permission proceedings (Marks 3/12–3/15). Delay was due to illness, wife's death and rival proceedings. Cause of action arose in April-May 2019 on discovery of defendant No.3's board and, after obtaining certified copies, knowledge of fraudulent sale deed 15.02.2018 (Mark 3/27) executed by defendant No.1 on forged Will of Laduben (died 28.04.1994), Mutation 7116, Shantaben's affidavit leading to Mutation 7218 and related entries. Suit filed December 2019 is within time. Even from the aforesaid sale-deed date the suit is within three years, as the limitation for specific performance runs from knowledge of refusal by fraudulent transfer. Possession plus irrevocable POAs further negate any limitation bar and fraud unravels everything, thus defendant No.1 fraudulently created documents to transfer to defendant No.2.

4.5. Since the issue of limitation interwoven with merits must be tried with other issues. It is a mixed question of law and fact. Under Order VII Rule 11 CPC only the entire plaint and plaintiff's documents are to be read as a whole, defence is irrelevant. The learned Civil Judge wrongly considered defendant No.2's defence. The plaint discloses a real cause of action. The powers exercised under Order VII Rule 11 are drastic and conditions must be strictly satisfied, which in case on hand lacked. Thus, the cause of action requiring thorough trial, the plaint cannot be rejected merely because the plaintiff may not ultimately succeed.

4.6. It is therefore prayed that the present proceedings be quashed and set aside and the suit of the plaintiff be restrained and proceedings thereof be ordered to be confirmed in accordance with law.

4.7. Learned Advocate for the appellant to substantiate its claim has placed reliance on the following judgments:

- A) *Rame Gowda v. M. Varadappa Naidu*, (2004) 1 SCC 769**
- B) *P.V. Guru Raj Reddy v. P. Neeradha Reddy*, (2015) 8 SCC 331**
- C) *Ramesh B. Desai v. Bipin Vadilal Mehta*, AIR 2006 SC 3672**
- D) *Shantibhai Somabhai Patel v. Ranchodbhai Pujabhai Padhiyar*, 2019 JX(Guj) 196 : 2019 AIJEL_HC 240338**
- E) *Srihari Hanumandas Totala v. Hemant Vithal Kamat*, (2021) 9 SCC 99**
- F) *T. Arivandandam v. T.V. Satyapal*, (1977) 4 SCC 467**
- G) *Mayar (H.K.) Ltd. v. Owners & Parties, Vessel M.V. Fortune Express*, (2006) 3 SCC 100**
- H) *K.R. Suresh v. R. Poornima and Ors*, 2025 SCCOnLine SC 1014**

5. Submissions on behalf of Learned Advocates for the defendant No.2:

5.1. It is submitted that the impugned judgment and decree dated 12.12.2024 passed below Exh.43 in Special Civil Suit No. 615 of 2019 by the learned 5th Additional Senior Civil Judge, Ahmedabad (Rural) is just, legal and in accordance with law. The learned Civil Judge has rightly allowed the application of defendant No.2 under Order VII Rule 11(a) & (d) of the CPC and rejected the plaint.

5.2. It is further submitted that from the plain reading of the plaint and

the documents relied upon by the plaintiff, the suit is barred by limitation. The agreements to sell are of the years 1985 and 1990. The suit filed in 2019 is hopelessly barred. The alleged knowledge in April-May 2019 is an afterthought and cannot revive a stale claim.

5.3. It is submitted that the suit is also barred under Section 43 of the Tenancy Act. The suit property being restricted-tenure land, specific performance of any agreement to sell cannot be granted without prior permission of the (Collector) competent authority. The multiple reliefs claimed do not alter the character of the suit, the main relief being specific performance.

5.4. The judgments relied upon by defendant No.2 before the Learned Civil Judge squarely apply and were correctly followed.

5.5. It is submitted that the plaint does not disclose any cause of action. The averments regarding possession, full payment and irrevocable powers of attorney are self-serving and do not create any enforceable right against defendant No.2 who is a subsequent purchaser under a registered sale deed of 2018, hence the allegations of fraud are vague, unsupported and cannot be examined beyond the four corners of the plaint at the stage of Order VII Rule 11 CPC.

5.6. It is therefore submitted that while deciding an application under Order VII Rule 11 CPC, the Court is required only to examine whether the plaint discloses a cause of action or is barred by any law. Hence, it is prayed that the learned Civil Judge has correctly done so and has not

traveled into the defence on merits. The order suffers from no infirmity and deserves to be upheld.

6. Submissions on behalf of Learned Advocate for the defendant No.6:

6.1. It is submitted that the judgment and decree dated 12.12.2024 passed below Exh.43 in Special Civil Suit No. 615 of 2019 by the learned 5th Additional Senior Civil Judge, Ahmedabad (Rural) is just, legal and proper. The learned Civil Judge has rightly allowed the application under Order VII Rule 11(a) & (d) CPC and rejected the plaint. Defendant No.6 supports the said order in its entirety.

6.2. It is submitted that the plaint does not disclose any cause of action against defendant No.6. The suit is barred by limitation as the agreements relied upon by the plaintiff are of 1985 and 1990 and the suit was filed only in 2019. The alleged knowledge of April-May 2019 is an afterthought and cannot save the claim.

6.3. While adopting the arguments made by the Learned Advocate for the defendant No.2, it is further submitted that the suit is further barred under Section 43 of the Tenancy Act. The property being restricted-tenure land, no decree for specific performance can be granted without prior permission of the competent authority. The multiple reliefs claimed do not change the essential character of the suit. The judgments relied upon by the contesting defendants before the learned Civil Judge were correctly applied.

6.4. It is further submitted that allegations of fraud and claim of settled possession are vague, self-serving and beyond the scope of inquiry under Order VII Rule 11 CPC. Only the plaint averments and documents produced with the plaint are to be examined. The learned Civil Judge has correctly done so without travelling into disputed questions of fact.

6.5. It is therefore submitted that the defendant No.6, having been joined later pursuant to the order dated 26.03.2025, is a subsequent party. No independent cause of action is disclosed against it. Hence, it is prayed that the impugned order suffers from no illegality or infirmity and deserves to be confirmed.

6.6. In support of his contentions, Learned Advocate for the respondent No.6 places reliance on the following judgments:

A) *Dhulaji Somaji Thakor v. Gordhanbhai Hathibhai Patel*, 2025 (0) AIJEL-HC 250791

B) *Nagjibhai Kanjibhai Patel v. Mukesh @ Pappu Chandraprakash Harivansh Shukla*, 2022 (0) AIJEL-HC 244605

C) *Hanubhai Ladhrabhai Bharwads Main Legal Heirs v. Chimanbhai Jivabhai Patel Legal Heirs of Decd.*, 2018 (0) AIJEL-HC 240672

D) *Harishbhai Chandrakant Madhu v. Ranchhodbhai Kalubhai Hvarwad & 13*, 2023 (0) AIJEL-HC 247278

E) *Hemendra Ishwarbhai Patel Through Poa Piyush B Trivedi v. Gokulbhai Shanabhai-decd. Through Legal Heirs*, 2017 (0) AIJEL-HC 237338

F) *Bharatbhai Devashibhai Ukani v. Vinaben Babaji & Ors.*, order dated 26/02/2024 passed by Coordinate Bench of this Court in First Appeal No.4023 of 2023

G) *Bharatbhai Devashibhai Ukani v. Vinaben Babaji & Ors.*, Special Leave to Appeal (Civil) No.12845 of 2024

H) Becharbhai Nathubhai Patel Alias Andhan v. Chimanbhai Maganbhai Patel, 2025 (0) AIJEL-HC 250662

I) Decd Shaikh Ismailbhai Hushainbhai Through LH v. Vankar Ambalal Dhanabhai, 2024 LawSuit(Guj.) 76

J) Pijush Kanti Chowdhury v. State of West Bengal and others, 2007 LawSuit(Cal) 633

K) Raajratna Ventures Limited v. Union of India, 2019 SCC Online Guj 6617

7. Having heard the Learned Advocates appearing for the respective parties and on perusal of the material placed for consideration, so also the conclusions arrived at by the Learned Judge of the Trial Court, the entire gamut of the case as narrated so also emerging from the averments made in the plaint as well as from the material adduced thereon, followed by the claim of the appellant, requires to be scrutinized judiciously.

8. Since the civil application seeking stay bearing Application No.1 of 2025 in the present First Appeal No.476 of 2025 came to be dismissed and the appellant unsuccessfully assailed the said order before the Hon'ble Apex Court by filing a Special Leave Petition (Civil) Diary No.31557 of 2025, the Hon'ble Supreme Court, while disposing of the said Special Leave Petition, reserved liberty to the appellant to seek expeditious disposal of the present appeal. In view of the observations made by the Hon'ble Apex Court directing that the appeal be disposed of as expeditiously as possible, preferably within a period of six months, and upon the joint request of the Learned Advocates appearing for the respective parties, the matter has been taken up for final hearing and disposal. The order of the Hon'ble Supreme Court has been placed on record.

9. It emerges from the record that the claim of the appellant rests on an agreement to sell executed on 02.04.1985, followed by another agreement to sell executed on 17.02.1990 with regard to the disputed property, along with irrevocable powers of attorney. It further transpires that since then no steps were initiated by the appellant to look after the status of the matter or the issue of sanctions claimed to have been incorporated in the alleged agreements to sell. Suddenly and surreptitiously, as per the claim of the appellant, the disputed land came to be converted from new tenure to old tenure in the month of January 2018 and a sale deed came to be executed in favour of defendant No.2. Pending the suit, a further sale deed came to be executed on 24.03.2023 in favour of defendant No.6. It further transpires that due to differences and family disputes amongst the original owners and their descendants, civil proceedings came to be initiated and an injunction operated therein. However, the said suit came to be disposed of on the basis of the amicable settlement arrived at between the parties. Therefore, pending the present suit, a fresh sale deed came to be executed in favour of defendant No.6, who in turn started putting up constructions on the basis of the rights vested under the sale deed executed by defendant No.1 in favour of defendant No.2 and subsequently in favour of defendant No.6.

10. Thus, the entire claim of the appellant rests solely on the basis of the different agreements to sell executed in its favour along with the irrevocable powers of attorney referred to hereinabove.

11. Per contra, defendant No.2 claims to have been vested with rights,

interest and title over the disputed property solely on the basis of the sale deed executed by defendant No.1, after thorough investigations and confirmations as to the title and ownership of the property in question. Defendant No.2 purchased the property from defendant No.1 only after satisfying all requirements and legal proceedings and thereby vested with the rights of ownership. It also transpires that during the course of inquiry and investigation, no existing rights of strangers, particularly of the appellant, could be found in the revenue records or any other records available. Thus, the said property appears to have been sold by registered sale deed in favour of defendant No.6.

12. It also transpires from the material that at the time when the agreements to sell as claimed by the appellant came to be executed, the land admittedly appears to have been of restricted tenure. The agreements to sell followed by the irrevocable powers of attorney appear to have been executed in the years 1985 and 1990 respectively. The suit seeking specific performance of the contract on the basis of the aforesaid agreements to sell, so also ancillary reliefs, came to be filed in the year 2019 (Special Civil Suit No.615 of 2019). As the defendants moved an application under Order VII Rule 11 and considering the aforesaid aspects and after affording opportunity to the parties concerned, on the basis of the applications moved by the respondents seeking rejection of the plaint, the plaint came to be rejected. The following aspects are required to be judicially appreciated:

IN CONTEXT TO THE ISSUE OF LIMITATION:

- i. Whether the suit of the appellant is barred by the law of

limitation since the claim of the appellant rests on the basis of two different agreements to sell dated 02.04.1985 and 17.02.1990 respectively, followed by the irrevocable powers of attorney with regard to the property in question which admittedly appears to be of restricted tenure and consequently the same being invalid and not enforceable in accordance with law.

13. It is pertinent to note that in context to the rights vested with defendant No.1, it appears from the material that the legal heirs of the original owner appear to have executed several deeds including a will in favour of defendant No.1. Though civil litigations inter se and revenue disputes were initiated, those proceedings were terminated on the basis of the amicable settlement arrived at between the parties and the rights over the property came to be vested in favour of defendant No.1. The necessary entries in the revenue records came to be mutated accordingly in the year 2003. Since then defendant No.1 has become the absolute owner of the property in question and on the basis of the same, defendant No.1 executed a sale deed in favour of defendant No.2 in the year 2018 after getting the restricted tenure of the land converted into old tenure in the year 2018. Thus, when the sale deed was executed in favour of defendant No.2, the land in question had already been converted from new tenure to old tenure and thereafter the said property came to be sold in the year 2023 in favour of defendant No.6.

14. The questions that arise for consideration with regard to the claim agitated by the appellant which solely rests on the agreements to sell executed in its favour in the years 1985 and 1990 when the land in

question was of restricted tenure. It transpires that all throughout the proceedings initiated between the parties inter se, the legal heirs of the original owner, so also with regard to the mutations of the entries on the basis of the will etc., nowhere the appellant seems to have appeared, nor any such contention with regard to acknowledgment of the aforesaid proceedings, claimed to have been initiated through/for and on behalf of original owners by the appellant in his capacity as power of attorney.

15. On the basis of acquiescence and knowledge, the appellant seems to have claimed any such status in the ongoing proceedings between the heirs of the original owners, though not a single effort appears to have been made by the appellant so as to get impleaded in the proceedings to establish the factum of the appellant being conversant with the continuing proceedings so as to show the nexus between the appellant and the property in question.

16. Thus the appellant seems to have initiated the civil proceedings seeking performance of the agreements to sell of 1985 and 1990 by filing the suit in the year 2019, i.e., after about 34 years.

17. It appears that during the period of aforesaid civil proceedings, as discussed in the foregoing paragraphs the non-participation in any proceedings and the ignorance of the appellant speaks volumes as to the rights claimed in the property in question. The present appellant seems to have got up from slumber only after the land in question had been converted from new tenure to old tenure by defendant No.1 followed by the execution of the sale deed in favour of defendant No.2, and then

approached the Court seeking execution of the aforesaid two agreements to sell almost after three decades from the date of deeds claimed to have been executed in favour of the appellant.

18. It further transpires, as claimed by the appellant, that in the two different agreements to sell executed in its favour with different recitals and conditions incorporated therein, condition No.6 pertains to obtaining permissions by the original owners for the sale of the land for the benefit of the minor as well as the permissions under the Act of 1948 or any other statutory permission from the Collector within a period of three months from the date of the agreement.

19. Condition No.7 pertains to the sale of the land being completed within a period of 12 months from the date of the said agreement after obtaining all necessary permissions/sanctions and orders required to be obtained from the competent authority.

20. Thus the claim of the appellant is that since the agreements to sell having been executed and the conditions incorporated therein subject to fulfilment at the hands of the respondents which have not been fulfilled and complied with, the rights of the appellant could not be put at peril on account of inactions and default on the part of the respondents. Though simultaneously the claim of the appellant of having been put in possession on the basis of the aforesaid agreements has also been claimed, however nothing of any such material seems to have been placed on record except the bare averments made therein. Be that as it may.

21. In context to the issue on limitation, the efforts seem to have been made by the appellant to abridge the time period on account of pleading ignorance on the basis of the ailment of his wife so also the inter se litigations between the original owners and their descendants/legal heirs followed by the initiation of civil proceedings, for example filing of ***Regular Civil Suit No.714 of 2013*** amongst the family members wherein interim stay was granted which, according to the appellant, prevented it to await the outcome of the said proceedings.

22. However, the said contentions have been totally negated by the respondents stating and contending that the appellant was totally disconnected and had no rights whatsoever over the property in question. Had it been so, the appellant must have rushed to the civil Court seeking impleadment of the parties. Instead thereof the appellant kept mum and the very demeanour and conduct on the part of the appellant speaks volumes as to the non-nexus with regard to the property in question. Simply by putting forward the cause of the aforesaid litigations between the family members of the original owners is no ground to cull out from the issue of limitation as admittedly the claim of the appellant seems to have been raised not only at a belated stage but also on the strength of the documents, namely the invalid agreements to sell.

23. The original owners in their capacity as owner executed a sale deed i.e. Will, etc. in favour of defendant No.1 followed by the mutations, of the entries vesting the rights over the disputed property on defendant No.1 and subsequent transfer having been so effected thereupon by paying a huge amount towards the premium for conversion of the land

from new tenure to old tenure to the extent of Rs.1,20,46,800/- followed by the sanction as sought for came to be accorded by the Collector vide order dated 12.02.2018. It is only thereafter the registered sale deed came to be executed as detailed hereinabove.

24. Thus, in view of the aforesaid issue raised in the foregoing paragraphs require to be determined, namely whether the plaint has been rightly rejected under the provisions of Order VII Rule 11 of the Code of Civil Procedure on the ground that the suit for specific performance of the contract based on illegal or invalid agreement to sell is further hit by Section 43 of the Tenancy Act, 1948.

25. Before dealing with the said issue, the purpose and object as enshrined under Section 43 of the Tenancy Act, 1948 requires to to have a glance. The relevant excerpts of the said provisions are required to be reproduced. Section 43 imposes restrictions on transfer of land purchased under the Act.

IN CONTEXT TO SECTION 43 OF THE TENANCY ACT, 1948:

26. Section 43 of the Tenancy Act, 1948 read as under:

“Section 43. Restriction on transfers of land purchased or sold under this Act. - [(1) No land or any interest therein purchased by a tenant under section 17B, 32, 32F, 32-I. [*], [32U, 43-1D or 88E] or sold to any person under section 32P or 64 shall be transferred or shall be agreed by an instrument in writing to be transferred, by sale, gift, exchange, mortgage, lease or assignment, without the previous sanction of the Collector and except in consideration of payment of such amount as the State Government may by general or special order determine; and no such land or any interest, therein shall be partitioned without the previous sanction of the Collector]:

[Provided that no previous sanction of the Collector shall be required, if

the partition of the land is among the members of the family who have direct blood relation or among the legal heirs of the tenant:

Provided further that the partition of the land as aforesaid shall not be valid if it is made in contravention of the provisions of any other law for the time being in force:

Provided also that such members of the family or the legal heirs shall hold the land, after the partition, on the same terms, conditions and restrictions as were applicable to such land or interest therein purchased by the tenant or the person.]

[(1A) The sanction under sub-section (1) shall be given by the Collector in such circumstances and subject to such conditions, as may be prescribed by the State Government.]

[(1AA)] Notwithstanding anything contained in sub- section (1), it shall be lawful for such tenant] or a person to mortgage or create a charge on his interests in the land in favour of the State Government in consideration of a loan advanced to him by the State Government under the Land Improvement Loans Act, 1983, the Agriculturists' Loans Act, 1984, or the Bombay Non-agriculturists' Loans Act, 1928, as in force in the State of Gujarat, or in favour of a bank or co-operative society, and without prejudice to any other remedy open to the State Government, bank or co-operative society, as the case may be, in the event of his making default in payment of such loan in accordance with the terms on which such loan was granted, it shall be lawful for the State Government, bank or co-operative society, as the case may be, to cause his interest in the land to be attached and sold and proceeds to be applied in payment of such loan.

Explanation.—For the purposes of this sub-section, "bank" means—

(a) the State Bank of India constituted under the State Bank of India Act, 1955;

(b) any subsidiary bank as defined in clause (k) of section 2 of the State Bank of India (Subsidiary Bank) Act, 1959;

(c) any corresponding new bank as defined in clause (d) of section 2 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970;

(d) the Agricultural Refinance and Development Corporation, established under the Agricultural Refinance and Development Corporation Act,

1963.]

(1B) Nothing in sub-section (1) 4 [or(1AA)]shall apply to land purchased under section 32, 5 [32 F or 64] by a permanent tenant thereof, if prior to the purchase, the permanent tenant, by usage custom, agreement or decree or order of a court, held a tranferable right in the tenancy of the land.]

[(1C)The land to which sub-section (1) applies and for which no permission is required under sub-section (1) of section 65B of the Bombay Land Revenue Code, 1879 for use of such land for a bonafide industrial purpose may, notwithstanding anything contained in sub-section (1) of this section, be sold without the previous sanction of the Collector under sub-section (1) but subject to payment of such amount as may be determined by the State Government under sub-section (1).]

(2) [Any transfer or partition, or any agreement of transfer, or any land or any interest therein] in contravention of sub-section (1) 7 [or sub-section (1C)] shall be invalid.]”

27. At this juncture, it would be apt to refer the relevant paragraphs of ***Decd Shaikh Ismailbhai Hushainbhai Through LH v. Vankar Ambalal Dhanabhai, (2024) 1 GLH 222***, with reference to Section 43 of the Tenancy Act, 1948

“75 (a) **Essence of Section 43 of the Tenancy Act,1948:-**

(i) Section 43 is couched in negative language, making an express prohibition on execution of any instrument in writing to transfer by sale, gift, exchange, mortgage, lease or assignment, without the previous sanction of the Collector. The plain language of Section 43 of the Tenancy Act makes it clear that even an agreement in writing for transfer of the land governed by Section 43 is prohibited unless prior permission of the Collector is obtained. Sub-section (1A) further clarifies that the sanction under Sub-section (1) shall be given by the Collector, in such circumstances and subject to such conditions, as may be prescribed by the State Government. Sub-section (2) provides the consequence of any transfer or any agreement for transfer of the land governed by Section 43 in contravention of Sub- section (1), and makes it Invalid.

76. The essence of Section 43 has been discussed by the Division Bench of this Court in the case of **Shashikant Mohanlal Desai and others vs. State of Gujarat, AIR 1970 GUJARAT 204**. While deciding the question of construction of Section 43 of the unamended Bombay Tenancy and Agricultural Lands Act, 1948, it was noted therein that the Tenancy Act, 1948, originally enacted, was intended to regulate the relationship of landlord and tenant with a view to giving protection to the tenant against exploitation by the landlords introducing a radical measure of agrarian reform. The legislature later decided that the tiller of the soil should be brought into direct contact with the State and the intermediary landlord should be eliminated and introduced fasciculus of Sections from Section 32 to Section 32-R and Section 43, which came into force on 13.12.1956 and they provided for the tenant becoming deemed purchaser of the land held by him as tenant. Since the tenant is made deemed purchaser of the land in order to effectuate the policy of agrarian reform to eliminate the intermediary landlord and to establish direct relationship between the State and the tiller of the soil, so that soils of his cultivation are not shared by an intermediary or middleman who does not put in any labour, the legislature insisted that the tenant must personally cultivate the land of which he is made the deemed purchaser. The tenant would continue to remain owner of the land only so long as he personally cultivated it. He must make use of the land for the purpose for which it was given to him as the owner. If the tenant fails to cultivate the land personally either by keeping it fallow or by putting it to non-agricultural use, he would loose the land under Section 32B and the land would be given for personal cultivation in accordance with the provisions of Section 84C.

(ii) It was noted therein that for the same reason, the legislature, by enacting Section 43, placed an embargo on the tenant transferring the land deemed to be purchased by him. If the tenant was free to transfer the land to any one he likes, the object and purpose of making him the deemed purchaser of the land would be frustrated. Section 43, therefore, provided that no land purchased by a tenant, under Section 32 shall be transferred by sale, gift, exchange, mortgage, lease, assignment or partition without the previous sanction of the Collector and except the payment of such amount, as the State Government may by general or special order determine. General rule enacted in Section 43 was that the tenant

shall not transfer the land by any of the above mode, for it is given to him as owner for personal cultivation. It was noted that the legislature, however, recognized that there may be cases where it may be necessary or expedient to transfer the land to some other person and, therefore, provided that the transfer may be made by the tenant after obtaining the previous sanction of the Collector and on payment of such amount, as the State Government may, by general or special order, determine. These two conditions are clearly and indubitably conditions of a valid transfer of the land by the tenant and, if either of those two conditions are not fulfilled, the transfer would be Invalid.

(iii) As far as the first condition is concerned, which requires previous sanction of the Collector before the land can be transferred by the tenant, it was observed that this requirement has been introduced in order to ensure that the general rule inhibiting transfer is not departed from, except under justifying circumstances. When an application is made to the Collector for sanction, the Collector will examine the facts and circumstances of the case and decide whether consistently with the object of the Act and the exigencies of the situation, the tenant should be permitted to transfer the land. If the land is said to be transferred by the tenant for non- agricultural purposes, the Collector will have to consider whether the necessity or expediency of the transfer is so great that despite the policy of the Statute that the land must be personally cultivated by the tenant, it should be allowed to be transferred by the tenant to another for non-agricultural purpose.

(iv) The Division Bench has emphasized that the power of the Collector is not to be exercised lightly, rather it is a power, which must be exercised with great care and circumspection having regard to the policy of the statute and also bearing in mind the fact that the landlord has been deprived of his ownership of the land for the purpose of making the tiller of the soil the owner of it. The Collector, will, therefore, take into account various circumstances relating to the proposed transfer and decide whether he should grant permission or not.

77. In view of the negative language of the Statute, there can be no doubt that the two conditions of transfer in Sub-section (1) of Section

43 are of mandatory character.

78. Section 43, as was originally enacted, did not contain any prohibition about the agreement as an instrument in writing to be entered for transfer by sale, gift, exchange, mortgage, lease or assignment. By Gujarat Act No. 30 of 1977, the amendments were brought in the Tenancy Act, 1948. From the Statement of object and reasons of the Bill seeking to amend the Tenancy law enforced in the State of Gujarat, it may be noted that Sub-section (1B) of Section 32 of the Tenancy Act, 1948 was amended so as to provide that if the tenant fails to give an undertaking within the prescribed period to cultivate the land personally, the land whose possession is taken from the landlord, shall vests in the State Government and shall be disposed of in the manner prescribed in Sub-section (2) of Section 32P. The first proviso to Sub-section (1B) of Section 32 was amended and second proviso was inserted.

79. The object and reasons, as narrated in the Bill, to achieve two fold purpose to amend Sections 43 and 63 of the Tenancy Act, 1948, is relevant to be extracted hereinunder:-

Statement of Objects and Reasons

This Bill seeks to amend the tenancy laws in force in the State of Gujarat for certain purposes.

2. It seeks to amend sub-section (1B) of section 32 of the Bombay Tenancy and Agricultural Lands Act, 1948 so as to provide that if the tenant fails to give an undertaking within prescribed period to cultivate the land personally, the land whose possession is taken from the landlord, shall vest in the State Government and shall be disposed of in the manner provided in sub-section (2) of section 32P.

3. This Bill also seeks to amend sections 43 and 63 of the Bombay Tenancy and Agricultural Lands Act, 1948 and the corresponding sections 57 and 89 of the Bombay Tenancy and Agricultural Land (Vidarbha Region and Kutch Area) Act, 1958, for achieving two fold purpose as under:

(1) to impose restrictions on the purchase of sites for dwelling houses by the tenants of such sites similar to the restrictions imposed by the Act on the purchase or sale of land under certain provisions of the Act;

(2) to apply the restrictions imposed by the aforesaid sections on

transfers of lands to agreements of transfer also, with a view to preventing circumvention of the aforesaid provisions of law by effecting agreements of transfer and then resorting to part performance of such agreements under section 43A of the Transfer of Property Act, 1882.

Sub-section (1) of Section 43 was substituted in the following manner:-

“(1) for sub-section (1), the following shall be substituted, namely:-

“(1) No land or any interest there in purchased by a tenant under section 17B, 32, 32F, 32I, 32O, 32U, or 43-1D or sold to any person under section 32P or 64 shall be transferred or shall be agreed by an instrument in writing to be transferred, by sale, gift, exchange, mortgage, lease or assignment, without the previous sanction of the Collector and except in consideration of payment of such amount as the State Government may be general or special order determine; and no such land or any interest, therein shall be partitioned without the previous sanction of the Collector.”;”

“g) Enforceability of the agreement hit by Section 43 of the Tenancy Act:-

*140. In the end, on the issue of grant of decree of specific performance of an agreement to sell which is contrary to the statutory provisions, we may refer to the decision of the Apex Court in Narayanamma (supra) wherein applying various tests, referring to the decision of the Apex Court in Kedar Nath Motani it was held that if the decree is granted in favour of the plaintiff on the basis of an illegal agreement which is hit by a statute, it will be rendering active assistance of the Court in enforcing an agreement which is contrary to law. A ticklish question has also arisen in the situation of the said case where both the parties were common participators in the illegality. Referring to the opinion of Hidayatulla, J in Kedar Nath Motani (supra) and the opinion of Gajendragadkar, J in Immani Appa Rao it was noted that where the claim of the plaintiff is entirely based upon an agreement which is hit by the statutory provisions, although illegality is not pleaded by the defendant nor sought to be relied upon by him in defence, yet the Court itself, upon the illegality appearing from the evidence will take notice of it and will dismiss the action on the doctrine *ex turpi causa non oritur actio*, i.e. no polluted hand shall touch the pure fountain of justice.”*

28. Thus sum and substance of the aforesaid provision makes it abundantly clear that the land or the interest therein cannot be transferred or even agreed to be transferred by executing any deed in writing in the form of sale, gift, exchange, mortgage, lease or assignment without obtaining previous sanction of the Collector.

29. As such there is a clear prohibition as enumerated in Section 43 against such transfer or execution of an agreement purporting to transfer such land or interests therein as mentioned in the aforesaid provisions. Therefore the moot question which requires to be looked into is that the entire case of the appellant rests solely on the agreements to sell executed in its favour of the land of restricted tenure and that too without obtaining previous permissions. Therefore the question with regard to the enforceability of such agreement by the Civil Court, particularly in a suit for specific performance of the agreement filed by the appellant herein, is whether the same is maintainable as the agreement in question is an invalid agreement in view of the aforesaid provision.

30. The provision of Section 43 makes it clear that any transfer or any agreement of transfer of the property in question which is of restricted tenure or interest therein in contravention of Section 43(1) is invalid. The unambiguous and clear language of the provision makes it abundantly clear that the transfer or partition or an agreement to transfer any such property or the interest therein shall ipso facto be invalid. As a consequential effect the transactions between the parties in contravention of sub-section (1) of Section 43 would be hit by sub-section (2) of Section 43 of the Tenancy Act, 1948. Thus in view of the aforesaid, the

essential ingredients of the aforesaid provision apparently appear to be couched in negative language making an express prohibition on execution of any instrument in writing to transfer by any mode including sale, gift, exchange, mortgage, lease or assignment without previous sanction of the Collector.

31. In the case on hand, admittedly the agreements to sell dated 02.04.1985 and 17.02.1990 pertaining to the property in question which appears to be of restricted tenure, though the reference with regard to putting a burden to obtain a sanction has been shifted on the original owner subject to the stipulated times agreed upon between the parties, nothing of any such progress seems to have surfaced. Therefore the performance sought for by the appellant of the aforesaid agreements of the property in question at the relevant time when the deeds of agreement to sell were executed was of restricted tenure and in the absence of the previous sanction of the Collector as enunciated under Section 43, the agreements are apparently invalid and the performance and enforcement cannot be sought for and is not enforceable. That too after the lapse of about 34 years. Thus the conclusion arrived at by the Learned Judge while rejecting the plaint on the aforesaid ground does not warrant any interference.

IN THE CONTEXT TO ORDER VII RULE 11:

32. Order VII Rule 11 of Code of Civil Procedure, reads as under:

“11. Rejection of plaint.— The plaint shall 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

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of exceptional nature for correction of the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.”

33. Before considering the submissions on merits, it is necessary to refer to the legal position governing the issue. The present issue arises from an application filed under Order VII Rule 11 of the Code of Civil Procedure, 1908, seeking rejection of the plaint. On this issue, it is apt to discuss the judgment of the Hon'ble Supreme Court dated 09.07.2020 in the case of ***Dahiben v. Arvinbhai Kalyanji Bhanusali (Gajra) (D) through LRs & Ors., Civil Appeal No. 9519 of 2019***, wherein the Hon'ble Supreme Court has held from paragraph No.12.1 onwards as under:

12.1 ...The remedy under Order VII Rule 11 is an independent and special remedy, wherein the Court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in

this provision.

The underlying object of Order VII Rule 11 (a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11 (d), the Court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

In Azhar Hussain v. Rajiv Gandhi this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court, in the following words :

“12. ...The whole purpose of conferment of such power is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the Court, and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even if an ordinary civil litigation, the Court readily exercises the power to reject a plaint, if it does not disclose any cause of action.”

12.2 The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order VII Rule 11 are required to be strictly adhered to.

12.3 Under Order VII Rule 11, a duty is cast on the Court to determine whether the plaint discloses a cause of action by scrutinizing the averments in the plaint, read in conjunction with the documents relied upon, or whether the suit is barred by any law.

12.4 Order VII Rule 14(1) provides for production of documents, on which the plaintiff places reliance in his suit, which reads as under :

“Order 7 Rule 14: Production of document on which plaintiff sues or relies.–

(1) Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in Court when the plaint is presented by him and shall, at the same time

deliver the document and a copy thereof, to be filed with the plaint.

(2) Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.

(3) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

(4) Nothing in this rule shall apply to document produced for the cross examination of the plaintiff's witnesses, or, handed over to a witness merely to refresh his memory."

Having regard to Order VII Rule 14 CPC, the documents filed alongwith the plaint, are required to be taken into consideration for deciding the application under Order VII Rule 11 (a). When a document referred to in the plaint, forms the basis of the plaint, it should be treated as a part of the plaint.

12.5 In exercise of power under this provision, the Court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.

12.6 At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration.

12.7 The test for exercising the power under Order VII Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in Liverpool & London S.P. & I Assn. Ltd. v. M.V.Sea Success I & Anr., which reads as:

"139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed."

In Hardesh Ores (P.) Ltd. v. Hede & Co. the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact.

12.8 If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order VII Rule 11 CPC.

12.9 The power under Order VII Rule 11 CPC may be exercised by the Court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial, as held by this Court in the judgment of Saleem Bhai v. State of Maharashtra. The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in Azhar Hussain (supra).

12.10 The provision of Order VII Rule 11 is mandatory in nature. It states that the plaint "shall" be rejected if any of the grounds specified in clause (a) to (e) are made out. If the Court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the Court has no option, but to reject the plaint.

34. Though the Learned Advocates for the respective parties have placed reliance on several judgments of various High Courts as well as the Hon'ble Apex Court, the core issue that falls for consideration pertains to the invocation of powers under the provisions of Order VII Rule 11 of the Code of Civil Procedure. Furthermore, regarding the approach to be adopted, the Learned Advocate for the appellant has referred to the aforesaid judgments which, in a nutshell, prescribe that while exercising powers under Order VII Rule 11, the Court is required to

consider only the averments made in the plaint and, at most, the documents appended in support thereof. The Court is not permitted to look into the defense raised by the defendant. Moreover, a plaint can never be rejected in part, nor can it be rejected on account of the principles of res judicata, except on the specific grounds enumerated under the provisions of Order VII Rule 11. Thus, the sum, substance, and the ratio laid down in the aforesaid decided cases, upon which reliance has been placed by the Learned Advocates for the parties, cannot be disputed. However, the application of these principles varies from case to case. Therefore, the aforesaid judgments, which are nothing but a repetition of settled legal propositions, are not being dealt with separately.

35. It becomes necessary to consider the powers of the Civil Court in rejecting a suit summarily under Order VII Rule 11 of the Code of Civil Procedure. The object and scope of the said provision have been clearly explained by the Hon'ble Apex Court in ***Dahiben (Supra)***. In the said case, the Civil Court had held the suit to be barred by limitation and allowed the application under Order VII Rule 11(d). The High Court affirmed the findings of the Trial Court rejecting the suit as barred by the law of limitation.

36. While examining the law applicable for deciding an application under Order VII Rule 11 of the Code of Civil Procedure, the Hon'ble Apex Court observed that the remedy under the said provision is an independent and special remedy. The Court is empowered to summarily dismiss the suit at the threshold, without proceeding to record evidence and conducting a full trial, if it is satisfied that the action should be

terminated on any of the grounds contained in the provision. The underlying object of Order VII Rule 11 is that if no cause of action is disclosed in the plaint or the suit is barred by limitation under Order VII Rule 11(a) and (d), the Court would not permit the plaintiff to unnecessarily protract the proceedings. In such a case, it becomes necessary to put an end to the sham litigation so that further judicial time is not wasted.

37. The decision of the Hon'ble Apex Court in ***Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC 315*** was also considered, wherein it has been held that the whole purpose of conferment of powers under Order VII Rule 11 of the Code of Civil Procedure is to ensure that litigation which is meaningless and bound to prove abortive should not be permitted to waste the judicial time of the Court.

38. It was further noted that the power under Order VII Rule 11 of the Code of Civil Procedure may be exercised by the Court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial. The contention that once issues are framed the Court must necessarily proceed to trial was specifically repelled by the Hon'ble Apex Court in ***Azhar Hussain (Supra)***.

39. It is held that if the transaction is in breach of the provisions, the position of law is clear that such transfer is invalid.

40. In the context of the claim of the appellant being hit by or barred by the law of limitation, and to avoid any repetition of the facts as

discussed in the preceding paragraphs, the agreements to sell the performance of which has been sought for by the appellant appear to be of 1985 followed by the supplementary agreement in the year 1990 with irrevocable powers of attorney. However, nothing of any material has been placed on record so as to repose any confidence in the stance raised by the appellant as to the claim of having acquiescence at the delayed stage. On the contrary, from the averments made in the plaint it transpires that the claim of the appellant rests on the aforesaid agreements to sell and the suit in question seeking performance thereof has been filed in the year 2019 without there being any plausible and substantial material. Therefore the conclusion arrived at by the Learned Judge in paragraphs 11 and 12 is justified. While assigning the reasons which disentitle the appellant to raise the stale claim at a belated stage, that too after a period of about 29–34 years, the suit has rightly been rejected as barred by the law of limitation in view of Article 54 of the Limitation Act, according to which the claim or the suit is to be filed within a period of three years as falling thereunder.

41. During the pendency of this appeal the appellant has sought directions and permission that pending hearing of the appeal the appellant needs to amend the plaint so as to add an alternative prayer seeking compensation as claimed in lieu of specific performance under Section 21 of the Specific Relief Act, 1963. The said request has been strongly opposed by the respondents stating and contending that since the entire claim of the appellant rests on the invalid and time-barred agreements to sell, the request seeking to alter and add the relief for alternative prayer of compensation is otherwise hit by the law of limitation.

42. In the context of the aforesaid, the Learned Advocate for the appellant, while referring to decision of in the case of ***K.R. Suresh v. R. Poornima and Ors, 2025 SCCOnLine SC 1014***, where it is has held that it is open to the Appellate Court, in appropriate circumstances, to permit amendment of the plaint for incorporating an alternative prayer for compensation under Section 21 of the Specific Relief Act, even if such a prayer was not originally made before the Trial Court. It is further observed that such an amendment does not amount to setting up a new case but merely enables the Court to grant complete and equitable relief based on the same cause of action and has relied upon relevant paragraphs 56 and 58 of the said judgment and has submitted that the appellate Court in appropriate circumstances may permit the amendment of the plaint for incorporating an alternative prayer for compensation under Section 21 of the Specific Relief Act even if such prayer was not originally made before the Trial Court, and that such amendment would not amount to setting up a new case but merely enables the Court to grant complete and equitable relief based on the same cause of action.

43. Per contra, the learned advocate for the respondent has strongly objected to the request as sought for to permit the appellant to carry out the amendment at the belated stage, as the very conduct and the demeanour on the part of the appellant cannot stretch the period of limitation which otherwise may change the entire nature of the suit, particularly when the relief sought for by the appellant wholly rests on an invalid agreement and therefore also the request may not be entertained. However, in the context of the aforesaid issue as raised during the

pendency of the appeal, admittedly the claim raised by the appellant appears to have been raised at a belated stage which otherwise is hit by the law of limitation. Not only that, the entire claim as discussed in the foregoing paragraphs solely rests on the agreements to sell with regard to the restricted tenure of the land which otherwise is hit by the provision of Section 43 of the Tenancy Act and therefore there was no cause of action for the appellant even to institute a suit so as to seek the aforesaid remedies.

44. It is submitted by the Learned Advocate for the appellant that the reliance by the respondent on the case of ***Raajratna Ventures Limited v. Union of India, 2019 SCC Online Guj 6617*** and the same has been challenged before the Hon'ble Apex Court and the same is awaiting its fate; however, stay on the disputed property has been granted, but the execution thereof has not been stayed and therefore, the same cannot be laid and the ratio laid down therein does not come to the rescue of the respondent. However, to meet with the aforesaid issue, the decision relied upon by the Learned Advocate in ***Raajratna Ventures Limited (supra)***, wherein, the relevant observations made by the Division Bench of this Court are required to be reproduced as under:

“2. It was pointed out that vide order dated 23.9.2019 passed in Special Leave Petition (C) No. 23356 of 2019 the Supreme Court has stayed the operation and implementation of the said judgment. The attention of the court was invited to the decision of the Calcutta High Court in the case of Pijush Kanti Chowdhury v. State of West Bengal, 2007 SCC OnLine Cal 267, wherein the court has held that the effect of the order of stay in a pending appeal before the Apex Court does not amount to 'any declaration of law', but is only binding upon the parties to the said proceedings and at the same time, such interim order does not destroy the binding effect of the judgment of the High Court as a precedent because while granting the interim order, the Apex Court had no

occasion to lay down any proposition of law inconsistent with the one declared by the High Court which is impugned.

3. Reliance was also placed upon the decision of the Delhi High Court in Principal Commissioner of Central Excise, Delhi-1 v. Space Telelink Ltd., (2017) 355 ELT 189 (Del.), wherein the court placed reliance upon the decision of the Supreme Court in Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association, (1992) 3 SCC 1 and held that an order keeping in abeyance the judgment of lower court or authority does not deface the underlying basis of the judgment itself, i.e., its reasoning. It was submitted that therefore, the principles enunciated in the decision of this court in the case of Maxim Tubes Company Pvt. Ltd. (supra) would not stand defaced.”

45. Thus, in view of the law and principles laid down in the aforesaid decision, as held and observed therein, that the order of stay in the pending appeal before the Hon’ble Apex Court does not amount to any declaration of law, but is only binding upon the parties to the said proceedings, and at the same time such interim order does not destroy the binding effect of the judgment of the High Court as a precedent, because while granting the interim stay the Hon’ble Supreme Court had no occasion to lay down any proposition of law in consonance with the one declared by the High Court which is impugned.

46. The Learned Advocate for the appellant has submitted that since the decision of this Court in the case of ***Decd Shaikh Ismailbhai Hushainbhai Through LH V. Vankar Ambalal Dhanabhai in Second Appeal No.208 of 2021***, has been assailed before the Hon’ble Apex Court and the issue is pending and awaiting the final outcome. However, it is made clear that reliance placed by the other side on the aforesaid decision does not come to the rescue of the respondent. It is further submitted that while considering the facts of the case on hand, the relief as sought for

may be considered. Apart from the aforesaid, the factum as to the decision of this Court in the case of ***Decd Shaikh Ismailbhai (supra)*** having been assailed before the Hon'ble Supreme Court and the same being pending and awaiting the final outcome, nothing short of any such material has been placed on record by the appellant so as to constrain this Court to consider the factum of the impugned decisions of the High Court having been assailed before the Hon'ble Apex Court. In the absence thereof, the contentions raised therein find no logical force and consequently stands defaced.

47. Even otherwise, in view of the decisions of our own High Court in the case of ***Raajratna Ventures Limited (supra)***, the same does not come to the rescue and the contentions deserve to be negated and is hereby rejected. While considering the observations made by this Court in the case of ***Raajratna Ventures Limited (supra)*** wherein this Court, while referring to the decision of the ***Delhi High Court in Principal Commissioner of Central Excise, Delhi-1 v. Space Telelink Ltd., (2017) 355 ELT 189 (Del.)*** and the decision of the Hon'ble Supreme Court in the case of ***Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association, (1992) 3 SCC 1***, has been pleased to hold that an order keeping in abeyance the judgment of the lower Court or the authority does not deface the underlying basis of the judgment itself, i.e., its reasoning. Thus, in view of the aforesaid, we do not find any substance in the submissions advanced on the aforesaid issue.

48. It is also pertinent to note that the suit seeking enforcement of the agreement which is hit by Section 43 of the Tenancy Act being barred by law, the plaint is bound to be rejected in view of the mandatory provisions, and the Court will not lend its aid to a person who brings a cause of action based on illegal and invalid acts. Therefore, even if a decree were to be granted in favour of the appellant on the basis of an illegal/invalid agreement which otherwise is hit by the statute, it would rather amount to extending active assistance by the Court in enforcing such agreement which is otherwise contrary to law.

49. While examining the issue, the objects and scope under the head of the relevant decisions of this Court and the Hon'ble Supreme Court, including the principles laid down in Dahiben and other authorities dealing with the test for exercising power under Order VII Rule 11, have been considered. The underlying object is that if the plaint does not disclose a cause of action or the claim is barred by any law, the Court is under a duty to reject the plaint at the threshold.

50. In view of the foregoing discussion, the present appeal stands dismissed and is disposed of accordingly. Interim relief, if any, stands vacated.

51. In view of the above, the connected Civil Application No.1 of 2026 and Civil Application No.2 of 2026, also stands disposed of accordingly.

52. Record and proceedings, if any, be remitted to the concerned Court.

(ILESH J. VORA,J)

(R. T. VACHHANI, J)

MVP