

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
IN AN APPEAL FROM ITS ORDER PASSED IN ITS
ORDINARY ORIGINAL CIVIL JURISDICTION**

**THE HON'BLE MR. JUSTICE SABYASACHI BHATTACHARYYA
And
THE HON'BLE MR. JUSTICE SANDIP KUMAR DE**

**A.P.O. NO. 84 of 2021
ARISING OUT OF
I.A. G.A. NO.2 OF 2015
C.S. 250 OF 2015
With
I.A.G.A. NO.2 OF 2021
ALP 4 OF 2018
I.A. G.A. NO.2 OF 2026**

FUNIDEA PROJECTS PRIVATE LIMITED AND ANOTHER

-Versus-

DR. DILIP KUMAR GHOSH AND OTHERS

With

A.P.O. NO. 85 of 2021

FUNIDEA PROJECTS PRIVATE LIMITED AND ANOTHER

-Versus-

DR. DILIP KUMAR GHOSH AND OTHERS

For the appellants	:	Mr. Suman Dutt, Sr. Adv., Ms. Nilanjana Adhya, Mr. Subhransu Ganguly, Advs.
For the respondent nos.1 & 2	:	Mr. Aniruddha Mitra, Sr. Adv., Ms. Dipika Banu, Mr. Subhadip Chakraborty, Advs.
For the respondent no.3	:	Mr. Samriddha Sen, Adv.

For the respondent nos.6-33 : Mr. Shounak Mukhopadhyay, Adv.
 Heard on : 12.08.2026, 19.08.2026,
 02.09.2026 & 09.09.2026
 Reserved on : 09.09.2026
 Judgment on : 07.10.2026

Sabyasachi Bhattacharyya, J.:-

1. Both the present appeals arise out of a judgment dated March 5, 2021 passed in CS No. 250 of 2015. By the self-same order, the learned Single Judge dismissed GA 2 of 2015 (Old No. GA 4020 of 2015), whereby the defendant Nos. 1 and 2/appellants sought for dismissal of the suit, alternatively rejection of the plaint, primarily on the ground of bar under Order II Rule 2 of the Code of Civil Procedure, 1908 (in short, “the Code”) (against which portion of the order APO 84 of 2021 has been filed), as well as directed transfer of the suit under Section 15 of the Commercial Courts Act, 2015 (for short, “the CC Act”) to the Commercial Division of this Court (against which part of the order APO 85 of 2021 has been preferred).
2. Learned senior counsel appearing for the defendant nos. 1 and 2/appellants argues that the dispute between the parties is not commercial in nature. Whereas Section 2(1)(c)(xii) of the CC Act refers to “shareholders’ agreement”, the present suit pertains to a “share purchase agreement”. Learned counsel cites the judgment of a learned Single Judge of the Karnataka High Court in the matter of *Bhaskar Naidu vs. Aravind Yadav*, reported at (2025) SCC OnLine Kar 5, to stress the distinction between the

two. It is submitted that the Hon'ble Supreme Court, in *Vodafone International Holdings vs. Union of India and Another*, reported at (2012) 6 SCC 613, which has been cited by the plaintiffs, defined what constitutes a shareholders' agreement, but did not lay down the points of distinction between such an agreement and a share purchase agreement.

3. It is, thus, argued that since Clause (xii) of Section 2(1)(c) of the CC Act is not attracted, the learned Single Judge erred in law in transferring the suit to the Commercial Division of this Court.
4. Secondly, the appellants argue, the learned Single Judge proceeded on an erroneous interpretation of Order II Rule 2 of the Code of Civil Procedure in refusing to dismiss the suit or reject the plaint. By relying on the relevant paragraphs of the plaint of the current suit, it is pointed out that the same categorically refers to two earlier suits filed by the plaintiff/respondent no. 1 and 2 - a suit for specific performance and a money suit. Since the said suits, in particular, the money suit, have been specifically referred to in the plaint of the current suit and it has also been averred that a copy of the plaint of the money suit has been served on the defendants/appellants, it is submitted that the court could, within the ambit of Order VII Rule 11 of the Code, look into the averments of the plaint of the earlier suit as well.
5. Learned senior counsel for the appellants places specific reliance on Paragraph Nos. 22, 30 and 37 of the plaint of Money Suit No. 101 of 2015 to submit that allegations in respect of the alleged fraud perpetrated by the defendant/appellants were levelled in such paragraphs. Further, it is submitted that the cause of action of the earlier money suit would be

evident from Paragraphs no. 15, 16, 19, 20, 21, 25 and 34 of the plaint thereof. A composite and meaningful reading of the plaint of the money suit would indicate that the cause of action to seek cancellation of the acts of deceit and compulsion which took place on May 16, 2012 and April 10, 2013, when the agreements-in-question were entered into, was available to the plaintiffs at the juncture of filing the earlier money suit. However, the plaintiffs chose to waive the right to seek any relief with regard to the alleged fraud but sought specific performance of the agreements in the form of a money decree, thereby relinquishing a portion of the claim. By such conduct, it is argued that the plaintiffs also omitted to sue for all reliefs that they were entitled to on the basis of the cause of action cited in the plaints of both suits, without taking any leave under Order II Rule 2 of the Code of Civil Procedure in the money suit.

6. In Paragraph no. 36 onwards of the plaint of the current suit for cancellation of the said agreements, there is a reiteration of the events of alleged fraud expressly pleaded in the money suit. Thus, the plaintiffs having specifically omitted to sue for the reliefs sought in the present suit in the earlier suit, although the causes of action in both the suits are premised on the alleged acts of fraud, the current suit is barred by Order II Rule 2 of the Code.
7. Learned senior counsel for the appellants contends that the tests laid down in *Cuddalore Powergen Corporation Ltd. Vs. Chemplast Cuddalore Vinyls Limited and Another*, reported at (2025) SCC OnLine SC 82, relied on by the plaintiff/respondent nos. 1 and 2, are squarely applicable to the present case but support the cause of the appellants.

8. Insofar as *S. Valliammai and Others. Vs. S. Ramanathan and Another*, reported at 2026 SCC OnLine SC 603, is concerned, which is also cited by the plaintiffs, learned senior counsel for the appellants argues that the distinguishing feature on facts is set out in Paragraph no. 8 of the judgment, where there was an adjudication of merits at the Order VII Rule 11 stage, due to which it was held that the plaint could not be rejected on such grounds.
9. Learned senior counsel for the appellants argues that Order II Rule 2 of the Code takes away the right to sue in respect of a cause of action omitted or relinquished and reliefs omitted or relinquished, unless leave is obtained. Taking away a right to sue, it is contended, is a bar under Order VII Rule 11(d) of the Code of Civil Procedure.
10. The next issue raised by learned senior counsel for the appellants is that, on a plain reading of the terms of the agreement dated May 16, 2012, which is one of the agreements sought to be cancelled in the present suit, it is clearly indicated that the plaintiffs agreed to transfer the entire shareholding in the defendant no. 3-company, namely Venkateswar Medicare Private Limited, along with its only asset, being the leasehold land, to the defendant/appellant no. 1 against the consideration mentioned therein. Learned senior counsel takes the court through the various clauses of the said agreement to argue that if prayer (a) of the plaint is decreed, it would tantamount to adjudication of the interest of the defendant nos. 1 and 2/appellants in the defendant no. 3-company. Similarly, if Prayers (b) and (c) are decreed, the right of the defendant no. 1 and 2/appellants to use the

assets of the defendant No. 3/company, that is, leasehold land, subsequent to the transfer would cease.

11. Thus, the reliefs claimed by the plaintiffs do not simply involve the transfer of shares held in the defendant no. 3-company but also involve the transfer of assets including the plot at D.N. 20, Sector – V Electronics Complex, Police Station – Electronics Complex, Salt Lake, Kolkata – 700091.
12. Learned senior counsel places reliance on *Tridandeeswami Bhakti Kusum Sraman Maharaj and others Vs. Mayapore Sree Chaitanya Math and others*, reported at (1983) 1 CHN 395, where a Division Bench of this Court held that the question whether, out of several reliefs in the plaint, the claim for the grant of particular relief which does not relate to title to or possession, control or management of land or buildings or other immovable property is the primary object of the suit or not, has to be decided by applying the test whether such relief claimed to be the primary object of the suit can be granted without the necessity of any adjudication on the question of title to any land or buildings, or other immovable property, or possession, control or management thereof.
13. Again, in *Rashmoy Das Vs. Rajashree Enclave Pvt. Ltd. & Ors.*, reported at AIR 2011 Cal 148, a learned Single Judge of this Court had reiterated that the suit is one for land/immovable property if, in the event the relief sought is granted, the same would entail cancellation of a deed of conveyance, thereby depriving the purchaser therein of possession and enjoyment of the premises.

14. Next citing *Lotus Homes Limited Vs. Concept Apartments Private Limited and Ors.*, reported at 2023 SCC OnLine Cal 1945, a judgment rendered by a learned Single Judge of this Court, it is reiterated that even if the document concerned was void, a competent Civil Court had to declare it to be so with an order for delivery up and cancellation. In such context, it would be a point on the merits of the matter and did not clothe the court with the territorial jurisdiction to receive, try and determine the suit when the immovable property in connection with which the sale-deed had been executed was admittedly outside the jurisdiction of the court.
15. Learned senior counsel lastly cites *Rohit Kochhar v, Vipul Infrastructure Developers Ltd. Others*, reported at 2024 SCC OnLine SC 3584, where the Hon'ble Supreme Court considered *Adcon Electronics Pvt. Ltd. Vs. Daulat and Another*, reported at (2001) 7 SCC 698, and observed on a consideration of the other previous judgments of the Supreme Court that the nature of the suit and its purpose have to be determined by reading the plaint as a whole and that the inclusion or absence of a prayer is not decisive of the true nature of the suit, nor is the order in which the prayers are arrayed in the plaint. The substance or object of the suit has to be gathered from the averments gathered from within the plaint and on which the reliefs asked in the prayers were based.
16. Thus, it is argued that the learned Trial Judge ought to have dismissed the suit and/or rejected the plaint also on the ground that the same was, in effect, a suit for land, which was situated outside the territorial jurisdiction of this court.

- 17.** Alternatively, it is argued that even if the suit is not one for land or immovable property, no material part of the cause of action has arisen within the jurisdiction of this court.
- 18.** It is submitted that none of the parties against whom fraud has been pleaded, that is, defendant nos. 1 to 3, are located within the jurisdiction of this Court, nor does the plaint disclose the cause of action against defendant nos. 4 and 5 or claim any relief against them.
- 19.** Defendant nos. 6 to 33 are the 28 companies in whose favour the shares are alleged to have been fraudulently transferred and, thus, are beneficiaries of the alleged fraud as per the plaint.
- 20.** Such act of fraud, however, allegedly arose on May 16, 2012 at the office of the defendant no. 3 at Salt Lake, which is outside the jurisdiction of this court.
- 21.** The police complaint alleging fraud had been lodged on April 22, 2015, as stated in Paragraph no. 42 of the plaint of the current suit, also at a Salt Lake Police Station. Moreover, Paragraph No. 36 of the plaint refers to an advocate's letter of demand dated September 14, 2015 alleging termination of the agreements on the ground of fraud which had admittedly taken place at the registered office of the company at Salt Lake.
- 22.** Hence, the entire cause of action, even as per the plaint, arose outside the territorial jurisdiction of this court, thus denuding this court of the jurisdiction to entertain the suit, for which the plaint ought to have been rejected or returned.

- 23.** Learned senior counsel for the plaintiffs/respondent no. 1 and 2, on the other hand, argues that the present suit concerns a dispute which squarely falls within the contemplation of Section 2(1)(c)(xii) of the CC Act, which provides that a dispute arising out of a shareholders' agreement is a "commercial dispute" as envisaged in the said Act.
- 24.** By relying on *Vodafone International Holdings (supra)*¹, learned senior counsel for the plaintiffs argues that the Hon'ble Supreme Court defined "shareholders' agreement" in the said judgment, the purpose of which is to confer rights and impose obligations over and above those provided by the Company Law. Such definition, it is argued, was not noticed in the Karnataka High Court judgement in the matter of *Bhaskar Naidu (supra)*². Thus, the learned Single Judge was justified in directing transfer of the suit to the Commercial Division of this court.
- 25.** Learned senior counsel next contends that a suit for land is a suit in which the reliefs claimed relate to title or delivery of possession of land and immovable property. Whether a suit is one for land or immovable property or not has to be determined based on the averments in the plaint with reference to the reliefs claimed therein. If the reliefs claimed relate to adjudication of title of land or immovable property and delivery of possession of such property, it is a suit for land, as held in *Adcon Electronics*

¹ *Vodafone International Holdings vs. Union of India and Another, reported at (2012) 6 SCC 613*

² *Bhaskar Naidu vs. Aravind yadav, reported at (2025) SCC OnLine Kar 5*

*Pvt. Ltd. (supra)*³ and *Bimal Kumar Parasramka & Ors. Vs. Rajendra Prasad Agarwalla & Ors.*, reported at (2011) 4 CHN 362.

- 26.** In the instant case, it is an admitted position that the defendant no. 3-company is the lessee of the land situated at Salt Lake, beyond the territorial limits of the Original Side jurisdiction of this court. However, none of the reliefs claimed in the suit relate to adjudication of title of the defendant no. 3 in the said land, nor has any relief been claimed for possession of the land or the immovable property on the said land. The dispute in the present suit involves two agreements dated May 16, 2012 and April 10, 2013 respectively and the transfer of shares of the defendant no. 3-company. On a plain reading of the said two agreements, it is palpably clear that there is no transfer of title of the land thereby and the court is not called upon to adjudicate such title or to determine any rights or interest of the defendant no. 3-company in the land in question. There is no agreement to deal with and/or transfer any part or portion of the said land. The agreements-in-question exclusively deal with the shares of the defendant no. 3-company held by the plaintiffs and their transfer to the defendants, whereas ownership of the shares is in issue.
- 27.** By relying on *Bacha F. Guzdar Vs. Commissioner of Income Tax, Bombay*, reported at (1954) 2 SCC 563, it is argued by the plaintiffs/respondent nos. 1 and 2 that there is nothing in Indian Law to warrant the assumption that a shareholder who buys shares, buys any interest in the property of the

³ *Adcon Electronics Pvt. Ltd. Vs. Daulat and Another*, reported at (2001) 7 SCC 698

company, which is a juristic person entirely distinct from the shareholders. Thus, the present suit is not a “suit for land” from any perspective.

28. Moving on to the question of bar under Order II Rule 2 of the Code, learned senior counsel cites *Cuddalore Powergen Corporation Ltd. (supra)*⁴ where the tests for determination as to whether a bar under Order II Rule 2 is applicable were laid down.
29. In the instant case, the causes of action of the earlier money suit and the present suit for cancellation of the agreements are completely different and the evidence required to be led in support of the two claims is also different. There are specific pleadings of fraud in the current suit which the plaintiffs are required to prove by way of evidence during trial. Also, several other allegations made in support of the reliefs are to be proved in evidence in the instant suit.
30. The earlier suit filed at Barasat (money suit) proceeds on the fact that in spite of repeated demands, the defendants failed to pay the balance consideration money to the plaintiffs against sale of the shares, and the cause of action for the money suit is non-payment of money. On the contrary, the current suit, filed in this court, is founded on the cause of action that the defendant nos. 1 and 2/appellants acted fraudulently in attempting to get title deeds to the land released from the secured creditor, namely Allahabad Bank, and thus acted in breach of the subsisting agreements.

⁴ ***Cuddalore Powergen Corporation Ltd. Vs. Chemplast Cuddalore Vinyls Limited and Another, reported at (2025) SCC OnLine SC 82***

- 31.** In *S. Valliammai (supra)*⁵, the Hon'ble Supreme Court held that a bar to sue is distinct from a suit being barred by law. It is argued that on a conjoint reading of Order VII Rule 11 and Order II Rule 2 of the Code, it emerges that the plea under the latter provision cannot be a ground or basis for rejection of the plaint. The defence needs to be established by way of evidence. Whether the causes of action of the suits are identical or distinct or whether the subject-matters of the two suits are different and/or the evidence to be led in the two suits are different, it is argued, are required to be gone into at the trial and cannot be decided at the initial stage of adjudicating a prayer for rejection of plaint or dismissal of the suit at the threshold.
- 32.** Upon hearing learned senior counsel appearing for the parties and considering the materials on record as well as the judgments cited by both parties, the court arrives at the following:

DECISION

- 33.** Several interesting questions have been raised in the appeals.
- 34.** The first question which falls for adjudication is whether the suit involves a “commercial dispute” within the contemplation of the CC Act. The premise on which the learned Single Judge transferred the suit under Section 15 of the CC Act, as well as the plaintiff/respondent nos. 1 and 2 have advanced their arguments, is Section 2(1)(c)(xii) of the CC Act.
- 35.** The said provision stipulates that a dispute arising out of a shareholders’ agreement is a “commercial dispute” within the meaning of the CC Act. The

⁵ *S. Valliammai and Others. Vs. S. Ramanathan and Another, reported at 2026 SCC OnLine SC 603*

plaintiffs heavily rely on the definition of “shareholders’ agreement” as given in *Vodafone International Holdings (supra)*⁶. As per the said judgment, such an agreement is essentially a contract between some or all the shareholders in a company, the purpose of which is to confer rights and impose obligations over and above those provided by the Company Law. It is a private contract between the shareholders compared to the Articles of Association of the company, which is a public document. Being a private document, it binds parties thereof and not the other remaining shareholders in the company.

36. The Karnataka High Court, in *Bhaskar Naidu (supra)*⁷ has succinctly distinguished between a “shareholders’ agreement” and a “share purchase agreement”. As opposed to the former, the latter has been described as an agreement recording the terms by which the buyer agrees to purchase from the seller shares in the capital of the target company and agrees to pay the purchase price for the acquisition of the shares, in return for which the seller transfers title in the shares to the buyer by executing a stock transfer form.

37. Even on a plain reading of the definition of “shareholders’ agreement” in *Vodafone International Holdings (supra)*⁸ it would be evident that, in the first place, such an agreement has to be executed between the existing shareholders of the company. An agreement between shareholder(s) of a

⁶ *Vodafone International Holdings vs. Union of India and Another, reported at (2012) 6 SCC 613*

⁷ *Bhaskar Naidu vs. Aravind Yadav, reported at (2025) SCC OnLine Kar 5*

⁸ *Vodafone International Holdings vs. Union of India and Another, reported at (2012) 6 SCC 613*

company and/or the company on the one hand and a third party holding no shares on the other, thus, cannot come within the ambit of a shareholders' agreement. In order to come within the said expression, the *sine qua non* would be that the parties to such an agreement are already existing shareholders of the company.

- 38.** As opposed thereto, a “share purchase agreement”, as the name suggests, is an agreement between the company or its shareholders with a stranger to the company to sell some or all of its shares to such purchaser.
- 39.** In the present case, from the contracts in question, it would be evident that on the date of execution of such agreements, the defendant nos. 1 and 2/appellants were outsiders, having no share in the company. Thus, the threshold test of being existing shareholders is not satisfied; hence, the agreement cannot be termed a “shareholders’ agreement”.
- 40.** Thus, the agreements do not come within the mischief of Clause (xii) of Section 2(1)(c) of the CC Act. Accordingly, the learned Single Judge erred in law in construing the disputes raised in the suit, pertaining to the said agreements, to come within the purview of the CC Act and consequentially transferring the suit to the Commercial Division of this Court under Section 15 of the CC Act. Thus, the said transfer cannot be sustained in law.
- 41.** The question which consequentially falls for consideration is whether the said part of the impugned decision can be construed as a “judgment” under Clause 15 of the Letters Patent for the High Court of Judicature at Fort William in Bengal (for short, “the Letters Patent”), for an intra-court appeal to be maintainable against the same. A composite reading of the provisions

of the CC Act would clearly indicate that once a dispute comes within the purview of the said Act, several serious consequences entail. The entire paradigm of adjudication of the suit, as opposed to an ordinary civil suit, acquires a restrictive character, both regarding procedure and substance. For example, Section 12A of the CC Act is attracted, mandating exhaustion of the remedy of pre-litigation mediation prior to instituting such suit, unless any urgent interim relief can be shown to have been contemplated.

- 42.** The rigours of the CC Act in respect of adjudication of suits impose further restrictions on the scope of defence in such suits, thereby having a direct impact on the scope of defence on the defendants therein. Thus, several opportunities and freedoms which are procedurally available to the defendants in defending an ordinary civil suit are severely curtailed in a commercial suit, directly affecting the rights of the defendants.
- 43.** Hence, an order holding that the suit is a commercial suit and directing transfer of the same to the Commercial Court, bringing it within the regime of the CC Act, is undoubtedly a “judgment” affecting the rights of the parties to the suit, in particular the defendants. In view of the above, such a judgment is appealable under Clause 15 of the Letters Patent.
- 44.** Accordingly, APO 85 of 2021 cannot but be allowed, therefore setting aside the said portion of the impugned judgment.
- 45.** The next issue which falls for consideration is whether the suit is one for land or immovable property for this court to assume jurisdiction.
- 46.** Clause 12 of the Letters Patent, pertaining to the original jurisdiction of this court as to suits, provides that this court 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 is situated within the local limits of the ordinary original jurisdiction of this court.

- 47.** In order to decide such question, the court has to examine the true purport of the agreements which have been sought to be cancelled in the present suit, by looking beyond the surface level.
- 48.** The second agreement dated April 10, 2013 is comprised of the final terms of settlements. Although it is provided therein that it will supersede the terms and conditions of the earlier agreement dated May 16, 2012, in effect, the second agreement is in furtherance of the first. Moreover, the first agreement as well as the second agreement have been sought to be cancelled in the suit, thereby requiring the court to look into the true purport of both.
- 49.** The first cardinal feature in the first agreement dated May 16, 2012 is that although the defendant/respondents nos. 1 and 2, namely Dilip Kumar Ghosh and Kamala Ghosh, have been referred to as “transferors”, the defendant/respondent no. 3-company has also been made a party of the second part in the agreement. The plaintiff/respondent nos. 1 and 2, the Directors of the defendant no. 3-company, have signed the agreement throughout.
- 50.** Clause A(b) stipulates that the plaintiffs/respondent nos. 1 and 2, the transferors, are “the Directors of the Company and are in the full control and management thereof (including all its assets, benefits and rights)”.

- 51.** Sub-clause (c) of Clause A states in no uncertain terms that the share capital of the company is entirely owned by the said transferors/directors.
- 52.** Sub-clause (d) thereof mentions that the Company is the lessee of all that the leasehold plot of land measuring 15.01570 cottahs, being Plot No. 20 in Block DN in Sector – V of Bidhannagar (Salt Lake City) in the District of North 24 Parganas and the sole and beneficial owner of the multi-storied building consisting of basement, ground floor and 11 upper floors under construction of the said plot.
- 53.** The agreement proceeds to record that the Company has obtained term lease credit facilities from the Allahabad Bank, Chowringhee Branch, Kolkata, secured by equitable mortgage/charge of the said plot and building and personal guarantee of the transferors and that save and except the loan liabilities and outstanding liabilities to contractors and suppliers of materials for construction of the said building, there is no other liability of the Company and the assets and properties of the Company, including the said plot and building.
- 54.** It is further recorded in the agreement that because of diverse reasons, including the intention of the transferors to make themselves as well as the company and its assets and properties free from all liabilities, including loan liabilities, the transferors had agreed to transfer the entire holdings of the said shares in respect of one Recon Engineers (India) Private Limited. The narrative continued to record the transactions between the said Recon and the transferors, including that the entirety of the said plot together with the

building under construction at the said plot is in complete vacant possession of the company.

- 55.** In Clause B of the Agreement, the Transferors have agreed to sell the entirety of the said shares, and relying on the aforesaid representations, assurances and declarations of the transferors and the company and believing the same to be true and correct and acting on faith thereof and “with the intention of having total control and management of the company along with all its assets and properties (including the said plot and the building and all its rights interest or benefits therein free from all encumbrances and liabilities)”, the transferee had agreed to purchase and acquire the same free from all encumbrances and liabilities for consideration.
- 56.** In the habendum portion of the Agreement, under Article-I (Sale and Transfer), it is recorded that the transferors had jointly and severally agreed to sell and transfer the entirety of the said shares as well as that the transferees, relying on such representations and assurances made by not only the transferors but the company itself, had agreed to purchase and/or acquire the entirety of the said shares and all rights, title, claim and interests whatsoever of the transferors absolutely and forever.
- 57.** Importantly, Clause 1.2 of the habendum recorded that the purchase and acquisition of the said shares was with the intent and object of having total control, management and acquisition of the company *along with all its assets and properties including the said Plot and the said Building thereupon* and other rights, interests or benefits therein free from all encumbrances,

etc., as well as *vacant peaceful possession* thereof. The particulars of the pending/incomplete jobs relating to the building as on that date were recorded in a separate statement annexed to the agreement and marked as Annexure “B” and it was stated and confirmed that it shall not be the responsibility of the company and/or its transferors to complete the same and/or to obtain completion certificate in respect thereof from the competent authority.

- 58.** The consideration for such transaction was also recorded in the agreement.
- 59.** Under Article-III (Obligations of the Transferors and the Company) of the said Agreement, several sub-clauses were incorporated to preclude the transferors and the company from doing any act, deed or thing by reason whereof the respective right, title, claim and interest of the transferors in the shares is prejudicially affected, as well as not to alter the position of the company, including assets and properties held by the company, in any manner whatsoever. The transferors, who were the sole Directors and shareholders of the defendant no.3-Company, were also to apply to the Urban Development Department of the Government of West Bengal and other concerned authorities for permission to change the user of the said plot of land and the building thereat as may be required by the transferee, the costs and expenses of which were to be borne by the transferees. Again, the transferors and the Company were to hand over the original lease deed and clearance letter from the Bank, after clearing the bank loan account, to the transferee and to execute power of attorney in favour of the transferees/nominees of the transferees to deal with legal matters,

Government bodies and to appoint contractors, engineers, etc., for completion of the buildings.

- 60.** Thus, a composite reading of the entire agreement leaves no manner of doubt whatsoever that the plaintiffs/respondent nos.1 and 2, being the sole Directors and only shareholders of the defendant no.3-Company, on their own behalf as well as on behalf of the Company (in their capacity as the only Directors and shareholders of the same), agreed to transfer not only all shares in the Company but also to transfer the right, title and interest in the assets of the Company, specifically including the land and building referred to hereinabove.
- 61.** Annexure “B” thereto provided the particulars of the pending works/incomplete jobs relating to the building under construction on the said plot of land, situated at Salt Lake (Bidhannagar). The list of title deeds and related documents were also included in the list of annexures to the agreement.
- 62.** By the subsequent Agreement dated April 10, 2013, the parties agreed on a deviation of the total consideration amount and the deadline for payment of the same.
- 63.** In the “FINAL TERMS OF SETTLEMENT” contained in the said agreement, Clause 1 clearly provided that the consideration amount was for transfer of the shares mentioned therein as well as all the rights in the plot of land at DN-20, Sector – V, Salt Lake City, Kolkata – 700 091, along with resignation of both the plaintiffs/respondent nos.1 and 2 as Directors of the defendant no.3-Company.

- 64.** In Clause 4 of the second agreement, it was recorded that in addition of the abovementioned full and final settled consideration amount, the second party agreed to pay Rs.25,00,000/- to the respondent nos.1 and 2 jointly only after the case is settled with Recon Engineers (India) Pvt. Ltd. for the property thereinabove mentioned, which was “completely transferred” to the third party (present appellants).
- 65.** The plaintiffs/respondent nos.1 and 2 also agreed to “appoint constituted attorney to the nominee of the second party”, that is, the defendant nos.1 and 2/appellants, to represent them in legal matters by registered Power of Attorney and also agreed that they would present themselves in person as and when required in the Urban Development Department, Government of West Bengal and Nabadiganta Industrial Township Authority, evidently for the purpose of obtaining necessary permissions and sanctions regarding construction on the aforementioned immovable property.
- 66.** Hence, on a comprehensive reading of the agreements, which are the meat of the dispute involved in the suit, it is evident that those clearly contemplated transfer of not only the shares of the company but the assets thereof as well. As opposed to an ordinary share transfer agreement, in the present case, there are certain unique features, which compel us to conclude that the agreements, in effect, were primarily for transfer of the assets of the Company through the shareholding of the plaintiffs therein, who were the sole and only Directors and one hundred per cent shareholders in the defendant no.3-Company. Secondly, the plaintiffs signed the agreements not only on their own behalf but also in the capacity of

Directors, on behalf of the defendant no.3-Company itself. Hence, although the Company was not specifically described as a transferor, for all practical purposes, the agreements were entered into not only by the transferors/plaintiffs in their individual capacity of shareholders but also on behalf of the Company itself, as Directors thereof.

- 67.** No further evidence is required to be adduced in the suit for coming to the above conclusions. All the above findings are based solely on the contents of the said two agreements, which form the entire premise of the suit and have been referred to and filed along with the plaint, thus entitling the Court to look into their contents even at the stage of deciding an application for rejection of plaint/dismissal of the suit at the outset.
- 68.** As a corollary of the above observations, any decree of cancellation of the agreements, in effect, directly impacts the right, title and interest proposed to be transferred by the agreements in favour of the defendant nos.1 and 2 by the plaintiffs and the defendant no.3-Company. One is not required to go to the extent of lifting the corporate veil to ascertain the context of the agreements. The contents of the agreements themselves are sufficiently self-explanatory to disclose the intent of the parties, including the defendant no.3-Company, to touch upon and directly affect the right, title and interest available to the Company in respect of the immovable properties, which are the assets of the Company, in favour of the defendants/appellants.

- 69.** In *Mayapore Sree Chaitanya Math (supra)*⁹, a co-ordinate Bench of this court was considering whether the suit filed in the said case was a suit for land within the contemplation of Clause 12. The court observed that in deciding whether the suit is a suit for land or for the cancellation of deeds of appointment, the court should try to ascertain what the dominant or primary object of the suit was. If the primary object was to establish title to land or for possession or control thereof, it would be a suit for land, whereas if the primary object was something else, it would not be so. The court considered *Moolji Jaitha & Co. Vs. K.S & W. Mills Co. Ltd.*, reported at *AIR 1950 FC 83*, in such context, where the Federal Court was considering a similar issue and there was a divergence of opinion between two of the Hon'ble Judges comprising the Bench on the one hand and two on the other, the fifth not expressing any opinion, as to whether in the facts and circumstances of that case, it was a suit for land. The Division Bench noted that in spite of such divergence of opinion, there was a general agreement on one point, that if the primary object was to obtain adjudication of title to land or immovable property, the suit would be one for land.
- 70.** In the opinion of the Division Bench, if a question arose as to whether, out of several reliefs in the plaint, the claim for the grant of a particular relief which does not relate to title or possession, control or management of land or buildings or other immoveable property is the primary object of the suit, it had to be decided by applying the test of primary object of the suit..

⁹ ***Tridandeeswami Bhakti Kusum Sraman Maharaj and others Vs. Mayapore Sree Chaitanya Math and others, reported at (1983) 1 CHN 395***

- 71.** In *Rashmoy Das (supra)*¹⁰, a learned Single Judge of this Court categorically held that in the event the reliefs prayed for in the suit before the said Bench was granted, the same would entail cancellation of the deed of conveyance and therefore deprive the purchaser therein of possession and enjoyment of the premises. As cancellation would entail adjudication of title and possession, the suit was held to be a suit for land.
- 72.** Again, in *Lotus Homes Limited (supra)*¹¹, a learned Single Judge of this Court observed that even if the document, which was sought to be declared void, was void, a competent Civil Court had to declare the same to be void, with an order for delivering up and cancellation. This was held to be a point on the merits of the matter and not to clothe the Court with the territorial jurisdiction to receive, try and determine the suit when the immovable property in connection with which the sale deed was executed was admittedly outside its jurisdiction.
- 73.** In *Adcon Electronics Pvt. Ltd. (supra)*¹², relied on by the plaintiffs/respondents, the Hon'ble Supreme Court 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 immoveable 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 reliefs relate to adjudication of title to land or immoveable property or delivery of possession of the land or immoveable property, it will be a suit for land. While holding

¹⁰ ***Rashmoy Das Vs. Rajashree Enclave Pvt. Ltd. & Ors.*, reported at AIR 2011 Cal 148**

¹¹ ***Lotus Homes Limited Vs. Concept Apartments Private Limited and Ors.*, reported at 2023 SCC OnLine Cal 1945**

¹² ***Adcon Electronics Pvt. Ltd. Vs. Daulat and Another*, reported at (2001) 7 SCC 698**

so, the Hon'ble Supreme Court agreed with the view expressed in Mahajan, J. in *Moolji Jaitha (supra)*¹³.

- 74.** The respondents also rely on another co-ordinate Bench judgment of this Court in *Bimal Kumar Parasramka (supra)*¹⁴, where *Adcon Electronics Pvt. Ltd. (supra)*¹⁵ was relied on and it was held that in a suit for specific performance of contract for sale of immovable property, unless the relief of recovery of possession is prayed, it cannot be said to be a suit for land because in such a suit, title to the immovable property is not decided. The dispute in the said case was over the control and management of a company simpliciter.
- 75.** The plaintiffs/respondents also cites *Bacha F. Guzdar (supra)*¹⁶, in support of the proposition that there is nothing in Indian Law to warrant the assumption that a shareholder who buys shares buys any interest in the property of the company, which is a juristic person.
- 76.** While completely agreeing with the proposition that *per se*, shareholding in a company does not confer title to the assets of the company in favour of the shareholders, the facts of the present case compel us to proceed further.
- 77.** As discussed above, the agreements-in-question were entered into by the plaintiffs/respondent nos.1 and 2 not in their sole capacity as shareholders but also as Directors of the company, on behalf of the company.

¹³ *Moolji Jaitha & Co. Vs. K.S & W. Mills Co. Ltd.*, reported at AIR 1950 FC 83

¹⁴ *Bimal Kumar Parasramka & Ors. Vs. Rajendra Prasad Agarwalla & Ors.*, reported at (2011) 4 CHN 362

¹⁵ *Adcon Electronics Pvt. Ltd. Vs. Daulat and Another*, reported at (2001) 7 SCC 698

¹⁶ *Bacha F. Guzdar Vs. Commissioner of Income Tax, Bombay*, reported at (1954) 2 SCC 563

- 78.** Secondly, the plaintiffs/respondent nos.1 and 2 were the only Directors and one hundred per cent shareholders in the company, which fact completely obliterates the artificial distinction between the juristic entity of the company as opposed to the individual persona of the shareholders.
- 79.** Thirdly, in view of the company itself, despite not being described as a transferor, being a party to the first agreement, which was the genesis of the second, it cannot be said that the company was not a party to the consensus arrived at between the parties relating to the immovable properties which are the assets of the company, even as per the agreements which are the subject-matter of the suit.
- 80.** Most importantly, both the agreements contained terms and conditions galore directly pertaining to the assets of the company. Even on a plain reading of the agreement dated May 16, 2012, which led to the subsequent agreement dated April 10, 2013, there cannot be any manner of doubt that the transfer of the entire shareholding in the company in favour of the defendants/appellants was only a route of transferring the title of the company in the assets of the company, comprised of immoveable properties of land and building, in favour of the appellants.
- 81.** Thus, even accepting the propositions advanced by the plaintiffs, there cannot be any manner of doubt that if the reliefs claimed in the suit, that is, for cancellation of the agreements-in-question, are granted, it would directly affect the right, title and interest of the parties to the assets of the company comprised in land and buildings, bringing the suit within the mischief of Clause 12 of the Letters Patent.

- 82.** Since admittedly the said assets are situated in their entirety in Salt Lake (Bidhannagar), that is, outside the ordinary original civil jurisdiction of this Court, this Court does not have the jurisdiction to “receive, try, and determine the suit”. The said bar to “receive” hits at the threshold of maintainability of the suit before this Court. Hence, the plaint ought to have been rejected or at least, returned for presentation before the appropriate Court having jurisdiction.
- 83.** Moving on to the issue of bar under Order II Rule 2 of the Code, it would be imperative, for a complete adjudication of the question, to examine the provisions of Order II Rule 2 as well as Order VII Rule 11 of the Code. The said provisions are set out below:

“ORDER II: FRAME THE SUIT

...

2. Suit to include the whole claim.—(1) *Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.*

(2) Relinquishment of part of claim.—*Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.*

(3) Omission to sue for one of several reliefs.—*A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs, but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.*

Explanation.—*For the purpose of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one case of action.”*

...

ORDER VII: PLAINT

...

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 under-valued, and the plaintiff, on being required by the Court to so 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-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, 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."

- 84.** Sub-rule (1) of Rule 2 or Order II casts a mandate on the plaintiff to include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action of the suit, permitting the plaintiff to relinquish any portion of the claim to bring the suit within the jurisdiction of a Court.
- 85.** Sub-rule (2) provides that where a plaintiff omits to sue in respect of or intentionally relinquishes any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.
- 86.** In the present case, although an application for leave has been filed in the earlier money suit, the same was filed only after the filing of the present suit and, more importantly, no leave has yet been granted under the said provision. In any event, it is an admitted position that on the date of filing of the current suit, the earlier money suit was still subsisting (as it still is) and no leave under Order II Rule 2 of the Code was obtained.

- 87.** Sub-rule (3) of Order II Rule 2 provides that a person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs. Omission to do so, except with the leave of the Court, would preclude the plaintiff from afterwards suing for any relief so omitted.
- 88.** Read in such context, Order VII Rule 11(d) contemplates the rejection of a plaint where the suit appears from the statements in the plaint to be barred by any law.
- 89.** Thus, the Court can only look at the statements in the plaint (and, by necessary implication, as interpreted by Courts, also the documents specifically referred to in the plaint and/or filed therewith) for the purpose of adjudicating the question of whether the plaint should be rejected.
- 90.** Hence, we confine ourselves to the consideration of the plaint of the current suit and the documents relied on therein for the purpose of the present consideration.
- 91.** A question which arises then is whether a bar under Order II Rule 2 is a “bar of law” contemplated in Order VII Rule 11(d). A “bar of law” may come in various forms. It may arise from a statute which debars the filing of a suit on some ground or the other, such as the Limitation Act, 1963 and/or Section 34 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Again, the bar of law may operate in respect of the plaintiff, restraining the plaintiff from filing any subsequent suit. A bar under Order II Rule 2 falls under the second category.

- 92.** Under Order VII Rule 11(d), the suit must appear to be barred by any law. Juxtaposed with the language of Order II Rule 2(3), the plaintiff is precluded to “sue” for any relief, if omitted to be taken, despite being entitled to claim on the self-same cause of action, in an earlier suit. Thus, in the specific context of Order II Rule 2(3), read with Order VII Rule 11(d), there cannot be any distinction between the expressions “sue” and “suit” used respectively in the said provisions.
- 93.** Whereas sub-Rules (1) and (2) of Order II Rule 2 pertain to claims of a similar nature on the basis of the self-same cause of action, sub-rule (3) marks a deviation from the same, inasmuch as the bar pertains not only to the entirety of the claims of similar or ancillary nature made on the basis of the same cause of action, but relates to different reliefs, although based on the self-same bundle of facts comprising the cause of action of the earlier suit.
- 94.** In order to come within the mischief of Order II Rule 2(3) of the Code, the cause of action in both the suits have to be the same whereas the reliefs which the plaintiff is entitled to get on the self-same cause of action have to be different.
- 95.** Looked at from such perspective, the facts of the present case fit the matrix of Order II Rule 2(3) of the Code squarely.
- 96.** We base the above inference on a plain and meaningful reading of the complaints of both the suits in their entirety. Even going by the complaint of the present suit alone, we find that till Paragraph No. 29 thereof, the facts pleaded are substantially similar to that in the complaint in the earlier money

suit, the narrative leading up to the execution of the second agreement dated April 10, 2013.

- 97.** In Paragraph no. 29 of the plaint of the present suit for cancellation of the agreements, the plaintiffs categorically plead a still earlier suit instituted in the year 2014 for specific performance of the second agreement dated April 10, 2013.
- 98.** In Paragraph No. 34 of the current plaint, it is pleaded that “as a last attempt to secure the consideration” as set forth in the agreements dated May 16, 2012 and April 10, 2013, the plaintiffs had instituted the earlier money suit, bearing Money Suit No. 101 of 2015, at Barasat.
- 99.** In Paragraph No. 35 of the current plaint, the plaintiffs cite an application filed in the money suit indicating that the defendant nos. 1 and 2 were not interested in complying with the terms of the agreement.
- 100.** In Paragraph no. 36 of the present plaint, it is alleged that the plaintiffs “while scrutinising the breaches committed by the defendant no. 1 and 2” (evidently, in respect of the two agreements), it has “now become clear” that the defendant nos. 1 and 2, “from the very inception”, have perpetrated fraud on the plaintiffs. The expressions “from the very inception” and “now become clear” present a contradiction in terms, since the breaches alleged comprise of facts which were within the knowledge of the plaintiffs at the time of filing the earlier money suit and could not have come to the notice of the plaintiffs for the first time before filing the present suit.
- 101.** The “aforesaid revelation”, according to Paragraph no. 36 of the present plaint, was possible after taking note of the conduct of the defendant nos. 1

and 2 in attempting to get the title deeds of the property released from the bank.

102. It is extremely important to note that in Paragraph no. 37 of the present plaint, it is alleged that the defendant nos. 1 and 2, by having unallotted shares of defendant no. 3 issued in favour of defendant no. 6 to 33 (28 stranger entities), have control over the defendant no. 3.

103. In Paragraph no. 41, the particulars of the alleged fraud have been pleaded, which are set forth below:

“41. It is apparent from sequence of events that both the defendant Nos. 1 and 2 as also the defendant Nos. 5 to 32 have perpetrated fraud on the plaintiffs, as also the defendant no.3 particulars whereof are set out herein below:

Particulars of Fraud

- (i) the defendant Nos. 1 and 2 had induced the plaintiffs to issue the unallotted shares of the defendant No. 3 in favour of the defendant Nos. 6 to 33 on the promise that they shall honour the Agreement dated 16th May, 2012. The inducement as aforesaid took place in the office of Mr. S. M. Gupta, Company Secretary of the defendant no. 1 situate at P-15, Bentinck Street, Kolkata-700 001, within the jurisdiction of this Hon'ble Court.*
- (ii) The issuance of unallotted shares to the defendant Nos. 6 to 33 as per particulars set forth in the schedule was not an independent act but was to give further effect to the agreement dated 16th may, 2012. The aforesaid act of the issuance of unallotted shares of the defendant No. 3 in favour of the defendant Nos. 6 to 33 took place at the office of Mr. S. M. Gupta, Company Secretary of the defendant no. 1 situate at P-15, Bentinck Street, Kolkata-700 001, within the jurisdiction of this Hon'ble Court.*
- (iii) The defendant Nos. 1 and 2 also induced the plaintiffs to induct their henchmen in the Board of the defendant No.3. The aforesaid steps was also taken in the office of Mr. S. M. Gupta, Company Secretary of the defendant no. 1 situate at P-15, Bentinck Street, Kolkata-700 001, within the jurisdiction of this Hon'ble Court.*
- (iv) The defendant Nos. 1 and 2 along with the defendant Nos. 6 to 33 after having accomplished their goal did not honour the agreement dated 16th May, 2012. The basic terms of such agreement as regards payment of consideration was also not complied with.*
- (v) On one hand the defendant No. 1 and 2 along with the defendant Nos. 6 to 33 assumed control of the defendant No. 3 and on the other failed to clear the loan of Allahabad Bank thereby jeopardising the plaintiff*

especially since the plaintiffs continue to remain guarantors for due repayment of loan with Allahabad Bank.

- (vi) The money collected out of the issuance of the unallotted shares to the tune of Rs.89 lacs has also been taken over by the defendant No. 2 by having such sum deposited in the account of the defendant No. 3 over which he exercises full control.*
- (vii) The defendant Nos. 1 and 2 despite inducing the plaintiffs to enter into the Agreement dated 10th April, 2013 did not honour the basis terms thereof.*
- (viii) The defendant Nos. 1 and 2 have assumed control over the defendant No. 3 without making payment of any consideration on account of either the transfer of shares in favour of the defendant no. 1 or the issuance of the unallotted shares of the defendant No. 3 in favour of the defendant Nos. 6 to 33.”*

104.Reverting back to the plaint of Money Suit No. 101 of 2015, which has been categorically referred to in the plaint of the current suit, it is seen that non-payment by the defendant nos. 1 and 2 in terms of the self-same agreements was one of the premises of the said suit. Both the agreements and the attending circumstances for entering those had been elaborated in the money suit plaint, as in the plaint of the present suit. The issuance of a letter of release of all the original documents, including title deeds, possession certificates, etc. lying with the bank, in favour of the defendant no. 2 is also alleged. Paragraphs Nos. 22 and 25 of the money suit plaint are germane for the present consideration and are also set forth below:

“22. Your plaintiffs state that Mr. Bhuwalka deceived the plaintiffs by taking hold of the VMPL Company along with its assets i.e. the plot and the building constructed thereon which values at Rs. 40 Crore at the relevant time caused by getting the plaintiffs’ 26990 shares transferred in the individual name of the defendant No. 2 and further issuing the entire un-allotted shares of 445830 shares on a single day and getting the shares transferred in the name of 28 different companies which are actually controlled by the Defendant No. 2 behind the corporate veil. The names and details of the Companies and the shares transferred are shown in Annexure – ‘A’ to this plaint.

25. *Furthermore, Mr. Bhuwalka getting transferred the entire shares in his own name or his associates definitely with some ulterior intentions or motive become the real owner of VMPL and all the 28 companies as stated above, in whose names the shares of VMPL got transferred are actually being controlled by the defendant No. 2 behind the corporate veil.”*

105. From the said paragraphs, it would be evident that the alleged “deception” (borrowing the language of the plaintiffs) on the part of the present defendant no. 2, who was also a defendant in the earlier suit, was specifically alleged in the plaint of the money suit. In the context of taking control of the defendant no. 3-Company along with the assets, being the plot and the building constructed thereon, which are stated in the said paragraphs, as well as further issuing the entire unallotted shares on a single day and transferring those in favour of 28 different companies which are allegedly controlled by the defendant no. 2, it is alleged that the plaintiffs are attempting to take shelter behind the corporate veil. The said companies, it is noteworthy, are the self-same 28 companies who are the defendants in the present suit and are the alleged beneficiaries of the alleged deception committed by the present defendants, as evident from Paragraph No.22 of the plaint of the earlier suit itself.

106. Again, in the plaint of the money suit, it is alleged that the defendant no.2, having transferred the entire shares in his own name or his associates, “definitely with some ulterior intention or motive”, became the real owner of the defendant no.3-Company and all the 28 companies mentioned thereinabove, in whose names the shares of defendant no.3-Company got

transferred, which were allegedly controlled in actuality by defendant no.2, by seeking shelter behind the corporate veil.

107.If the pleadings of the aforesaid paragraphs in the plaint of Money Suit No.101 of 2015 are juxtaposed with the allegations of fraud in the plaint of the present suit, that is, CS No.250 of 2015, there cannot be any manner of doubt that the bundle of events which comprise of the cause of action of both the suits are identical.

108.Although the immediate cause of action pleaded in the earlier money suit pertained to the date of alleged refusal by the defendants to pay the sum of money on the strength of the two Agreements-in-question to the plaintiffs, the genesis of the cause of action, as pleaded in Paragraph No.37 of the money suit, arose on May 16, 2012 and thereafter on other diverse dates, the first being the date of the first agreement between the parties.

109.Thus, in effect, the claim of money in the earlier suit was, in the garb of a money claim, a relief for specific performance of the contracts between the parties, which contracts also form the crux and content of the cause of action of the present suit.

110.The allegations of deception and resultant fraud on the part of the defendant nos. 1 and 2 in transferring “unallotted” shares of the defendant no. 3 company in favour of 28 outsiders were available and form a crucial part of the bundle of facts comprising the cause of action of both the money suit and the present suit for cancellation of the agreements-in-question.

111.The scope of consideration of Order II Rule 2(3) operates at the stage of suing, that is, filing of the suit, and not at the time of grant of relief. The bar

embodied in Order II Rule 2(3) is from “suing”, meaning thereby from instituting a suit, for reliefs arising out of the same cause of action which were omitted or relinquished in the earlier suit. Such bar operates against the party suing, and not against the court granting such reliefs. Thus, if the facts evidencing the foundational facts to attract the bar are pleaded in the plaint itself of the subsequent suit, no further evidence is required to establish the bar. In such circumstances, there is no conceivable reason as to why a defendant should be compelled to wait till the end of the suit and participate in a futile and vexatious litigation for the relief to be turned down on such ground.

112.In certain statutes, for example the rent control laws of different States, where an additional cloak of protection is given to tenants, the relevant date for consideration of the ground of eviction is the date of passing of the decree. As opposed thereto, in an Order II Rule 2(3) scenario, the date of ascertainment of the bar is the date when the plaintiff “sues” for the reliefs omitted in the earlier suit.

113.The prerequisite of sub-rule (3) of Order II Rule 2 is that the plaintiff in the second suit had to be the plaintiff in the first suit and was to be entitled to more than one reliefs, the cause of action being the same in both the suits, and had to omit to ask for, or relinquished, some or one of such reliefs in the earlier suit.

114.Tested on such anvil in the facts of the present case, the plaintiffs, despite having categorically pleaded as a part of the cause of action in the earlier suit the act of alleged deception by the defendants in transferring shares in

respect of 28 stranger companies, and having pleaded the self-same facts as the bulwark of the present suit, cannot be permitted to seek reliefs in the subsequent suit which were omitted to be claimed in the earlier one.

115. Seen from the said perspective, despite the bundle of facts comprising the cause of action in the earlier suit being also based on alleged fraud/deception, as in the present suit, the plaintiffs consciously elected to seek specific performance of the agreements in the form of monetary reliefs on the strength of the agreement, instead of repudiating and seeking cancellation of the said agreements, but have sought such relief in the subsequent suit.

116. Qualitatively as well as materially, the ground for seeking entitlement to the reliefs in the earlier suit as well as the present suit is the fraudulent action/deception alleged on the part of the defendant nos.1 and 2 in transferring the shares to third parties (28 stranger entities).

117. Hence, despite being entitled to the relief of repudiation/cancellation of the agreements on the basis of the cause of action pleaded in the earlier suit, the plaintiffs consciously relinquished/omitted to claim the relief of cancellation therein and sought the diametrically opposite, mutually exclusive, and contradictory relief of implementation of the agreements by seeking monetary reliefs on the strength of the same.

118. By applying the Doctrine of Election, thus, the present case is not one of mere omission to sue for a relief despite being entitled to the same, but of conscious relinquishment of the relief of cancellation of the agreements in favour of a mutually contradictory relief. Thus, the bar under Order II Rule

2(3) of the Code is squarely attracted in the present case. While holding so, it is the bounden duty of this Court to consider two recent judgments of the Hon'ble Supreme Court which may have some impact on the interplay between Order II Rule 2 and Order VII Rule 11 of the Code.

119.In *S. Valliammai (supra)*¹⁷, the Court categorically considered the earlier judgment in *Cuddalore Powergen Corporation Ltd. (supra)*¹⁸. In Paragraph No.43 of *Cuddalore* judgment, the Hon'ble Supreme Court summed up the different principles laid down in earlier judgments, on the conspectus of which the Hon'ble Supreme Court formulated its own tests in respect of the bar under Order II Rule 2 of the Code in Paragraph No.47. Paragraph Nos.43 and 47 of the said report are reproduced below:

"43. A summary of the principles laid down in *Mohd. Khalil Khan (supra)* are as under:

"The principles laid down in the cases thus far discussed may be thus summarised: –

- (1) The correct test in cases falling under Or. 2, r. 2, is "whether the claim in the new suit is, in fact, founded upon a cause of action distinct from that which was the foundation for the former suit." [*Moonshee Buzloor Ruheem v. Shumsoonissa Begum* [11 Moo IA 551, 605.]].
- (2) The cause of action means every fact which will be necessary for the Plaintiff to prove, if traversed, in order to support his right to the judgment. [*Read v. Brown* ([L.R.] 22 Q.B. 128, 131)].
- (3) If the evidence to support the two claims is different, then the causes of action are also different. [*Brunsdon v. Humphrey* [[L.R.] 14 Q.B.D. 141].
- (4) The causes of action in the two suits may be considered to be the same if in substance they are identical. [*Brunsdon v. Humphrey* [[L.R.] 14 Q.B.D. 141].
- (5) The cause of action has no relation whatever to the defence that may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the Plaintiff. It refers "to the media upon which the Plaintiff asks the Court to arrive at a

¹⁷ **S. Valliammai and Others. Vs. S. Ramanathan and Another, reported at 2026 SCC OnLine SC 603**

¹⁸ **Cuddalore Powergen Corporation Ltd. Vs. Chemplast Cuddalore Vinyls Limited and Another, reported at (2025) SCC OnLine SC 82**

conclusion in his favour. [Muss. Chand Kour v. Partab Singh [(1887-88) 15 IA 156, 157]. This observation was made by Lord Watson in a case under s. 43 of the Act of 1882 (corresponding to Or. 2, r. 2), where plaintiff made various claims in the same suit."

...

47. On a conspectus of the aforesaid discussion, what follows is that:

- i. The object of Order II Rule 2 is to prevent the multiplicity of suits and the provision is founded on the principle that a person shall not be vexed twice for one and the same cause.
- ii. The mandate of Order II Rule 2 is the inclusion of the whole claim arising in respect of one and the same cause of action, in one suit. It must not be misunderstood to mean that all the different causes of action arising from the same transaction must be included in a single suit.
- iii. Several definitions have been given to the phrase "*cause of action*" and it can safely be said to mean - "*every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court*". Such a cause of action has no relation whatsoever to the defence that may be set up by the defendant, nor does it depend upon the character of the relief which is prayed for by the plaintiff but refers to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour.
- iv. Similarly, several tests have been laid out to determine the applicability of Order II Rule 2 to a suit. While it is acknowledged that the same heavily depends on the particular facts and circumstances of each case, it can be said that a correct and reliable test is to determine whether the claim in the new suit is in fact founded upon a cause of action distinct from that which was the foundation of the former suit. Additionally, if the evidence required to support the claims is different, then the causes of action can also be considered to be different. Furthermore, it is necessary for the causes of action in the two suits to be identical in substance and not merely technically identical.
- v. The defendant who takes shelter under the bar imposed by Order II Rule 2(3) must establish that (a) the second suit was in respect of the same cause of action as that on which the previous suit was based; (b) in respect of that cause of action, the plaintiff was entitled to more than one relief; and (c) being thus entitled to more than one relief, the plaintiff, without any leave obtained from the Court, omitted to sue for the relief for which the second suit had been filed.
- vi. The defendant must also have produced the earlier plaint in evidence in order to establish that there is an identity in the causes of action between

both the suits and that there was a deliberate relinquishment of a larger relief on the part of the plaintiff.

- vii. Since the plea is a technical bar, it has to be established satisfactorily and cannot be presumed merely on the basis of inferential reasoning.”

120.It may be noted that in Paragraph No.43, disparate principles, all governing Order II Rule 2, have been consolidated under one umbrella. It is not necessary that each of the said principles have to be applicable to every case under Order II Rule 2. The tests laid down therein are general guidelines for examining the scope of Order II Rule 2 and do not appear to be exhaustive. One of the tests noted therein is that if the evidence to support the two claims is different, then the causes of action are also different, which was held in the English decision *Brunsdon v. Humphrey (L.R.) 14 Q.B.D. 141*.

121.However, the Hon’ble Supreme Court observed that the mandate of Order II Rule 2 is the inclusion of the whole claim arising in respect of one and the same cause of action in one suit; however, it must not be misunderstood to mean that all the different causes of action arising from the same transaction must be included in a single suit. While holding so, evidently, the Hon’ble Supreme Court was considering the scope of sub-rules (1) and (2) of Rule 2 of Order II, and not sub-rule (3) thereof. The latter provision is dealt with in Item ‘v’ of Paragraph No.47 of the said judgment, where the Hon’ble Supreme Court observed that the defendant who takes shelter under the bar imposed by Order II Rule 2(3) must establish that (a) the second suit was in respect of the same cause of action as that on which the previous suit was based; (b) in respect of that cause of action, the plaintiff was entitled to more than one relief; and (c) being thus entitled to more than

one relief, the plaintiff, without any leave obtained from the Court, omitted to sue for the relief for which the second suit had been filed.

122. The necessity to consider whether the evidence to support two claims, as laid down in *Brunsdan (supra)*¹⁹, in the Indian context, would itself pertain only to situations covered by sub-rules (1) and (2) of Order II Rule 2 of the Code and not sub-rule (3) thereof.

123. Whereas sub-rules (1) and (2) contemplate claims made on the self-same cause of action which are ancillary and similar in nature, sub-rule (3) contemplates different and multi-textured reliefs, although based on the self-same bundle of facts (cause of action).

124. Thus, there is a qualitative distinction between sub-rule (3) on the one hand and sub-rules (1) and (2) on the other, of Order II Rule 2 of the Code.

125. In *S. Valliammai (supra)*²⁰, the Hon'ble Supreme Court laid down certain propositions, which cannot be taken out of context. The Hon'ble Supreme Court recognised the principles laid down in *Cuddalore Powergen Corporation Ltd. (supra)*²¹ and proceeded on such premise. Certain paragraphs of *S. Valliammai (supra)*²⁰, being germane for the present consideration, must be considered in proper perspective. Those are as follows:

“5.13. Bar to sue is distinct from a suit being barred by any law, In the former, a suit cannot be commenced at all and, therefore, would have to be dismissed on the application of Order II Rule 2 of the Code, while in the latter case, a suit can be commenced but is not

¹⁹ **Brunsdan v. Humphrey (L.R.) 14 Q.B.D. 141**

²⁰ **S. Valliammai and Others. Vs. S. Ramanathan and Another, reported at 2026 SCC OnLine SC 603**

²¹ **Cuddalore Powergen Corporation Ltd. Vs. Chemplast Cuddalore Vinyls Limited and Another, reported at (2025) SCC OnLine SC 82**

entertainable owing to a bar in law. Under Order II Rule 2, a suit can be dismissed after recording evidence depending upon the facts and circumstances of the case and on the analysis of the cause of action in a former suit and a subsequent suit. In the case of rejection of a plaint, recording of evidence on the bar to file a suit may not be necessary in all circumstances. It all depends on the nature of the bar.

...

5.15. Thus, the right to sue is circumscribed by what is stated under Order Rules 1 and 2 of the Code. Order II Rule 2(1) states that every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of the court. With regard to relinquishment of part of the claim and omission to sue for one of several reliefs, the consequences are stated in sub-rules (2) and (3) of Order II Rule 2 of the Code. Thus, under the said sub-rules the right to sue in respect of relinquishment of a claim or omitted reliefs in the absence of conditions occurring therein would not arise. Therefore, sub-rules (2) and (3) of Order II Rule 2 deal with claims and reliefs.

...

5.20. As opposed to the above, under Order II Rule 2 of the Code, the right to sue is taken away in terms of sub-rules (2) and (3) thereof which means that the suit could not have been filed at all. On the other hand, under Order VII Rule 11(d), there is “no bar to sue” but “the suit is barred by law from being filed”. There is a subtle but distinct difference between the two. If the conditions under sub-rules (2) and (3) of Order II Rule 2 of the Code are satisfied in a case, it would be a case of there being a curtailment of the right to sue for the claims relinquished or omitted in the earlier suit. It is not a case where the plaint has to be rejected as it is barred by the provision of Order II Rule 2[sub-rules (2) and (3)]. In other words, the application of Order II Rule 2 of the Code to a case can result in in rejection of reliefs being granted to a plaintiff which may, in certain cases, also result in dismissal of the suit itself. But it does not result in rejection of the plaint under Order VII Rule 11(d) of the Code.

5.21. We think that in a case where Order 2 Rule 2 of the Code applies, there is no legal bar to filing a suit but the reliefs sought for or the claims made therein cannot be granted if the conditions mentioned therein apply. For arriving at such a conclusion, there has

to be evidence let in in order to determine whether the provision of Order 2 Rule 2 would apply to the suit or not. On the other hand, in the case of Order 7 Rule 11(d), if there is express or implied bar for filing of a suit under any law then on a meaningful reading of the plaint, it has to be rejected. The suit need not proceed to record evidence on merits but only to the extent where evidence is necessary to be recorded for the purpose of rejection of the plaint such as on the ground of the suit being hit by law of limitation or on the principle of res judicata. Thus, the bar created by any law to the filing of a suit is different from a plaintiff suing for certain claims or reliefs which he could not have claimed or sued having regard to Order 2 Rule 2 of the Code. Therefore, in our view, the application of Order 2 Rule 2 cannot be construed to be a ground for rejection of the plaint under Order 7 Rule 11(d) of the Code.

...

7. *A juxtaposition of the above discussion with the discussion for rejection of a plaint under Order 7 Rule 11(d) of the Code must be made. On a conjoint reading of Order 2 Rule 2 with Order 7 Rule 11(d) of the Code, it emerges that the plea under Order 2 Rule 2 of the Code cannot be a basis or a ground for rejection of the plaint. In other words, it is for the defendant to establish by way of evidence, the bar of the subsequent suit under Order 2 Rule 2 of the Code filed by the very same plaintiff. In such an event, on a comparative analysis of the plaint filed in the first suit and the plaint filed in the second suit, if the Court comes to the conclusion that the second suit was filed on an identical cause of action which led to the filing of the first suit and there was an omission to make the claim or to reserve the reliefs to be claimed in the first suit in a subsequent suit, then the bar under Order 2 Rule 2 of the Code would apply to the subsequent suit or the second suit. Then the claims or reliefs not maintainable would be rejected as the plaintiff could not have sued for those reliefs by filing a second suit, although technically, the filing of such a suit was not barred by any law. On the other hand, if the cause of action for filing the second suit is totally distinct from the cause of action from filing the first suit and the reliefs claimed are distinct, subject-matter of the suits are different and if the parties to the suit are also different then in such a case, the plea under Order 2 Rule 2 of the Code would not arise at all. The above are, inter alia, the heads of distinction to be analysed while analysing the plaints in the first/former suit and a subsequent suit.”*

126. From a bare reading of the said paragraphs, at the first blush it appears that no plaint can be rejected under Order VII Rule 11 on the premise of the bar under Order II Rule 2 of the Code. However, there is more to it than meets the eye. The above paragraphs have to be read in the context of the rest of the judgment, in order to extract the ratio laid down in *S. Valliammai (supra)*²². It is, after all, well-settled that a judgment is only a binding precedent insofar as the *ratio decidendi* laid down therein, in the context of the factual matrix of the said case, is concerned. Each and every statement of law in a judgment cannot be blindly construed as a legal and binding proposition laid down therein. By applying Goodhart's test, one has to focus strictly on the material facts as seen by the Judge and the conclusion based on those specific facts, ignoring wider or narrower channelized statements, in order to cull out the *ratio decidendi* of a judgment.

127. Again, Wambaugh's Inversion test mandates one to reverse the proposed rule laid down in a judgment and to ascertain if changing or removing the proposition alters the outcome of the case, to assess whether such proposition is a part of the ratio.

128. On a harmonious application of the said principles to the decision rendered in *S. Valliammai (supra)*²², certain interesting aspects emerge. In Paragraph No.5.16 of the judgment, the Hon'ble Supreme Court held that on a comparative analysis of the plaint in the first suit and the second suit, the following aspects have to be considered:

- (i) Whether parties and their privies are the same in the two suits?

²² ***S. Valliammai and Others. Vs. S. Ramanathan and Another, reported at 2026 SCC OnLine SC 603***

- (ii) Whether the cause of action in the two suits is identical or distinct?
- (iii) Whether the subject-matters of the two suits are different?
- (iv) Any such other point of identity or distinction.

129.In Paragraph No.5.17 of the judgment, it was categorically laid down that the written statement or any other document cannot be taken into consideration in order to ascertain whether the suit is barred by any law and it is only on a meaningful reading of the plaint and the annexed documents that the suit should appear to be barred by law to come within the purview of Order VII Rule 11(d) of the Code. As a logical corollary, where it is evident from a plain and meaningful reading of the plaint and the documents relied on therein or annexed thereto, without looking into the defence case, let alone the evidence, that the suit is barred by any law, the plaint has to be rejected.

130.In the facts of the said case, the Hon'ble Supreme Court went on to observe that in a case where Order II Rule 2 of the Code applies, there is no legal bar to filing of suit but the reliefs sought for or the claims made therein cannot be granted if the conditions mentioned therein applied. For arriving at such a conclusion, it was held that evidence has to be let in in order to determine whether Order II Rule 2 would apply.

131.In such context, it was held that the application of Order II Rule 2 cannot be construed to be a ground for rejection for the plaint under Order VII Rule 11(d) of the Code.

132.However, if the above judgment is construed to lay down that there is an universal bar to rejection of the plaints on the ground of Order II Rule 2 of

the Code, such an interpretation might, respectfully, militate against the language of Order II Rule 2(3) of the Code, which pertains to the “right to sue”, being a threshold bar referring to the inception of the suit. The bar of a right to sue operates when filing the suit at the outset and one need not wait till the conclusion of the suit to determine whether such bar is operative, in the event the plaint of the subsequent suit clearly discloses the necessary ingredients of Order II Rule 2(3).

133.A “bar of law” contemplated in Order VII Rule 11 (d) can fall under either of the two broad heads – a statutory bar to the maintainability of the suit itself, and a statutory bar on the plaintiff to sue. The bar under Order II Rule 2 of the Code comes under the second category.

134.The basic tests for the bar under Order II Rule 2(3) to apply are as follows:

- (i) The cause of action has to be the same in both the suits;
- (ii) The plaintiffs had to be entitled to the omitted/relinquished relief on the basis of such cause of action at the time of filing of the earlier suit; and
- (iii) One or more of such reliefs, to which the plaintiffs were entitled in the earlier suit on the basis of the self-same cause of action, were omitted or relinquished in the first suit.

135.If such ingredients are evident from a plain and meaningful reading of the plaint of the subsequent suit itself, there cannot be plausible reason for the plaintiff to wait till the final disposal of the suit, even on the principle that the suit would then be vexatious and harassive, thus liable to be nipped in the bud.

136.For context, we are to look at the facts of *S. Valliammai (supra)*²³. In the said case, as discussed in Paragraph No.8 of the judgment, the High Court, while allowing a revision and rejecting the plaint, on a conjoint reading of the two plaints, had observed on a reading of the averments in Paragraph No.7 of the plaint in OS No.4722 of 2012 that the plaintiff no.1 in the second suit was aware that the properties in the present suit were already given to the share of the defendant no.1, that the Power of Attorney dated 04.11.2011 was not changed by the plaintiff no.2 in the first suit during his lifetime and the second suit was filed after the demise of plaintiff no.2 in the earlier suit by his widow and two daughters challenging the power of attorney in favour of defendant no.2 in the said suit. Importantly, the Hon'ble Supreme Court observed that the High Court had also gone into the merits of the prayers sought for by the plaintiff in the second suit. It was considered that the first plaintiff in the second suit did not seek leave to file another suit and that there was an omission to assail the power of attorney in the first suit and that there was no separate cause of action to file another suit. It was held that the plaintiffs in the second suit were aware of the execution of the power of attorney dated 04.11.2011 and hence, the cause of action for both the suits were one and the same. While doing so, the High Court further analysed the averments in the second suit, "as if it is evidence". The High Court also considered the implication of the released letters executed by the daughters and consequently, held that the Trial Court erred in concluding that the cause of action for the two suits is different and distinct.

²³ ***S. Valliammai and Others. Vs. S. Ramanathan and Another, reported at 2026 SCC OnLine SC 603***

137.In Paragraph No.8.1 of *S. Valliammai (supra)*²⁴, it was observed that the above approach of the High Court in analysing the averments made in the second suit as if it is evidence, in juxtaposition with the averments made in the first suit, was improper.

138.Thus, the premise of the Hon'ble Supreme Court coming to the conclusion in *S. Valliammai (supra)*²⁴ that the bar under Order II Rule 2 of the Code could not be taken as a bar of law under Order VII Rule 11(d) was premised on the aforesaid facts, being that the High Court had traversed beyond the scope of Order VII Rule 11 and appreciated the materials annexed to the plaint as if it was evidence.

139.By applying the Inversion Test, thus, even if the aforesaid proposition is omitted from the said judgment, the Hon'ble Supreme Court would have arrived at the same conclusion that the High Court erred in assessing evidence at the Order VII Rule 11 stage.

140.If Goodhart's principle were to be applied as well, it would be seen that the material facts in *S. Valliammai (supra)*²⁴, in the context of which proposition under consideration was arrived at, are completely different from the instant case.

141.As opposed thereto, in the present case, a plain and meaningful reading of the plaint of the subsequent suit would suffice to explicitly attract the bar under Order II Rule 2, without any further evidence or appreciation of facts being required. The plaint of the current suit categorically refers to the earlier money suit and refers to the plaint filed therein, which, if compared

²⁴ ***S. Valliammai and Others. Vs. S. Ramanathan and Another, reported at 2026 SCC OnLine SC 603***

with the cause of action and reliefs sought in the present suit, would *ex facie* reveal that the plaintiffs had relinquished the relief of cancellation of the agreements-in-question despite having pleaded the self-same ground of fraud/deception as in the present suit; rather, had chosen to seek specific performance of the said agreements in the garb of a monetary relief on the strength of the said agreements, thus attracting the bar under Order II Rule 2 as well as being precluded from instituting the subsequent suit by application of the Doctrine of Election.

142. The context in which the above judgment was rendered was that the High Court had appreciated evidence to qualitatively assess the cause of action in both the suits instead of confining itself to the plaint and the documents relied therein, thus, transgressing the domain of Order VII Rule 11(d) of the Code. Even otherwise, in *S. Valliammai (supra)*²⁵, the Hon'ble Supreme Court observed, while adverting to *State Bank of India v. Gracure Pharmaceuticals Ltd.*, reported at (2014) 3 SCC 595, that in the said case, it was held that the earlier suit was filed on 15.03.2003 and the subsequent suit was filed on 21.05.2003 and there was no fresh cause of action arose between the first suit and the second suit. Therefore, the respondent therein was not entitled to split the cause of action into parts by filing separate suits. However, it was held to be necessary to note that although Order II Rule 2 of the Code may have been applied to the cause of action, the plaint therein was not rejected under Order VII Rule 11 (d) as such but possibly under Order VII Rule 11(a) of the Code as in Paragraph No.17 and

²⁵ ***S. Valliammai and Others. Vs. S. Ramanathan and Another, reported at 2026 SCC OnLine SC 603***

it was also noted that no fresh cause of action arose in between the first and the second suits.

143. Taking into consideration the above distinguishing and evident features of the perspective in which *S. Valliammai (supra)*²⁶ was rendered, it cannot be said that it was held therein that the bar embodied in Order II Rule 2 cannot, under all circumstances and universally, be invoked under Order VII Rule 11 of the Code.

144. Although in *Cuddalore Powergen Corporation Ltd. (supra)*²⁷, the Hon'ble Supreme Court had summed up several contexts of consideration of Order II Rule 2, the test mentioned therein, of the evidence to support the two claims being different, which was an English law principle, is available in respect of sub-Rules (1) and (2) only of Order II Rule 2, as opposed to sub-Rule (3). Whereas evidence may be required to be considered to ascertain whether the same is different for the two claims, such principle is attracted only if several claims could have been made on the basis of the self-same cause of action but were relinquished.

145. Sub-rule (3) of Order II Rule 2, however, contemplates different reliefs being sought on the self-same cause of action.

146. In the facts of the instant case, from the plaint of the current suit itself, it is evident that the specific fraud pleaded as the cause of action in the subsequent suit for cancellation of the concerned agreements was also

²⁶ ***S. Valliammai and Others. Vs. S. Ramanathan and Another, reported at 2026 SCC OnLine SC 603***

²⁷ ***Cuddalore Powergen Corporation Ltd. Vs. Chemplast Cuddalore Vinyls Limited and Another, reported at (2025) SCC OnLine SC 82***

pleaded and was available to the plaintiff as a ground when the earlier money suit was filed, as disclosed in the plaint of the earlier suit.

147.It is an admitted position that no leave under Order II Rule 2 of the Code was obtained in connection with the earlier Money Suit No. 101 of 2015 before filing the present suit.

148.The specific argument of fraud, premised on deceptive transfer in favour of 28 third party entities, also forms the plinth of the cause of action in the earlier suit, as in the present one.

149.On the basis of the pleadings in the two suits, thus, it is evident that the plaintiffs had the option of seeking either of the two mutually exclusive reliefs – either to seek performance of the agreements-in-question or to seek repudiation of those by cancellation. The plaintiffs chose to seek the former by relinquishing the latter.

150.Thus, in view of the plaintiffs/respondent nos. 1 and 2 herein having categorically opted for the former relief in the earlier suit, they are precluded, not only by Order 2 Rule 2(3) of the Code, but also by the Doctrine of Election, from performing a *volte face* and now seeking the diametrically opposite relief of cancellation of the agreements, which was fully available to them at the time of filing of the earlier money suit, having not only relinquished the same in the earlier suit but having chosen to go for the diametrically opposite relief of seeking recovery of money by way of performance of the self-same agreements.

151.In such view of the matter, the second suit is barred, not only under Order II Rule 2(3) of the Code but also by the Doctrine of Election, as well as being evidently vexatious and harassing, entailing nipping the same in the bud.

152.Mere impleadment of the 28 transferees of the shares of the defendant no.3- Company in the current suit on the premise of such transfer in their favour, which forms the very basis of such alleged deception/fraud, cannot be a determinant to test the applicability of Order II Rule 2, since, as per the allegations in the plaints of both suits, such transferees are the beneficiaries of the alleged fraud and would be bound by the outcome of suit vis-à-vis the transferors (present defendant nos. 1 and 2/appellants). The cause of action of both the suits is primarily against the present appellants and the fate of the transferees of the shares in the suits would automatically govern the rights of the transferees in the shares. Hence, the addition of the transferees as parties to the subsequent suit is merely incidental and consequential to the cause of action against the principal defendants, the appellants herein, which does not make any difference insofar as the applicability of the bar to sue under Order II Rule 2 is concerned.

153.In such view of the matter, learned Single Judge erred in law in not rejecting the plaint outright.

CONCLUSION

154.In the light of the above findings, this court comes to the conclusion that the suit from which the present appeals emanate does not involve any commercial dispute and, as such, ought not to have been transferred to the Commercial Division of this court under Section 15 of the CC Act.

155. Secondly, the plaint should have been rejected outright, the present suit being barred under Order II Rule 2 and the Doctrine of Election, as well as being vexatious and harassing.

156. In the light of the above findings, A.P.O. No.85 of 2021 is allowed on contest, thereby setting aside the portion of the impugned judgment dated March 5, 2021 passed in GA 2 of 2021 in ALP 4 of 2018 whereby the suit was directed to be transferred to the Commercial Division of this Court.

157. A.P.O. No.84 of 2021 is also allowed on contest, thereby setting aside the portion of the impugned judgment dated March 5, 2021 whereby IA GA No.2 of 2015 in CS No.250 of 2015 was rejected, and allowing the said application by rejecting the plaint of the said suit on the ground of the same being barred by Order II Rule 2(3) of the Code of Civil Procedure as well as by the Doctrine of Election and being vexatious and harassing.

158. Consequentially, GA No.2 of 2026, filed in connection with A.P.O. No.84 of 2021, stands disposed of.

159. There will be no order as to costs.

160. Separate decrees be formally drawn up accordingly in respect of each of the appeals.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Sandip Kumar De, J.)