

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Aryak Dutt

APDT 21 of 2026
With
CS/107/2016
IA No. GA/1/2026

Kalimata Infratech Limited
Vs.
Maheshwari Devi & Ors.

For the Appellant : Mr. Malay Kumar Ghosh, Sr. Adv.
Mr. Aniruddha Mitra, Sr. Adv.
Mr. Abhisek Seal, Adv.
Mr. Aishik Chakraborty, Adv.
Mr. Arindam Paul, Adv.
Ms. Laboni Dey, Adv.
Ms. Debarati Das, Adv.

For the Respondent : Mr. Jishnu Chowdhury, Sr. Adv.
Nos. 3 to 8 : Mr. Amritam Mondal, Adv.
Ms. Shahnaz Parveen, Adv.

For the Respondent Nos. : Mr. S. N. Mookherjee, Sr. Adv.
15 to 20. : Mr. Suddhasatva Banerjee, Adv.
Mr. Ratul Das, Adv.
Mr. Naman Chowdhury, Adv.
Mr. Amit Kumar Nag, Adv.
Mr. Probir Kumar Chatterjee, Adv.
Mr. Pranoy Chatterjee, Adv.
Ms. Ranjabati Ray, Adv.
Ms. Rishita Sarkar, Adv.
Ms. Barnisha Samanta, Adv.

Hearing Concluded on : September 01, 2026
Judgement on : September 10, 2026

DEBANGSU BASAK, J.:-

1. Appellant has assailed the judgment and decree dated June 10, 2026 passed in IA GA 3 of 2024, CS 107 of 2016.
2. By the impugned judgment and decree, learned Single Judge has rejected the plaint filed by the appellant.
3. Learned Senior Advocate appearing for the appellant has submitted that, the appellant as the plaintiff filed the suit on March 18, 2016. He has referred to the prayers made in the plaint. He has submitted that, the appellant had sought decree for declaration with regard to a deed of gift dated August 1, 1948 and documents purporting to create title in derogation of the title of the appellant in respect of an immoveable property. He has submitted that, apart from the decree of declaration appellant had prayed for decree for delivery of documents relating to the immoveable property and perpetual injunction.
4. Learned Senior Advocate appearing for the appellant has contended that, although the suit was filed on March 18, 2016 and leave under Clause 12 of the Letters Patent, 1865 was obtained on January 2, 2023, nonetheless the suit cannot be rejected under Order VII Rule 11 of the Code of Civil

Procedure, 1908 on the alleged ground of abuse of process. He has referred to Chapter XXXIXA Rules 1 and 3 of the Original Side Rules. He has contended that, Chapter XXXIXA of the Original Side Rules applied notwithstanding anything contrary contained elsewhere in the Original side Rules. He has also drawn the attention of the Court to Chapter VII Rule 4 of the Original Side Rules and submitted that, by reason of the non-obstante clause in Rule 1 and Rule 3 of Chapter XXXIXA of the Original Side Rules, the provisions of Chapter XXXIXA of the Original Side Rules will prevail. He has relied upon **1984 (Suppl) SCC 196 (Union of India Versus G.M. Kokil)** in support of the contention that, non-obstante clause will have an overriding effect.

5. Relying upon **AIR 2012 Cal 71 (Shridhar Issar Versus Bharnobari Tea & Industries Limited)** learned Senior Advocate appearing for the appellant has contended that, there was no conflict between Chapter VII Rule 4 and Chapter XXXIXA of the Original Side Rules. He has contended that, limitation stops running when the plaint is filed in the Centralized Filing Section.

6. Relying upon ***AIR 1992 Cal 278 (Lakshmi Commercial Bank Limited Versus Bengal National Textile Mills Limited)*** learned Senior Advocate appearing for the appellant has contended that, for the purpose of limitation, the suit is instituted upon presentation of the plaint even though no steps were taken to obtain leave under Clause 12 of the Letters Patent, 1865.

7. Learned Senior Advocate appearing for the appellant has contended that, since the suit was filed on March 18, 2016, subsequent leave granted under Clause 12 of the Letters Patent, 1865 did not characterize the suit to be freshly instituted on January 2, 2023. According to him, obtaining leave under Clause 12 of the Letters Patent, 1865 at a subsequent stage cannot be said to be an abuse of process since the suit was instituted on March 18, 2016.

8. Learned Senior Advocate appearing for the appellant has contended that, the statements made in the plaint are to be treated as true and correct for the purposes of considering an application under Order VII Rule 11 of the Code of Civil Procedure, 1908. He has contended that, the appellant pleaded that the appellant became aware of the alleged deed of

gift dated August 1, 1948 only upon service of the plaint in CS No. 371 of 2013 on October 29, 2013. Moreover, appellant has alleged in the plaint that, the alleged deed of gift is not authentic. Appellant has questioned the execution and subsequent transactions founded upon the alleged deed of gift.

9. Referring to Section 3 Explanation I of the Transfer of Property Act, 1882, learned Senior Advocate appearing for the appellant has contended that, the execution of the alleged deed of gift dated August 1, 1948 and its registration does not visit the appellant with constructive notice or any notice of the same till October 29, 2013 when the appellant became aware of such document from the copy of the plaint of CS No. 371 of 2013.

10. Relying upon **2018 (6) SCC 422 (Chhotanben & Another Versus Kiritbhai Jalkrushna Bhai Thakkar)** and **2024 SCC OnLine SC 4105 (Daliben Valjibhai Versus Prajapati Kodarbhai)** learned Senior Advocate appearing for the appellant has contended that, averments in the plaint are germane for Order VII Rule 11 of the Code of Civil Procedure, 1908 and that the defence of the defendant is irrelevant at

that stage. He has contended that, there is a question of limitation and the same requires adjudication. The issue of limitation that has been raised being triable, the plaint cannot be rejected under Order VII Rule 11 (d). According to him, the date of knowledge of a registered document of which cancellation is sought for is important on the issue of limitation and the same has raised a triable issue.

11. Relying upon **2026 SCC OnLine SC 860 (B.S. Lalitha Versus Bhuvanesh)** learned Senior Advocate appearing for the appellant has contended that, defence on merits cannot be adjudicated while considering rejection of plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908. He has relied upon **2004 (9) SCC 512 (Liverpool & London S.P & I Association Limited Versus M.V. Sea Success I & Another)** for the proposition that, the plaint has to be read as a whole with its averments being taken as correct for the purpose of determining whether a cause of action is disclosed or not. He has pointed out that, a Court cannot isolate individual statements and construct a case which is not a part of the plaint read as a whole.

12. Referring to Section 3 Explanation II of the Transfer of Property Act, 1882, learned Senior Advocate appearing for the appellant has contended that, such provisions do not contemplate deemed possession but deals with actual possession at the relevant point of time. He has contended that, Explanation II of Section 3 of the Transfer of Property Act, 1882 allows an inference of deemed notice of title if there is a person in possession for the time being. He has referred to the pleadings in the plaint and contended that, paragraph 24 of the plaint cannot be read in isolation and has to be read in the context of the fact that, the appellant claimed that the appellant became aware of the deed of gift from the copy of the plaint.

13. Learned Senior Advocate appearing for the appellant has contended that the conveyance dated July 15, 2005 noted that, the suit premises was mutated in the name of Aparna Singh and that there are certain occupants on a portion of the land. He has referred to the deed of conveyance dated March 8, 2011 in favour of the appellant which also stated that some portion of the property is occupied by various monthly occupants and that, the vendor being defendant No. 25 was in

possession of certain portion of the building in the suit premises and that such vendor had handed over such vacant portion in favour of the appellant.

14. Learned Senior Advocate appearing for the appellant has contended that, there is no averment in the application seeking rejection of the plaint that the defendant Nos. 15 to 20 are in actual physical possession of the suit premises or are in possession through their tenants. He has referred to the addresses of the defendant Nos. 15 to 20 as mentioned in the affidavit in support of the application for rejection of the plaint.

15. Learned Senior Advocate appearing for the appellant has contended that, Explanation II to Section 3 of the Transfer of Property Act, 1882 does not say that a purchaser is deemed to have notice of the title of every person who historically possessed the property. He has contended that, the deeming provision operates only upon the existence of actual possession at the relevant time and attributes notice of the title, if any, of that person.

16. Learned Senior Advocate appearing for the appellant has contended that, the essential ingredients of Section 3 of

the Transfer of Property Act, 1882 namely, constructive notice and actual possession are matters of fact which are required to be established through evidence. Therefore, on an application under Order VII Rule 11 of the Code of Civil Procedure, 1908, the suit could not have been dismissed on the plea of Explanation II Section 3 of the Transfer of Property Act, 1882.

17. Learned Senior Advocate appearing for the appellant has contended that, the defendant Nos. 15 to 20 have relied upon Explanation I Section 3 of the Transfer of Property Act, 1882 rather than Explanation II thereof. More the reason that the plaint could not have been rejected.

18. Learned Senior Advocate appearing for the appellant has contended that, the plaint has to be read as a whole. The fact as to who had obtained the certified copy and who are in actual physical possession of the suit property at the relevant point of time are issues of fact and therefore, the same raises triable issues. The appellant cannot be said to have suppressed any material fact.

19. Learned Senior Advocate appearing for the appellant has contended that, on a meaningful reading of the plaint as a

whole, the alleged bar of limitation is not so apparent so as to warrant a rejection of plaint under Order VII Rule 11(d) of the Code of Civil Procedure, 1908.

20. Learned Senior Advocate appearing for the defendant Nos. 15 to 20 has contended that, the plaint of the suit is liable to be rejected under Order VII Rule 11(a) and (d) of the Code of Civil Procedure, 1908. He has contended that, the suit appears from the statements made in the plaint to be barred by the laws of limitation. By making false statement and suppressing material facts as is apparent from the plaint itself, an illusory cause of action has been sought to be presented by the appellant. The appellant has no locus standi to seek the reliefs in the plaint particularly prayer (a) of the plaint. The appellant is not entitled to any other reliefs in the suit as they are consequential to prayer (a) of the plaint.

21. Learned Senior Advocate appearing for the defendant Nos. 15 to 20 has contended that, the period of limitation for the reliefs claimed in the plaint is governed by Article 59 of the Limitation Act, 1963. He has pointed out that, prayer (a) of the plaint relates to deed of gift dated August 1, 1948. He has relied upon Section 3 Explanation I of the Transfer of Property

Act, 1882 and contended that, registration of the deed of gift operates as constructive notice to all subsequent purchaser of the property mentioned in the deed of gift, if the three conditions prescribed in Explanation I are fulfilled. He has relied upon the extract of Chapter 9 of the Law Commission of India, 70th Report on the Transfer of Property Act, 1882.

22. Referring to the pleadings in the plaint particularly paragraphs 16 and 49 thereto, learned Senior Advocate appearing for the defendants Nos. 15 to 20 has contended that, the claim that the appellant had knowledge/notice of the Deed of Gift only on October 29, 2013 when copy of the plaint in CS No. 371 of 2013 was served upon the appellant, and therefore, the suit which was filed on March 18, 2016 is not barred by limitation is incorrect. According to him, such contention of the appellant is contrary to Section 3 of the Transfer of Property Act, 1882 as the appellant has claimed title through the Deed of Conveyance dated March 8, 2011.

23. Learned Senior Advocate appearing for the Defendant Nos. 15 to 20 has contended that, statements made by the appellant in paragraphs 33 (o) and 26 of the plaint are false statements and that, by making such false statements, the

appellant is seeking to create illusory cause of action. He has pointed out that the Deed of Lease which is the part of the plaint being an annexure to the plaint clearly mentions the Deed of Gift dated August 1, 1948.

24. Learned Senior Advocate appearing for the Defendant Nos. 15 to 20 has contended that no case has been made out by the appellant that the Deed of Lease was not found in the records of the Registry Office, or that the appellant came to know of the same only on the receipt of the copy of the plaint.

25. Learned Senior Advocate appearing for the Defendant Nos. 15 to 20 has contended that, the appellant cannot seek any relief with regard to the immovable property concerned, in the facts and circumstances of the present case. In support of his contention, he has relied upon **2000 Volume 7 Supreme Court Cases 702 (Dilboo (Smt) (Dead) by LRS and Others Versus Dhanraji (Smt) (dead) and Others), 2024 SCC Online SC 3844 (Shri Mukund Bhavan Trust and Others Versus Shrimant Chhatrapati Udayan Raje Pratapsinh Maharaj Bhonsle and Another), 2026 SCC Online SC 831 (Manjula and Others Versus D.A. Srinivas)** and an unreported decision dated August 17, 2026 of the Supreme

Court in **CA 11194 of 2026 (N. Asha Devi Versus R. Aravind Kumar & Another)**.

26. Learned Senior Advocate appearing for the Defendant Nos. 15 to 20 has contended that, the appellant accepted the possession of the defendant nos. 15 to 20 by stating in the plaint that, such defendants acquired title to the property concerned.

27. Learned Senior Advocate appearing for the Defendant Nos. 15 to 20 has contended that, the appellant had actual notice and knowledge of the registered Deed of Lease on or before the date of registration of the Conveyance dated March 8, 2011. He has contended that the appellant was under an obligation to make an enquiry with regard to the prior encumbrances in respect of immovable property concerned, if any. The appellant has not stated in the plaint that it came to know of the Deed of Lease on any subsequent date or upon service of the plaint. The appellant could not have made any averments that it came know of the Deed of Lease upon service of the plaint. The Deed of Lease referred to and relied upon in the plaint is a certified copy issued on September 21, 2004.

28. Learned Senior Advocate appearing for the Defendant Nos. 15 to 20 has drawn the attention of the Court to the verification and averments of the plaint. He has pointed out that, one Mr. Alok Agarwal had affirmed the plaint. He has pointed out that the same Mr. Alok Agarwal was a Director of one Aarya Industrial Products Private Limited of which the entire shareholding is held by Mr. Alok Agarwal and his wife. Aarya Industrial Products Private Limited had entered into a registered agreement of sale in respect of part of the suit property with the predecessor-in-interest of the defendants nos. 3 to 7 and defendant nos 8 on March 25, 2011. The documents dated March 25, 2011 had a specific mention of the Deed of Gift dated August 1, 1948. Mr. Alok Agarwal has been a Director of the appellant till January 5, 2011. Mr. Alok Agarwal had knowledge of the Deed of Gift as a Director of Aarya Industrial Products Private Limited and his knowledge can be imputed as a Director and Executive Officer and a Principal Officer to the appellant.

29. Learned Senior Advocate appearing for the Respondent Nos. 3 to 8 has contended that, relief sought for in the plaint is barred by the laws of limitation. In support of such

contention, he has drawn the attention of the Court to Section 3 of the Transfer of Property Act, 1882 and Explanation I thereof.

30. Learned Senior Advocate appearing for the Defendant Nos. 3 to 8 has contended that, predecessor-in-interest of the appellant that is defendant no. 26 purchased the immovable property from Ms. Aparna Singh on July 20, 2005, defendant no. 26 is deemed to have notice of the registered document dated August 1, 1948, July 24, 1975, September 11, 1984, August 24, 1981 and August 21, 1992.

31. Without prejudice to earlier contention, learned Senior Advocate appearing for the Defendant Nos. 3 to 8 has contended that, a second period of limitation commenced on and from March 18, 1991 when Mr. Kailash Dewan transferred the suit property to the appellant.

32. Learned Senior Advocate appearing for the Defendant Nos. 3 to 8 has contended that, no factually disputed position appears from the averments made in the plaint. He has contended that the applicability of Section 3 particularly Explanation I of the Transfer of Property Act, 1882 can be deduced from the statements made in the plaint. According to

him, no triable issue has been raised or exists on the point of limitation.

33. Learned Senior Advocate appearing for the Defendant Nos. 3 to 8 has contended that, the document mentioned in Schedule B to the plaint are not capable of being challenged by way of a suit. He has contended that, the appellant is seeking cancellation of the documents mentioned in Schedule B to the plaint. A sale deed dated August 24, 1981 was executed in terms of a decree for specific performance dated August 11, 1978. He has pointed out that an agreement of sale dated June 16, 1972, decree dated August 11, 1978 and the Deed of Conveyance dated August 24, 1981 are not capable of challenge in the suit. Moreover, the order of the Probate Court was the subject matter of challenge in a suit.

34. Learned Senior Advocate appearing for the Defendant Nos. 3 to 8 has distinguished the authorities relied upon on behalf of the appellant.

35. Appellant as the plaintiff had filed a suit in respect of an immovable property lying and situated at premises No. 2/1 Loudon Street, Kolkata – 700016. Appellant has prayed that the registered Deed of Gift dated August 1, 1948 and all

documents of title respect of immovable property concerned apart from the title deed of the appellant be declared as false fabricated, manufactured and in any event did not have and have not transferred any title or created any interest in the suit premises or any part or portion thereof.

36. Appellant has claimed title to the immovable property by virtue of a registered Deed of Conveyance dated March 8, 2011 executed by the defendant no. 26 in favour of the appellant. According to the appellant, on May 17, 1940 Justice Satish Chandra had sold the suit premises to Charubala Devi by a registered Deed of Sale. Charubala Devi had made and published her last will and testament dated September 6, 1985 whereby she devised and bequeathed the suit premises in favour of her daughter Aparna Singh. Charubala Devi had expired on November 1, 1988. Probate of the will of late Charubala Devi had been obtained by Aparna Singh on October 25, 1990. Aparna Singh by a Deed of Conveyance dated July 15, 2005 had sold the suit premises to the defendant no. 26. Such Deed of Conveyance had been registered on January 10, 2011.

37. In the plaint, appellant has claimed that it became aware of the rival claims of the defendants in respect of the suit property on October 29, 2013 when the appellant was served with a copy of the plaint in CS No. 371 of 2013. Plaint of the appellant has disclosed various litigations in respect of the suit property concerned. In the plaint the appellant has stated that, there are eight sets of claims in respect of the suit property.

38. In view of the rival claims as to the date of presentation of the plaint on the issue of limitation, we had called for the original plaint. We had considered the endorsements appearing on the plaint with regard to the filing and presentation, in the presence of the learned counsel for the parties. In fact, we had made over the original plaint to the learned counsel for the parties in the course of hearing for inspection and sought their assistance on the date of filing and presentation of the plaint.

39. It appears from the endorsements on the plaint that the appellant had presented the plaint on March 18, 2016. Leave under Clause 12 of the Letters Patent, 1865 had been

granted on January 2, 2023. These facts have not been disputed by the appearing parties.

40. Chapter XXXIXA of the Original Side Rules has been introduced with effect from September 5, 1996. It has sought to address the issue of presentation of a pleading before the High Court on the advent of the Centralized Filing Section in the High Court.

41. Rule 1 of the Chapter XXXIXA has specified that the Rules relating to computerisation shall have effect notwithstanding anything contrary contained anywhere else in the Original Side Rules. Rule 3 of Chapter XXXIXA opens with a non-obstante clause and has provided that, notwithstanding anything contrary contained anywhere else in the Original Side Rules, any plaint, petition, memo of appeal, application complete in all respects shall, save as otherwise directed by the Court, be presented at the first instance at the Centralized Filing Section of the Original Side.

42. Chapter VII Rule 4 of the Original Side Rules has provided for the endorsements that are required to be made on the plaint which is admitted.

43. Interplay of Chapter VII Rules 4 and Chapter XXXIXA have been considered in ***Shridhar Issar (supra)*** as well as in ***Lakshmi Commercial Bank Limited (supra)***.

44. ***G.M. Kokil (supra)*** has held that, where a provision of statute contains a non-obstante clause such provision will have overriding effect. Chapter XXXIXA Rules 1 and 3 have non-obstante clause. Provisions of Chapter XXXIXA would therefore have primacy over other provisions of the Original Side Rules in the event there is any conflict.

45. ***Shridhar Issar (supra)*** has explained that there is no conflict between Chapter VII Rule 4 and Chapter XXXIXA of the Original Side Rules. It has held as follows:-

. “30. There is no conflict between Rule 4 of Chapter VII of the Original Side Rules and Chapter XXXIXA of the said Rules. In any case, Rule 1 of Chapter XXXIXA provides that the rules contained in that Chapter relating to computerization of the cause list of the Original Side are to have effect notwithstanding anything contrary contained anywhere else in the Original Side Rules of this Court.

31. Chapter XXXIXA provides that notwithstanding anything to the contrary contained anywhere else in the Original Side Rules, any plaint, petition, memorandum of appeal or application, complete in all respects shall, save as otherwise directed by Court, be presented at the first instance, at the centralized filing section of the Original Side of the Court along with a duly filled in presentation form prescribed as Form A of Appendix 2 of the said Chapter.

32. The plaint is filed directly in Court with leave of Court only in certain exigencies, for example, where immediate interlocutory relief or any leave of Court is sought, whether for leave to file the suit with deficit Court fee or for leave under Clause 12 of the Letters Patent, Order 2 Rule 2 of the Civil Procedure Code or any other provision of law and/or rules of procedure. In all other cases, the plaint would necessarily have to be filed in the centralized filing section.

33. Limitation would stop running the moment a plaint is filed in the centralized filing section. Once the plaint is filed in the Computer Section, the plaintiff has no control over the same. A litigant cannot suffer for no fault of his own, just because of procedural delays in sending the plaint to the Master for the necessary endorsements in terms of Rule 4 of Chapter VII.”

46. Code of Civil Procedure, 1908 has dealt with institution of suits in Section 26 thereof. It has provided that, every suit shall be instituted by the presentation of plaint or by such other manner as may be prescribed. Order IV Rule 1 of the Code of Civil Procedure, 1908 has specified that every suit shall be instituted by presenting a plaint to the Court or such officer as it appoints in this behalf.

47. The Original Side Rules of the High Court at Calcutta under Chapter XXXIXA has allowed presentation of the plaint before the Central Filing Section. Under Chapter VII Rule 4 of the Original Side Rules, the same plaint may be presented before the Court instead of being presented before the Central

Filing Section if, the exigency of the situation so demands. Chapter VII Rule 4 and Chapter XXXIXA of the Original Side Rules have to be considered harmoniously. In such a construction, there is no conflict between the two. Chapter VII Rule 4 of the Original Side Rules has provided for situation where exigency demands the plaint to be presented before a Court while, Chapter XXXIXA of the Original Side Rules permits plaints to be presented before the Central Filing Section.

48. In terms of Order IV Rule 1 of the Code of Civil Procedure, 1908, read with Chapter XXXIXA of the Original Side Rules, the Central Filing Section therefore is the designated authority by or before whom a plaint can be presented. This designated authority is in addition to the Court before whom the plaint can be presented. Court can be approached if an exigency occurs. This power of the Court, however, is not to be misused to suit the convenience of the parties. The Court must be satisfied that the exigency is such that the plaint cannot be presented before the Central Filing Section.

49. In terms of Chapter XXXIXA Rules 1 and 3 of the Original Sides Rules, the plaint has to be treated as presented on the date when the plaint is filed in the Central Filing Section. In terms of such rules, therefore, the plaint had been filed and presented on March 18, 2016.

50. Averments made in the plaint are germane for the purpose of consideration of petition under Order VII Rule 11 of the Code of Civil Procedure, 1908 and that, defence of the defendant is irrelevant at that stage has been held in ***Chhotanben and Another (supra)*** and ***Daliben Valjibhai (supra)***. ***Lalitha (supra)*** has observed that, defence of merits cannot be adjudicated while considering an application under Order VII Rule 11 of the Code of Civil Procedure, 1908.

51. ***Liverpool & London S.P & I Association Limited (supra)*** has held that a plaint has to be read as a whole and its averments are to be taken as correct for the purpose of determining whether the plaint has disclosed a cause of action or not.

52. ***Shri Mukund Bhavan Trust and Others (supra)*** has held that, where it is evident from the plaint averments that the suit is barred by limitation plaint can be rejected under

Order VII Rule 11 of the Code of Civil Procedure, 1908 irrespective of the fact that the issue of limitation is generally a mixed question of fact and law and has to be decided after weighing the evidence of record. It has held that, allowing such suit to proceed would be abuse of the process of law and would only cause of harm to the defendant.

53. In *Shri Mukund Bhavan Trust and Others (supra)* the plaintiff therein had taken a fictional date as the date of knowledge in order to save the rigors of limitation. Such date in the plaint had been established to be fictional. In the facts and circumstances of the present case, appellant has claimed that it became aware of the rival claims in respect of the immovable property concerned only on October 29, 2013 upon receipt of the summons in respect of the CS No. 371 of 2013. This claim has not been established on the balance of probabilities to be false.

54. The defendants in the suit have not established conclusively that, the appellant was aware of the rival claims with regard to the immovable property concerned on or before October 29, 2013 as claimed by the appellant. According to the opposing defendants, the appellant had knowledge of the

rival claims as the person affirming the plaint was a Director of another legal entity which had entered into an agreement for purchase in respect of the immovable property concerned. Knowledge of such deponent can be imputed upon the appellant since, the deponent has held the managerial posts in the appellant. Plaint has disclosed the certified copy of a document of title established to have been obtained in the year 2004 by the deponent of the plaint.

55. With respect, these contentions of the opposing defendants have to be assessed on the basis of evidence on record after allowing the parties to the suit an opportunity to lead evidence. The inference that the opposing defendants have required us to draw with regard to the issue of limitation, are not available conclusively on the basis of the pleadings made in the plaint. The pleadings appearing on the plaint have to be taken as true and correct for the purpose of considering an application Order VII of Rule 11 of Code of Civil Procedure, 1908. The pleadings in the plaint have to be read as a whole. Defence of the defendant on merits have no manner of application while considering the petition under Order VII Rule 11 of the Code of Civil Procedure, 1908.

56. *Manjula and Others (supra)* Supreme Court has allowed an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 after finding that the plaint did not disclose any cause of action and that the suit was barred under Section 4 and 6 of the Prohibition of Benami Property Transaction Act, 1888. In the facts and circumstances of the present case, the issue of limitation that has been raised, is a triable one which should be decided after permitting the parties an opportunity to adduce evidence. Issue of limitation cannot be decided in favour of any of the parties on the basis of the averments that have been made in the plaint as it stands today.

57. In *N. Asha Devi (supra)* Supreme Court, on the basis of the averments made in the plaint itself and taking the averments in the plaint and the documents annexed therewith as germane for considering the issue of limitation, has held that the suit was barred by laws of limitation.

58. In the facts and circumstances of the present case, as we have noticed above, the issue of limitation cannot be decided on the basis of the pleadings made in the plaint alone.

59. The two sets of opposing defendants have pressed Section 3 of the Transfer of Property Act, 1882 particularly, the definition of “a person is said to have notice” appearing therein along with Explanation I and II therein in support of their contention, the appellant had notice of the title of the opposing defendants at a point of time much prior to the point of time which the appellant had pleaded in the plaint.

60. Section 3 of the Transfer of Property Act, 1882 has provided for the interpretation of various phrases used in the Act of 1882. Such interpretation however can be applied unless there is nothing repugnant in the subject of context.

61. By the interpretation of “a person is said to have notice” Section 3 of the Act of 1882 imparts notice of a fact on a person whom he actually knows that fact, or whom but for wilful abstention from an enquiry or search which he ought to have been made, or gross negligence, he would have known it. The interpretation of “a person is said to have notice” has three Explanations.

62. Under Explanation I a person is said to have notice of the fact of pre-existing registered title deeds of an immovable if three criteria specified in the proviso thereto are

simultaneously satisfied. These are issues of fact which have to be established at the trial to non suit the party against whom the same is sought to be canvassed unless, the same appears conclusively from the pleadings.

63. Under Explanation II a person is said to have notice of the title, if any, of any person who is for the time being in actual possession of the concerned property. In the facts of the present case, there is nothing on record at this stage that a person other than the vendor of the appellant was in actual physical possession when the appellant had purchased the suit premises.

64. We do not propose to enter into an elaborate discussion with regard to the applicability of Section 3 Explanation I and II of the Transfer of Property Act, 1882 on the issue of limitation, in the facts and circumstances of the present case, as, we are of the view that, a triable issue has been raised by the parties on the point of limitation. Such a triable issue, according to us have to be decided after allowing the parties opportunity to lead evidence.

65. Limitation is a mixed question of fact and law. Averments made in the plaint, if taken as true and correct and

on a purposive reading of the plaint averments and taking the documents annexed to the plaint as a part thereof, in the facts and circumstances of the present case, the issue of limitation cannot be pronounced finally as against the appellant as the plaintiff.

66. Appellants have claimed in the plaint that they were not aware of any rival claims to the immoveable property till such time they served a copy of the plaint in CS No. 371 of 2013. According to the opposing defendants, the appellant was aware of the opposing claims in respect of the suit property much prior to the date disclosed in the plaint. This raises a triable issue.

67. In view of the fact that, the deed of gift, cancellation of which is sought for by the appellant, is stated in the deed of lease which the appellant obtained at a much prior point of time, the contentions of the opposing defendants are defence to the merits of the claim of the appellant in the suit. In a situation under Order VII Rule 11 of the Code of Civil Procedure, 1908 we are not called upon to take into consideration the defence of the defendants in the suit on the merits of the claim of the plaintiff. Moreover, the appellant

must be afforded an opportunity to explain the point of limitation, at the trial.

68. The plaint having disclosed a cause of action and the averments made in the plaint does not permit a Court to decide the issue of limitation on the basis of the plaint and the documents annexed thereto, we hold that, the plaint cannot be rejected as one to be not disclosing a cause of action or being barred by the laws of limitation. Order VII Rule 11(a) and (d) of the Code of Civil Procedure, 1908 are not attracted.

69. In view of the discussions above, we set aside the impugned judgment and order. CS 307 of 2016 is remanded for hearing on merits. Issue of limitation is kept open to be decided at the trial of the suit.

70. APDT 21 of 2026 is disposed of accordingly without any order as to costs.

[DEBANGSU BASAK, J.]

71. I agree.

[ARYAK DUTT, J.]