2026:HHC:42167

IN THE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA

CMPMO No. 435 of 2026
Reserved on : 22.9.2026
Decided on: 30.9.2026
Uploaded on: 30.9.2026

Madhu Negi

... Petitioner

Versus

Ganesh Dutt Sharma & others

...Respondents

Coram
Hon'ble Mr. Justice Virender Singh, Judge
Whether approved for reporting? yes

For the Petitioners: Mr. N.K. Bhalla and Ms. Chehak Bhalla, Advocates.

For the Respondents *:* Mr. Sudhir Thakur, Senior Advocate, assisted by Mr. Karun Negi, Advocate, for respondents No. 1 and 2.

Mr. Narender Sharma, Ms. Minakshi Sharma and Mr. Suraj Sharma, Advocates, for respondent No. 3.

Virender Singh, Judge

Petitioner Madhu Negi has filed the present petition, under Article 227 of the Constitution of India, against the order dated 20.05.2026, passed by the Court of learned Civil Judge, Court No. 1, Solan, District

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Solan, HP (hereinafter referred to as, 'the trial Court') in CMA No. 292 of 2025, in Civil Suit titled as, 'Ganesh Dutt Sharma and others versus Smt. Madhu Negi and another'.

2. By virtue of order dated 20.05.2026, the learned trial Court has rejected the application, filed under Order 7 Rule 11 CPC, filed by the petitioner, in the said suit.

3. For the sake of convenience, parties to the lis are hereinafter referred to, in the same manner, in which, they were referred to, by the learned trial Court.

4. Necessary facts, as borne out from the documents, annexed with the petition, may be summed up, as under:

The plaintiffs Shri Ganesh Dutt Sharma and Smt. Ram Prabha Sharma have filed a suit for declaration and permanent prohibitory injunction, under Sections 34/38 of the Specific Relief Act, 1963, against defendants Smt. Madhu Negi and Baghat Urban Cooperative Bank Ltd.

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4.1 The said suit has been filed by the plaintiffs on the ground that they are owners in possession of the land measuring Khata Khatauni No. 327, min 548, khasra Nos. 1115/918, and 1117/919 kita 2, total measuring 0-15-27 hectares, situated in mauja Basal Patti Kather, Hadbast No. 48, Pargana Sumana, Basal Tehsil and District Solan, HP, along with the house/ structure existing thereupon (hereinafter referred to as 'the suit land').

4.2 The ownership and possession over the suit land is also stated to be in the knowledge of defendants, prior to 21.03.2016. Defendant No.1, in connivance with her husband, had played a fraud upon the plaintiffs and misrepresented the facts and by misrepresentation, got executed a sale deed, in her favour, on 21.03.2016 which was registered with Sub-Registrar Solan, District Solan, H.P., whereby, defendant No. 1 had got the suit land transferred, in her favour, for a total sale consideration of Rs. 56,00,000/-.

4.3 According to the plaintiffs, in para-3 of the sale deed, it has been mentioned that defendant No. 1 had

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paid the total agreed sale consideration of Rs. 56,00,000/- to the plaintiffs, through cheque No. 158470, drawn on the Baghat Urban Cooperative Bank Limited, Solan.

4.4 On the basis of the above recital in the sale deed, defendant No. 1 had prominently got the sale deed executed, whereas, at the time of issuing the said cheque No. 158470 dated 21.03.2016, in favour of the plaintiffs, defendant No.1 and her husband had requested the plaintiffs not to present the said cheque for encashment, for some days, and relying upon the version of defendant No. 1 and her husband, plaintiffs have not presented the said cheque for encashment.

4.5 It is the further case of the plaintiffs that defendant No. 1, immediately after getting the sale deed executed in her favour, had mortgaged the suit land with defendant No. 2, on the very next date i.e. on 23.03.2016 through Mortgage Deed No. 650/16 dated 23.03.2016, but, the amount has not been paid to the plaintiffs. Despite the request made by the plaintiffs, defendant No.1 and her husband had not made the payment of the

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cheque to them, and till the time of filing of the suit, they have not paid the said amount.

4.6 The sale deed is stated to be without any consideration and has been obtained by playing fraud upon the plaintiffs.

4.7 On the basis of the above facts, a prayer has been made to decree the suit for declaration to the effect that the sale deed dated 21.03.2016 be declared as null and void and not binding upon the rights of the plaintiffs.

4.8 Similarly, the subsequent mortgage has also been challenged and a prayer has been made to pass a decree for declaration, in favour of the plaintiffs, by declaring them the owners in possession of the suit land.

5. In the said Civil Suit, defendant No. 1 has filed the application, under Order 7 Rule 11 of CPC, on the ground that the plaintiffs have averred in the plaint that they have signed and executed the sale deed, in favour of defendant No. 1, for a sale consideration of Rs. 56,00,000/-.

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5.1 By virtue of the application, following grounds have been taken:

a) Sale deed has been challenged by the executant.

b) The amount of sale deed is 56,00,000/-.

5.2 On the basis of above facts, a prayer has been made to pay the court fees of Rs. 56,00,000/-, as according to them, the suit has not been valued properly for the purpose of court fees and jurisdiction. The suit of the plaintiffs is prayed to be rejected, on account of incorrect valuation. It has further been averred that the plaintiffs cannot seek the relief, without affixing the court fees.

5.3 In addition to this, another application has also been moved for rejection of the plaint, on the ground that the plaintiffs have no cause of action to file and maintain the suit. Defendant No. 1 has further averred that the sale deed cannot be annulled, solely, on the basis of the dishonour of the cheque, in favour of the plaintiffs, towards the sale consideration.

6. These applications have been contested by the plaintiffs on the ground that defendant No. 1 had got executed the sale deed, by playing fraud with the

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defendants, without making the payment of the sale consideration, and thereafter, she had mortgaged the suit land, with Baghat Urban Cooperative Bank Limited, on the very next day, i.e. 23.03.2016, through Mortgage Deed. This act of defendant No.1 has been pleaded as her intention to defraud the plaintiffs.

6.1 The other application has been contested on the ground that the sale deed in question, cannot be annulled, solely on the basis of dishonour of cheque, delivered to the plaintiffs, towards the sale consideration.

6.2 Re-asserting the fact that the sale deed is null and void, and as such, they have sought the declaration on the basis of the stand, as taken in the application, a prayer has been made to dismiss the application.

7. The learned trial Court had dismissed the applications, vide order dated 20.5.2026.

8. The aforesaid findings have been assailed by defendant No. 1, before this Court, mainly on the ground that the learned trial Court has wrongly ignored the averments, as made in the sale deed, as well as, in the

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plaint and re-asserted the fact that the alleged non-payment of the sale price or part thereof, does not affect the validity of the sale deed.

9. On the basis of the above facts, Mr. Navneet Kumar Bhalla and Ms. Chehak Bhalla, Advocates, appearing for defendant No. 1 have prayed that the present petition may kindly be allowed, by setting aside the order, passed by the learned trial Court, on 20.5.2026 and their applications for rejection of the plaint, may kindly be allowed, by rejecting the plaint.

10. Per contra, Mr. Sudhir Thakur, learned Senior Advocate, assisted by Mr. Karun Negi, Advocate appearing for respondent Nos. 1 and 2/plaintiffs have supported the order passed by the learned trial Court and prayed that the revision petition sans merit and the same may kindly be dismissed.

11. Defendant No.1 has moved the application for rejection of the plaint, on two counts; firstly, that the suit has not been valued, for the purpose of court fees and jurisdiction, and deficient court fee has been paid; and secondly, that the plaintiffs have no cause of action

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to file the present suit, as their suit is not maintainable, on account of alleged non-payment, of the sale consideration, to the plaintiffs.

12. The learned trial Court, in the present case, has dismissed the application, under Order 7 Rule 11 CPC, on the ground, that the plaintiffs have pleaded that since, the sale consideration was not paid, as such, possession was not delivered, and fraud has been committed with them.

13. According to the learned trial Court, these disputed facts require evidence and need to be adjudicated upon, during trial. As stated above, the applications were rejected by the learned trial Court.

14. The scope of provisions of Order 7 Rule 11 of the CPC has elaborately been discussed by Hon'ble Supreme Court in **Madanuri Sri Rama Chandra Murthy vs. Syed Jalal,** reported in **(2017) 13 Supreme Court Cases 174**. Relevant paragraph-7 of the judgment is reproduced, as under:

> *"7. The plaint can be rejected under Order VII Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that the power under Order VII*

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Rule 11, CPC can be exercised by the Court at any stage of the suit. The relevant facts which need to be looked into for deciding the application are the averments of the plaint only. If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under Order VII Rule 11, CPC. Since the power conferred on the Court to terminate civil action at the threshold is drastic, the conditions enumerated under Order VII Rule 11 of CPC to the exercise of power of rejection of plaint have to be strictly adhered to. The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. It is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. The averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when, the allegations made in the plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under Order VII Rule 11 of CPC can be exercised. If clever drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage."

(self emphasis supplied)

15. Similar view has again been taken by the Hon'ble Supreme Court in **Dahiben versus Arvindbhai Kalyanji**

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Bhanusali, reported in (2020) 7 SCC 366. Relevant paragraph-12 of the judgment is reproduced as under:

> *"12. We have heard the learned Counsel for the parties, perused the plaint and documents filed therewith, as also the written submissions filed on behalf of the parties.*
> *12.1 We will first briefly touch upon the law applicable for deciding an application under Order VII Rule 11 CPC, which reads as under:*
> *"11. Rejection of plaint.– The plaint shall be rejected in the following cases:–*
> *(a) where it does not disclose a cause of action;*
> *(b) where the relief claimed in undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;*
> *(c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;*
> *(d) where the suit appears from the statement in the plaint to be barred by any law;*
> *(e) where it is not filed in duplicate;*
> *(f) where the plaintiff fails to comply with the provisions of rule 9 Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevent by any cause of exceptional nature for correction the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and*

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that refusal to extend such time would cause grave injustice to the plaintiff."

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

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

In Azhar Hussain v. Rajiv Gandhi1 this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be 11986 Supp. SCC 315 Followed in Maharaj Shri Manvendrasinhji Jadeja v. Rajmata Vijaykunverba w/o Late Maharaja Mahedrasinhji, (1998) 2 GLH 823 permitted to waste judicial time of the court, in the following words :

> *"12. …The whole purpose of conferment of such power is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the Court, and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even if an ordinary*

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civil litigation, the Court readily exercises the power to reject a plaint, if it does not disclose any cause of action."

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

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

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

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

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

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

(3) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the

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Court, be received in evidence on his behalf at the hearing of the suit.

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

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

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

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

12.7. The test for exercising the power under Order VII Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in Liverpool & London S.P. & I Assn. Ltd. v. M.V.Sea Success I & Anr.,4 which reads as :

"139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must

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be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed."

In Hardesh Ores (P.) Ltd. v. Hede & Co.5 the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact.

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

12.9 The power under Order VII Rule 11 CPC may be exercised by the Court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial, as held by this Court in the judgment of Saleem Bhai v. State of Maharashtra.7 The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in Azhar Hussain (supra).

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

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16. Guided by the above two decisions, now, this Court would proceed further to ascertain the fact whether the learned trial Court has committed an irregularity, in dismissing the applications, for rejection of the plaint or there is any jurisdictional error on the part of learned trial Court.

17. While holding so, view of this Court is being guided by the Hon'ble Supreme Court in a case titled as, **'Bhudev Mallick Alias Bhudeb Mallick & anr. versus Ranajit Ghoshal & ors.'**, 2025 INSC 175. Relevant paragraphs 53, 54 and 55 of the judgment are reproduced as under:

> *53. We are a bit disappointed with the manner in which the High Court dealt with the present litigation, more particularly while deciding the revision application filed by the appellants herein against the order passed by the executing court. All that the High Court has said in one line is that it did not find any jurisdictional error in the order passed by the executing court ordering arrest, detention in a civil prison and attachment of the property of the appellants. We fail to understand, why the High Court was not able to see the gross error in the order passed by the executing court, be it called an error of law or a jurisdictional error. Undoubtedly, the High Court in*

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exercise of its supervisory jurisdiction under Article 227 of the Constitution must ascertain before interfering with any order passed by a subordinate court or tribunal whether the same suffers from any jurisdictional error. At times in litigation like the one on hand, the court should be guided by its conscience, more particularly keeping in mind the peculiar facts and circumstances of the case and not strictly go by the term "jurisdictional error". It is very easy for the High Court to say that there is no jurisdictional error and, therefore, no interference is warranted but before saying so, the High Court should be mindful of the consequences that would follow like arrest, detention in civil prison and attachment of property.

54. What is a jurisdictional error has been the subject of a legion of illuminating judicial decisions. In this case, however, we need concern ourselves with only one aspect of that matter and it is enough for us to refer in this connection to the decision of the Privy Council in the case of Joy Chand Lal Babu v. Kamalaksha Chaudhury, AIR 1949 PC 239, where Sir John Beaumont, delivering the judgment of the Board, observed inter alia as follows:-

"although error in a decision of a Subordinate Court does not by itself involve that the subordinate Court has acted illegally or with material irregularity so as to justify interference in revision under Subsection (c). nevertheless if the erroneous decision results in the subordinate Court exercising a jurisdiction, not vested in it by law or failing to exercise a jurisdiction so vested, a case for revision arises under Sub-section (a) or Sub-section (b) and Sub section (c) can be ignored."

55. If, therefore, an error, be it an error of fact or of law, is such that the erroneous decision has resulted in the subordinate Court or tribunal exercising jurisdiction, not

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> *vested in it by law, or in its having failed to exercise jurisdiction, vested in it by law, that will come within the scope of Section 115 of the Code or, for the matter of that, of Article 227 of the Constitution, as the case may be. This error may have resulted from a violation of rules of natural justice, by taking into consideration matters which are extraneous and irrelevant, or by substituting judicial consideration by bias, based on suspicion, arising from those extraneous matters or from any other cause whatsoever but if it has affected the assumption or exercise of jurisdiction, as envisaged above, it will be a jurisdictional error for purposes of the above Article."*

18. It is no longer *res integra* that while deciding the application, under Order 7 Rule 11 of the CPC, no amount of evidence or merit of the controversy can be examined and only the averments of the plaint are to be seen, as held in a case titled as, **'Eldeco Housing & Industries Limited versus Ashok Vidyarthi & others'**, reported in (2024) 11 Supreme Court Cases 503. Relevant paragraph-26 of the judgment is reproduced as under:

> *"26. However, the fact remains that all the aforesaid documents, referred to by the respondent in support of his plea for rejection of the plaint, cannot be considered at this stage as these are not part of the record with the Court filed along with the plaint. This is the stand taken by the respondent-defendant in the application filed*

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under Order VII Rule 11 C.P.C. As noticed above, no amount of evidence or merits of the controversy can be examined at the stage of decision of the application under Order VII Rule 11 C.P.C. Hence, in our view, the impugned order of the High Court passed in the Review Application deserves to be set aside. Ordered accordingly."

(self emphasis supplied)

19. As per the averments made in the plaint, it is the case of the plaintiffs, in nutshell, that defendant No. 1, in connivance with her husband, played a fraud upon the plaintiffs, and by misrepresentation, got executed the sale deed, in her favour, on 21.03.2026, which was also registered and the consideration amount was paid through cheque No. 158470, drawn on Baghat Urban Co-operative Bank Limited Solan, H.P., for a sum of Rs. 56,00,000/- and when, the cheque was issued, defendant No.1 and her husband had requested the plaintiffs not to present the cheque, in the bank for encashment, and acting upon the said request, the plaintiffs have not presented the cheque with the banker of defendant No.1, for encashment.

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20. It is also the case of the plaintiffs that the sale deed was got executed by defendant No. 1, in her favour, without making the payment of the sale consideration.

21. It has further been alleged that on the very next day of execution of the sale deed, i.e. on 22.03.2016, defendant No. 1 has mortgaged the subject matter of the lis to defendant No. 2.

22. The very basis of the challenge to the sale deed is non-payment of the sale consideration, amounting to Rs. 56,00,000/-, which, as per the plaint, was given to the plaintiffs, by defendant No. 1, by way of cheque, for a sum of rupees 56,00,000/-. At the best, it can be said that the challenge to the sale deed is on account of non-payment of the sale consideration.

23. The term 'sale' has also been discussed by the Hon'ble Supreme Court in **Dahiben**'s case (supra). Relevant paragraph-15 of the judgment is reproduced as under:

> *"15.3 The Plaintiffs have made out a case of alleged non-payment of a part of the sale consideration in the Plaint, and prayed for the relief of cancellation of the Sale Deed on this ground.*

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Section 54 of the Transfer of Property Act, 1882 provides as under :

"54. 'Sale' defined.—'Sale' is a transfer of ownership in exchange for a price paid or promised or part-paid and part- promised." The definition of "sale" indicates that there must be a transfer of ownership from one person to another i.e. transfer of all rights and interest in the property, which was possessed by the transferor to the transferee. The transferor cannot retain any part of the interest or right in the property, or else it would not be a sale. The definition further indicates that the transfer of ownership has to be made for a "price paid or promised or part paid and part promised". Price thus constitutes an essential ingredient of the transaction of sale.

In Vidyadhar v. Manikrao & Anr., this Court held that the words "price paid or promised or part paid and part promised" indicates that actual payment of the whole of the price at the time of the execution of the Sale Deed is not a sine qua non for completion of the sale. Even if the whole of the price is not paid, but the document is executed, and thereafter registered, the sale would be complete, and the title would pass on to the transferee under the transaction. The non-payment of a part of the sale price would not affect the validity of the sale. Once the title in the property has already passed, even if the balance sale consideration is not paid, the sale could not be invalidated on this ground. In order to constitute a "sale", the parties must intend to transfer the ownership of the property, on the agreement to pay the price either in praesenti, or in future. The intention is to be gathered from the recitals of the sale deed, the conduct of the parties, and the evidence on record.

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> *In view of the law laid down by this Court, even if the averments of the Plaintiffs are taken to be true, that the entire sale consideration had not in fact been paid, it could not be a ground for cancellation of the Sale Deed. We find that the suit filed by the Plaintiffs is vexatious, meritless, and does not disclose a right to sue. The plaint is liable to be rejected under Order VII Rule 11 (a).”*
>
> *(self emphasis supplied)*

24. In view of the aforesaid judgment, the sale deed cannot be declared as null and void on account of alleged non-payment of the sale consideration.

25. The order passed by the learned trial Court, in application under Order 7 Rule 11 of the CPC also does not sustain in judicial scrutiny, as Hon’ble Supreme Court, in a case titled as, **Razia Begum and others versus Nafisa Begum Abdul Hamid and others**, reported in 2026 SCC Online SC 1511 has held that the non-payment of the remaining part of the sale price would not invalidate it and remedy would be to recover the balance sale consideration, but not cancellation of sale deed for non-payment of balance sale consideration. Relevant paragraphs 9 to 12 are reproduced as under:

> ***“9.*** *Learned Counsel for the respondent on the other hand emphasized that the view of the High Court flows from the findings of the Trial Court itself. No fact finding of the*

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Trial Court was disturbed and it was merely on the aspect of law, the binding nature of the sale deeds, in the absence of full consideration being paid, the High Court reversed the Trial Court judgment and decreed the suit. The High Court acted within the contours of the jurisdiction conferred under Section 100 of the Civil Procedure Code, 1908. It never reappreciated the evidence led or substituted the findings of the Trial Court but merely gave legal effect to the findings already rendered.

10. *In* ***Vidhyadhar*** *(supra), it was held so in Paragraph Nos. 36, 37 and 38 with respect to Section 54 of the Transfer of Property Act, 18823:—*

*"**36.** The definition indicates that in order to constitute a sale, there must be a transfer of ownership from one person to another, i.e., transfer of all rights and interests in the properties which are possessed by that person are transferred by him to another person. The transferor cannot retain any part of his interest or right in that property or else it would not be a sale. The definition further says that the transfer of ownership has to be for a "price paid or promised or part-paid and part-promised". Price thus constitutes an essential ingredient of the transaction of sale. The words "price paid or promised or part-paid and part-promised" indicate that actual payment of the whole of the price at the time of the execution of sale deed is not a sine qua non to the completion of the sale. Even if the whole of the price is not paid but the document is executed and thereafter registered, if the property is of the value of more than Rs. 100, the sale would be complete.*

37. *There is a catena of decisions of various High Courts in which it has been held that even if the whole of the price is not paid, the transaction of sale will take effect*

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and the title would pass under that transaction. To cite only a few, in Gayatri Prasad v. Board of Revenue [1973 All LJ 412] it was held that non-payment of a portion of the sale price would not affect validity of sale. It was observed that part-payment of consideration by the vendee itself proved the intention to pay the remaining amount of the sale price. To the same effect is the decision of the Madhya Pradesh High Court in Sukaloo v. Punau [AIR 1961 MP 176 : ILR 1960 MP 614].

38. *The real test is the intention of the parties. In order to constitute a "sale", the parties must intend to transfer the ownership of the property and they must also intend that the price would be paid either in praesenti or in future. The intention is to be gathered from the recital in the sale deed, the conduct of the parties and the evidence on record."*

11. *Dahiben (supra) also, while interpreting Section 54 of the Act, held that actual payment of entire sale price at the time of execution of sale deed is not an essential condition for completion of sale. When a sale deed is registered, even upon part payment of the sale price, title would pass to the transferee. The non-payment of remaining part of the sale price would not invalidate it and the remedy would be to recover the balance sale consideration, but not cancellation of sale deed for non-payment of balance sale consideration.*

12. *Section 54 of the Act squarely applies to the above case. A reading of the translated sale deeds produced along with the appeal, clearly indicates that the defendant had retained Rs. 4,500/- for clearing the dues of the plaintiffs. Obviously, the same was not paid and later, by*

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two agreements, the defendant agreed to pay the full consideration and to repay all the government loans."

(self-emphasis supplied)

26. In this case, the learned counsel for the plaintiffs has also relied upon the decision of Hon'ble Supreme Court in a case, titled as, '**Saleem Bhai and others versus State of Maharashtra & ors.**' reported in AIR 2003 SC 759 to buttress his arguments that the learned trial Court has rightly dismissed the application. But, the said decision is of no hep to the plaintiffs as there is no dispute, with regard to the principle of Order 7 Rule 11, as discussed by the Hon'ble Supreme Court, in the above mentioned case. Relevant paragraphs 7 to 9 of the judgment are reproduced as under:

" 7. The short common question that arises for consideration in these appeals is, whether an application under Order VII Rule 11 C.P.C. ought to be decided on the allegations in the plaint and filing of the written statement by the constesting defendant is irrelevant and unnecessary.

Order VII Rule 11 C.P.C. reads as under:

"11. Rejection of plaint.-The plaint shall be rejected in the following cases:-

(a) Where it does not disclose a cause of action;

(b) Where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the

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valuation within a time to be fixed by the court, fails to do so;

(c) Where the relief claimed is properly valued by 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, failed to do so:

(d) Where the suit appears from the statement in the plaint to be barred by any law;

(e) Where it is not filed in duplicate;

(f) Where the plaintiff fails to comply with the provisions of Rule 9;

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

9. A perusal of Order VII Rule 11 C.P.C. makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order VII Rule 11 C.P.C. at any stage of the suit- before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order VII C.P.C. the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the

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written statement without deciding the application under Order VII Rule 11 C.P.C. cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court. The order, therefore, suffers from non-exercising of the jurisdiction vested in the court as well as procedural irregularity. The High Court, however, did not advert to these aspects."

27. Similar view has also been taken by the Hon'ble Supreme Court, in a case titled as, '**Mayar (H.K.) Ltd. & others versus Owners and Parties, Vessel M.V. Fortune & others',** reported in AIR 2006 SC 1828. Relevant paragraph-11 of the judgment is reproduced as under.

"11. From the aforesaid, it is apparent that the plaint cannot be rejected on the basis of the allegations made by the defendant in his written statement or in an application for rejection of the plaint. The Court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does, then the plaint cannot be rejected by the Court exercising the powers under Order VII Rule 11 of the Code. Essentially, whether the plaint discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to misrepresentation, fraud, wilful default, undue influence or of the same

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nature. So long as the plaint discloses some cause of action which requires determination by the court, mere fact that in the opinion of the Judge the plaintiff may not succeed cannot be a ground for rejection of the plaint. In the present case, the averments made in the plaint, as has been noticed by us, do disclose the cause of action and, therefore, the High Court has rightly said that the powers under Order VII Rule 11 of the Code cannot be exercised for rejection of the suit filed by the plaintiff-appellants."

28. The learned senior counsel for the respondents/plaintiffs have also relied upon the decision of Hon'ble Supreme Court in **'Sopan Sukhdeo Sable and others versus Assistant Charity Commissioner and others**, reported in AIR 2004 SC 1801. Relevant paragraph 15 of the judgment is reproduced as under:

"15. There cannot be any compartmentalization, dissection, segregation and inversions of the language of various paragraphs in the plaint. If such a course is adopted it would run counter to the cardinal canon of interpretation according to which a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction or words or change of its apparent grammatical sense. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. At the same time

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it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair- splitting technicalities."

29. The above case law, in no way helps the case of the plaintiffs, as no one can deny the principles, which have been enumerated by the Hon'ble Supreme Court in the aforesaid decisions, however, in this case, defendant No. 1 has sought the rejection of the plaint, on account of the fact that the plaintiffs have no cause of action to file the suit, as the proper course for them is to file the suit for recovery, on account of non-payment of sale consideration and they have no cause of action to get the sale deed cancelled.

30. In this case, the copy of the sale deed has also been annexed with the petition, in which, there is a clear recital that the plaintiffs have received the full and final agreed sale consideration and handed over the actual possession of the suit land to defendant No.1, in para-11 of the sale deed. The plaintiffs cannot blow hot and cold in the same breath, as the main ground of attack is non-payment of the sale consideration, by defendant No. 1. Moreover, the plaint is totally silent about the fate

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of the cheque, issued by defendant No. 1 for a sum rupees 56,00,000/-, which has been accepted by the plaintiffs, as sale consideration.

31. Considering all these facts, defendant No.1 is able to make out a case in her favour. Consequently, impugned order, passed by learned trial Court, is set aside and the application, under Order 7 Rule 11 of the CPC is allowed, on account of the fact that the plaintiff has no cause of action to file the present suit. Consequently, the plaint is rejected.

32. With these observations, the present petition is allowed, so also the pending application(s), if any.

(Virender Singh)
Judge

30.9.2026
(Kalpana)

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