

(2005) 09 AP CK 0096
In the Andhra Pradesh High Court
Case No : CCCA No. 121 of 2004

Sri Laxmi Co-operative Housing Society Ltd.

APPELLANT

Vs

G.V. Mohan and Others

RESPONDENT

Date of Decision : 06-09-2005

Acts Referred:

Andhra Pradesh Vacant Lands in Urban Areas (Prohibition of Alienation) Act, 1972 — Section 4
Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 102, 98
Constitution of India, 1950 — Article 226(2)
Contract Act, 1872 — Section 23, 31, 32
Limitation Act, 1963 — Article 54
Transfer of Property Act, 1882 — Section 53A
Urban Land (Ceiling and Regulation) Act, 1976 — Section 10, 10(4), 20, 21, 26

Citation : (2006) 1 ALD 607

Hon'ble Judges : T. Ch. Surya Rao, J

Bench : Single Bench

Advocate : Movva Chandrashekar Rao, for the Appellant; Mahmood Ali, for Respondent Nos. 1, 3 to 5 and Durga Prasad, for the Respondent

Final Decision : Allowed

Judgement

T. Ch. Surya Rao, J.—Having regard to the divergence of opinion between the two Hon'ble Judges constituting the Bench, the matter has been referred to me by My Lord the Chief Justice.

2. The facts of the case have been succinctly narrated by my Learned Sister Justice T. Meena Kumari. I have had the advantage of going through both the judgments written by the learned Judges. Having regard to the same, there is no need for me to reiterate the facts in extenso except mentioning the same wherever necessary to elucidate the point in controversy.

3. It is expedient to refer the parties, as they are originally arrayed in the suit so as to avoid confusion. The plaintiff filed the suit O.S. No. 118 of 2003 for specific performance of the suit agreement of sale dated 9-12-1980. The defendants 1

and 2 resisted the suit by filing a written statement. Subsequently they filed an interlocutory application in LA.No. 3665 of 2003 in O.S.No. 118 of 2003 under Order 7, Rule 11 of the CPC (for brevity "the Code") requesting the Court to reject the plaint. The grounds set forth inter alia therein are two fold - firstly that in the absence of exemption from the Government under the Urban Land (Ceiling and Regulation) Act, 1976 (for brevity "the ULC Act"), the suit is barred by law; and secondly that there is no cause of action to file the suit. That application was resisted by the plaintiff society on the premises that even in the absence of exemption from the Government, the suit is not barred by law and that there is cause of action for the society as there is possibility of granting exemption. It is pleaded inter alia in the counter that as per the written statement filed by the defendants an extent of 7064.16 square meters of site has been exempted and held to be not excessive land subsequent to the agreement, that extent of land being part and parcel of the disputed site, the plaintiffs claim could be maintained to that extent and that it is always open to the Court to mould the relief at the end. The specific case of the plaintiff is that all issues in controversy are to be decided at the time of trial. Under the impugned order dated 23-2-2004, the learned Chief Judge, City Civil Court, Hyderabad, eventually rejected the plaint. Assailing the same, the present appeal has been preferred before this Court. The respondents 3 to 6 have been impleaded in the appeal by means of an order dated 30-4-2004 in CMP No. 9781 of 2004.

4. Since it is not discernible from the judgments of both the Hon'ble Judges, the points of divergence whether on fact or law, it is sought to be contended before me advertent to Section 98 of the Code that notwithstanding the fact that no point has been formulated by the Hon'ble Judges while rendering divergent orders for referring the same to a third Judge, still the third Judge can hear the matter and decide the case. In this connection, reliance is sought to be placed upon the judgment of the Apex Court in P.V. Hemalatha Vs. Kattamkandi Puthiya Maliackal Saheeda and Another, . There can be no quarrel on the proposition of law sought to be canvassed. In view of the same, the matter is at large before me.

5. The plaint in this case has been sought to be rejected under clauses (a) and (d) of Rule 11 of Order 7 of the Code on the ground of non-disclosure of cause of action and the suit having been barred by any law. It is expedient to notice the relevant provision at the outset, for the purpose of brevity and better understanding of the matter. The provision reads as under :

Order-VII - Plaint.

Rule 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 value 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 laws;

(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 any exceptional nature from correcting the valuation or supply 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.

(Emphasis is mine)

6. It is visibly manifest from a bare perusal of the above excerpted provision that the plaint is liable to be rejected when it does not disclose a cause of action and where it appears from the statement in the plaint that the suit is barred by any law. At the first blush, it is obvious that the Court has to consider the plaint and plaint alone so as to see whether it does disclose a cause of action or the suit is not barred as framed in the plaint by any law. Therefore, the possible defence to be taken by the defendants in the suit, the evidence to be adduced at the time of trial in the suit, etc., are quite extraneous to the consideration of the Court when it is called upon to reject the plaint on any of the grounds enjoined under Rule 11 of Order 7 of the Code, particularly clauses (a) and (d) thereof. Law seems to have been settled on the point.

7. In *T. Arivandandam Vs. T.V. Satyapal and Another*, , the Apex Court held in Para 5 thus :

The learned Munsif must remember that if on a meaningful - not formal - reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7, Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10, CPC. An activist Judge is the answer to irresponsible law suits. The trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Ch. XI) and must be triggered against them.

That was a case where the facts disclosed a horrendous enterprise sought to be

resorted by the petitioner. An eviction order was passed against the second respondent by the trial Court which was confirmed right upto the High Court. However, the Courts were generous in having granted six months time to vacate the premises. The second respondent moved another application for extension of time. Noticing that no further time would be extended, the second respondent got a suit filed by his son for declaration that the order of eviction was one obtained by fraud and collusion and sought for an injunction. When this fact was brought to the notice of the High Court during the hearing of the prayer for further time to vacate, the High Court took pity on the tenant and granted time for vacating the premises on the basis that the suit newly and sinisterly filed shall be withdrawn. Without stopping there, the father and son filed another suit before another Munsif making a carbon copy of the old plaint and obtained an ex parte injunction. The Court vacated the order of injunction when the evil designs of the petitioner and second respondent were exposed. The appeal was carried without success. Undaunted by all these defeats, the petitioner came to the High Court in revision and managed to get an injunction order again. The High Court upon coming to know all the facts dismissed the revision. Then the parties moved the Supreme Court for special leave. These facts led the Apex Court ultimately to have passed the above dictum.

8. In *Patasibai and Others Vs. Ratanlal*, , the Apex Court held that from the admitted facts appearing from the record it is difficult to show that any of the averments made in the plaint disclose a cause of action giving rise to a triable issue and, therefore, the plaint was liable to be rejected. The suit was filed for dissolution of partnership and rendition of accounts. Eventually it ended in compromise between the parties. A final decree was also passed in the suit which had become final. Thereafter, Civil Suit No. 1699 of 1980 was filed for a declaration that the final decree passed in the previous suit dated 16-11-1959 is a nullity and the partnership continues to subsist. The grounds set forth in seeking the relief of declaration appears to be that the decree has been passed against a non-existent person and that the decree does not discharge defendant No. 3 and that there has been no consideration for abandonment of the interest of Puranmal which renders the corresponding term void. Under those circumstances, the Apex Court held that all the three grounds raised in Para 6 does not disclose a cause of action, giving rise a triable issue as explained *inter alia* in its judgment.

9. In *I.T.C. Limited Vs. Debts Recovery Appellate Tribunal and Others*, , the facts show that a suit was filed by the Corporation Bank against five defendants including the appellant I.T.C. Limited for recovery of a sum of Rs. 52,59,639.66 ps. The suit was subsequently transferred to Debts Recovery Tribunal. An application was filed by the appellant under Order 7, Rule 11 of the Code for rejection of the plaint insofar as the appellant was concerned on the ground that no valid cause of action had been shown against it. That application was rejected by the Tribunal on the ground that cause of action being a mixed question of fact and law and the application could not be maintained at the stage when the

matter was posted for evidence. It was confirmed by the High Court of Karnataka. The question raised before the Apex Court was whether the allegations in the plaint prove a cause of action against the appellant for recovery of the amount already paid under irrevocable letters of credit. Inasmuch as the principles regarding the payment of amounts covered by bank guarantees or irrevocable letters of credit are fairly well settled, the Banks have to honour the bank guarantee or letter of credit except in two cases where there had been fraud or irretrievable injury. The suit in the case before the Apex Court having been filed basing on fraud or misrepresentation by the appellant, the question arose before the Supreme Court was as to whether a real cause of action had been set out in the plaint or something illusory had been stated with a view to get out of Order 7 Rule 11 of the Code. In those circumstances, it was held that a clever drafting creating illusions of cause of action were not permitted in law and a clear right to issue should be shown in the plaint.

10. In *Raj Narain Sarin (Dead) through Lrs. and Others Vs. Laxmi Devi and Others*, , the Apex Court held in Para 3 thus :

3. It is convenient to note at this juncture that in an application for rejection of the plaint under Order 7 Rule 11, the law has been rather well settled for quite some time in a long catena of cases that the plaint should be taken as it is and the application should be considered on the basis of the averments in the plaint itself and no external aid is available to the Court for the purpose. It has also been the well-settled principle of law that the law Court should be rather hesitant to exercise the jurisdiction under Order 7 Rule 11 unless the factual score warrants such exercise and the matter in issue falls within the four corners of the requirement of the statute.

(Emphasis is mine)

As can be seen from the averments made in Paras 6 to 9 of the plaintiff, one Munni Lal who filed a suit, succeeded to the property of one Ram Sahai who was an occupancy tenant in respect of 3 bighas 13 biswas and owner of the bungalow constructed over the suit land and one Smt. Siddo was the occupancy tenant of the rest of 6 bighas 13 biswas. He became the sub-tenant of the rest of 6 bighas 13 biswas. However, Munni Lal in or about 1941 transferred under a sale deed his tenancy rights. That sale deed had nothing to do with the rest of the area i.e., 6 bighas 13 biswas and bungalow to which Munni Lal continued to be the owner and possessor. The suit was filed on the ground that he had no transferable right in respect of 6 bigha 13 biswas area over which he had only sub-tenancy rights, the sale under the sale deed was unaffected and contra-recital in the said sale deed if any was illegal and invalid and not binding on the plaintiff. The Apex Court held that without taking steps to get over the sale deed avoided, there was no cause of action for the plaintiff to have filed a suit to avoid the sale at that stage. Under those circumstances, relying upon its earlier judgment in *T. Arivandandam's* (supra) held that where the litigation was utterly vexatious and abuse of the process of Court, the plaint could be rejected.

11. In *Saleem Bhai and Others Vs. State of Maharashtra and Others*, , the Apex Court held in Para 9 thus :

9. A perusal of Order 7 Rule 11 CPC makes it clear that the relevant facts which need to be looked into for deciding an application there under are the averments in the plaint. The trial Court can exercise the power under Order 7 Rule 11 CPC 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 (b) of Rule 11 of Order 7 CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage....

(Emphasis is mine)

12. In *Sopan Sukhdeo Sable and Others Vs. Assistant Charity Commissioner and Others*, , the appellants filed a suit before the Civil Judge, Senior Division, claiming themselves to be the tenants under respondent No. 2/trust and the respondents 3 to 13/trustees. It was alleged that they had been forcibly evicted notwithstanding the continuance of the tenancy. In the suit four reliefs were claimed, namely, (i) that the plaintiffs 1 to 17 be declared as the tenants of temple Trust; (ii) to restrain the defendants 1 to 13 by an order of injunction not to evict plaintiffs forcibly; (iii) to direct the defendants 2 to 13 to pay compensation for the loss caused to the plaintiffs on account of their acts of omission and commission; and (iv) the first defendant be directed to enquire into the illegal acts committed by defendants 2 to 13 and issue appropriate direction to that effect. In that suit, an application was filed raising a preliminary plea that the plaint was liable to be rejected on the ground that Civil Court had no jurisdiction to decide or deal with any question in view of Section 80 of the Bombay Public Trusts Act, 1950. The trial Court framed two preliminary issues, namely, (i) whether the suit was liable to be rejected under Order 7 Rule 11 of the Code for want of cause of action, and (ii) whether the suit was tenable against all the defendants. Findings in regard thereto were recorded eventually against the plaintiffs and were confirmed right upto the High Court. It was contended before the Supreme Court that although some reliefs were to be dealt with by the District Court under the Trusts Act and the Civil Judge had no jurisdiction, the other reliefs claimed in the plaint were severable and the civil Court had jurisdiction to deal with them and, therefore, in respect of those issues which fall within the jurisdiction of the Civil Court, rejection of the plaint under Order 7, Rule 11 could not be maintained. In the process, it was held in Para 10 thus :

The trial Court can exercise the power 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 Order 7 Rule 11 of the Code, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage.

13. In *Liverpool and London S.P. and I Asson. Ltd. Vs. M.V. Sea Success I and Another*, , the Apex Court held in Para 144 thus :

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

The Apex Court considered its earlier judgments in *D. Ramachandran Vs. R.V. Janakiraman and Others*, and in *Vijay Pratap Singh Vs. Dukh Haran Nath Singh and Another*, . In the latter judgment the Apex Court held thus:

By the express terms of Rule 5 Clause (d), the Court is concerned to ascertain whether the allegations made in the petition show a cause of action. The Court has not to see whether the claim made by the petitioner is likely to succeed : it has merely to satisfy itself that the allegations made in the petition, if accepted as true, would entitle the petitioner to the relief he claims. If accepting those allegations as true no case is made out for granting relief no cause of action would be shown and the petition must be rejected. But in ascertaining whether the petition shows a cause of action the Court does not enter upon a trial of the issues affecting the merits of the claim made by the petitioner. It cannot take into consideration the defences which the defendant may raise upon the merits; nor is the Court competent to make an elaborate enquiry into doubtful or complicated questions of law or fact. If the allegations in the petition, *prima facie*, show a cause of action, the Court cannot embark upon an enquiry whether the allegations are true in fact, or whether the petitioner will succeed in the claims made by him.

(Emphasis is mine)

In Para 155, the Apex Court sought to summarize in a compendious manner the law on the point thus :

So long as the claim discloses some cause of action or raises some questions fit to be decided by a Judge, the mere fact that the case is weak and not likely to succeed is no ground for striking it out. The purported failure of the pleadings to disclose a cause of action is distinct from the absence of full particulars.

(Emphasis is mine)

14. Sri Movva Chandra Sekhar Rao, learned Senior Counsel for the plaintiff seeks to place reliance upon judgments of this Court in *Sri Durga Nageswara Swamy Temple v. Arja Suryanarayana* 2002 (2) An.WR 345 (AP); *Chaitanya Mahila Mandalsi Vs. Punuri Arogyam and Another*, ; *Ragam Yellaiah and Others Vs. Chintha Shankaraiah*, ; *Saibaba Kirana and General Merchant, Banswada Vg and Mandal Vs. Manjira Chit Fund Company, Banswada Vg and Mandal*, and *Rajam Extractions Ltd. Vs. Nagaboyina Pakeeru*, and a short noted judgment of the Madhya Pradesh High Court in *Shyam Singh v. GSM Association and Anr.* 2004

(5) ALT 10 (DN OHC), wherein this Court as well as the Madhya Pradesh High Court have taken the same view as discussed hereinsabove.

15. The eventual conspectus from a concatenation of the judgments referred to hereinabove shows thus :

Whether a plaint discloses a cause of action or not is essentially a question of fact. In order to decide the question as to whether the plaint shall be rejected under clauses (a) and (d) of Order 7, Rule 11 of the Code, the averments made inter alia in the plaint and the documents annexed therewith if any alone shall be taken into consideration. The plea taken in the written statement and the probable defence which the defendant might raise on merits are not germane for consideration. In the process, the plaint in its entirety must be considered to be correct. The test is as to whether if the averments in the plaint are taken as correct in entirety, a decree could be passed. So long as the claim as made in the plaint discloses some cause of action or raises some questions fit to be decided by a Judge, the mere fact that the case is vague and is not likely to succeed, is no ground for striking it out. The Court shall not enter upon a trial of the issues affecting the merits of the claim made inter alia in the plaint. The purported failure of the pleadings to disclose a cause of action is distinct from the absence of full particulars. The contentions issues which shall have to be decided on the evidence adduced on either side cannot be decided at the threshold for rejecting the plaint or not, unless on the allegations made in the plaint itself the Court can arrive at a conclusion that the suit is clearly barred by any law, be it a question of a limitation or any other question. A distinction shall be drawn between a case where the plaint itself does not disclose a cause of action and a case where after considering the entire material on record a conclusion can be arrived at that there is no cause of action. If the plaint is asked to be rejected at the threshold, the former case is germane, but not the latter. The Court can exercise the power to reject the plaint at any stage of the suit. The Court should guard itself from any camouflage or trick in the pleading sought to be made so as to create a cause of action. Where the litigation is utterly vexatious and abuse of the process of the Court, can be yet another ground to reject the plaint.

16. Having due regard to the law, as discussed hereinabove, let us see in the instant case whether the plaint does disclose a cause of action and whether it is barred by any law.

17. Apropos the first consideration, the meaning of the expression "cause of action" need be noticed in the first instance. The earliest decision on the point is that of the Judicial Commission in *Mussummat Chand Kour and Anr. v. Partab Singh and Ors.* Vol. XV Indian Appeals page 156. According to the facts in that case, one Kahan Singh was the holder of the estate. His widow Mussummat Chand Kour executed a gift deed in favour of one Perak Singh in respect of her deceased husband's estate. Perak Singh and others who are the agnates of Kahan Singh filed a suit for declaration that the gift made by Chand Kour was inoperative and could not affect their reversionary rights interest in the estate

and Perak Singh, the donee, was a stranger to the succession. That suit was resisted only on the ground that it was barred by certain proceedings concluded in the Court of a Judicial Assistant Commissioner before the date of the deed of gift. That proceeding was instituted by Partab Singh and Gopal Singh for declaration and for an injunction forbidding alienation of the moveable and Immovable property of Kahan Singh which were then in possession of his widow Chand Kour. For the default of the plaintiff who brought the proceeding and on account of the denial of his claim by the defendant that case was ordered to be struck off u/s 102 of the Code. Such a decision in the proceeding could not operate as *res judicata* but bars a fresh suit to be instituted on the same cause of action. Obviously, the ground of action in the first suit is an alleged intention on the part of the widow to affect the estate to which the plaintiff had a reversionary right by selling it in whole or in part or by affecting it with mortgages. The cause of action set forth in the second suit was not mere matter of intention and it did not refer to either sale or mortgage. It consisted in an allegation that the first defendant had made a *de praesenti* gift of their whole interest to a third party, namely the second defendant. That itself was considered to be a good cause of action. It was thus held that the gift deed executed in favour of Parek, Singh by Chand Kour was not in existence at the time when the first suit was brought in. Under those circumstances it was held that it was impossible to say that a cause of action which did not exist at the time when the previous action was dismissed could be regarded as other than a new cause of action subsequently arising.

18. The Apex Court in *State of Rajasthan and Others Vs. Swaika Properties and Another*, , had to consider the meaning of the expression "cause of action". That was a case where the respondent filed a writ of mandamus against the State of Rajasthan, before the High Court of Calcutta to forbear from giving effect to the impugned notification dated 8-2-1984. On behalf of the State of Rajasthan, a serious objection was taken as regards the jurisdiction of the Calcutta High Court. The writ was in respect of 14 bighas of land owned by the respondent. In respect of the said land, the Town Planning Department, Jaipur, issued a notice u/s 52(2) of the Rajasthan Urban Improvement Act expressing intention to acquire the said land by the State Government for a public purpose. The notice was duly served on the respondent at its registered office at Calcutta. Except that no part of cause of action either in whole or in part did arise at Calcutta. In Para 8, The Apex Court held thus :

8. The expression "cause of action" is tersely defined in Mulla's CPC :

The "cause of action" means every fact which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court.

In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. The mere service of notice u/s 52(2) of the Act on the respondents at their registered office at 18-B, Brabourne Road, Calcutta i.e., within the territorial limits of the State of West

Bengal, could not give rise to a cause of action within that territory unless the service of such notice was an integral part of the cause of action. The entire cause of action culminating in the acquisition of the land u/s 52(1) of the Act arose within the State of Rajasthan i.e., within the territorial jurisdiction of the Rajasthan High Court at the Jaipur Bench. The answer to the question whether service of notice is an integral part of the cause of action within the meaning of Article 226(2) of the Constitution must depend upon the nature of the impugned order giving rise to a cause of action.

19. In *Navinchandra N. Majithia Vs. State of Maharashtra and Others*, , the Apex Court in Paras 18, 19 and 20 has extracted the meaning of expression "cause of action" as given in *Black's Law Dictionary*; *Stroud's Judicial Dictionary*; and the *Book on Words and Phrases* (4th Edition) thus :

18. In legal parlance the expression "cause of action" is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a Court or a tribunal; a group of operative facts giving rise to one or more bases for suing; a factual situation that entitles one person to obtain a remedy in Court from another person. (*Black's Law Dictionary*).

19. In *Stroud's Judicial Dictionary* a "cause of action" is stated to be the entire set of facts that give rise to an enforceable claim; the phrase comprises every fact, which, if traversed, the plaintiff must prove in order to obtain judgment.

20. In "*Words and Phrases*" (4th Edn.) the meaning attributed to the phrase "cause of action" in common legal parlance is existence of those facts which give a party a right to judicial interference on his behalf.

The Apex Court relied upon its earlier three Judge Bench Judgment in *Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others*, and extracted a passage from the said judgment thus :

Therefore, in determining the objection of lack of territorial jurisdiction the Court must take all the facts pleaded in support of the cause of action into consideration albeit without embarking upon an inquiry as to the correctness or otherwise of the said facts. In other words the question whether a High Court has territorial jurisdiction to entertain a writ petition must be answered on the basis of the averments made in the petition, the truth or otherwise whereof being immaterial.

(Emphasis is mine)

20. In *Swamy Atmananda v. Sri Ramakrishna Tapovanam* 2005 AIR SCW 2548, in Para 27 it was held thus :

27. A cause of action, thus, means every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It

must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded.

(Emphasis is mine)

21. From the above it is obvious that the expression "cause of action" does not mean a single or a solitary fact. On the other hand, it is a bundle of facts which the petitioner/plaintiff must prove, if traversed, so as to entitle him to a judgment in his favour by the Court. In deciding the controversy basing upon the cause of action the Court shall look into the facts mentioned inter alia in the plaint without embarking upon an enquiry as to the correctness or otherwise of the said facts. In this connection, it is appropriate to draw a distinction between the existence of cause of action and adjudication of claim of the plaintiff based on the said cause of action. At the time of adjudication of the claim perhaps the Court may go into the controversy about the existence of such cause of action but to see whether there is a cause of action to lay the suit or not, the Court has to go by the averments made in the plaint.

22. It is necessary to consider compendiously the case of the plaintiff as set out inter alia in the plaint so as to see whether it does disclose a cause of action and whether the suit is barred by any law.

23. The plaintiff society was duly registered on 4-2-1976 for the purpose of construction of houses for its members in accordance with the co-operative principles. Defendants 1 and 2 are the owners of the land in dispute. In the enquiry under the ULC Act it had been eventually held that the defendants were entitled to retain an area of 1000 square meters including the building bearing municipal No. 8-3-228 and the remaining area to an extent of 66,173 square meters was in excess. In the meanwhile the Government of Andhra Pradesh issued G.O.Ms. No. 4270 dated 10.9.1980 whereunder it permitted alienation of the excess land in favour of house building co-operative societies registered prior to 17-2-1976 for the purpose of construction of houses for its members. So as to avail the benefit under the said G.O., the defendants approached the plaintiff and the plaintiff agreed to purchase the land, which culminated in the suit agreement dated 9-12-1980. It was specifically agreed upon inter alia in the agreement that the sale deed shall be executed and registered after obtaining the exemption under ULC Act in favour of the plaintiff society. The defendants also agreed to execute and sign all the documents, papers etc. that might be required in regard thereto. Pursuant to G.O. Ms. No. 4270 dated 10.9.1980 the plaintiff and the defendants submitted applications dated 25-3-1981 and 18-4-1981 respectively to the Government seeking exemption. However, the Government rejected those applications. The plaintiff and the defendants jointly, therefore, filed a Writ Petition No. 2658 of 1984. By an order dated 5-4-1989 the High Court directed the Government to consider the application filed by the plaintiff in pursuance of G.O. Ms. No. 4270 as modified by G.O. Ms. No. 136 dated 28-1-1981 while setting aside the said order. Pursuant to the order of the High Court, the process

of consideration was commenced and eventually the authorities submitted a report to the Special Chief Secretary to Government recommending for exemption in favour of the plaintiff. The Principal Secretary to Government, issued a memo asking the plaintiff and the defendants to be present on 30-8-1997 for personal hearing. After the matter had undergone several adjournments, it was heard finally on 24-3-2003 but no orders were passed nor communicated to the plaintiff so far. In the meanwhile, the Government of Andhra Pradesh issued G.O. Ms. Nos. 455 and 456 both dated 29-7-2002 setting forth certain guidelines inter alia for allotment of the excess land. With a view to avail the benefit of new G.Os, the plaintiff tried several times to approach the defendants but they avoided the plaintiff on one ground or the other. Later, the members of the plaintiff society on 15-3-2003 noticed certain pits dug in a portion of the suit schedule property. That had led the plaintiff society to file the suit.

24. As can be seen from the plaint, the reliefs sought for are three fold. The first relief is to direct the defendants to cooperate with the plaintiff by strictly adhering to the terms and conditions of the suit agreement and by supporting the applications filed by the plaintiff before the Government or other authorities for grant of exemption. The basis for such relief seems to be the alleged non-cooperation as set forth in Para 14 of the plaint when the plaintiff wanted to avail the benefit of two G.Os. passed on 29-7-2002. In my considered view, this is an independent relief by itself apart from the second relief being specific relief sought for in the plaint for the performance of the suit agreement of sale. The third relief being the relief of perpetual injunction to restrain the defendants from transferring the property by any means and from changing the nature of the property. Even this relief could independently be maintained basing upon the suit agreement of sale. The facts thus set forth inter alia in the plaint clearly show the necessary cause of action on a prima facie consideration.

25. Lengthy arguments have been addressed in this case on the side of the defendants by Sri Mahmood Ali and Sri M.V. Durga Prasad. The core contention seems to be that in the absence of necessary exemption granted by the Government in favour of the plaintiff under the provisions of the ULC Act, the suit for specific performance is barred by law and the plaintiff has no cause of action in filing the suit. Indeed on those two considerations I.A.No.3665 of 2003 was filed seeking rejection of the plaint. The Court below has considered the point of limitation in this case and was of the view that the suit was barred by limitation. Sri Mahmood Ali, learned Senior Counsel appearing for the defendants 1 and 2, fairly conceded that it was not the plea taken by him inter alia in his petition seeking rejection of the plaint. Even otherwise, the finding on the point of limitation seems to be quite unsustainable. As per Article 54 of the Limitation Act time for specific performance begins to run from the date fixed in the contract of sale for the performance or if no such date is fixed when the plaintiff has notice that the performance is refused. Obviously, no date seems to have been fixed for performance, inter alia, in the suit agreement of sale. On the other hand, there

seems to have been an agreement between the parties inter se to have the sale deed executed after obtaining the necessary permission under the ULC Act. So the first limb of Article 54 of the Limitation Act has no application. It becomes a pure question of fact as to when the performance is refused by the defendant so as to reckon the period of limitation in accordance with the second limb of Article 54. In cases where neither of the limbs applies as per fact situation, Article 113 applies and the period of limitation begins to run when the right to sue accrues vide *R. Ramjibhai Dahyabhai v. Narottamdas Lallubhai* AIR 1986 SC 1912. When the right to sue accrues is again a question of fact, these questions of fact shall have to be decided not by mere glance at the averments made in the plaint but on evidence adduced on either side. In such cases the plea of limitation becomes a mixed question of law and fact. Unless on an examination of the averments made in the plaint ex facie the suit is barred by limitation, the plaintiff cannot be non-suited at the threshold without conducting an enquiry. Therefore, the Court below committed an illegality in having taken the view that the suit was barred by limitation which, having regard to the matrix in the instant case, is a mixed question of law and fact.

26. Inasmuch as the core contentions of the defendants are based on the provisions of the ULC Act it is apt to consider the important provisions thereof. Section 3 thereof mandates that no person shall be entitled to hold any vacant land in excess of the ceiling limit save and except the land exempted by the Government. Section 5 makes any transfer of the land held by the transferor in excess of the ceiling limit during the relevant period as null and void. Sections 6 to 10 thereof deal with filing of the statement by the persons holding vacant lands in urban areas, preparation of draft statements by the authorities, enquiry as regards any claims over the land and finally the determination of the ceiling limit by the authority. Sub-section (3) of Section 5 and Sub-section (4) of Section 10 interdicts any transfer by way of sale, mortgage, gift, lease, or otherwise before furnishing a statement u/s 6 or till the determination of the ceiling limit respectively and renders the transaction made in contravention thereof as null and void. Section 20 empowers the State Government by an order to exempt in the public interest appropriate case from the provisions of the ULC Act notwithstanding the interdict contained in Sections 3, 5 and 10. Therefore prohibition of alienation will not operate so soon after the determination of the holding but after the Government refuses to grant permission u/s 20 of the Act. Sections 26 and 27 prohibit any transfer without giving any notice in writing, and except with previous permission in writing of the Competent Authority respectively. Section 28 prohibits registration of any document without the necessary permission in writing of the Competent Authority.

27. Admittedly the Government of Andhra Pradesh in exercise of the powers conferred on it u/s 20 of the ULC Act issued G.O. Ms. No. 4270 dated 10.9.1980 permitting alienation of the excess land in favour of the house building co-operative societies registered prior to 17-2-1976. In view thereof, there had been negotiations in between the plaintiff society and the defendants which eventually

culminated in the execution of the suit agreement of sale on 9-12-1980. The Government also passed G.O. Ms. No. 136 dated 28-1-1981 modifying the conditions and terms fixed inter alia in the former G.O. There afterwards the Government passed G.O. Ms. Nos. 455 and 456 both dated 29-7-2002 setting forth certain guidelines for allotment of excess land.

28. It is now the contention of the defendants that in view of G.O. Ms. Nos. 455 and 456 dated 29-7-2002, the first G.O. Ms. No. 4270 dated 10-9-1980 as modified under G.O. Ms. No. 136 and 28-1-1981 stands superseded and, therefore, the plaintiff is no more entitled to avail the benefit of G.O. Ms. No. 4270, and since G.O. Ms. Nos. 455 and 456 are not applicable to the case of the plaintiff society, it has no cause of action to lay the suit. It is manifest from the G.O. Ms. No. 4270 that the Government granted exemption for transfer of excess land in favour of a registered house building cooperative society. In order to avoid speculative activities, the Government in G.O. Ms. No. 136 dated 28-1-1981 limited the exemption only to the societies registered after commencement of the ULC Act and before the cut off date mentioned inter alia in the G.O. Ms. No. 4270. The said concession is made operative only for a period of one year from the date of issue of that order. On account of the long drawn litigation for variety of reasons which resulted in not finalizing the matter under the ULC Act, the subsequent purchasers if any from the excess land holders who innocently purchased the same and made permanent structures thereon ultimately have fallen prey to the evil designs of the excess land holders and therefore, in order to protect their interests, the Government issued the G.O. Ms. No. 455 deciding thereby to allot the excess land to such innocent purchasers. Under the G.O. Ms. No. 456 the Government granted further exemption to the excess land held by the persons either in core area or peripheral areas to the extent of 300% land covered by the ceiling limit. These benefits which have been conferred under the G.O. Ms. Nos. 455 and 456 are sought to be availed by the plaintiff society presumably under the perception that its case is squarely covered by the said G.Os.

29. It may be mentioned at the outset that whether the plaintiff is entitled to the relief of specific performance, is not germane for consideration at, the threshold. Instead whether the suit is barred under any law is relevant. In view of Section 20 of the ULC Act, as has been rightly contended by the learned Senior Counsel for the plaintiff the interdict contained in the provisions of the ULC Act cannot apply to the plaintiff's case. The Government is competent to grant exemption and the Government has issued such an exemption to the excess landholders so as to enable them to sell the excess land in favour of the registered house building co-operative societies. Therefore, at this stage it cannot be said that the present suit is barred under any of the provisions of the ULC Act. What is required is the necessary permission from the Competent Authority, which is pending consideration according to the plaintiff. So as to consider the transaction as null and void, there is no sale as yet, as aforesaid, in favour of the plaintiff. It is only on these lines the arguments have been addressed on either side.

30. Having been of the mistaken view that the pre-requisite for seeking benefit under G.O. Ms. No. 4270 that the agreement of sale shall be prior to 28-1-1976, the cut off date fixed therein inter alia and since Ex.AI sale agreement dated 9-12-1980 in ex facie subsequent thereto the learned Chief Judge repeatedly observed that the suit agreement of sale was frustrated, void, and not capable of enforcement and, therefore, there was no cause of action for the plaintiff to lay the suit oblivious of the meaning of the expression "cause of action".

31. What is a sine qua non under the said G.O. is that the Society should have been registered prior to 17-2-1976, the date set forth therein inter alia. It is not quite discernible from the said G.O. that the agreement should precede the said date. The view that G.O. Ms. Nos. 4270 and 136 ceased to be in vogue by 27-1-1982 and, therefore, there is no cause of action for the plaintiff to lay the suit appears to be equally incorrect. When a transaction was entered into pursuant to the terms of the said G.O. Ms. No. 4270 and as per the conditions set forth inter alia in the said transaction when the parties apply for the necessary exemption and such an application seeking exemption is pending consideration by the Government, and in the meanwhile operation of the G.O. Ms. No. 4270 ceases, the transaction cannot automatically fail. All pending matters shall have to be considered only in terms of the G.O. Ms. No. 4270 read with G.O. Ms. No. 136 regardless of the fact that both the G.Os. ceased to be in vogue one year after their issuance.

32. Sri Mahmood AH, learned Senior Counsel for the defendants 1 and 2, has fairly conceded the same. It is his contention that for want of necessary exemption from the Government, a sale deed cannot be registered by the Sub-Registrar and, therefore, the agreement cannot be sought to be enforced either voluntarily or through the agency of the Court. It is his further contention that in view of the provisions of the ULC Act, the willingness of the vendor or vendee is of no consequence and the provisions of Section 53A of the Transfer of Property Act cannot be invoked since the parties are bound by the provisions of the ULC Act, although per se the agreement is not opposed to law nor barred by any law, but has become unenforceable.

33. The learned Senior Counsel for the plaintiff in this connection seeks to place reliance upon a Judgment of the Apex Court in Bai Dosabai Vs. Mathurdas Govinddas and Others, . That was a case where an agreement was entered into between a lessor and a lessee, the lessee agreeing to take a conveyance for the demised property within a specified period for an agreed price. A part of the agreed price was paid forthwith. The condition incorporated in the agreement was that in the event lessor disagreeing to sell the property, the lessee had right to seek specific performance and in the event of lessee committing default, the lessor had right to seek sale by public auction of the demised property. The suit was filed to enforce the covenant in the agreement for the sale of the land by public auction. A decree was passed before the advent of the ULC Act. The matter went to the Supreme Court by which time the ULC Act came to be

passed. While noticing the provisions of the ULC Act, the Apex Court held that in view of the provisions for exemption under Sections 20 and 21 thereof, the exemption sought could be worked out through the Receiver appointed by the Court and that arrangement should survive and in case the exemptions became effective, the benefit of the proceeds should be applied to discharge the dues of the decree holder.

34. Placing reliance upon the above judgment of the Apex Court a Full Bench of the Gujarat High Court in *Shah Jitendra Nanalal Vs. Patel Lallubhai Ishverbhai*, . Held that a conditional decree for specific performance subject to exemption being obtained u/s 20 of the ULC Act was permissible. That was a case where the defendants 1 and 2 entered into an agreement with the defendants 3 to 5 in respect of a land in an extent of 3 acres. That agreement was executed on 4-7-1966. The defendants 1 and 2 in their turn entered into an agreement with the plaintiff on 1-7-1967 to sell a portion of such land to the plaintiff. That portion agreed to be sold was subsequently re-constituted under the town planning scheme into a plot of 8451 square yards. The plaintiff filed the suit for specific performance as between defendants 1 and 2 on one hand and defendants 3 to 5 on the other. The defendants 1 and 2 earlier filed a suit against defendants 3 to 5 which ended in a compromise. The suit filed by the plaintiff was dismissed and he carried the matter in appeal. During the pendency of the appeal, ULC Act came into force. The Full Bench eventually answered the question in Para 13 thus :

13. In this view, in answer to the second question referred to us we hold that a conditional decree for specific performance subject to exemption being obtained u/s 20 of the Urban Land (Ceiling and Regulation) Act, 1976 (Act No. 33 of 1976) is permissible. As we have said earlier, we do not propose to answer the first question as it may not be necessary. The case will be sent back to the Division Bench for disposal in accordance with the decision herein and in accordance with law.

In *K.M. Jose and Others Vs. D. Anantha Bhat*, , it was held thus :

Though a plain reading of Sub-sections (1) and (3) of Section 79A. Karnataka Land Reforms Act, 1962 declares acquisition of agricultural land by a person who has assured annual income of Rs. 12,000/- or more from sources other than agriculture as null and void. It will become void only when action is initiated u/s 82 and after enquiry by the specified officer u/s 83 of the Act. The Civil Court which in terms of Section 132 of that Act is not competent to enquire into the legality of such acquisition cannot create a bar for itself to enforce the contract on the plausible result of such enquiry u/s 83 of that Act. It is therefore not possible to contend that the contract for sale is hit by Section 23 of the Contract Act.

35. The learned Senior Counsel further relies upon a recent judgment of the Apex Court in *Vithalbhai Pvt. Ltd. Vs. Union Bank of India*, . That was a case,

according to the matrix in the suit, where a lease was entered into in between lessor and lessee in respect of an immovable property for a fixed term expiring by 24-6-1984. On 26-9-1983 the lessor served a notice to lessee informing him that the tenancy was to expire on 24-6-1984 and, therefore, on that day, he must deliver vacant possession. On 8-11-1983 the lessee sent up a reply taking a firm stand that he would not vacate. On 16-4-1984, the lessor filed a suit for declaration that he was entitled to vacant possession, and for other reliefs. The suit was filed 12 weeks before the date on which the lease was to expire by efflux of time. The lessee in his written statement inter alia had taken the plea that the suit was premature and hence was not maintainable. The Apex Court in Para 20 of its judgment held thus :

20. No amount of waiver or consent can confer jurisdiction on a Court which it inherently lacks or where none exists. The filing of a suit when there is cause of action though premature does not raise a jurisdictional question. The claim may be well merited and the Court does have jurisdiction to hear the suit and grant the relief prayed for but for the fact that the plaintiff should have waited a little more before entering the portals of the Court. In such a case the question is one of discretion. In spite of the suit being premature on the date of its institution the Court may still grant relief to the plaintiff if no manifest injustice or prejudice is caused to the party proceeded against. Would it serve any purpose, and do the ends of justice compel the plaintiff being thrown out and then driven to the need of filing a fresh suit - are pertinent to be posed by the Court to itself.

36. Per contra, the learned Senior Counsel for the defendants 1 and 2 seeks to place reliance upon a Division Bench Judgment of this Court in Sampatlal Ramlal Kimtee (died) and others Vs. Ananth Vijay Shridhar Naik and others, . That was a case where the suit for specific performance of sale agreement was filed. There also formal exemption or permission under the ULC Act was required. The parties thereto agreed inter alia that the plaintiff should obtain necessary permission from the authority within a period of six months. At the end of trial, the trial Court held that since time was the essence of contract and obtaining permission from the authority under the ULC Act is sine qua non and in the absence thereof, the contract would be frustrated and the same could not be enforced. Since the contract had been frustrated, the trial Court finally directed refund of the amount paid by the plaintiff with interest. Before the High Court in the appeal, when it was sought to be contended by placing reliance upon the Full Bench Judgment of the Gujarat High Court in Shah Jitendra Nanilal's case (supra) that a conditional decree could be passed, this Court held thus :

We do not think it necessary to go into the question whether this Court has got power to pass a conditional decree, but the circumstances obtaining in the case on hand do not justify passing of such a conditional decree inasmuch as 20 years have elapsed after execution of suit agreements and plaintiffs could not obtain necessary permission or exemption till today.

37. He further seeks to place reliance upon a judgment of the Apex Court in M.V.

Shankar Bhat and Another Vs. Claude Pinto Since (Deceased) by Lrs. and Others, . That was a case where an agreement to sell the property was entered into by the executor with the purchaser not as sole executor of the will but as a legatee and/or one of the heirs of the testator. The agreement was made subject to ratification of the terms and conditions thereof by the co-heirs who were not parties to the agreement. It was held that there was no conclusive contract between the parties and the sale agreement could not be specifically enforced. I am afraid that both the judgments are of no relevance to the facts of the instant case and are distinguishable.

38. Reliance has also been sought to be placed by the learned Senior Counsel for the plaintiff upon a Full Bench Judgment of this Court in K. Venkateswarlu and others Vs. Pedda Venkaiah (died) Per LRs., . The Full Bench of this Court held placing reliance upon a Judgment of the Apex Court in Babu Lal Vs. Hazari Lal Kishori Lal and Others, thus :

15. An owner of a property has a right to transfer the same unless there exists a statutory interdict. Such statutory prohibitions are required to be construed strictly. An agreement of sale being not a transfer, a fortiori, the prohibition created u/s 4 of the A.P. Vacant Lands in Urban Areas (Prohibition of Alienation) Act, 1972 would not apply to such a transaction.

That was a case where a suit for specific performance was filed in respect of an agreement dated 9-7-1973. A defence was taken by the appellant to the effect that the suit agreement was void as it was hit by Section 4 of the said Act. The said Act was repealed under the provisions of the ULC Act. However, according to the facts in that case, that Act has no application to the lands in question which is situate in the District of Prakasam. Under those circumstances, it was held that Section 4 of the said Act has no effect of making the agreement as void since there was no transfer.

39. The learned Senior Counsel has rightly sought to draw a distinction between "cause of action" and "right to sue". Here in this case, prohibition of any transfer will not attract, is his contention. G.O. Ms. No. 4270 specifically authorizes the excess land holder to sell the land in favour of the house building co-operative society and such a transaction can be validly entered into provided the necessary exemption is granted by the Government. Admittedly, both the parties applied for the exemption and it is pending consideration with the Government. The contention that the Government rejected the application and refused to grant exemption is not born out of the plaint averments and, therefore, becomes extraneous. The prohibition of alienation under the ULC Act proprio vigore will not operate having due regard to the above facts. Having regard to the Full Bench Judgment of the Gujarat High Court referred to supra the plaintiff can validly lay the suit. Whether the plaintiff is entitled to the relief of specific performance or not is an altogether different issue. Similarly, the contention that the suit is premature since no exemption is granted by the Government, also merits no consideration in view of the judgment of the Apex Court in Vithalbhai

(P) Ltd.'s case (supra).

40. Finally, it is contended on behalf of the defendants that suit agreement is in the nature of contingent contract covered by Section 31 of the Indian Contract Act, 1872 and, therefore, it cannot be enforced. In essence, the case of the respondents 1 and 2 appears to be that the suit agreement of sale is a contingent contract as it is conditional upon the ground of exemption by the Government and that in the absence of any such exemption by the Government, no specific relief can be granted so as to enforce the agreement by directing the parties to execute a sale deed and get it registered which cannot be done having been barred by the provisions of the ULC Act and, therefore, till such time the exemption is granted there can be no valid cause of action for the agreement holder to lay the suit for specific performance. I am afraid that I cannot accede to the said contention for the reason that in the instant appeal it is not quite germane for the Court to consider whether the plaintiff is entitled to the relief or not. Even assuming for a moment that it is a contingent contract, as contended, the contract cannot become void, unless and until the event becomes impossible as can be seen from Section 32 of the Indian Contract Act, 1872.

41. But, then, one question remains to be addressed. As discussed hereinabove, if the suit on the face of it appears to be frivolous, the plaint can be rejected or not albeit it is not one of the grounds enjoined under Rule 11 of Order 7 of the Code. Frivolity is again a ground which requires a detailed enquiry unless it is a case where frivolity is writ large on the face of the averments made inter alia in the plaint, on that ground the plaint cannot be rejected at the threshold. It seems that the Court below was of the view that the suit having been filed two decades after the rejection of alleged exemption and inasmuch as a part of the retainable area was sold to respondents 3 to 6 for higher price involving some crores of rupees, it is too much on the part of the plaintiff to have aspired for the property by paying a paltry sum of Rs. 10,000/- and the whole consideration under the agreement being only Rs. 10 lakhs, oblivious of the fact that under the very G.O. Ms. No. 4270 it was made conditional that the consideration shall not exceed the amount stipulated inter alia therein and the sale should be in favour of the registered housing co-operative society. Therefore, the intention of the State in granting exemption shall have to be given paramount consideration. It is not a case of fixation of the price in between the willing vendor and the willing vendee and the subsequent astronomical rise in prices due to passage of time or given the importance to the area in which the property in question is situate and, therefore, it can be a ground for the Court to have refused the relief of specific performance. The Court below exceeded its jurisdiction in making an attempt to consider the factum of possession so as to eventually come to the conclusion that it is a case of frivolous litigation. The factum of possession shall have to be considered after hearing on either side and considering the evidence adduced on the point by the parties. For the above reasons, it is not that easy for the Court to decide that the very suit itself is a frivolous one which entails rejection of the plaint at the threshold.

42. All this seems to be not quite germane having regard to the matrix of the instant case. Whether relief of specific performance can be granted in favour of the plaintiff or not is a larger question which shall have to be addressed by the trial Court having regard to the respective contentions of the parties to the suit. It is noteworthy here that by granting relief of specific performance, the necessary conveyance deed will not be executed and it is only the person against whom the decree for specific performance is passed, has to execute the sale deed pursuant to the decree and if he fails to execute the sale deed on his behalf, the Court has to execute the sale deed. That stage has not yet reached. In that view of the matter, the decree for specific performance can be made conditional by granting the relief of specific performance directing the defendants to execute the necessary conveyance deed in the event the necessary exemption is granted by the Government or as a matter of that the execution of the sale deed by the Court for the default of the Judgment Debtor be made conditional in the similar way are all matters to be considered by the trial Court and, in my considered view, shall be left to be considered by that Court. Delving deep into such larger issues which have not fallen for consideration as yet, for the plea of the defendants are not germane for consideration at the threshold when the Court is asked to reject the plaint, in my considered view, seems to be quite impermissible at this stage.

43. As discussed hereinabove, the scope of enquiry in an application filed under Order 7, Rule 11 of the Code seeking rejection of the plaint is indeed limited. The Court cannot go beyond the four corners of the plaint and the documents, if any, annexed therewith. Whether the plaintiff is entitled to any relief for specific performance in terms of G.O. Ms. No. 4270; whether the plaintiff is entitled to claim any benefit of the G.O. Ms. Nos. 455 and 456; whether eventually the plaintiff is entitled to any such relief or not; seem obviously to be extraneous at this juncture for consideration, particularly when the matter is at its threshold. Even the plea of the plaintiff taken inter alia in the counter filed in LA. No. 3665 of 2003 to the effect that an extent of 7064.16 square meters of site has been exempted and held to be not excessive land by the authorities under the ULC Act subsequent to the suit agreement and therefore the plaintiffs claim could be maintained to that extent and the Court shall have to mould the relief at the end, equally not germane for consideration at this stage and becomes extraneous. It may be made clear that the Court below shall proceed to dispose of the suit on its own merits uninfluenced in any manner by any of the observations made by this Court inter alia in the order on the larger issues.

44. For the above reasons, the appeal is allowed and the impugned order is hereby set aside.