2025 INSC 73

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 372-373 OF 2025
(@SLP (C) NOS. 1297-1298 OF 2025)
(@ SLP(C) D. No.13548 of 2017)

CUDDALORE POWERGEN CORPORATION LTD …**APPELLANT(S)**

VERSUS

M/S CHEMPLAST CUDDALORE VINYLS LIMITED AND ANR …**RESPONDENT(S)**

J U D G M E N T

J.B. PARDIWALA, J. :-

For the convenience of exposition, this judgment is divided in the following parts:-

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1. Delay condoned in filing SLPs.

2. Leave granted.

3. These appeals arise out of the Judgment and Order passed by the High Court of Madras dated 01.09.2016 in CMP No. 12498 of 2016 in S.A. No. 858 of 2014 and the order dated 30.06.2016 in S.A. No. 858 of 2014 respectively filed by the respondent no. 1 herein (original plaintiff) whereby the High Court allowed the second appeal and restored the plaint in O.S. No. 122 of 2008.

A. FACTUAL MATRIX

4. M/s Chemplast Cuddalore Vinyls Limited (hereinafter, the "**respondent no.1/original plaintiff**") is said to have entered into an agreement for sale with Mrs. Senthamizh Selvi (hereinafter, the "**respondent no.2/original defendant no. 1**") on 24.01.2007 whereby the respondent no. 2 agreed to sell the suit property admeasuring 1 acre situated in village Thiyagavalli, Cuddalore to the respondent no. 1 for a total consideration of Rs. 1,50,000. Pursuant to the agreement for sale and after receiving the entire sale consideration, it is the case of the respondent no. 1 that they were also put in possession of the suit property. In furtherance of the same, the respondent no. 2 is also said to have executed an irrevocable Power of Attorney dated 26.03.2007 to enable the respondent no. 1 to complete the formalities as regards the execution and registration of the sale

deed pertaining to the suit property. The Power of Attorney was registered with the Office of the Sub Registrar, Joint I, Chennai Central, on the same day. Consequently, on 07.09.2007, the respondent no. 1 got the agreement for sale in respect of the suit property registered with the Joint Sub Registrar II, Cuddalore.

5. However, on 02.11.2007, the respondent no. 2 issued a letter *inter alia* revoking the Power of Attorney issued in favour of the respondent no. 1 to which the respondent no. 1 issued a reply on 05.11.2007. After couple of months i.e., on 06.02.2008, the respondent no.2 again issued a letter to the respondent no. 1 in which she enclosed a demand draft of the sum of Rs. 1,50,000. According to the respondent no. 1, the letter *inter alia* mentioned that the demand draft was being enclosed in connection with the repayment of money borrowed from the respondent no. 1 for the purchase of a vehicle and there was no indication that the amount sought to be returned was towards the sale consideration which was received by the respondent no. 2 pursuant to the agreement for sale dated 24.01.2007. It is the case of the respondent no. 1 that, on 08.02.2008, they had returned the demand draft and issued a reply to the aforementioned letter. Additionally, it is also stated that on 09.02.2008, the respondent no. 1 furnished a notice to the respondent no. 2 asking her to perform her part of the agreement for sale by executing the sale deed and further not to alienate the property in

favour of any other person. It appears that the respondent no. 2 has not furnished any reply to the said notice till date.

6. It is the case of the respondent no. 1 that they had visited the office of the sub-registrar on multiple occasions for the purpose of registering the sale deed. However, the same was refused. On 14.12.2007, one more attempt was made by the respondent no. 1 to get the sale deed registered, however, the documents were not accepted by the revenue authorities. Aggrieved by such refusal, on 21.01.2008, the respondent no. 1 filed Writ Petition No. 1783 of 2008 before the Madras High Court. During the pendency of these writ proceedings, it was found out that the revenue authorities had declined to register the sale deed due to the existence of a Government Order (hereinafter, the "**GO**") dated 08.08.1986 issued by the Government of Tamil Nadu by which certain parcels of land situated at Thiyagavalli (where the suit property is located) and Kudikkadu villages were reserved exclusively for the purpose of a thermal power station to be set up by the Tamil Nadu Electricity Board (hereinafter, the "**TNEB**"). Furthermore, *vide* letter dated 23.10.2006, the TNEB had authorized the Cuddalore Powergen Corporation Ltd. (hereinafter, the "**appellant/original defendant no.2**") to develop a power station and for that purpose an extent of 350 hectares of land is said to have been earmarked. As a consequence, the general ban against registering the suit property did not operate against the appellant herein. It is pertinent to mention that a petition in public interest being

Writ Petition No. 11453 of 2007 was filed by an organization representing the agriculturists namely the Thiyagavalli Panchayathai Serntha Nochikkadu Grama Vivasayigal Pdthukappu Mattrum Makkal Pothunala Sangam, on 20.03.2007, before the Madras High Court challenging the decision of the revenue authorities not to register the sale deeds.

7. On and from the 2nd week of February 2008, as alleged, the appellant along with the respondent no. 2 started to interfere with the peaceful possession and enjoyment of the suit property of the respondent no. 1.

8. Since the threat of dispossession was imminent and in order to prevent further attempts of trespassing into the suit property, on 16.02.2008, the respondent no. 1 filed original suit O.S. No. 28 of 2008 (hereinafter, the "**first suit**") before the Principal District Judge, Cuddalore for permanent injunction to restrain the appellant and the respondent no.2 from interfering with the peaceful possession and enjoyment of the suit property by the respondent no. 1. The same is still pending before the concerned court.

9. However, the appellant in its written statement put forward altogether a different case in the aforementioned first suit. It is the case of the appellant that it had entered into a *bona fide* agreement for sale dated 20.02.2007 with the respondent no. 2 in order to purchase the suit property and a sale deed in that regard was registered on 24.01.2008. It is their case that, at the time of both the

sale agreement and the sale deed, it was the respondent no.2 alone who was in possession of the suit property and consequently, the possession was transferred to the appellant on 24.01.2008. Therefore, the appellant contended that the respondent no. 1 cannot seek an injunction against the appellant who was the actual owner in possession of the suit property as on the date of institution of the first suit.

10. Subsequently, on 05.03.2008, a Division Bench of the Madras High Court heard the public interest litigation in ***Thiyagavalli Panchayathai Serntha Nochikkadu Grama Vivasayigal Pdthukappu Mattrum Makkal Pothunala Sangam, represented by its Secretary, Nochikkadu v. The Chairman, Tamil Nadu Electricity Board*** reported in **(2008) SCC OnLine Mad 188** (Writ Petition No. 11453 of 2007) and quashed the G.O. dated 08.08.1986 along with the letter dated 23.10.2006 by which lands including the suit property were reserved exclusively for the appellant. In the same breath, the High Court also directed the revenue authorities to receive and register all the documents pertaining to the Thiyagavalli and Kudikkadu villages presented to them, if such documents fulfilled all the stipulations contained in the Registration Act or any other enactment governing such registration. The relevant excerpts of this judgement are as follows:

> "*11. Taking note of the categorical stand of the third respondent in the impugned proceedings, we are at a loss to understand as to how and under what provision of law such a prohibition came to be imposed by the respondents*

restraining any individual land owners in the above two villages from transferring their lands either by way of sale or by any other mode to any third party other than "M/s. Cuddalore Power Company Limited" and refuse to register such documents.

12. Under Article 300-A of the Constitution, a right of a citizen to own a property and retain the same has been well protected and such right cannot be deprived of except by authority of law.

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15. In this context, it is worthwhile to refer to the decision of the Hon'ble Supreme Court reported in (1982) 1 SCC 39 (Bishambhar Dayal Chandra Mohan and others v. State of Uttar Pradesh and others), wherein, paragraphs 27 and 41 are relevant for our present purpose which read as under:

> *"27. The quintessence of our Constitution is the rule of law. The State or its executive officers cannot interfere with the rights of others unless they can point to some specific rule of law which authorizes their acts. In State of M.P. v. Thakur Bharat Singh, the Court repelled the contention that by virtue of Article 162, the State or its officers may, in the exercise of executive authority, without any legislation in support thereof, infringe the rights of citizens merely because the legislature of the State has power to legislate in regard to the subject on which the executive order is issued. It was observed:*
>
> *Every act done by the Government or by its officers must, if it is to operate to the prejudice of any person, be supported by some legislative authority.*
>
> *The same principle was reiterated by the Court in Satwant Singh Sawhney v. Dr. Ramarathnam, Assistant Passport Officer Government of India, New Delhi and Smt. Indira Nehru Gandhi v. Raj Narain.*
>
> *41. There still remains the question whether the seizure of wheat amounts to deprivation of property without the authority of law. Article 300-A provides that no person*

shall be deprived of his property save by authority of law. The State Government cannot while taking recourse to the executive power of the State under Article 162, deprive a person of his property. Such power can be exercised only by authority of law and not by a mere executive fiat or order. Article 162, as is clear from the opening words, is subject to other provisions of the Constitution. It is, therefore, necessarily subject to Article 300-A. The word "law" in the context of Article 300-A must mean an Act of Parliament or of a State Legislature, a rule, or a statutory order, having the force of law, that is positive or State-made law. The decisions in Wazir Chand v. State of H.P. and Bishan Das v. State of Punjab are an authority for the proposition that an illegal seizure amounts to deprivation of property without the authority of law."

16. The above proposition of law laid down by the Hon'ble Supreme Court was subsequently followed in the reported decisions in 2003 (1) SCC 591 (Hindustan Times and others v. State of U.P. and another) and (2006) 2 SCC 545 (State of Bihar and others v. Project Uchcha Vidya, Sikshak Sangh and others).

17. Applying the above said principle to the fact of this case, we have no hesitation to hold that the impugned proceedings of the respondents are liable to be set aside as non-est in law. Accordingly, setting aside the proceedings, the prayer of the petitioner stands allowed and the respondents are directed to receive and register all the documents present by them for registration pertaining to the villages namely, Thiyagavalli and Kudikkadu, if such documents satisfy the stipulations contained in the Registration Act or any other enactment governing such registration."

(emphasis supplied)

11. Immediately thereafter, the respondent no. 1 contended that they had addressed a letter dated 06.03.2008 to the Tahsildar, Cuddalore, calling upon the authorities not to alter the revenue records in respect of the suit property in anybody's name. As a consequence of the decision rendered in the public

interest litigation, *vide* order dated 25.03.2008, the Writ Petition No. 1783 of 2008 which was filed by the respondent no. 1 was also disposed of by a learned Single Judge of the Madras High Court on similar terms.

12. It is the case of the respondent no. 1 that they acquired knowledge of the sale deed dated 24.01.2008 pertaining to the suit property executed by the respondent no. 2 in favour of the appellant, only after the institution of the first suit. Therefore, the respondent no. 1 filed another Original Suit being O.S. No. 122 of 2008 (hereinafter, the "**second suit**") in the Court of the First Additional Subordinate Judge, Cuddalore *inter alia* praying that (a) the respondent no. 2 be directed to specifically perform the terms and conditions of the agreement for sale dated 24.01.2007 which was registered on 07.09.2007 by executing and registering the sale deed in favour of the respondent no. 1; (b) the sale deed dated 24.01.2008 executed by the respondent no. 2 in favour of the appellant be declared as null and void; and (c) permanent injunction restraining the respondent no. 2 and the appellant from interfering with the peaceful possession and enjoyment of the suit property by the respondent no. 1 be granted.

13. Contending that the second suit is hit by the bar under Order II Rule 2 CPC, the appellant moved an I.A. No. 17 of 2009 in the second suit under Order VII Rule 11 read with Section 151 CPC, for the rejection of plaint. On 30.04.2009, the Court of the First Additional Subordinate Judge, Cuddalore, allowed the I.A and

consequentially, passed a decree rejecting the plaint in the second suit i.e., O.S. No 122 of 2008. The relevant observation is as follows:

> *"... in the instant case on our hand we have elaborately discussed the entire plaint in both the suits with regard to the subject matter of the cause of actions and we have also recorded the reasons that the causes of action for the present suit were very well available during the filing of the earlier suit and moreover these aspects are actually admitted by the respondent that the respondent had knowledge about the impugned sale deed even in the 2nd week of February 2008; Thus, in the light of the above discussion the point is answered that the suit is clear bar as it required under order 2 rule 2 r/w order VII rule 11(d) C.P.C. and in result this petition is allowed with cost."*
>
> (emphasis supplied)

14. Being aggrieved with the aforesaid, the respondent no. 1 filed Appeal Suit No. 10 of 2009 in the Court of the Principal District Judge, Cuddalore against the order passed in I.A. No. 17 of 2009 in the second suit. However, on 05.10.2009, the same was dismissed as not pressed since the respondent no. 1 conceded to the objection that a regular appeal against an order passed in an I.A. was not maintainable and the proper course of action to challenge an order in allowing an application filed under Order VII Rule 11 CPC would be to file a regular first appeal against the decree which is passed in the original suit. The Court, therefore, observed as thus:

> *"This appeal coming on the day for final hearing before me in the presence of Thiru P.I.X. Vedamnayagam, Advocate for the appellant and Thiru. M. Balathandayutham Advocate for the respondent, the appellant's counsel made an endorsement appeal may be dismissed as not pressed, in view*

of filing of fresh appeal on the same judgment and decree, this court doth order and decree as follows:

1. *that the appeal be and the same is hereby dismissed as not pressed.*
2. *that there be no order as in costs."*

(emphasis supplied)

15. Thereafter, the respondent no. 1 filed a fresh Appeal Suit No. 1 of 2010 in the Court of the Principal District Judge, Cuddalore against the judgment and decree dated 30.04.2009 by which the plaint in the second suit was rejected and prayed that the same be set aside. The First Appellate Court found no reason to interfere with the order of the Trial Court. Therefore, the First Appeal was dismissed and the Trial Court's order was confirmed.

16. As against the concurrent findings of both the Courts, the respondent no. 1 filed a Second Appeal in S.A No. 858 of 2014 under Section 100 CPC before the High Court. On 30.06.2016, the High Court allowed the second appeal *ex-parte* and restored the plaint in the second suit. The High Court was of the view that the second suit was not hit by the bar under Order II Rule 2 and that the plaint could not have been rejected. The relevant observations made by the High Court are as follows:

"*19. In this case, I do not find any deliberate omission on the part of the plaintiff to make a claim in the earlier suit. Further, in a case of this nature wherein the possession of the suit property is said to have been handed over to the agreement holder, it is not an unusual situation of sudden interference by the land owner warranting the agreement holder to file a suit for bare injunction. Therefore, if any such situation arises, the agreement holder cannot be precluded from claiming or seeking an immediate and emergent relief*

first in order to prevent further damage or abuse. Therefore, filing of such suit for bare injunction also by reserving the right to file a comprehensive suit later cannot be construed or considered as the one arising out of same cause of action in order to bring it under the hammer of Order 2 Rule 2 C.P.C.

20. Considering the above stated facts and circumstances and considering the case laws discussed as above, I am of the firm view that the rejection of the plaint by the trial Court which was confirmed by the appellate Court is totally erroneous and against law.

21. Accordingly, the substantial question of law raised in the appeal is answered in favour of the appellant. It is made clear that this Court is not expressing any view on the merits as claimed by the appellant as it is for the appellant to establish the same before the trial Court in both the suits.

22. Consequently, the Second Appeal is allowed and the plaint in O.S.No.122 of 2008 is restored. The trial Court is directed to take up the suit in O.S.No.122 of 2008 and try along with O.S.No.90 of 2010 and decide the matter on merits and in accordance with law within a period of six months. Connected miscellaneous petition is closed. No costs."

(emphasis supplied)

17. The appellant thereafter preferred a Civil Misc. Petition in CMP No. 12498 of 2016 before the High Court against the *ex-parte* judgement and order dated 30.06.2016. It is the case of the appellant that the vakalat nama of their counsel was duly filed with the registry of the High Court on 02.09.2015, however, the same was returned on 07.09.2015 since the vakalat nama did not contain the enrolment number of the counsel in compliance with the new procedure implemented by the registry. It was contended that the counsel of the appellant

never knew about the return of the vakalat nama and that his actions were neither willful nor wanton but a *bona fide* mistake. Furthermore, when the matter was listed for hearing, the name of the counsel with the endorsement "Vakalat returned" was also not mentioned in the cause list as per usual practice. It was submitted that this was the sole reason why the matter was taken up for hearing in the absence of the counsel for the appellant. Therefore, the appellant prayed that the second appeal be re-heard as otherwise they would be subject to serious prejudice. After hearing the counsel for the appellant, the High Court rejected the miscellaneous petition on 01.09.2016 observing that the objections raised by the counsel for the appellant had no merit. Hence, the High Court concluded that setting aside the earlier judgment and order dated 30.06.2016 and reopening the matter would not serve any useful purpose.

18. In such circumstances referred to above, the appellant has filed the present appeals before this Court.

B. SUBMISSIONS ON BEHALF OF THE APPELLANT (ORIGINAL DEFENDANT NO. 2)

19. Mr. V. Prabhakar, the learned senior counsel appearing for the appellant submitted that in order to test whether the second suit would be hit by Order II Rule 2, the averments of the plaint in the first suit would have to be taken

note of with a view to ascertain whether the respondent no. 1 had any cause of action for seeking the relief claimed in the second suit, while filing the first suit itself. The counsel highlighted the following averments made by the respondent no. 1 in the plaint of the first suit:

> *"6. Quite unfortunately, the First Defendant for reasons best known to her, issued a letter on 2nd November 2007 (received by the Plaintiff on 5th November 2007) inter alia revoking the Power of Attorney issued in favour of the Plaintiff…*
>
> *7. While these are the circumstances, the Defendant with an ulterior design and ill motive issued a letter to the Plaintiff on 06.02.2008 setting forth frivolous and vexatious contentions enclosing a sum of Rs. 1,50,000/- by way of demand draft. A copy of the said letter along with a copy of the demand draft is submitted herewith as document No. 6…"*

According to the learned counsel, these aforesaid averments as regards the revocation of the Power of Attorney and the alleged return of the entire sale consideration clearly and explicitly indicate the refusal on the part of the respondent no. 2 to have the sale deed executed and registered in favour of the respondent no. 1. Despite being conscious of the explicit refusal of the respondent no. 2 to perform the contract, the respondent no. 1 had chosen to sue only for permanent injunction in the first suit without seeking the relief of specific performance. This omission amounts to a deliberate relinquishment and therefore, attracts Order II Rule 2(2) CPC.

20. The counsel also drew the Court's attention to the averments made as regards the cause of action in the plaint of the second suit:-

> "*The cause of the action for the suit arose on and from 24th Jan 2008 (sic – 2007) when the first defendant entered into the Agreement for sale with the plaintiff on 25th March, 2007 when the first defendant executed the irrevocable power of Attorney in favour of the plaintiff and when the payments were made under the Agreement for sale. On 7th September, 2007 when the agreement for sale was registered, on 24th January 2008 when the sale deed was executed by the first defendant in favour of the second defendant,* ***on and from the 2nd week of the Feb, 2008 when the plaintiff came to know of the impugned sale deeds****, on and from 24th Jan, 2008 when the first defendant registered the sale deed in respect of the suit property in favour of the second defendant* ***which amounts to deemed refusal on her part to perform her part of the Agreement for sale*** *and on all dates when the first defendant has failed to perform her part of the contract and at Thyagavalli village, Cuddalore District within the jurisdiction of this Honourable court.*"
>
> (emphasis supplied)

The counsel submitted that the above referred paragraph would indicate that the respondent no. 1 had a cause of action to seek the relief of specific performance in the first suit in view of specific knowledge of the execution of sale deed in favour of the appellant.

21. Furthermore, it was submitted that Order II Rule 2(3) permits the institution of a second suit in respect of a relief which had been omitted to be sought only if the leave of the court is obtained therefor. Although the respondent no. 1 averred that "*The Plaintiff reserved its right to file a separate suit for specific performance against the Defendant*" in the plaint of the first suit, yet admittedly no such leave was granted by the Court before which the first suit was instituted.

22. As regards the relief for declaration that the sale deed dated 24.01.2008 executed by the respondent no. 2 in favour of the appellant is null and void, which was sought for in the second suit, the counsel submitted that the respondent no. 1 was already aware of the factum of sale and this was sufficiently indicated in the plaint of the first suit through the following averment:

> "*9. The 2nd Defendant claims to have purchased the property from the first defendant while the first defendant has no right, title or interest in respect of the suit property ...*"

According to the counsel, the aforesaid averment contained in the first suit has been clarified by the respondent no. 1 in the second suit as follows:

> "*VIII. During the second week of Feb 2008, the second Defendant attempted to interfere with the plaintiff's peaceful possession and enjoyment of the suit property and they demanded possession of the suit property with the help of anti-social elements* ***with a copy of the sale deed said to have been executed by the First Defendant in its favour****. Thus, the Plaintiff came to know about the alleged sale of the suit property by the First Defendant to the Second Defendant...*"
>
> (emphasis supplied)

Based on the aforesaid, the counsel submitted that even while filing the first suit on 16.02.2008, the respondent no. 1 was aware that the appellant had purchased the suit property from the respondent no. 2 on 24.01.2008. Therefore, the relief seeking a declaration that the sale deed dated 24.01.2008 was null and void was also available on the date when the first suit had been

filed and an omission to avail this relief would also attract the provisions of Order II Rule 2.

23. It was submitted that the factum of the respondent no. 1 having knowledge of the sale made by the respondent no. 2 in favour of the appellant even before the filing of the first suit stands fortified by the fact that the appellant had been impleaded in the first suit as the second defendant. Otherwise, in the normal course, the respondent no. 1 would have filed the suit for permanent injunction only against the respondent no. 2 praying that she be restrained along with her men, agents and persons claiming through/under her from interfering with the peaceful possession and enjoyment of the suit property.

24. The counsel then submitted that extraneous matters cannot be projected as giving a cause for the second suit, unless such extraneous matters have been set forth in the agreement to sell itself so as to postpone the cause for filing a suit for specific performance. The respondent no. 1 had entered into an agreement with the respondent no. 2 on 24.01.2007 being fully aware of the facts that were prevalent on the said date and therefore, cannot plead extraneous matters for the purpose of saving the second suit. Furthermore, the cause of action paragraph in the second suit has not referred to any extraneous cause for instituting the suit for specific performance.

25. To fortify his submissions, the counsel contended that the facts of the present case are *pari materia* to those in ***Vurimi Pullarao v. Vemari Venkata Radharani*** reported in **(2020) 14 SCC 110** wherein this Court had held that the second suit for specific performance was barred under Order II Rule 2. It was also submitted that the decisions in ***Rathnavati v. Kavita Ganashamdas*** reported in **(2015) 5 SCC 223** and ***Inbasagaran v. S. Natarajan*** reported in **(2015) 11 SCC 12** which were relied upon by the High Court in the impugned judgment are clearly distinguishable on facts.

26. Finally, as regards the judgment and order dated 01.09.2016 made by the High Court in C.M.P. No. 12498 of 2016 in S.A. No. 858 of 2014, the counsel submitted that the appellant had preferred the aforesaid miscellaneous petition before the High Court since the second appeal had been decided without hearing the counsel for the appellant and this ought not to have been done. However, the High Court had rejected the prayer made by the appellant.

27. In light of all the aforesaid, the counsel prayed that both the impugned orders of the High Court dated 30.06.2016 and 01.09.2016 be set aside, the plaint in the second suit i.e., O.S. No. 122 of 2008 be rejected and the orders of the Trial Court along with that of the First Appellate Court be restored.

C. SUBMISSIONS ON BEHALF OF THE RESPONDENT NO. 1 (ORIGINAL PLAINTIFF)

28. On the other hand, Mr. V. Chitambaresh, the learned senior counsel appearing for the respondent no. 1 submitted that the cause of action as pleaded in both the suits are totally different and that the reliefs claimed in the second suit could not have been claimed in the first suit. It was submitted that the respondent no. 1 had to seek immediate protection against the threat of dispossession and therefore, it had instituted the first suit praying for injunction against the respondent no. 2 and the appellant. The provisions of Order II Rule 2 are based on the principle that no person should be vexed twice for the same cause of action. The rule provides that every suit shall include the whole of the claim and the reliefs which the plaintiff is entitled to make in respect of the cause of action. If the plaintiff fails to do so, they will not be entitled to sue for the portion of the claim or the relief so omitted subsequently. However, if there are different causes of action arising even out of the same transaction, the plaintiff cannot be expected to pray for all the reliefs in a single suit.

29. The counsel set out in brief, the causes of action, dates and events contained in the plaint of the first suit (O.S. No. 28 of 2008) wherein a prayer for the grant of permanent injunction was made as follows:

> "*The cause of action for the suit arose on 24th January 2007 when the plaintiff entered into an agreement for sale at Cuddalore, on 26th March when the defendant executed an irrevocable power of attorney in favour of the plaintiff, on 7th September, 2007 when the sale agreement was registered, on and from the second week of February 2008 when the defendants have been attempting to interfere with the plaintiff's peaceful possession and enjoyment of the suit property and on all dates when the threat of dispossession continues and at Cuddalore within the jurisdiction of this Court.*"

All the relevant dates and events set out in the first suit are:

- 24.01.2007: An agreement to sell was executed in favour of the respondent no. 1 by the vendor and the delivery of possession of the property was granted to the respondent no. 1 after receipt of the entire sale consideration.
- 26.03.2007: Registration of the irrevocable Power of Attorney by the vendor in favour of the respondent no.1 for the purpose of completion of all formalities as regards the execution and registration of the sale deed.
- 07.09.2007: Registration of the agreement for sale made by the vendor in favour of the respondent no. 1.
- 02.11.2007: Letter issued by the vendor revoking the Power of Attorney made in favour of the respondent no. 1.
- 05.11.2007: Receipt of the aforesaid letter and reply by the respondent no. 1 that the Power of Attorney could not be revoked.

- January 2008: Refusal by the Registrar to register the sale deed in favour of the respondent no. 1 on several occasions as a consequence of which a writ petition was filed before the Madras High Court.
- 06.02.2008: Another letter issued by the vendor by which a Demand Draft of Rs. 1,50,000 was sent to the respondent no. 1.
- 08.02.2008: Receipt of the aforesaid letter and reply by the respondent no. 1 to the vendor along with the return of the Demand Draft.
- 09.02.2008: Letter issued by the respondent no. 1 to the vendor stating that the property not be alienated in favour of any other person.

The counsel argued that the dates as set out hereinabove clearly indicate that despite all the actions taken by the respondent no. 1 for the execution of the sale deed in its favour, there was a threat of dispossession and that the respondent no. 1 was constrained to approach the Court urgently in order to protect its possession. Furthermore, from the aforementioned dates and events, it was not possible to make a prayer for specific performance in the first suit. It was submitted that the respondent no. 1 was not aware of the execution of the sale deed dated 24.01.2008 in favour of the appellant and it was also not the case of the appellants that they had informed the respondent no. 1 of the execution of a sale deed in their favour. Therefore, the submissions on behalf of the appellant that the respondent no. 1 was aware of the sale deed dated 24.01.2008 during the institution of the first suit is

completely unsustainable and liable to be rejected. Additionally, the respondent no. 1 had also reserved its right to sue for specific performance at a later stage and the same cannot be read against the respondent no. 1.

30. The counsel set out in brief, the causes of action, dates and events contained in the plaint of the second suit (O.S. No. 122 of 2008) wherein a prayer for specific performance of the agreement to sell dated 24.01.2007, declaration of sale deed dated 24.01.2008 as null and void, and the grant of permanent injunction was made, as follows:

> "*XXII. The cause of action for the suit arose on and from 24th January, 2007 when the first defendant entered into the agreement for sale with the plaintiff, on 26th March 2007 when the first defendant executed the irrevocable power of attorney in favour of the plaintiff and when the payments were made under the agreement for sale. On 7th September, 2007 when the agreement for sale was registered,* ***on 24th January, 2008 when the sale deed was executed by the first defendant in favour of the second defendant, on and from the 2nd week of February, 2008 when the plaintiff came to know of the impugned sale deeds, on and from 24th Jan 2008 when the first defendant registered the sale deed in respect of the suit property in favour of the second defendant which amounts to deemed refusal on her part to perform her part of the Agreement for sale and on all dates when the first defendant has failed to perform her part of the contract and at Thyagavalli Village, Cuddalore District within the jurisdiction of this Court.***"
>
> (emphasis supplied)

All the relevant dates and events set out in the second suit are:

- Various dates and on 14.12.2007: The Registrar had refused registration of the sale deed in favour of the respondent no.1.

- 21.01.2008: Respondent no. 1 filed a Writ Petition No. 1783 of 2008 before the Madras High Court challenging the actions of the Registrar. It came to the knowledge of the respondent no. 1 that the refusal on part of the Registrar was due to a G.O. dated 08.08.1986 issued by the State Government and a notification dated 23.10.2006 issued by the TNEB which reserved the lands including the suit property for a thermal station.
- 05.03.2008: The High Court rendered its judgment in the public interest litigation filed in Writ Petition No. 11453 of 2007 whereby the G.O. of 1986 and the notification of the TNEB dated 23.10.2006 were quashed.
- 06.03.2008: Respondent no. 1 sent a letter to the Tahsildar to not effect any changes to the revenue records.

In light of the aforesaid, the counsel submitted that on a mere reading it is evident that the causes of action are different and the reliefs claimed in the second suit could not have been prayed for earlier. It was pointed out that in addition to the dates and events mentioned in the first suit, the respondent no. 1 has brought forth a crucial fact in the second suit, i.e., that the High Court had rendered a decision in the public interest litigation which was filed against the refusal of the Registrar to register the sale deed.

31. It was submitted that the appellant who was the original defendant no. 2 did not make out or establish the principles which were laid down by the

Constitution Bench of this Court in ***Gurbux Singh v. Bhooralal*** reported in **AIR 1964 SC 1810**. The principles are as follows:

i. That the second suit was in respect of the same cause of action as on which the previous suit was based;

ii. That in respect of that cause of action, the plaintiff was entitled to more than one relief;

iii. That being thus entitled to more than one relief the plaintiff, without leave obtained from the Court, omitted to sue for the relief for which the second suit had been filed.

Furthermore, the counsel also placed reliance on the decisions of this Court in ***Rathnavathi*** *(supra)*, ***Inbasagaran*** *(supra)* and ***Sucha Singh Sodhi (Dead) through Legal Representatives v. Baldev Raj Walia and Anr.*** reported in **(2018) 6 SCC 733** in order to fortify his submissions as regards the non-applicability of Order II Rule 2 in the present facts and circumstances.

32. It was submitted that the respondent no. 1 is the original purchaser & is in possession of the suit property. As per the appellant's own submission, the agreement to sell in his favour was dated 20.02.2007 and this was admittedly executed after the agreement to sell dated 24.01.2007 in favour of the respondent no. 1. Therefore, the appellant cannot be said to be a *bona fide* purchaser of the suit property.

33. The counsel, in the last, submitted that the respondent no. 1 would be left with no remedy in the event the plaint in the second suit is rejected. The High Court in its impugned judgment has rightly acknowledged that the orders of the Trial Court and the First Appellate Court were erroneous and against the law. Even though it was an *ex-parte* judgment in the first instance, the High Court had heard the appellant subsequently and affirmed its judgment. Therefore, the counsel prayed that the present petition be dismissed and that the order of the High Court may not be interfered with.

D. ISSUES FOR DETERMINATION

34. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is as follows: -

i. Whether in the facts & circumstances of the present case, the principles enumerated under Order II Rule 2 CPC would bar the institution of a second suit and warrant rejection of the plaint filed by the respondent no. 1 herein in O.S. No. 122 of 2008?

E. ANALYSIS

35. Order II Rule 2 CPC reads as under:

> ***"2. Suit to include the whole claim. —***

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

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

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

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

(emphasis supplied)

I. General Principles underlying Order II Rule 2 CPC

36. The object of both the Rules 1 and 2 of Order II is to prevent the multiplicity of suits. Order II Rule 2 is founded on the principle that a person should not be vexed twice for one and the same cause. It is a rule which is directed against two evils i.e., the splitting up of claims and the splitting up of remedies. What Order II Rule 2 requires is the inclusion of the whole claim arising in respect of one and the same cause of action, in one suit. However, this must not be misunderstood to mean that every suit shall include every claim or every cause of action which the plaintiff may have against the defendant. Therefore, where

the causes of action are different in the two suits, Order II Rule 2 would have no application.

37. On a more careful perusal of the provision, it can be seen that Order II Rule 2(1) reads as - "*every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action*", whereas the words used in Order II Rule 2(3) are "*the same cause of action*". Despite being so, the words "*the cause of action*" used in Order II Rule 2(1) must be read to mean "*the particular cause of action*". Only on such a reading one can arrive at the inference that where there are different causes of action, Order II Rule 2 will not apply; and where the causes of action are the same, the bar imposed by Order II Rule 2 may apply.

38. Order II Rule 2(1) requires every suit to include the whole of the claim to which the plaintiff is entitled to in respect of a particular cause of action. However, the plaintiff has an option to relinquish any part of his claim for the purpose of bringing the suit within the jurisdiction of any court. Order II Rule 2(2) contemplates a situation where a plaintiff omits to sue or intentionally relinquishes any portion of the claim which he is entitled to make. If the plaintiff so acts, then he shall not, afterwards, sue for the part or portion of the claim that has been omitted or relinquished. It must be noticed that Order II Rule 2(2) does not contemplate the omission or relinquishment of any portion of the plaintiff's claim with the leave of the court so as to entitle him to come

back later to seek what has been omitted or relinquished. Such leave of the court is contemplated by Order II Rule 2(3) in situations where a plaintiff being entitled to more than one relief on a particular cause of action, omits to sue for all such reliefs. In such a situation, the plaintiff is precluded from bringing a subsequent suit to claim the relief(s) earlier omitted except in a situation where leave of the court had been obtained. It is, therefore, clear from a conjoint reading of the provisions of Order II Rules 2(2) and (3) CPC that the aforesaid two sub-rules of Order II Rule 2 contemplate two different situations, namely, where a plaintiff omits or relinquishes a part of a claim which he is entitled to make and, secondly, where the plaintiff omits or relinquishes one out of the several reliefs that he could have claimed in the suit. It is only in the latter situation where the plaintiff can file a subsequent suit seeking the relief omitted in the earlier suit, provided that at the time of omission to claim the particular relief, he had obtained the leave of the court in the first suit.

39. In ***Words and Phrases*** **(4th Edn.),** the meaning attributed to the phrase "cause of action" in common legal parlance was stated to be the existence of those facts which give a party the right to judicial interference on his behalf. In ***Stroud's Judicial*** **Dictionary,** a cause of action is stated to be the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact, which, if traversed, the plaintiff must prove in order to obtain a judgment.

Black's Law Dictionary states that 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. ***Halsbury's Laws of England*** **(4th Edn.)** defined cause of action as follows:

> *"'Cause of action' has been defined as meaning simply a factual situation the existence of which entitles one person to obtain from the court a remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse. 'Cause of action' has also been taken to mean that particular act on the part of the defendant which gives the plaintiff his cause of complaint, or the subject-matter of grievance founding the action, not merely the technical cause of action."*

40. The phrase "*cause of action*" has not been legislatively defined in any enactment. However, the meaning of the expression has been the subject of judicial consideration in various decisions. In ***Mohammad Khalil Khan and Others v. Mahbub Ali Mian and Others*** reported in **AIR 1949 PC 78**, the Privy Council agreed that "*cause of action*" means every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved. Furthermore, it was stated that the cause of action has no relation

whatsoever to the defence that may be set up by the defendant, nor does it depend upon the character of the relief which is prayed for by the plaintiff but refers to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour. The relevant observations are as follows:

> "*The phrase "cause of action" has not been defined in any enactment, but the meaning of it has been judicially considered in various decisions. In Read v. Brown [22 Q.B.D. 128.], Lord Esher, M.R., accepted the definition given in Cook v. Gill [(1873) 8 C.P. 107.] that it means "every fact which it would be necessary for the Plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved." Fry, L.J., agreed and said, "Everything which, if not proved, gives the defendant an immediate right to judgment, must be part of the cause of action." Lopes, L.J., said, "I agree with the definition given by the Master of Rolls of a cause of action, and that it includes every fact which it would be necessary to prove, if traversed, in order to enable a Plaintiff to maintain his action." This decision has been followed in India. The term has been considered also by the Board. In Mussammat Chand Kour v. Partab Singh [(1888) L.R. 15 I.A. 156.], Lord Watson delivering the judgment of the Board observed as follows:*
>
> > *"Now the cause of action has no relation whatever to the defence which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff. It refers entirely to the grounds set out in the plaint as the cause of action, or in other words, to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour."*
>
> (emphasis supplied)

41. The Privy Council in ***Mohammad Khalil Khan*** *(supra)* also discussed the principles governing the applicability of Order II Rule 2 CPC and the several

"tests" therefor in detail. On a thorough examination of the reasoning given in several decisions, it was opined that: -

a. The correct test is whether the claim in the new suit is in fact founded upon a cause of action distinct from that which was the foundation of the former suit;
b. Where the question is whether the cause of action in two suits is the same or not, one of the tests that is applied is whether the same evidence would support the claims in both suits. If the evidence required to support the claims is different, then the causes of action are also different;
c. The causes of action in the two suits may be considered to be the same if they are identical in substance and not merely technically identical. Therefore, the application of the rule depends, not upon any technical consideration of the identity of the forms of action, but rather upon a matter of substance.

42. The Court in ***Mohammad Khalil Khan*** *(supra)* acknowledged that what would constitute the cause of action in a suit must always depend on the particular facts of each case and the true difficulty in each instance arises only upon the application of this rule. The relevant observations are reproduced hereinbelow:

> *"As pointed out in Moonshee Bazloor Ruheem v. Shumsoonnissa Begum (11 M.I.A. 551 at p. 605) "The correct test in all cases of this kind is, whether the claim*

in the new suit is, in fact, founded on a cause of action distinct from that which was the foundation of the former suit. . . ." The object of the rule is clearly to avoid splitting up of claims and to prevent multiplicity of suits.

xxx xxx xxx

What would constitute the cause of action in a suit must always depend on the particular facts of the case. It was laid down in Brunsden v. Humphrey (14 Q.B.D. 141)that where the question is whether the cause of action in two suits is the same or not, one of the tests that is applied is whether the same evidence would support the claims in both suits; if the evidence required to support the claims is different, then the causes of action are also different. This appears to be clear from the judgments of both Brett M.R. and Bowen L.J. Brett M.R. observed as follows:

> *"……Different tests have been applied for the purpose of ascertaining whether the judgment recovered in one action is a bar to subsequent action. I do not decide this case on the ground of any test which may be considered applicable to it; but I may mention one of them; it is whether the same sort of evidence would prove the plaintiff's case in the two actions. Apply that test to the present case…"*

Bowen, L.J., quoted the following words of De Grey, L.J. in Kitchen v. Campbell [(1771) 2 W. B1. 827.] :

> *"……The principal consideration……is whether it be precisely the same cause of action in both, appearing by proper averments in a plea, or by proper facts stated in a special verdict, or a special case. And one great criterion of this identity is that the same evidence will maintain both actions. ….."*

And applying the test mentioned above the learned L. JJ., came to the conclusion in the case before the court that the causes of action as to damage done to the plaintiff's cab, and to the injury occasioned to the plaintiff's person were distinct; in other words, the cause of action on which the first suit was founded was distinct from the cause of action in the

second suit which was founded on different facts. It is important to note that in the course of his judgment Bowen L.J. also pointed out that in considering whether the causes of action in the two suits are the same, it would be enough if the causes of action in the two suits are in substance proved to be identical. After stating that it is a well settled rule of law that damages resulting from one and the same cause of action must be assessed and recovered once for all, the learned Lord Justice observed as follows:

> *"The difficulty in each instance arises upon the application of this rule, how far is the cause which is being litigated afresh the same cause in substance with that which has been the subject of the previous suit." (14 Q.B.D. 141, 147)*

At the end of the paragraph occurs the following observation:

> *"It is evident therefore that the application of the rule depends, not upon any technical consideration of the identity of forms of action, but upon matter of substance."*

Further on, the learned Lord Justice observed,

> *"….the point I now have to determine, whether the cause of action arising from damage to the plaintiff's cab is in substance identical with that which accrues in consequence of the damage caused to his person…"*

These observations show that in considering whether the cause of action in the subsequent suit is the same or not as the cause of action in the previous suit, the test to be applied is, are the causes of action in the two suits in substance—not technically—identical? Applying this test the learned Judges came to the conclusion that the causes of action in the two suits in Brunsden v. Humphrey[(14 Q.B.D. 141). were distinct.

Observations to the same effect appear in certain decisions of this Board. In Soorjomonee Dayee v. Suddanund [12 Beng. [(1873) 12 Beng L.R. 304, 315], their Lordships stated as follows:—

"Their Lordships are of opinion that the term "cause of action" is to be construed with reference rather to the substance than to the form of action. ..."

In Krishna Behari Roy v. Brojeswari Chowdranne [(1875) LR 2.I.A. 283, 285.], Sir Montague Smith in delivering the judgment of the Board observed:—

"... their Lordships are of opinion that the expression "cause of action" cannot be taken in its literal and most restricted sense. But however that may be..."

The decision in the Rajah of Pittapur v. Sri Rajah Venkata Mahipati Surya [(1885) L.R. 12.I.A. 116]does not advance the case of the appellants. In that case the plaintiff sued to recover immovable property in consequence of having been improperly turned out of possession and afterwards sued to recover from the same defendant movable property in consequence of its wrongful detention. Their title to the said estate as well as to the half share of the personality now sued for was under a will of one Bharayamma. On the facts, their Lordships held that the causes of action in the two suits were distinct. They held that:

"The claim in respect of the personality was not a claim arising out of the cause of action which existed in consequence of the defendants having improperly turned the plaintiffs out of possession of Viravaram [Zemindari property]. It was a distinct cause of action altogether, and did not arise at all out of the other.".

Referring to the above case. Lord Buckmaster stated the true principle concisely as follows in Muhammad Hafiz v. Muhammad Zakariya [(1921) L.R. 49.I.A. 9, 15]:

". . . . the cause of action is the cause of action which gives occasion for and forms the foundation of the suit, and if that cause enables a man to ask for larger and wider relief than that to which he limits his claim, he cannot afterwards seek to recover the balance by independent proceedings."

In similar language what was decided in Brunsden v. Humphrey (14 Q.B.D. 141) may be stated as

follows, namely, that the cause of action which gave occasion for and formed the foundation for the first suit in that case was different from the cause of action which gave occasion for and formed the foundation for the second suit."

(emphasis supplied)

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

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

(1) The correct test in cases falling under Or.2, r.2, is "whether the claim in the new suit is, in fact, founded upon a cause of action distinct from that which was the foundation for the former suit." [Moonshee Buzloor Ruheem v. Shumsoonnissa Begum [11 M.I.A. 551, 605.]].

(2) The cause of action means every fact which will be necessary for the Plaintiff to prove, if traversed, in order to support his right to the judgment. [Read v. Brown (22 Q.B.D., 128, 131)].

(3) If the evidence to support the two claims is different, then the causes of action are also different. [Brunsden v. Humphrey [14 Q.B.D. 141].

(4) The causes of action in the two suits may be considered to be the same if in substance they are identical. [Brunsden v. Humphrey [14 Q.B.D. 141].

(5) The cause of action has no relation whatever to the defence that may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the Plaintiff. It refers "to the media upon which the Plaintiff asks the Court to arrive at a conclusion in his favour. [Muss. Chand Kour v. Partab Singh [54 L.R. 15 I.A. 156, 157]. This observation was made by Lord Watson in a case under s. 43 of the Act of 1882 (corresponding to Or.2, r.2), where plaintiff made various claims in the same suit."

(emphasis supplied)

44. Therefore, the phrase "*cause of action*" for the purposes of Order II Rule 2 would mean the cause of action which gives an occasion for and forms the foundation of the suit. If that cause enables a person to ask for a larger and wider relief than that to which he limits his claim, he cannot be permitted to recover the balance reliefs through independent proceedings afterwards, especially when the leave of the court has not been obtained.

45. A Constitutional Bench of this Court in ***Gurbux Singh*** *(supra)* emphasized that the plaint in the former suit would have to be produced in order to sustain a plea of applicability of Order II Rule 2 in the subsequent suit. While stating so, the Court observed that the "cause of action" would be the facts which the plaintiff had then alleged to support the right to the relief that he claimed. The Court also laid down that the defendant who seeks to take recourse to a successful plea under Order II Rule 2(3) must make out the following: (a) that the second suit was in respect of the same cause of action as that on which the previous suit was based; (b) that in respect of that cause of action, the plaintiff was entitled to more than one relief; and (c) that being thus entitled to more than one relief, the plaintiff, without any leave obtained from the Court, omitted to sue for the relief for which the second suit had been filed. The Court had observed as under:

> *"**6.** <u>In order that a plea of a Bar under Order 2 Rule 2(3) of the Civil Procedure Code should succeed the defendant who raises the plea must make out; (i) that the second suit was in</u>*

respect of the same cause of action as that on which the previous suit was based; (2) that in respect of that cause of action the plaintiff was entitled to more than one relief; (3) that being thus entitled to more than one relief the plaintiff, without leave obtained from the Court omitted to sue for the relief for which the second suit had been filed. From this analysis it would be seen that the defendant would have to establish primarily and to start with, the precise cause of action upon which the previous suit was filed, for unless there is identity between the cause of action on which the earlier suit was filed and that on which the claim in the latter suit is based there would be no scope for the application of the bar. No doubt, a relief which is sought in a plaint could ordinarily be traceable to a particular cause of action but this might, by no means, be the universal rule. As the plea is a technical bar it has to be established satisfactorily and cannot be presumed merely on basis of inferential reasoning. It is for this reason that we consider that a plea of a bar under Order 2 Rule 2 of the Civil Procedure Code can be established only if the defendant files in evidence the pleadings in the previous suit and thereby proves to the Court the identity of the cause of action in the two suits. It is common ground that the pleadings in CS 28 of 1950 were not filed by the appellant in the present suit as evidence in support of his plea under Order 2 Rule 2 of the Civil Procedure Code. The learned trial Judge, however, without these pleadings being on the record inferred what the cause of action should have been from the reference to the previous suit contained in the plaint as a matter of deduction. At the stage of the appeal the learned District Judge noticed this lacuna in the appellant's case and pointed out, in our opinion, rightly that without the plaint in the previous suit being on the record, a plea of a bar under Order 2 Rule 2 of the Civil Procedure Code was not maintainable."

(emphasis supplied)

Therefore, there must exist an identity between the cause of action which forms the basis of the former and the subsequent suit. Since the plea taken under Order II Rule 2 is a technical one, it has to be established

satisfactorily and it cannot be presumed merely on the basis of inferential reasoning.

46. In ***S. Nazeer Ahmed v. State Bank of Mysore and Others*** reported in **(2007) 11 SCC 75**, this Court categorically held that if the defendant wishes to show that the causes of action were identical in both suits, it is necessary for him to have marked the earlier plaint in evidence and then make out that there was a relinquishment of a relief by the plaintiff, without the leave of the Court. It was also stated that Order II Rule 2 is directed towards securing an exhaustion of the relief in respect of a cause of action and not to the inclusion in one and the same action of different causes of action, even though they may arise from the same transaction. In other words, a number of causes of action may arise out of the same transaction and it is not the mandate of Order II Rule 2 that they should all be included in one suit. On the other hand, what is required is that every suit shall include the "whole of the claim" arising out of "one and the same cause of action".

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

i. The object of Order II Rule 2 is to prevent the multiplicity of suits and the provision is founded on the principle that a person shall not be vexed twice for one and the same cause.

ii. The mandate of Order II Rule 2 is the inclusion of the whole claim arising in respect of one and the same cause of action, in one suit. It

must not be misunderstood to mean that all the different causes of action arising from the same transaction must be included in a single suit.

iii. Several definitions have been given to the phrase "*cause of action*" and it can safely be said to mean – "*every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court*". Such a cause of action has no relation whatsoever to the defence that may be set up by the defendant, nor does it depend upon the character of the relief which is prayed for by the plaintiff but refers to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour.

iv. Similarly, several tests have been laid out to determine the applicability of Order II Rule 2 to a suit. While it is acknowledged that the same heavily depends on the particular facts and circumstances of each case, it can be said that a correct and reliable test is to determine whether the claim in the new suit is in fact founded upon a cause of action distinct from that which was the foundation of the former suit. Additionally, if the evidence required to support the claims is different, then the causes of action can also be considered to be different. Furthermore, it is necessary for the causes of action in the two suits to be identical in substance and not merely technically identical.

v. The defendant who takes shelter under the bar imposed by Order II Rule 2(3) must establish that (a) the second suit was in respect of the same

cause of action as that on which the previous suit was based; (b) in respect of that cause of action, the plaintiff was entitled to more than one relief; and (c) being thus entitled to more than one relief, the plaintiff, without any leave obtained from the Court, omitted to sue for the relief for which the second suit had been filed.

vi. The defendant must also have produced the earlier plaint in evidence in order to establish that there is an identity in the causes of action between both the suits and that there was a deliberate relinquishment of a larger relief on the part of the plaintiff.

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

II. Status/Stage of the first suit is immaterial for the applicability of Order II Rule 2 CPC

48. A careful perusal of Order II Rule 2 would indicate that it does not impose any restriction on the applicability of the principles therein based on the stage or status of the first suit. In other words, there is no clear requirement that the first suit either be pending or disposed of in order to make a plea of bar under Order II Rule 2 as regards the second or subsequent suit. It is conspicuous by the absence of such a stipulation that the law makers thought fit that the bar under this provision would apply if there is an identity in the causes of action of both suits and irrespective of whether the first suit is disposed or not.

49. Furthermore, the laudable object behind this provision is to prevent the multiplicity of suits and the splitting of claims. If it is held that it is a necessary condition for the first suit to be disposed of, for a plea under Order II Rule 2 to be maintainable, parties would still be able to file multiple suits with the excuse that the first suit is pending. Declaring so would not serve to further the object of Order II Rule 2 in any manner whatsoever. On the contrary, this would run counter to the objective behind the enactment of the provision and only serve to continuously vex the defendants. Therefore, reading such a qualification into the rule which is clearly absent in the letter of the provision would be unjustified.

50. That the disposal of the first suit is not a requirement under Order II Rule 2 was clarified by this Court in ***Virgo Industries (Eng.) Private Limited v. Venturetech Solutions Private Limited*** reported in **(2013) 1 SCC 625**. Herein, the Court held that the principles under Order II Rule 2 would have an application even when the subsequent suit is filed during the pendency of the first suit. A plea under this provision would be available irrespective of the stage at which the prior suit is at. The relevant observation is as follows:

> "***17.*** *The learned Single Judge of the High Court had considered, and very rightly, to be bound to follow an earlier Division Bench order in R. Vimalchand v. Ramalingam [(2002) 3 MLJ 177] holding that the provisions of Order 2 Rule 2 CPC would be applicable only when the first suit is disposed of. As in the present case the second set of suits were filed during the*

pendency of the earlier suits, it was held, on the ratio of the aforesaid decision of the Division Bench of the High Court, that the provisions of Order 2 Rule 2(3) will not be attracted. Judicial discipline required the learned Single Judge of the High Court to come to the aforesaid conclusion. However, we are unable to agree with the same in view of the object behind the enactment of the provisions of Order 2 Rule 2 CPC as already discussed by us, namely, that Order 2 Rule 2 CPC seeks to avoid multiplicity of litigations on the same cause of action. If that is the true object of the law, on which we do not entertain any doubt, the same would not stand fully subserved by holding that the provisions of Order 2 Rule 2 CPC will apply only if the first suit is disposed of and not in a situation where the second suit has been filed during the pendency of the first suit. Rather, Order 2 Rule 2 CPC will apply to both the aforesaid situations. Though direct judicial pronouncements on the issue are somewhat scarce, we find that a similar view had been taken in a decision of the High Court at Allahabad in Murti v. Bhola Ram [ILR (1894) 16 All 165] and by the Bombay High Court in Krishnaji Ramchandra v. Raghunath Shankar [AIR 1954 Bom 125]."

(emphasis supplied)

51. In light of the aforementioned, it is re-affirmed that the stage at which the first suit is, would not be a material consideration in deciding the applicability of the bar under Order II Rule 2. What needs to be looked into is whether the cause of action in both suits is one and the same in substance, and whether the plaintiff is agitating the second suit for claiming a relief which was very well available to him at the time of filing the first suit. Therefore, the fact that the first suit i.e., O.S. No. 28 of 2008 is still pending before the concerned court would have no material impact in deciding whether the subsequent suit filed as O.S. No. 122 of 2008 is barred by the principles under Order II Rule 2.

III. The plaints have to be read as a whole to determine the applicability of the bar under Order II Rule 2 CPC for the purpose of rejection of plaint under Order VII Rule 11(d) CPC

52. In ***Saleem Bhai and Others v. State of Maharashtra and Others*** reported in **(2003) 1 SCC 557,** the Court was faced with the issue whether the filing of a written statement by the contesting defendant was necessary in order to decide an application for rejection of plaint made under Order VII Rule 11(a) and (d). It was held that, for this purpose, the relevant facts which need to be looked into are the averments in the plaint and it is those averments which are germane. The relevant observations are as under:

> "*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 thereunder 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 (d) 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, therefore, a direction to file the written statement without deciding the application under Order 7 Rule 11 CPC 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.*"
>
> (emphasis supplied)

53. In yet another decision of this Court in ***Ram Prakash Gupta v. Rajiv Kumar Gupta and Others*** reported in **(2007) 10 SCC 59,** this Court discussed the approach that Courts must adopt while considering whether the plaint is to be rejected under Order VII Rule 11(d). It was stated that the proper approach would be to verify the entire averments in the plaint. A few lines or a passage must not be read in isolation and the pleadings have to be read as a whole in order to ascertain its true import. The relevant observations are thus:

> "*21. As observed earlier, before passing an order in an application filed for rejection of the plaint under Order 7 Rule 11(d), it is but proper to verify the entire plaint averments. The abovementioned materials clearly show that the decree passed in Suit No. 183 of 1974 came to the knowledge of the plaintiff in the year 1986, when Suit No. 424 of 1989 titled Assema Architect v. Ram Prakash was filed in which a copy of the earlier decree was placed on record and thereafter he took steps at the earliest and filed the suit for declaration and in the alternative for possession. It is not in dispute that as per Article 59 of the Limitation Act, 1963, a suit ought to have been filed within a period of three years from the date of the knowledge. The knowledge mentioned in the plaint cannot be termed as inadequate and incomplete as observed by the High Court. While deciding the application under Order 7 Rule 11, few lines or passage should not be read in isolation and the pleadings have to be read as a whole to ascertain its true import. We are of the view that both the trial court as well as the High Court failed to advert to the relevant averments as stated in the plaint.*"
>
> (emphasis supplied)

54. The decision of this Court in ***Coffee Board v. Ramesh Exports Private Limited*** reported in **(2014) 6 SCC 424** held that in order to determine whether a suit is barred by Order II Rule 2, the Courts must examine the cause of action

pleaded by the plaintiff in his plaints filed in the relevant suits. However, considering the technicality of the plea under this provision, both the plaints must be read as a whole to identify the cause of action which is necessary for the plaintiff to prove, if traversed. The relevant observations are reproduced hereinbelow:

> "***12.*** *The courts in order to determine whether a suit is barred by Order 2 Rule 2 must examine the cause of action pleaded by the plaintiff in his plaints filed in the relevant suits (see S. Nazeer Ahmed v. State Bank of Mysore [(2007) 11 SCC 75]).* *Considering the technicality of the plea of Order 2 Rule 2, both the plaints must be read as a whole to identify the cause of action, which is necessary to establish a claim or necessary for the plaintiff to prove if traversed. Therefore, after identifying the cause of action if it is found that the cause of action pleaded in both the suits is identical and the relief claimed in the subsequent suit could have been pleaded in the earlier suit, then the subsequent suit is barred by Order 2 Rule 2.*"
>
> (emphasis supplied)

55. In ***Chhotanben and Another v. Kiritbhai Jalkrushnabhai Thakkar and Others*** reported in **(2018) 6 SCC 422,** this Court was of the opinion that for the purpose of rejecting the plaint under Order VII Rule 11(d) CPC, the averments made in the plaint must be looked into and the plaint is required to be read as a whole. It was added that the defence available to the defendants or the plea taken by them in their written statement or any application filed by them cannot be the bases to decide the application under Order VII Rule 11(d). It is only the averments in the plaint that are germane. The relevant observations are as thus:

> "*15. What is relevant for answering the matter in issue in the context of the application under Order 7 Rule 11(d) CPC, is to examine the averments in the plaint. The plaint is required to be read as a whole. The defence available to the defendants or the plea taken by them in the written statement or any application filed by them, cannot be the basis to decide the application under Order 7 Rule 11(d). Only the averments in the plaint are germane...*"
>
> (emphasis supplied)

56. Order VII Rule 11(d) reads as – "*where the suit appears from the statement in the plaint to be barred by any law*". In light of the aforesaid, it follows that before rejecting the plaint under Order VII Rule 11(d), the Courts must ensure that the plaint is read as a whole and its entire averments are looked into. A few lines or passages must not be read in isolation and it is imperative that the pleadings are read as a whole for ascertaining the true import of the averments therein. In performing such a holistic reading, it must be deduced whether the causes of action in both the suits are identical in substance in order to sustain a successful plea under Order II Rule 2. It would be a reductive approach to only cull out the cause of action paragraphs from the respective plaints and decide that they disclose the same cause of action on mere comparative overview.

IV. Application of the principles in Order II Rule 2 CPC to the institution of a suit for specific performance when the relief of permanent injunction was sought in a previous suit.

57. In ***Virgo Industries*** *(supra),* initially two suits had been filed by the plaintiff-respondent for permanent injunction in order to restrain the defendant-appellant from alienating and encumbering the suit properties on which there were agreements to sell made in favour of the plaintiff-respondent. Subsequently, the plaintiff-respondent filed two more suits seeking the relief of specific performance of the said agreements. It was held that the bar under Order II Rule 2 would apply to the subsequent set of suits filed for specific performance since the plaintiff itself had claimed in the averments of the first set of plaints that the defendant had no intention to honour the agreement to sell. Therefore, the foundation for the relief of permanent injunction in the initial set of suits had furnished a complete cause of action to also sue for the relief of specific performance. It was opined that since the said relief was omitted and no leave in this regard was obtained or granted by the Court, the second set of suits were not maintainable. The relevant observations are reproduced hereinbelow:

> "*13. A reading of the plaints filed in CSs Nos. 831 and 833 of 2005 show clear averments to the effect that after execution of the agreements of sale dated 27-7-2005 the plaintiff received a letter dated 1-8-2005 from the defendant conveying the information that the Central Excise Department was contemplating issuance of a notice restraining alienation of the property. The advance amounts paid by the plaintiff to the defendant by cheques were also returned. According to the plaintiff it was surprised by the aforesaid stand of the defendant who had earlier represented that it had clear and marketable title to the property. In Para 5 of the plaint, it is stated that the encumbrance certificate*

> *dated 22-8-2005 made available to the plaintiff did not inspire confidence of the plaintiff as the same contained an entry dated 1-10-2004. The plaintiff, therefore, seriously doubted the claim made by the defendant regarding the proceedings initiated by the Central Excise Department. In the aforesaid paragraph of the plaint it was averred by the plaintiff that the defendant is "finding an excuse to cancel the sale agreement and sell the property to some other third party". In the aforesaid paragraph of the plaint, it was further stated that "in this background, the plaintiff submits that the defendant is attempting to frustrate the agreement entered into between the parties".*
>
> *14. The averments made by the plaintiff in CSs Nos. 831 and 833 of 2005, particularly the pleadings extracted above, leave no room for doubt that on the dates when CSs Nos. 831 and 833 of 2005 were instituted, namely, 28-8-2005 and 9-9-2005, the plaintiff itself had claimed that facts and events have occurred which entitled it to contend that the defendant had no intention to honour the agreements dated 27-7-2005. In the aforesaid situation it was open for the plaintiff to incorporate the relief of specific performance along with the relief of permanent injunction that formed the subject-matter of the above two suits. The foundation for the relief of permanent injunction claimed in the two suits furnished a complete cause of action to the plaintiff in CSs Nos. 831 and 833 to also sue for the relief of specific performance. Yet, the said relief was omitted and no leave in this regard was obtained or granted by the Court*."
>
> (emphasis supplied)

58. Thus, what is discernible from the above is that in ***Virgo Industries*** *(supra),* after the execution of the agreement to sale, the defendant had issued a letter which conveyed that the Central Excise Department was contemplating issuing a notice restraining alienation of the suit property on account of a pending revenue demand. Under this pretext, the advance amount paid by the plaintiff was returned by the defendant. These were all circumstances that

were referred to in the plaint of the first suit itself. Moreover, the plaintiff also made an averment in the plaint of the first suit that the defendant is "*finding an excuse to cancel the sale agreement and sell the property to some third party*" and also that "*the defendant is attempting to frustrate the agreement entered into between the parties*". Therefore, this Court had held that there is no doubt regarding the fact that the plaintiff was aware of the defendant's intention to not honour the agreement which they had entered into and that it was open for the plaintiff to avail the relief of specific performance along with the relief of permanent injunction.

59. This Court in ***Inbasagaran*** (supra) was also faced with a similar issue wherein it had to decide the applicability of Order II Rule 2 to the subsequent suit for specific performance. However, the decision herein deals with a slightly different factual situation. The respondent was allotted the suit property as a house site by the Housing Board through a lease-cum-sale agreement, however, on a condition that a sale deed would be executed in favour of the respondent only when he constructs a building in the suit property. In the meantime, the respondent had entered into an agreement for sale with the appellant and obtained a part of the sale consideration as well. It was agreed that the appellant shall prepare a plan for construction of the building in the suit property, the respondent would get it approved and thereafter, the appellant would undertake the construction at his own cost. The

appellant took possession of the suit property and completed the construction. Thereafter, the Housing Board on 18.02.1985 had executed the sale deed in favour of the respondent. The appellant alleged that the respondent attempted to forcefully take possession of the building constructed on the suit property and was therefore, constrained to file a suit for permanent injunction on 11.09.1985. In response to this, the respondent also filed a similar suit for permanent injunction to restrain the appellant from interfering with his possession and enjoyment of the suit property. It was in this suit for injunction that the respondent disclosed to the appellant that the execution of the sale deed in his favour by the Housing Board was complete. After the said factum of transfer was brought to the notice of the appellant, he had sent a legal notice to the respondent and on 25.04.1986, he filed another suit for specific performance of the agreement to sell. In short, since the plaintiff-appellant only came to know of the sale deed executed by the Housing Board in favour of the respondent after the institution of the first suit, the cause of action was held to be different and distinct in both the suits. There relevant observations are as under:

> "*18. In the subsequent suit filed by the plaintiff being OS No. 252 of 1986, a decree for specific performance of the agreement was claimed on the ground inter alia that the defendant in the earlier suit took a defence that the sale agreement was allegedly given up or dropped by the plaintiff. The cause of action, as pleaded by the plaintiff in the subsequent suit, arose when the respondent-defendant disclosed the transfer made by the Housing Board in his*

favour and finally when the defendant was exhibiting an intention of not performing his part of the sale agreement and in reply to the lawyer's notice the defendant made a false allegation and denied to execute the sale deed as per the agreement.

19. A perusal of the pleadings in the two suits and the cause of action mentioned therein would show that the cause of action and reliefs sought for are quite distinct and are not same.

xxx xxx xxx

27. Besides the above, on reading of the plaint of the suit for injunction filed by the plaintiff, there is nothing to show that the plaintiff intentionally relinquished any portion of his claim for the reason that the suit was for only injunction because of the threat from the side of the defendant to dispossess him from the suit property. It was only after the defendant in his suit for injunction disclosed the transfer of the suit property by the Housing Board to the defendant and thereafter denial by the defendant in response to the legal notice by the plaintiff, the cause of action arose for filing the suit for specific performance."

(emphasis supplied)

60. In ***Inbasagaran*** *(supra)*, the Court was of the view that the decision adopted in ***Virgo Industries*** *(supra)* cannot be applied since in ***Inbasagaran*** *(supra)* the suit for injunction was filed due to the threat given by the respondent to dispossess him from the suit property and there was no allegation made in the first suit that the respondent was threatening to alienate or transfer the property to a third party in order to frustrate the agreement.

61. Similarly, in ***Rathnavathi*** (supra), the Court refused to accept the submission that the second suit for specific performance was barred by the principles

underlying Order II Rule 2. Here, an agreement for sale was entered into between the plaintiff and defendant no. 2 for the sale of the suit house and part payment was also made by the plaintiff. Later, on 07.01.2000, the plaintiff had filed the first suit against the defendants for seeking permanent injunction restraining the defendants from interfering with the plaintiff's possession over the suit house since the defendant no. 1 who is a total stranger to the suit house, along with defendant no. 2 who was the vendor, had visited the suit house on 02.01.2000 and threatened to dispossess the plaintiff from the suit property. In the written statement of this first suit, it was disclosed to the plaintiff that the defendant no. 2 had sold the house to defendant no. 1 on 09.02.1998. Subsequently, a legal notice dated 06.03.2000 was served upon the defendant no. 2 and the plaintiff had filed a second suit seeking the relief of specific performance. Thereafter, the plaintiff sought to add a prayer for the cancellation of the sale deed alleged to have been executed by the defendant no. 2 in favour of the defendant no. 1 in the second suit by way of an amendment and the same was allowed. It was under such circumstances that this Court had held that the rigours of Order II Rule 2 were not attracted and observed as thus:

> *"22. Coming first to the legal question as to whether bar contained in Order 2 Rule 2 CPC is attracted so as to non-suit the plaintiff from filing the suit for specific performance of the agreement, in our considered opinion, the bar is not attracted.*
>
> *xxx xxx xxx*

25. In the instant case when we apply the aforementioned principle, we find that the bar contained in Order 2 Rule 2 CPC is not attracted because of the distinction in the cause of action for filing the two suits:

25.1. So far as the suit for permanent injunction is concerned, it was based on a threat given to the plaintiff by the defendants to dispossess her from the suit house on 2-1-2000 and 9-1-2000. This would be clear from reading Para 17 of the plaint. So far as the cause of action to file suit for specific performance of the agreement is concerned, the same was based on non-performance of agreement dated 15-2-1989 by Defendant 2 in the plaintiff's favour despite giving legal notice dated 6-3-2000 to Defendant 2 to perform her part.

25.2. In our considered opinion, both the suits were, therefore, founded on different causes of action and hence could be filed simultaneously...

xxx xxx xxx

28. We cannot accept the submission of the learned Senior Counsel for the appellants when she contended that since both the suits were based on identical pleadings and when cause of action to sue for relief of specific performance of agreement was available to the plaintiff prior to filing of the first suit, the second suit was hit by bar contained in Order 2 Rule 2 CPC.

29. The submission has a fallacy for two basic reasons. Firstly, as held above, cause of action in two suits being different, a suit for specific performance could not have been instituted on the basis of cause of action of the first suit. Secondly, merely because pleadings of both suits were similar to some extent did not give any right to the defendants to raise the plea of bar contained in Order 2 Rule 2 CPC. It is the cause of action which is material to determine the applicability of bar under Order 2 Rule 2 CPC and not merely the pleadings. For these reasons, it was not necessary for the plaintiff to obtain any leave from the court as provided in Order 2 Rule 2 CPC for filing the second suit.

30. Since the plea of Order 2 Rule 2 CPC, if upheld, results in depriving the plaintiff to file the second suit, it is necessary for the court to carefully examine the entire factual matrix of both the suits, the cause of action on which the suits are founded, the reliefs claimed in both the suits and lastly, the legal provisions applicable for grant of reliefs in both the suits."

(emphasis supplied)

62. The Court in ***Rathnavathi*** *(supra)* had added that the defendants would not be justified in raising a plea of bar under Order II Rule 2 merely on account of the pleadings of both the suits being similar to some extent. It is the identity of the cause of action which must be a material consideration for the Courts and not the pleadings alone. Additionally, since a successful plea under this provision would result in depriving the plaintiff of his right to file the second suit, Courts must be careful and should examine the entire factual matrix of both the suits, the causes of action on which they are founded, the reliefs which are claimed in both suits and the legal provisions applicable for the grant of reliefs.

63. In ***Vurimi Pullarao*** (supra), it was observed by this Court that the plaint of the first suit filed for injunction contained a recital of the agreement to sell; the price fixed for the bargain between the parties; the payment of earnest money; the handing over of possession; the demand for performance and the failure of the defendant to perform the contract. It was held that the cause of action for the suit for specific performance had arisen when the plaintiff had

notice of denial by the defendant to perform the contract. This notice of denial was much prior to the date of institution of the first suit. Therefore, the plaintiff was entitled to sue for specific performance but however, omitted to sue for such relief in the initial suit. There was also a complete identity of the causes of action between the two suits. Hence, this Court had arrived at the conclusion that in the absence of any leave obtained from the court for having omitted the claim for the relief of specific performance, the second suit would be hit by the provisions of Order II Rule 2(3). The relevant observations are reproduced hereinbelow:

> "*20. In the present case, the earlier suit for injunction was instituted on 30-10-1996. Para 2 of the plaint in the suit for injunction contained a recital of the agreement to sell dated 26-10-1995; the price fixed for the bargain between the parties; the payment of earnest money; the handing over of possession; the demand for performance and the failure of the defendant to perform the contract. Indeed, the plaintiff also asserted that she was going to institute a suit for specific performance of the agreement dated 26-10-1995. Under the agreement dated 26-10-1995, time for completion of the sale was reserved until 25-10-1996. Notice of performance was issued on 11-10-1996 to which the defendant had replied on 13-10-1996. The cause of action for the suit for specific performance had arisen when the plaintiff had notice of the denial by the defendant to perform the contract. On 30-10-1996 when the suit for injunction was instituted, the plaintiff was entitled to sue for specific performance. There was a complete identity of the cause of action between the earlier suit (of which para 2 of the plaint has been reproduced in the earlier part of the judgment) and the cause of action for the subsequent suit. Yet, as the record indicates, the plaintiff omitted to sue for specific performance. This is a relief for which the plaintiff was entitled to sue when the earlier suit for injunction was instituted. Having omitted the claim for*

> *relief without the leave of the Court, the bar under Order 2 Rule 2(3) would stand attracted.*"
>
> (emphasis supplied)

64. On a detailed examination of the aforementioned decisions, it can be seen that the variance in opinion that can observed as regards the applicability of the bar contained in Order II Rule 2 is due to a pertinent factual distinction i.e., the date when the refusal to perform the agreement for sale on part of the defendant was brought to the notice of the plaintiff. While in ***Virgo Industries*** *(supra)* and ***Vurimi Pullarao*** *(supra)* the plaintiffs had notice of the defendant's refusal to perform even prior to the institution of the first suit for injunction, in ***Inbasagaran*** *(supra)* and ***Rathnavathi*** *(supra),* such a knowledge of the fact that the defendants had no intention to perform the agreement for sale was acquired after the first suit was instituted and through the defence which was put forth by the defendants to the first suit. This was precisely why the plea of bar under Order II Rule 2 was said to apply to the facts in ***Virgo Industries*** *(supra)* and ***Vurimi Pullarao*** *(supra)* and to be inapplicable to the facts in ***Inbasagaran*** *(supra)* and ***Rathnavathi*** *(supra).*

65. If the factual scenario of the present case is superimposed to those in the decisions as aforesaid, it can be seen that the respondent no. 1 (plaintiff) had filed a suit for permanent injunction against both the respondent no. 2 and the appellant in order to restrain them from interfering with the peaceful

possession and enjoyment of the suit property by the respondent no. 1. In the plaint of the first suit for injunction, the respondent no. 1 averred as follows:

> "*6. Quite unfortunately, the First Defendant for reasons best known to her, issued a letter on 2nd November 2007 (received by the Plaintiff on 5th November 2007) inter alia revoking the Power of Attorney issued in favour of the Plaintiff…*
>
> *7. While these are the circumstances, the Defendant with an ulterior design and ill motive issued a letter to the Plaintiff on 06.02.2008 setting forth frivolous and vexatious contentions enclosing a sum of Rs. 1,50,000/- by way of demand draft. A copy of the said letter along with a copy of the demand draft is submitted herewith as document No. 6…*
>
> *8. … The plaintiff also issued a notice through its counsel on 09.02.08 calling upon her not to sell the suit property to any person…"*
>
> (emphasis supplied)

66. The revocation of the Power of Attorney which was issued in favour of the respondent no. 1 for the performance of all formalities in connection with the registration and execution of the sale deed on 02.11.2007, combined with the return of the entire sale consideration which was given by the respondent no. 1 on 06.02.2008 under alleged false pretexts, also combined with the lack of response to the letter dated 09.02.2008, was sufficient for the respondent no. 1, as a reasonable individual, to infer that the respondent no. 2 did not intend to perform her part of the agreement for sale dated 24.01.2007 and execute the sale deed in favour of the respondent no. 1.

67. Furthermore, in the plaint of the first suit, the respondent no. 1 alluded to the fact that it was aware of the purchase of the suit property by the appellant and stated thus:

> "*9. The 2nd defendant claims to have purchased the property from the first defendant while the first defendant has no right, title or interest in respect of the suit property after having received the entire sale consideration. The second defendant cannot claim any right through the first defendant in respect of the suit property.*
>
> *10. As already stated, the first defendant has no right title or interest in respect of the suit property after receiving the entire sale consideration from the plaintiff. The plaintiff's possession is protected statutorily u/s Section 53 A of the Transfer of property Act. The second defendant cannot claim itself to be a bona fide purchaser as much as it is fully aware of the subsisting sale agreement which took place between the plaintiff and the first defendant.*"
>
> (emphasis supplied)

68. Adding to the above, in the plaint of the second suit, the respondent no. 1 additionally made an averment that when the respondent no. 2 and appellant i.e., the original defendants, demanded possession of the suit property during the second week of February 2008, they furnished a copy of the sale deed which was said to have been executed by the respondent no. 2 in favour of the appellant. This no doubt refers to the sale deed dated 24.01.2008. Thereafter, the respondent no. 1 proceeds to agree that the act on part of the respondent no. 2 in revoking the Power of Attorney and also executing a sale deed in respect of the suit property in favour of the appellant would by themselves sufficiently prove that the respondent no. 2 had refused to perform her part of

the contract. Admittedly, both the events pre-existed the date of institution of the first suit. The specific averments are as follows:

> "*VIII. During the second week of Feb 2008, the second Defendant attempted to interfere with the plaintiff's peaceful possession and enjoyment of the suit property and they demanded possession of the suit property with the help of anti-social elements with a copy of the sale deed said to have been executed by the First Defendant in its favour. Thus, the Plaintiff came to know about the alleged sale of the suit property by the First Defendant to the Second Defendant...*"
>
> *IX. The facts set out above would reveal that while the plaintiff has performed his part of the contract, the first defendant has failed to perform her part of the contract. The act on the part of the first defendant in revoking the power of Attorney and executing a sale deed in respect of the suit property in favour of the second defendant itself would prove that the first defendant has refused to perform her part of the contract.*
>
> *xxx xxx xxx*
>
> *XVI. While the circumstances are such, the first defendant with an ulterior design and ill motive, issued a letter on 5th February 2008, forwarding a Demand Draft for Rs. 1,50,000/- inter alia mentioning that she is enclosing the said draft in connection with the repayment for the purchase of vehicle. A cursory perusal of the letter would reveal the reveal the motive behind issuing such a letter and the said letter has been issued with ulterior design and motive and the statement made in the letter is a blatant lie. While on 24th Jan, 2007, the first defendant has entered into an Agreement for Sale, executed the irrevocable power of Attorney and received the entire sale consideration, it is not understood as to what warranted the return of the demand draft. Evidently, this demand draft has been sent after executing the impugned sale deed illegally in favour of the second defendant...*"
>
> (emphasis supplied)

69. The averments as regards the cause of action in the plaint of the second suit also indicate the fact that the respondent no. 1 was aware of the alleged sale deed dated 24.01.2008 entered into between the respondent no. 2 and the appellant during the second week of February 2008 and that this amounted to a deemed refusal on part of the respondent no.2 to perform the agreement for sale. It reads as thus:

> "*The cause of the action for the suit arose on and from 24th Jan 2008 (sic – 2007) when the first defendant entered into the Agreement for sale with the plaintiff on 25th March, 2007 when the first defendant executed the irrevocable power of Attorney in favour of the plaintiff and when the payments were made under the Agreement for sale. On 7th September, 2007 when the agreement for sale was registered, on 24th January 2008 when the sale deed was executed by the first defendant in favour of the second defendant, on and from the 2nd week of the Feb, 2008 when the plaintiff came to know of the impugned sale deeds, on and from 24th Jan, 2008 when the first defendant registered the sale deed in respect of the suit property in favour of the second defendant which amounts to deemed refusal on her part to perform her part of the Agreement for sale and on all dates when the first defendant has failed to perform her part of the contract and at Thyagavalli village, Cuddalore District within the jurisdiction of this Honourable court.*"
>
> (emphasis supplied)

70. A conjoint reading of the aforementioned averments made by the respondent no.1 as the plaintiff in the plaints of both the suits would indicate that the refusal by the respondent no. 2 to perform the agreement for sale was brought to the knowledge of the respondent no. 1 much prior to the filing of the first suit. In other words, the notice of the refusal to perform on part of the

respondent no. 2 preceded the filing of the first suit. Therefore, to this extent, the factual scenario would be akin to those in ***Virgo Industries*** *(supra)* and ***Vurimi Pullarao*** *(supra).* This might be why the Trial Court in its judgment and decree dated 30.04.2009 passed in I.A. No. 17 of 2009 and O.S. No. 122 of 2008 (second suit) had arrived at the conclusion that the second suit must be subjected to the bar imposed under Order II Rule 2. In other words, that when the respondent no. 1 could have prayed for a larger relief in their first suit, their omission to do so must preclude them for agitating the same subsequently.

71. However, in our opinion, the Trial Court had unfortunately failed to address a key aspect – whether more than one relief in respect of the cause of action which formed the foundation of the institution of the first suit was "available" to the respondent no. 1? In other words, whether the relief of specific performance and the relief to pray for the cancellation of the sale deed dated 24.02.2008 executed in favour of the appellant were "available" to the respondent no. 1 at the time of filing the first suit in view of the ban imposed on the registration of sale deeds at the Thyagavalli village by the G.O. dated 08.08.1986 issued by the Government of Tamil Nadu and the notification dated 23.10.2006 issued by the TNEB which exclusively allowed the appellant to register the sale deeds at the Thyagavalli village where the suit property is situate.

V. The "entitlement to" along with the "availability of" the relief as a requisite in determining the applicability of Order II Rule 2.

72. The Privy Council in ***Mohammad Khalil Khan*** *(supra)* elaborated on the true import of Order II Rule 2 as follows:

> "*Shortly stated O. 2. R. 2, C.P.C., enacts that if a Plaintiff fails to sue for the whole of the claim* ***which he is entitled to make*** *in respect of a cause of action in the first suit, then he is precluded from suing in a second suit in respect of the portion so omitted. To apply the rule to the facts of the case their Lordships will have to consider what was the cause of action in Suit No. 8, on which the Plaintiffs founded their claims,* ***and whether they included all the claims which they were entitled to make in respect of that cause of action in that suit.*** *For, if they failed to include all the claims, then by force of O. 2, R. 2, they are precluded from including the claim omitted in the present Suit No. 2.*"
>
> (emphasis supplied)

73. Order II Rule 2(1) reads that – "*every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action…*". Similarly, Order II Rule 2(3) reads that – "*A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs…*". It is necessary that the same intention also be read into Order II Rule 2(2) which reads that – "*where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished*". The phrase "*any portion of his claim*" must essentially be understood to mean any portion of his claim which he is entitled to make for the simple reason that there cannot

be a deliberate or intentional relinquishment of any portion of a claim, if the plaintiff was not entitled to it. Therefore, the true import of the bar under Order II Rule 2 must be that it operates to preclude a plaintiff from instituting a second suit, on the same cause of action, for a claim, any portion of a claim, or reliefs, which the plaintiff was entitled to avail at the time of filing of the first suit.

74. There may arise a situation where the plaintiff may be entitled to a relief but such a relief was not available at a certain point in time. In other words, that obtaining such a relief was impossible due to the circumstances which existed during the institution of the first suit. It is our opinion that, in such scenarios, Courts must give such an interpretation to the principles under Order II Rule 2 that is not bogged down by mere technicalities.

75. We are in agreement with the view taken by the Rajasthan High Court in ***Ramjilal v. Board of Revenue, Rajasthan*** reported in **AIR 1964 Raj 114** wherein the High Court had opined that Order II Rule 2 does not require that a person must seek all the remedies to which he may be entitled to even though it would be impossible for him to obtain the remedy from the opposite party. Herein, it was not possible for the plaintiff to obtain the relief of possession from the respondent no. 2 in his initial suit since the respondent no. 2 himself was put in actual possession of the property much after the institution of the first suit. In such circumstances, it could not be said that the plaintiff had

intentionally relinquished any portion of his claim or that he omitted to ask for a relief which he could otherwise obtain. The relevant observations are reproduced hereinbelow:

> *"8. Now, in the present case, when the petitioner filed the first suit on 14th August, 1946, his claim was only for a declaration to the effect that the adoption of respondent No. 2 by Pusharam was invalid in law and for the relief that the adoption-deed should be cancelled. According to the admission of respondent No. 2 himself he was not in possession of the property in respect of which the second suit was filed on 1st July, 1954. It cannot therefore, be said that the plaintiff had intentionally relinquished any portion of his claim or that he omitted to ask for a relief which he could get from respondent No. 2. Even if he had sued for possession against respondent No. 2, he could not obtain a decree for possession against a person who was admittedly not in occupation of the same. It would, therefore, have been futile on the part of the petitioner to sue for possession against respondent No. 2 at that time. O. 2, R. 2 C.P.C. does not require that a person must seek all the remedies to which he may be entitled even though it be impossible for him to obtain them from the opposite party. It is true that respondent No. 2 had obtained a decree for possession against the landlords on 18th February, 1946, i.e., about six months prior to the institution of the petitioner's suit, but the petitioner was not a party to that suit. It had nowhere been mentioned in the judgment of the learned Members of the Board of Revenue if the petitioner was even aware of the decree which respondent No. 2 had obtained against the landlords Moreover, even if it be assumed for the sake of argument that the said decree was in the knowledge of the petitioner, then too, he could not sue for possession, because respondent No. 2 was not put in actual possession of the property in execution of the decree. It was about three years after, i.e., on 11th March, 1949 that respondent No. 2 got possession of the property. In our opinion, the learned Members committed an error, which is patent on the face of the record, in holding that the petitioner ought to have sued for possession at the time when he filed the first suit on 14th August, 1946….*

xxx xxx xxx

> *15. We think it unnecessary to burden the judgment by referring to other authorities. In our opinion, the learned Members of the Board of Revenue have committed an error, which is apparent on the face of the record i.e. from the very perusal of their judgment, in dismissing the suit filed by the petitioner on the grounds that it was barred by O. 2, R. 2 of the Code of Civil Procedure. They have also failed to exercise their jurisdiction by giving an incorrect interpretation to O. 2, R. 2 and not deciding the suit on merits."*
>
> (emphasis supplied)

76. We are also in agreement with the position taken by the Allahabad High Court in ***National Security Assurance Company Ltd. v. S.N. Jaggi*** reported in **AIR 1971 All 421** in so far as it held that a subsequent suit in respect of a claim which was barred at the time of the earlier suit but revived later on by an enactment would not be hit by the provisions of Order II Rule 2. Here, the appellant insurance company had insured the goods of the respondent in his shop and his home respectively. During the disturbances and rioting which took place on 07.09.1947 and 08.09.1947, the respondent's goods, both at his home and shop, were looted. While the applicant had raised a claim for the goods looted at his home, he did not raise any claim for the insured goods at his shop since he had no knowledge of it. However, when the factum of looting at his shop came to his knowledge, he intimated the insurer but the insurer took the defence that intimation of the loss was not made within 15 days of the occurrence of the looting as per the insurance policy. Under these

circumstances, the respondent instituted a suit against the insurer for recovery of the amount which was to be paid on account of the loss of goods at his house only and the same ended in a compromise decree where the respondent accepted a sum of Rs. 5500. On 09.12.1951, the Displaced Persons (Debt Adjustment) Act, 1951 was applied to Uttar Pradesh, where the respondent was now residing. In such circumstances, the appellant then made a claim for recovery of the amount due from the insurer for the loss of goods at his shop on account of him being a displaced person and also a debt being due to him. The High Court opined that the Act enacted special provisions which revived the claim of the respondent and that it can be said that a fresh right was conferred on the applicant by the Act to recover the amount due from the appellant-insurer for the loss of the goods kept in the shop. Therefore, there would be no question of applicability of Order II Rule 2 in order to bar the respondent's claim. The relevant observations are as thus:

> *"20. There now remains to consider the argument whether the provisions of Order 2, Rule 2 were attracted and otherwise the applicant was not entitled to claim the amount he having accepted Rs. 5,500/- in full payment of the claim under the insurance policy.*
>
> *21. ... As the law stood in 1948 the applicant under the terms of the policy was not entitled to recover the loss incurred by him for the destruction of goods of the shop or looting thereof as he had not been able to intimate of the loss to the company within fifteen days of the occurrence. Since the applicant had been able to intimate the loss of the insured goods kept in the house within fifteen days of the occurrence, he filed a suit No. 650 of 1948 in the Civil Court at Delhi for recovery of*

Rs. 8,000/- from the company which represented the risk which the company covered for the loss of the goods in the house. That being the position no question of the application of provisions of Order 2, Rule 2 will arise as in that suit which was instituted by the applicant in 1948 he could not, in law, claim a relief for the loss of the goods kept in the shop as under the terms of the insurance policy he could not recover the amount representing risk covered by the company for those goods. I think the Tribunal was right in holding that in the suit filed by the applicant in the Civil Court at Delhi the applicant could not have obtained any relief in respect of loss of the goods kept in his shop. The compromise in the said suit, to my mind, would remain confined to the claim in regard to the loss of the goods kept in the house of applicant and when the applicant who was the plaintiff in the suit accepted the sum of Rs. 5,500/- in full settlement of the claim under the policy it would only mean that he accepted that smaller sum as against Rs. 8,000/-, a sum claimed in full satisfaction of the claim under the policy relating to the loss of the goods kept in the house and not to the loss of the goods kept in the shop as they were not the subject-matter of the suit at all. I do not agree with the learned counsel for the appellant that the applicant is estopped now to raise any claim and re-agitate the matter as he would be deemed to have given up the claim in regard to the loss of the goods kept in the shop. I do not see how the provisions of Order 2, Rule 2, C.P. Code, or the principles of estoppel bar the applicant from recovering the money due under the insurance policy for the loss of the goods kept in the shop. In fact the company in 1948 told the applicant that he was not entitled to recover any thing in regard to the loss of the goods in the shop as the claim had not been made within the time as agreed under the policy, then to say now that the applicant could have claimed that sum will be allowing the company to blow hot and cold at the same time.

22. ... The Act enacted special provisions which revived the claim of the applicant and it can be said that a fresh right was conferred on the applicant by the Act to recover the amount due on the policy for the loss of the goods kept in the shop and in that view of the matter also no question of applicability or Order 2, Rule 2, C.P. Code or any principles of estoppel, can bar the applicant's claim."

(emphasis supplied)

77. These decisions of the Rajasthan and Allahabad High Courts respectively, have rightly taken the view that when it is not possible for the plaintiff to obtain a particular relief in the first instance but such relief becomes available to him on the happening of a subsequent event, post the institution of the first suit, then the bar under Order II Rule 2 would not stand in the way of the plaintiff who has instituted a subsequent suit for claiming those reliefs. It can be said that the occurrence of that subsequent event gives rise to a fresh cause of action to the concerned plaintiff for claiming certain reliefs which he was otherwise prevented from claiming.

78. In ***Virgo Industries*** *(supra)*, this Court had held that just because the relief for specific performance was premature on the dates on which the first set of suits were instituted, it would not mean that it could not be prayed for in the first suit, especially when the defendant made his intentions clear through his overt acts. This view was taken in a different factual context. In the said case, the plaintiff claimed that the suit for specific performance was premature on the date of filing of the first set of suits since the time for execution of the sale documents in terms of the agreement to sell had not elapsed. It is in this background that the Court had taken the view that a suit claiming a relief to which the plaintiff may become entitled to at a subsequent point in time, though may be termed as premature, yet, cannot be dismissed to be presented

on a future date. However, such a view cannot be adopted in the facts of the present case since it is not the premature nature of the claim but the impossibility of it which prevented the respondent no. 1 from availing certain remedies. A mandatory bar was created by a G.O. issued by the State Government which disabled the respondent no. 1 from seeking the remedy which he was otherwise entitled to.

79. The G.O. Ms. No. 1986 dated 08.08.1986 issued by the Government of Tamil Nadu read with the notification dated 23.10.2006 issued by the TNEB imposed an absolute prohibition which restrained any individual land owner in the two villages of Thiyagavalli and Kudikkadu from transferring their lands either by way of sale or by any other mode to any third party other than to "M/s. Cuddalore Power Company Limited" who is the appellant herein. On the strength of this G.O., the revenue authorities refused to register the sale deeds pertaining to several extents of land, belonging to several individuals. Only sale deeds executed in favour of the appellant herein was being registered by the authorities. The Madras High Court while delivering its decision dated 05.03.2008 in the public interest litigation remarked that they were at a loss to understand as to how and under what provision of law such a prohibition could have been imposed and stated that any such ban would directly infringe the constitutional right of any land owner to his right to property.

80. During the institution of the first suit for permanent injunction by the respondent no.1 on 16.02.2008, the proceedings in the public interest litigation which challenged the G.O. dated 08.08.1986 was still pending before the High Court and the respondent no. 1 himself had also filed a separate writ petition challenging the actions of the registrar. Until the High Court quashed the G.O. dated 08.08.1986 *vide* order dated 05.03.2008 passed in the public interest litigation, the respondent no. 1 could not have registered a sale deed in his favour or sought for the relief of specific performance. It must be highlighted that the factual situation herein is slightly different from one where there is a statutory requirement under any law which mandates that a permission/sanction from certain competent authorities must be obtained before registering a sale deed. In such a situation, the court would be empowered to grant a conditional decree of specific performance subject to such permission/sanction being obtained by the appropriate party and a suit for specific performance would be maintainable. However, in the present peculiar facts, there was an absolute ban and not a conditional restriction to execute the sale deeds. Therefore, a suit for specific performance could not have been instituted by the respondent no.1 since it would have been nothing but a futile attempt.

81. It is worthy to be noted that the respondent no. 1 had approached the revenue authorities multiple times for registering a sale deed in its favour but was faced

with a denial from the authorities on every one of these attempts. As a natural next course of action, the respondent no. 1 filed their own writ petition dated 21.01.2008 challenging such a refusal. When the order dated 05.03.2008 quashing the G.O. dated 08.08.1986 was passed, the rights of the respondent no.1 had been crystallized and a relief which was impossible to obtain earlier due to the existence of a State Government imposed ban was now made available to the respondent no.1. It was on the basis of the decision dated 05.03.2008 that the writ petition which was filed by the respondent no. 1 was disposed of by a single judge of the High Court on 25.03.2008. Therefore, a new cause of action for obtaining the relief of specific performance directing the respondent no. 2 to execute the sale deed in favour of the respondent no. 1 and for seeking the cancellation of the sale deed dated 24.01.2008 entered into between the respondent no. 2 and the appellant had arisen on 05.03.2008 and on 25.03.2008 respectively.

82. The counsel for the appellant argued that extraneous matters cannot be projected as giving a cause for the second suit, unless such extraneous matters had been set forth in the agreement to sell itself so as to postpone the cause for filing a suit for specific performance. It was alleged that the respondent no. 1 entered into an agreement to sell on 24.01.2007 being fully aware of the facts that were prevalent on the said date and therefore, cannot plead extraneous matters for the purpose of saving the second suit. Furthermore, it

was their case that these extraneous matters were neither set forth in the cause of action paragraph provided in the second plaint nor were they argued before the High Court in the proceedings which resulted in the impugned judgment.

83. We are unable to agree with these contentions raised by the counsel for the appellant. *First*, it would be unfair to the respondent no. 1 to hold that the decisions of the Madras High Court dated 05.03.2008 and 25.03.2008 respectively relating to the G.O. would not be of any benefit whatsoever to their cause just because the existence of such a ban was not mentioned in the agreement to sell which was entered into with the respondent no. 2. It is clear that the ban prevented the respondent no. 1 from obtaining a title to the property which he otherwise could have obtained if not for the existence of such peculiar circumstances. Furthermore, averments relating to these decisions of the Madras High Court were mentioned in the second plaint. Therefore, in the interests of justice, the decisions dated 05.03.2008 and 25.03.2008 must be held to have given rise to a new cause of action to the respondent no. 1 for the agitating the reliefs in the second suit.

84.*Secondly*, it cannot be accepted that the respondent no. 1 was fully aware of the circumstances relating to the ban at the time of entering into the agreement to sell and would therefore, be precluded from relying on the decision lifting the ban to postpone his cause of action. Such a fact cannot be inferred from the plaints which have been placed before us. On the other hand, from the

averments of the plaint, it can be seen that the agreement to sell was registered by the respondent no. 1 with the Joint Sub-Registrar, Cuddalore on 07.09.2007 without any hassle. Even at this stage, the revenue authorities had not brought it to the knowledge of the respondent no. 1 that the agreement to sell could not be registered in his favour due to the operation of the ban. It is only when the respondent no. 1 approached the revenue authorities on multiple occasions for the execution of the sale deed that the reluctance of the registrar was noticed and a writ petition had been immediately filed challenging the actions of the registrar. Therefore, we see no reason to doubt the *bona fides* of the respondent no. 1.

85. *Thirdly,* it cannot be said that such extraneous matters are not set forth in the plaint. On the contrary, on a holistic reading of the both the plaints, it can be seen that the respondent no. 1 indicated in the first plaint that a writ petition instituted by them before the High Court challenging the actions of the registrar is pending and in the second plaint, they had averred that the High Court had quashed the G.O. dated 08.08.1986 in a public interest litigation and had also disposed of their writ petition. It is, however, true that the specific pleadings as regards the cause of action does not contain the date on which the High Court had decided the public interest litigation i.e., 05.03.2008 or the date on which the writ petition of the respondent no. 1 was disposed of i.e., 25.03.2008. However, it is difficult for us to subscribe to such a technical view

that since these dates do not figure in the paragraph relating to the cause of action in the second plaint as giving rise to a new cause of action to the respondent no.1, the same would not save the second suit. As indicated by us in our forgoing discussion, the plaint should be read as a whole and certain specific paragraphs or lines should not be isolated to arrive at a restricted view. As far as the contention that these arguments were not raised before the High Court goes, a bare perusal of the Memorandum of Grounds of Appeal filed by the respondent no. 1 would indicate that the grounds relating to the ban imposed by the G.O. dated 08.08.1986 and the subsequent decision of the High Court in the public interest litigation as also in the writ petition filed by the respondent no. 1 were agitated during the second appeal as well.

86. It is established law that the principles governing the applicability of the provisions of Order II Rule 2 do not operate as a bar when the subsequent suit is based on a cause of action different from that on which the first suit was based and that the identity of the causes of action in both the suits must be the material consideration before the court which decide the applicability of this provision to a second suit filed by the plaintiff. It would be incorrect for us to hold that merely because the pleadings in the plaint filed in O.S. No. 28 of 2008 and the plaint filed in O.S. No. 122 of 2008 are similar to some extent, the causes of action are also identical. Rejecting the plaint in the second suit i.e., O.S. No. 122 of 2008 would result in depriving the respondent no. 1 from

claiming the relief of specific performance of the agreement for sale dated 24.01.2007 and the cancellation of the sale deed dated 24.01.2008. In this regard, we have examined the entire factual matrix along with the causes of action on which both the suits were founded, through a holistic reading of the plaints placed before us. In our opinion, the reliefs in the subsequent suit are in fact founded on a cause of action which is distinct from that which is the foundation of the former suit. The facts which are necessary to be proved and the evidence to support the claims in the second suit are also different from that of the first suit. Therefore, it cannot be said that the respondent no. 1 could have prayed for the reliefs claimed in the subsequent suit at an earlier stage.

87. The High Court could be said to have fallen in error in failing to notice that the crucial fact which acted as a linchpin in saving the second suit was its own decisions dated 05.03.2008 and 25.03.2008 respectively which set aside the ban imposed by the G.O. dated 08.08.1986 and directed the registrar to register the sale deeds pertaining to the suit property. However, for altogether different reasons than what has been elaborated by us, the High Court held that the bar under Order II Rule 2 was not applicable and that the respondent no. 1 would not be prevented from instituting the second suit. As a consequence, the plaint in the second suit i.e., O.S. No. 122 of 2008 was restored. The Trial Court was accordingly directed to decide both the suits together on their own merits and

in accordance with law, within a period of six months. We do not wish to disturb the ultimate conclusion arrived at by the High Court.

88. The questions relating to whether such an agreement for sale dated 24.01.2007 could have been entered into by the respondent no.1 in ignorance of the subsistence of the ban which was imposed by the G.O. dated 08.08.1986 to begin with and whether the appellant entering into a subsequent sale deed dated 24.01.2008 during the existence of the aforementioned agreement to sell was a *bona fide* purchaser of the suit property, along with all other pertinent questions, are all issues which will have to be determined by the Trial Court on merits.

89. In so far as the appeal preferred against the decision of the High Court dated 01.09.2016 in C.M.P. No. 12498 of 2016 in S.A. No. 858 of 2014 is concerned, we find no reason to make separate observations since after a detailed examination of the two plaints, we have also arrived at the conclusion that the bar under Order II Rule 2 would not be applicable to the facts of the present case.

F. CONCLUSION

90. In view of the aforesaid, it is held that the bar under the provisions of Order II Rule 2 CPC would not stand in the way of the institution of the second suit by the respondent no. 1 (original plaintiff).

91. It is made clear that this Court has not expressed any views on the merits of the matter.

92. In view of the above, the appeals fail and are hereby dismissed.

93. Pending application(s), if any, stand disposed of.

……………………………………….J.
(J.B. Pardiwala)

……………………………………….J.
(R. Mahadevan)

New Delhi.
15th January, 2025.