

IN THE HIGH COURT OF SINDH CIRCUIT COURT MIRPURKHAS

Second Appeal No.S-08 of 2025

Present:

Mr. Justice Dr. Syed Fiaz ul Hasan Shah

Irfanullah S/o Barkatullah,
Muslim, Adult, by caste Arain,
Through his Power of Attorney
Rafiullah S/o Irfanullah,
Muslim, Adult, by caste Arain,
R/o Village Chaudhary Barkatullah.
Deh Talhi, Taluka Kunri, District Umerkot.

....Appellant/Plaintiff

Versus

1. Inam S/o Shoukat Ali,
2. Akhtar Ali S/o Shoukat Ali,
3. Muhammad Ali S/o Ahmed Khan.
All Muslim, Adult, By cast Chandio,
R/o Village Hyder Chandio, Taluka Kunri, District Umerkot.
4. Tariq Ahmed S/o Ghulam Ahmed,
R/o Village Sharifabad, Deh Bombarlo,
Taluka Kunri, District Umerkot.
5. Mukhtiarkar Revenue Taluka Kunri,
6. Tapedar, Taluka Kunri, District Umerkot,
7. Assistant Commissioner, Taluka Kunri, District Umerkot,
8. Deputy Commissioner, District Umerkot,
9. Sub Registrar, Mirpurkhas.
10. Province of Sindh, through Secretary Board of Revenue,
Shahbaz Building, Hyderabad.

.... Respondents/Defendants

Date of Hearing: 19.03.2025

Date of Decision: 07.04.2025

Mr. Tarique Mehmood Arain, advocate for the Appellant.

Mr. Arjan Das, advocate for the Respondent No.4.

Mr. Muhammad Shareef Solangi, Assistant A.G Sindh.

J U D G M E N T

Dr. Syed Fiaz ul Hasan Shah, J: This Appeal under section 100 of Civil Procedure Code, 1908 is directed against the judgment dated 23.01.2025 and decree dated 24.01.2025 passed by the learned Additional District Judge-II, Umerkot whereby the Civil Appeal No.30 of 2023, filed by the Appellant has been dismissed.

1. The brief facts are that the Appellant/Plaintiff filed suit for Declaration, Possession and Permanent Injunction alleging therein that the agricultural land bearing S.No.143 area 40-00 acres and Survey No.54 area 4-14 acres situated in Deh Khuda Bux Chandio, Tappa Hado, Taluka Kunri District Umerkot was purchased by the Appellant/Plaintiff from its owner Karim Bux through General Power of Attorney Muhammad Shafique son of Mian Sardar Ali, through Registered Sale Deed No.702 dated 17.03.1983 and S. No.54 area 4-14 acres from Veerjimal son of Khajoro through his General Power of Attorney Muhammad Shafique son of Mian Sardar Ali, through Registered Sale Deed No.701 dated 17-03-1983 and the same was maintained in the revenue record vide Entry No.51 dated 24-04-2008 in the name of Appellant/Plaintiff, while the old Entry No.14 dated 14-11-1993 and Entry No.28 dated 14-11-1993 were in the names of previous owners namely

Karim Bux and Veerji Mal. In the old entries No.14 and 28 there was note clearly mentioned that through sale vide entry No.51 kept in revenue record which means that both entries rightly transferred as per Entry No.51 of VF VII issued by Mukhtiarkar in the name of the Appellant/Plaintiff. The private Respondents/Defendants were having bad eyes over the lands of the Appellant/Plaintiff, therefore, they tease the Appellant/Plaintiff and were not allowing him to cultivate the purchased land. About three months back prior to filing suit the Appellant/Plaintiff along with his haries was available at his land when private Respondents/Defendants along with Gunda persons came and forcibly occupied the land on gun point and extended threats of dire consequences. The private Respondents/Defendants have no right, title or interest over the suit land, they have forcibly occupied the suit land. It is further submitted that the Entry No.51 dated 24-04-2008 torn and there is no record in the office of Mukhtiarkar Revenue Kunri, which shows that fraud has been committed with the Appellant/Plaintiff in collusion with revenue staff and the Respondent/Defendant No.4 brother working in Deputy Commissioner Office, Umerkot the entries No.14 dated 14.11.1993, 28 dated 14-11-1993 and 51 dated 24-04-2008 are genuine, the Respondents/Defendants No.1 to 3 have committed fraud and illegally occupied the suit land. Therefore, the Appellant/Plaintiff filed such suit with the following prayers:

- a. Declare that the plaintiff is lawful and exclusive owner of the suit land and act of the defendants No.01 to 04 is illegal, unlawful, void and not accordance with law.
- b. Declare that the entry No.14 dated 14-11-1993 entry No.28 dated 14-11-1993 and entry No.51 dated 24-04-2008 are genuine and legal one.
- c. That this Honourable Court also issue directions to the official defendants to restore the entry No.51 dated 24-04-2008 and so also note on entries No.14 dated 14-11-1993 and entry No.28 dated 14-11-1993 in Revenue Record.

- d. That this Honourable Court also issue direction to the private defendants to hand over the vacant and peaceful possession of the suit land to the plaintiff. In case of failure Honourable Court issue direction to the Nazir of this Honourable Court to do so.
 - e. Grant permanent injunction against the defendants No.01 to 04 restraining and prohibiting from, leasing, mortgaging, gifting, selling or alienating, disposing the suit land or create third party interest or cultivate crops on the suit land by themselves, through agents, friends, associates or creating any third party interest till the pendency of the suit.
 - f. Costs of the suit may be borne by the defendant.
 - g. Any other relief which this Honourable Court may be deemed fit and proper according to the facts and circumstances of the suit.
2. The Respondent/Defendant filed Written Statement wherein he denied the allegation leveled against him and contended that the alleged registered sale deeds are forged and fabricated documents as well as entire on the basis of forged documents have been managed with connivance of lower revenue staff. The possession of the suit land is with the answering Respondent/Defendant being legal and lawful owner of the same.
3. In the meanwhile, Respondent/Defendant No.4 filed an application under Order VII, rule 11, C.P.C, which was contested by the Appellant and after hearing the learned counsel for parties; the learned trial court allowed the said application and rejected the plaint in F.C Suit No.59 of 2021, vide order dated 15.08.2023.
4. Being aggrieved with and dissatisfied by the aforementioned order, the Appellant/Plaintiff opted for Civil Appeal No.30/2023 before the Court of learned Additional District Judge-II, Umerkot who after hearing both the parties, dismissed the aforementioned Civil Appeal, upholding the order dated 15.08.2023 passed by the learned trial court. Consequently, this second appeal has been filed.

5. I have heard the learned counsel for the Appellant, Respondent No.4 and learned Assistant A.G and perused the record as well as the impugned order with their assistance. Before deposing with the Judgment, I would like to re-produce interim order dated 19.03.2025 passed by me, which established found:-

In compliance of last order, Assistant Commissioner, Kunri has placed his report of enquiry under the signature of Deputy Commissioner, Umerkot. The enquiry does not disclose finding of guilt, fixing of responsibility and conclusion of Assistant Commissioner, Kunri, which seems that either order has not been properly appreciated or ignored. It has not been determined that in whose name the original entry No.51 stands and existing bogus entry No.51 has inserted, although bogus Entry has been blocked by the Board of Revenue, Hyderabad on the ground that fake entry is inserted by maneuvering record. Counsel for the Appellant drawn my attention towards report of Mukhtiarkar, Kunri available (at page Nos.179 to 183 of the file) who has categorially admitted that existing entry No.51 and backside of this entry, entry No.52 has been inserted by manipulating the official record while actual entry No.51 dated 24.04.2008 in the name of Irfanullah S/o Barkatullah existing in the People Service Center Online, while verification signature of the then Assistant Commissioner/DDO, Kunri is not mentioned. Be that as it may, Commissioner, Mirpurkhas is directed to hold an inquiry after due notice to all parties concerned in order to determine whether entry No.51 undated in the name of Chattu Khan S/o Fateh Muhammad and others showing 559-00 acres which has been blocked

by the Board of Revenue, Hyderabad is genuine or it is inserted in the record of rights by manipulating the official record and removing original entry No.51 dated 24.04.2008 as endorsed by Mukhtiarkar Kunri in his report dated 01.11.2024. The Commissioner shall pass a speaking order within 04 weeks and place the same for perusal of this court. The Assistant Commissioner, Kunri, is present in court, is exempted from appearance in this case. The main Appeal has heard with the assistance of counsel for the Appellant, counsel for Respondent No.4 and learned AAG. Reserved for the judgment.

6. The following substantive question of law is formed to determine controversy:
 - i. Whether a court can reject a plaint in suit under Order VII Rule 11 CPC when question of jurisdiction or limitation are mixed question of law and facts?
 - ii. Whether a cause of action is the date of injury and denial of document OR date of execution of such document?
 - iii. What should the cause of action for the *lis* in question?
7. The expression “jurisdiction” has been provided in the Civil Procedure Order, 1908 at several places of the said procedural statute. The jurisdiction, in a legal context, refers to the power or authority of a court to hear, adjudge and decide a case. It indicates that there is remarkable distinction between the legit of existence of jurisdiction and exercise of jurisdiction. It cynosure according to the contextual clauses and as per rule interpretation of statutes and cannot be stretched or expand for each other. Both legal situations are differ and one pertinent situation is irrelevant to the other legal situation as per the intention of legislatures.

The reason behind it simple, that the legislature used the expression or terms “jurisdiction” in many places of same statute with intent and scope to achieve meaningful usage and application according to the relevancy of situation in a case or its application in its interpretation. When the court has lack a jurisdiction, its decision can be assailed as a nullity and when such jurisdiction is barred by or under statutory provision; for instance, the law of limitation or res judicata or re-institution of suit after unconditional withdrawal, Court vests jurisdiction and entails to decide the lis. Therefore, CPC provides different ways according to variegated situations. Correspondingly, the statutes do not extinguish power of court rather it is sine non quo for the courts to adjudicate and decide the issue in line with relevant provisions causing the court to question whether the process of lis is always barred as is the desideratum.

8. This framework serves as a powerful settled metaphor for the judicious settlement and compartmentalization often seen in the identical situations of the superior courts judgments. This common denominator comprehends from reading the provisions of section 9 and Order XIV Rule 2 C.P.C. The Court of law set free to decide the preliminary issues subject to conditionality that this preliminary issue is only and purely a question of law and ensure that it is not a mixed question of law and fact as question of fact cannot be decided without recording of evidence and production of record or documents for the examination and analysis of the trial court.
9. Moving on forward the expression “cause of action” is mandatorily refer in every plaint of each instituted suit before the Court of law and is frequently urged and appreciated before the Court in daily routine. This expression has not been defined in the Code of Civil Procedure, 1908 but it has always been considered by court of law in judicial scrutiny and it has been recognizing in well-reason manner in judgments persuading

dispensation of justice with its importance to explain not only its values but also form basis to resolve controversial point on law of limitation as to know veracity of concern is a case of action after efflux of time period stipulated by the Limitation Act, 1908 or any other law before granting relief to the plaintiff. Apart from it, at various decisions, cause of action has referred that every fact, which if traversed, it would be imperative upon the plaintiff to prove to support his right to a judgment of the court. Generally, this definition would suffice but it does not attentiveness to details.

10. Normally, the expression “cause of action” is applied to carry out the functions of the Code which are designed to achieve convenience and efficiency in trial of the suits and such designed is policy as framed under Order II Rule 1 according to which causes of action can be joined and all matters in dispute between the parties relating to the same transaction can be tried in one suit. The framework of Orders I & II of the Code demands that a legal right or legally recognized claim or right or truth is denied or deprived or violated, in alternative manner, way or form it constitutes as a legal wrong or legal injury. A fortiori reason draws on existing confidence and jurisprudence recognition on the proposition that any wrong or denial against the legal right or legal recognized claim or the cause of truth or justice would give rise to or create right to sue before the Court of law under stipulated statutory remedies and would construe as cause of action.
11. The nature, scope and objects of cause of action is accustomed implicitly in the principle of inclusivity strategy that is framed to validate or encompass the individual personal's action to approach the Court of law in shape of right to sue for infringement or reinforcement of right or entitlement against the wrongdoer or anyone compulsory liable for it through judicial determination. At the initial point of time, this rule

essentially requires structural basis of primary facts or operative injuries that represent a legal injury or legally recognized wrong which led basis to right to sue or rise to a claim enforceable in court. These conditional probabilities demand confirmation from a filler or plaintiff under definite requirement of law and he has to undergo the test of Qanun-e-Shahadat Order, 1984 that what emerges are chain of events or facts or fact of facts by way of prove before the court can take action. This broad categorization of the rule is in accord with the scheme of the Code.

12. At the initial stage of a case, the primary facts or operative injuries or wrongfulness can liberally be looked into for the purposes of calculation of limitation period by invoking the provision of Order VII Rule 11(d) CPC. The Courts only consider the averments in the plaint, and the averments in the written statement are wholly immaterial. A plaint can be rejected at any stage of the proceedings but idealistically at initial stage, and when a plaint is rejected, the Courts exercise drastic power as the proceedings are truncated at the threshold without a trial. The averments in the plaint must be read as a whole and must be taken on their face value; only if the plaint averments on such reading, does not disclose cause of action or is barred by law, the power under Order VII Rule 11(a) or (d) of CPC can be exercised. If on meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under Order VII Rule 11 CPC. Since the power conferred on the court to terminate civil action at the threshold is drastic, the conditions enumerated under Order VII Rule 11 CPC to the exercise of power of rejection of plaint have to be strictly adhered to. The initial stage is based on the concept to bury the case at beginning if it is barred under any law including law of limitation and dealing with it, the approach is liberal and unless a clear and unequivocal violation exist, a plaint cannot

be rejected while frequently invoking powers under Order VII Rule 11 CPC. The rejection of plaint in suit is procedural in nature, which mainly focusing on the sufficiency of the plaint itself adjudge on the rules 11 (a) to (d) of Order VII CPC. It does not involve a determination of the merits of the case and for this reason the law permits the filer to repeat again by institution of fresh suit (case).

13. In contrast, at the advance stage when the conditional probabilities are correspondingly set forth for confirmation by adducing evidence, it can *stricto sensu* examine all questions of limitation period. The criterion for Dismissal of Suit is substantive in nature, which solely involve a decision on the merits of the case i.e. after adding up evidence of parties. The provision of Order VII Rule 11 CPC to reject the plaint in suit is overwhelmingly move at the initial stage of the case while the Court dismiss suit at the time of advancement of suit after judicial scrutiny of evidence. It finally concludes the matter or *lis* which cannot be re-agitated under the doctrine of *res judicata* as defined under section 11 of the Code and it is substantive decision under the rule of conclusiveness.
14. Sometimes, the question of limitation is also a mixed question of fact and law depending upon the peculiar facts of each case. Undoubtedly, the question of limitation may become a mixed question of law and fact but the period of limitation would be a pure question of law. The Hon'ble Supreme Court of Pakistan elaborately dealt with it. In *Jan Muhammad and others vs. Mst. Sakina Bibi and others* (PLD 2017 SC 158), Hon'ble Supreme Court of Pakistan held as under:

“This Court has the discretion to grant leave at the time of hearing an appeal in which leave has been granted on a different point(s) and to consider such point of law, including for instance the question of inherent jurisdiction, undoubtedly being a pure question of law; even if not earlier taken up in any proceedings including those before the Supreme Court. This could very well apply to the point of

limitation too where such plea was not dependent upon any factual determination. However, those cases which require a factual foundation and adjudication for the purposes of settling a legal issue cannot be said to be pure questions of law and the same cannot be allowed to be raised before this Court for the first time”.

- 15.** In *Hakim Muhammad Buta and another vs. Habib Ahmad and others* (PLD 1985 SC 153) observed that:

“The law, therefore, does not leave the matter of limitation to the pleadings of the parties. It imposes a duty in this regard upon the Court itself. There is a chain of authority, and a detailed discussion of the same is not necessary, to lay down that limitation being a matter of statute and the provisions being mandatory, it cannot be waived and even if waived can be taken up by the party waiving it and by the Courts themselves. Where, therefore, the application is on the face of it barred by limitation, it is the duty of the Court to dismiss it summarily and there is no occasion for calling upon the judgment debtor to show cause why it should not be admitted. Where, however, the question of limitation depends on a question of fact which cannot be determined without taking evidence, the position would certainly be different.” The question of limitation may be one of fact or of law, if former the Court is not bound to go into it unless raised by the parties, and if latter the court is as a general rule bound to raise and decide it, although not raised by the parties. If the plea of limitation in a particular case is a mixed question of law and fact, that it will be highly improper to allow the plea to be raised. Where the question of limitation is not a mixed question of law and fact or where limitation is apparent on the face of the record, a waiver by the parties would not relieve the Court itself of its duty under section 3 of the Limitation Act and a waiver by the Court of the question of limitation is not contemplated”.

- 16.** The Indian Supreme Court has also highlighted the question of limitation and held that the issue of limitation can be determined as a preliminary

issue under Order 14 Rule 2 of the CPC. Realistically, this is not unquestionable legal authority but exceptions are available. Therefore, any circumscription for the question of limitation or question of jurisdiction at the preliminary stage through Application under Order VII Rule 11 CPC generally or by way of settlement of preliminary Issue in particular is not permissible under the scheme of law as whenever a lis is based on disputed facts, the point of limitation or jurisdiction cannot be decided without allowing parties to adduce evidence and produce record. The Courts are not to act in mechanical manner on the application under Order VII Rule 11 CPC or while considering grounds for Order 14 Rule 2 CPC but deep gauge is to calibrate on the carefully assessment of facts raising a line of distinction between the divergence that the facts are admitted one or disputed facts are involved which require full-grown exercise by accumulating evidence in shape of testimonies and record and only after fully developed case, the question of jurisdiction or question of law can properly be addressed. Therefore, the superior courts emphasized that Order 14, Rule 2 CPC does not confer any jurisdiction on the court to decide a mixed question of fact and law, and it can only decide when the facts are clear from the plaint itself. Reliance can be placed on the case “Nusli Neville Wadia v. Ivory Properties”, (2020) 6 SCC 557, wherein, the Indian Supreme Court had held:

“if a question of limitation can be decided based on admitted facts, it can be decided as a preliminary issue under Or. 14, R. 2(2)(b). However, once the facts about limitation are disputed, the issue of limitation cannot be made a preliminary issue. Further, if the question of jurisdiction also depends on the disputed facts, it can also not be decided as a preliminary issue.”

17. The case in hand can also be visualized through the provision of Section 39 of the Specific Relief Act, 1887 is part of Chapter V which deals with the cancellation of instruments whereas Chapter VI relates to declaratory decrees and Section 42 forms part of the same. In terms of former provision any person having reasonable apprehension that a written instrument being void or voidable to his extent, if left outstanding, may cause him serious injury can sue to have it adjudged void or voidable and the court may in its discretion, so adjudge it and order it to be delivered up and cancelled whereas in terms of latter any person entitled to any character, or any right to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled and such person need not in such suit to ask for any other relief. The said provisions are re-produced:-

“39. When cancellation may be ordered. Any person against whom a written instrument is void or voidable, who has reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, may sue to have it adjudged void or voidable; and the Court may, in its discretion, so adjudge it and order it to be delivered up and cancelled. If the instrument has been registered under the Indian Registration Act, the Court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.”

“42. Discretion of Court as to declaration of status or right. Any person entitled to any character, or any right to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit

ask for any further relief: Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

(2) Notwithstanding anything contained in any other law for the time being in force, a suit filed under sub-section (1) shall be decided by the Court within six months and the appellate court shall decide the appeal not later than ninety days, as the case may be.”

- 18.** In case KHALID HUSSAIN and others versus NAZIR AHMAD and others (2021 SCMR 1986), the Supreme Court of Pakistan dealt with Sections 39 & 42 of the “Act 1877” in the following manner words:

“4. There is a marked yet subtle distinction between a suit for cancellation of a document under section 39 of the Act of 1877, and a suit for declaration of a document under section 42 of the Act of 1877. The crucial feature determining which remedy the aggrieved person is to adopt, is: whether the document is void or voidable. In case of a voidable document, for instance, where the document is admitted to have been executed by the executant, but is challenged for his consent having been obtained by coercion, fraud, misrepresentation or undue influence, then the person aggrieved only has the remedy of instituting a suit for cancellation of that document under section 39 of the Act of 1877, and a suit for declaration regarding the said document under section 42 is not maintainable. On the other hand, in respect of a void document, for instance, when the execution of the document is denied as being forged or procured through deceit about the very nature of the document, then the person aggrieved has the option to institute a suit, either for cancellation of that instrument under section 39 of the Act of 1877, or for declaration of his right not to be affected by that document under section 42 of the Act of 1877; it is not necessary for him to file a suit for cancellation of the void document.”

- 19.** The plaintiff is required to prove during the trial that the facts are established. The judicial propriety requires to strict adherence to

maintenance protocols and to perform full potentials for calculation of limitation period after careful revisit on question of law as well as question of facts, as I have observed in earlier paragraphs that, sometimes, the limitation period is mixed question of law and facts. Even the plaintiff, in case he sets up his case based on the allegations of fraud, he is entitled to benefit under Section 18 of the Limitation Act, 1908 which provide that the period of limitation shall begin to run only from the date of discovery of “fraud”. The averments and allegations in the plaint about the date of knowledge of fraud or date of legal injury or breach of duty is the date of cause of action and therefore, considering such aspects, the suits cannot be said to be barred by limitation. Reliance is placed on the decision of the Hon’ble Supreme Court of Pakistan in the case of **“Ghulam Ali and 2 others v. Mst. Ghulam Sarwar Naqvi” (PLD 1990 Supreme Court 1)** and Indian Supreme Court in case **“Salim D. Agboatwala & Ors. Vs. Shamalji Oddhavji Thakkar & Ors.” (2021 SCC Online SC 735)**. The Indian Supreme Court in **“C. Natrajan v. Ashim Bai”, (2007) 14 SCC 183** had further held that the limitation would not commence unless there has been a clear and unequivocal threat to the rights claimed by the plaintiff. Consequently, there has been a clear and unequivocal threat to the right claimed by the plaintiff and it has nothing to do with the execution of instrument nor the date of execution of instrument, which is relevant for the purposes of cause of action in the present case as both the Courts below has committed illegality by treating date of execution of title document as date of limitation for calculation the time period. The Courts have erred on this point of question of law which does not attract the provisions of Order VII Rule 11 CPC as prima facie the cause of action has elaborately given by the Appellant/ Plaintiff in plaint at paragraph No.9, 10 & 17 which are re-produced hereunder:

“09- That it is further submitted that the Plaintiff purchased the suit land by legal way and adopted all legal course, which evident from the entry No: 51 dated 24-04-2008.

10- That about three months ago, the Plaintiff along with his haris were available at his land, meantime the above named private Defendant along with their Gunda type persons came at the suit land and forcibly occupied the lands on gun point and extended threats to the Plaintiff if the Plaintiff and his haris again come here/on suit land they will murder the Plaintiff and his haris and presently the armed persons standing on suit land and private Defendants did not allow the Plaintiff to visit the suit land or cultivate the same.

17- That the cause of action firstly accrued to the Plaintiff to file the present suit when first time the Plaintiff came to know that the Defendants No: 1 to 4 in collusion with Revenue Staff committed forgery and fraud and occupied the suit land by force and after knowing such fraud the Plaintiff approached to the official Defendants, they advised to approach before court of law for seeking his redressal and same cause of action is still continues within the jurisdiction of this Honorable court”

20. The computation of time period reckons from the date of knowledge or right to sue or breach of contract or legal duty or legal injury suffers by the plaintiff or cause of truth or justice is denied or deprived or violated which constitutes legal wrong or legal injury, which is generally called as cause of action. The time period for filing of the case by a plaintiff cannot be considered on the basis of date of execution or registration of title documents or date of entry of mutation which is irrelevant in the present lis. The Court is bound to evaluate and consider the cause of action according to the contents of the plaint of every case on its own merits. It is the right of a lawful owner to file a suit for declaration or to seek cancellation of an instrument fraudulently prepared against his or her right, interest or title. In these cases, overwhelmingly the date of knowledge is the cause of action and not the date of execution of document. The Court has to determine and calculate the period of limitation from the date of cause of action when the actual legal injury or right to sue or breach of duty have committed or

when the fraud came into the knowledge of the Appellant. Additionally, the provision of Order VII Rule 11 C.P.C has not attracted when a mixed question of law and fact exists, and case cannot be decided by exercising power under Order VII Rule 11(d) C.P.C. by wrongly assuming the cause of action pertaining to the date of execution of Sale Deed or Mutation Order. Therefore, the order of Appellate Court is not sustainable to reject the plaint on the ground that declaration sought by the Appellant/Plaintiff with regard to ownership backed by title document i.e. registered sale deed dated 17.03.1983 and Revenue Entry No.24.04.2008 due to some fraudulent act in the official record wherein page where entry No.51 dated 24.04.2008 in favour of Appellant have been removed from Official record and thereafter a manipulated or forged document of Revenue Entry have been inserted which has been blocked by the Board of Revenue itself and complainant has also moved complaint for registration of criminal case against officials who are/were custodian of official record to the Anti-Corruption Department.

21. The Government is the statutory custodian of official record and it is the duty of officials to keep, save, harmless and preserve the original Public record of private documents so that the citizen should not be deprived from valuable rights by way of some manipulation or fabrication. Consequently, judgment dated 23.01.2025 and decree dated 24.01.2025 passed by learned Additional District Judge-II, Umerkot is set-aside and the trial court is directed to decide the matter after settlement of issue and recording evidence of the parties in accordance with law.

JUDGE

*Faisal *