UTTARAKHAND JUDICIAL AND LEGAL ACADEMY
BHOWALI, NAINITAL

Refresher Course on Recent Developments in Civil Laws & Procedures
(07.07.2025 to 11.07.2025)

S. No.	Case Title and Citation	Law Point/Principles	Relevant Para/Head Note
CASE STUDIES FOR GROUP DISCUSSION			
1.	**Periyammal (Dead) through Lrs. and Others V. V. Rajamani and Another (2025) SCC OnLine SC 507**	• Meaning of word "person" under Order-21 R-35 and R 97 -R 101 CPC. • Remedy u/rule 99 to whom available. • How application under O-21 R-97 dealt. • Difference between Sec 47 and O-21 R- 97 and O-21 R-101. • Disposal of the executing cases within 6 months.	**Para 42.** It is a settled position of law that an application under Order XXI Rule 97 may be made in respect of obstruction raised by any person in obtaining possession of the decretal property. The courts adjudicating such application have to do so in accordance with Rule 101 and hold a full-fledged inquiry to determine all questions including questions relating to right, title or interest in the property arising between the parties. **Para 48.** A conjoint reading of the relevant provisions and the principles laid down by this Court makes it clear that in execution of decree for possession of immovable property, the executing court delivers actual physical possession of the decretal land to the decree holder. Rule 35 confers jurisdiction on the executing Court to remove any person, who is bound by the decree and who refuses to vacate the property. The words "any person who is bound by the decree", clearly mandate that removal can only be of a person who is bound by the decree. Rules 97 to 101 deal with situation when execution is obstructed or resisted by "any person"

			claiming right, title or interest in the property. The words "any person" include even a stranger to a decree resisting the decree of possession as not being bound by a decree or by claiming independent right, title or interest to the property. **Para 62.** A harmonious reading of Section 47 with Order XXI Rule 101 implies that questions relating to right, title or interest in a decretal property must be related to the execution, discharge or satisfaction of the decree. The import of such a reading of the provisions is that only matters arising subsequent to the passing of the decree can be determined by an executing court under Section 47 and Order XXI Rule 101. **Para 73.** The executing court must dispose of the execution proceedings within six months from the date of filing, which may be extended only by recording reasons in writing for such delay.
2.	**Yerikala Sunkalamma V. State of Andhra Pradesh, 2025 SCC OnLine SC 630**	• Suits against Government. • Sec. 80 CPC, 1908.	**Para 45**: Mere recording of right under the Act of 1971, by itself, may not be a conclusive proof of title and ownership, but it definitely records rights of the person. Once the recording was done, followed by the issuance of a pattadar pass book, the presumption in favour of the holder of the pass book was that he was having right in the land in question. In the case on hand, the Appellants had a sale deed in their favour which never came to be questioned by the State at any point of time. **Para 85:** The Appellants could be said

			to have established their possession over the suit land in question. There was cogent and convincing evidence in this regard. They were in peaceful enjoyment of the suit land in question. The Respondent State had not been able to prove its title to the suit land. Just because the suit land was surrounded by few other parcels of land owned by the Government, that by itself would not make the suit land of the ownership of the Government. If the Government claims title over the land, it had to establish it by producing relevant records in the form of revenue records etc. The State had failed to advance any credible evidence on record to rebut the presumption. Consequently, the Appellants had Pattadars' title to the suit land in question. ***<u>Essentials of Section 80 CPC</u>*** **Para 103.** A notice issued under Section 80 must include: i. The name, description, and place of residence of the person providing the notice. ii. A statement outlining the cause of action. iii. The relief sought by the plaintiff. **Para 104.** When determining whether the essential requirements of the Section have been met, the court should consider the following questions: (i) Has the notice provided adequate information to allow the authorities to identify the person issuing the notice? (ii) Have the cause of action and the relief sought by the plaintiff been

			sufficiently detailed? (iii) Has the written notice been delivered to or left at the office of the appropriate authority as specified in the section? (iv) Has the suit been initiated after the expiration of two months following the delivery or submission of the notice, and does the plaint include a statement confirming that such notice has been provided as required? **Para 105.** A statutory notice holds significance beyond mere formality. Its purpose is to provide the Government or a public officer with an opportunity to reconsider the matter in light of established legal principles and make a decision in accordance with the law. However, in practice, such notices have often become empty formalities. **Para 106.** The administration frequently remains unresponsive and fails to even inform the aggrieved party why their claim has been rejected.
3.	**M.S. Ananthamurthy and Anr. V. J. Manjula Etc., 2025 SCC OnLine SC 448**	• Test to determine the nature of POA laid down. • Mere use of the word 'irrevocable' in a POA does not make the POA irrevocable. • Transfer of an immovable property by way of sale can only be by a registered document being a	**Para 35.** Therefore, the essentials of Section 202 of the Contract Act are, first, there shall be a relationship in the capacity of 'principal and agent' between the parties and secondly, there shall be agent's interest in the subject-matter of the agency. If both the conditions are fulfilled the agency becomes irrevocable and cannot be terminated unilaterally at the behest of the principal. **Para 42.** The import of the word "general" in a POA refers to the power granted concerning the subject matter. The test to determine the nature of POA

		deed of transfer or a conveyance deed. • Combined reading of the POA and the agreement to sell not transfer interest in immovable property. • In injunction suit, specific prayer for a declaration of title is not necessary where the question of title is "directly and substantially" in issue.	is the subject matter for which it has been executed. The nomenclature of the POA does not determine its nature. Even a POA termed as a 'general power of attorney' may confer powers that are special in relation to the subject matter. Likewise, a 'special power of attorney' may confer powers that are general in nature concerning the subject matter. The essence lies in the power and not in the subject-matter. **Para 45.** Further, a mere use of the word 'irrevocable' in a POA does not make the POA irrevocable. If the POA is not coupled with interest, no extraneous expression can make it irrevocable. At the same time, even if there is no expression to the effect that the POA is irrevocable but the reading of the document indicates that it is a POA coupled with interest, it would be irrevocable. The principles of construction of a POA termed as 'irrevocable' was explained in ***Manubhai Prabhudas Patel v. Jayantilal Vadilal Shah, reported in 2011 SCC OnLine Guj 7028.*** **Para 46.** Applying the above exposition of law in the facts of the present case, it is evident from the tenor of POA that is not irrevocable as it was not executed to effectuate security or to secure interest of the agent. The holder of POA could not be said to have an interest in the subject matter of the agency and mere use of the word 'irrevocable' in a POA would not make the POA irrevocable. The High Court was right in holding that

			the holder did not have any interest in the POA. When the High Court observes that the power of attorney does not explicitly state the reason for its execution, it implies that its nature is general rather than special. **Para 47.** It is a settled law that a transfer of immovable property by way of sale can only be by a deed of conveyance. An agreement to sell is not a conveyance. It is not a document of title or a deed of transfer of deed of transfer of property and does not confer ownership right or title. In ***Suraj Lamp (supra)*** this Court had reiterated that an agreement to sell does not meet the requirements of Sections 54 and 55 of the TPA to effectuate a 'transfer'. **Para 49.** The issue at hand may also be looked at from another angle. The appellants have submitted that that since the GPA and the agreement to sell were executed by the same person in favour of the same beneficiary, it ought to have been read together. **Para 53.** Even from the combined reading of the POA and the agreement to sell, the submission of the appellants fails as combined reading of the two documents would mean that by executing the POA along with agreement to sell, the holder had an interest in the immovable property. If interest had been transferred by way of a written document, it had to be compulsorily registered as per Section

			17(1)(b) of the Registration Act. The law recognizes two modes of transfer by sale, first, through a registered instrument, and second, by delivery of property if its value is less than Rs. 100/-. **Para 55.** The High Court rightly held that even though the GPA and the agreement to sell were contemporaneous documents executed by the original owner in favour of the holder, this alone cannot be a factor to reach the conclusion that she had an interest in the POA. Thus, even though the GPA and the agreement to sell were contemporaneous documents executed by the original owner in favour of the same beneficiary, this cannot be the sole factor to conclude that she had an interest in the subject-matter. Even if such an argument were to persuade this Court, the document must have been registered as per Section 17(1)(b) of the Registration Act. In the absence of such registration, it would not be open for the holder of the POA to content that she had a valid right, title and interest in the immovable property to execute the registered sale deed in favour of appellant no. 2. **Para 56.** The practice of transferring an immovable property vide a GPA and agreement to sell has been discouraged by the following observations of this Court in ***Suraj Lamp (supra)***. The relevant observations are reproduced herein below:— “24. We therefore reiterate that

			immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Transactions of the nature of "GPA sales" or "SA/GPA/will transfers" do not convey title and do not amount to transfer, nor can they be recognised or valid mode of transfer of immovable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. They cannot be recognised as deeds of title, except to the limited extent of Section 53-A of the TP Act. …" **Para 58.** Where the question of title is "directly and substantially" in issue in a suit for injunction, and where a finding on an issue of title is necessary for granting the injunction, with a specific issue on title raised and framed, a specific prayer for a declaration of title is not necessary. As a result, a second suit would be barred when facts regarding title have been pleaded and decided by the Trial Court. In the present suit, the findings on possession rest solely on the findings on title. The Trial Court framed a categorical issue on the ownership of the appellants herein. To summarize, where a finding on title is necessary for granting an injunction and has been substantially dealt with by the Trial Court in a suit for injunction, a direct and specific prayer for a declaration of title is not a necessity.
4.	**RBANMS**	• The	**Para 15.1.** Undoubtedly, a sale deed,

	Educational Institution vs. B. Gunashekar 2025 SCC Online SC 793	applicability of Section 53-A of the Transfer of Property Act, • Agreement to Sell Does Not Confer Ownership Rights: As per Section 54 of the Transfer of Property Act, 1882, • Rejection of plaint under Order 7 R 11 (a) CPC. • While it is true that the defendant's defense is not to be considered at this stage, this does not mean that the court must accept patently untenable claims or shut its eyes to settled principles of	which amounts to conveyance, has to be a registered document, as mandated under Section 17 of the Registration Act, 1908. On the other hand, an agreement for sale, which also requires to be registered, does not amount to a conveyance as it is merely a contractual document, by which one party, namely the vendor, agrees or assures or promises to convey the property described in the schedule of such agreement to the other party, namely the purchaser, upon the latter performing his part of the obligation under the agreement fully and in time. Section 54 of the Transfer of Property Act, 1882 explicitly lays down that a contract for sale will not confer any right or interest. Section 53-A of the Transfer of Property Act, 1882 offers protection only to a proposed transferee who has part performed his part of the promise and has been put into possession, against the actions of transferor, acting against the interest of the transferee. For the proposed transferee to seek any protection against the transferor, he must have either performed his part of obligation in full or in part. The applicability of Section 53-A of the Transfer of Property Act, 1882 is subject to certain conditions viz., (a) the agreement must be in writing with the owner of the property or in other words, the transferor must be either the owner or his authorised representative, (b) the transferee must have been put into possession or must have acted in furtherance of the agreement and made

		law and put the parties to trial.	some developments, (c) the protection under Section 53-A is not an exemption to Section 52 of the Transfer of Property Act, 1882 or in other words, a transferee, put into possession with the knowledge of a pending lis, is not entitled to any protection, (d) the transferee must be in possession when the lis is initiated against his transferor and must be willing to perform the remaining part of his obligation, (e) the transferee must be entitled to seek specific performance or in other words, must not be barred by any of the provisions of the Specific Relief Act, 1963 from seeking such performance. The protection under Section 53-A is not available against a third party who may have an adversarial claim against the vendor. Therefore, unless and until the sale deed is executed, the purchaser is not vested with any right, title or interest in the property except to the limited extent of seeking specific performance from his vendor. An agreement for sale does not confer any right to the purchaser to file a suit against a third party who is either the owner or in possession, or who claims to be the owner and to be in possession. In such cases, the vendor will have to approach the court and not the proposed transferee. **Para 17.** At the same time, we are conscious of principle that only averments in the plaint are to be

			considered under Order VII Rule 11 CPC. While it is true that the defendant's defense is not to be considered at this stage, this does not mean that the court must accept patently untenable claims or shut its eyes to settled principles of law and put the parties to trial, even in cases which are barred and the cause of action is fictitious. In ***T. Arivandandam (supra)***, this Court emphasized that where the plaint is manifestly vexatious and meritless, courts should exercise their power under Order VII Rule 11 CPC and not waste judicial time on matters that are legally barred and frivolous. The present case falls squarely within this principle.
EXECUTION MATTERS			
5.	**Ashan Devi & Anr. vs Phulwasi Devi & Ors. (2003) 12 SCC 219**	• Meaning and test of the terms "Possession" and "Dispossession" in context of land (especially vacant).	**Para 24.** The objectors have laid evidence before the executing court to show that after obtaining by recitals in the sale deeds delivery of possession of the property, the names of purchasers were also mutated in the municipal records. Merely because at the time of execution of the decree through Court Nazir, the objectors were not physically present on the property, it cannot be said that the delivery of possession to the decree-holder by the court does not amount to the objectors' legal ouster or “dispossession”. The word “possession”, therefore, has to be given contextual meaning on facts of a particular case and the nature of the property involved. **Para 25.** In interpreting the provisions of Order 21 Rule 97 of the Code and the other provisions in the said order, the

			aims and objects for introducing amendment to the Code cannot be lost sight of. Under the unamended Code, third parties adversely affected or dispossessed from the property involved, were required to file independent suits for claiming title and possession. The legislature purposely amended provisions in Order 21 to enable the third parties to seek adjudication of their rights in execution proceedings themselves with a view to curtail the prolongation of litigation and arrest delay caused in execution of decrees.
6.	**Banwar Lal vs Satyanarain and another (1995) 1 SCC 6**	• For differentiation between O 21 R 35 (3) and Rule 97. Under Rule 35 (3) the resistor must claim derivative title from the judgment-debtor. Under Rule 97, the DH gets a right over third party also.	**Para 5.** The procedure has been provided in Rules 98 to 103. We are not, at present, concerned with the question relating to the procedure to be followed and question to be determined under Order 21, Rules 98 to 102. A reading of Order 21, Rule 97 CPC clearly envisages that "any person" even including the judgment-debtor irrespective whether he claims derivative title from the judgment-debtor or set up his own right, title or interest dehors the judgment-debtor and he resists execution of a decree, then the court in addition to the power under Rule 35(3) has been empowered to conduct an enquiry whether the obstruction by that person in obtaining possession of immovable property was legal or not. The decree-holder gets a right under Rule 97 to make an application against third parties to have his obstruction removed and an enquiry thereon could be done. Each occasion of obstruction or resistance furnishes a cause of action to the decree-

			holder to make an application for removal of the obstruction or resistance by such person.
7.	**Pratibha Singh and anr vs Shanti Devi Prasad and anr (2003) 2 SCC 330**	• Errors like a Defect in the Court records as to draft sale deed caused due to oversight is curable by resort to Section 47 when possession has not been taken yet by the DH plaintiff.	**Para 9.** As there was no map of the land attached with the plaint, the decree too is not accompanied by any map of the property forming the subject-matter of decree. The decree refers to the decretal property as "suit lands" which obviously means the lands forming the subject-matter of suit as per plaint averments. **Para 15 :** Order 7 Rule 3 CPC requires where the subject-matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it. Such description enables the court to draw a proper decree as required by Order 20 Rule 3 CPC. In case such property can be identified by boundaries or numbers in a record for settlement of survey, the plaint shall specify such boundaries or numbers. Having perused the revenue survey map of the entire area of RS Plot No. 595 and having seen the maps annexed with the registered sale deeds of the defendant judgment-debtors we are clearly of the opinion that Sub-plots Nos. 595/I and 595/II were not capable of being identified merely by boundaries nor by numbers as sub-plot numbers do not appear in records of settlement or survey. The plaintiffs ought to have filed the map of the suit property annexed with the plaint. If the plaintiffs committed an error the defendants should have objected to it promptly. The default or carelessness of the parties

			does not absolve the trial court of its obligation which should have, while scrutinizing the plaint, pointed out the omission on the part of the plaintiffs and should have insisted on a map of the immovable property forming the subject-matter of the suit being filed. This is the first error. **Para 16:** Order 21 Rule 34 provides the procedure for execution of documents pursuant to a decree. Where a decree is for the execution of a document the decree-holder may prepare a draft of the document in accordance with the terms of the decree and deliver the same to the court. Thereupon the court shall cause the draft to be served on the judgment-debtor together with a notice requiring his objections, if any, to be made out within time as the court fixes in this behalf. Where the judgment-debtor objects to the draft, his objections shall be stated in writing and then determined. The draft shall be approved or altered consistently with the finding arrived at by the court. **Para 17:** When the suit as to immovable property has been decreed and the property is not definitely identified, the defect in the court record caused by overlooking of provisions contained in Order 7 Rule 3 and Order 20 Rule 3 CPC is capable of being cured. After all a successful plaintiff should not be deprived of the fruits of decree. Resort can be had to Section 152 or Section 47 CPC depending on the facts and circumstances of each case — which of the two provisions would be more

			appropriate, just and convenient to invoke. Being an inadvertent error, not affecting the merits of the case, it may be corrected under Section 152 CPC by the court which passed the decree by supplying the omission. Alternatively, the exact description of decretal property may be ascertained by the executing court as a question relating to execution, discharge or satisfaction of decree within the meaning of Section 47 CPC. A decree of a competent court should not, as far as practicable, be allowed to be defeated on account of an accidental slip or omission. In the facts and circumstances of the present case, we think it would be more appropriate to invoke Section 47 CPC.
8.	**Rameshwar Das Gupta V. State of UP (1996) 5 SCC 728**	• Executing Court cannot go beyond the order or decree under execution.	**Para 4.** It is a well-settled legal position that an executing court cannot travel beyond the order or decree under execution. It gets jurisdiction only to execute the order in accordance with the procedure laid down under Order 21 CPC. In view of the fact that it is a money claim, what was to be computed is the arrears of the salary, gratuity and pension after computation of his promotional benefits in accordance with the service law. That having been done and the court having decided the entitlement of the decree-holder in a sum of Rs 1,97,000 and odd, the question that arises is whether the executing court could step out and grant a decree for interest which was not part of the decree for execution on the ground of delay in payment or for unreasonable stand taken in execution? In our view, the executing court has exceeded its jurisdiction and the order is one without jurisdiction and is thereby a void order. It is true that the High Court normally exercises its

			revisional jurisdiction under Section 115 CPC but once it is held that the executing court has exceeded its jurisdiction, it is but the duty of the High Court to correct the same. Therefore, we do not find any illegality in the order passed by the High Court in interfering with and setting aside the order directing payment of interest.
9.	**Kanta Devi V. Arya Smaj Pratinidhi Sabha Haldwani with Satyendra Kumar V. Arya Smaj Pratinidhi Sabha Haldwani 2015 SCC Online Utt 531**	• Additional defence cannot be taken under Section 47 of the CPC- JD cannot challenge the title of the DH once again during execution proceedings.	"None can be permitted to take additional defence under Section 47 of the C.P.C. after decree was passed against him. Under Section 47 of the C.P.C. questions arising between the parties to the suit relating to execution, discharge or satisfaction of the decree can be determined. By invoking Section 47 of the Code, judgment debtor once again cannot challenge the title of the plaintiff. Decree passed against the judgment debtor has attained finality execution thereof should not be allowed to be obstructed by setting title in third party, who was not present/party in the suit."
10.	**Rahul S. Shah Vs. Jinendra Kumar Gandhi and Ors. (2021) 6 SCC 418**	• Execution of Decree. • Fair approach requiring the Executing Court to verify the identity of the suit properties.	**Para 20:** .....fair approach requiring the Executing Court to appoint a Court Commissioner to verify the identity of the suit properties and also consider the materials brought on record including the reports of the previous local commission. In the light of this, the arguments of the present Appellants unmerited and without any force. The documents ought to be subjected to forensic examination insubstantial. The criminal proceedings initiated during the pendency of the execution proceedings- in 2016 culminated in the quashing of those proceedings. The argument that the documents are not genuine or that

			they contain something suspicious ex-facie appears only to be another attempt to stall execution and seek undue advantage. As a result, the High Court correctly declined to order forensic examination. The direction to pay costs was just and proper. **Para 35:** To avoid controversies and multiple issues of a very vexed question emanating from the rights claimed by third parties, the Court must play an active role in deciding all such related issues to the subject matter during adjudication of the suit itself and ensure that a clear, unambiguous, and executable decree is passed in any suit. **Para 41:** There is urgent need to reduce delays in the execution proceedings. As held appropriate, directions issued for compliance by Court to do complete justice. These directions are in exercise of our jurisdiction under Article 142 read with Article 141 and Article 144 of the Constitution of India in larger public interest to subserve the process of justice so as to bring to an end the unnecessary ordeal of litigation faced by parties awaiting fruits of decree and in larger perspective affecting the faith of the litigants in the process of law. **Para 42:** Directions regarding the expeditious disposal of execution cases.
11.	**Bhudev Mallick V. Ranajit Ghoshal 2025 SCC OnLine SC 360**	• Burden of Proof in Execution petitions of Injunction Decree.	**Para 36.** It is well settled that a decree of permanent injunction is executable with the aid of the provisions contained in Order XXI Rule 32 of the Code referred to above, and any act in

			violation or breach of decree of permanent injunction is a continuing disobedience entailing penal consequences. **Para 49.** The sub-rule, as seen from its clear and explicit language, provides that a decree for injunction passed against a party could be enforced by his detention in a civil prison, if he has wilfully failed to obey such decree despite having had an opportunity of obeying it. In other words, the sub-rule, no doubt, enables a holder of a decree for injunction to seek its execution from the executing Court by requiring it to order the detention of the person bound by the decree, in a civil prison. But, the Court should not, according to the same sub-rule, make an order for detention of the person unless it is satisfied that that person has had an Opportunity of obeying the decree and yet has wilfully disobeyed it. **Para 50.** If regard is had to the above scope and ambit of the sub-rule, it follows that the executing Court required to execute the decree for injunction against the person bound by that decree, by ordering his detention, cannot do so without recording a finding on the basis of the materials to be produced by the person seeking the execution of the decree that the person bound by the decree, though has had an opportunity of obeying the decree, has wilfully failed to obey it, as a condition precedent. Hence, what is required of the person seeking execution of the decree for injunction under the sub-rule is to place materials before the executing

			Court as would enable it to conclude (i) that the person bound by the decree, was fully aware of the terms of the decree and its binding nature upon him; and (ii) that that person has had an opportunity of obeying such decree, but has wilfully, i.e., consciously and deliberately, disobeyed such decree, so that it can make an order of his detention as sought for. Thus, the onus of placing materials before the executing Court for enabling it to record a finding that the person against whom the order of detention is sought, has had an opportunity of obeying the decree for injunction, but has wilfully disobeyed it, lies on the person seeking such order of detention, lest the person seeking deprivation of the liberty of another cannot do so without fully satisfying the Court about its need.
JURISDICTIONAL MATTERS AND CONFLICTS			
12.	**Sri Ram and anr V. Ist Additional District Judge and ors (2001) 3 SCC 24**	• Suit for cancellation of Sale deed not hit by Section 331 of the UPZA&LR Act 1950.	**Para 7 :** ...where a recorded tenure-holder having a prima facie title and in possession files suit in the civil court for cancellation of sale deed having been obtained on the ground of fraud or impersonation cannot be directed to file a suit for declaration in the Revenue Court, the reason being that in such a case, prima facie, the title of the recorded tenure-holder is not under cloud. He does not require declaration of his title to the land. The position would be different where a person not being a recorded tenure-holder seeks cancellation of sale deed by filing a suit

			in the civil court on the ground of fraud or impersonation. There necessarily the plaintiff is required to seek a declaration of his title and, therefore, he may be directed to approach the Revenue Court, as the sale deed being void has to be ignored for giving him relief for declaration and possession. **Suit is maintainable is Civil Court.**
13.	**Horil • V. Keshav and anr (2012) 5 SCC 525**	Jurisdiction of Civil Court versus Revenue Court.	**Para 9.** It is true that a compromise forming the basis of the decree can only be questioned before the same court that recorded the compromise and a fresh suit for setting aside a compromise decree is expressly barred under Order 23 Rule 3-A. It is equally true that the expression “not lawful” used in Order 23 Rule 3-A also covers a decree based on a fraudulent compromise hence, a challenge to a compromise decree on the ground that it was obtained by fraudulent means would also fall under the provisions of Order 23 Rule 3-A. **14.** Though the provisions of the Code of Civil Procedure have been made applicable to the proceedings under the Act but that would not make the authorities specified under Schedule II to the Act as “court” under the Code and those authorities shall continue to be “courts” of limited and restricted jurisdiction. **Para 15.** We are of the view that the Revenue Courts are neither equipped nor competent to effectively adjudicate on allegations of fraud that have overtones of criminality and the courts really skilled and experienced to try such issues are the courts constituted under

			the Code of Civil Procedure. **Para 16.** It is also well settled that under Section 9 of the Civil Procedure Code, the civil court has inherent jurisdiction to try all types of civil disputes unless its jurisdiction is barred expressly or by necessary implication, by any statutory provision and conferred on any other tribunal or authority. We find nothing in Order 23 Rule 3-A to bar the institution of a suit before the civil court even in regard to decrees or orders passed in suits and/or proceedings under different statutes before a court, tribunal or authority of limited and restricted jurisdiction.
14.	**Ram Awalamb V. Jatashankar AIR 1969 All 526**	• Question of jurisdiction is regulated by the main relief cognizable by a Revenue Court.	**Para 59.** It follows that in each and every case the cause of action of the suit shall have to be strictly scrutinized to determine whether the suit is solely cognizable by a revenue court or is impliedly cognizable only by a revenue court, or is cognizable by a civil Court. **Para 60.** Where in a suit, from a perusal only of the reliefs claimed, one or more of them are ostensibly cognizable only by civil Court and at least one relief is cognizable only by the revenue court, further questions which arise are whether all the reliefs are based on the same cause of action and, if so, (a) whether the main relief asked for on the basis of that cause of action is such

			as can be granted only by a revenue court, or (b) whether any real or substantial relief (though it may not be identical with that claimed by the plaintiff) could be granted by the revenue court. There can be no doubt that in all cases contemplated under (a) and (b) above the jurisdiction shall vest in the revenue court and not in the Civil Court. In all other cases of a Civil nature the jurisdiction must vest in the Civil Court.
15.	**Shyam Kumar and ors V. Budh Singh AIR 1977 Raj 238 1977 SCC OnLine Raj 24**	• The relief of the cancellation of sale-deed or a decree can only be granted by a civil court and not by revenue court. • The suit therefore lies in the civil court.	**Para 15:** It is this cause of action which has forced the plaintiffs to file the suit; the relief therefore that is mainly sought is a relief of cancellation of the sale-deeds, and such a relief can not obviously be given by a revenue court, but can only be given by the civil court. It is patent that the explanation to section 207 is not applicable. The relief of perpetual injunction and others are incidental to the main relief, and will follow as a consequence to the finding of the court with regard to the relief of cancellation of the sale-deeds or otherwise.
16.	**Patil Automation (P) Ltd. v. Rakheja Engineers (P) Ltd. (2022) 10 SCC 1**	• Any suit instituted violating the mandate of Section 12-A of the Commercial Courts Act, 2015 must be visited with rejection of the plaint under Order 7 Rule 11.	**Para 94.3 :** Order 7 Rule 11 does not provide that the court is to discharge its duty of rejecting the plaint only on an application. Order 7 Rule 11 is, in fact, silent about any such requirement. Since summon is to be issued in a duly instituted suit, in a case where the plaint is barred under Order 7 Rule 11(*d*), the stage begins at that time when the court can reject the plaint under Order 7 Rule 11. No doubt it would take a clear case where the court is satisfied. The Court

			has to hear the plaintiff before it invokes its power besides giving reasons under Order 7 Rule 12. In a clear case, where on allegations in the suit, it is found that the suit is barred by any law, as would be the case, where the plaintiff in a suit under the Act does not plead circumstances to take his case out of the requirement of Section 12-A, the plaint should be rejected without issuing summons. Undoubtedly, on issuing summons it will be always open to the defendant to make an application as well under Order 7 Rule 11. In other words, the power under Order 7 Rule 11 is available to the court to be exercised suo motu.
SPECIFIC PERFORMANCE, POWER OF ATTORNEY			
17.	**Balbir Singh V. Baldev Singh (Dead) through LR, (2025) 3 SCC 543**	• Decree for specific performance – Extension of time to Judgment Debtor.	**Para 24.** The present section corresponds to Section 35(*c*) of the Specific Relief Act, 1877 (hereinafter referred to as "the repealed Act") under which it was open to the vendor or lessor in the circumstances mentioned in that section to bring a separate suit for rescission; but this section goes further and gives to the vendor or lessor the right to seek rescission in the same suit, when after the suit for specific performance is decreed the plaintiff fails to pay the purchase money within the period fixed. The present section, therefore, seeks to provide complete relief to both the parties in terms of a decree for specific performance in the same suit without requiring one of the parties to initiate separate proceedings.

			The object is to avoid multiplicity of suits. Likewise, under the present provision where the purchaser or lessee has paid the money, he is entitled in the suit for specific performance to the reliefs as indicated in sub-section (3) like, partition, possession, etc. A suit for specific performance does not come to an end on passing of a decree and the court which has passed the decree for specific performance retains the control over the decree even after the decree has been passed. **Para 25.** The decree for specific performance has been described as a preliminary decree. The power under Section 28 of the Act is discretionary and the court cannot ordinarily annul the decree once passed by it. Although the power to annul the decree exists yet Section 28 of the Act provides for complete relief to both the parties in terms of the decree. The court does not cease to have the power to extend the time even though the trial court had earlier directed in the decree that payment of balance price to be made by certain date and on failure the suit to stand dismissed. The power exercisable under this section is discretionary.
18.	**Tomorrowland Ltd.** **v.**	• In commercial disputes, the award of interest	**Para 46.** That being the case, it is imperative to maintain the sanctity of the terms of the agreement between the

	Housing & Urban Development Corpn. Ltd. (2025) 4 SCC 19	pendente lite or post-decree is typically granted as a matter of course.	parties. It is a settled position of law that a commercial document ought not to be interpreted in a manner that arrives at a complete variance with what may originally have been the intention of the parties. As a result, we hold that Respondent 1 is liable to refund the amount of Rs 28,11,31,939 (*First instalment of Rs 27.04 crores along with interest for three months amounting to Rs 1,04,81,939 and Rs 2.5 lakhs towards maintenance corpus*) deposited by the appellant pursuant to the allotment letter. **Para 49.** There is no gainsaying that the power to award interest ought to be exercised judiciously, aligning with equitable considerations and also ensuring neither undue enrichment nor unfair deprivation. Courts are duty-bound to assess the facts and circumstances of each case, applying the principles of fairness and justice. This discretion must reflect a balanced approach, grounded in reason, and guided by the overarching objective of equity.
19.	**Desh Raj V. Rohtash Singh (2023) 3 SCC 714**	• Refund of any earnest money in suit for specific performance of a contact.	**Para 35:** On a plain reading of the above-reproduced provision, we have no reason to doubt that the plaintiff in his suit for specific performance of a contact is not only entitled to seek specific performance of the contract for the transfer of immovable property but he can also seek alternative relief(s) including the refund of any earnest money, provided that such a relief has been specifically incorporated in the plaint. The court, however, has been

			vested with wide judicial discretion to permit the plaintiff to amend the plaint even at a later stage of the proceedings and seek the alternative relief of refund of the earnest money. The litmus test appears to be that unless a plaintiff specifically seeks the refund of the earnest money at the time of filing of the suit or by way of amendment, no such relief can be granted to him. The prayer clause is a sine qua non for grant of decree of refund of earnest money. **Para 36:** The Respondent in the instant case has neither pleaded for refund of the earnest money nor has he claimed any damages or penalty from the Appellants. From the perusal of the records, it is conspicuous that Respondent never raised any concern that the pre estimated amount was 'penal' in nature and instead his sole objective was to gain titular rights over the Concerned Property on the strength of Sale Agreements.
20.	**Amar Nath V. Gian Chand (2022) 11 SCC 460**	• Power of Attorney holder can present the document for registration.	**Para 20:** When a person empowers another to execute a document and the power of attorney, acting on the power, executes the document, the power of attorney holder can present the document for registration under Section 32(a) of Registration Act, 1908. In the facts of this case, the second Defendant was armed with the power of attorney dated 28th January, 1987 and if it was not cancelled and he had executed the sale deed on 28th April, 1987, he would be well within his rights to present the document for registration under Section 32(a) of the Act.

			Para 21: Presentation is not a matter of form. Without a valid presentation of the document, the registration would be illegal. The IInd Defendant having presented the sale deed as executant, the presentation and registration cannot be questioned. **Para 48:** The High Court has overstepped its limits by reappreciating the evidence, a task which must be left to the First Appellate Court. It is true that the First Appellate Court did not fully conform to the requirements of Order XLI Rule 31 of the CPC. The property is banjar land. Quite clearly, the Plaintiff wanted to sell the land. He has admittedly executed the Power of Attorney in favour of the second Defendant. **Para 52:** Since, it is not disputed that the Plaintiff did execute the power of attorney, empowering the second Defendant to sell the property and it is further not in dispute that the second Defendant has executed the sale deed in favour of the first Defendant, Section 201 of the Contract Act, dealing with termination of agency, declares that an agency can be terminated by the principal revoking the authority of the agent. An exception to the power of principal to revoke the agency is found in Section 202 of the Contract Act, which provides that where an agent has himself an interest in the property which forms the subject of the agency, in the absence of an express contract, the agency cannot be terminated to the prejudice of the agent's interest. In such

			cases, the agency would be clearly irrevocable. Section 207 of the Contract Act declares that revocation may be express or may be implied in the conduct of that principal or agent, respectively. **Para 59:** The case of the Plaintiff that power of attorney stood cancelled, in the manner done on 2nd February, 1987, cannot be accepted. At any rate, present Court find it difficult to accept the case of the Plaintiff that the first Defendant, who is the third party, could be attributed any knowledge of the surrender or the alleged cancellation on 2nd February, 1987. Even in the absence of a registered cancellation of the power of attorney, there must be cancellation and it must further be brought to the notice of the third party at any rate. Such a cancellation is not made out. **Para 62:** Proceeding on the basis that, the second Defendant had a duty to not sell the property below Rs. 55,000, in terms of P-1, the breach of duty to not sell below Rs. 55,000, when the second Defendant sold the property for Rs. 30,000, cannot invalidate the sale or render it null and void. A perusal of the power of attorney will make it clear that any restriction on the price is conspicuous by its absence in the power of attorney.
21.	**Umadevi Nambiar V. Thamarasseri Roman Catholic Diocese**	• Purported sale by agent (Power of Attorney holder) - Whether binding on principle in the absence of an	**Para 15:** It is not always necessary for a Plaintiff in a suit for partition to seek the cancellation of the alienations. There are several reasons behind this principle. One is that the alienees as well as the co-sharer are still entitled to sustain the

	(2022) 7 SCC 90	authority to sell.	alienation to the extent of the share of the co-sharer. It may also be open to the alienee, in the final decree proceedings, to seek the allotment of the transferred property, to the share of the transferor, so that equities are worked out in a fair manner. Therefore, the High Court was wrong in putting against the Appellant, her failure to challenge the alienations. **Para 17:** As a matter of plain and simple fact, Exhibit A-1, deed of Power of Attorney did not contain a Clause authorizing the agent to sell the property though it contained two express provisions, one for leasing out the property and another for executing necessary documents if a security had to be offered for any borrowal made by the agent. Therefore, by convoluted logic, punctuation marks cannot be made to convey a power of sale. Even the very decision relied upon by the learned Counsel for the Respondent, makes it clear that ordinarily a Power of Attorney is to be construed strictly by the Court. Neither Ramanatha Aiyar's Law Lexicon nor Section 49 of the Registration Act can amplify or magnify the clauses contained in the deed of Power of Attorney. **Para 18:** As held by this Court in ***Church of Christ Charitable Trust and Educational Charitable Society v. Ponniamman Educational Trust,*** the document should expressly authorize the agent, (i) to execute a sale deed; (ii) to present it for registration; and (iii)to admit execution before the

			Registering Authority. **Para 19:** It is a fundamental principle of the law of transfer of property that "no one can confer a better title than what he himself has" (Nemo dat quod non habet). The Appellant's sister did not have the power to sell the property to the vendors of the Respondent. Therefore, the vendors of the Respondent could not have derived any valid title to the property. If the vendors of the Respondent themselves did not have any title, they had nothing to convey to the Respondent, except perhaps the litigation.
CANCELLATION OF INSTRUMENTS			
22.	**Jamila Begum v. Shami Mohd. (2019) 2 SCC 727**	• A registered sale deed. • Presumption of valid execution.	**Para 16:** ...the registration of the sale deed reinforces valid execution of the sale deed. A registered document carries with it a presumption that it was validly executed. It is for the party challenging the genuineness of the transaction to show that the transaction is not valid in law.
23.	**R. Kandasamy v. T.R.K. Sarawathy (2025) 3 SCC 513**	• Seek declaratory relief in suit for specific performance of agreement.	**Para 41.** A comprehensive reading of the two decisions reveals that in a fact scenario where the vendor unliterally cancels an agreement for sale, the vendee who is seeking specific performance of such agreement ought to seek declaratory relief to the effect that the cancellation is bad and not binding on the vendee. This is because an agreement, which has been cancelled, would be rendered non-existent in the eye of the law and such a non-existent agreement could not possibly be

			enforced before a court of law. Both the decisions cited above are unanimous in their approval of such legal principle. However, as clarified in ***Kanthamani [A. Kanthamani v. Nasreen Ahmed, (2017) 4 SCC 654 : (2017) 2 SCC (Civ) 596]*** , it is imperative that an issue be framed with respect to maintainability of the suit on such ground, before the court of first instance, as it is only when a finding on the issue of maintainability is rendered by the trial court that the same can be examined by the first or/and second appellate court. In other words, if maintainability were not an issue before the trial court or the appellate court, a suit cannot be dismissed as not maintainable.
24.	**Thota Ganga Laxmi v. Govt. of A.P. (2010) 15 SCC 207**	• There is no need for the aggrieved person to approach the civil court as the cancellation deed as well as registration of the same is wholly void and non est.	**Para 3.** A writ petition was filed seeking declaration that the cancellation deed is illegal and that has been disposed of by the impugned judgment holding that the appellants should approach the civil court. **Para 4.** In our opinion, there was no need for the appellants to approach the civil court as the said cancellation deed dated 4-8-2005 as well as registration of the same was wholly void and non est and can by a be ignored altogether. For illustration, if *A* transfers a piece of land to *B* registered sale deed, then, if it is not disputed that *A* had the title to the land, that title passes to *B* on the registration of the sale deed (retrospectively from the date of the execution of the same) and *B* then becomes the owner of the land. If *A* wants to subsequently get that sale deed cancelled, he has to file a civil suit for

			cancellation or else he can request *B* to sell the land back to *A* but by no stretch of imagination, can a cancellation deed be executed or registered. This is unheard of in law.
AMENDMENTS IN PLEADINGS, SECTION 80 CPC			
25.	**Jai Jai Ram Manohar Lal v. National Building Material Supply, (1969) 1 SCC 869**	• All amendments should be permitted as may be necessary for the purpose of determining the real question in controversy between the parties, unless by permitting the amendment injustice may result to the other side.	**Para 6 :** These cases do no more than illustrate the well settled rule that all amendments should be permitted as may be necessary for the purpose of determining the real question in controversy between the parties, unless by permitting the amendment injustice may result to the other side. **Para 7.** In the present case, the plaintiff was carrying on business as commission agent in the name of "Jai Jai Ram Manohar Lal." The plaintiff was competent to sue in his own name as Manager of the Hindu undivided family to which the business belonged; he says he sued on behalf of the family in the business name. The observations made by the High Court that the application for amendment of the plaint could not be granted, because there was no averment therein that the misdescription was on account of a bona fide mistake, and on that account the suit must fail, cannot be accepted. In our view, there is no rule that unless in an application for amendment of the plaint it is expressly averred that the error, omission or misdescription is due to a bona fide mistake, the Court has no power to grant leave to amend the plaint. The power to grant amendment of the pleadings is intended to serve the ends of justice and

			is not governed by any such narrow or technical limitations. **Para 8.** Since the name in which the action was instituted was merely a misdescription of the original plaintiff, no question of limitation arises : the plaint must be deemed on amendment to have been instituted in the name of the real plaintiff, on the date on which it was originally instituted.
26.	**Basavaraj v. Indira (2024) 3 SCC 705.**	• Amendment of plaint- Principles summarized • Amendment which would change the nature of the suit can not be allowed.	**Para 13:** Initially, the suit was filed for partition and separate possession. By way of amendment, relief of declaration of the compromise decree being null and void was also sought. The same would certainly change the nature of the suit, which may be impermissible. **Para 14.** This Court in *Revajeetu case* ***[Revajeetu Builders & Developers v. Narayanaswamy & Sons, (2009) 10 SCC 84 : (2009) 4 SCC (Civ) 37]*** enumerated the factors to be taken into consideration by the court while dealing with an application for amendment. One of the important factor is as to whether the amendment would cause prejudice to the other side or it fundamentally changes the nature and character of the case or a fresh suit on the amended claim would be barred on the date of filing the application.
27.	**M/s Revajeetu Builders V. M/s Narayanswamy & Sons and ors (2009) 10 SCC 84**	• Code of Civil Procedure, 1908 - Order VI, Rule 17- Amendment of pleadings- Principles.	**63.** On critically analysing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment: (*1*) whether the amendment sought is imperative for proper and effective

			adjudication of the case; (*2*) whether the application for amendment is bona fide or mala fide; (*3*) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money; (*4*) refusing amendment would in fact lead to injustice or lead to multiple litigation; (*5*) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and (*6*) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application. These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive. **64.** The decision on an application made under Order 6 Rule 17 is a very serious judicial exercise and the said exercise should never be undertaken in a casual manner. We can conclude our discussion by observing that while deciding applications for amendments the courts must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide, worthless and/or dishonest amendments.
28.	**Mohinder**	• Time limitation on	**Para 14 :** By Amendment Act 46 of

	Kumar Mehra V. Roop Rani Mehra (2018) 2 SCC 132	Amendment- How and when ?	1999, with a view to shortage litigation and speed of the trial of the civil suits, Rule 17 of Order 6 was omitted, which provision was restored by Amendment Act 22 of 2002 with a rider in the shape of the proviso limiting the power of amendment to a considerable extent. The object of newly inserted Rule 17 is to control filing of application for amending the pleading subsequent to commencement of trial. Not permitting amendment subsequent to commencement of the trial is with the object that when evidence is led on pleadings in a case, no new case be allowed to set up by amendments. The proviso, however, contains an exception by reserving right of the Court to grant amendment even after commencement of the trial, when it is shown that in spite of diligence, the said pleas could not be taken earlier. The object for adding proviso is to curtail delay and expedite adjudication of the cases. **Para 17:** Although Order 6 Rule 17 permits amendment in the pleadings "at any stage of the proceedings", but a limitation has been engrafted by means of proviso to the effect that no application for amendment shall be allowed after the trial is commenced. Reserving the court's jurisdiction to order for permitting the party to amend pleading on being satisfied that in spite of due diligence the parties could not have raised the matter before the

			commencement of trial. In a suit when trial commences? Order 18 CPC deals with "hearing of the suit and examination of witnesses". Issues are framed under Order 14. At the first hearing of the suit, the court after reading the plaint and written statement and after examination under Rule 1 of Order 14 is to frame issues. Order 15 deals with "disposal of the suit at the first hearing", when it appears that the parties are not in issue of any question of law or a fact. After issues are framed and case is fixed for hearing and the party having right to begin is to produce his evidence, the trial of suit commences.
29.	**Bihari Chowdhary v. State of Bihar (1984) 2 SCC 627**	• Sec. 80 CPC, 1908 is mandatory.	**Para 3:** The effect of the section is clearly to impose a bar against the institution of a suit against the Government or a public officer in respect of any act purported to be done by him in his official capacity until the expiration of two months after notice in writing has been delivered to or left at the office of the Secretary to Government or Collector of the concerned district and in the case of a public officer delivered to him or left at his office, stating the particulars enumerated in the last part of sub-section (1) of the section. When we examine the scheme of the section it becomes obvious that the section has

			been enacted as a measure of public policy with the object of ensuring that before a suit is instituted against the Government or a public officer, the Government or the officer concerned is afforded an opportunity to scrutinise the claim in respect of which the suit is proposed to be filed and if it be found to be a just claim, to take immediate action and thereby avoid unnecessary litigation and save public time and money by settling the claim without driving the person, who has issued the notice, to institute the suit involving considerable expenditure and delay. The Government, unlike private parties, is expected to consider the matter covered by the notice in a most objective manner, after obtaining such legal advice as they may think fit, and take a decision in public interest within the period of two months allowed by the section as to whether the claim is just and reasonable and the contemplated suit should, therefore, be avoided by speedy negotiations and settlement or whether the claim should be resisted by fighting out the suit if and when it is instituted. There is clearly a public purpose underlying the mandatory provision contained in the section insisting on the issuance of a notice setting out the particulars of the proposed suit and giving two months' time to Government or a public officer before a suit can be instituted against them. The object of the section is the advancement of justice and the securing of public good by avoidance of unnecessary litigation.

30.	**State of W.B. v. Pam Developments (P) Ltd. (2025) 3 SCC 356**	• Relevancy of Section 80 CPC.	**Para 29.** We have already observed that the amendment sought amounts to a continuous cause of action and maintains the nature and character of the suit and to that extent, Section 80CPC is irrelevant to the case at hand.
ORDER-7 RULE-11, ORDER-8 RULE 10 CPC			
31.	**Uma Devi v. Anand Kumar, (2025) 5 SCC 198**	• Object of Order 7 Rule 11(*a*) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(*d*), the Court would not permit the plaintiff to unnecessarily protract the proceedings in the suit.	**Para 18:** In our considered opinion, the Trial Court had rightly allowed the application of the Defendants/Appellants Under Order 7 Rule 11 Code of Civil Procedure, holding that the suit filed by the Plaintiffs was a meaningless litigation, that it did not disclose a proper cause of action and was barred by limitation.
32.	**Future Sector Land Developers LLP v. Bagmane Developers (P) Ltd. (2023) 5 SCC 368**	• Applications both under Order 7 Rule 10, and Order 7 Rule 11 CPC – Proper mode of disposal-Law clarified.	**Para 9:** Once an application under Order 7 Rule 11 is allowed, the plaint stands rejected and hence the question of presenting the same plaint before the appropriate court does not arise. Under Order 7 Rule 13, the rejection of plaint on the grounds stated in the preceding Rules, shall not of its own force, preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action. Therefore, if a plaint is rejected under Order 7 Rule 11, the only remedy is to file a fresh plaint within the parameters of Order 7 Rule 13 and the question of presenting the same plaint before the appropriate court does not arise.

33.	**Asma Lateef v. Shabbir Ahmad, (2024) 4 SCC 696**	• Scope and extent of power under Order-8 Rule-10 CPC, 1908.	**Para 26.** We have no hesitation to hold that Rule 10 is permissive in nature, enabling the trial court to exercise, in a given case, either of the two alternatives open to it. Notwithstanding the alternative of proceeding to pronounce a judgment, the court still has an option not to pronounce judgment and to make such order in relation to the suit it considers fit. The verb "shall" in Rule 10 (although substituted for the verb "may" by the Amendment Act, 1976) does not elevate the first alternative to the status of a mandatory provision, so much so that in every case where a party from whom a written statement is invited fails to file it, the court must pronounce the judgment against him. If that were the purport, the second alternative to which "shall" equally applies would be rendered otiose. **Para 56:** Further, even a cursory reading of Order 8 Rule 10 CPC impresses upon us the fundamental mandate that a "decree" shall follow a "judgment" in a case where the court invokes power upon failure of a defendant to file its written statement. It is, therefore, only a "judgment" conforming to the provisions of the CPC that could lead to a "decree" being drawn up.
34.	**Bhargavi Constructions v Kothakapu Muthyam Reddy, (2018) 13 SCC 480**	• **The expression "Law" in Order 7 Rule 11 includes a law declared by the High Courts as well the Supreme**	**Para 28.** The question as to whether the expression "law" occurring in clause (*d*) of Rule 11 of Order 7 of the Code includes "judicial decisions of the Apex Court" came up for consideration before the Division Bench of the Allahabad High Court in *Virendra Kumar Dixit* v.

		Court.	*State of U.P.* ***[Virendra Kumar Dixit v. State of U.P., 2014 SCC OnLine All 16476 : (2014) 9 ADJ 1596]*** The Division Bench dealt with the issue in detail in the context of several decisions on the subject and held in para 15 as under : (SCC OnLine All) *"15. Law includes not only legislative enactments but also judicial precedents. An authoritative judgment of the courts including higher judiciary is also law."*
LAW OF INJUNCTION – TEMPORARY AND PERMANENT			
35.	**Maria Margadia Sequeria V. Erasmo Jack De Sequeria (D) (2012) 5 SCC 370**	• Understanding types of Possession in a suit for injunction in order to qualify as a condition for grant of injunction.- Whose possession is a Court supposed to protect in a suit for injunction.	**Para 70.** It would be imperative that one who claims possession must give all such details as enumerated hereunder. They are only illustrative and not exhaustive: (*a*) who is or are the owner or owners of the property; (*b*) title of the property; (*c*) who is in possession of the title documents; (*d*) identity of the claimant or claimants to possession; (*e*) the date of entry into possession; (*f*) how he came into possession—whether he purchased the property or inherited or got the same in gift or by any other method; (*g*) in case he purchased the property, what is the consideration; if he has taken it on rent, how much is the rent, licence fee or lease amount; (*h*) If taken on rent, licence fee or lease —then insist on rent deed, licence deed or lease deed;

			(*i*) who are the persons in possession/occupation or otherwise living with him, in what capacity; as family members, friends or servants, etc.; (*j*) subsequent conduct i.e. any event which might have extinguished his entitlement to possession or caused shift therein; and (*k*) basis of his claim that not to deliver possession but continue in possession. **Para 78.** It is a settled principle of law that no one can take the law in his own hands. Even a trespasser in settled possession cannot be dispossessed without recourse to law. It must be the endeavour of the court that if a suit for mandatory injunction is filed, then it is its bounden duty and obligation to critically examine the pleadings and documents and pass an order of injunction while taking pragmatic realities including prevalent market rent of similar premises in similar localities in consideration. The court's primary concern has to be to do substantial justice. Even if the court in an extraordinary case decides to grant ex parte ad interim injunction in favour of the plaintiff who does not have a clear title, then at least the plaintiff be directed to give an undertaking that in case the suit is ultimately dismissed, then he would be required to pay market rent of the property from the date when an ad interim injunction was obtained by him. It is the duty and the obligation of the court to at least dispose of the application of grant of injunction as

			expeditiously as possible. It is the demand of equity and justice. **Para 84.** In order to grant or refuse injunction, the judicial officer or the Judge must carefully examine the entire pleadings and documents with utmost care and seriousness. The safe and better course is to give a short notice on the injunction application and pass an appropriate order after hearing both the sides. In case of grave urgency, if it becomes imperative to grant an ex parte ad interim injunction, it should be granted for a specified period, such as, for two weeks. In those cases, the plaintiff will have no inherent interest in delaying disposal of injunction application after obtaining an ex parte ad interim injunction. **Para 97.** Principles of law which emerge in this case are crystallised as under: (*1*) No one acquires title to the property if he or she was allowed to stay in the premises gratuitously. Even by long possession of years or decades such person would not acquire any right or interest in the said property. (*2*) Caretaker, watchman or servant can never acquire interest in the property irrespective of his long possession. The caretaker or servant has to give possession forthwith on demand. (*3*) The courts are not justified in protecting the possession of a caretaker, servant or any person who was allowed to live in the premises for some time either as a friend, relative, caretaker or as a servant.

			(*4*) The protection of the court can only be granted or extended to the person who has valid, subsisting rent agreement, lease agreement or licence agreement in his favour. (*5*) The caretaker or agent holds property of the principal only on behalf of the principal. He acquires no right or interest whatsoever for himself in such property irrespective of his long stay or possession.
36.	**Rame Gowda (D) by Lrs V. M. Varadappa Naidu (D) by Lrs and Anr (2004) 1 SCC 769**	• Court to protect only settled possession. • The expression "Settled Possession" explained.	**Para 8.** It is thus clear that so far as the Indian law is concerned, the person in peaceful possession is entitled to retain his possession and in order to protect such possession he may even use reasonable force to keep out a trespasser. A rightful owner who has been wrongfully dispossessed of land may retake possession if he can do so peacefully and without the use of unreasonable force. If the trespasser is in settled possession of the property belonging to the rightful owner, the rightful owner shall have to take recourse to law; he cannot take the law in his own hands and evict the trespasser or interfere with his possession. The law will come to the aid of a person in peaceful and settled possession by injuncting even a rightful owner from using force or taking the law in his own hands, and also by restoring him in possession even from the rightful owner (of course subject to the law of limitation), if the latter has dispossessed the prior possessor by use of force. In the absence of proof of better title, possession or prior peaceful settled

			possession is itself evidence of title. Law presumes the possession to go with the title unless rebutted. The owner of any property may prevent even by using reasonable force a trespasser from an attempted trespass, when it is in the process of being committed, or is of a flimsy character, or recurring, intermittent, stray or casual in nature, or has just been committed, while the rightful owner did not have enough time to have recourse to law. In the last of the cases, the possession of the trespasser, just entered into would not be called as one acquiesced to by the true owner. **Para 9.** It is the settled possession or effective possession of a person without title which would entitle him to protect his possession even as against the true owner. The concept of settled possession and the right of the possessor to protect his possession against the owner has come to be settled by a catena of decisions.
37.	**Anathula Sudhakar V. P. Buchi Reddy (D) by LR and ors. (2008) 4 SCC 594**	• On Prohibitory permanent injunction based on possession; • where basis of possession is the title of the plaintiff, • where title of plaintiff is under cloud.	**Para 13:** The general principles as to when a mere suit for permanent injunction will lie, and when it is necessary to file a suit for declaration and/or possession with injunction as a consequential relief, are well settled. We may refer to them briefly. **13.1.** Where a plaintiff is in lawful or peaceful possession of a property and such possession is interfered or threatened by the defendant, a suit for an injunction simpliciter will lie. A person has a right to protect his possession against any person who does not prove a better title by seeking a prohibitory

			injunction. But a person in wrongful possession is not entitled to an injunction against the rightful owner. **13.2.** Where the title of the plaintiff is not disputed, but he is not in possession, his remedy is to file a suit for possession and seek in addition, if necessary, an injunction. A person out of possession, cannot seek the relief of injunction simpliciter, without claiming the relief of possession. **13.3.** Where the plaintiff is in possession, but his title to the property is in dispute, or under a cloud, or where the defendant asserts title thereto and there is also a threat of dispossession from the defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction. Where the title of the plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction. **Para 21.** To summarise, the position in regard to suits for prohibitory injunction relating to immovable property, is as under: (*a*) Where a cloud is raised over the plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with the

			plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter. (*b*) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession. (*c*) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title (either specific, or implied as noticed in ***Annaimuthu Thevar [Annaimuthu Thevar v. Alagammal, (2005) 6 SCC 202]***). Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction. (*d*) Where there are necessary pleadings regarding title, and appropriate issue

			relating to title on which parties lead evidence, if the matter involved is simple and straightforward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to the plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case.
38.	**Velayudhan V. Mohammedkutty (2017) 13 SCC 249**	• For Identifying a suit for Permanent Injunction Simpliciter from one involving question of title	**Para 9:** ....Reading the expression "or from doing anything detrimental to the title and possession of the plaintiffs" in prayer clause 'A' quoted above would show that the plaintiffs have also expressed apprehension in relation to their title over the suit properties. **Para 10.** Keeping in view the averments made in Para 1 of the plaint read with aforementioned words of the prayer clause, we are of the view that it cannot be said that the suit is only for grant of permanent injunction simpliciter. In other words, the issue of title having surfaced in the relief clause, the same is of some significance over the rights of the parties while considering the grant of

			the reliefs. **Para 11.** In our considered opinion, the reading of the plaint as a whole in the context of the reliefs claimed therein would go to show that the issue of title is not wholly foreign to the controversy and is relevant while considering the grant of permanent injunction.
39.	**Zarif Ahmad v. Mohd. Farooq (2015) 13 SCC 673**	• Standard of proof of possession in injunction suits.	**Para 11:** Order 7 Rule 3 of the Code of Civil Procedure, 1908 (for short "CPC"), which pertains to the requirement of description of immovable property,... ....The object of the above provision is that the description of the property must be sufficient to identify it. The property can be identifiable by boundaries, or by number in a public record of settlement or survey. Even by plaint map showing the location of the disputed immovable property, it can be described.
COMMISSION			
40.	**Ram Lal V Saligram (2020)11 SCC 590**	• Discourse to be adopted when Court not satisfied with commission report.	**Para 18:** In the course of a civil suit, by way of incidental proceedings, the Court could issue a Commission, inter alia, for making local investigation, as per Section 75 of the Code of Civil Procedure ("the Code" hereafter). The procedure in relation to such Commission for local investigation is specified in Rules 9 and 10 of Order 26 of the Code. Suffice it to notice for the present purpose that, as per clause (3) of Rule 10 of Order 26, where the Court is dissatisfied with the proceedings of such a Local Commissioner, it could direct such further inquiry to be made as considered fit.

			Para 19. The fact that the Local Commissioner's report, and for that matter a properly drawn up report, is requisite in the present case for the purpose of elucidating the matter in dispute is not of any debate, for the order dated 24-1-1991 passed by the first appellate court having attained finality whereby, additional issues were remitted for finding on the basis of Local Commissioner's report. In the given set of facts and circumstances, we are clearly of the view that if the report of the Local Commissioner was suffering from an irregularity i.e. want of following the applicable instructions, the proper course for the High Court was either to issue a fresh commission or to remand the matter for reconsideration but the entire suit could not have been dismissed for any irregularity on the part of Local Commissioner. To put it differently, we are clearly of the view that if the Local Commissioner's report was found wanting in compliance of applicable instructions for the purpose of demarcation, it was only a matter of irregularity and could have only resulted in discarding of such a report and requiring a fresh report but any such flaw, by itself, could have neither resulted in nullifying the order requiring appointment of Local Commissioner and for recording a finding after taking his report nor in dismissal of the suit.
41.	**Ram Bihari Dwivedi V. State of U.P.**	• Validity of commission report when survey done	**Para 14:** It is settled law that a valid survey must necessarily be made on the basis of fixed points. No fixed points are mentioned either in the report or in the

	2017 SCC OnLine All 3225	without legal demarcation on basis of fixed points.	map prepared after the alleged survey. Moreover, the map does not contain any measurements. The report therefore was not in accordance with law and could not be the basis of the impugned order. **Para 15:** Accordingly, I set aside the impugned order dated 2.6.2006 and remand the matter back to the Revisional Court, the Chief Revenue Officer to ensure that a proper survey is conducted on the basis of fixed points and after recording the measurements made during the survey, in the map.
42.	**Badan Prasad Jaiswal v Bira Khamari AIR 1990 Ori 1989**	• Procedure to be adopted by a Survey commissioner in order to make the survey report acceptable before Court.	**Para 2:** The procedure adopted by the Commissioner was extraordinary since fixed points in survey operations are paramount fixtures and if the fixed points were not available near about the disputed plot, the Commissioner was to find out other permanent structures such as the temples, old trees or the like near about the plot and take the measurement and if that was not possible, then to carry out the measurement commencing it from the fixed point available and reach the disputed plot. Besides, if the fixed point was available but the line was not visible from such point to the disputed plot, the survey should not have been made by chain method but should have been made by other method of survey suitable for the purpose. In no circumstances, the commissioner should have set up imaginary points with reference to the map by which process there cannot be any guarantee of the accuracy of the measurement.

COURT FEE & SUIT VALUATION			
43.	**Agra Diocesan Trust Association v Anil David (2020) 19 SCC 183**	• Section 7 (iv-A)	**Para 16.** It is evident from the above discussion that it is undisputed that the point in issue was with respect to valuation for purposes of court fee; equally, it is not in issue that since the plaintiff (i.e. petitioner herein) sought, in addition to a declaration, in both the suits, decrees of cancellation, the crucial point was what the correct value for purposes of court fee was. Now, market value has been specifically defined, in the context of a litigation like the present one. According to Section 7 (iv-A), in case the plaintiff (or his predecessor-in-title) was not a party to the decree or instrument, the value was to be according to one-fifth of the value of the subject matter, "and such value shall be deemed to be" under Section 7 (iv-A), "if the whole decree or instrument is involved in the suit, the amount for which or value of the property in respect of which the decree is passed or the instrument executed". Importantly, the explanation to Section 7 (iv-A) created a deeming fiction as to what constitutes the "value of the property" by saying that "in the case of immovable property shall be deemed to be the value as computed in accordance with the sub-section (v), (v-A) or (v-B) as the case may be. **Para 19.** In the opinion of this Court, there was no compulsion for the plaintiff to, at the stage of filing the suit, prove or establish the claim that the suit lands were revenue paying and the details of such revenue paid. Once it is conceded that the value of the land [per Explanation to Section 7(*iv*-A)] is to be determined according to either sub-clauses (*v*), (*va*) or (*vb*) of the Act, this

			meant that the concept of "market value" — a wider concept in other contexts, *was deemed to be* referrable to one or other modes of determining the value under sub-clauses (*v*), (*va*) or (*vb*) of Section 7(*iv*-A).
44.	**Suhrid Singh @ Sardool Singh V Randhir Singh AIR 2010 SC 2807 (2010) 12 SCC 112**	• Section 7(*iv*)(*c*) provides that in suits for a declaratory decree with consequential relief, the court fee shall be computed according to the amount at which the relief sought is valued in the plaint.	**Para 6.** Where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed. But if a non-executant seeks annulment of a deed, he has to seek a declaration that the deed is invalid, or non-est, or illegal or that it is not binding on him. The difference between a prayer for cancellation and declaration in regard to a deed of transfer/conveyance, can be brought out by the following illustration relating to `A' and `B' -- two brothers. `A' executes a sale deed in favour of `C'. Subsequently `A' wants to avoid the sale. `A' has to sue for cancellation of the deed. On the other hand, if `B', who is not the executant of the deed, wants to avoid it, he has to sue for a declaration that the deed executed by `A' is invalid/void and non- est/ illegal and he is not bound by it. In essence both may be suing to have the deed set aside or declared as non-binding. But the form is different and court fee is also different. If *A*, the executant of the deed, seeks cancellation of the deed, he has to pay ad valorem court fee on the consideration stated in the sale deed. If *B*, who is a non-executant, is in possession and sues for a declaration that the deed is null or void and does not bind him or his share, he has to merely pay a fixed court fee of Rs. 19.50 under Article 17(*iii*) of the Second Schedule of the Act. But if *B*, a non-executant, is not in possession, and he seeks not only a declaration that the sale deed is invalid, but also the consequential relief of possession, he has to pay an ad valorem

			court fee as provided under Section 7(*iv*) (*c*) of the Act.
45.	**Shailendra Bhardwaj & Ors vs Chandra Pal & Anr 2013 (1) SCC 579**	• Article 17(iii) of Schedule II of the Court Fees Act makes it clear that this article is applicable in cases where the plaintiff seeks to obtain a declaratory decree without consequential reliefs and there is no other provision under the Act for payment of fee relating to relief claimed.	**Para 9.** On comparing the above mentioned provisions, it is clear that Article 17(iii) of Schedule II of the Court Fees Act is applicable in cases where the plaintiff seeks to obtain a declaratory decree without any consequential relief and there is no other provision under the Act for payment of fee relating to relief claimed. Article 17(iii) of Schedule II of the Court Fees Act makes it clear that this article is applicable in cases where plaintiff seeks to obtain a declaratory decree without consequential reliefs and there is no other provision under the Act for payment of fee relating to relief claimed. If there is no other provision under the Court Fees Act in case of a suit involving cancellation or adjudging/ declaring void or voidable a will or sale deed on the question of payment of court fees, then Article 17(iii) of Schedule II shall be applicable. But if such relief is covered by any other provisions of the Court Fees Act, then Article 17(iii) of Schedule II will not be applicable. On a comparison between the Court Fees Act and the U.P. Amendment Act, it is clear that Section 7(iv-A) of the U.P. Amendment Act covers suits for or involving cancellation or adjudging/declaring null and void decree for money or an instrument securing money or other property having such value. The suit, in this case, was filed after the death of the testator and, therefore, the suit property covered by the will has also to be valued. Since Section 7(iv-A) of the U.P. Amendment Act specifically provides that payment of court fee in case where the suit is for or involving cancellation or adjudging/declaring null and void decree

			for money or an instrument, Article 17(iii) of Schedule II of the Court Fees Act would not apply. The U.P. Amendment Act, therefore, is applicable in the present case, despite the fact that no consequential relief has been claimed. Consequently, in terms of Section 7(iv-A) of the U.P. Amendment Act, the court fees have to be commuted according to the value of the subject matter and the trial Court as well as the High Court have correctly held so.
46.	**Tajender Singh Ghambhir v. Gurpreet Singh, (2014) 10 SCC 702**	• Duty of court to determine as to whether or not court fee paid on plaint is deficient.	**Para 8.** The scheme of the above provisions is clear. It casts duty on the court to determine as to whether or not court fee paid on the plaint is deficient and if the court fee is found to be deficient, then give an opportunity to the plaintiff to make up such deficiency within the time that may be fixed by the court. The important thread that runs through sub-sections (2) and (3) of Section 6 of the 1870 Act is that for payment of court fee, time must be granted by the court and if despite the order of the court, deficient court fee is not paid, then consequence as provided therein must follow.
47.	**Bharat Bhushan Gupta v. Pratap Narain Verma (2022) 8 SCC 333**	• Market value does not become decisive of suit valuation merely because an immovable property is subject-matter of litigation.	**Para 24:** It remains trite that it is the nature of relief claimed in the plaint which is decisive of the question of suit valuation. As a necessary corollary, the market value does not become decisive of suit valuation merely because an immovable property is the subject-matter of litigation. The market value of the immovable property involved in the litigation might have its relevance depending on the nature of relief claimed but, ultimately, the valuation of any particular suit has to be decided primarily with reference to the relief/reliefs claimed.
48.	**Court of Madras v.**	• Refund on settlement of	**Para 26.** Thus, in our view, the High Court was correct in holding that Section

	M.C. Subramaniam, (2021) 3 SCC 560	disputes under section 89 of Code of Civil Procedure	89 CPC and Section 69-A of the 1955 Act be interpreted liberally. In view of this broad purposive construction, we affirm the High Court's conclusion, and hold that Section 89 CPC shall cover, and the benefit of Section 69-A of the 1955 Act shall also extend to all methods of out-of-court dispute settlement between parties that the Court subsequently finds to have been legally arrived at. This would, thus, cover the present controversy, wherein a private settlement was arrived at, and a memo to withdraw the appeal was filed before the High Court. In such a case as well, the appellant i.e. Respondent 1 herein would be entitled to refund of court fee.
49.	**Raptakos Brett & Co. Ltd. v. Ganesh Property (1998) 7 SCC 184**	• Sections 108 (q) and 111 (a) of Transfer of Property Act, 1882- Eviction Suit - Suit Valuation.	**11.** They can as well support the case of the plaintiff for possession also under the general law of the land as recited in the last lines of para 2. So far as para 5 regarding the Court is concerned, it is now well settled that if the plaintiff seeks possession of the demised premises from the erstwhile tenant, court fee payable would not be on the market value of the suit property but on the basis of the valuation of the premises computed on the basis of 12 months' rent as it would not be a suit simpliciter on title against a rank trespasser. Only in the latter type of suits that the market value would be the valuation for the purpose of court fees.
OTHER MATTERS			
50.	**Bijay Kumar v Ashwin (2024) 8 SCC 668**	• Tenancy- Determination by landlord when can be done • Tenant would be liable to pay mesne profits to landlord for	**Para 18 :** Landlord-tenant disputes often make their way to this Court, and obviously, the payment of rent/mesne profits/occupation charges/damages becomes, more often than not a matter of high contest. Determination, as alleged to have taken place by the petitioner, can take place at the instance of both the

		period he had been a "tenant at sufferance".	landlord and the tenant. **Para 19.** According to the petitioner, as already taken note of above, the lease was “forfeited” due to non-payment of rent. Forfeiture, as defined by *Corpus Juris Secundum* is “the right of the lessor to terminate a lease because of lessee's breach of covenant or other wrongful act”. **Para 20.** It would also be useful to refer to the concept of tenant at sufferance. As defined in the very same treatise, such a tenant is a person who enters upon a land by lawful title, but continues in possession after the title has ended without statutory authority and without obtaining consent of the person then entitled.
51.	**Kattukandi Edathil Krishnan v. Kattukandi Edathil Valsan, (2022) 16 SCC 71**	• Meaning and distinction between Preliminary Decree and Final Decree. • Once a preliminary decree is passed by the trial court, the court should proceed with the case for drawing up the final decree suo motu.	**35.** We are of the view that once a preliminary decree is passed by the trial court, the court should proceed with the case for drawing up the final decree suo motu. After passing of the preliminary decree, the trial court has to list the matter for taking steps under Order 20 Rule 18 CPC. The courts should not adjourn the matter sine die, as has been done in the instant case. There is also no need to file a separate final decree proceedings. In the same suit, the court should allow the party concerned to file an appropriate application for drawing up the final decree. Needless to state that the suit comes to an end only when a final decree is drawn. Therefore, we direct the trial courts to list the matter for taking steps under Order 20 Rule 18 CPC soon after passing of the preliminary decree for partition and separate possession of the property, suo motu and without requiring initiation of any separate proceedings.

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