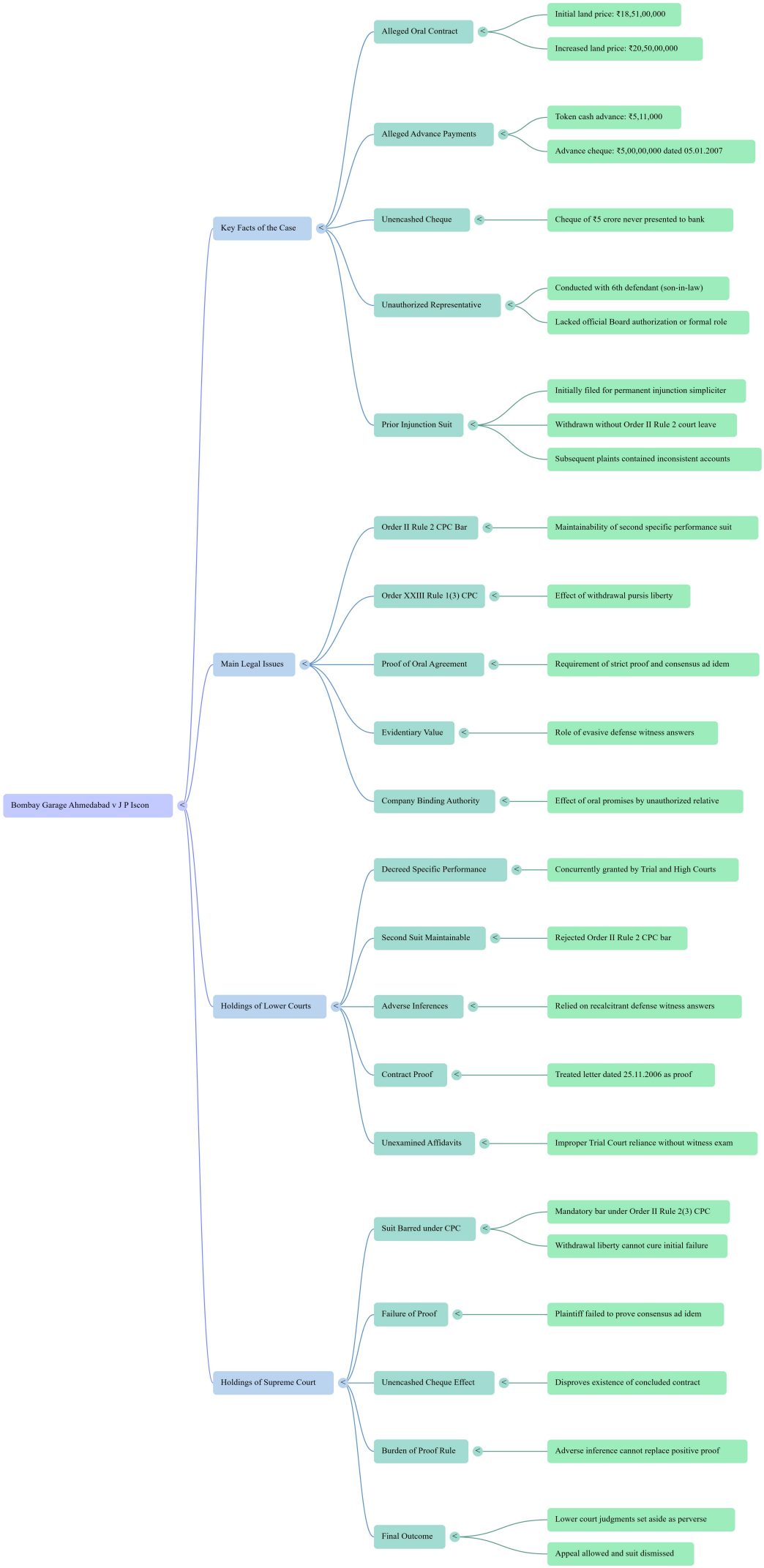
Bombay Garage Ahmedabad v J P Iscon
Key Facts of the Case
Alleged Oral Contract
Initial land price: ₹18,51,00,000
Increased land price: ₹20,50,00,000
Alleged Advance Payments
Token cash advance: ₹5,11,000
Advance cheque: ₹5,00,00,000 dated 05.01.2007
Unencashed Cheque
Cheque of ₹5 crore never presented to bank
Unauthorized Representative
Conducted with 6th defendant (son-in-law)
Lacked official Board authorization or formal role
Prior Injunction Suit
Initially filed for permanent injunction simpliciter
Withdrawn without Order II Rule 2 court leave
Subsequent plaints contained inconsistent accounts
Main Legal Issues
Order II Rule 2 CPC Bar
Maintainability of second specific performance suit
Order XXIII Rule 1(3) CPC
Effect of withdrawal pursis liberty
Proof of Oral Agreement
Requirement of strict proof and consensus ad idem
Evidentiary Value
Role of evasive defense witness answers
Company Binding Authority
Effect of oral promises by unauthorized relative
Holdings of Lower Courts
Decreed Specific Performance
Concurrently granted by Trial and High Courts
Second Suit Maintainable
Rejected Order II Rule 2 CPC bar
Adverse Inferences
Relied on recalcitrant defense witness answers
Contract Proof
Treated letter dated 25.11.2006 as proof
Unexamined Affidavits
Improper Trial Court reliance without witness exam
Holdings of Supreme Court
Suit Barred under CPC
Mandatory bar under Order II Rule 2(3) CPC
Withdrawal liberty cannot cure initial failure
Failure of Proof
Plaintiff failed to prove consensus ad idem
Unencashed Cheque Effect
Disproves existence of concluded contract
Burden of Proof Rule
Adverse inference cannot replace positive proof
Final Outcome
Lower court judgments set aside as perverse
Appeal allowed and suit dismissed