



ORDER BELOW EXH. 12 IN RCS 75/2024

APPLICATION UNDER ORDER VII RULE 11 OF CPC

1. Present application has been preferred by the Defendants under Order VII Rule 11 of the Code of Civil Procedure (CPC) praying for rejection of the Plaint in the suit filed by the Plaintiffs seeking a declaration and permanent injunction against the Defendants.

BRIEF FACTS OF THE PLAINT

2. The Plaintiff has submitted that they belong to the Scheduled Caste community and are residents of Village Ijpura (Jethaji), Taluka Jotana, District Mehsana. The dispute pertains to agricultural land bearing Survey No. 829, Old Survey No. 62 situated within the limits of the Ijpura (Jethaji) Gram Panchayat (Suit Property). Plaintiff submit that they, along with their ancestors including grandfather Bababhai Kalabhai and father Fusabhai Bababhai, have been in continuous, peaceful, and undisturbed possession of the said land for over 50 years, dating back to the era of the Gaekwad Government and Katosan State. While the revenue records currently categorize the land as a pond (Talav), it is submitted that no such pond exists on the site or in the vicinity, and the land is physically level ground used for agricultural cultivation which serves as their sole source of livelihood. It is submitted that on 27/11/1984, their grandfather, Bababhai Kalabhai, submitted a formal application based on these historical records to have the land officially restored to his name. Furthermore, a Gram Panchayat Resolution dated 15/04/1984 had already acknowledged the family's long-standing possession and resolved to hand over the land to the Plaintiffs' father, Fusabhai Bababhai. The family's right to possession was further solidified by the Mehsana District

Panchayat in D.P. Appeal No. 80/84 (order dated 07/05/1984) and the Additional Development Commissioner in Revision Application No. 237/88, order dated 16/12/1988, both of which recognized and maintained their possession wherein an interim status quo was also granted in favour of plaintiff. These orders have not been appealed by anyone till date. The cause of action to the present litigation is that a third party, Jayeshbhai Laljibhai Rabari, who recently purchased adjacent land at Survey No. 830, has allegedly used political influence to pressure the Defendant into creating a road through the Plaintiff's land. Acting upon this pressure and a letter from the Collector dated 18/09/2024, the Defendant issued a notice to the Plaintiff dated 07/10/2024, labeling their possession as an illegal encroachment and directing its removal. Plaintiff argues that this notice is illegal and violates the principles of natural justice, as they hold a long-standing right over the property, including by way of adverse possession. Consequently, the Plaintiff has filed the present suit seeking to declare the notice dated 07/10/2024 as void and to establish their permanent right over the suit property.

DEFENDANT-APPLICANT'S SUBMISSIONS

3. The Defendant has prayed that the present application be rejected under Order VII Rule 11 of the CPC because it fails to disclose a cause of action. It is submitted that the Plaintiff has admitted the suit property is a pond (talav) property, and as such, the Plaintiff can neither cultivate a pond property nor claim any right of possession over the same. It is further contended that the suit property was never legally handed over to the Plaintiff, and while the Plaintiff has produced interim status quo orders that were only in effect until the next order, he has intentionally suppressed the final orders and the current status of those proceedings. The Defendant highlights that the Plaintiff has himself pleaded that he

requested the property from the government but was not granted the same, and despite a notice from the Gram Panchayat requiring the Plaintiff to provide proof of ownership within 07 days, the Plaintiff has failed to submit any reply or evidence. The Defendant asserts that the suit property has been mutated in the name of the Gram Panchayat since 04/11/1976 and is officially categorized as a pond. Finally, it is submitted that as per the communication dated 21/10/2024, the Defendant has vacated the suit property, and therefore the suit fails to disclose a cause of action and is liable to be rejected at the threshold.

4. The Defendant-Applicants have relied on the following judgments in their support, (1) Yusuf Mehmuddkhan Pathan Versus State Of Gujarat Reported In 2025 (0) Aijel-Hc 251501 (2) Kaniz Ahmed Versus Sabuddin Reported In 2025 (0) Aijel-Hc 75231 (3) Pranavkumar Rameshchandra Shah Versus Sitaben Rameshbhai Parmar Reported In 2025 (0) Aijel-Hc 251376 (4) Rameshbhai Umakant Sharma Versus Ashaben Kamleshkumar Modi Reported In 2023 (0) Aijel-Hc 252778 (5) Piyushbhai Valjibhai Ahir Versus Ismail Abha Mathda Havind Died His Lhs & Ors. Reported In 2024 (0) Aijel-Hc 249004 (6) Amrish Vinodchandra Mehta Versus Hamida Ismail Kakal Reported In 2023 (0) Aijel-Hc 245522 (7) C.S.Ramaswamy Versus V.K.Senthil And Others Reported In 2022 (0) Aijel-Sc 69921 (8) Divyeshbhai Mahendrabhai Patel Versus Vijaybhai Odhabhai Lalu Reported In 2023 (0) Aijel-Hc 247438 (9) Manubhai Mayabhai Ahir Versus Hemaben Ashikali Narsi Reported In 2023 (0) Aijel-Hc 245934

PLAINTIFF-RESPONDENT'S SUBMISSIONS

5. The Plaintiff-Respondents have filed their reply to the application at Exhibit 21 wherein the present application for rejection of the plaint

has been strongly opposed and submitted that the suit property, while recorded as a pond in revenue records, does not contain any actual pond on-site and is in fact level agricultural land. Plaintiff has contended that they have been in continuous, peaceful, and unobstructed possession of the suit property for over 50 years, dating back to the eras of the Gaekwad Government and Katosan State. It is further submitted that the Plaintiff's grandfather, Bababhai Kalabhai, and father, Fusabhai Bababhai, cultivated this land, and their rights were recognized by a Gram Panchayat Resolution dated 15/04/1984. Plaintiff has placed heavy reliance on the order dated 07/05/1984 passed in D.P. Appeal No. 80/84 and the order dated 16/12/1988 passed by the Additional Development Commissioner in Revision Application No. 237/88, arguing that these orders, which protected their possession, remain valid and operative as they have never been challenged or set aside by the Defendant. Plaintiff asserts that the question of whether the land is a functional pond or cultivable land is a complex matter of fact that can only be determined through a full trial, and they must be granted a fair opportunity to lead evidence to prove their long-standing occupation and claim of adverse possession. It is submitted that since the Plaintiff has raised serious triable issues regarding the nature of the property and the illegality of the notice dated 07/10/2024, the plaint cannot be rejected at this preliminary stage under the provisions of Order VII Rule 11.

ANALYSIS

6. Heard the submissions made by the Ld. Advocate of Plaintiff, and that of the Defendant along with judgments referred. Perused the application and other documents on record.

7. It is a settled rule of law that a plea of rejection of Plaint is founded on the '*Plea of Demurrer*' which dictates that for the purpose of Order VII Rule 11 of the CPC, the Court must exclusively examine the averments in the plaint and its annexed documents, treating them as prima facie correct. The defense of the Defendant remains irrelevant at this stage. The burden lies on the applicant to demonstrate that, even assuming the truth of the Plaintiff's claims, the suit lacks a cause of action or is barred by law. Should the plaint fail to disclose a complete cause of action or fall within the contingencies of the rule, it is liable for rejection at the threshold.

8. The Court has carefully examined the pleadings wherein the Plaintiff claims rights over the suit property. Although the Plaintiff asserts a claim of adverse possession, the pleadings and documents produced indicate that the Plaintiff and his ancestors have consistently sought the regularisation or grant of the land from the government authorities. It is a settled legal position that adverse possession must be hostile to the true owner; however, the Plaintiff's own case supports a plea for permissive possession or a request for allotment, which is fundamentally inconsistent with a claim of adverse possession, and therefore as far as relief based on adverse possession is concerned there is no cause of action arising out of the plaint's pleadings.

9. Moving on to the rest of the grounds claimed, regarding the Gram Panchayat Resolution dated 15/04/1984, it is observed that the resolution merely expressed that the panchayat had no objection if the land was given to the Plaintiff's father. The Gram Panchayat does not possess the statutory authority to alienate or grant ownership of government land or a recorded pond property to a private individual, and thus, such a resolution does not create any enforceable legal right. Furthermore, the Plaintiff has

placed reliance on interim status quo orders granted in D.P. Appeal No. 80/84 dated 07/05/1984 and Revision Application No. 237/88 dated 16/12/1988. These orders were interlocutory in nature and intended to maintain the status of the parties only during the pendency of those specific administrative proceedings. Such interim protections do not enshrine the Plaintiff with a substantive legal right, especially when the Plaintiff has failed to submit the final conclusions of those proceedings. When a plaintiff approaches a civil court for any relief, it is incumbent upon him to clearly establish the existence of a right in his favour which is not done in the present case. The principles laid down by the Hon'ble Supreme Court in **Maria Margarida Sequeria Fernandes v. Erasmo Jack de Sequeria, (2012) 5 SCC 370** would be helpful when dealing with the present dispute, relevant paragraphs of which have been reproduced :

“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, license fee or lease amount;

(h) If taken on rent, license fee or lease - then insist on rent deed, license 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.”*

In the present suit, the Plaintiff has failed to establish the precise origin of his right to possession or produce title documents justifying his occupation of property mutated in the name of the Gram Panchayat since 04/11/1976 and categorized as a pond. In light of these findings, the Court concludes that the plaint fails to disclose a clear and legally sustainable cause of action.

10. Lastly it is also a trite law that no injunction can be granted against the owner without challenging his title or establishing one's lawful possession, where lawful would mean where the Plaintiff has acquired some right to possess. Another judgment of **Padhiyar Prahladji Chenaji (D) through LRS. Vs. Maniben Jagmalbhai (D) through LRS, 2022 (0) AIJEL-SC 68485** of our Hon'ble Supreme Court should be looked at for further clarification :

“9.3 In the case of A. Subramanian Vs. R. Pannerselvam, (2021) 3 SCC 675, it is observed by this Court that a person in possession of land in the assumed character of owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against all the world but the rightful owner. Therefore, the plaintiff is not entitled to any injunction and/or protect his possession against the rightful owner, more particularly, when he fails to get the declaratory relief and the dispute with respect to the title comes to an end.

10. Now, so far as the reliance placed upon the decision of this Court in the case of Anathula Sudhakar vs. P Buchi Reddy & Ors [AIR 2008 SC 2033] by the learned Advocate appearing on behalf of the original plaintiff in support of his submission that in a suit for permanent injunction to restrain the defendant to interfere with the plaintiff's possession, the only thing the plaintiff will have to establish is that as on the date of the suit, he was in lawful

possession of the suit property and the defendant has tried to interfere or disturb his possession is concerned, what is observed by this Court in paragraph 15 is the “lawful possession” of the plaintiff.”

(Emphasis Given)

In the present case since the pleadings themselves do not lay the groundwork for claiming possession, even if the plaintiffs suit is believed to be true, it would still not succeed in getting the relief being prayed for. Keeping in mind the words from the judgment of **Azhar Hussain v. Rajiv Gandhi - 1986 Supp SCC 315** of our Hon’ble Apex Court *“The whole purpose of conferment of such power is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the Court, and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even if an ordinary civil litigation, the Court readily exercises the power to reject a plaint, if it does not disclose any cause of action.”* This court is of the firm opinion that on a meaningful reading of the plaint, it does not disclose any cause of action against the defendants either on grounds of adverse possession or on grounds of right to possess the suit property. Allowing such a suit to proceed would result in abuse of the process of law.

11. Therefore for all the above reasons and deliberations, this court comes to the conclusion that the suit herein falls below Order VII Rule 11 (a) of the CPC and passes the following order in the interest of justice :

-:: FINAL ORDER ::-

1. This application is allowed and the plaint is rejected.
2. No order as to costs.
3. Decree be drawn accordingly.

Signed, pronounced and declared in the open court on the 30th day of March, 2026, at Jotana.

Date: 30/03/2026

**Place: Jotana,
Dist. - Mahesana**

(SAUMITRA BHADAURIA)

**Principal Civil Judge,
Jotana**

GJ01691