

Regular Civil Suit No. 31/2017
Order below Exh. 23 filed under
the provisions of Order-VII, R-11 of C.P.C.

- (1) Heard both the Ld.Advocates for the parties at length. Read the present application and it's reply filed by plaintiff vide Exh.12. I have also gone through records of the case.
- (2) Present application is submitted by defendants under the provisions of O-VII, R-11d of C.P.C. for rejection of plaint, on the ground that the suit and the application for interim injunction of the plaintiff have violated the factual and legal provisions.

It is averred in present application that the Defendant No.1 Jagdishbhai Chimanbhai Bhatt have sold him the property situated in the western part of Survey No.212 at Mouje Village Petlad, Ta.Petlad, Dist. Anand vide a registered saled deed being Sale Deed Registration No.2003/2015 dated 10/08/2015. Since then, the Defendant No.2 is the legal owner of the property and is in continuous legal possession thereafter till date.

It is averred that the present suit is filed in collusion by Plaintiff, Defendant No.1, 3 and 4 as they are brothers and sisters. It is further averred that the day on which the present suit property was filed, the suit property was only in the name of Defendant No.1 i.e. Jagdishbhai Chimanbhai Bhatt and full consideration amount was paid to him. It is also averred that the Plaintiff No.1 Vishnubhai Chimanbhai Bhatt had relinquished his rights from the said property on 05/11/2011 before Executive Magistrate, Petlad in favor of Defendant No.1 Jagdishbhai Chimanbhai Bhatt. In the same way, Plaintiff No.2 Shantaben @

Kalpanaben Chimanbhai Bhatt had relinquished her rights from the said property on 17/02/2011 before public notary in favor of Defendant No.1 Jagdishbhai Chimanbhai Bhatt. Mutation entry No.12451 dated.28/11/2011 was certified on the basis of that which is not challenged by the parties herein till date.

Thus, it is averred that the date on which sale deed was executed, there was only one name in the revenue records of the suit property and that name is of the Defendant No.1, Jagdishbhai Chimanbhai Patel and as there was only one name, the present Plaintiffs have no.2 have purchased the same from him after paying consideration and thus, the present applicant is the bonafide purchaser of the property and thus, the present plaintiff have no locus standie to file this suit and harass the present Defendant No.2. It is also averred that the suit is barred by section 115 of the Indian Evidence Act and thus, it falls under the provision of O.VII r.11.

And thus filing this application, the Defendant have prayed that the suit and the injunction application are not maintainable under any law and have prayed to dismiss the suit and injunction application under O.VII r.11.

- (3) In reply to present application, plaintiffs have denied all the facts and averments made by defendant and in reply vide Exh.25. It is contended that, in present case, provisions of O-VII, R-11d is not at all attracted and suit and the interim injunction application is not barred by any law.

It is contended by plaintiffs that, the Defendants No.1 and 2 have prepared bogus documents so that their rights gets relinquished. It is contended that they have never relinquished their rights from the said

suit property willingly. It is further averred that before filing the present suit, they inquired and intimated the Defendants 1, 3 and 4 to hand over their part of property on 31/03/2017 but they denied and on getting the certified copies of the property, they came to know that their names do not reflect in the records of the property and at the first instance, they have filed this suit. It is averred that they have not signed the sale deed and they have not received any consideration. They have admitted that they have not filed any proceedings before the revenue courts. It is also averred that the suit property is ancestral property and all the legal heirs have equal rights in the suit property, they have not given any right to Defendant No.1 regarding the suit property. And thus, the plaintiff have argued that the suit and the injunction application do not suffer by any law and therefore, present application is not tenable in the eye of law and they have filed present suit in accordance with law and therefore, present application is not tenable and requested this Hon'ble Court to reject the present application and proceed further in present suit.

- (4) At the time of hearing of present application, Ld. Advocate Mr.N. H. Raval on behalf of the Defendant No.2 have filed written arguments which are recorded at Exh.26. The Ld. Advocate have reiterated the points which are raised in the application so those points are not discussed here again. The Ld. Advocate have argued that the present suit is barred by sec.115 of the Indian Evidence Act, 1872 and hence is not tenable. It is averred that “આ કાયદાની કલમ-૧૧૫ થી પ્રતિબંધ એવા સિધ્ધાંત પર આધારીત છે કે કોઈ એક વ્યક્તિ પોતે કરેલ રજુઆત અથવા વર્તન ઉપરથી બીજી વ્યક્તિને કોઈ કૃત્ય કરવા પ્રેરે, જાણે કે અન્યથા તેણે તે કર્યું ન હોય તો તેની પોતાની આવી રજુઆત અથવા વળતરનો ઈન્કાર કરવા દેવો તે અસમાન અને અન્યાયી ગણાય. રજુઆત કરનાર વ્યક્તિની રજુઆત ઉપરથી તેવું કૃત્ય કરનાર વ્યક્તિને હાનિ અથવા નુકશાન થાય તેવું

કાયદો ચલાવી શકે નહીં તેવું નિર્દેશાયેલ.” Thus, it is prayed that the present suit falls under the provision of O.VII r.11(d) and should be rejected.

It is also argued that the Plaintiffs had relinquished their rights in the suit property way back in the year 2011 and they have come before the court on 11/04/2017 and hence, the suit is also barred by limitation and hence should be rejected.

It is also argued that the Plaintiff have not paid the requisite fees as per Bombay Court Fee Act, 1959. He has stated that “વાદીનો દાવો સ્થાવર મિલકતની કબજા સિવાયની કોઈ અનુસાંગિક દાદ માંગેલ હોય તો તેણે એડવેલોરમ કોર્ટ ફી ની અડધી રકમ કોર્ટ ફી તરીકે લગાડવાની રહેશે. જો વાદીએ અનુષંગિક દાદમાં મિલકતના કબજાની પણ માંગણી કરેલ હોય તો એડવેલોરમ ફી ની પુરે પુરી રકમ કોર્ટ ફી તરીકે લગાડવાની રહેશે.” Thus, it is argued that the Plaintiff have filed the suit for declaration and have paid the court fees of only Rs.100/- and therefore also the present suit is liable to be rejected.

- (5) As against this, Ld. Advocate for plaintiffs Mr. have argued that they have not filed the suit for cancellation of sale deed but they have filed the present suit to declare that the sale deed executed on 10/08/2015 between the Defendant No.1 and 2 is not binding to them. Further, they have argued that the suit is filed for the declaration that they have 2/5th share in the suit proerty and for partition of the same. It is also argued that the sale deed was executed in the year 2015 and the suit is filed on 17/02/2018, i.e. within 3 years, and hence the present suit is within the time limit and thus is not barred by limitation. It is also argued that this suit is not barred by the rule of estoppel. The Ld. Advocate have argued that when false affidavits were made and on the basis of that mutation entries were certified, then this rule does not apply to them. It is also agrued that this suit is for declaration that the

sale deed executed between the Plaintiff No.1 and 2 is not binding to them and the suit is not for cancellation of the sale deed. In that case there is no question of deficit court fees.

Thus, the Ld. Advocate of the Plaintiff have argued that the present application under O.VII r.11 filed by the Defendant is not tenable and should be rejected with cost.

- (6) Considering the arguments advanced by the Ld.Advocate for the parties and pleadings and copies of precedents, it appears that, present application is filed by defendant under the provisions of Order-VII, Rule-11d of C.P.C. Therefore, to decide the present application, it is necessary to have the provisions of Order-VII, R-11d of C.P.C. and the same is reproduced here.

C.P.C. ORDER-VII, R.11.

Rejection of plaint.--

The plaint shall be rejected in the following cases:-

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
- (c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the court, fails to do so;
- (d) where the suit appears from the statement in the plaint to be barred by any law;
- (e) where it is not filed in duplicate;
- (f) where the plaintiff fails to comply with the provisions of Rule 9;

PROVIDED that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature for correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.

(7) On perusing the aforesaid provision, it clearly appears that the provisions of this rule are mandatory and it can be invoked at any stage of the suit. Provisions of Order-VII, Rule-11 can be invoked at any stage of the proceedings and also in order to invoke the provisions, no such application is also requires. Court itself can invoke the same, if the Court found that the provisions are attracted in the case.

(8) Here in the present case, first of all relying on the judgement of Hon'ble The Supreme Court of India, reported as AIR 2008 Supreme Court, p.3174 in case of Kamala and ors v. K.T. Eshwara sa and ors it is held that

Order VII rule 11D of the code has limited application. It must be shown that the suit is barred under any law. Such a conclusion must be drawn from the averments made in plaint. Different clauses in Order VII, Rule 11, in our opinion should not be mixed up. What would be relevant for invoking clause (d) of Order VII, Rule 11 of the Code is the averments made in the Plaint. For that purpose, there cannot be any addition or subtraction. Absence of jurisdiction on the part of a court can be invoked at different stages and under different provisions of the Code. Order VII rule 11 of the Code is one, Order XIV rule 2 is another.

For the purpose of invoking Order VII Rule 11d of the Code, no amount of evidence can be looked into. The issues on merit of the matter which

may arise between the parties would not be within the realm for the court at that stage. All issues shall not be subject-matter of an order under the said provision.

The decisions rendered by this court as also by various High Courts are not uniform in this behalf. But then the broad principle which can be called out therefrom is that the court at that stage would not consider any evidence or enter into a disputed question of fact of law. In the event, the jurisdiction of the court is found to be barred by any law, meaning thereby, the subject-matter thereof, the application for registration of plaint should be entertained.

To substantiate the contention and arguments of parties, if we carefully go through the provisions of O-VII, R-11, we may find that, while considering the application under this provision, Court is not required to take into consideration the defense set up by the defendant in his written statement and the provisions of O-VII and R-11 are of a mandatory nature and if, Court come to the conclusion that the suit is lacking of cause of action or are lacking from the provisions of Limitation Act, or barred by any law it can be rejected at any stage of the proceedings.

- (9) Keeping in mind aforesaid provisions and object of a rule, if we go through the pleadings of plaintiffs which he has made in plaint, we may find that, in prayer clause 7, plaintiff have prayed as follows;

એ. ઉપર પેરા ૨ માં જણાવેલ મોજે પેટલાદની સીમમાં સર્વે નં.૨૧૨ હે.૧-૧૦-૨૮ જેનો આકાર ૧૮.૧૮ પૈસા વાળી જમીન પૈકી પશ્ચિમ તરફ અડધી જમીન ૦-૫૨-૮૪ ગુંઠા જમીનમાં અમો વાદીઓનો ૨/૫ હિસ્સો છે તેવું ઠરાવશોજી, તેમજ અમો વાદીનો ૨/૫ મો હિસ્સો આ કામના પ્રતિવાદી નં.૧ પાસેથી અપાવશોજી.

બી. આ કામના પ્રતિવાદીએ અમો વાદીઓના નામો ૭/૧૨ ના રેકર્ડમાંથી ખોટી રીતે કમી કરાવેલ છે તેવું ઠરાવશોજી.

- ક. આ કામના પ્રતિવાદી નં.૧ નાએ નં.૨ ના ને જે રજીસ્ટર દસ્તાવેજ તા.૧૦/૦૮/૧૫ નારોજ કરી આપેલ છે તે અમો વાદીઓના હકક, હિત વિરુદ્ધનો હોઈ તે અમો વાદીઓને બંધનકર્તા નથી તેવું ઠરાવશોજી.
- ડી. પ્રતિવાદી નં.૨ સદર જમીન અન્ય કોઈ ત્રાહિતને કોઈ પણ રીતે ટ્રાન્સફર કરે કરાવે નહી તેવો પ્રતિવાદી નં.૨ ને કાયમી મનાઈ હુકમ ફરમાવશોજી.
- (ઇ) આ દાવાની હકીકતો જોતા બીજી હરકોઈ ન્યાયની દાદ અમોને અપાવશોજી.
- (એફ) દાવાનો ખર્ચ આ કામના પ્રતિવાદીઓ પાસેથી અપાવશોજી.

- (10) The plaintiff have prayed as above in the plaint. Now, looking to the prayer, the plaintiff has prayed to declare that they have 2/5 th share in the suit property, and to partition of that 2/5 th share and that their names are deleted from the records of rights village extract 7/12 falsely and the sale deed executed on 10/08/2015 between Defendant no.1 and 2 is not binding to them and that to give permanent injunction to the Defendant no.2 not to transfer the suit property in any manner to any person.
- (11) Now, to decide the present application, as discussed above, only the averments made in the plaint should be read and the defence forwarded by the defendant is not to be taken into account.
- (11.1) If we go through para-1 of the plaint, it is evident that the Plaintiffs and the Defendant No.1, 3 and 4 are brothers and sisters and are legal heirs of Deceased Chimanbhai Motibhai and Shardaben Chimanbhai Bhatt. Plaintiff No.1 is uneducated and mentally challenged and the Plaintiff No.2 and Defendant No.3 and 4 are married and reside at their in-laws house. Plaintiff No.1 resides with Defendant No.1.
- (11.2) The property situated in the sim of Petlad being Survey No.212 admeasuring He.01-10-28 was originally owned by Arvindbhai

Fulshankar Tapodhan. The Eastern part of the said property, half of the property, being 0-55-14 guntha was owned by the family uncle Fulshankarbai Kalidas and the other half on the western part being he.0-52-85 guntha came to the part of Chimanbai Motibhai, father of Plaintiffs and Defendant no.1,3 and 4 and his brothers, namely, Ramanbai Motibhai and Chandubhai Motibhai. As the others have expired, and their heirs have relinquished the rights of the property in their part hence, the Plaintiffs and the Defendant No.1, 3 and 4 are the only owner of the said property situated in the western part which is suit property herein this suit. Further, it is the say of the Plaintiff that there is no legal partition of the said property between the parties and though furnishing false affidavits, without giving any consideration, their names were deleted from the records of the rights of the property on 16/04/2008. no notice is served and mutation entry to that effect being entry no.11253 was certified and later 28/11/2011 their names were deleted and Mutation entry no.12451 was certified. The Plaintiffs came to know about all this on 31/03/2017 when they applied and received certified copies of the records of the property being village extract no.7/12.

Now, when the Plaintiff came to know that their names do not appear in the records of rights and they are deleted, they have not applied to the revenue authorities challenging the mutation entries.

- (11.3) Further, the Plaintiff have prayed to declare that the sale deed executed between the Defendant No.1 and 2 is not binding to them. Here the Plaintiff have not prayed for cancellation of sale deed. Looking to the documents at Mark 3/1 to 3/2, it becomes clear that the Defendant No.1 have sold the property to the Defendant No.2. Now, Defendant No.2 is a bonafide purchaser. His rights should be protected. The Plaintiff have

nowhere in the Plaint have averred that Defendant No.2 have played mischief or Defendant No.2 have fraudulantly made affidavits and thereby have taken steps to delete their names from the records of rights of the property.

- (11.4) Going through the document at Mark 3/4 produced by the Plaintiff, mutation entry no.11253 dated 16/04/2008 was made which was certified on 26/06/2008 and name of Bhanuben Chimmanbhai Hansaben Chimmanbhai were deleted on the basis of Affidavits to waive their rights. These two are Defendants no.3 and 4. Thus, from the record itself it appears that the Defendant No.3 and 4 have waived their rights in favor Defendant No.1 way back in the year 2008 and mutation entry to that effect was certified.
- (11.5) Going through the document at Mark 3/5 produced by the Plaintiff, mutation entry no.12451 dated 28/11/2011 was made and names of Vishnubhai Chimmanbhai and Shantaben Chimmanbhai were deleted on the basis of Affidavits made before Notary and executive magistrate to waive their rights. These two are Plaintiffs. Thus, from the record itself it appears that the Plaintiffs have waived their rights in favor Defendant No.1 way back in the year 2011 and mutation entry to that effect was certified.
- (11.6) Going through document at Mark 3/7, it indicates that there was partition of land between Arvindkumar Fulshankar Bhatt and the present Defendant No.1 Jagdishbhai Chimmanbhai Bhatt. The said entry no.14036 dated 22/06/2015 was certified on 05/08/2015 by Deputy Mamlatdar on the basis of partition deed no.1513 and 1575.
- (11.7) Going through the document at Mark 3/8, it is the mutation entry

no.14113 dated 10/08/2015 which was certified by Deputy Mamlatdar, Petlad. The said entry is made on the basis of the registered sale deed no.2002/2015 dated 10/08/2015. The said registered sale deed is executed between Arvindkumar Fulshankar Bhatt and Joshi Ketankumar Upendrabhai. This entry is not in question.

- (11.8) Going through the document at Mark 3/9, it is the mutation entry no.14114 dated 10/08/2015. The said entry is made on the basis of the registered sale deed no.2003/2015 dated 10/08/2015. The said registered sale deed is executed between Jagdishbhai Chimanbhai and Joshi Ketankumar Upendrabhai. This entry made based on sale deed is in question and the sale deed itself is in question. It is the say of the Plaintiff that this sale deed is not binding to them. Now, the entry is certified on the basis of resolution/order passed in the takrari /dispute case no.48/2015. The entry is certified by Mamlatdar, Petlad on 11/12/2015.

In the present case, the Plaintiff have not challenged the said entry or the said registered sale deed.

- (11.9) Going through the document at Mark 3/11, it is the registered sale deed no.2003/2015, executed on 10/08/2015 and the same is certified.

- (12) Perusing the whole Plaint and going through each and every averment and the documents produced alongwith the Plaint, which are relied upon by the Plaintiff, it is learnt that the present plaintiff is in relation with the defendants No.1, 3, 4 and 5 and they are brothers and sisters. From the documentary evidences, it has become very clear that the present Plaintiffs and the Defendants no.3, 4 and 5 have relinquished their rights from the suit property and Mutation Entry to that effect were certified by the appropriate authorities of the revenue department.

It is evident from the plain reading of the plaint that those Mutation Entries are not challenged till date by the present plaintiffs. Further, the present suit is not filed for cancellation of the sale deed registered at no.2003/2015 dated 10/08/2015 but the present suit is filed to get declaration that the abovementioned sale deed is not binding to them and to prevent the Defendant no.2 to take further actions regarding the suit property on the basis of the sale deed. Now, Defendant No.2 is a bonafide purchaser of the suit property. It is nowhere in the Plaint, averred that the Defendant No.2 have played fraud or the sale deed is executed fraudulantly. Thus, this court is of the view that the rights of the Defendant No.2 should be protected. Further, the plaintiffs have not produced any single iota of evidence to show that their names were entered in the records of rights.

- (13) Considering the arguments and discussion here in made above, and perusing the documents, it seems that the plaintiffs have relinquished their rights from the suit property. The Mutation entries are not challenged before the appropriate authorities and this court does not have jurisdiction to pass any kind of order to cancel the mutation entries.

Now, going through the prayers of the Plaintiff, to claims 2/5 th share in the suit property the plaintiff have to show that they have share in the suit property, but they fail as, the documents produced before the court indicates that they have relinquished their rights from the suit property. Now, the plaintiff have to prove that their names were deleted wrongfully from the record of rights, but the plaintiff have not initiated any action or proceedings before revenue authorities, further, as the sale deed between the Defendant no.1 and 2 is legal and is registered and no suit is filed to cancel the suit, the Defendant No.2 being a

bonafide purchaser, no order can be passed against him, without showing appropriate evidence against him, further, the plaintiff have to show prima facie case before the court, why the said registered sale deed being 2003/2015 dated 10/08/2015 is not binding to them. It is discussed earlier also that the Plaintiffs have not proved their locus standie, and thus, the present suit is barred by law and hence, this court is of the opinion that the provisions of O-VII, R-11 are attracted here and as a result, present application is required to be allowed and hence the present suit deserve to be rejected. Hence, I pass following final order.

-: ORDER :-

Present application filed by the defendant vide Exh.23 is hereby allowed and disposed off accordingly.

No order as to costs.

This order is pronounced in open court today on 26 th day of July, 2019.

Place : Petlad
Date : 26/07/2019

(P. S. Shah)
Additional Civil Judge,
Petlad