

-:In Special Civil suit No. 10/2024:-

Order below Ex-17

1. Heard, Read the present application. Read the reply filed by the plaintiff below ex-38.
2. By filing this application the defendant no.2 to 4 have prayed to reject the plaint under Order 7 Rule 11 of CPC as no cause of action has been arose and the suit is barred by the law of limitation.
3. Defendant has stated in the present application that plaintiff had waived her right towards the disputed land on dt. 15/07/1981 and the said mutation entry has been duly certified on dt. 5/2/1982. After that, time by time, the disputed land has been sold through registered sale deed. Thus the disputed land has transfered time by time to their bonafied purchaser through minimum 14 registered sale deed. Plaintiff has tried to challange the mutation entry which has been mutetaed in 1982. Plaintiff has no cause of action after passing almost 45 years. Plaintiff was very well aware about the all revenue entry and sale deeds though she had filed the present suit with false facts. On the basis of these facts, the present application has been filed by defendant no. 2 to 4 stating that the suit is barred by law of limitation and without any cause of action.
4. On the other side the fact of the plaint is that land bearing block no. 161(old no.220), land bearing block no. 277(old no.101), land bearing block no. 191(old no.7), land bearing block no. 219(old no.34), situated at village Dodwada, Taluka Valiya (herein after referred as disputed land) had been of the

ownership of plaintiff's father Parsottambhai Laliyabhai. Her father was died on dt.08/09/1980. Her father has two children, one is Ambubhai Parsottambhai and another is Jasuben Parsottambhai i.e. Plaintiff. After the death of their father i.e. Prasottambhai Lailiyabhai, revenue entry no. 564 has been mutated for legal heirs and on a very same day revenue entry no. 565 for relinquishment of the right of the plaintiff has been mutated attempting fraud by his brother. Plaintiff's brother Ambubhai Parsottambhai was died on dt. 18/01/2014 and after that her wife name Maniben has been mutated in revenue record. Ambubhai and Maniben had no children. Maniben has wrongfully sold the one of the disputed land block no. 161, 219 to her brother's children i.e. defendant no. 1 to 3 on dt. 30/06/2014 and on dt. 19/01/2014 and they further sold disputed land bearing block no. 161 to defendant no. 4. Ambubhai has sold one of the disputed land i.e Block no. 277 to defendant no. 5,6 on dt.18/12/2007 though he was not sole owner of that disputed land and they further sold that disputed land to defendant no 9,10. Maniben has wrongfully sold the one of the disputed land i.e. block no. 191 to defendant no. 11 on dt. 07/06/2017 and he further sold that disputed land to the defendant no. 12 on dt. 21/09/2020. Plaintiff in her plaint states that she has her right and 1/2 share in all ancestral land. When Maniben was died on dt. 09/09/2020, plaintiff has enquired about the revenue record of the disputed land and came in to the knowledge that her name was not shown in revenue record as per the mutation entry no. 565 and plaintiff has challenge the said entry before the revenue court with delay condonation application

and issued legal notices to all defendants for her 1./2 share. Plaintiff in the present suit prayed for cancellation of all registered sale deed to the extend of her half share and for a partition of disputed land and for permenant injunction.

5. This court has considered the submission advanced by the both side and has perused the record on hand. Plaintiff has produced document vide Mark 3/1 to 3/66. It appears from the fact of the plaint that all disputed land are self acquired land of the Parsottambhai Laliyabhai. Parsottambhai has purchased the land or came to him as tenant. Thus the say of the plaintiff that the disputed land are ancestral land is contary to the fact of the plaint. Plaintiff has stated that after the death of her father Parsottambhai, name of Ambubhai and Jasuben(plaintiff) had been mutated by entry no. 564 but her name had been deleated by her brother Ambubhai committing fruad. Plaintiff has not explained how fruad had been committed. As per the entry no. 564 and 565 which are produced vide mark 3/13 and 3/14, it transpires that application for legal heir entry has been given on 15/07/81 and right relinquishment application also given on dt. 15/07/81. As per these entries the entry has been duly certified(pramanit) on dt. 05/02/1982. Thus the mutation entry has not been mutated on very same day. After verifing served notices, written consent of plaintiff, mutation has been carried out. Mutation entries were of 1982. Plaintiff has remained silent till the mutation entry has been certified. Her brother Ambubhai has sold one of the disputed land through registered sale deed in the year 2007. Plaintiff remain silent about her share in 2007. Her brother Ambubhai was died in 2014. Plaintiff remained silent

after the death of the brother though she has knowledge that she and her brother were only legal heir of her father. In 2014 one of the disputed land sold through registered sale deed but plaintiff remained silent. Mutation entry has been certified in 1982. Plaintiff's brother was died in 2014. Plaintiff states that her brother has committed fraud to her without pleading how fraud committed. It is unbelievable that from 1982 to 2014, plaintiff was unaware about mutation entry no. 565. It is also unbelievable that plaintiff was unaware about mutation entry no. 565 after the death of her brother. After the death of her brother i.e. from 2014 to the death of her Bhabhi Maniben in 2020 plaintiff remained silent and after the death of plaintiff's bhai and bhabhi she alleged that her brother has committed fraud. In the present suit the main allegation is about fraud.

6. Apart from this averment, the plaintiff has not mentioned any other averment regarding the fraud committed on the part of her brother. The only averment regarding the alleged fraud is that her brother had illegally deleted her name. The pleadings of the plaintiff is seems to be only allegations. Plaintiff has not produced any document which prima facie shows fraud. Plaintiff remain silent for more then forty years. Mere allegations cannot be said Fraud.

Order 6 Rule 4 of CPC requires that in case of misrepresentation, fraud, breach of trust, willful default or undue influence and in all other cases in which particulars may be necessary, shall be stated in the pleadings. It is well settled principle of law that a party pleading fraud must set up the

particulars of fraud and in the absence of such particulars it could not be said that the fraud has been pleaded.

In the case of H.S. Goutham v. Rama Murthy, (2021) 5 SCC 241, the Hon'ble Supreme Court held as under:

"36. As per the settled principle of law, when the fraud is alleged the same is required to be pleaded and established by leading evidence. Mere allegation that there was a fraud is not sufficient....."

7. Ld. Advocate for the plaintiff has relied upon the judgment of Hon'ble Gujarat High Court given in the case **Bhanuben Chandubhai Patel vs. Kalidas Shankerbhai Patel** wherein Hon'ble Gujarat High Court had held that *Period for cancellation suit is three years from knowledge under Article 59 Limitation Act Whereas declaration suits for partition attract twelve years under Article 110, Plaintiff's knowledge deemed from public notice dated June 2012 followed by revenue record inspection in March, since cause arose post these dates limitation period not expired at filing in October 2013, thus dismissal on limitation ground improper. Hon'ble Gujarat High Court also held that rejection of plaint premature as limitation is mixed question of law and fact and law requiring trial, plaintiff pleaded fraud in deletion of her name from revenue record based on forged statement dated 1978 and cause of action arose only upon discovery via public notice in 2012, unregistered mutation entries cannot operate as valid relinquishment or partition under Transfer of Property Act and Hindu Succession Act, reliance on expert opinion suggesting forgery mandates*

evidence appreciation thus plaint averments must be presumed true at this stage and suit deserves trial.

Fact of the case is that disputed land was ancestral land and after the death of one Shankerbhai Patel name of his legal heirs were entered in revenue record in 1966 and on dt. 24/02/1978 forged statement of plaintiff has been produced before the Talati cum mantri and on a very same day notice served to the plaintiff. Plaintiff has pleaded that forged signature has been stated to have been endorsed on the statement dated 19th February 1978 releasing her right was recorded thus it create doubt in mutation entry of release of right of plaintiff.

But the fact of the present case is different. In present case name of present plaintiff has not been deleted on very same day on which application for relinquishment of right has given. In present case brother of plaintiff was died in 2014 and plaintiff has not done any thing though she knows that she and her brother are only two legal heirs of their father. It is not a case of plaintiff that she had no relation with his brother. In the present case disputed land is not an ancestral land but disputed land was self acquired land of their father. Plaintiff has not produced any single document to show that her brother has committed fraud or stated any single fact by which it may be presume that plaintiff is a victim of fraud.

8. Here one document produced from the side of defendant is required to be read. It is in the knowledge of this court that for determining the present application only averment of the plaint should be considered but when it seems that plaintiff have not brought each and every fact and knowingly suppress the facts

then how fact brought on record should avoid. ***Here look in to the Judgment of Hon'ble Gujarat High Court, reported in 2008(1) GLH 665 (Oriental Bank of Commerce vs. Naresh Khushaldas Gangtani)***, Hon'ble Court observed that application under order 7 rule 11 of CPC cannot be thrown overboard on ground that for purpose of dismissal of the suit or rejection of plaint only the fact stated or the statement made in the plaint are to be taken in to consideration, An unscrupulous litigant may not disclose all the relevant facts truly and correctly, When these facts are brought to the notice of the court, though in the form of preliminary objection, the court cannot overrule the same.

Now, Document produced vide mark 26/1 from the side of defendants, it transpires that present plaintiff has signed one consent deed on dt. 22/08/2014 by which she has agreed for all transaction and has taken amount of sale consideration and waived her right on other land which was on the name of her bhabhi Maniben. The said consent deed was duly notarized. Plaintiff has knowingly suppressed this fact. It is reason to believe that plaintiff was very well aware about the mutation entry no. 565 which has been mutated in 1982. She was also very well aware about the fact that his brother has sale some land during his lifetime. She was very well aware about the sale of land in 2014. In the present suit plaintiff has stated the fact of fraud only to bring the suit in limitation.

9. Here it is fit refer the following judgment :-

In Whiteswan Buildcon Lip Vs. Thakor Praveenji Mangaji in Civil Revision Application No. 497 of 2021 Hon'ble Gujarat High Court has held that By way of clever drafting and by devising cause of action suit appears to have been instituted to frustrate right of defendant hence plaint rejected.

In Shantilal Shankerbhai Patel since deceased Vs. Patel Dalsukhbhai Nanabhai(deceased) in First Appeal No. 1560/2023 Hon'ble Gujarat High Court held that thus, cause of action, as mentioned in plaint, is an illusory and appears to have been well planned action in order to bring suit challenging registered sale deeds dated in year 2002 and 2006 by alleging bald allegations of fraud and cheating, suit which is otherwise barred under the provisions of Article 58 and 59 of Limitation Act,- by way of clever drafting and by devising cause of action, by alleging fraud an cheating- suit only appears to have been instituted to frustrate the right of defendants and trial court order rejecting the plaint upheld.

In Jagdishbhai Odhabhai Vs. Dhirubhai Savsibhai Vagad in Civil Revision Application No. 511 of 2024 Hon'ble Gujarat High Court has held that plaintiff claimed ownership over property based on alleged fraudulent revenue entries made by defendants' predecessor without legal documentation and consent- held trial court erred in not addressing factual aspects regarding limitation and knowledge of revenue entries prior to filing suit plaint was barred by limitation as plaintiffs were aware of relevant entries since 2017 and ignorance of law does not extend limitation period -application under order 7 Rule 11 should have been allowed.

*In **Hermes Marines Limited Vs. Capeshore Maritime Partners Fzc** in Civil Application(OJ) No. 144 of 2016 Hon'ble Gujarat High Court has held that Law cannot be confined only to mean the enacted law contained in statute, framed by the legislature scope and amplitude of the word law is much wider than that and takes within its sweep the binding precedents of Supreme Court.*

*In **Becharbhai Zaverbhai Patel vs. Jashbhai sivabhai patel**, which reported in **2013(1) GLR 398** it has been held by the Hon'ble Gujarat High Court that considering averments in plaint and supporting documents produced along with plaint if suit is clearly barred by law of limitation, plaint required to be rejected under O 7 R 11(d) of CPC as well as by clever drafting and vague averments suit which otherwise barred by law of limitation cannot be brought within limitation. The same finding were held by the Hon'ble Gujarat High Court in the case of **Kanjibhai Bhagwanjibhai Patel vs. Nanduben Shamjibhai Sorathiya**. **Hon'ble Supreme Court in T. Arivandandam v. T. V. Satyapal(1977)4 SCC 467** held that "Reading of the averments made in the plaint should not only be formal but also meaningful. It has been held that if clever drafting has created the illusion of cause of action, and a meaningful reading thereof would show that pleading are manifestly vexatious and merit less, in the sense of not disclosing a clear right to sue, then the court should exercise its power under Order VII Rule 11 of CPC. **Hon'ble Supreme Court reported in 2011(0) GLHEL SC 50076, Ramrameshwari Devi vs. Nirmala Devi**, wherein it has been*

held that wrongdoers should not get benefit out of frivolous litigation and imposed Rs.,. 2,00,000/- as costs.

10. In the light of the above settled principles of law and considering the plaint as whole it transpires that disputed lands were self acquired land of father of plaintiff and her brother Ambubhai. Plaintiff has knowledge that she and her brother were only two legal heir of their father. plaintiff has knowledge that revenue entry no.565 has been mutated in 1982. Plaintiff has knowledge that his brother has sale some land during his lifetime during 2007 to 2014. Plaintiff has knowledge that his brother was died in 2014. Plaintiff has knowledge that after her brother's death some disputed land has been sale and she also taken consideration. Plaintiff, in the present plaint, has created illusion of cause of action by clever drafting that the disputed lands were ancestral land and she has her right by birth though she very well knows that lands were self acquired land of her father and her right came after her father. Plaintiff, without any cogent fact or evidence, pleaded that her brother who was died in 2014 has deleted her name fraudulently. Plaintiff was very well aware about all transaction but came with fact that she does not aware about revenue entry mutated in 1982 and not aware about sale deed executed in 2007 and even not know any thing about disputed land when his brother died in 2014. Plaintiff has challenge registered sale deeds after long period. By clever drafting plaintiff has try to create the illusion of cause of action and try to bring the suit in limitation.

11. In view of the above and for the reasons stated above, it reflects that plaintiff, by clever drafting and vague averments,

create illusory cause of action and not disclose true cause of action and tried to bring the suit in limitation. Hence the present plaint is deserve to be rejected with under O. 7 R. 11(a),(d) of Civil Procedure Code.

12. As per the all above discussion the present plaint is deserves to be rejected. Hence following is the order.

::- Order -::

- The present application is hereby allowed.
- The present plaint of the plaintiff is hereby rejected under Order 7 Rule 11(a), (d) of Civil Procedure Code and suit has been disposed of accordingly.
- Plaintiff to the suit shall bare cost of the suit.
- Decree shall be drawn accordingly.

To be signed and pronounced in the open court on
29th June 2026.

Place : Jhagadia
Date : 29/06/2026

(Ekta Rameshbhai Kshatriya)
Principal Civil Judge
Jhagadia.
Judge Code : GJ 01197