

Order below Exh.13
(Rejection of Suit under O.7 R.11)

Statement of the Application:-

1. Present application at **Exh.13** is moved by deft. No.1 under **O.7 R 11 of the Code of Civil Procedure, 1908** (for short "the Code") by stating that plaintiff has filed present suit on 11.4.2022. Suit property was purchased by the father of defts.No.1 to 4 by sale deed in 1967. Its Mutation Entry No.415 was made on dtd.15.5.1967. Since then, they are in the possesion of the suit property. Mutation Entry No.1000 was certified and allowed by the Mamlatdar on 28.5.1990. From then, plaintiffs have never taken any objection regarding it and no dispute is on record regarding that. In between the said land of the sale deed, land of Mafaji Nagaji is situated. Ingress and outgress way is situated there. From the date of the sale deed, plaintiffs knew regarding the sale deed. Defts.No.1 to 4 sold the suit property due to the need of money. And after that by suppressing material facts, plaintiffs have filed present suit. Plaintiffs had filed R.T.S. Appeal No.71/2011 & 37/2012 before the revenue authority and Revision against it vide No.87/2013 and they had also filed the suit R.C.S.No.1/2015, but they have suppressed these facts from the court and have not mentioned such facts in the plaint. Plaintiffs have no right or title in the suit property. In spite of that, they have filed present suit. Hence, present suit is required to be rejected under O.7 R.11.

Submission of the Plaintiff :-

2. At Exh.17, plaintiffs have submitted the written reply for the said application and after refusing the allegations of the application, they have further submitted that present application is filed on false submissions. Defts. have not submitted the true facts. Hence, present application is required to be rejected.

Facts of the Plaint:-

3. It is settled principle of law that at the time of deciding any application moved under O.7 R.11, plaint and documentary evidences supplied with the plaint have to be taken into consideration. Accordingly, brief facts of present suit as mentioned in plaint are; revenue Survey No.97 and 100 of village Deodar, Dist.B.K. which were of Acre-20.00 guntah + Acre 21.13 guntha that was total Acre 41.13 guntha. Out of that , Acre 12.00 guntha land was given to Nai Revabhai Virabhai by Jagirdar Himmatsinh and remaining Acre 29-13 guntha land was given in the possession and ownership of Kala Rama. For the said Acre 12 land, one deed was

executed on 21.6.1995. Nai Ravabhai Virabhai sold 12 Acre land out of S.No.100 to late Ambaram Valabhai, predecessor of defts.No.1 to 4. From then, Nai Ravabhai handed over even possession to them. Accordingly, Mutation Entry No.415 of dtd.15.5.1967 was made and it was certified on 20.2.1968. Hence, Nai Revabhai Virabhai ceased to be a farmer and late Ambrambhai was having right for the said 12 guntha land only. Therefore, widow of Revabhai Virabhai did not have any right in the suit property. But by mistake, names of widow of Revabhai Virabhai and his daughter was running in the record and to delete their name, Mutation Entry No.1000 was made on 19.12.1989. It was certified on 28.5.1990. Kalabhai Ramabhai expired on 20.11.2004 and his succession entry was made vide No.1798 on 14.7.2006 and names of his heirs were entered in the record. Rajiben d/o.Revabhai Virabhai challenged Mutation Entry No.1000, but it was rejected by the Dy.Collector, Deodar. Accordingly, other revenue proceedings are also rejected. After the death of Rajiben, her heirs filed R.C.S.No.1/2015. It was rejected on 1.1.2022 and hence, Appeal is filed against the said order which is pending. Heirs of Rajiben does not have any right for the sold land of revenue S.No.100. Defts.No.1 to 4 are trying to sale the suit property which is Hec.1 Are.14 Sq.mtrs.40. Though plaintiffs have won the case, but defts.No.1 to 4 are trying to sale the suit land and plaintiffs' right may be prejudiced and hence, cause of action is arose to file the present suit. Plaintiffs have asked to declare that defts. do not have any right in the suit property and to held that the defts.No.1 to 4 do not have right to sale the suit property and they be restrained from transferring it further. Reliefs of declaration and injunction are also asked.

Documentary Evidences produced by Plaintiff:-

4. With the present suit, at Exh.4, plaintiffs have produced 35 documentary evidences. They are;

- Mark 4/1 is copy of abstract of 8-A of block No.100/p/2(S.No.270) of Deodar (for Hec.4-Are.85-Sq.mtrs.63). Names of Oad Prahlad Ambaram, Oad Jayantiram Ambaram, Oad Natubhai Ambaram, Oad Gafurbhai Ambaram are shown in the document.
- Mark 4/2 is copy of abstract of 7 of block No.100/p/2 (S.No.270) of Deodar (for Hec.5-Are.92-Sq.mtrs.75). Names of Oad Prahlad Ambaram, Oad Jayantiram Ambaram, Oad Natubhai Ambaram, Oad Gafurbhai Ambaram are shown in the document.
- Mark 4/3 is copy of abstract of 12 of block No.100/p/2 (S.No.270). Names of Oad Prahlad Ambaram, Oad Jayantiram Ambaram, Oad Natubhai Ambaram, Oad Gafurbhai Ambaram are shown in the document.
- Mark 4/4 is copy of abstract of 8-A of block No.100/p/2 (S.No.270) of Deodar (for

Hec.5-Are.92-Sq.mtrs.75). Names of Oad Prahlad Ambaram, Oad Jayantiram Ambaram, Oad Natubhai Ambaram, Oad Gafurbhai Ambaram are shown in the document.

- Mark 4/5 is copy of Mutation Entry No.53 of dtd.24.6.2016.
- Mark 4/6 is copy of Mutation Entry No.62 of dtd.28.5.1990.
- Mark 4/7 is copy of Mutation Entry No.62,etc. of dtd.7.10.1989.
- Mark 4/8 is copy of Mutation Entry No.415 of dtd. 7.10.1989.
- Mark 4/9 is copy of Mutation Entry No.942 of dtd.10.5.1989.
- Mark 4/10 is copy of Mutation Entry No.1000 of dtd.19.12.1989.
- Mark 4/11 is copy of Mutation Entry No.1432 of dtd.2.6.1999.
- Mark 4/12 is copy of Mutation Entry No.1671 of dtd.16.5.2004.
- Mark 4/13 is copy of Mutation Entry No.1776 of dtd.25.5.2004.
- Mark 4/14 is copy of Mutation Entry No.1798 of dtd.14.7.2006.
- Mark 4/15 is copy of Mutation Entry No.1799 of dtd.14.7.2006.
- Mark 4/16 is copy of Mutation Entry No.1902 of dtd.17.10.2007.
- Mark 4/17 is copy of Mutation Entry No.1912 of dtd.16.01.2008.
- Mark 4/18 is copy of Mutation Entry No.2186 of dtd.18.6.2011.
- Mark 4/19 is copy of Mutation Entry No.2002 of dtd.28.5.2009.
- Mark 4/20 is copy of Mutation Entry No.2208 of dtd.14.9.2011.
- Mark 4/21 is copy of Mutation Entry No.2441 of dtd.23.2.2012.
- Mark 4/22 is copy of Mutation Entry No.2287 of dtd.15.6.2012.
- Mark 4/23 is order of dtd.31.5.2013 in R.T.S.Appeal No.37/2012. By this order, application of Rajiben d/o. Revabhai Virabhai was rejected due to the limitation. By the said application, Mutation Entry No.1000 of dtd.28.5.1990 was challenged by the applicant. Rajiben is not party in present suit. And some of the oppnents are plaintiffs of present suit.
- Mark 4/24 is order of dtd.15.9.2014 in Revision Application No.87/2013. By this order, Revision Case was dismissed due to limitation and order of R.T.S.Appeal No.37/2012 was confirmed.
- Mark 4/25 is order of dtd.20.8.2016 in Revision Application No.142/2014 of Addil.Secretarty, Revenue Dept.,(Dispute). By the said order also, order of the

Collector Shri, B.K. was confirmed.

- Mark 4/26 is plaint of R.C.S.No.1/2015. Suit was filed by heirs of Rajiben d/o.Revabhai Virabhai against present some of the defts. The suit was in respect of 1 Acre land of Block No.100p.
- Mark 4/27 is order of interim injunction application passed in R.C.S.No.1/2015.
- Mark 4/28 is written statement of defts.No.1 to 6, 12 to 16 and 18 to 23 filed in R.C.S.No.1/2015.
- Mark 4/29 is sale deed of dtd.21.6.1955.
- Mark 4/30 is sale deed of dtd.25.10.1958.
- Mark 4/31 is sale deed of dtd.25.10.1958.
- Mark 4/32 is sale deed of dtd.20.4.1961.
- Mark 4/33 is judgement pronounced on 1.1.2022 of R.C.S.No.1/2015. Suit was rejected
- Mark 4/34 is Appeal Memo of R.C.S.No.2/2022.
- Mark 4/35 is survey map.

Documentary Evidences produced by Defendants:-

5. On behalf of defts., no documentary evidence is produced till yet.

Arguments :-

6. Heard both the ld.Advocates of both the parties. Both have argued as per the submissions on record as stated above and hence, they are not repated here again.

Reasons and Appreciation of Record:-

7. Present application is moved under **O.7 R.11 of the Code without stating any specific clause of the said provision**. It is settled principle of law that at the time of deciding the application under O.7 R.11, court has to look into the record produced by the plaintiff only alongwith the suit and the entire scenario presented by the plaintiff on record at the time of filing the suit. No evidence of defendant is required to go through. However, if court finds it fit in the interest of justice and from the perusal of the plaint as well as documentary evidences, it transpires to the court that the plaintiff has suppressed material facts, it can verify and go through the documentary evidences and facts produced by the defendant too. Till yet no

documentary evidence is produced on record by the defts.

8. Plaintiff has filed present suit on 11.4.2022. The cause of action is narrated in para 13 of the plaint. It is prima facie clear from the record that sale deeds produced by the plaintiff on record show that present suit is barred by law. **It prima facie shows that suit is barred by the provisions of Law of Limitation,1963. But the facts and allegations of the plaint are of such nature that issue of limitation seems mixed question of law and facts and not only pure question of law. Hence, present suit cannot be rejected at this stage without recording the entire evidence. The plaint does not seem illegal from its reading and interpretation which is possible at this stage. When the substantial question of legal rights is involved, court cannot be that much technical to reject the suit without giving full opportunity to the plaintiff to produce the evidences.**

9. *Prima facie* it seems that facts submitted by the plaintiff are ambiguous and the cause of action is also ambiguous. At the same time, on behalf of defts. too, it is not cleared categorically. In the application also, it is not submitted clearly and otherwise also at the stage of deciding O.7 R.11 application, scope to reject the suit are limited to those aspects which are apparent from the suit. Hence, in such kind of situations, this Court does not find it legal to reject present suit under O.7 R.11. There seems no substance in the present application and it is required to give the opportunity to produce evidences in respect of factual and legal aspects of plaintiff rather both the parties on record. After recording the entire evidence only, it shall be just and reasonable to pass any justifiable and legal order in this respect.

10. In view of the aforesaid discussions and reasons, following order is passed under Exh.13.

O R D E R

- 1) Application at Exh.13 moved under O.7 R.11 of the Code of Civil Procedure,1908 is hereby rejected.
- 2) No order as to costs.

Pronounced in the open Court today on 11th day of January, 2023.

Date:- 11.01.2023
Deodar.

(Dr.Manjudevi Shardaprasad Pande)
Principal Sr.Civil Judge,
Deodar,District : B.K.
Code No.GJ:00860

