

GJBK070001122022

RCS/ 70 /2023

**BRAHMAN DHANANJAYBHAI MANSANGBHAI
VS.
LAKHIRAM VAJRAM BRAHMAN**

ORDER BELOW EXH-16

1. The present application has been preferred by the defendant for rejection of plaint u/O-7 R-11(d) of the Code of Civil Procedure.
2. Ld. Ad. G R Trivedi appearing for the defendant has submitted that the plaintiff has brought this suit after 14 years from the date of the impugned mutation entry no. 307 dated 17/02/2009 on the basis of sale deed no. 1029/2008. He argued that the period of limitation is 3 years, and therefore suit is apparently time barred. Further, it is contended that plaintiff has not exhausted all the remedies available under revenue jurisdiction, therefore also, the suit is barred by the provisions of section-11 of the Revenue Jurisdiction Act. Hence, it is submitted that the suit is clearly barred by the law which requires to be rejected u/O-7 R-11(d) of the CPC. Following authorities have been relied upon by the plaintiff;

A. 2012 (0) GLHEL HC 227390

- B. 1998 (2) GLH 823
- C. 2014 (0) GLHEL SC 55135
- D. 1977 (0) GLHEL SC 31368
- E. 2012 (0) GLHEL HC 228986
- F. AIR 1996 Cal. 253
- G. 2007 (0) GLHEL SC 39274
- H. (2000) 1 GLR 835
- I. 2017 (0) AIJEL HC 237338

3. *Per contra*, Ld. Ad. Mr. B P Padhiyar, appearing for the plaintiff has vehemently submitted that the sale deed in favour of the plaintiff has neither been challenged nor signature in the said sale deed has been denied by defendants. The said sale deed is in force till date. It is also argued that the period of 3 years of limitation under section-58 only begins to run from the date of knowledge, and admittedly the plaintiff got the knowledge of mutation of entry in 2022 only, therefore the suit is well within time. Further, it is submitted that the plaintiff has not slept over his rights but agitated his claim before the authorities as soon as possible. On these premise, the plaintiff prayed to reject the application. Further, he argued that the suit cannot be rejected at threshold when limitation as a mixed question of fact and law arises, the same should be adjudicated on merits after taking evidence of

both the parties. Therefore, he urged this court to reject the present application with cost.

4. The present application by defendant has been preferred under O-7 R-11 of the CPC. It is quite appropriate to visit the said provision for reference, which reads as under;

“ O.7 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 sub-rule (2) 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.

5. The application is preferred by the defendant mainly on the two grounds, Firstly; the suit of the plaintiff is clearly barred by law of limitation for the reason that the suit must be brought within 3 years from the date of cause of action, however the plaintiff has filed this suit after period of 14 years, and Secondly; the suit is barred by the provision of section-11 of the Revenue Jurisdiction Act.
6. So far as the issue of limitation is concerned, law is well settled by the number of decisions of the Hon'ble Apex Court that when the question of limitation appears to be a mix question of law and fact in the circumstances of a particular case, it cannot be rejected at threshold. But, in the very same manner it is also well settled that if the suit ex-facie appears to be brought beyond period of limitation, the same can certainly be rejected in exercise of powers under O-7 R-11(d) of the CPC. Therefore, the question which needs attention is a quite clear that whether a plaint from the statement appears to be filed after expiration of period of limitation or not. It emerges from the statement made in the plaint in its entirety that the suit is filed for the declaration that the plaintiffs are owner of the suit land on the basis of the registered

Sale deed bearing no. 1029 dated 30/03/2008. It must be kept in mind that purchaser of the property is not obliged to file a suit for declaration of ownership on the basis of sale deed in all cases. It is only when the other party (seller) takes objections against the sale deed so executed or denies the title of the purchaser. Unless and until the seller takes objections against the sale deed, the purchaser has no cause of action to bring a suit. In the case on hand, defendants as alleged seller of the suit land did not take objection up to 19/07/2022. Therefore, in my view, there was no cause of action till such date when defendants took objections against the alleged sale deed. On this count, the present suit does not seem to be barred by law of limitation.

7. It is well settled that at the time of deciding the application under order 7 rule 11, the Court must look into the averments made in plaint only, the plea or defence raised by defendant cannot be considered. The said proposition has been settled by Hon'ble the Supreme Court in various decisions. So far as the question of cause of action is concerned with respect to the limitation, the plaintiff has made positive assertion that the defendant raised objection only on 19/07/2022 and also made complaint against plaintiff under Land Grabbing Act. Further, it is also pleaded in the plaint that the defendant made a statement in the said

complaint that the plaintiff is in illegal possession of the suit land since long time by playing fraud with defendants by fraudulently obtained signatures in sale deed under guise of mortgage deed.

8. Considering the said averment in the plaint for showing cause of action, the question of limitation cannot be said to be a pure question of law but it becomes a mixed question of fact and law which requires to be decided after full-fledged trial. The observation made by Hon'ble the Supreme Court in case of **Chhotanben and anr vs. Kiritbhai Jalkrushnabhai Thakkar and Anr. Reported as (2018) 6 SCC 422** is worth to reproduce here which is as under;

12. What is relevant for answering the matter in issue in the context of the application under Order VII Rule 11(d), is to examine the averments in the plaint. The plaint is required to be read as a whole. The defence available to the defendants or the plea taken by them in the written statement or any application filed by them, cannot be the basis to decide the application under Order VII Rule 11(d). Only the averments in the plaint are germane. It is common ground that the registered sale deed is dated 18th October, 1996. The limitation to challenge the registered sale deed ordinarily would start running from the date on which the sale deed was registered. However, the specific case of the appellants (plaintiffs) is that until 2013 they had no knowledge whatsoever regarding execution of such sale deed by their brothers - original defendant Nos.1 & 2, in favour of Jaikrishnabhai Prabhudas Thakkar or defendant Nos.3 to 6. They acquired that knowledge on 26.12.2012 and immediately took steps to obtain a certified copy of the registered sale deed and on receipt thereof they realised the fraud played on them by their brothers concerning the ancestral property and two days prior to the filing of the suit, had

approached their brothers (original defendant Nos.1 & 2) calling upon them to stop interfering with their possession and to partition the property and provide exclusive possession of half (1/2) portion of the land so designated towards their share. However, when they realized 15 that the original defendant Nos.1 & 2 would not pay any heed to their request, they had no other option but to approach the court of law and filed the subject suit within two days therefrom. According to the appellants, the suit has been filed within time after acquiring the knowledge about the execution of the registered sale deed. In this context, the Trial Court opined that it was a triable issue and declined to accept the application filed by respondent No.1 (defendant No.5) for rejection of the plaint under Order VII Rule 11(d). That view commends to us.

9. Therefore, in my opinion, careful reading of the plaint, it does not suggest that the suit is ex-facie barred by law of limitation. Moreover, I am of the considered view that the rulings cited by Ld. Advocate for defendant are not helpful to defendants as the facts of the present case are different and peculiar. Further, the ratio laid down by Hon'ble the Supreme Court (3 Judges Bench) in case of **Chhotanben (supra)** is the answer to the question arisen in the case on hand because the facts involved in the said decision are identical to the facts of the case on hand.
10. Another contention of the defendant is that the suit is barred by provision of section-11 of the Revenue Jurisdiction Act. But, in my view the dispute in the present suit pertains to inter se dispute between the parties and not a dispute with respect to the government land. Further, the present suit is also not filed against

the government so as to create a bar under section-11. Relevant observation of the Hon'ble Supreme Court in case of Sankalchand Jaychandbhai Patel vs. Vithalbhai Jaychandbhai Patel [(1996) 6 SCC 433] is worth to reproduce here, which is as under;

"11. Suits not to be entertained unless plaintiff has exhausted right of appeal. - No Civil Court shall entertain any suit (against the Government) on account of any act or omission of any Revenue Officer unless the plaintiff first proves that previously to bring his suits he has presented all such appeals allowed by the law for the time being in force, as within the period of limitation allowed for bringing such suits it was possible to present."

A reading of the section would clearly indicate that there is a prohibition on the Civil Court to entertain any suit against the Government, on account of any act or omission of any Revenue Officer, unless the plaintiff first process that he previously brought it by way of an appeal before the competent authority and within the time prescribed. Without availing of that remedy, he cannot present the suit against the State. The question is: whether Section 11 applies to the inter se claim of the private parties ? It would be seen that learned single judge has construed Section 11 of the Bombay Revenue Jurisdiction Act, and concluded that Section 11 prohibits entertainment of the suit between private parties unless the plaintiff has exhausted right of appeal or revision

prescribed therein and available to him before he resorts to the suit challenging the order passed by the Revenue officer. A reading of Section 11 does not indicate any prohibition on private parties inter se to avail of the remedy of a suit provided under the Code of Civil Procedure, 1908 [CPC]. Section 9 of CPC. does not expressly or by necessary implication, prohibits the jurisdiction of the civil Court to entertain the based on title.(emphasis supplied)

It is settled law that mutation entries are only to enable the State to collect revenues from the persons in possession and enjoyment of the property and that the right, title and interest as to the property should be established de hors the entries. Entries are only one of the modes of proof of the enjoyment of the property. Mutation entries do not create any title or interest therein. Therefore, the view taken by the learned single Judge, with due respect, is not correct in law. The civil suit is clearly maintainable”.

11. In view of the aforesaid discussion and reasons, I am of the considered view that the question of limitation in the present suit of the plaintiff is a mixed question of fact and law, which is required to be adjudicated after affording opportunities to the parties to the suit to lead their evidences. Further, the issue of bar under section 11 of the Revenue Jurisdiction does not appear to be applicable as discussed hereinabove. Resultantly, I am

declined to exercise powers u/O-7 R-11 of the CPC. Hence, I pass following order in the interest of justice;

--ORDER--

- A) The present application at **Exh-16** preferred by the defendant is hereby rejected.
- B) No order as to cost.

Order signed and pronounced today on 11th January, 2024 in open court.

Date : 11-01-2024

MR.T.R.GHONIYA
PRINCIPAL CIVIL JUDGE & J.M.F.C
WAV-BANASKANTHA. GJ01561

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