
ORDER BELOW EXHIBIT NO.47.
IN
REGULAR CIVIL SUIT NO.122 OF 2019.

- (1) Read the application and reply filed by the plaintiffs vide Exh.53.
- (2) The present application has been filed by the defendants under Order 7 Rule 11 of C.P.C. for rejecting the suit.
- (3) Heard Ld. Advocates for both the sides at length.
- (4) The present application is given for rejecting the suit on the ground that the present plaintiffs have no reason to file the present suit as plaintiffs have no right as per revenue record and when revenue remedy is available the present suit is only a misuse of process of law and beyond the period of limitation and hence, the suit deserves to be rejected. Further, it is stated that regarding the different survey numbers file in one suit by all the plaintiffs and the reasons for the cause of action is also not tenable that they were not aware of that names were not transferred in the revenue record for mistake in the survey numbers and hence, they have not filed any proceedings. Further, as stated that remedy authority is also available then also the present suit is filed after a period of 44 years which is the period of limitation and on that ground the suit is deserves to be rejected and has relied on the judgment passed by the Hon'ble High Court of Gujarat in the case of Mangabhai Bhayabhai Karia V/s. State of Gujarat.
- (5) The plaintiffs have filed reply vide Exh.53 and opposing the present application filed by the defendants under Order 7 Rule 11 of C.P.C. It is say of the plaintiff that the present application is against law and

there is no reason and has not been filed with proper forum and hence, it deserves to be rejected. Further, it has been stated that the present application filed only with method of delay tactics and malafide intention and false averments made in this application and hence, this application deserves to be rejected. Further, it is stated that there is a mixed question of facts and law it has been decided in the suit and no application is filed under Order 7 Rule 11 of C.P.C. The Ld. Advocate for the plaintiffs have relied upon the following judgments are as under :-

- (1) G. Nagaraj V/s. B. P. Mruthunjayanam, 2023 (0) AIJEL-SC 71024.
- (2) Dilipkumar Jayantilal Shah V/s. Yasinbhai Faridbhai Hokabaj, 2022 (0) AIJEL-HC 244690 (Gujarat High Court).

In the aforesaid two judgments, the Hon'ble Higher forum have held that, whether there exists a cause of action or not cannot be decided at the stage of deciding application under Order 7 Rule 11 of C.P.C. and does not fall under any of the provisions of C.P.C.

- (6) Further, the present suit has been filed for declaration and permanent injunction for declaring the plaintiffs as legal owner and possessor of the suit lands bearing different survey numbers and other reliefs are also demanded and hence, it is prayed to reject the present application filed by the defendants.
- (7) Both the parties are heard at length.
- (8) Looking to the provision of Order - 7, Rule - 11 of Code of Civil Procedure:-

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-papers 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 from correcting the valuation or supplying the requisite stamp-papers, 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.]

- (9) From the above facts, it is clear that the present suit is filed by the plaintiffs against the defendants for declaration and permanent injunction and for declaring the plaintiffs are the owners and possessors of the suit lands and other prayers are also made in the suit plaint which cannot be over seen at this stage without recording of evidence from both the sides. Thus, the ground of the contention that the present suit is barred by the period of limitation herein does not survive. Further, in the present suit, the plaintiffs have prayed for reliefs regarding the land ownership and possession of the plaintiffs. Thus, the plaintiffs have not asked any relief which arise out of any legal act done in due course by the defendants, the plaintiffs have only prayed for the relief mentioned in para - 9 of the suit plaint and

they have produced the documentary evidence along with the suit which clearly shows that the plaintiffs have filed the suit for declaration and permanent injunction. Whether the act of the defendants is legal or illegal cannot be decided at this stage before recording of evidence simply by mentioning in the present application filed by the defendants that the suit is barred by the limitation and does not have any cause of action herein cannot be accepted as there are many question of laws and facts involved in the present suit. Further, the Hon'ble Higher forum in the case of G. Nagaraj V/s. B. P. Mruthunjayanam, 2023 (0) AIJEL-SC 71024 and Dilipkumar Jayantilal Shah V/s. Yasinbhai Faridbhai Hokabai, 2022 (0) AIJEL-HC 244690 (Gujarat High Court) have held that, whether there exists a cause of action or not cannot be decided at the stage of deciding application under Order 7 Rule 11 of C.P.C. and does not fall under any of the provisions of C.P.C. and hence, the present application cannot be allowed at this juncture on the technical ground and it deserves to be rejected and hence, in the interest of justice, following order is passed.

:- ORDER :-

- (1) The present application filed by the defendants under Order 7 Rule 11 of C.P.C. is hereby rejected.
- (2) No order as to costs.

Signed and Pronounced in the open Court Today, on this 11th Day of January, 2024.

**Place :- Khambhalia
Date :- 11.01.2024**

**(Rajeev I. Chopra)
Additional Senior Civil Judge
Devbhumi Dwarka @ Khambhalia
Code No. GJ00765**