

**R.C.S. No.- 128 of 2022****Order below Application at  
Exhibit -14.**

<b>Lr. Advocate for the plaintiffs</b>	<b>Mr. D. J. Rajgor.</b>
<b>Lr. Advocate for the defendants</b>	<b>Mr. D. K. Sagar.</b>

1. Present application is filed by the defendants under the provision of order 7 rule 11 of the code of civil procedure praying to reject the plaint on the ground of lack of cause of action and limitation. It is stated by the defendants that the suit is barred by limitation as the alleged partition deed dated 17/05/1999 is challenged by way of the present suit which is filed on 19/6/2022. There is no explanation from the Plaintiffs as to why the present suit could not be filed earlier. It is further stated that the suit for declaration should be filed within 3 years in terms of article 58 and 59 of limitation act 1963. Learned advocate for the defendant has relied on section 3 of limitation act which says that the court should reject the suit, if it is found that it is beyond the period of limitation even though limitation is not specifically pleaded as defence by the other side. Learned advocate has submitted that the plaint is also required to be rejected on the ground that no cause of action is disclosed in the plaint. On the bear perusal of the plaint, it transpires that the only averment which is made by the plaintiff is that the cause of action to file the suit arose at Gandhinagar within the territorial jurisdiction of this Court.
2. The application is opposed by plaintiffs by filing reply vide exhibit 18 where in the plaintiffs have stated that they have clearly stated in the plaint that the cause of action to file the present suit arose

when the defendant issued demurrer application dated 30/10/2021 where in the defendant claimed right title and interest over a particular survey number and there by prejudicing the rights of the plaintiffs. It is further stated that the defendant has filed the present application with an intention to merely waste the precious time of the court because it appears that the defendant has not really perused the plaint. Thus, the plaintiffs have prayed to reject the present application with exemplary cost.

3. In the course of hearing of present application, the Lr. Advocate for the defendant has submitted that the plaintiffs have challenged the partition deed dated 17/05/1999 by filing the suit in the year 2022. The plaintiff was one of the parties to the said deed. Based on the said partition deed mutation entry no. 8037 was carried out in revenue record. Plaintiff opposed the said entry before the revenue authority leading to Takrari Case no. 12/2000. The authority dismissed the objections taken by plaintiff and ordered to certify the entry. Defendant has produced copy of the order passed by Mamlatdar, Dehgam vide mark 10/3. Therefore, it can be said that plaintiff had knowledge about the partition deed since the year 2000. However, plaintiffs maintained silence till all these years. In the mean-time plaintiff sold one of the property bearing survey no. 699 admeasuring He.Are.Sq.Met 0-89-03 to one Rajesh Keshav Shukla by executing registered sale deed no. 1057 dated 28/04/2011. The said sale deed is produced by defendant vide mark 10/5. Thus, on one hand plaintiff challenges the partition deed and on the other hand disposes of the property that fall in their share by virtue of the impugned partition deed. Plaintiffs have suppressed above facts before the court. In view of above submissions, the Lr. Advocate has prayed to allow the application and reject the plaint.
4. The Lr. Advocate for plaintiffs have submitted his written arguments vide exhibit-19 wherein he has stucked to his submissions in the reply filed against the present application. It is submitted looking to

para 7 of the plaint the plaintiffs have clearly mentioned the fact as to how the cause of action to file the suit arose. It is also stated that the suit is within limitation in view of Article-58 of limitation act. The contention that the suit is barred for non-joinder of necessary parties is not a ground to reject the plaint. He has prayed to reject the application.

5. As the present application is filed for the rejection of plaint, it is well settled that while deciding an application under Order 7 Rule 11, the plaint and document attached with the plaint can only to be looked into. Thus, for effective adjudication of the present application, it is necessary to note in brief the case with which the plaintiff has come before the court. By way of the present suit the plaintiff have challenged a partition deed dated 17/5/1999 notarized by a notary public on a stamp paper of Rs. 50/-. The plaintiffs have filed the suit in the capacity of legal heirs and representatives of Rupesh Kumar Narsi Bhai Amin who passed away on 26/02/1990. It is the case of plaintiffs that disputed property situated at village Sapa, bearing revenue survey number 161, is an ancestral property wherein Rupesh Kumar Narsi bhai Amin had right, title and interest as legal heir of Narsinhbhai Motibhai Amin. The defendant had put forward a demurrer vide an application dated 30/10/2021 claiming his rights title and interest in the said land on the strength of partition deed dated 17/5/1999 which is alleged to have been executed by plaintiff number 1 in her personal capacity and as a legal guardian of plaintiffs number 2 to 4. Plaintiffs have prayed for following reliefs in the suit.
  - a. Declaration that partition deed dated 17/05/1999 is erroneous and to cancel the same.
  - b. Grant injunction against sale, hypothecation, renting of the said land stated in partition deed dated 17/05/1999 and/or any act prejudicing the rights and interests of the plaintiffs.
  - c. Cost and other reliefs that the court deems fit.

6. As the present application is under the provision of order 7, rule-11 of CPC, it is necessary to quote its text which is as under :

Rule 11: Rejection of Plaintiff.

The plaintiff 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 plaintiff 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 plaintiff 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.]

With reference to application for rejection of plaintiff, the general principles established by catena of decisions of Hon'ble Apex court says that the plaintiff can be rejected under Order 7 Rule 11 if conditions enumerated in the said provision are fulfilled. The power

under Order 7 Rule 11, CPC can be exercised by the Court at any stage of the suit. The relevant facts which need to be looked into for deciding the application are the averments of the plaintiff only. If on an entire and meaningful reading of the plaintiff, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the suit is barred by the provision of law or any other ground mentioned in the rule, the court should exercise power under Order 7 Rule 11 CPC. Since the power conferred on the Court to terminate civil action at the threshold is drastic, the conditions enumerated under Order 7 Rule 11 CPC to the exercise of power of rejection of plaintiff must be strictly adhered to. The averments of the plaintiff must be read as a whole to find out whether they disclose a cause of action or whether the suit is barred by any law. It is pertinent to note that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. The averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaintiff. Even when the allegations made in the plaintiff are taken to be correct as a whole and on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaintiff can be entertained and the power under Order 7 Rule 11 CPC can be exercised. If clever drafting of the plaintiff has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage.

6. Applying the above settled legal position to the facts of the present case, the defendant has filed the application on the premise that the suit of the plaintiff is barred under limitation act as the plaintiff has filed the present suit in the year 2022 to challenge a partition deed of the year 1999. Defendant has also prayed to reject the plaintiff as

according to him the plaint does not disclose cause of action. Perusing the plaint the plaintiffs at para-7 of the plaintiffs have stated that the cause of action to file the suit arose when one of plaintiff issued public notice with respect to suit property to obtain title clearance certificate and in response to such notice the defendant filed his objection. Thus, at this juncture it cannot be said that the plaint does not disclose cause of action.

7. The Lr. Advocate for the defendants has argued that in the year 2000 the plaintiffs had filed their objections before the revenue authorities against certifying entry based on the impugned partition deed. However, the authorities dismissed the objections of plaintiff and certified the entry. Thus, plaintiff had knowledge about the partition deed since the year 2000 and still they did not challenge the partition deed. It is also submitted that the plaintiffs have sold the property that came to their share in partition deed. With respect to above submissions, this court has meticulously gone through the application for rejection of plaint. However, the defendants have neither mentioned a word about the knowledge of plaintiff about the partition deed since the year 2000 nor the fact of alienation of property that fall in the share of plaintiffs by virtue of the impugned partition deed is mentioned. Thus, the written arguments of Lr. Advocate for the defendants travels beyond the facts mentioned in the application for rejection of plaint. The fact about knowledge of plaintiff of partition deed since the year 2000 and sale by plaintiffs of the property that came to their share are the facts mentioned in the written statement of defendants. As per the settled law the defence raised by defendants in their written statement cannot be looked into while deciding an application for rejection of plaint. Defendant has relied on the judgment of Hon'ble Supreme Court in the case of Dahiben and Raghwendra Sharan Singh. However, in both the cases the plaintiff therein had challenged the registered documents. And under that

particular set of facts Hon'ble Apex Court held the plaint to be barred the law of limitation. However, in the present case, the partition deed under challenge is un-disputedly un-registered. Therefore, on facts the judgments relied on by Lr. Advocate for defendant would not assist him.

8. In view of above reasoning, the present application do not deserve any consideration and following order is passed below the application.

**:: FINAL ORDER ::**

- a. The present application by defendant for rejection of plaint is rejected.
- b. In the facts of the case, it would not be proper to impose costs.

Pronounced in open court on this 16<sup>th</sup> day of July, 2024.

Date: 16/07/2024.

Place: Dehgam.

Vishal P. Mehta.  
Prin. Civil Judge, Dehgam.  
UIC : GJ01538.