

REGULAR CIVIL SUIT NO. 58/2018

Order Below Exh. 13

[01] The defendants have filed this application under Order VII, Rule 11 of the Code of Civil Procedure, seeking threshold rejection of the plaint. It has been stated that the plaintiff has filed the suit for declaration and injunction by means of clever drafting. It has been stated that suit is clearly barred by law of limitation. It is further case of the defendants that the suit is filed after passing of 20 years and the suit therefore is clearly barred by law of limitation and the suit is required to be rejected Order VII, Rule 11 (d) of CPC. The plaintiff has filed reply at Exh. 21, where in he has denied the allegations made in the application and stated that the application is not maintainable and same is required to be rejected. It is further stated that the plaintiffs are co-owner of the suit property and the plaintiff has right and interest in the suit property. It is further submitted by the plaintiff that the suit is clearly in the limitation and the application required to be rejected.

[02] Heard, learned advocates for the respective parties. Perused the contentions of plaint and documents annexed with the plaint. It is well-settled that at the time to decide an application under Order VII, Rule 11 of C.P.C., the court has only look into the averments made in the plaint. It is also well-settled that the defence set-up by the defendants in written statement cannot be taken into the consideration. The court is duty bound to read the plaint

meaningfully and it has to be read as a whole. It is also well founded proposition of the law that on meaningful reading of the plaint, if the plaint found on the vexatious claim, the court can exercise its power under Order VII, Rule 11 of the Civil Procedure Code. In the case on hand, the plaintiff has filed the suit for the declaration on the basis of their inheritance right from the ancestral property. The said issue is required to be decide after taking evidence. Further, the issue of limitation is mixed question of law and facts. Therefore, plea of limitation cannot be considered at this stage.

[03] In the case of ***Church of Christ Charitable Trust & Educational Charitable Society v. Ponniamman Educational Trust (2012) 8 SCC 706***, the Hon'ble Supreme Court in paras 13 has observed and held as under :

“13. While scrutinizing the plaint averments, it is the bounden duty of the trial Court to ascertain the materials for cause of action. The cause of action is a bundle of facts which taken with the law applicable to them gives the Plaintiff the right to relief against the Defendant. Every fact which is necessary for the Plaintiff to prove to enable him to get a decree should be set out in clear terms. It is worthwhile to find out the meaning of the words "cause of action". A cause of action must include some act done by the Defendant since in the absence of such an act no cause of action can possibly accrue.”

[04] In *A.B.C. Laminart Pvt. Ltd. vs. A.P. Agencies (1989) 2 SCC 163*, the Hon'ble Supreme Court explained the meaning of "cause of action" as follows:

"12. A cause of action means every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff."

[05] In the case of *Sopan Sukhdeo Sable vs. Assistant Charity Commissioner (2004) 3 SCC 137*; in paras 11 and 12, the Hon'ble Supreme Court has observed as under:

"11. In *I.T.C. Ltd. vs. Debts Recovery Appellate Tribunal* [(1998) 2 SCC 70] it was held that the basic question to be decided while dealing with an application filed under Order 7 Rule 11 of the Code is whether a real cause of

action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 of the Code.

12. The trial court must remember that if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise the power under Order 7 Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order 10 of the Code. (See T. Arivandandam v. T.V. Satyapal (supra).”

[07] In **Balasaria Construction Pvt. Ltd. Vs. Hanuman Seva Trust (2006)**

5 SCC 658, the Hon'ble Supreme Court has held as under :

"8. After hearing counsel for the parties, going through the plaint, application under Order VII, Rule 11 (d) CPC and the judgments of the trial court and the High Court, ***we are of the opinion that the present suit could not be dismissed as barred by limitation without proper pleadings, framing of an issue of limitation and taking of evidence. Question of limitation is a mixed question of law and fact.*** Ex facie in the present case on the reading of the plaint it cannot be held that the suit is barred by time. The findings recorded by the High Court touching upon the merits of the dispute are set aside but the conclusion arrived at by the High Court is affirmed. We agree with the view taken by the trial court that a plaint cannot be rejected under Order VII Rule 11(d) of the Code of Civil Procedure."

[08] Thus, having taking note of the ratio laid down by the Hon'ble Apex Court in the above stated case law, the court is clearly of the view that the issue involve in the suit is required consideration and the plaint cannot be rejected in terms of Order VII, Rule 11 of the Code of Civil Procedure. The issue of limitation being a mixed question of law and fact cannot be considered at this stage and the same is required to be adjudicate on the basis of evidence. Hence, I passed following order in the interest of Justice.

◀ O R D E R ▶

- The Application stand dismissed.
- No order as to cost.

[Signed & pronounced on **02/08/2023**]

Date : 02/08/2023

Place: Kalol

[**Ashishkumar N. Patel**]

Principal Senior Civil Judge

KALOL - GANDHINAGAR

Code No:GJ00935