

Order Below Exh. 30
Regular Civil Suit No. 207/ 2012

1. Heard learned advocate for the parties. Read the application, reply vide Exh. 52. Perused the record.

2. By way of the present application, learned advocate for the defendant No. 13 Mr. M. P. Parmar submitted that the plaintiff has filed the present suit against the defendants for specific performance of contract for execution of the registered sale deed on the basis of unregistered agreement to sell as executed by the elder of the defendant No. 1 to 12 in the favour of plaintiff as well as defendant No. 13 and for cancellation of registered sale deed as executed by the deceased elder of defendant No. 1 to 12 in the favour of defendant No. 1 to 13 on dated 05.07.1994 and for declaration and for permanent injunction. He further submitted that while on plain reading of the entire facts as pleaded by the plaintiff in the plaint, from the face of the same, it clearly and ostensibly transpires that on the basis of registered agreement to sell dated 16.01.1992, the plaintiff has filed the present suit on dated 11.12.2012. Therefore, on plain reading of the entire facts as pleaded, it clearly and ostensibly transpires that the plaint of the plaintiff is barred by law of limitation. Therefore, the plaint of the plaintiff is require to be rejected at threshold by invoking provision

as envisaged under Order 7 Rule 11 (d) of the CPC.

3. He further submitted that on plain reading of the entire facts as pleaded by the plaintiff in his plaint as a whole not in isolation, it clearly and ostensibly transpires that the deceased father of defendant No. 1 to 12 have executed registered sale deed of the suit land in question in the favour of defendant No. 13 on dated 05.07.1994, a copy of the same is submitted by the plaintiff on record vide Mark 3/3 and on the basis of registered sale deed as executed in the favour of defendant No. 13, name of the defendant No. 13 is also mutated in revenue record. It clearly appears from the document vide Mark 3/1 as submitted by the plaintiff, therefore, the date of registered sale deed is to be considered as deemed date of knowledge and suit is require to be filed within period of three years from the date of knowledge, then also it appears that the plaintiff has not filed suit within period of three years from dated 05.07.1994, on the contrary, as he submitted that the plaintiff has filed the present suit on dated 11.12.2012, it means after almost more than 5 years from expiry of three years from the date of registered sale deed as executed in the favour of defendant No. 13, the plaintiff has filed the present suit for cancellation of registered sale deed in the favour of defendant No. 13 for specific performance of contract on the basis of registered agreement to sale dated 16.01.1992. Therefore, plaint of the plaintiff is barred by law of limitation. Therefore, plaint of the plaintiff is require to be rejected,

while applying the provision under Order 7 Rule 11 (d) of the CPC.

4. He further submitted that regarding suit land in question, one another suit, it means RCS No.107/2009 was filed and in the said suit, the plaintiff is shown as a defendant No. 10. Not only that another RCS No. 224/2009 filed regarding the suit land in question by the present plaintiff and though the said suit was pending, then also on the same cause of action, the plaintiff has filed the present suit against the defendants. Therefore, as per provision as envisaged u/s. 11 of the CPC, suit for same cause of action is not maintainable and present suit of plaintiff is barred by law of Res Judicata as envisaged u/s. 11 of the CPC. Not only that even it appears that in the plaint the plaintiff has pleaded that the cost of the disputed land in question is of Rs. 35 lakh, therefore, if the suit land is amounting Rs. 35 lakh, then this Court is barred by pecuniary jurisdiction and having no jurisdiction to try and proceed further in the present suit. Therefore, also on plain reading of the entire facts as pleaded by the plaintiff in the plaint, the plaint of the plaintiff is barred by law of limitation and also barred by pecuniary jurisdiction of this Court and for the same cause of action, earlier two suit were filed as present suit filled by the plaintiff. Therefore, the plaint of the plaintiff is barred by law of Res Judicata, therefore, while invoking provision under Order 7 Rule 11 (d) of the CPC, the plaint of the plaintiff is require to be rejected at threshold and accordingly prays to allow the present

application.

5. Learned advocate for the plaintiff Mr. J. D. Patel, while submitting reply vide Exh. 52 and while submitting written submission vide Exh. 57, submitted that while on plain reading, the entire facts as averred by the defendant No. 13 in the present application, from the face of the same, it clearly and ostensibly transpires that on the basis of false, frivolous and vexatious averments, with malice intention to delay the proceedings of the present suit, which is reached at the stage of evidence, at belated stage, the defendant No. 13 to fulfill his own malice intention and to delay the proceedings of the present suit and on the basis of his own defense moved the present application for invoking the provision as envisaged under Order 7 Rule 11 (d) of the CPC.

6. He further submitted that while on plain reading, the entire facts as pleaded by the plaintiff, the plaintiff has specifically pleaded that the plaintiff as well as defendant No. 13 while by paying a part consideration amount to the deceased father of defendant No. 1 to 12 got executed agreement to sell regarding suit land on dated 16.01.1992 and same is registered in the office of Sub Registrar at Kalol bearing registration No. 186, it clearly appears from the document upon mark 3/2 as submitted by the plaintiff and it was agreed that elder of the defendant No. 1 to 12 will execute the registered sale deed of the suit land in question in the favour of

plaintiff as well as defendant No. 13 jointly, after accepting the balance consideration amount and regarding agreement to sell vide Mark 3/2, the defendant No. 13 having knowledge that he has no right and authority to get execute the registered sale deed of the suit land in question from the elder of the defendant No. 1 to 12 in his name only, then also behind the back of the plaintiff and without giving any information to the plaintiff, the defendant No.13 to fulfill his malice intention got executed registered sale deed of the suit land in his favour on 05.07.1994 and have not informed regarding the registered sale deed to the plaintiff, even the defendant No. 13 has not taken signature of the plaintiff in the registered sale deed dated 05.07.1994, which is produced on record at Mark 3/3 as confirming party and it appears that though elder of the defendant No. 1 to 12 agreed to sell the suit land in the favour of plaintiff as well as defendant No. 13 jointly in total consideration amount of Rs. 95,000/-, but instead of accepting the balance consideration amount, the defendant No. 13 by playing fraud with the plaintiff as well as defendant No. 1 to 12 got executed registered sale deed of the suit land at amount of Rs. 40,000/-, which clearly appears from the document vide Mark 3/3 and when the plaintiff comes to know that the defendant No. 13 fraudulently got executed registered sale deed of the suit land from the elder of the defendant No. 1 to 12 behind back of the plaintiff and without giving half share to the plaintiff, when the defendant No. 13 filed RCS No. 107/2009 within period of three years of the date of the knowledge,

the plaintiff has filed the present suit against the defendants for cancellation of registered sale deed as defendant No. 13 got executed in his favour fraudulently from the elder of the defendant No.1 to 12 and for specific performance of contract as elder of the defendant No. 1 to 12 executed the agreement to sell in the favor of plaintiff as well as defendant No. 13. He further submitted that the plaintiff in his plaint made a specific facts and the facts as pleaded by the plaintiff could only be adjudicate after recording the evidence and after appreciating of the evidence and same could not be decided threshold. Then also it appears that on the basis of false, frivolous and vexatious averments to delay the proceeding of the present suit and to defeat the right and interest of the plaintiff, the defendant No. 13 move the present application.

7. He further submitted that as per provision as envisaged under Article 58 and 59 of the CPC, suit for cancellation of deed is require to be filed within period of three years from the date when the right to sue accrues, it means from the date of knowledge and the plaintiff has specifically pleaded that when he came to knowledge regarding the fraudulent act of the defendant No. 13, within period of three years from the date of the knowledge, the plaintiff has filed the present suit against the defendants. Therefore, the plaintiff raised numerous grounds that plaint of the plaintiff is not barred by law of limitation, then also, it appears that the defendant No. 13 mainly on the ground that the plaint of the plaintiff is barred by

law of limitation filed the present application to reject the plaint of the plaintiff by invoking the provision as envisaged under Order 7 Rule 11 of the CPC, but it appears that the defendant No. 13 forget the question of limitation is always a mix question of law and facts and mainly on the ground of limitation, straight way plaint cannot be rejected at threshold by invoking provision under Order 7 Rule 11 (d) of the CPC. Therefore, he prays that the present application of the defendant No. 13 is nothing but to fulfill his own malice intention and to defeat the right and interest of the plaintiff. Therefore, he prays to reject the present application of the defendant No. 13 by awarding special cost to the plaintiff.

8. In support of his above submission, he placed reliance in the case of **Mayar (H.K.) Limited Versus Owner and Parties Vessel M.B.Fortunre Express**, reported in **AIR 2006 SC 1828**, further in case of **C. Natrajan versus Asimbhai and another**, reported in **AIR 2008 SC 363** and submitted that as per ratio as laid down by the Hon'ble Supreme Court in the above judgment, the ground of limitation is always a mix question of law and facts and same cannot be decide without appreciating the evidence, therefore, while considering the ratio as laid down by the Hon'ble Supreme Court in the above judgment, plaint of the plaintiff could not be rejected at threshold at this stage by invoking provision under Order 7 Rule 11 (d) of the CPC.

9. He further submitted that in the present application the defendant No. 13 also averred that the plaint of the plaintiff is barred by law of Res Judicata as per provision u/s. 11 of the CPC, but it appears that the application filed by the defendant No. 13 is misconceived, because the provision as envisaged u/s. 11 of the CPC Res Judicata could only be applicable once if suit is decided on any point or on ground or if any suit is decided regarding and the disputed land in question, then the subsequent suit on the same ground is not maintainable and barred by law provisions as envisaged u/s. 11 of the CPC i.e. Res Judicata. Not only that even as per settled principle of law, the law of Res Judicata will not be applicable at the time of adjudicating application under Order 7 Rule 11 of the CPC, then also by misinterpreting the provisions as envisaged u/s.11 of the CPC and though the earlier two suits as filed, same were not decided on merit and same were pending for evidence and though the said fact is known very well by the defendant No. 13, then also to fulfill his own malice intention to save his skin as fraud committed by the defendant No. 13 by invading right and interest of the plaintiff that though the defendant No. 13 is known very well that plaintiff as well as defendant No. 13, both jointly executed agreement to sell regarding suit land from the elder of the defendant No. 1 to 12 and the plaintiff has paid part consideration amount, then also to grab the part consideration amount as paid by the plaintiff to the elder of the defendant No. 1 to 12 behind the back, instead of giving half share

of the plaintiff in the suit land, the defendant No. 13 by playing fraud and fraudulently got executed the registered sale deed that show dishonest intention of the defendant No. 13. Therefore, also plaintiff of the plaintiff could not be rejected at threshold by invoking provision as envisaged u/s.11 (d) of the CPC, because as he submitted that law of Res Judicata is not applicable at the time of deciding application under Order 7 Rule 11 of the CPC. Therefore, while considering the ratio as laid down by the Hon'ble Supreme Court, the present application of the defendant No. 13 is nothing but to fulfill his own malice intention and to save his dishonest intention as fraud committed by defendant No. 13. Therefore, he prays to reject the present application by awarding special cost to the plaintiff.

10. Having bestowed of my thoughtful consideration, I am of the view that at the stage of adjudicating application under Order 7 Rule 11 of the CPC, the Court must consider only averment made in the plaint and the documents alongwith the plaint are require to be taken into consideration. Further, while deciding the application under Order 7 Rule 11 of the CPC, few line or passage of plaint should not be read in isolation or any piecemeal but same is require to be read as a whole. To ascertain the facts, where the plaint of the plaintiff is discussed, cause of action or the plaint of the plaintiff is barred by any law. Further in the case of **Sopan Sukhdeo Sable &**

Ors. versus Assistant Charity Commissioner, reported in **2004(3) SCC 137**, wherein, Hon'ble Supreme Court in para-14 held that "there cannot be any compartmentalization, dissection, segregation and inversions of the language of various paragraphs in the plaint. If such a course is adopted it would run counter to the cardinal cannon of interpretation according to which a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction or words or change of its apparent grammatical sense. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. At the same time it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair splitting technicalities".

11. Therefore, while considering the ratio as laid down by the Hon'ble Supreme Court in the above judgment, entire averments is require to be read as a whole, not only one or two line or passage, at the time of adjudicating the application under Order 7 Rule 11 of the CPC.

12. Further, on plain reading of the application of the defendant

No. 13, it appears that the defendant No. 13 mainly contended that the plaint of the plaintiff is barred by law of limitation and also raised the contention that the earlier two suits were filed in which the plaintiff is also party and knowing very well that RCS No. 107/2009 and RCS No. 224/2009 filed, then also the plaintiff has filed the present suit, therefore, plaint of the plaintiff is also barred by law of Res Judicata as per provision as envisaged u/s. 11 of the CPC and also contended that the suit is barred by pecuniary jurisdiction of this Court. Therefore, while considering the facts as averred by the defendant No. 13 in the present application, from the face of the same, it clearly and ostensibly transpires that the present application of the defendant No. 13 is based on his own defense and as per the settled principle of law, at the time of adjudicating present application under Order 7 Rule 11 of the CPC, the defence of the defendant cannot be looked into, but, only the facts as pleaded by the plaintiff in his plaint as well as documents alongwith the plaint is require to be taken into consideration and while on plain reading of the plaint not in isolation but as a whole, it clearly and ostensibly transpires that the plaintiff has specifically pleaded that plaintiff as well as defendant No. 13 jointly agreed to purchase the suit land from the elder of the defendant No. 1 to 12 and the elder of the defendant No. 1 to 12 after accepting the earnest amount Rs. 30,000/- from the plaintiff as well as defendant No. 13 jointly the elder of the defendant No. 1 to 12 executed registered sale deed in favour of plaintiff as well as defendant No.13

on 16.01.1992, a copy of the same is on record vide Mark 3/2. Further while on plain reading of the entire facts there is no prima facie evidence at his stage, though the agreement to sell as executed by the elder of defendant No. 1 to 12 in favour of plaintiff and defendant No. 13, jointly the said agreement to sell, which is registered agreement bearing registration No. 186 is cancelled by executing any cancellation deed either by the defendant No. 1 to 12 or defendant No. 13. Then also it appears that the defendant No.13, who having knowledge that joint agreement to sell executed in the plaintiff as well as defendant No. 13 by the elder of the defendant No. 1 to 12, then also defendant No. 13 got executed sale deed in his own favour on 05.07.1994, a copy of the same is on record vide Mark 3/3 and nothing transpires that in document Mark 3/3, the defendant No. 13 at the time of got execution of registered sale deed in his favour from the elder of defendant No. 1 to 12 informed the plaintiff and have returned part consideration amount of the plaintiff or have taken signature as a confirming party. Not only that even as discussed nothing transpires that the defendant No. 13 informed the plaintiff regarding the registered sale deed of the suit land as got executed only in his favour from the elder of the defendant No. 1 to 12. Therefore, while considering the document vide Mark 3/2 and 3/3, it appears that while executing agreement to sell the right and interest of the plaintiff created in the suit land in question and as per settled principle of law, if there is agreement to sell regarding the suit land, then each and every time, the time is

not to be considered as a essence of contract, if the specific terms and conditions not stipulated by the parties in agreement to sell and it is settled principle of law that when the suit filed for specific performance of contract and agreement to sell, then each and every time, plaint should not be rejected at threshold by invoking provision as envisaged under Order 7 Rule 11 (a) and (d) of CPC, mainly on that ground. Further while considering the settled principles of law on the sole ground of limitation plaint of the plaintiff is not barred by law of limitation because in when there is no straight barred of limitation, law of limitation is always mix question of law and facts and when the question of law of limitation involved in the plaint as a mix question of law and facts, in such circumstances, the plaint cannot be rejected at threshold without recording evidence and appreciating the evidence as parties are going to be adduced in the suit.

13. Further, this Court is having conscious knowledge that the date of registration is considered as deemed date of knowledge, but, there is no iota of evidence on record that immediately after getting execution of the registered sale deed of the suit land by the defendant No. 13 in his favour from the elder of the defendant No. 1 to 12 on dated 05.07.1994, the defendant No. 13 immediately on the basis of registered sale deed mutated his name in the revenue record and informed the plaintiff. Therefore, the law of deemed date of knowledge is not applicable in the instant case on hand. Not only

that even as discussed at the stage of adjudicating application under Order 7 Rule 11 of the CPC, the facts as pleaded by the plaintiff is not require to be read in isolation but it is require to be read as a whole and not to cull out one or two sentences or passages and the defense of the defendants cannot be looked into but as discussed only the facts as pleaded in the plaint is require to be taken into consideration and on plain reading of the plaint as a whole not in isolation, I am of the view that the plaint of the plaintiff is not barred by law of limitation. On the contrary, the ground of limitation in the present suit is a mix question of laws and facts and said facts can only be decide after adducing evidence by the parties. Therefore, looking to the above judgment, same is binding to this Court and the facts before the Hon'ble Supreme Court and ratio as laid down is applicable in the present case on hand. Therefore also the plaint of the plaintiff cannot be rejected at threshold by invoking the provision as envisaged under Order 7 Rule 11 (d) of the CPC.

14. Further, while considering the second submission as advanced by the learned advocate for the defendant No. 13 regarding ground of Res Judicata as envisaged u/S. 11 of the CPC and while considering the settled principle of law, it appears that the defendant No. 13 is misconceived and have misinterpreted the provision as envisaged u/S. 11 of the CPC, because the defendant No. 13 has not adduced any document that the earlier two suits i.e.

RCS No. 107/2009 and RCS No. 224/2009 as filed are decided on merit and the judgment and order passed in both the suits. On the contrary, it appears that both the earlier suits were pending for adjudication and same are not decided on merit. Therefore, if the earlier suits as filed not decided on merit and no judgment or order delivered in those suits, then the application of the provision as envisaged u/S. 11 of the CPC, Res Judicata does not arise, then also by misinterpreting the provision at the belated stage, the defendant No. 13 raised such dispute and it appears that the dispute as raised by the defendant No. 13 is misconceived.

15. Further, while considering the third point as raised by the defendant No. 13 regarding pecuniary jurisdiction of this Court for that also while reading of the entire facts as pleaded by the plaintiff as a whole not in isolation, nothing transpires that the plaintiff has filed any suit for cancellation of any deed, which is amounting of Rs. 35 lac, on the contrary, it appears that the plaintiff has specifically pleaded that when he met defendant No. 13 and at that time, defendant No. 13 demanded Rs. 35 lacs from the plaintiff, therefore, for filing the suit for cancellation of any deed, which is amounting of Rs. 35 lac or as within demanding of Rs. 35 lac or more, then it appears that by misinterpreting the facts as averred by the plaintiff in the plaint, from his own defense, the defendant No. 13 moved present application. Therefore, considering entire facts and ratio as laid down by the Hon'ble High Court, I am of the view that the

present application of the defendant No. 13 is nothing but to delay the proceedings of the present suit and the application of the defendant No. 13 is misconceived and does not fall under the purview of Order 7 Rule 11 (a) and (d) of the CPC. Hence, in the larger interest of justice, I pass the following order.

ORDER

1. Present application of the defendant No. 13 is hereby ordered to be rejected with cost.

2. The defendant No. 13 is hereby directed to pay an amount of Rs. 2,000/- (Rupees Two Thousand Only) towards cost within period of 10 days in TLSC, Kalol.

Place : Kalol

Date : 18 – 01 - 2023

(Prem Hansraj Singh)

Code No. GJ00746

Principal Senior Civil Judge,
Kalol