

ORDER BELOW EXH-52

1. The defendats filed the present application under O.VII, R.11(a) and (d) for rejection of the plaint. The plaintiff submitted reply against the present application at Exh.53.
2. In the present application, defendant has stated that the defendants got the possession of the suit land in the year 1982 for air-force station, but the suit land was not acquired for air-force station and the plaintiff did not get the possession and therefore, he has filed Sp.C.S. No. 34/1984 for the possession of the siit land and that suit was ultimately decreed in favour of the plaintiff and the defendant has challenged the said decree in appeal before Hon'ble High Court vide F.A.No.631/2002 and the Hon'ble High Court directed the defendant to pay Rs.5,00,000/- to the plaintiff and that has been already paid to the plaintiff. It is stated that the possession of the suit land has been already handed over to the plaintiff on 20.11.2025 and the Hon'ble High Court has declared the F.A.No.631/2002 'infructuous'. It is stated that the plaintiff has been given possession and compensation for the suit land, even though, the plaintiff sent notice on 30.5.2017 and claimed compensation to the tune of Rs.8,31,24,400/- and therefore, the present application has been filed. It is stated that there is no cause of

action, but the plaintiff misguided the Court with clever drafting. It is stated that the plaintiff has been given the possession of the suit land on 20.11.2025 and the plaintiff can have the deduction of two months which is the notice period under sec.80 of CPC and therefore, the plaintiff ought to have filed the present suit on or before 20.1.2019, but the plaintiff has filed the present suit beyond the period of limitation and therefore, it is prayed to reject the present plaint.

3. Plaintiff in his reply at Exh.53 stated that the question of limitation is a mixed question of facts and law and the Court has already framed the issue of limitation and therefore, this issue cannot be decided without recording of evidence. It is stated that the plaintiff has not been given full possession of the suit land on 20.11.2015 because the pipe line in the suit land was not removed by the defendant. It is stated that the Hon'ble High Court has not declared the F.A. infructuous but dismiss the appeal on 7.1.2017. Plaintiff has denied the averments and allegations made in the application under order 7 rule 11 of CPC. It is stated that in the plaint para 17 and 18, the cause of suit and limitation has been pleaded. It is stated that the cause of action had not been arisen till the period of appeal pending before Hon'ble High Court and only after dismissal of appeal, the cause of action have

arisen. It is stated that averments made in plaint be taken into consideration and not the defence of the defendant be looked into while deciding an application under order 7 rule 11 of CPC. It is stated that the suit is well within limitation and after lapse of 5 years the present application has been filed to prolong the matter. It is prayed to reject the present application.

4. Ld. Advocate Kalpanaben Vyas argued as per the averments and contentions raised in the application at exh.52 and relied on certain judgments in support of her arguments, which will be discussed herein after. Ld. Advocate requested this Court reject the plaint under order 7 rule 11 being without cause of action and barred limitation.
5. Ld. Advocate Mr. Mayur M. Mehta strongly opposed the present application and argued as per the contentions raised in the reply at exh. 53 and prayed to dismiss the application as the same has been filed to prolong the suit.
5. I have given my thoughtful consideration to the submission made by both sides. Defendant No.1 submitted the present application under O.VII, R.11 of CPC for rejection of plaint. The provision of O.VII, R.11 of CPC as under :
 - 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, failed 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;
6. Looking to the present application at Exh.52 filed by defendant No.1, the present plaint is objected on the ground of limitation and for want of cause of action.
7. Defendants have stated that the plaintiff has been already given possession of suit land on 20.11.2015 for which they have filed Sp.C.S.No.34/1984 and compensation of Rs.5,00,000/- have also been awarded in F.A.No.631/2002 filed by the present defendants before Hon'ble High Court against the decree passed in Sp.C.S.No.84/1984 in favour of the present plaintiff, even though by clever drafting the present suit is filed for compensation. It is submitted that there is no cause of action and right to sue for filing the present suit. Now, it is settled principle of law that while deciding an application under order 7 rule 11 of CPC for want of cause of action, only averments made in plaint be taken into consideration, the Court has to accept the

plaint as if the plaint is true and comes to the conclusion whether the right to sue has been established and if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. Looking to the plaint, it is stated by the plaintiff that the defence authorities, Air Force (M.E.S.) unauthorizedly and illegally encroached upon 1648 Sq.m. land of the plaintiff and constructed high wall depriving the plaintiff from enjoying the possession of the suit land and therefore, the plaintiff has sent legal notice under sec.80 of CPC on 11.10.1982 to vacate the suit land within 60 days, but the defendant did not comply the notice and therefore, the plaintiff has filed the Sp.C.S. No. 34/1984 in the Civil Court of Jamnagar. It is stated that the defendant contested the suit and ultimately decree passed in favour of the plaintiff on 30.12.1995. It is stated that though the decree passed in favour of the plaintiff, the defendant did not hand-over the possession of the suit land and therefore, execution petition has been filed by the plaintiff vide Execution Petition no.3/1997 and after lapse of 7 years, the defendant has filed appeal with delay condone civil application. It is stated that on 13.12.2002, Hon'ble High Court of Gujarat has passed order and stayed the operation of execution petition for a period of 6 months in condtion that the

defence authority should deposit Rs.5,00,000/- within 6 weeks and directed the defendant to carry out the acquisition proceedings of the encroached land. It is stated thereafter, liberty to complete the acquisition proceedings within 6 months has been given by Hon'ble High Court. It is stated that the defendant were killing the time under the pretext that they are willing to acquire the suit land, but on November, 2015, the defendants declared that they did not require the suit land and thus, the possession of the suit land given to the plaintiff on 20.11.2015 and thus for the period of 33 years, the defendants have deliberately deprived the plaintiff from enjoyment of the land and therefore, the plaintiff could not develop the suit land and could not enjoy the fruits of the land and therefore, the present suit filed for compensation. Thus, considering the averments made in the plaint in entirety, it gives right to suit to the plaintiff and the cause of action have been pleaded clearly and after meraningful reading of the entire plaint, it clearly disclosed the cause of action. Thus, this Court is of the concluded view that the the plaint cannot be rejected for non-disclosure of cause of action.

8. It is contended by the defendants that the possession has been handed over to the plaintiff on 20.11.2015 and deducting the period of two months of notice under sec.80 of CPC, plaintiff

ought to have filed the present suit on or before 20.1.2019, but the present suit has been filed beyond the period of limitation. As against this, it is stated by the plaintiff that the present suit is for the compensation for the illegal encroachment of the suit land and the suit for possession has been already decreed in favour of the plaintiff and the possession has been handed over to the plaintiff on 20.11.2015 but, possession has not been given completely and the pipe-lines of the defendant was still there on the suit land and the F.A. was disposed on 7.2.2017 and thereafter, the cause of action have arisen. Thus, the question, whether the limitation began to run from the date on which the possession was handed over i.e. 20.11.2015 or from the date when the F.A. disposed off on 7.2.2017 or notice under sec.80 of CPC has been sent on 30.5.2017, that will be determine after recording evidence. Question of limitation is a mixed question of facts and law and the issue of limitation has been already framed by this Court and therefore, the suit is barred by limitation or not, will be determined after recording of evidence and therefore, at this stage, plaint cannot be rejected on the ground that the suit is barred by limitation.

9. Ld. Advocate for the defendant has relied on the judgment of Hon'ble Supreme Court in **Sp. Leave Petition (Civil) No. 1352 of 2011 between M/s. Disha Constructions @ ORS. v. State of Goa**. In

this Hon'ble Supreme Court of India has interpreted sec.15(2) of the Limitation Act, as under:

"16. In our view, proper interpretation of section 15(2) of the Act would be that in computing the period of limitation, the period of notice, provided notice is given within the limitation period, would be mandatorily excluded. That would mean a suit, for which period of limitation is three years, would be within limitation even if it is filed within two months after three years, provided notice has been given within the limitation period. In such a case, the period of notice cannot be counted concurrently with the period of limitation. If it is done, then period of notice is not excluded. Any other interpretation would be contrary to the express mandate of sec.15(2) of the Act." There cannot be any question against the above interpretation of sec.15(2) by the Hon'ble Apex Court, but here in the case, the question is whether the cause of action to file the suit arisen after dismissal of the F.A.No. 631/2002 or the cause of action to file the suit had been already arisen when the possession of the suit land was handed over to the plaintiff on 20.11.2015. Thus, the facts and circumstances of the case at hand is different from the case before Hon'ble Supreme Court and hence, in my humble opinion, above judgment is not helpful to the defendants.

10. Ld. Advocate for the defendants have relied on the judgment of Hon'ble Supreme Court passed in S.L.P. (c) No.8147 of 2016 between Kum.Geetha, d/o late Krishna & Ors. v. Nanjundaswamy & ORS. In this judgment, Hon'ble Supreme Court held that the High Court not correctly and truly applied the principle underlying the 'rejection of plaints' under order 7 rule 11, Code of Civil Procedure, 1908 and rejected the plaint in part. Hon'ble Supreme Court allowed the appeal and rejected the application under O.7 R.11 of CPC. Thus, this judgment is not helpful to the defendant.
11. Ld. Advocate for the plaintiff has relied on the judgment of Hon'ble Supreme Court reported in **AIR 2021 SC 5212 between Salim D.Agboatwala and others v. Shamalji Oddhavji Thakkar**. In this judgment it is held that when a plaintiff claims that he gained knowledge of the essential facts giving rise to the cause of action only at a particular point of time, the same has to be accepted at the stage of considering the application under order VII Rule 11." Herein the case at hand, rejection claimed on the ground of limitation and therefore, in view of above stated ratio laid down by Hon'ble Apex Court, averments made in plaint regarding time of knowledge of cause of action be accepted at the stage of considering the application under O.7 R.11 of CPC. Thus, this judgment is applicable to the case at hand. Ld. Advocate for the

plaintiff has relied on the judgment of Hon'ble Supreme Court reported in **AIR 2020 SC 2721 between Shaktibhog food Industries LTD.V. The Central Bank of India and another.** In this judgment, it is held that the question of limitation is a mixed question of facts and law. This is a settled principle and applicable to each and every case where the question of limitation is arise.

12. Thus, in view of above detailed discussion, no case made out to reject the plaint and hence, in larger interest of justice, this Court passes following order.

- : O R D E R :-

1. The application at Exh.52 filed under O.VII, R.11 of the Code of Civil Procedure, 1908 is hereby rejected.
2. No order as to cost.

Order passed and pronounced in an open Court on this 22nd day of January, 2025.

Date:22/01/2025
place:Jamnagar

(Sandeep Manharkumar Christy)
3rd additional Senior Civil Judge,
Jamnagar. GJ00929