

**ORDER BELOW EXH. 25**

1. The present application has been filed by the defendant no. 6 vide exh. 25 under Order 7 Rule 11 (D) of the Code of Civil Procedure stating that the plaintiff has no cause of action to file the suit and has not mentioned clear cause of action in the plaint. It is stated by the defendant no. 6 that the averments taken in the plaint are result of clever drafting which creates an illusion for cause to file the present suit and hence, it should be rejected as per the ratio laid down the Hon'ble Apex Court in case of ITC Ltd. Vs. DRT reported in (1998) 2 SCC 70. It is further stated by the defendant no. 6 that the plaintiff has prayed for specific performance which was executed on 22.02.2014, whereas, the suit is time barred as the limitation to file the present suit got over in the year 2017. It is further stated by the defendant no. 6 that as the suit of the plaintiff is based on an unregistered agreement to sale which was executed in the year 2014 and hence, it is barred by provisions of Registration Act and hence, prayed to reject the suit under Order 7 Rule 11 of the Code of Civil Procedure.

2. The plaintiff has not filed any reply but has orally argued the matter.

3. Ld. Advocate for defendant has argued that the suit is filed for cancellation of the sale deed and for getting specific performance of

contract which is unregistered. The suit is barred by limitation as the contract for which performance is asked is of the year 2014 and since, then much has happened in relation to this suit land as the plaintiff has sold the property to the defendant no. 4 on 13.01.2015, thereafter, defendant no. 4 had sold the property to defendant no. 5 on 11.08.2016 and subsequently, defendant no. 5 had sold the land to defendant no. 6 on 29.10.2021. Defendant no. 6 is the bonafide purchaser for value of money and he has got the registered sale deed from the owner of the land. This suit is filed by clever drafting to bring the suit in the limitation period. Looking to the article of Limitation Act, the suit has to be filed in the year 2017 and the suit is barred by limitation. Further, the plaintiff has not mentioned any clear right to sue the property. No notice has been given to show the readiness and willingness to perform part of the contract. If the documents produced by the plaintiff are perused, in condition no. 3 it is stated that by March 2014, rest of the consideration has to be paid, after getting the NA permission, sale deed has to be executed and if the plaintiff does not pay the consideration before the date mentioned then the agreement to sell has to be considered as cancelled. There is nothing on record to show that the plaintiff has paid the full consideration by the date specified in the agreement to sale. Hence, the suit is filed after limitation period is over. The Hon'ble High Court and the Hon'ble Supreme Court in catena of judgements have held

that vexatious suit should be struck out under Order 7 Rule 11 of the CPC.

4. The defendant no. 6 has relied upon following judgements :

**A] K. Akbar Ali Vs. K. Umar Khan & Ors. arising out of SLP (C) No. 31844 of 2018**, wherein, the Hon'ble Supreme Court has held in para 13 that:

*“a suit which is ex facie not maintainable for want of cause of action against the defendants or any of them, thereby saving previous judicial time as also inconvenience and expenditure to the parties to the suit.”*

**B] T. Arivandandam Vs. T.V. Satyapal arising out of SLP (C) No. 4483 of 1977** the Hon'ble Supreme Court held that:

*“In any view, that suit has not survival value and should be disposed of forthwith after giving an immediate hearing to the parties concerned. We are constrained to make these observations and hope that the co-operation of the Bar will be readily forthcoming to the Bench for spending judicial time on worthwhile disputes and avoiding the distraction of sham litigation such as the one we are disposing of.”*

**C] The Hon'ble Supreme Court in yet another judgement ITC Ltd. Vs. DRT reported in LAWS (SC) 1997 12 143** held that:

*“Rejection of plaint. Absence of cause of action. Issues already framed. Framing of issues cannot come in way of consideration of application for rejection of plaint not disclosing cause of action. Court need to go to Trial.”*

**D]** The Hon’ble Patna High Court in judgement of **Bhagirath Prasad Singh Vs. Ram Narayan Rai & Anr.** Reported in **AIR 2010 Patna 189** held that:

*“Rejection of plaint, Plaintiff had deliberately suppressed material facts. Real cause of action not set out in the plaint rather something illusory had been stated with a view to get out scope of O7 R11. Such clever drafting and suppression of material facts are not permitted in law. Continuance of suit, would amount to abuse of process of court. Plaint liable to be rejected”.*

Therefore, the defendant no. 6 requested to reject the plaint.

5. The Ld. Advocate for the plaintiff on the contrary had argued that the defendant has not read the plaint, it is clearly disclosed the cause of action. The plaintiff has stated that he is and was always willing to perform his part of the contract and the judgements pointed out by the defendant no. 6 states that bogus litigation should be thrown at the threshold at the admission stage itself. But in this case, the plaintiff states that he has alleged fraud in the plaint. He had always visited the place of

defendant nos. 1, 2 and 3 who are in possession of the suit property and asked for executing the sale deed. Defendant nos. 1 to 3 have been extending time every now and then and without informing the plaintiff, they have sold the property on paper only. The defendant nos. 1 to 3 sold the property to defendant no. 4, defendant no. 4 sold the property to defendant no. 5 and defendant no. 5 sold the property to defendant no. 6. Neither of them have the possession. Today also the possession is with defendant nos. 1 to 3. Neither of them have published any paper notice for title clearance. Even the possession is still with the defendant nos. 1 to 3 because of which the plaintiff could not know about the transaction. This suit is within limitation as they came to know recently about the transaction. The suit is filed in limitation. The cause of action has been mentioned in the plaint very clearly. There are mixed question of law and facts which are required to be proved. Hence, requested to rejected the application of the defendant no. 6.

6. The plaintiff has relied upon the judgement of the Hon'ble Supreme Court in case of **Salim D. Agboatwala & Ors. Vs. Shamalji Odhavji Thakkar & Ors.** arising out of **Civil Appeal No. 5641 of 2021 in SLP (C) No. 26441 of 2014**, wherein, the Hon'ble Supreme Court has stated that point of constructive notice cannot be decided at the time of deciding Order 7 Rule 11 of CPC. Another judgement relied upon by the

plaintiff is **P.V. Guru Raj reddy Vs. P. Neeradha Reddy & Ors.** reported in **2015 0 AIR (SC) 2485** it is held that “*Conditions precedent for invoking the provision. Averments in the plaint read as a whole must disclose cause of action and be not barred under any law. Defendant’s written statement. Of no consequence.*”

7. Before any discussion, I would like to quote the provisions of Order 7 Rule 11 of the Code of Civil Procedure which reads as under:

**ORDER VII- PLAINT**

**RULE 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 returned 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 :*

*[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 form 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.]*

8. Considering the legal position and on reading the plaint and the documents produced by the plaintiff and the arguments advanced by the plaintiff and the defendants, it is the say of the defendant that the cause of action is not disclosed in the plaint and the suit is clearly barred by limitation. Read the judgements produced by the plaintiff and the defendants and I abide by the ratio laid down in the said judgements but at the same time the facts of the case on hand is totally different from the facts stated in the judgements produced by the defendants. But considering the judgement of the Hon'ble Supreme Court in Salim (supra) it is stated that point of constructive notice cannot be raised at the time of deciding application under Order 7 Rule 11 and would like to reiterate in para 16, 17, 18 and 19 of the said judgements of Hon'ble Supreme Court which reads as under:

*16. But a defendant in a suit cannot pick up a few sentences here and there from the plaint and contend that the plaintiffs had constructive notice of the proceedings and that therefore limitation started running from the date of constructive notice.*

*17. The relevant part of section 3 together with explanation II*

*thereunder reads as follows:*

*“A person is said to have notice of a fact when he actually knows that fact, or when, but for willful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it.*

*Explanation II- Any person acquiring any immovable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof”*

*18. The 2 ingredients of the relevant part of section 3 providing as to when “a person is said to have notice”, are matters of fact to be established through evidence.*

*19. It is not the case of the respondents that the plaintiffs had real or constructive notice of the proceedings by virtue of such a public notice. It is not even known whether a public notice was ever published. Therefore, the plea of constructive notice raised with a view to sustain the plea of limitation cannot be accepted at the stage of dealing with an application for rejection of plaint.*

Also considering the judgement of the Hon’ble Supreme Court in case of **Changalvaraya Naidu v. Jagannath, 1994 (1) SCC 1** it is held that:

*“Fraud avoids all judicial acts, ecclesiastical or temporal, wherein*

*the Supreme Court while considering the scope of Section 25 of the Indian Penal Code, Section 17 of the Contract Act, Article 136 of the Constitution of India and Sections 33 and 13 of CPC and Order 6 Rule 4 of CPC,”*

**LIMITATION:**

*Limitation Act, 1963 - S.17. Effect of fraud or mistake.(1) Where, in the case of any suit or application for which a period of limitation is prescribed by this Act,*

*(a) the suit or application is based upon the fraud of the defendant or respondent or his agent; or*

*(b) the knowledge of the right or title on which a suit or application is founded is concealed by the fraud of any such person as aforesaid; or*

*(c) the suit or application is for relief from the consequences of a mistake; or*

*(d) the period of limitation shall not begin to run until the plaintiff or applicant has discovered the fraud or the mistake or could, with reasonable diligence, have discovered it; or in the case of a concealed document, until the plaintiff or the applicant first had the means of producing the concealed document or compelling its production.*

When fraud is alleged in the suit, the suit cannot be thrown out at threshold. As the plaintiff has stated that after the agreement was signed and earnest money of Rs. 35 lakhs was taken, even after several requests, the defendant nos. 1 to 3 have not executed registered sale deed in favour

of the plaintiff. And even they have been tilling the land till today and have not handed over the possession to any of the alleged subsequent purchasers, it's a paper transfer. Even no title clearance notice was published before the transfer, which would create doubt in the mind of plaintiff. All these facts are required to be proved by taking evidence only. Even from the fact narrated in the plaint there seems to be lot of mixed questions of facts and law to be decided by taking evidence. Hence, there seems to be no merit in the application of the defendant no. 6. The case does not fall under purview of CPC Order 7 Rule 11 (A) or (D). Looking to the facts and circumstances of the case, I pass the following order in the interest of justice.

**\\ O R D E R //**

- The present application is hereby rejected.
- No order as to cost.

Signed and Pronounced in the open Court today i.e. on 03<sup>rd</sup> day of month of December, 2022.

Place: Nadiad  
Date : 03.12.2022

**(Mrs. R.S. Rajput)**  
Principal Senior Civil Judge,  
Nadiad (Dist. Kheda)  
GJ00744