



IN THE COURT OF PRINCIPAL CIVIL JUDGE & JMFC, MAHUDHA

Regular Civil Suit No. 28/2015

Legal heirs of the deceased Shah Harishkumar Mohanlal
Anandiben Harishbhai Shah & Others ...Plaintiffs

Versus

Legal heirs of the deceased Ashvinkumar Jivanlal Shah
Kokilaben Ashvinkumar Shah & Others. ...Defendants

Appearance:

Ld. Advocate Mr. D. B. Bhatt for the Plaintiffs

Ld. Advocate Mr. S. R. Shah for Defendant No. 1 to 4.

Ld. Advocate Mr. M. A. SHaikh for the Defendant No. 5.

**Order below Exh. 30 filed by the deceased Defendant No. 1 under
Order 7 Rule 11(d) and Section 151 of the Code of Civil Procedure.**

1. The Present application has been filed by the deceased Defendant No. 1 Ashwin Jivanlal Shah under Order 7 Rule 11 of the CPC. Since Defendant No. 1 expired during the pendency of the suit and therefore his legal heirs were joined as party defendants below Exh-82. The present application was filed by deceased Defendant No. 1 on 28.07.2013 thereafter he expired, even after his legal heirs were joined but they have not filed their appearance. Since the question of law was raised in the present application and therefore the same was required to be disposed of on merits and accordingly taken up for hearing. The Ld. Advocate for the Plaintiff, the Ld. Advocates for the Defendant No. 5 were heard accordingly.

Facts as per Plaint:-

2. The Plaintiffs have filed the present suit against the Defendants for declaration and cancellation of registered sale-deed dated 09.10.2009. The Plaintiffs have submitted that the agricultural land situated within the revenue limits of Village Balol, Taluka Mahudha, District Kheda, bearing Khata No. 107, **Block No. 111**, admeasuring Hectare 0-70-82 (i.e., 6.11 gunthas), is the undivided ownership property of the Plaintiffs. The boundaries of the said land are as under:-
East: Road leading from Balol to Khuradabad.
West: Agricultural land of Manibhai Mangalbai Patel.

North: Other agricultural lands of Defendant No. 1 to 4.

South: Agricultural land of Chandubhai Govindbhai Patel.

3. The Plaintiffs and the predecessors-in-title of Defendants No. 1 to 4, namely Shankarbhai Nanchandbhai, had partitioned their ancestral agricultural lands among the brothers on 04/11/1953. In the said family partition, Survey Nos. 163 and 192/3 were allotted to Ramanlal Shankarlal; Survey Nos. 115/1, 293/1, 276/1, 276/3, and 200/2 were allotted to Jeevanlal Shankarlal; Survey Nos. 306, 116/1-2, 116/3, 170, and 259/3 were allotted to Occhavlal Shankarlal; Survey Nos. 75, 283/1, 283/2, 129/1, and 129/2 were allotted to Kanaiyalal Shankarlal; and Survey Nos. 266/1 and 301 were allotted to the father of the Plaintiffs, namely, Mohanlal Shankarlal. At that time Survey Nos. 128/1, 263/1-2-3, 161, 11/4, and 307/2 were retained joint, and the name of Ramanlal Shankarlal was recorded as the Karta (manager) of the joint family in the revenue record. Entry No. 1079 has been recorded in respect of the said family distribution. Thus, the suit property originally belonged to the Plaintiffs' grandfather. Ramanlal Shankarlal Shah expired on 15/08/1979. After the implementation of the consolidation scheme, **Survey No. 128/1 was converted into Block No. 111.** After his death, vide Mutation Entry No. 1732 dated 14/12/1979, the name of the father of Defendants No. 1 to 4, namely, Jeevanlal Shankarlal Shah, was entered in the revenue record as the administrator of the joint property. Upon his death

on 01/05/1987, the names of Defendants No. 1 to 4 were mutated in respect of the suit land vide Mutation Entry No. 2261 dated 29/09/2004. However, the said entry ought to have been recorded only in the capacity of manager of the joint property. Thus the mutation entry is incorrect and the ownership continued to vest in the joint undivided Hindu family property. Taking undue advantage of the said entry, Defendants No. 1 to 4 executed illegal sale deeds despite the Plaintiffs' and other heirs' lawful rights over the property. Upon knowing this, the Plaintiffs obtained relevant copies of the record, including Mutation Entries No. 2483 and 2484 pertaining to the two sale deeds. The Plaintiffs challenged the same by filing RTS Appeal No. 373/11 before the Deputy Collector, Nadiad, who cancelled the mutation entries upon finding merit in the Plaintiffs' case.

4. The Plaintiffs preferred RTS Appeal No. 373/2011, which was decided on 23/07/2012 in favour of the Plaintiffs. During the said proceedings it came to the knowledge of the Plaintiffs that the suit property had already been transferred by registered sale deeds by Defendants No. 1 to 4. Upon obtaining the revenue record, the Plaintiffs came to know of the said sale transactions on 20/10/2012 and therefore filed the RTS Appeal on 24/10/2011. As advised by their advocate that the registered sale deeds also require to be cancelled, the Plaintiffs are

constrained to file the present suit seeking cancellation of the said sale deeds.

Issues raised in the present application:-

5. The Defendant No. 1 has raised two issues in the present application. Their first contention is that the plaintiffs have sought relief of cancellation of sale deed whose value was Rs. 2,14,000/- therefore the Plaintiffs was required to affix court fee of Rs. 8,350/- but the Plaintiffs have not affixed court fee of Rs. 4,275/- therefore the Plaintiffs have paid deficient court fee stamp and accordingly the plaint is required to be rejected under Order 7 Rule 11(c) of the CPC. Their second contention is that the sale deed was registered on 09.10.2009 but the present suit is filed on 07.12.2012 but as per the law of limitation such suit for cancellation of sale deed is required to be filed within a period of three years and therefore since suit is barred by law, the plaint is required to be rejected.

Arguments of the Ld. Advocate Mr. M. A. Shaikh on behalf of Defendant No. 5:

6. After filing of the present application, neither the Defendant No. 1 nor his Ld. Advocate has remained present to argue the present application. Even after joining his legal heirs, they also did not remain present to argue the matter. Therefore since

Defendant No. 5 is also supporting Defendant No. 1 and therefore the Ld. Adv. for the Defendant No. 5 is heard.

7. The Ld. Adv. Mr. M. A. Shaikh has reiterated the grounds raised in the present application and has submitted that the sale deed was registered on 09.10.2009 and therefore as per Article 59 of the Limitation Act, suit was required to be filed on or before 09.10.2012 but the present suit is filed on 07.12.2012 and therefore the present suit is barred by law. Therefore he has requested to reject the Plaint under Order 7 Rule 11(d) of the CPC.

8. On the contrary, the Ld. Advocate for the Plaintiff has submitted that the sale-deed was registered on 09.10.1009 however the Plaintiffs was completely unaware about the same. Therefore as per Article 59 of the Limitation act, suit has to be filed within 3 years from the date of knowledge of the transaction. Herein this the Plaintiff was not the signatory of the sale deed dated 09.10.2009 and therefore when the Plaint was not having knowledge of the same, the same cannot be decided without leading evidence. Therefore the question of limitation is a mixed question of law and fact and therefore the present application is required to be rejected.

Reasons/Findings:-

9. To address the issue raised by the Defendant No. 1 herein, it is required to look into the provision of law which is as under:-

Order 7 & 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;*
- (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 from 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.]

A. Carefully considering the provision of Order 7 & Rule 11, the Plaintiff can be rejected only on the grounds stated in the Rule 11. Where it appears that the Suit filed by the Plaintiff is barred by law on the face of it without entering into the merits of the case, then only the Plaintiff can be rejected under Order 7 Rule 11 of the CPC. The Court is mindful of the fact that no appreciation of evidence is permissible while considering the application under Order 7 Rule 11 of the Code of Civil Procedure.

B. In the case of **A.B.C. Laminart (P) Ltd. v. A.P. Agencies reported in (1989) 2 SCC 163**, the Hon'ble Supreme Court in paragraph 12 has explained meaning of word '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 fight 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 fight 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."

-Thus, while deciding application under Order VII Rule 11 of the CPC, while scrutinizing the plaint averments, it is the bounden duty of the trial Court to ascertain the material facts for cause of action. The terms "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 get relief.

C. Plaintiffs' contentions is that the subject land was ancestral land. Ramanlal Shankarlal Shah expired on 15/08/1979. After his death, vide Mutation Entry No. 1732 dated 14/12/1979, the name of the father of Defendants No. 1 to 4, namely, Jeevanlal Shankarlal Shah, was entered in the revenue record as the **administrator** of the joint property.

Upon his death on 01/05/1987, the names of Defendants No. 1 to 4 were mutated in respect of the suit land vide Mutation Entry No. 2261 dated 29/09/2004. However, the said entry ought to have been recorded only in the capacity of administrator of the joint property. Thus the mutation entry is incorrect and the ownership continued to vest in the joint undivided Hindu family property. Taking undue advantage of the said entry, Defendants No. 1 to 4 executed an illegal sale deed dated 09.10.2009 despite the Plaintiffs' and other heirs' lawful rights over the property. Therefore the Plaintiffs were also having share in the family property.

D. Now it is required to see what the limitation is for filing suit for cancellation of sale deed. Article 59 of the Schedule 1 of the Limitation Act 1963 which is as under:-

Description of suit	Period of limitation	Time from which period begins to run
59. To cancel or set aside an instrument or decree or for the rescission of a contract.	Three years	When the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him.

Therefore as per the Article 59 of the Schedule 1 of the Limitation Act, the suit for cancellation of sale deed or any instrument must be filed within 3 years.

E. Perusing the record, it appears that the sale-deed was registered on 09.10.2009 and the same is produced at Mark-3/1, the Plaintiff does not appear to be a signatory of the said sale deed. Further at the time of execution and registration of sale-deed, the names of the Defendant Nos. 1 to 4 were there on revenue record and therefore no notice U/s 135D of the Gujarat Land Revenue Code was served to the Plaintiff. To adjudicate an application under Order 7 Rule 11 of the CPC, only the Plaintiff averments and documents submitted with it can be seen. No defence or any material produced by the Defendant can be seen at this stage for the adjudication of the present application. Therefore considering the same, when the Plaintiff was not signatory of the sale-deed dated 09.10.2009 and from the material produced by the Plaintiffs it can not be conclusively determined the exact date of knowledge.

F. Therefore in absence of clear proof of date of knowledge and therefore the same becomes a mixed question of law and fact which cannot be decided without leading evidence by the

parties. Therefore this Court does not deem fit to reject the plaint under Order 7 Rule 11(d) of the CPC.

G. Further the Defendant No. 1 has also raised another ground that the plaintiffs have sought relief of cancellation of sale deed whose value was Rs. 2,14,000/- therefore the Plaintiffs were required to affix court fee of Rs. 8,350/- but the Plaintiffs have not affixed court fee of Rs. 4,275/- therefore the Plaintiffs have paid deficient court fee stamp and accordingly the plaint is required to be rejected under Order 7 Rule 11(c) of the CPC. Considering the Section 6(9) of the Gujarat Court fee Act is as under:-

6(9) In suits for declaration that any sale or contract for sale or termination of the contract for sale of any moveable or immovable property is void, **one-half of the ad valorem fee leviable on the value of the property.**

-Therefore considering the same when relief of cancellation of an instrument is sought then the 1/2 of the ad valorem fee leviable on the value of the property Therefore the ground of Defendant No. 1 for deficient court fee is misconceived. Therefore, the Plaint cannot be rejected on that ground since the Plaintiff has paid 1/2 of the court fee on the value of the property.

10. In view of the above facts and circumstances, the provision of Order 7 & Rule 11 discussed above and reasons assigned this Court passes the following order in the interest of Justice:-

ORDER

1. The present application Exh-30 of the Defendant No.1 is hereby rejected.
2. No order as to cost.

Signed and pronounced in open court today on this 03rd day of November, 2025.

Place: Mahudha
Date: 03.11.2025

Kishankumar R. Maurya
Principal Civil Judge
& JMFC, Mahudha, Kheda
Code: GJ01723