

ORDER BELOW EXH. 58 IN REGULAR CIVIL SUIT NO. 1/2011.

Sub: Application for rejection of plaint.

1. Heard Advocate, Mr. D.M.Jadeja for Defendant Nos. 4, 6 to 8. Advocate, Mr. M.H. Rathod for plaintiff-side.
2. Plaintiff herein comes for cancellation of the sale deed executed by him way back in the Year 1988 in favour of Patel Kalyanji Mavji (i.e. Defendant No.4); and subsequent sale deeds of the suit land made in favour of Defendant Nos. 5, 6, 7 and 8.
3. Plaintiff claims declaration of title and possession of the suit lands. Plaintiff also claims injunction to protect his possession of the suit land.
4. Plaintiff alleges that he came to knowledge of sale deed of 1988 When he obtained copies of revenue records in the Year 2009-2010. Plaintiff further alleges that registered sale deed Sr.No.341, dated 04-02-1988 is concocted one and is executed exercising fraud by Defendant No.4. Plaintiff never executed the disputed first sale deed to Defendant No.4.
5. Revenue records shows possession of suit lands by Defendant Nos. 6, 7 and 8. It is contention of plaintiff that after dated 08-03-2010 suit land has already mutated in his name vide Entry

No. 1037 in Village Form No.6 at Mark 3/12.

6. Defendant side contends that suit is clearly barred by limitation because plaintiff was aware of the sale deed of 1988 from the very beginning and at that time suit land was restricted new tenure land. Thereafter plaintiff also applied for setting aside exparte decree of RCS 8/98, vide Civil Misc. Application No. 53/2000 which was granted setting exparte decree obtained by defendant No.4. It is contended by defendant side that plaintiff has falsely created starting point of cause of action mentioning knowledge of disputed first sale deed recently just to bring this suit within limitation.

7. Plaintiff Arab Haroon Sanghar died pending this suit on dated 15-04-2013.

8. Defendant No.4 formerly filed a Regular Civil Suit No. 8 of 1998 against the plaintiff. Copy of plaint is produced by plaintiff at Mark 3/5 in which the defendant No.4 prayed for preventive injunction against the plaintiff not to dispossess the defendant No.4 and prayed for mandatory injunction against the Collector(Government) not to take any actions under Section 79(a) of the Land Revenue Code. So the transaction of sale deed of new tenure land was defended by the defendant No.4, in that suit. The present plaintiff

filed written statement which is produced at Mark 3/9 in which it is contended by the plaintiff that the sale deed made by the plaintiff is without any consideration and the plaintiff is not bound by sale deed of 1988. So plaintiff had already knowledge of the disputed sale deed of 1988 when written statement in Regular Civil Suit No. 8 of 1998, filed dated 29-08-2009. Thereafter plaintiff also filed CMA 53/2000 ,application to set aside the exparte decree passed in Regular Civil Suit No. 8 of 1998. But he filed the present suit to cancel the sale deed after 10years. Ultimately CMA No. 53 of 2000 was decided on 24-02-2009 and Regular Civil Suit No. 8 of 1998 was set aside and restored to file. Ultimately the Regular Civil Suit No. 8 of 1998 was dismissed due to non prosecution by the defendant No.4 on 08-10-2009. So the plaintiff and defendant were engaged in litigation of Regular Civil Suit No. 8 of 1998 and the plaintiff did not file any suit for cancellation of the sale deed of 1988.

9. Plaintiff was relegating and indulged in Regular Civil Suit No. 8 of 1998 and he did not file the suit for cancellation of the disputed sale deed. From the pleadings it comes out initially the execution of the sale deed was made of restricted new tenure land which legalized by the defendant No.4 with revenue authorities. Plaintiff cannot take advantage of his own wrong to selling out the restricted

new tenure land executing sale deed in the Year 1988 and comes with a case subsequently that the sale transaction is fraudulent and made without any consideration. So sale deed of 1988 is not binding to him as fraudulent and be cancelled. Plaintiff filed this suit on 03-01-2011 alleging that fraud was exercised by the defendant No.4 executing the sale deed in his favour which was never intended by the deceased plaintiff and the sale deed is fraudulent one without consideration. So sale deed be cancelled. He was not aware of the disputed sale deed of 1988 till 2011. Plaintiff (deceased plaintiff) filed this suit alleging cause of action of the knowledge of the sale deed of 1988 when he received certified copies of revenue records in the Year 2009-10. Plaintiff himself was aware of the previous litigation with defendant No.4 and was well aware of the execution of the disputed sale deed of 1988 which was executed in favour of defendant No.4 initially with respect to restricted new tenure land. Collector or Mamlatdar has not declared registered sale deed of 1988 invalid under Land Revenue Code and there is no such case of the plaintiff that disputed sale deed is declared invalid by the revenue authorities. But present suit is clearly barred by limitation and the cause of action of this suit is falsely created by the plaintiff. Plaintiff documents itself speak that cause of action started on the

date of filing CMA no.53/2000 for setting aside exparte decree against him in Regular Civil Suit No. 8 of 1998. But plaintiff himself does not disclose these facts of CMA no.53/2000 in the plaint and the knowledge of the sale deed of 1988 was already to plaintiff in the application filed by the plaintiff at Mark 3/7. Plaintiff was aware of the fact of the sale deed in the application No. 53 of 2000.

10. But disclosure of the fraud is not certain and clear to the plaintiff. It is during the trial what Court can come to the conclusion whether the suit is within limitation or not ? When plaintiff realised of fraud is required to be decided after evidence. The suit cannot be rejected on the basis of limitation. So on over all discussion, though plaintiff has filed this suit to cancel the sale deed of 1988 which requires clear evidence whether the suit is within limitation or not ? When the plaintiff claims that fraud is exercised against him during execution of the sale deed and he came to realize that fraud lately does not become suit clearly time barred. So present application of defendant No.4 and others though have substance that the suit of the plaintiff is time barred, is required to be proved on merit after examining the evidence. So I pass the following order :

– : ORDER : –

Application of defendant for rejection of plaint as clearly barred

by limitation, is hereby disallowed.

No order as to costs.

Pronounced and signed in the open Court today, on this the 26<sup>th</sup>

Day of February, 2015 A.D. at Bhuj.

( PINAKIN SUKHLAL JOSHI )  
Principal Senior Civil Judge  
Bhuj-Kachchh  
Code No: GJ00325