

**-:: Order Below Exh.15 ::-**

1. Read the application and heard the Ld. Advocate for the defendant No.2. Also perused written statement filed by the Ld. Advocate of the plaintiff vide Exh.27. I have also heard the Ld. Advocate for the plaintiff.
  - 1.1 At the outset, the plaintiff has instituted the suit for cancellation of sale deed up to the plaintiff's 1/6 share & or recovery of sale consideration amount, declaration and permanent injunction with respect to the properties bearing (1) New Block No.1577 admeasuring 0-79-25, (2) new Block No.1581, admeasuring 0-67-97 (3) new Block No.1875 admeasuring 0-24-73 situated in the sim of Moje-Rajpur, Sub-District : Kadi, District : Mahesana (**hereinafter referred to as the suit properties**).
2. As against the suit of the plaintiff, the present application is preferred by the defendant No.2 at Exh.15 under Order-VII, Rule-11 and Sec.151 of C.P.C, 1908 wherein, the defendant has contended that, suit of the plaintiff is barred by the provisions of Specific Relief Act, 1963. Further, the defendant has contended that, the plaintiff has misled the court and suppressed the material facts and not come before the court with clean

hands.

2.1 The defendant has categorically contended that, the suit properties were converted into non-agricultural lands vide order passed by the Collector, Mahesana bearing No.2171/04/09/028/2023 on dated 01.07.2023 and said entry was registered in the revenue record vide No.16784 and the same was certified on 15.07.2023 and the plaintiffs are well aware with such fact, even then the plaintiffs have suppressed the material fact and shown the suit properties as agricultural properties. Further, the defendant has contended that, as per say of the plaintiffs, they are entitled for 1/6 share in the suit properties and co-sharer of the suit properties have determined to sell the suit properties to defendant No.5 and sale deed has been executed in this connection but plaintiffs' share up to Rs.40,00,000/- is remained to pay to plaintiffs and the plaintiffs have so often asked for their amount but it is not paid to them, thus, fraud and deception has been committed with the plaintiffs. Further, the defendant has contended that, the plaintiffs should have to file suit for recovery but they have filed false suit for declaration and cancellation of sale deed. The defendant has contended that, above mentioned facts averred by the plaintiffs are contradictory and evasive

facts and thus, the plaintiffs have no cause of action. Further, it is contended that, the defendant Nos.2 to 4 are bonafide purchaser of property bearing Survey/Block No.1577 ad measuring 7925 Sq. mtrs. Further, the defendant has referred Sec.17 & 18 of the Indian Registration Act, 1908, Sec.5 & 54 of the Transfer of Property Act, 1872, provisions of Law of Property Act

2.1 In nutshell, the defendant has contended that, the suit of the plaintiff has no cause of action to file the suit as well as the against the legal settled principles, thus, the Suit is devoid of any cause of action and has only been filed with an ulterior motive and has not approached this Court with clean hands and therefore, the present Suit so preferred deserves to be rejected.

3. On the other side, the plaintiff has filed reply at Exh.27 against the present application whereby the plaintiff has denied in toto the contentions of the defendant. The plaintiff has submitted that, the present application is false frivolous and vexatious. The plaintiff has submitted that, the facts mentioned by the defendant is represented in the manner of his defence and it

cannot be considered as per application under Order-VII, Rule-11 of C.P.C. Further, the plaintiff has submitted that at the time of deciding application under Order-VII, Rule-11 of C.P.C., only facts of the plaint are taken into consideration and defence cannot be considered.

3.1 Over and above, the plaintiffs have submitted that, the plaintiffs have filed suit for cancellation of sale deed and factual aspect can be proved only by recording of evidence and the plaintiffs have filed documents vide DE-List at Exh.3 (Mark-3/1 to 3/26) and stated that only after consideration of these documents, the suit can be reached at the finality. Over and above, the plaintiff has asked for alternative relief of recovery of sale consideration amount. Further, the plaintiffs have submitted that, their suit is not barred by any law and it is also submitted that, the suit is filed for fraud and deception committed by the defendants with the plaintiff and thus, the plaintiffs have proper cause of action to file the suit and the plaintiffs have filed suit for cancellation of the sale deed up to their part.

3.2 The plaintiffs have categorically submitted that, the plaintiffs have filed the present suit for

legal rights but the defendants have filed the present application only with a view to delay the matter and thus, the plaintiffs have requested to reject the present application.

3.3 The Ld. Advocate for the plaintiffs has relied upon the following authorities : -

(1) First Appeal No.57/2016: Parmar Narmadaben Wd/o. Vithalbhai Vs. Amratlal Motibhai Prajapati & 4 (Guj. H.C.)

(2) R/Civil Revision Application No.284 of 2019 to 286 of 2019 : Poonam Kishor Dhongani Vs. Atik Bhinesh Desai (Guj. H.C.)

(3) Civil Appeal No.4841 of 2012 : Church of Christ Charitable Trust & Edu Vs. M/s. Ponniamman Education Trust (SC.)

4. Heard the Ld. Advocate for the parties.

5. It is well settled law that while dealing with an application filed under Order-7, Rule-11 of C.P.C, 1908, only plaint and whatever documents adduced by the plaintiff be taken into consideration. Herein the present application, the main dispute raised by the defendant side that the plaintiffs have no cause of action to file the suit. but it is well decided by Hon'ble Apex court in several judgments that to decide

question of cause of action,entire plaint should be read and also peruse the para describing cause of action in plaint. Here in this suit considering pleadings of plaintiffs,plaintiffs have filed this suit to get cancellation of sale deed only for their 1/6 share in suit properties and also prayed for alternative remedy to get Rs 40 lac from the executor of registered sale deed. therefore considering nature of pleadings this suit is preferred under section 9 of civil procedure code for their civil rights and so mere on the ground of cause of action plaint should not be rejected at threshold. In the present plaint,plaintiffs have also alleged of fraud made by defendants and so, when allegations of fraud are not proved by defendants during trial,plaint should not be rejected,in this regard plaintiffs have relied upon the judgment of the Hon'ble gujarat high court in the case of parmar narmadaben v/s amaratlal motibhai prajapati and Hon'ble Apex court in civil appeal No 4841 of 2012.Moreover defendants have requested to reject the plaint as suit is barred by section 17 of the Indian registration act and section 54 of transfer of properties act but for this aspect evidence are required to be taken during trial and that time court may decide whether any breach of any section of said acts or not. It is also

well settled law that plaint cannot be rejected in part, in this regard plaintiffs have relied upon judgment of Hon'ble Gujarat High Court in the case of Poonam Kishor Dhongani v/s Atik Bhinesh Desai in Civil Revision Application no 284 of 2019.

Therefore considering the contentions raised by plaintiffs against the present application, the present plaint should not be rejected at this juncture and arguments submitted by defendant side is not tenable. Hence, in the interest of justice I pass the following order.

**-:: O R D E R ::-**

1. The present application below Exh.15 preferred by the defendant No.2 under the provision of Order-VII, Rule-11 of the Civil Procedure Code, 1908 is hereby Rejected.
2. No order as to costs.

Pronounced in the open Court on this 29<sup>th</sup> Day of April, 2025.

Date : 29.04.2025  
Place : Kadi.

[Ritaben Manubhai Barot]  
Principal Senior Civil Judge  
Kadi, District Mahesana.  
[Judge Code No.GJ01001]