

**-:: Order Below Exh.18 ::-**

1. Read the application and heard the Ld. Advocate for the defendant No.5. Also perused written statement - written arguments filed by the Ld. Advocate of the plaintiff vide Exh.23. 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, declaration and permanent injunction with respect to the property bearing old Survey No.7, admeasuring Acre-Guntha 3-00, situated at Moje : Merda, Taluka : Kadi, District : Mahesana (**hereinafter referred to as the suit property**).
2. As against the suit of the plaintiff, the defendant No.5 has preferred the present application at Exh.18 under Order-VII, Rule-11(a) & (d) and Sec.151 of Civil Procedure Code, 1908. In the present application, the defendant No.5 has denied the averment of plaintiff and alleged that, the pleadings and documents produced along with the plaint are false, frivolous, vexatious and filed with malafide intention and more particularly the present application is filed mainly on the ground that the suit is barred by law of limitation as the plaintiff has filed the suit for cancellation of the sale deed which was executed on 28.04.2015 bearing Sr. No.2518/2015

and as per the legal settled principles, the suit should be filed up to the 28.04.2018, but, the plaintiff has filed the suit in the year 2024 i.e. after the delay of six years. Further, the defendant has contended that, plaintiff's father died on 01.01.1989 and in such case if the plaintiff was seeking to file the suit for heirship right then she has to file the suit within prescribed limit of twelve years i.e. up to the year 2000 but the plaintiff has filed the suit in the year 2024 i.e. delay of about 24 years.

2.1 Further, the defendants have contended that, the plaintiff has no cause of action to file the suit as the plaintiff has not mentioned clearly due to which of the complaint regarding land grabbing the plaintiff has come to know about the suit property. Thus, the plaintiff was well aware with all such facts even then she has not filed the suit within the prescribed time limit and thus, the suit of the plaintiff is deserve to be dismissed under Order-VII, Rule-11(a) and Sec. 151 of the Civil Procedure Code. On the above mentioned grounds, the plaintiff is not entitled to get relief as prayed for in the plaint. Hence, prima facie the present suit is deserve to be dismissed.

2.2 The Ld. Advocate for the defendant No.5 has

relied upon the following authorities : -

(1) Dhaniben D/o. Morabhai Bapubhai Rohit & W/o. Parshottambhai Chhotabhai Rohit Vs. Rohit Kanubhai Morabhai : 2024 (0) AIJEL-HC 249324

(2) Poonambhai Shanabhai Valand Decd. & Ors. Vs. Hasmukhbhai Bachubhai Parsana & Anr. : 2017 0 Supreme (Guj) 1049

(3) Shantilal Shankarbhai (Decd.) Vs. Patel Dalsukhbhai Nanabhai (Deceased) : 2023 0 Supreme (Guj) 282

(4) T. Arivandandam Vs. T.V. Satyapal and another : 1977 0 Supreme (SC) 313

3. On the other side, the plaintiff has filed reply at Exh.23 against the present application whereby, the plaintiff has denied in toto the contentions of the defendant and adhered to averments of the plaint that, the plaintiff is legal heir of the deceased Rabari Visabhai Nathubhai and despite of such fact her name was not registered in the heirship entry or she is not given any share or sale consideration amount of the suit property. Further, the plaintiff has averred that, she is residing at her matrimonial resident and thus, she has never inquired about the revenue record, but, when the defendant No.5 has filed complaint of land grabbing against the defendant Nos. 1 to 4 and in this connection Police has recorded their reply, at that point of time, the plaintiff has come to know about the

fact that the suit property has been sold out and her name was not mutated as legal heir in the suit property. Further, the plaintiff has alleged that, the Hon'ble Supreme Court and the Hon'ble High Court has held that, to obtain the right in the ancestral property, question of time bar cannot be arose. Under such circumstances, suit of the plaintiff is not barred by the law of limitation but the defendants have filed the present application only with a view to delay the matter. The plaintiff has filed the present suit for legal rights and question of limitation is mixed question of fact and law and requested to reject the present application.

4. Heard the Ld. Advocate for the parties.
5. It is well settled law that while dealing with an application filed under Order-VII, 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 suit is barred by law of limitation, but it is now well settled law by the Hon'ble Apex Court in several judgments that question of limitation is a mix question of fact and law and it can only be decided after adducing evidence from both the sides. The plaintiff has filed the present suit for her legal rights being legal heirs of her

deceased father and her name was not mutated as legal heir into revenue record of suit property and for that purpose allegation made in the present application regarding delay of about 24 years is not maintainable because when the suit is filed for any legal rights and when plaintiff's name is not entered as legal heirs of her deceased father and for that purpose evidence are required to be taken at length during the trial.

Moreover, here on perusal of entire plaint Exh.1, the plaintiff has narrated proper cause of action to file the present suit against defendants. The allegations made by the defendant No.5 in the present application, evidence are required to be taken at the time of trial and, therefore, merely on the ground of limitation, plaint cannot be rejected at threshold at this juncture. Therefore, arguments delivered by the defendant No.5 side are not tenable and citations relied upon by him are not squarely applicable with the present case, while the arguments of the plaintiff side are tenable and helpful to the plaintiff side. Hence, I found no merits in the present application and, therefore, in the interest of justice I, pass the following order.

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

1. The present application vide Exh.18 preferred by the defendant No.5 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 13<sup>th</sup> Day of November, 2024.

Date : 13.11.2024  
Place : Kadi.

**[Jayesh A. Dave]**  
Additional Senior Civil  
Judge, Kadi.  
[Code No.GJ00712]