

ORDER BELOW EXHIBIT - 19

1. Read the application and heard the Ld. Advocate for the defendants No.1,3, 4, & 5. Also heard the Ld. Advocate for the plaintiffs.
2. The present application has been preferred by the defendant Nos.1, 3, 4 & 5 to reject the plaint mainly under the provision of Order-7, Rule-11 (a) and (d) of C.P.C. The defendant Nos.1, 3, 4 & 5 have raised the dispute that plaintiffs have not clearly mentioned their cause of action to file the present suit. Also plaintiffs have not filed said suit within three years from their date of knowledge and therefore the suit is barred by law of limitation. In support of their submission the Ld. Advocate of the defendants has relied upon the following citations :
 - 1) Appeal (Civil) 448 of 2004, Sopan Sukhdeo Sable & Ors. V/s. Assistant Charity Commissioner, dated 23.01.2004 passed by the of Hon'ble Apex Court.
 - 2) Civil Revision Application No.186/2011, Becharbhai Zaverbhai Patel & 1 V/s. Jashbhai SHivabhai Patel, dt.10.04.2012 passed by Hon'ble High Court of Gujarat.
3. Against the present application, the plaintiffs have filed written objection cum arguments vide

Exh.20. The plaintiffs have denied each and every allegations of defendants in toto. The Ld. Advocate has submitted that plaintiffs are having possession of suit property since long years. They have also submitted the true fact is that, defendants have not made it clear under which Article suit is barred by the law of limitation. It is further submitted that ancestor of the plaintiffs have purchased the suit land through the registered sale deed from the ancestor of the defendants and on the basis of registered sale deed they have filed the suit to declare about their right of ownership over the suit property. He has further submitted that the plaintiffs have filed the present suit to get cancel the registered sale deed NO.12453, dated 20/6/2023 made in favour of defendant Nos.4 and 5 and considering the date of execution of registered sale deed of suit property, the present suit is filed within the limitation period as per law and requested to reject the present application of the defendants.

4. Now, it is well settled law that at the time of deciding an application under Order-7, Rule-11 of the C.P.C, only plaint and whatever documents adduced by the plaintiff can be taken into consideration. Now on plain reading of the plaint-Exh.1 the plaintiffs have filed the

present suit to get declaration and permanent injunction in respect of **agriculture land bearing revenue survey No.2218 (old No.1229/1B/PAIKI1) area admeasuring Hector-ARE-Sq.mt. 1-14-20 sitauted at Moje Dagnarva, Taluka Kadi, District Mehsana (Hereinafter referred to as 'suit property')** and to get cancellation of registered sale deed of suit property executed in favour of defendants No.4 and 5. The plaintiffs have narrated proper cause of action to file the present suit in para No.9 of Exh.1 and to understand the cause of action for filing of any suit, the whole plaint is to be taken into consideration to determine cause of action. According to Exh.1, plaintiffs have filed the present suit for their precious legal rights over suit property and therefore the plaint should not be rejected under the provision of Order-7, Rule-11 (a) of the Civil Procedure Code, 1908.

5. The defendants in the present application mainly raised question of limitation and alleged that plaintiffs have filed on the basis of registered sale deed of suit property after almost 47 years. But according to pleadings of the plaintiffs, they pleaded that as per registered sale deed executed in the year 1981 and being legal heirs of their ancestral late Parmar Amarabhai Sadabhai, the present suit is

filed to get declaration that present plaintiffs are owners and occupiers of the suit property. Moreover, the present suit is also filed to get cancellation of registered sale deed dated 20.06.2023 executed in favour of defendant Nos.4 & 5. But looking to the date of registration of the latest registered sale deed, the present suit is filed within limitation as per law. It is also brought on record by the plaintiffs vide mark 23/1 i.e. order of Ld. Prant Officer, Kadi dated 18.9.2023 and in that order the Ld. Prant Officer has been pleased to pass an order of cancellation of entry No.13258 of survey No.2218 situated moje Dangarva, Taluka Kadi. Considering the above said facts and documents adduced by plaintiff side, the version of defendants that suit is barred by law of limitation, is not tenable. Moreover, it is well decided by Hon'ble Apex Court in various judgments that question of limitation is a mixed question of facts and law and for that aspect evidence are required to be taken at length. Keeping in mind the said ratio, the allegations made by the defendants side are also not tenable. Also, citations relied upon by the defendants side are not squarely applicable with their submissions, hence I do not find any merit in the present application and in the interest of justice I pass the

following order.

O R D E R

1. The present application below **Exh.19** preferred by the defendant Nos.1, 3, 4 & 5 under the provision of Order-7, Rule-11 (a) and (d) of the Civil Procedure Code, 1908 is hereby **rejected**.
2. No order as to costs.

Pronounced in the open Court on this 04th Day of October, 2023.

Date :04/10/2023
Place : Kadi.

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