

**ORDER BELOW EXH.22**

1. Read the application and heard the Ld. Advocate for the defendants No.10, 37, 45 & 50. Also, perused written objection filed by plaintiffs side vide Exh.24 and also heard them.
  
2. Present application has been preferred by the Ld. Advocate for the defendants No.10, 37, 45 & 50 to reject the plaint under the provision of Order-VI, Rule-11(d) of the Civil Procedure Code, 1908. He has submitted that the present suit is filed by the plaintiffs in respect of a agriculture land situated moje Laxmipura - Nandasan, Taluka Kadi bearing survey No.148 (old survey No.34) (**herein after referred to as 'suit land' or 'suit property'**) which is plaintiffs owned and occupied and defendants have no legal right, share, part, entitlement or interest over the suit property and requested the Ld. Court to be declared as suit land is of plaintiffs' owned land and defendants have no right over the suit land. Also, requested that sale deed be made on the basis of deed made by the father of plaintiff and defendants not to snatch away the actual possession of the plaintiff and not to sell directly or indirectly by the defendants and cost of the suit be awarded from defendants.

3. Ld. Advocate for the defendants No.10, 37, 45 & 50 has stated that the true fact is that plaintiff has not mentioned the true fact in respect of purchased the suit land from it's original owners nor plaintiff has shown pedigree of husband of plaintiff NO.1/1. Moreover, it is contended that deed of dated 5/8/1998 executed by plaintiff is unregistered and have not paid stamp duty nor agreement made other than the original owners, but through third party, as such plaintiff has created forged and false deed. Further, it is contended that suit filed after 24 years, hence prima facie suit of the plaintiff is liable to be dismissed. Further, it is contended that plaintiff has not produced any documentary evidence to prove that before the he has kept the suit land through oral contract then he had got executed the registered deed and became the owner, but plaintiff has not produced any evidence in that regard. Moreover, plaintiff has stated in para-5 and 6 that defendants No.10 and 41 had given undertaking through the elder and administrator of the family on 23/10/2018, but plaintiff has not proved the fact by producing evidence. Further, plaintiff has stated false reason in para-9 and filed the false suit, hence suit of the plaintiff is liable to be dismissed. Ld. Advocate for the defendants No.10, 37, 42, 45 & 50 has submitted that without original owners of the land,

plaintiffs got prepared draft with possession through third party and created false and fabricated evidence and after lapse of 24 years, false suit filed before the Ld. Court and made false litigation of the land of defendants' joint ownership and shown as purchased from the true owner on record and filed the suit contrary to the provision of the Transfer of Property Act as well as provision of the Law of Limitation, hence suit of the plaintiffs is required to be dismissed.

4. Against the present application, the Ld. Advocate for the plaintiffs have filed his reply vide **Exh.24** and denied the averments of the said application in toto. Further, it is stated that described the true fact of the suit land and all the parties are mentioned there and deed of dated 05-8-1998 is with possession and with description of four directions and stated that suit land purchased from the husband of defendant No.1/1 deceased Patel Bhikhabhai Shankerdas Narayandas through the oral contract and on that basis received the consideration amount executed the sale deed and procedure in respect of title clearance and entry of heirship as well as cancellation of right are yet to be done. Further, it is contended that defendants No.37,42,45, 50 have not made any claim or suit for restitution of the right over the suit

property. Moreover, all the defendants have accepted the claim made by the plaintiff. Moreover, defendants NO.8 & 41 as well as 4, 5 and 6 have accepted the suit of the plaintiff and filed the reply in the form of affidavit. Further, it is submitted that the true fact is that, defendants No.10,37,42,45 and 50 have made application under Order-7, Rule-11 of C.P.C wherein they have made total four signatures which make it clear that due to internal conflict among the defendants, present false application filed by them and defendants accepted the facts of the suit of the plaintiffs and plaintiffs have right to get registered sale deed on the basis of earlier drafted sale deed. So considering the reply, application of the defendants under Order-7, Rule-11 of C.P.C is to be dismissed with cost.

5. It is well decided that while dealing with an application filed under the provision of Order-7, Rule-11 of the CPC, 1908, only plaint and whatever document relied upon by the plaintiffs side be taken into consideration. Now, considering averments of both the sides, the present application is mainly preferred on the ground of limitation as well as contrary to the provision of Transfer of Property Act and the so called agreement is not registered as per the provision of Indian Registration Act. The

defendants have contended that the present suit is filed after 24 years and therefore suit is barred by law of limitation. But, it is well settled Law that issue of limitation is a mixed question of facts and law and it can only be decided after taking evidence at length during the trial.

6. Moreover, the defendants have raised the dispute that the documents relied upon by the plaintiff is not a registered document as per the provision of the Indian Registration Act and also it is contrary to the provision of the T.P. Act, but for these issues also evidence are required to be taken during the trial and at this stage, the plaint should not be rejected at this stage without entering into merit. Therefore, in my view the present application is preferred only with a view to delay the matter and the said application is required to be rejected. Therefore, in the interest of justice I pass the following order.

**O R D E R**

1. The present application below **Exh.22** preferred by the defendants No.10, 37, 42, 45 & 50 under the provision of Order-7, Rule-11(d) of the Civil Procedure Code, 1908 is hereby **rejected**.

2. No order as to costs.

Pronounced in the open Court on this 07<sup>th</sup> Day  
of April, 2023.

Date :07/04/2023

Place : Kadi.

**[Jayesh A. Dave]**

Additional Senior Civil

Judge, Kadi.

[Code No.GJ00712]