

**IN THE COURT OF HON'BLE 3RD ADDITIONAL SENIOR CIVIL
JUDGE, KADI, DISTRICT MAHESANA**

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ORDER BELOW EXH.24 IN REGULAR CIVIL SUIT NO.237/2021

1. The plaintiffs have filed the present suit against the defendants for declaration as they are the owners through the adverse possession of the land and for permanent injunction against the defendants. Plaintiffs have stated that the agriculture land of old survey No.1596 (new S.N. 215) area in Hector-ARE-Sq.mt. 0-55-81, value at Rs.2.69ps situated moje Agol, Taluka Kadi, District Mahesana (**Hereinafter referred to as 'suit land'**) which was purchased by the plaintiffs father Sipai Kasambhai Motibhai from Patel Gangarambhai Chaturbhai 45 years ago and after the death of their father plaintiffs possessed and occupied the suit land and during the possession and occupation, defendants have never filed any notice or complaint to prove that plaintiffs are not the owners and possessors of the suit land. Further, it is stated that the suit land was sold by defendant Nos.1 to 8 to defendant No.9 on 20/10/2021 through the registered sale deed on 21/10/2021 and registered before the Sub-Registrar, Kadi. Moreover, plaintiffs have filed the objection application on 28/10/2020 against the certified

mutation entry No.10601 recorded on 20/10/21 in the right of record/Haq patrak. Further, it is stated that upon raising objection in respect of the selling of the suit land, the defendants No.1 to 8 gave evasive reply to plaintiffs, hence present suit is filed to get declaration that they still possessed and occupied the suit land and by the adverse possession they are the owners of the suit land and inter alia filed the Exh.5 application to get permanent injunction order against the defendants that defendants not to sell, mortgage, transfer or alienate the suit land to any third party and not to illegally enter into the suit land and not to snatch away the suit land from the plaintiffs and requested the Court to restrain defendants that not to obstruct, interfere and disturb during the actual possession with the plaintiffs

2. Upon service of summons/notice, defendants No.9, appeared through their Advocate and filed application at Exh.24 under Order-7, Rule-11 of C.P.C. In his application, he has contended that the plaintiffs suit is barred by the law of limitation. Further, it is contended that the plaintiff claimed about sale transaction of 45 years ago and before plaintiffs have not filed the suit for specific performance, as such plaintiffs' suit is barred by the law of limitation, hence it is required to be

dismissed. **Further, it is contended that plaintiffs have not prayed any consequential claim/s and they have filed the suit only for declaration, here suit of the plaintiffs is barred by the provision of Sec.34 of the Specific Relief Act,** hence suit of the plaintiffs is liable to be dismissed. Further, it is contended that the plaintiffs have not paid the sufficient Court fees stamp, hence suit of the plaintiffs be dismissed. So, as per the above contention, the suit of the plaintiffs is not maintainable, hence under the provision of Order-7, Rule-11 of C.P.C, suit of the plaintiffs be dismissed with cost.

3. Upon the application vide Exh.24 of defendant No.9. Learned Advocate for the plaintiffs have made oral arguments. In which, he has argued that the suit land which was purchased by the plaintiffs father Sipai Kasambhai Motibhai from Patel Gangarambhai Chaturbhai 45 years ago and and after the death of their father plaintiffs possessed and occupied the suit land and during the possession and occupation, defendants have never filed any notice or complaint to prove that plaintiffs are not the owners and possessors of the suit land. As such, plaintiffs are the owners of the suit land through the

adverse possession and defendants No.1 to 8 have illegally and unauthorizedly without issuing any notice sold out the suit land to defendant No.9 which is contrary to law. Hence, application at Exh.24 filed by the defendant No.9 be dismissed.

6. Now, considering the main issue for which the present application filed by the defendant No.9 under Order-VII, Rule-11 of C.P.C. and contended that the suit is time barred under the provision of Order-7, Rule(E) of C.P.C, so prima facie it is not necessary to adjudicate the present suit on evidence for that submission he relied on the present application. Now first of all, considering the nature of suit and jurisdiction of Court and issue regarding the suit is barred by law . First of all let we see the provision of Order-VII, Rule-11 of the Civil Procedure Code, 1908 which is stated herein below :

Rejection of plaint.- The plaint shall be rejected in the following cases:-

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;
- (c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the

plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;

- (d) where the suit appears from the statement in the plaint to be barred by any law;
- (e) where it is not filed in duplicate;
- (f) where the plaintiff fails comply with the provision of Rule 9 Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers, as the case may be within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff.

7. It is required to be noted that, it is the proposition of law and various judicial principle held by Honble Aprx court - that at the time of deciding application of Order-7, Rule-11 condition precedent for it that consider the averments of the plaint and documents attached with. and, written statement filed by the defendants shall not be considered at this stage.

Now considering the above facts, and also peruse the submissions, the plaintiffs have prayed for declaration of ownership through the adverse possession as they possessed the suit land more than 45 years over the suit land.

Moreover, as per the say of the plaintiffs, defendants other than No.9 who is the third party purchaser, who entered his name in the record of right of the suit property on the basis of sale deed registered No.10601, dated 20/10/2021 (mark 23/4) and his name duly entered their name in record of right.

Now pick point of the present litigation, on the base of that record of right, thereafter in the year 2021, defendant Nos.1 to 8 executed the Registered Sale Deed No.10601, dated 20/10/2021 in favour of the Defendant No.9 who is the purchaser.

Considering the above discussion , it is on record that , plaintiff come with case that their late father one Sipai Kasam bhai Motibhai purchase the suit land by way of sale from the predecessor of the defendant no. 1 to 8,, and also handed over the possession of the suit land , to plaintiff, since that time family of the plaintiff cultivate the suit land and enjoy the settle and continue possession,, now as per the averment

of the plaintiff , cause of action arise when agent of the defendant no. 9 come on the suit premises and threatened the plaintiff for vacate the possession , on Dt. 20-10-2021 , and also told the plaintiff that they purchase the suit land and also mutation of the property certified , so given the possession to them , so this conduct and behave which is breach the possessory right of the plaintiff as a purchaser of the suit land ,, Now plaintiff assertion for the claim that plaintiff is title owner due to execution of the sale deed by way of oral communication being a successor of the their late father Sipai Kasambhai Motibhai purchase from 45 years back , and at the same time he also claim long settle , possession, approximate duration of 45 years , he is the owner of the suit property by way of adverse possession, Now examining the dispute raise by the defendant that suit barred by law of limitation and also lack of proper prayer , So both dispute along with examine the provision of Order 7 Rule 11 of CPC if review then , claim of the plaintiff that his late father purchase the property by way of oral sale with possession ,, before 45 years ,So far as the , concept of the oral sale , no doubt heavy burden on plaintiff during trial ,but oral sale or contract which is ultimate involve mix question of law and fact , for that there are several

question for what is the market price of the suit property ? how is executed ? what are the terms and condition at the time of execution of sale deed ?

With aforesaid triable issues in addition , looking to the submission of the plaintiff along with supportive affidavit of the nearest account holder farmer , who are the supporter of the ,claim of the plaintiff in respect of their possession and cultivation, More over ,, plaintiff also take one more plea that due to long possession their right of the adverse possession create , So as per forgoing paragraph discussion summary is that prima facie plea of , adverse possession is also a mix question of law and fact , which plea decided on evidence , further it is also noticeable that,, objection from the defendant that suit file plaintiff has not prayed consequential relief except declaration so suit is not filed in proper Performa,, for that issue, it is believe of the court whether suit is bad for relief or not ? it also decided on merits and adducing evidence , at this juncture court also noted that in various precedents of the Hon high courts , decided that in so called oral contract or sale if involve in parties transaction then , heavy burden cast who assert the fact, so with this observation

court thing that for deciding the present suit controversy , there must be adjudication .

So considering the all aspect of the suitability of suit proceedings, this court believe that pleading of the plaint and plea of the plaintiff , not attract the provision of various grounds in respect of the-- Order 7 Rule 11 CPC, Whether lack of cause of action or barred by law,?

More over assertion of plaintiff to protect the possession which is acquired by the oral sale , so for that provision of TP act sec 54 and 53 A also ,need to evaluate at the time of trial ,

So considering the pleading, prayer of the suit, conduct of the defendants and litigation contested by the defendants, at this juncture it is necessary to recording evidence for the present civil remedy there after decide the subject matter, rather than reject the plaint prima facie on the base of

With above observation, suit must be tested on evidence. So, in the interest of justice, I pass the following order.

O R D E R

1. Present application filed by the Defendant No. 9 at Exh. 24 is hereby rejected.
2. No order as to cost.

Pronounced in the open Court on this 1st Day of July, 2023.

Date: 1/07/2023
Place : Kadi.

[Aniket M. Shukla]
3rd Addl.Senior Civil Judge &
Addl. Chief Judicial
Magistrate, Kadi
[Code No.GJ01139]
District Mahesana.