

ORDER BELOW EXHIBIT 23

1. Perused this application and its reply. Heard the learned advocate for the parties. The ld. advocate for the defendant nos. 8 to 10 has filed this application for rejection of plaint as per the provisions of Order 7 Rule 11(a) & (d) and sec.151 of The Civil Procedure Code, 1908. Bried facts of the application as undolded against the plaintiff is that in the plaint the cause of action mentioned by plaintiff is not proper and not tenable. Further the plaintiffs' suit is time barred but plaintiff has evasively got up cause action to bring the suit in limitation . So the plaint is liable to be rejected under Order 7 Rule 11(a) & (d) .

2. The plaintiff has filed the reply of this application vide ehhi.30 and has submitted that the suit is in time limit but the defendants have filed this frivolous application to waste the time of the court and to linger on the matter.

3. Then I have passionately and attentively heard the arguments canvassed by the ld.Advts. for the

parties. The ld. advt. for the defendant nos. 8 to 10 Mr. A.M.Desai has submitted that the plaintiff's suit is barred by the law of limitation and the cause of action disclosed by the plaintiff is not correct, so it should be rejected. Further he has replied upon certain authorities in support of his submission, which I have discussed as the relevant place in this order. 3.1 On the other hand the ld. advt. for the plaintiff Mr. S.K.Desai has submitted that as per Order 7 Rule 11(a) of the Civil Procedure code, 1908 the plaint can be rejected only when it does not disclose cause of action but as the present suit it clearly discloses cause of action and whether it is proper or not it can be decided only after taking evidence, So the application should be rejected with cost.

4. I have given my thoughtful consideration to the arguments canvassed by the ld. advt. for the respective parties. I have minutely perused the plaint and the relevant documentary evidences obtainable on record. Considering the plaint the suit has been filed by the plaintiff for partition, accounts, possession, declaration and injunction.

5. Now considering the contention of the

defendant's application, the defendant has submitted that the cause of action mentioned in the plaint by the plaintiff is not proper and that is evident from the plaint itself. so looking to the para no.9 of the plaint the cause of action is mentioned in it as-

". So as per the plaintiff in April/May-2015 She first came to know about the partition, mutation entries etc; and then she asked the defendant no. 8 and 9 regarding this but the misbehaved with the plaintiff's husband and son so the plaintiff has filed this present suit. Here it is the submission of the plaintiff that at the time of deciding as application under Order 7 Rule 11, only plaint should be taken into consideration and for that she has replied upon the ration laid down in the case of- **S.B.Sinha v/s. Sirpurkar reported in AIR 2008 S.C. 3174** same view has been taken in the suit of **Church Of christ C.T. AND E.C. society v/s. Ponniamman Educational Trust (2012)8 SCC 706**. I am thoroughly agree with the ration laid down in this judgment, moreover in this present application the defendants ahve also focused on the contentions of the plaint.

6. I now looking to the plaint as a whole the

plaintiff has submitted that the suit property has been obtained by her father by way of tenancy right and mutation entries nos. 127 and 148 have been made in this regard on dt. 21/10/62. Then after the death of the plaintiff's father her mother's name has been entered in the revenue records. But the administration of the suit property was with the defendant no. 8 & 9; the plaintiff and her husband has signed on blank papers on the say of defendant no.8 & 9 out of her trust on them. The plaintiff has asked for the relief relating to the mutation entry no.614 regarding to the *lambhakhat*, will of her deceased mother of dt. 12/01/83, mutation entry no.1350 dt. 10/07/84, Registered sell deed no. 1132 dt.20/12/99, mutation entry no. 2085 dt. 29/12/99. Now the plaintiff is asking for the declaration of these entries and Sell deed to be void *ab initio*. but as it is clear that the proceedings as such mutation entries etc. are done under Bombay Land Revenue code after giving notice to the parties and so the saying of the plaintiff that she had no knowledge of these proceedings earlier, can not be relied upon. Further, the plaintiff has submitted that many a times she had tried to get the copies of the revenue records but as the defendant no.8 was

influential person the plaintiff could not get the copies of the revenue records, but this submission of the plaintiff is not liable to be accepted because the plaintiff resides in Valsad i.e. nearby the place where the suit property is situated and the changes in revenue records are being made after notice to the parties as per the Land Revenue Act and the plaintiff has not produced any copy of the application or the other proceeding which she has done to get the copies of revenue records. Thus it is the negligence of the plaintiff to get the copies of the revenue record or the plaintiff has falsely stated this fact to create cause of action. Moreover a sell deed notice to the world. In this regard I have taken into consideration the ratio laid down in the following judgements-

6.1 T.Arvidanam V/S T.V.Satyapal 1977 S.C. 307 "The court must exercise its power to shoot down the bogus litigation at the earliest stage. If on a meaningful not formal reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right sue, he should exercise his power under Order VII, Rule 11, C.P.C...."

6.2 Becharbhai Zeverbhai Patel & Anr. v/s Jashbhai Shivabhai patel & Ors. G.L.R. 2013(1) 399 Even in the

entire plaint, nothing has been pleaded with respect to limitation. Mere clever drafting in the plaint and by such vague averments and the pleading the cause of action in the plaint, the suit which is otherwise barred by law of limitation cannot be brought within a period of limitation. Further it has been held in this judgement that "In case of suit challenging registered document, date of registration becomes the date of knowledge. "" Whenever a document is registered the date of registration becomes the date of deemed knowledge and in other cases where a fact could be discovered by due diligence then deemed knowledge would be attributed to the plaintiff because a party can not be allowed to extend the period of limitation by merely claiming that he had no knowledge."

6.3 Further in the latest Judgement of Poonambhai Shanabhai v/s Hasmukhbhai Bachubhai 2017 (2) G.L.H.765 same view has been taken- "The suit has been filed in the year of 2010 for the cancelation of registered documents/sale deed executed in the year of 2001. Held, if a suit is found hopelessly time barred, it is obligatory for the Court to consider such aspect of limitation while entertaining an application under 0.7

R.11 of CPC. Further it has been held that the registration of document is the deemed date of notice for the purpose of knowledge... If clever drafting has created in the bud. Courts are obliged to consider and read in a meaningful manner the averment in the plaint particularly the cause action and to consider whether it is hit by any statutory provision including law of limitation by skillful drafting or misleading facts the party may not be allowed to stretch the limitation. The date of the registration of document is the date of deemed knowledge."

1. 7.. Now again even at the cost of repetition, looking to the plaint and the documents which the plaintiff has produced along with the plaint the suit property has been acquired by the father of the plaintiff by tenancy right (ganothaq) in the year of 1955 the revenue entry no.127 and 148 has been made in this regard. Then after his death name of his was entered by entry no. 400 dt. 2/11/62; which are not disputed. Then mutation entry no. 614 on dt. 04/06/70 is made and the name of all the

heirs of late Manishankar Joshi has been entered in the revenue record of the suit properties, after taking the statement has been recorded at that time, so it can not be accepted that she had no knowledge of it (lambha). Further, Then the mutation entry nos. 841,842,843,844,846 have also been made in the revenue record of the order to deposit the amount to all the parties including the plaintiff. Then other revenue entries. nos. 1088,1089,1090,1091 etc. has been made on dt. 30/12/78 regarding mutation, in the revenue records. Then the disputed entry no. 1350 on dt. 10/07/84 has been made regarding the will of deceased mother of the plaintiff of dt.12/01/83. Then entry no.2085 has been made in the revenue records regarding the disputed Registered sale deed dt. 20/12/99. Thus the registration has been done in the year of 1999. Further perusing it, through this registered sell deed the plaintiff has sold one property amongst the disputed properties to the defendant no.11 and 12 and the entry no.

3048 on dt. 26/12/2000. Thus when the plaintiff has herself sold the suit property to defendant no.11 and 12 then in that circumstances it can not be believed that she had no knowledge of all these proceedings. On the contrary it is clear that she has mentioned false facts to bring her suit within limitation and to arise cause of action wrongly.

7.1. Thus the plaintiff is challenging the revenue entries and the registered sale deed of the year 1983 and 1999-2000 in the suit filed in the year of 2015 i.e. nearly after 34 years. Under these circumstances and considering the aforesaid facts, it appears that the plaintiff has falsely arouse the cause of action to bring a time barred suit into limitation.

7.2. So, as per the discussion held in the above mentioned judgement, this suit is also found hopelessly time barred, because in this matter also disputed sale deed is registered on 20/12/99 and that is executed by the plainiff herself so it is obviously in the knowledge of the plaitiff from that date as it is clear that in case of suit challenging registered document, date of registration becomes the date of knowledge and here as the document is executed by the plaitiff herself she must obviously be knowing this from the year

1999. And far as the other revenue entry nos. 1350 dt. 10/07/84 based on the will of dt. 12/01/83, that entries have been made after taking the statements of all parties as mentioned in the revenue records and after that the plaintiff has herself executed the registered sell deed no. 1132 on dt. 20/12/99 so it is clear that she was having knowledge of mutation entry no.1350 of dt. 10/07/84.

7.3. Thus from the fact of the plaint it is clear that the plaintiff has merely done clever drafting in the plaint and by such vague averments and the pleading tried to create cause of action whereas the suit is clearly barred by law of limitation. Hence, I pass the following order in the interest of justice-

ORDER

The application is allowed.

The plaint is hereby rejected.

the plaintiff shall bear the cost of both the plaintiff and defendants.

Decree is to be drawn accordingly. pronounced in open Court today.

Date

13-11-2017.

Chandni Prateek sharma

Addl.civil judge

Gandevi

Code no. GJ 01049