

Order Below Exh.42.

Read the application, reply filed by plaintiff side at Exh.46 as well as documents produced along with.

(1). The plaintiff has instituted present suit for cancellation of sale deed, declaration and permanent injunction.

(2). After institution of the present suit, summon/notice has been served upon defendants and they have appeared before this Court through their learned advocate. The defendant no.1 has filed his written statement at Exh.32, though the defendant no.4 & 5 have appeared before this Court but they haven't filed any written statement, thereby, their right of filing written statement was closed by this Court. The defendant No.2, 3 & 6 haven't appeared before this Court despite being duly served. Therefore, proceeding of this suit is proceeded ex.-parte quo defendant no.s 2, 3 & 6.

The defendant no.1 has filed present application at Exh.42 under O-VII Rule 11 of C.P.C for rejection of plaint. In which it is ascertained that by filing the present suit plaintiff has prayed for cancellation of registered sale deed No. 1058/2020 as well as registered sale deed No.27/2021. It is further contended that registered sale deed No.1058 was executed by power of attorney holder on the basis of power of attorney dated 12.04.2019 same as registered sale deed No.27 has been executed by power of attorney on the basis of power of attorney dated 03.07.2019. In the circumstance, if plaintiff wants cancellation of both the power of attorney, which were executed in the year, 2019, he has to file a present suit within 03 years as contemplated under Article 56 of Limitation Act. It is further contended that both the power of attorney executed in the year, 2019 were executed by plaintiff themselves and both the

documents are duly registered before public notary and according to Circular of Gujarat Government power of attorney are required to be registered from the year, 2022. Herein both the power of attorneys have been executed in the year, 2019. It is further contended that after perusal of Stamp paper of both the power of attorney it clearly transpires that both the Stamps of power of attorney have been purchased by the plaintiffs. It is further contended that both the registered sale deeds have been registered in accordance with law. Therefore, plaintiff has no cause of action to file a present suit. It is further contended that present suit is not maintainable and plaintiff has filed present suit by vexatious & clever drafting and plaintiff has also suppressed material facts, therefore, present plaint of plaintiff is required to be rejected.

On the other side, Plaintiff side has filed reply against the present application at Exh.46. Wherein it is stated that plaintiff has clearly averred in para no.16 that defendants of the present suit by committing criminal conspiracy have fabricated the forged power of attorney and used them for execution of alleged sale deeds and said facts have come into the knowledge of plaintiff in January, 2021 and plaintiff has filed present suit in August, 2023. In the mean time plaintiff has challenged the revenue entries of the alleged sale deeds and have lodged complaint under Land Grabbing Act and Committee of Land Grabbing case have pleased to allow said application and Collector, Navsari has ordered to file an FIR against the defendants. Therefore, it is quite clear that as soon as plaintiff gathered the knowledge of execution of alleged sale deeds on the basis of forged power of attorneys, he has filed present suit within limitation and as the fabricated power of attorney has been used for execution of alleged sale deeds, therefore, cause of action have arisen to file a present suit.

(03). Learned advocate for the defendant no.1 have filed written argument in respect to present application. In which he has repeated the facts

mentioned in present application at Exh.42. In support of his argument learned advocate for defendant has placed his reliance in the following authorities which are as under;

- (1). Shri Mukund Bhavan Trust & Ors. Vs. Shrimant Chhatrapati Udayan Raje, Civil Appeal No. 14807 of 2024 Supreme Court.
- (2). Ramisetty Venkatanna & Anr. Vs. Nasyam Jamal Saheb & Ors., Civil Appeal No. 2717 of 2023, Supreme Court.
- (3). Prem Pal Singh Vs. Prem Pal Singh Dhangar & 12 Ors., AIR 2025 Allahbad 239, Allahabad High Court.
- (4). Jagdishbhai Haribhai Patel through PoA Shah Rajeshkumar Chandravadan Versus Lh of deceased Ramanlal Shankarlal Patel & Ors., First Appeal No. 2541 of 2024, Gujarat High Court.
- (5). Paresh Rashiklal Modi Versus Rameshbhai Jadavbhai Patel & Ors., R/First Appeal No. 4409 of 2025, Gujarat High Court.
- (6). Mukeshbhai Bachubhai Patel & Anr. Versus Pushpaben W/o. Chankalchand Vacheta & Ors., R/Civil Revision Application No.304 of 2025, Gujarat High Court.
- (7). Dhirubhai Jethabhai Patel & Ors. Versus Gangaben W/o. Ramsibhai Nathabhai Rabari & Ors., R/Civil Revision Application No. 336 of 2015, Gujarat High Court.

On the other hand. Learned advocate for the plaintiff has argued out that sale deed No.1058/2020 has been executed by using fabricated power of attorney dated 12.04.2019. Same as sale deed no.27/2021 has been executed by using fabricated power of attorney dated 03.07.2019 and plaintiff has clearly mentioned in para no.16 of plaint that he has come to know about alleged sale deeds which have been executed on the basis of fabricated & forged power of attorney in January, 2021. Thereby learned advocate has further argued out that plaintiff have specific case that by committing fraud and forgery both the sale deeds have been executed. It is further argued out that plaintiff has produced FIR which was lodged against the defendant no.2 to 6 by defendant no.1, which clearly shows that defendant no.1 himself admitted that both the sale deeds have been executed in his favour by fraud.

Therefore, plaintiff has clear cause of action to file a present suit and as the plaintiff has filed present suit after gathering knowledge of alleged sale deeds which is within limitation. Learned advocate for the plaintiff has placed his reliance upon Krishna Kant Trivedi Vs. Urshashiben; Firt Appeal (C) No.160/2018;

(04). I have given my thoughtful consideration to the arguments, pleadings of the parties and documents along with.

(05). Before going further, relevant provisions of law and case law are required to be taken into consideration.

Order VII Rule 11 (a) & (b) of C.P.C.

11. 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;

9. Courts to try all civil suits unless barred .-(CPC).

The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.Explanation [I].-A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies. [Explanation II .-For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place.]

(06). Further, in Radhakrishna Products Vs. Parsottambhai Dharamsinhbhai Lungaria, 2015 (1) GLH 01. It held by the Hon'ble Gujarat High Court that while deciding an application for rejection of plaints averments only in the plaint can be taken into plea or the defence raised by defendant side cannot be taken into account, moreover, the plaint must be read as a whole and not in

bits & pieces, further Court is not supposed to examine the substance and merits of the application there is enough evidence whereby the plaintiff can prove its claim and whether plaintiff will succeed or not Court would only examine the necessary elements which came out in the cause of action or not?

Further, in Punam Engineering Works Vs. Delux Bearings Ltd.2007 (03) GLH 07. It was held by Hon'ble Gujarat High Court that application by respondent for rejection of plaint under O.VII Rule 11 of C.P.C. plaint discloses material facts and even full particulars distinction between non-disclosure of cause of action and not having cause of action held that allegations made in the plaint if accepted as true modo proforma then also the plaint cannot be rejected under O.VII Rule 11 of C.P.C.

Further, in Kantibhai Ishwarbhai Patel Vs. Chandrakant Ishwarbhai Patel, 2006 (1) GLH 171. It was held by the Hon'ble Gujarat High Court that if the title to the land is claimed on the basis of such mutation entry, Civil Court has jurisdiction to decide the question as to the title irrespective of such mutation entry effected in the revenue record.

Further more, in Chhotanben & Ors. Vs. Kiritbhai Jalkrushnabhai Thakkar; Civil Appeal No. 3500/2018 (SLP) Civil No.26401/2017. The Hon'ble Apex Court held that,...

11. After having cogitated over the averments in the plaint and the reasons recorded by the Trial Court as well as the High Court, we have no manner of doubt that the High Court committed manifest error in reversing the view taken by the Trial Court that the factum of suit being barred by limitation, was a triable issue in the fact situation of the present case. We say so because the appellants (plaintiffs) have asserted that until 2013 they had no knowledge whatsoever about the execution of the registered sale deed concerning their ancestral property. Further, they have denied the thumb impressions on the registered sale deed as

belonging to them and have alleged forgery and impersonation. In the context of totality of averments in the plaint and the reliefs claimed, which of the Articles from amongst Articles 56, 58, 59, 65 or 110 or any other Article of the Limitation Act will apply to the facts of the present case, may have to be considered at the appropriate stage.

12. What is relevant for answering the matter in issue in the context of the application under Order VII Rule 11(d), is to examine the averments in the plaint. The plaint is required to be read as a whole. The defence available to the defendants or the plea taken by application filed by them, cannot be the basis to decide the application under Order VII Rule 11(d). Only the averments in the plaint are germane. It is common ground that the registered sale deed is dated 18th October, 1996. The limitation to challenge the registered sale deed ordinarily would start running from the date on which the sale deed was registered. However, the specific case of the appellants (plaintiffs) is that until 2013 they had no knowledge whatsoever regarding execution of such sale deed by their brothers – original defendant Nos.1 & 2, in favour of Jaikrishnabhai Prabhudas Thakkar or defendant Nos.3 to 6. They acquired that knowledge on 26.12.2012 and immediately took steps to obtain a certified copy of the registered sale deed and on receipt thereof they realised the fraud played on them by their brothers concerning the ancestral property and two days prior to the filing of the suit, had approached their brothers (original defendant Nos.1 & 2) calling upon them to stop interfering with their possession and to partition the property and provide exclusive possession of half (1/2) portion of the land so designated towards their share. However, when they realized¹⁵ that the original defendant Nos.1 & 2 would not pay any heed to their request, they had no other option but to approach the court of law and filed the subject suit within two days therefrom. According to the appellants, the suit has been filed within time after acquiring the knowledge about the execution of the

registered sale deed. In this context, the Trial Court opined that it was a triable issue and declined to accept the application filed by respondent No.1 (defendant No.5) for rejection of the plaint under Order VII Rule 11(d). That view commends to us.

16. In the present case, we find that the appellants (plaintiffs) have asserted that the suit was filed immediately after getting knowledge about the fraudulent sale deed executed by original defendant Nos.1 & 2 by keeping them in the dark about such execution and within two days from the refusal by the original defendant Nos.1 & 2 to refrain from obstructing the peaceful enjoyment of use and possession of the ancestral property of the appellants. We affirm the view taken by the Trial Court that the issue regarding the suit being barred by limitation in the facts of the present case, is a triable issue and for which reason the plaint cannot be rejected at the threshold in exercise of the power under Order VII Rule 11(d).

(07). In light of the above legal provision as well as settled principle of law, it is quite clear that while deciding the application for rejection of plaint under O-VII Rule 11 of C.P.C only the pleadings in plaint is required to be taken into consideration, defence raised by the defendant side cannot be taken into account. In light of said legal preposition if we peruse plaint filed by the plaintiff, it is ascertained in the plaint that plaintiff no.2, Bhupatrai Ramchandra Desai has suffered by terminal disease, called Cancer and therefore he is required money to get treated. For that purpose defendant no.1 have obtained hand-loan from defendant no.2 in the year, 2019. At that time, defendant no.2 has got sign of the plaintiff no.1 upon some blank papers. It is further ascertained that defendant no.2 brought plaintiff no.1 to the defendant no.6, where said public notary has also obtained some signature upon the blank space of notary registered. It is further ascertained in the plaint that by defendant no.2 plaintiff no.1 has met with defendant no.3 and have also

obtained hand-loan from him at the interest of 4 per cent per month. It is further ascertained that defendant No.2 & 3 have also obtained some signatures on blank papers. It is further ascertained that in January 2021, while cultivating the suit property some persons have come to the plaintiff and asked him about his intention to sell out the suit property. Such kind of person frequently visited the suit property, therefore, plaintiff has published public notice in Divya Bhaskar dtd. 05.01.2021. Thereafter, on 14.01.2021 some unknown persons have come to the plaintiff and told him that their boss has purchased the suit property, therefore, plaintiff has inquired in sub-registrar office and came to know about the registered sale deeds No.s 1058 dtd. 15.09.2020 and registered sale deed No.27 dtd. 16.07.2021. It is further ascertained that during the timeline of both the sale deeds name of Reshma, Maniben and Parth have been inserted in the RoR of suit property vide Entry No.1081 & 1082. It is further ascertained that plaintiff has challenged revenue entry No.1097, which was made & certified in respect to sale deed No.1058 and said entry was deleted by the Collector, Navsari. Same as he has challenged the entry No.1199 made in respect to the sale deed No.27 and said entry is also rejected by the Deputy Collector, Chikhli. It is further ascertained that plaintiff have also given complaint to the Superintendent of Police, Inspector General of Police as well as CM Office & PM Office in respect of alleged conspiracy and crime. It is further ascertained that in view of his application given under Land Grabbing Act defendant no.2 has deposed before Circle Officer, Chikhli. Wherein he has admitted that both the PoAs have been fabricated & forged by the other defendants. It is further ascertained in the plaint that defendant no.1 himself lodged a complaint against Bharatbhai, Kalpeshbhai, Nileshbhai and Jigneshbhai. Wherein he has also stated that those persons have executed the alleged sale deeds on the basis of fabricated & forged Power of Attorney. Thereby it is admitted fact of defendant no.1 that both the Power of Attorneys are forged & fabricated. If we

peruse in para no.16 of the plaint, it transpires that plaintiff has ascertained that cause of action to file a present suit was occurred when the defendants have fabricated both the power of attorneys and have executed the registered sale deeds No.1058 dtd. 15.09.2020 and registered sale deed no.27 dtd. 16.01.2021 and plaintiff have come to know about those sale deeds in January, 2021. In respect to the pleadings of the plaintiffs if we peruse the document at mark 3/3 to 3/8 which are village form no.8-A and 7/12 and it transpires that names of plaintiffs are on revenue record of the suit property. A document at mark 3/11 and 3/12 shows that entry No.1097 made in respect to the sale deed No.1058 & entry No.1199 made in respect to sale deed no.27 were rejected by the concerned revenue authorities. Moreover, a document at mark 3/16 shows that present defendant no.1 have lodged complaint against the Bharatbhai, Kalpeshbhai, Nileshbhai and Jigneshbhai for the offence punishable under Sec.406, 420, 465, 467, 468, 471, 120B and 144 which were registered in the Chikhli Police Station by I-CR No.11822009210368/2021 dtd. 09.03.2021. After perusal of said FIR it clearly transpires that defendant no.1 himself has stated in said complaint that persons mentioned as accused in the FIR have fabricated the Power of Attorneys and on the basis of said power of attorneys they have executed registered sale deeds in his favour and have received huge sum of money. Thus, at prima facie, after perusal of plaint it clearly transpires that plaintiffs' case is clear that by committing fraud & forgery the defendants in collusion with each other have fabricated Power of attorney's and have executed the registered sale deeds on the basis of said forged Power of attorneys. As held in Chhotanben (supra) it clearly transpires that as soon as plaintiffs have come to know about the alleged sale deeds they have initiated legal proceeding before different authorities and have filed present suit for cancellation of alleged sale deeds, power of attorneys and declaration as well as perpetual injunction. Therefore, considering the date of sale deeds and date of filing of the present suit it clearly appears that suit is within the limitation

and it cannot be hit by Article 56 of the Limitation Act. After perusal of the para no.16 of the plaint, it clearly transpires that plaintiff has clearly disclosed the cause of action and documents produced along with the plaint clearly shows that plaintiff has specific case of fraud & forgery and those issues are triable issues and it cannot be decided without taking evidence. Therefore, right to sue is survived for the plaintiff in the eye of law and this plaint cannot be rejected threshold without giving opportunity to plaintiff to lead his evidence on record. In the circumstances, looking to the entire pleadings as well as documentary evidence produced by the plaintiff side present case does not fall under the purview of provision of O-VII Rule 11 of C.P.C and it is not barred by law to try the present suit by this Court. Therefore, to meet the end of justice, this Court pass following order.

-:ORDER:-

- (1). Present application filed by defendants at Exh.42 is hereby Rejected.
- (2). Cost of the present application will follow the final verdict.

Pronounced in the open Court today on 09th day of March, 2026.

Chikhli.
Date: 09/03/2026.

S.P.Dave
Addl. Sr. Civil Judge, Chikhli.
Code: GJ01390.