

GJRJ020353802024

**Order below Exh. 31**

1. The Plaintiffs has filed the present suit for the Specific Performance of the Registered Agreement to Sell (Satakhat), Permanent Injunction and Declaration against the Defendants annexed with the documents vide Mark. 4/1 to 4/9. At this stage, this is an application filed by the Defendants no. 1/1 to 1/3 under O.7, R.11 (a) to (d) of Code of Civil procedure. Read the application. Heard the Ld. Advocate from the Plaintiffs and the Defendants.
2. Thereafter, vide Exh. 37 the Ld. Advocate from the Plaintiffs have submitted the reply on this application in which he denied all the contentions of the Defendants no. 1/1 to 1/3 under the application under O.7, R.11 (a) to (d) of Code of Civil procedure.
3. The **Laconic Gist** of this application is, this present suit is filed by the Plaintiffs for the specific performance of the agreement to sell (Satakhat) and permanent injunction and declaration. The Defendants say that the Plaintiffs filed this suit based on the registered agreement to sell no. 2649 dated 30.12.2013. The Defendant No. 1 Late Dineshbhai Somabhai Ukediya has died on dated 14.06.2016. The agreement to sell has been registered on dated 30.12.2013 and this present suit has been filed in the year

2024 which is the delay of around 11 years from the date of the registration of the agreement to sell to the date of the filing of this present suit so this suit is barred by law of limitation. When the late Defendant no. 1 was alive at that time the Plaintiffs did not file this suit for the specific performance of agreement to sell. Also, the Plaintiffs did not pay the amount as mentioned in the agreement to sell. Even after the death of the deceased Defendant No. 1, the Plaintiffs did not file the suit in a limitation time. Further, after the death of the deceased Defendant No. 1, the Plaintiffs being known of this fact of death did not take any legal steps, this is also a reason that the present suit is barred by law of limitation. The relief which the Plaintiffs have asked for in this suit is against the agreement to sell and the document and the agreement to sell 1/7 undivided share of Defendant No. 1 is prohibited under the Tukda Dhara. By meaningful reading of the pleading this suit also barred by cause of action. The Plaintiffs was having deemed knowledge so the limitation period to file this suit is only three years. This suit is also barred by the reason of non-joinder of necessary parties. It prima-facie appears that the Plaintiffs have filed this suit with a clever drafting. The Plaintiffs have filed this suit by suppression of the material facts. Hence, this application.

4. Reason for the suit:

When the deceased Defendant has executed the registered agreement to sell dated 30/12/2013 in favour of the Plaintiffs and when as per the condition of the alleged

registered agreement to sell the Plaintiffs have shown willingness and readiness to pay the Defendants a sum of Rs. 4,00,000/- and when the notice was sent to the Defendants dated 23.10.2023 which returned with the endorsement of "Address Left without instructions".

5. Relief in the suit:

- The Property situated in Gujarat State Registration District Rajkot Rajkot-1 Revenue Survey No. 146 (B) paiki 2 paiki 2 land admeasuring approximately 1-27-41 sq. mtr. hectare and Revenue Survey No. 149(B) paiki 2 land admeasuring approximately 0-40-47 sq. mtr. hectare, which in total admeasures approximately 1-67-88 sq. mtr. hectare, regarding which the specific performance of an agreement to sell the declaration that the agreement to sell executed by the Defendant in favour of the Plaintiffs dated 30.12.2013 is valid and to handover the possession of the suit property by executing the registered sale deed in favour of the plaintiffs after the Defendants make consent agreement with the family, making the disputed property into non-agricultural land, to make the disputed property into encumbrance free and all other procedure by persuading all the family members and after accepting the remaining consideration amount from the Plaintiffs. It is alternatively also prayed to execute the sale deed by the Defendant in favour of the Plaintiffs and to hand over the possession of the suit property to the Plaintiffs through court commissioner.

- It is prayed to issue a permanent injunction restraining the Defendants or his agent, representatives or other persons from selling, mortgaging, encumbering, gifting or otherwise transferring, assigning or otherwise, to any other person, firm or company on the basis of the name of the Defendants in the revenue record or restrain from handover the possession of the suit property to any other person, firm or company and restrain from changing the purpose property situated in Gujarat District, Registration District Rajkot, Rajkot -1 Revenue Survey no. 146 (B) paiki 2 paiki 2 land admeasuring approximately 1-27-41 sq. mtr. hectare and Revenue Survey No. 149 (B) paiki 2 land admeasuring approximately 0-40-47 sq. mtr. hectare, which in total land admeasuring approximately 1-67-88 sq. mtr. hectare.

6. The Documents produced by the Plaintiffs with the Plaint:

Sr.No	Particulars	Mark
1.	Agreement to Sell (Satakhat) executed on dated 30/12/2013 by the Late Defendant no.1 in favour of the Plaintiff's.	4/1
2.	Revenue record of village sample no. 7 of Defendant's name.	4/2
3.	Revenue record of village sample no. 7 of Defendant's name.	4/3

4.	Revenue record of village sample no. 12 of Defendant's name.	4/4
5.	Revenue record of village sample no. 8-A of Defendant's name.	4/5
6.	Revenue record of village sample no. 6 of Defendant's name (by Uttarotar Promulgation).	4/6
7.	The legal notice given by the Plaintiffs to the Defendants dated 23/10/2023.	4/7
8.	Money slip (total – 9)	4/8
9.	Returned cover (total – 3)	4/9

7. The authorities of the Hon'ble Supreme Court of India submitted by the plaintiffs at the time of hearing of this application:

- “Shri Mukund Bhavan Trust v/s Shrimant Chhatrapati Udayan Raje” decided on 20/12/2024.
- “Vinod Infra Developers Ltd. v/s Mahaveer Lunia” decided on 23/05/2025.

The authorities by the Defendants No.1/1 to 1/3 have been cited in the present application.

The Defendants No.1/1 to 1/3 has submitted the revenue record village sample no.6, entry no. 2639 during the oral hearings of this application.

I have respectfully read the authorities submitted by both the parties.

8. Perused the plaint and the Documents attached with the plaint vide mark 4/1 to 4/9, the application by the Defendants No.1/1 to 1/3 under Order.7 Rule.11 (a) to (d) vide Exh. 31 and the reply/objections filed by the Plaintiffs vide Exh.37 on the application of the Defendant no.1/1 to 1/3 under Order.7 Rule.11 (a) to (d), the Plaintiffs have filed this suit on dated 24/09/2024 for the Specific Performance of the Registered Agreement to Sell (Satakhat) No. 2649 dated 30/12/2013, Permanent Injunction and Declaration against the Defendants.
9. The Hon'ble Supreme Court of India in ***Wayne/Burt Petro Chemicals Pvt. Ltd. & Anr. v. Chain Tools & Products Pvt. Ltd. & Ors. (National Company Law Appellate Tribunal, 2020) & Bhau Ram Vs Janak Singh (2012) 8 SCC 701*** has decided the following:

Hon'ble the Supreme Court held that "the court is precluded from considering the defense of the Defendants and their evidence while deciding the application for rejection of the plaint under Order 7 Rule 11 CPC. The court has to look into the pleadings in the plaint and the documents annexed with the plaint. The stand of the Defendants in the written statement or in the Application is wholly immaterial for deciding the application under Order 7 Rule 11 of the CPC"

By respectfully referring the ratio in the Hon'ble Court in ***NUSLI NEVILLE WADIA VS. IVORY PROPERTIES AND ORS. (2020) 6 SCC 557.***, "While considering the application

under Order VII Rule XI and the prayer for rejection of the plaint, only averments of plaint are material and can be taken into consideration and any evidence or averments made in the written statement cannot be considered."

The Hon'ble Supreme Court of India in **"T. Arivandandam vs T. V. Satyapal & Another"** on 14 October, 1977 para-5, *"We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now, pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints. The learned Munsif must remember that 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 to sue, he should exercise his power under Or. VII r. 11 C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if clever, drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X CPC. An activist Judge is the answer to irresponsible law suits. The trial courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men (Ch.XI) and must be triggered against them."*

The Hon'ble Supreme Court of India in ***I.T.C. Limited vs The Debts Recovery Appellate Tribunal & ... on 19 December, 1997, AIR 1998 SUPREME COURT 634***, Question is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 C.P.C. Clever drafting creating illusions of cause of action are not permitted in law and a clear right to sue should be shown in the plaint. (See *T. Arivandandam vs. T.V. Satyapal & Another* [1977 (4) SCC 467]).

The Hon'ble Gujarat High Court in ***Ravani Ceramics vs Marshal Mfg. & Exports, Justice J B Pardiwala***,
 29 "The rejection of a plaint is within the definition of a "decree" within the scope of Section 2(2) C.P.C. The reference to "rejection of a plaint" in that definition is not confined to rejection of a plaint under Order VII Rule 11. That is clear from the very words of Section 2(2) C.P.C. or otherwise, they would have referred to Order VII Rule 11 in it."

The Hon'ble Supreme Court of India in ***"Madanuri Sri Rama Chandra Murthy vs Syed Jalal on 19 April, 2017, AIR 2017 SUPREME COURT 2653"***,

"8. The plaint can be rejected under Order VII Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that the power under Order VII Rule 11, C.P.C can be exercised by the Court at any stage of the suit. The relevant facts which need to be looked into for deciding the application are

the averments of the plaint only. If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under Order VII Rule 11, C.P.C. Since the power conferred on the Court to terminate civil action at the threshold is drastic, the conditions enumerated under Order 7 Rule 11 C.P.C. to the exercise of power of rejection of plaint have to be strictly adhered to. The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. It is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. The averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when, the allegations made in the plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under Order 7 Rule 11 C.P.C. can be exercised. If clever drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage."

The Hon'ble Supreme Court of India in "*N.V.Srinivasa Murthy And Others vs Mariyamma (Dead) By Proposed Lrs And ... on 11 July, 2005, Appeal (civil) 4500 of 2004*", In these

appeals preferred by the plaintiffs the only question involved is whether the trial court and the High Court were right in holding that the plaint under Order VII of Code of Civil Procedure was liable to rejection.

'With the assistance and on the comments and counter comments of the parties, we have carefully gone through the contents of the plaint. We find that the plaint has been very cleverly drafted with a view to get over the bar of limitation and payment of ad valorem court fee. According to us, the plaint was rightly held to be liable to rejection if not on the alleged ground of non-disclosure of any cause of action but on the ground covered by clause (d) of Rule 11 of Order VII of Code of Civil Procedure namely that 'the suit appears from the statement in the plaint to be clearly barred by law'.

The Hon'ble Supreme Court of India in "**Ramisetty Venkatanna vs Nasyam Jamal Saheb** on 28 April, 2023, Hon'ble Justice M.R. SHAH, CIVIL APPELLATE JURISDICTION CIVIL APPEAL NO. 2717 OF 2023", A Plaint can be rejected under order VII Rule 11 (a) and (d) of Code of Civil Procedure 1908 if it is vexatious, illusory or barred by limitation.

➤ **Order 7, Rule 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 Plaintiffs, 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 returned upon paper insufficiently stamped, and the Plaintiffs, 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 Plaintiffs fails to comply with the provisions of rule 9:]

10. Reasons:

Based on the alleged Registered Agreement to Sell (Satakhat) executed between the plaintiffs and the Defendant No. 1 Late Dineshbhai Somabhai Ukediya in consideration of Rs. 10,00,000/- (Ten Lakh only), the Plaintiffs have contended that they have paid total Rs. 6,00,000/- (Rupees Six Lakhs only) to the deceased Defendant No. 1 at the time of execution of the alleged Registered Agreement to Sell and the remaining amount Rs. 4,00,000/- (Rupees Four Lakhs only) the Plaintiffs have to pay when the deceased Defendant No. 1 fulfills his responsibility as per the alleged Registered Agreement to Sell i.e. consent agreement with the family, making the disputed property into non-agricultural

land, to make the disputed property into encumbrance free and all other procedure by persuading all the family members. The Plaintiffs further contending that they were and are ready and willing to pay the remaining amount Rs. 4,00,000/- to deceased Defendant No.1 and to the Defendants in this suit after the death of the deceased Defendant No.1 but the deceased Defendant No.1 neither fulfilled his responsibility i.e. consent agreement with the family, making the disputed property into non-agricultural land, to make the disputed property into encumbrance free and all other procedure by persuading all the family members when he was alive nor Defendants in this suit after the death of the deceased Defendant No.1 till date.

The Plaintiffs are further contending that they have asked to Late Defendant No. 1 to fulfill his responsibilities after 24 months from the date of the execution of the alleged Registered Agreement to Sell but the Late Defendant No. 1 have replied to them that he is not medically well and after sometime he will execute the sale deed after fulfilling his responsibilities as per alleged Registered Agreement to Sell. Then on dated 14/06/2016 the Defendant No. 1 Late Dineshbhai Somabhai Ukediya has died. Thereafter, also the Plaintiffs have many times asked to the Defendants in this suit to fulfill their responsibility as per the alleged Registered Agreement to Sell but till date they have not fulfilled their responsibility so the Plaintiffs have sent a legal notice to the Defendants but it was returned unserved with the endorsement "address left without instructions" and before few

months Plaintiffs have come to know that the Defendants are trying to sale the disputed property to the third person so they have filed this present suit.

➤ **“Vigilantibus non dormientibus jura subveniunt”**

"The law assists those who are vigilant, and not those who sleep over their rights".

THE SCHEDULE

(PERIODS OF LIMITATION) [See sections 2(j) and 3]

FIRST DIVISION—SUITS

Title	Period of limitation	Time from which period begins to run
54. For specific performance of a contract.	Three years	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.
58. To obtain any other declaration.	Three years.	When the right to sue first accrues.

Perusing the date of the arising of the cause of action to institute this suit is 31/12/2015 and the present suit has been instituted by the

Plaintiffs dated 24/09/2024 which is beyond limitation or time bared. Perusing paragraph no. 3 of the alleged Registered Agreement to Sell (Satakhat) executed on dated 30/12/2013, it is clearly written that the Plaintiffs have to pay the remaining amount Rs. 4,00,000/- (Rupees Four Lakhs only) to the Late Defendant No. 1 within 24 months of the execution of this alleged Registered Agreement to Sell and within the same 24 months of the execution of this alleged Registered Agreement to Sell the deceased Defendant No. 1 will fulfill his responsibilities i.e. consent agreement with the family, making the disputed property into non-agricultural land, to make the disputed property into encumbrance free and all other procedure by persuading all the family members and execute the sale deed in favour of the Plaintiffs. This alleged Registered Agreement to Sell executed between the Plaintiffs and the Defendant No. 1 Late Dineshbhai Somabhai Ukediya when he was alive. So, calculating the period of 24 months from the date of the execution of the alleged Registered Agreement to Sell i.e. from 30/12/2013 it completes on dated 30/12/2015. It nowhere appears from perusing the plaint and the Documents attached with the plaint vide mark 4/1 to 4/9 and the reply/objections filed by the Plaintiff vide Exh.37 on the application of the Defendants no.1/1 to 1/3 under Order.7 Rule.11 (a) to (d) that within 24 months time period the Plaintiffs have fulfilled their part of responsibility of paying the remaining amount Rs. 4,00,000/- (Rupees Four Lakhs only) to the deceased Defendant No. 1. or they have contacted or have sent any written notice to the Defendant No.1 Late Dineshbhai Somabhai Ukediya for fulfilling their part of

responsibility. Further after the completion of 24 months, the cause of action of the Plaintiffs to institute the suit has been arisen on dated 31/12/2015 with 3 years limitation i.e. till 31/12/2018 but the Plaintiffs have not instituted this suit within 3 years limitation. Further it nowhere appears from perusing the plaint and the Documents attached with the plaint and the reply/objections filed by the Plaintiff vide Exh.37 on the application of the Defendants No.1/1 to 1/3 under Order.7 Rule.11 (a) to (d) that the Plaintiffs have sent any written notice to the Late Defendant No. 1 or to the Defendants in this suit after the death of the Late Defendant No. 1 within 3 years limitation period.

The Plaintiffs have sent the written notice to the Defendants in this suit on dated 23/10/2023 and showed his readiness and willingness to pay the remaining amount of Rs. 4,00,000/- (Rupees Four Lakhs only) and told to the Defendants in this suit to fulfill the responsibility as per the alleged Registered Agreement to Sell and execute the sale deed in favour of the Plaintiffs and when the notice returned then they have instituted this suit on dated 24/09/2024 which is beyond limitation or is time barred.

Order

- This application vide Exh.31 is hereby allowed.
- The plaint of the Plaintiffs is hereby rejected under Order.7 Rule.11(d) of the Code of Civil Procedure.
- Exh.1 and other pending applications in the suit are disposed off accordingly.

- No order as to costs.
- Decree be drawn accordingly.

**Signed, Pronounced and Declared today in open Court on 15th
April, 2026.**

Date:15/04/2026

Rajkot

(Jayshri P. Goyal)
9th Addl. Civil Judge,
Rajkot.