



- : ORDER BELOW EXHIBIT 28 and 37: -

1. **BRIEF HISTORY OF CASE:** - For the sake of brevity, it is must to briefly narrate the facts of the case at hand. Now perusing the records of the case, it is found that the *disputed property is having Revenue Survey Number 101, 111, 82, 187, 119 block number 97, 125, 87, 210, 105 and 0/3 situated at Valak, Kamrej, Surat.* The present suit was filed by the plaintiff for the relief of Adminitration, Declaration, Mandatory Injunction and Cancellation of document dated 8/7/2016. Then the suit was admitted and the notice was issued to the other side which was duly served and other side filed their reply and meanwhile defendant number 1 vide exhibit 37, defendant number 10 vide exhibit 28 moved an application for the Rejection of Plaintiff.
2. **CONTENTS OF APPLICATION:** - Now, the said suit is filed plaintiff against defendant number 1 to 10 wherein defendant number 1 and 10 have moved their separate application for rejection of plaintiff. So, it is must to peruse the contents of each application separately.

** Defendant number 1 in his application vide exhibit 37 asserted that plaintiff filed the said suit for cancelation of sale dated 9/2/2007 and 22/2/007 which he was having knowledge still he failed to file the suit within limitation of 3 years as per Article 58, 59 of Limitation Act. He further contended that plaintiff with the help of clever drafting and suppressing the fact is trying to bring the said suit within limitation which is not permissible. Hence, due to above deformities the need is felt to file the said application for the Rejection of Plaint under order 7 rule 11(d) of the CPC, 1908 which is fit for the allowance with the cost to be paid to the defendants. The defendant in support of his application and argument has relied on documents produced further supported by case laws such as Kanjibhai vs. Nandubhen, Becharbhai vs. Jashbhai, Akhtar vs. Suresh, Saleem vs. state. The above documents and case laws will be taken into consideration as per their need and applicability.

** Defendant number 10 in his application vide exhibit 28 asserted that plaintiff filed the said suit for administration of property of deceased Bhikhabhai Vajir and cancelation of sale dated 9/2/2007 produced vide mark 3/11 and 22/2/007 produced vide mark 3/12 which he was having knowledge still he failed to file the suit within limitation of 3 years as per Article 54 of Limitation Act. Hence, due to above deformities the need is felt to file the said application for the Rejection of Plaint under order 7 rule 11(d) of the CPC, 1908 which is fit for the allowance with the cost to be paid to the defendants. The defendant in support of his application moved written argument vide exhibit 74 and relied on documents produced further supported by case laws such as Kanjibhai vs. Nandubhen, Becharbhai vs.

Jashbhai, Dilboo vs. Dhanraj, N V Srinivasan Murthy vs. Mariyamm. The above documents and case laws will be taken into consideration as per their need and applicability.

3. **REPLY/DEFENSE BY PLAINTIFF:** - Moving further in the suit, the notice was issued to the plaintiff for calling the reply for the said application. The plaintiff has filed separate reply to separate application by different defendants.

**** A defendant number 1 moved an application for rejection of plaint vide exhibit 37 wherein plaintiff has filed his reply vide exhibit 42.** The plaintiff in his reply stated that said suit is not only filed for cancelation of document but it is also for administration of property, declaration and permanent injunction. He further contends that plaintiff and defendant number 1 to 8 are the legal heirs of deceased Bhikhabhai vajir and as per Sunni Law Tenants of one is considered as Tenant of all. Further, as per Sunni Law tenant in all are tenant in common who has all right to claim their share and when such share is denied is said to be initiation of limitation period. He further contended that such sale of 2007 in favor of defendant number 9, 10 is done on the bases of bogus POA and he was not aware as he is residing in Canada. He further asserts that he has done no POA in favor of defendant number 1 and when he returned from Canada, he got to know about sale transaction and then and there within limitation he challenged the same. Hence said application be rejected.

**** A defendant number 10 moved an application for rejection of plaint vide exhibit 28 wherein plaintiff has filed his reply vide exhibit 43.**

The plaintiff in his reply stated that said suit is not only filed for cancelation of document but it is also for administration of property, declaration and permanent injunction. He further contends that plaintiff and defendant number 1 to 8 are the legal heirs of deceased Bhikhabhai vajir and as per Sunni Law Tenants of one is considered as Tenant of all. Further, as per Sunni Law tenant in all are tenant in common who has all right to claim their share and when such share is denied is said to be initiation of limitation period. He further contended that such sale in favor of defendant number 9, 10 is done on the bases of bogus POA and he was not aware as he is residing in Canada. He further asserts that he has done no POA in favor of defendant number 1 and when he returned from Canada, he got to know about sale transaction and then and there within limitation he challenged the same. Hence said application be rejected.

4. **POINT OF DETERMINATION:** - Now, considering the above averment and the counter averment made from both the sides, the need felt to make the following point of consideration: -

- A. Whether the defendant proves the said suit of the plaintiff is liable to be rejected under Order 7 Rule 11 of the CPC, 1908?

RESULT: - Negative.

REASONS FOR FINDING

5. POINT NUMBER A: - Now, to reach to a reasonable conclusion it is must to discuss the law at hand for the rejection of plaint as stated in the CPC, 1908.

The contents of the said law states that the plaint can be rejected for following reasons such as: -

a) where it does not disclose the cause of action;

d) where the suit appears from the statement in the plaint to be barred by law;

Now, perusing the complete relevant law, the relevant portion has been stated for the convience and considering the above-mentioned law it can be said that as defendant has moved this application on the bases of suit being time barred so, the point number (d) is found to be applicable as per the contents of the application filed by the defendant. Now, it is left to peruse the record of the case and found whether the said point is applicable or not.

6. Now, it must to discuss the law established by the Hon'ble court with regard to the said point.

6.1) In the case of **Sumer Sing V/s. Kedarnath reported in AIR 1987 SC1926**, and in the case of **I.T.C. LTD. V/s. Debta Recovery Tribunal, reported in AIR 1998 SC634**, the Honourable Supreme Court has held that the *provisions of Order 7 Rule 11 are mandatory in nature and can be invoked at any stage of the proceedings.*

6.2) In the case of **S.P.Chengalvaraya Vs. Jagannath AIR 1994 SC 853**, It was held that the court of law are meant for imparting justice

between the parties. One who comes to the court, *must come with clean hands. One who is found not to come with clean hands, then his case is liable to be rejected under said law.*

6.3) In a recent decision of the **Bhau Ram vs. Janak Singh 2012 and Church of Christ vs. Ponnaimman Educational trust (2012) 8 SCC 706**, and the Supreme Court in Saleem Bhai vs. State of Maharashtra and others has observed as follows: "A perusal of Order 7 Rule 11 CPC, makes it clear that the relevant facts which need to be looked into for deciding an application there under are the averments in the plaint. The trial court can exercise the power under Order 7 Rule 11 CPC at any stage of the suit before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. *For the purposes of deciding an application under Clauses (a) and (d) of Rule 11 or Order 7 CPC., the averments in the plaint are germane: the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage.*

7. **BRIEF FACTS OF PLAINT:** - It is found that the disputed property is having Revenue Survey Number 101, 111, 82, 187, 119 having block number 97, 103 (new number 125), 85 (new number 87), 177 (new number 210), 107 (new number 105) and Gamtal portion 0/3 situated at Valak, Kamrej, Surat. Bhikhabhai Vajir is an ancestor of plaintiff and defendant number 1 to 8 belonging from Sunni community of Muslims. Bhikhabhai Vajir died

intestate on 11/6/1968 and names of his wife Dhanubhen and son (Mohammadbhai and Rasulbhai) and daughter (Bibibehn and Aminabhen) was mutated vide entry number 733 dated 7/7/1968. Later wife and daughters of Bhikhabhai Vajir voluntarily waived their right over disputed property and same was mutated vide entry number 733 dated 4/7/1987 and Mohamadbhai and Rasulbhai become the sole owners. Then Mohammadbhai dies on 20/12/1996 leaving behind wife Amina and son Yunus, Khalil, Sadik and daughter Jamila, Johra and their names were mutated vide entry number 1126 dated 09/09/1999. After death of Amina and Yunus, names of all other heir were entered accordingly as per Sunni law. Plaintiff further state that she resides in Canada and when he returned to India she got to know that property number 97 and 103 have been sold to defendant number 10 and 9 without his consent. Plaintiff further contend that on the bases of POA dated 5/2/2007 defendant number 1 did such sale but at time of execution of POA plaintiff was in Canada. On the bases of POA of dated 5/2/007, defendant number 1 did sale of property number 97 on 7/2/2007 in favor of defendant number 10 registered on 9/2/007 and sale of property number 103 on 22/2/2007 in favor of defendant number 9. Hence, the need was felt to file the said suit for Administration, declaration, permanent injunction, cancellation of sale.

8. After perusing the records of the case and the law established in the above case law, it must to only focus on the contents of the plaint and to find out whether it falls in the category of Order 7 Rule 11 of the CPC, 1908. In the said consideration, the arguments from both the sides were heard at length

and considered the judgments produced from both the sides and will be discussed as and when found applicable and necessary. Further two separate applications are moved by defendant number 1 vide exhibit 37 and defendant number 10 vide exhibit 28 for rejection of plaint and plaintiff has filed separate reply for each application. Perusing both the applications vide exhibit 28 and 37 it is found that defendant wants said plaint be rejected as relief claimed is barred by law that is suit is time barred because sale of 2007 is challenged in 2016 which he should have done in 2010 that is he is found to be delayed with 6 years. Now, plaintiff claims that suit is not time barred and other side claims that suit is time barred, so it is must to peruse contentions at length and discuss point wise to reach to a conclusion;

9. **RELIEF BARRED BY LAW DUE TO LIMITATION:** - In the said discussion the argument from both the sides along with case laws are taken into consideration. The said application is related to rejection of plaint and for the same contents of plaint, cause of action and relief plays the important role. In the suit, the plaintiff has claimed various reliefs which need separate discussion with objection taken by side.

(a) Plaintiff in Para in 14 (A and B) of plaint claims for declaration and administration of property with separation of share with help of court commissioner of deceased Bhikhabhia vajir: Now, plaintiff and defendant number 1 to 8 are found to be legal heirs of Bhikhabhai Vajir is not objected by either side. So, being Hindu law or Muslim law each and every legal heir is entitled for claiming share from his ancestors.

Now, plaintiff has asserted that she resides in Canada and when she return she got to know about such sale and then she demanded for partition, mesne profits and her share from defendant number in June 2016 where he failed to response properly and need was felt to file the said suit.

Per contra, over said fact other side has taken objections that plaintiff was well aware with the sale and her suit is clearly time barred and she has no right to bring his suit within time by clever drafting.

This court finds that one can claim partition within 3 years from opening of partition or when one denied someone share. Now, ***Hon'ble Apex Court in Syed Shah Gulam Ghouse Mohiuddin vs. Syed Shaha Ahmad Mohiuddin kamisul Qadri AIR 1971 SC 2184*** observed that heirs of deceased Mohammedan holds estate of deceased as tenant in common without dividing it and one of them subsequently brings suit for recovery of his share, the period of limitation for such suit does not run against him from the date of death of deceased but from the date of express ouster or denial of title. Further ***Hon'ble Cal High Court in case Shantidevi Ram vs. Janradan Ram AIR 2015 (NOC) Cal 509*** observed that conclusion has to be drawn from plaint only when an application is filled for rejection of plaint for limitation. Now, this court finds that plaint is germane, so from the bare perusal of the plaint it is found plaintiff is legal heir of deceased Bhikhabhia Vajir of whose property she is claiming administration and separation of share. Further she has specifically mentioned in plaint that in June 2016 she asked for her share which was denied, hence she got right to file said suit from date of ouster

by defendant number 1 and hence it can be said that relief for administration with division of share is well within time and maintainable.

(b) Plaintiff in Para in 14 C of plaint claims that sale dated 22/7/2007 by defendant number 1 in favor of defendant number 9 of property having block number 103 new number 125 on bases of bogus Power of attorney dated 5/2/007 should be declared void: Now, plaintiff has asserted that she resides in Canada and when she returned she got to know about such bogus POA dated 5/2/2007 done in favor of defendant number 1 in her name and bogus sale dated 22/2/2007 done by defendant number 1 in favor of defendant number 9 of property number 103 new number 125. Plaintiff relied on AIR 2015 SC 2485, AIR 2015 (NOC) Cal 509, AIR 2016 (NOC) Bomb 262, observing that court while deciding an application under Order 7 Rule 11 has to confine to averments made in plaint and if from bare perusal of averment plaint is found to be time barred then suit can be rejected.

Per contra, other side has taken objection that sale is registered sale of 2007 which has effect of deemed knowledge and one can challenge same within 3 years hence suit is beyond limitation and plaint is liable to rejected. In this relief, defendant number 9 is the only affecting person still he has not mention separate application for rejection of plaint but relied on 2016 (0) AIJEL-HC 236184, 2012 (0) AIJEL-HC 228986, 2012 (0) AIJEL -HC 227390, 2007 (0) AIJEL-HC 217477.

Now, court finds that plaintiff is legal heir and has share in deceased Bhikhabhia Vajir property. Further she resides in Canada and she has mainly contended that POA dated 5/2/2007 is bogus because during that period she was not in India and hence she cannot sign or go before any notary for signing. Now, this court finds that plaintiff is challenging POA dated 5/2/2007, so the sale dated 22/2/007 on bases of such POA also comes under cloud. This court finds that sale dated 22/2/2007 of property number 103 is registered and produced vide a mark 3/12. Now, date of registration is considered as deemed knowledge is settled law but actually in this case, such sale was done on bases of POA which is also challenged by plaintiff as being fraud. So, actually such POA and subsequent sale are true or bogus is a main bone of contention making it a main triable issue and merely they cannot be decided without taking evidence at this juncture and suit cannot be rejected. *Further, from the bare perusal of the plain reading of the plaint this suit is not found to be time barred because plaintiff claims that at time of execution of POA she was residing in Canada and when she returned, she got to know about such bogus POA and sale and then challenged. Hence, court finds that though sale is of 2007 is registered but as such sale was done on bases of POA which is challenged by plaintiff makes it triable issue as someone interest is involved and one cannot be allowed to take fruits of fraud and guard of limitation law.* Further, when sale done by one person and he himself challenge after due time can be said to be delay but in this case plaintiff is challenging sale done on bases of bogus POA having plaintiff's signs which in itself a triable issue. Furthermore, when

complete suit is found to be time barred then only plaintiff is liable to be rejected and plaintiff cannot be rejected merely if one or two reliefs out of all are found to be barred by law.

(c) Plaintiff in Para in 14 D of plaintiff claims that sale dated 9/2/2007 by defendant number 1 in favor of defendant number 10 of property having block number 97 on basis of bogus Power of attorney dated 5/2/007 should be declared void: Now, plaintiff has asserted that she resides in Canada and when she returned she got to know about such bogus POA dated 5/2/2007 done in favor of defendant number 1 in her name and bogus sale dated 9/2/2007 done by defendant number 1 in favor of defendant number 10 of property number 97. Plaintiff relied on *AIR 2015 SC 2485*, *AIR 2015 (NOC) Cal 509*, *AIR 2016 (NOC) Bomb 262*, *observing that court while deciding an application under Order 7 Rule 11 has to confine to averments made in plaintiff and if from bare perusal of averment plaintiff is found to be time barred then suit can be rejected.*

Per contra, other side has taken objection that sale is registered sale of 2007 which has effect of deemed knowledge and one can challenge same within 3 years hence suit is beyond limitation and plaintiff is liable to be rejected. In this relief, defendant number 10 has relied on 2013(1) GLR 398, AIR 2000 SC 3146, 2012(0) GLHEL-HC 228986, AIR 2005 SC 2897.

Now, court finds that plaintiff is legal heir and has share in deceased Bhikhabhia Vajir's property. Further she resides in Canada and she has

mainly contended that POA dated 5/2/2007 is bogus because during that period she was not in India and hence she cannot sign or go before any notary for signing. Now, this court finds that plaintiff is challenging POA dated 5/2/2007, so the sale dated 9/2/007 on bases of such POA also comes under cloud. This court finds that sale dated 9/2/2007 of property number 97 is registered and produced vide a mark 3/11. Now, date of registration is considered as deemed knowledge is settled law but actually in this case, such sale was done on bases of POA which is also challenged by plaintiff as being fraud. So, actually such POA and sale are true or bogus is a main bone of contention making it a triable issue and merely they cannot be decided at this juncture and suit is not liable to be rejected. *Further, from the bare perusal of the plain reading of the plaint this suit is not found to be time barred because plaintiff claims that at time of execution of POA she was residing in Canada and when she returned she got to know about such bogus POA and sale and then challenged. Hence, court finds that though sale is of 2007 is registered but as such sale was done on bases of POA which is challenged by plaintiff makes it triable issue as someone interest is involved and one cannot be allowed to take fruits of fraud and guard of limitation law.* Further, when sale done by one person and he himself challenge after due time can be said to be delay but, in this case, plaintiff is challenging sale done on bases of bogus POA having plaintiff's signs which in itself a triable issue. Furthermore, when complete suit is found to be time barred then only plaint is liable to rejected and plaint cannot be rejected merely if one or two relief out of all are found to be barred by law.

(d) Plaintiff in Para 14 E of plaint claims that defendant number 9 and 10 be restricted from further alienating or transferring the said property or developing it: Now, plaintiff in the said suit has challenged POA and sale on the bases of such POA, so plaintiff has equal right to claim further relief of injuncting buyer that is defendant number 9, 10 from further alienating or transferring the property number 103 and 97 as she is claiming her right over such property.

(e) Plaintiff in Para 14 F of plaint claims that defendant number 1 be restrained from alienating or transferring other property such 87, 110, 105: Now, plaintiff has asserted that on the bases of bogus POA defendant number 1 has sold property 97 and 103 to defendant number 9 and 10 which he as challenged in relief number 3 and 4. Now, plaintiff in Para 1 of the plaint has describe different type of properties having *Revenue Survey Number 101, 111, 82, 187, 119 having block number 97, 103 (new number 125), 85 (new number 87), 177 (new number 210), 107 (new number 105) and Gamtal portion 0/3 situated at Valak, Kamrej, Surat.* Now, out of total 5 properties he has challanged sale of property number 97 and 103 and over rest of other 3 properties still she is claiming undivided share as being legal heir of deceased Bhikhabhai Vajir. So, as seen that out of total 5 properties of deceased Bhikhabhai vajir 2 were sold by defendant number 1 in favor of defendant number 9, 10 so right and interest of plaintiff being legal heir of deceased Bhaikhabhai vajir over other remaining properties cannot be denied

which makes it said suit alive and out of the purview for rejection of plaintiff application. Hence, it can be said that plaintiff has right to claim such relief.

10.CONCLUSION: - Hence, from above discussion it can be said that said suit is not barred by any law. Further defendant number 1 and 10 filed said application for rejection of plaintiff on the basis of point that said suit is barred by law limitation as plaintiff is challenging sale of 2007 in 2016 and no other objection with regard to no cause of action etc. are not taken hence not discussed at all.

**** Further the Honouable Supreme Court in case of Dilboo vs. Dhanraj (2000)7 SCC 702 and in Honouable Gujarat High Court in case of Becharbhai Zaverbhai Patel Vs. Jashben LAWS (GLH) 2012 has observed that considering the averments in the plaintiff and the supporting documents produced along with the plaintiff if the suit is clearly barred by the law of limitation, Plaintiff require to be rejected U/O 7, Rule 11(d). Now, in the said suit plaintiff has specifically mentioned that at time of execution of POA he was in Canada, so there is no question of making POA hence subsequent sale on bases of such POA is ipso facto comes under cloud. Hence, from the plaintiff itself it is found that plaintiff came to know about such fact in June 2016 and then he finally filed said suit for declaration, permanent injunction and cancellation of document. Hence, it can be seen that from plaintiff itself it is not found beyond limitation as plaintiff has clearly shown his triable case well within time limit. Further, as prescribed in Limitation law, one can challenge any document within 3 years of**

registration of date of knowledge of such document. In the said case, plaintiff has clearly mentioned in his plaint she got to know about such sale in June 2016 so accordingly said suit is found to be well within time.

**** Urvashibehn and others vs. Krishnakant Manuprasad Trivedi 14 December 2018**, *It is fairly well settled that, so far as the issue of limitation is concerned, it is a mixed question of fact and law. It is true that limitation can be the ground for rejection of plaint in exercise of powers under O.VII R.11(d) of the CPC. Equally, it is well settled that for the purpose of deciding application filed under O.VII R.11 only averments stated in the plaint alone can be looked into, merits and demerits of the matter and the allegations by the parties cannot be gone into.* Hence, bare perusal of plaint shows that said suit is well within time and cannot be rejected at threshold at this stage and even if it is thought that limitation is dispute then it is found to be mix question of law and fact which cannot be decided without taking due evidence from both sides.

**** In the case of Prem Narain vs. Mahabir Jain 2018 All HC 2018, Prem Sinhg and others vs. Birbal and others 2006 Insc 262 SC**, Hon'ble court observe that there is limitation of 3 years for instituting suit for cancellation of sale deed, as per Article 59 of the Limitation Act, will be reckoned from the date of knowledge of the execution of the sale deed. Now, limitation period for challenging sale deed is 3 years but from when person get to know of such sale and in this case plaintiff get to know about such sale of 2007 in June 2016 when she returns from Canada and when denied for her share and that too such sale was done on the bases of bogus POA which is also challenged.

** The Apex Court in the case of **Chotanbehn and others vs. Kiritbhai Jalkrushnan Thakkar 2018 (0) SC 315**, court observed in Para 12 that 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 defense available to the defendants or the plea taken by them in the written statement or any 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 and 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 realized 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 realized 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) but said order was reversed by High Court. Finally, court concluded that 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). This court find that fact of said case are found to be identical to present case because in both cases sale deed was challenged. Now, in said case, plaintiff is challenging two sale deed of 2007 which according to him she got to know in June 2016 when she returns from Canada as they were done on the bases of bogus POA of plaintiff which is also challenged by plaintiff. Further in said case also plaintiff being family member of defendant number 1 is challenging POA and sale done later on bases of such POA from his relative brother and in today's erina usually such issue have been increasing due to increasing value of property, so said is found to be filled immediately after getting knowledge of such bogus POA and subsequent, hence cannot be said to be beyond limitation.

**** Now, in the case of *Ruplal Sathi vs. Nachatar Singhil 1982(3)***

SCC 487 Hon'ble Apex Court held that rejection of plaint only of a part of the plaint is not permissible under Order 7 Rule 11 of CPC 1908. Therefore, where in a suit the plaintiff has claimed several reliefs, one of which is alleged to be barred under any law, the entire plaint shall not be liable for rejection under Order 7 Rule 11. Hence, it can be seen that defendant filed said application for rejection because plaintiff is challenging sale of 2007 in 2016 that is after due time. Now, court finds that sale was done of 2 properties out of total 5 properties and hence apart from cancelation of such sale, plaintiff has claimed administration and division of his share and also claimed injunction against defendant number 1 with regard to other properties which are not sold. Hence, it can be said that when all relief claimed are barred by law then only plaint can be rejected but in said case plaintiff has shown a triable case with regard to all relief and even if it is concluded that relief of challenging sale of 2007 is time barred still the suit is alive as other relief are equally validly claimed and are triable issue.

**** Now, court finds that Hon'ble Apex Court in AIR 2006 SC 1828 observed that merely court has an opinion that plaintiff may not succeed cannot be ground for rejection for plaint.** Hence, merely thinking that plaintiff is challenging two sale deed of 2007 in 2016 might cause him trouble in succeed of case but that does not mean that he does not have a triable case. Winning or losing is an end of trail but in between that there is a complete trail which gives scope to both sides to adduce their evidence in order to prove their aversion. So, it would be premature to decide at this stage that plaintiff might not succeed, hence suit should be rejected.

** So, the court find the said application of rejection of plaint by defendant number 1 and 10 is not maintainable as plaintiff has succeed in showing his triable case. Further, this court finds that plaintiff has claimed declaration, permanent injunction, administration with division of share and cancellation of document. So, administration of property with division of share of Bhikahbhai Vajir property is her right as being her legal heir and on such bases she has right to claim permanent injunction against defendant number 1 from further alienating other properties which are not sold. In the same way, plaintiff has clearly mention in his plaint that sale dated 9/2/2007 and 22/2/2007 were done on bases of her POA dated 5/2/2007 when she was not in Canada, hence the validity of such POA and subsequent sale come under cloud and which cannot be kept open discussion until and unless decided after taking evidence as it becomes main triable issue for the said suit. Hence, from above discussion limitation point becomes mix question of law and fact for the case at hand. So, the court feels appropriate to pass following order: -

ORDER

1. The present application vide exhibit 28 and 37 is hereby disallowed.
2. No order as to cost.

Signed and pronounced in the open Court today on 10th May of 2019

Date: 10/05/2019
Place: Kathor

(Rahul. K. Agarwal)
[GJ01341]
2nd Additional Civil Judge
Kathor