

Order below exhibit-13

1. Present application is filed by the defendants under provision of the Order -7 Rule-11(D) of Code of Civil Procedure,1908 on the ground that plaintiff's suit is barred by the law of Limitation. It is stated that plaintiffs have knowledge of the sale deed of the 1993 year and they have also admitted names of the defendants before competent authority in the year 2009 and therefore they have to file suit within 3 years from that but they have not do so hence suit is out of limitation. Further it is stated that in cause of action they have stated that cause of action starts from the 1988 when lease agreement was made and therefore also plaintiffs suit is out of limitation and it is also stated that no cause of action arise for this suit for the plaintiffs hence, requested to allow this application and reject the suit.
2. Plaintiff has filed his reply vide exhibit -14 wherein they have denied the facts of the defendants application and stated that application of the defendants is got up and false and filed to mislead the court and also stated that they have file this suit immediately they have got knowledge about the same and from the date of knowledge they have filed the suit in limitation. Further it is stated that since 1993 plaintiffs are enjoying peaceful possession of the suit land and therefore they have file this suit on the ground of adverse possession . Hence, this application is filed for to misguide court and therefore requested to reject the same.
3. It is not disputed that while considering application under Order 7, Rule 11(A)&(D) of the Code of Civil Procedure, the Court is required to consider the averments in the plaint and supporting documents

produced along with plaint. However, it cannot be disputed that if on the face of it and even considering the averments made in the plaint, it is found that the suit does not disclose any cause action or barred by any law, the plaint can be rejected in exercise of powers under Order 7 Rule 11(A) & (D) of the Code of Civil Procedure.

4. In the present case the plaintiff has filed the present suit and prayed for the cancellation of the sale deed which was executed on 22/11/1993 vide Registration NO:- 696 and also prayed to declare him as owner on the ground of adverse possession. Upon perusal of the plaint plaintiffs have stated that their deceased father has taken suit lands on lease from its original owners dated 72/1988 for 50 years with all the amenities and construction therein for Rs.1200/- p.a. as rent and Rs. 30000/- was paid at that time to the original owners by the father of the plaintiffs and agreement to said effect was also made on the Stamp of Rs.20/-. Further it is stated that since then they are leaving on and cultivating the same suit lands and earnings their livelihood from it and also stated that electric connections are running in their name at above suit lands and they are paying taxes of the same lands and since 1988 they are in possession without any hurdles and complaint. Further it is also stated that they are cultivating the suit lands since long and therefore they have tried to enter their name as farmer of the said land but defendants No 2 to 6 have filed objection against that and after hearing same competent authority has decided in favour of the plaintiffs and added their names as farmers and against that defendants have filed appeal in the deputy collector at Savli wherein said order of Mamlatdar was reversed and against which deceased father of the plaintiffs has filed revision application No RTS/RA/303/2012 wherein order of the deputy collector confirmed by the Collector dated 7/1/2015 and in the

year 2012 in proceedings of RTS/RA/303/2012 plaintiffs have got the copies of the documents of defendants and thus they know about the same in the year February , 2015 that suit lands were sold to defendants No 2 to 6 in the year 1993 by registered sale deed. Further it is stated that they have no knowledge about the same and they have never come to them to take possession of the suit lands and have filed this suit asking for prayer to cancel said sale deed. This is in nut shell case of the plaintiff. After considering the whole plaint and the documents supported with it I cannot found any ground for the rejection of the plaint under Order -7 Rule -11 (A) because plaintiffs have already disclose his cause of action for filling this suit and at this stage whether cause of action arise for the plaintiff is true or false it cannot be decided without taking evidence.

5. Looking to the present application of the defendant, main ground taken for the present application of the limitation as the sale deed was registered in the year 1993 and suit filed in the year 2015 hence it is clear delay of 23 years and plaintiffs have not filed this suit within 3 years from the date of its execution as per the Article -59 of the Limitation Act. Ld. Advocate of the defendant has submitted that date of registration is considered to be the date knowledge because after registration the instrument or document becomes public document and anyone has access of the same therefore as per the plaint sale deed of the suit land becomes public document from the date of the registration i.e. 22.11.1993 and suit must be filed within three years from there and hence the suit of the plaintiff is barred by Limitation Act and requires to be rejected under the provision of O-7 R-11(d) of the Civil Procedure Code. Advocate of the defendant has also filed his detail written submission and also stated that even if the plaintiffs does not have knowledge of the sale deed executed in the year 1993

but during the revenue proceeding started from 2009 onwards they have got the knowledge of the sale deed and hence starting from 2010 they have not filed suit within 3 years from there hence, considering the same also suit is out of limitation and requires to be rejected. Further he has also discussed certain other authorities of the Hon'ble High Court and Supreme Court. Which are as under;

GLR-2013(1)P. 51 Kanjibhai Bhgvanjibhai Patel V/s Nanduben Shamjibhai Sorathiya -In the very case hon'ble High Court has also stated held that plaintiff has knowledge of the cause of action before six years and same is clearly transpires from the plaint itself and therefore reject the plaint under O-7R.11 (D) of CPC.

2. In support of his submission Ld Advocate of the defendant has submitted the judgment of the Hon'ble Gujarat High court reported in **G.L.R. Vol.54(1) Page-398**, wherein, it was held that

"considering averments in plaint and supporting documents produced along with plaint if suit is clearly barred by law of limitation, plaint require to be rejected under Order 7, Rule 11(d). In case of suit challenging registered document, date of registration becomes date of deemed knowledge. By clever drafting and vague averments suit which is otherwise barred by law of limitation cannot be brought within limitation"

I have gone through all the above Judgments where in it is held that according to discussion above made and rejected the plaint under the provision of O-7 R.11 (D) of CPC on the Ground of barred by law of limitation but at the same time in cases before the Apex Court and High Court it is found clearly from the plaint and attached documents itself shows

that suit is barred by Limitation and no evidence required for to prove the same.

6. Ld. Advocate of the plaintiff has also argued this application at length and stated that issue of Limitation is always mix question of fact and law and it can only be decided after taking evidence and only after completion of the trial the said issue can be decided along with the other issues. Further he has also argued that as per the provision of O-7 R-11 (d) of CPC wherein the expression “barred by any law” does not include the operation of the Limitation Act.

7. Ld. Advocate of the plaintiffs have also filed some authorities

which are as under:

2007(14)SCC Page 183 C. Natrajan v/s Ashim Bai

Wherein hon’ble Supreme Court has held that limitation would not commence unless there has been a clear and unequivocal threat to right claimed by the plaintiffs. In the present suit there is dispute between parties about possession and therefore Hon’ble Supreme Court has decided to set aside High Court Decision to reject the plaint on the ground that issue in regards to the possession is required to be framed.

However, Ld. Advocate of the plaintiffs has also produced other authorities but considering the issue in question and considering facts of the said authorities said are of different facts and with due respect to the said authorities, same is not helpful at this stage to plaintiff as they are not fit with the facts of this case.

8. Looking to the arguments of Advocates of both the parties I would like to refer a judgment of the Hon’ble Supreme court reported in

2005(7)SCC Page-510, wherein the issue of Limitation and rejection of the plaint was before the Apex court in a suit filed for the specific performance of the contract and in the said case Hon'ble Supreme Court has held that "Rules of Limitation are not meant to destroy the rights of the parties but they are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The law of Limitation fixes the life span for such legal remedy for the redress of the legal injury so suffered. Further Hon'ble Supreme Court has also held that provision of the O-7 R-11(d) of CPC applies in those cases where the statement made by the plaintiff in the plaint, without any doubt or dispute shows that the suit is barred by any law in force and finally held that suit before the Apex court did not contain the statement in the plaint can be said to be barred by law. The statement in the plaint without addition or subtraction must show that is barred by any law to attract the application of O-7 R.11 of the code of Civil Procedure."

9. Now keeping in mind above ratios of the above referred judgments of the Hon'ble Supreme Court and Hon'ble Gujarat High Court and other Hon'ble High Courts perusing the plaint of the suit wherein it is admitted position that sale deed of the suit land was executed on 22/11/1993 but plaintiffs have also stated that they are not in knowledge of the same till Feb, 2015 and it is also noticeable that after executing registered sale deed in 1993 suit is filed after 23 years but upon plain reading and plain interpreting the plaint and documents supported to it is not clearly and unambiguously found that plaintiffs have knowledge of the said disputed sale deed at the time of its execution and hence I am of the opinion that for to get clear time of cause of action evidence is required along with the other issues and same can be decided along with other issues of the suit

therefore, I am with respect to the authorities produced by the Ld Advocate of the defendant found that said authorities is not helpful to his case in the present facts. Hence, as I do not found clear and unambiguous statement from the plaint and documents filed along with it that suit is barred law of limitation to reject the same under the provision of O-7 R.11 (D) of CPC and therefore evidence so far with other issues including the issue of Limitation is required to be decided after taking evidence and hence, I partly allowed this application and passes following order as under;

Order

- Defendants application is partly allowed.
- Issue regarding Limitation is framed which is as under
“ Whether plaintiffs suit is barred by law of Limitation??

Order pronounced in open court today on 6th day of May,2016

Date 6/5/2016

Waghodiya

(Mehul R Patel)

ACJ & JMFC, Waghodiya

G.J.01194