

REGULAR CIVIL SUIT NO. 25/2023

ORDER BELOW EXH. 16 :

- (01) The defendant no. 1 has filed this application under Order - VII Rule - 11 of the Civil Procedure Code for rejection of plaint. It has been submitted by the defendant that the plaintiff has filed the suit for the cancellation of sale-deed and for the declaration and for perpetual injunction. It has been stated by the defendant that the land bearing Block/Survey No. 298 (Old Survey Nos. 475, 476, 477, 480, 481) ad-measuring 03-79-19 situated in Village Borisana, Ta. Kalol, District Gandhiangar is the subject matter of this present suit. It is stated that the defendant no.1 is owner of the said land and the land is in possession of the defendant no.1. It is stated by the defendant that the plaintiff has filed this present suit for declaration on sole basis of registered sale-deed and the said sale-deed was executed on the basis of power of attorney. Such document of power of attorney was cancelled by the defendant no.1 and after such cancellation, the plaintiff and the power of attorney holder i.e. defendant no.3, in collusion with each other had executed the sale-deed in favour of the plaintiff. It has been further stated that since 2009, the plaintiff is aware of the facts with regard to all transactions of the suit land, however, he has filed the suit in the year 2023. The suit therefore, is barred by the law of limitation and required to be rejected in terms of clause (d) of Order VII, Rule 11 of Civil Procedure Code.
- (02) The plaintiff has filed the reply of application, wherein the plaintiff has submitted that the application is not fall in any clause of Order VII, Rule 11 of CPC. The plaintiff has submitted that the court has no permission

to look into the defence submitted by the defendant. It has been further submitted that the only contentions of plaintiff are requires to be taken in consideration. He further submitted that the issue of limitation, being a mixed question of law and facts, cannot be considered without taking of evidence.

- (03) Heard, learned advocates for the respective parties. Perused the contentions of plaintiff and documents annexed with the plaintiff. It is well-settled that at the time to decide an application under Order - VII Rule - 11 of C.P.C., the court has only look into the averments made in the plaintiff. It is also well-settled that the defence set-up by the defendants in written statement cannot be taken into the consideration. The court is duty bound to read the plaintiff meaningfully and it has to be read as a whole. It is also well founded preposition of the law that on meaningful reading of the plaintiff, if the plaintiff found on the vexatious claim, the court can exercise the power under Order VII, Rule 11 of the Civil Procedure Code. In the case on hand, from the prayer clause, it appears that the plaintiff has filed the suit for cancellation of sale-deed dated 14.02.2023, executed by the defendant no.1 in favour of defendant no.2. The plaintiff further prayed for the declarative relief to the effect that the registered sale-deed which was executed in the year 2009 in favour of plaintiff is true and genuine. Having perusal of the averments of the plaintiff, it appears that the plaintiff has purchased the suit land in the year 2009. It is the specific case of plaintiff that though the plaintiff had purchased the suit land by way of registered sale-deed, such land is again sold by the defendant no.1 to defendant no. 2 by way of registered sale-deed dated 14.02.2023 and the plaintiff therefore has

filed this present suit for cancellation of sale-deed. Having perusal of the plaint and documents annexed with the plaint, it comes to this court that there is no dispute with regard to the facts that the plaintiff has purchased the suit land from the power of attorney holder of defendant no.1. It is also not in dispute that the defendant no.1 has executed the sale-deed of suit land in favour of defendant no.2 on 14.02.2023. By this present suit, the plaintiff has challenged the action of the defendant no.1. The plaintiff has further challenged the validity of registered sale-deed executed by the defendant no.1 in favour of defendant no.2. The plaintiff in his plaint clearly pleaded the fraud. Having meaningful reading of the plaint as a whole, the court is of the clear view that the claim put for by the plaintiff requires consideration and same cannot be rejected at threshold.

- (04) One of the grievance as raised by the learned advocate for the defendant is that the suit is hit by Section 43 of the Gujarat Tenancy & Agricultural Land Act, 1948. Learned advocate for the defendant has submitted that the suit land was restricted land and the sale-deed in favour of plaintiff is null & void, since, it was executed for the restricted land. It is true that the sale or agreement to sale for the land which is restricted by nature cannot be made in the absence of previous sanction of the Collector. It is also well-settled that in a case of restricted land, any transfer, if made without the sanction of the Collector shall be void. Here in the case on hand, whether the land was restricted or not is a question which is in dispute and that question may be decided after taking full fledge evidence. Further, the issue of limitation, being a mixed question of law and facts, cannot be

considered at this stage and therefore, suit cannot be held barred by law of limitation. In the context of totality of the averments in the plaint and the relief claimed, the plaint cannot be rejected under the provision of Order VII, Rule 11 of the Civil Procedure Code. In a view of above stated reason, court is of the opine that the dispute between the parties required to be adjudicated on the basis of evidence. The court is of the view that the plaint cannot be rejected threshold. Therefore, the application filed under Order VII, Rule 11 of CPC is deserves to be rejected. Hence, I passed following order.

// ORDER //

➤ **The application stand rejected.**

➤ **No order as to cost.**

Order Pronounced in the open court on 02.08.2023

Date : 02.08.2023

(Ashishkumar N. Patel)

Place : Kalol.

Principal Senior Civil Judge,
Kalol.