
IN THE COURT OF 2nd ADDL.SENIOR CIVIL JUDGE, AT VADODARA.

GJVD020054952022

Sp.C.S. No.31/2022**Order Below Exh.-13**

(1) Present application has been given by the defendants no.1 to 4 under Order 7 Rule 11 (d) of C.P.C. for rejection of the suit. The brief facts of the application are as under:

The plaintiffs have filed the present suit for Cancellation of Gift deed and for cancellation of Sale deed dated 10.05.2019, declaration and for perpetual injunction regarding suit property land bearing Old R.S. No.12, admeasuring 1160.31 sq. m. of village Sevasi, Ta. Dist. Vadodara. As per their knowledge, a registered sale deed dated 27.05.1939 was executed in favour of the Ashabhai Mathurbhai's guardian i.e. Bai Lakhi @ widow of Maturbhai Talsibhai by Maganbhai Motibhai Patel which is produced at Mark 4/6. Even mutation entry executed on the name of Ashabhai Mathurbhai. Thus, the property was belonging to father of plaintiffs and defendant no.1 to 3, and it was not an ancestral property. Therefore, such contention of the plaintiffs that said property was purchased from the income of an ancestral property is not true. Mathurbhai died before purchasing said survey no.12/1 to 12/4 by executing sale deed on 27.05.1939. It is further stated that Ashabhai Mathurbhai was holding suit property as purchased by himself and a partition of ancestral property-agriculture land was done between his sons namely Chandrakantbhai(deft.no.1), Ramnikbhai(plaintiff) and Nitinbhai Ashabhai (deft.no.2) by execution of partition on 19.01.1980. Thus, Patel Ashabhai got Revenue Survey no.13/1 admeasuring hector 0-42-49 sq.meter and Ramnikbhai Ashabhai got R.S.no.441 admeasuring hector 0-51-60 sq. meter and Patel Nitinbhai Ashsabhai got survey no.263/2 admeasuring hector 0-44-52 sq. meter and R.survey no. 1036 admeasuring hector 0-01-01, said partition was also mutated by entry no.1902

dated 14.11.1980, which was certified thereafter. Thus, ledger of revenue record of Ashabhai Mathurbhai and his three sons separated, Even before granting mutation entry of partition deed, daughter of Ashabhai namely Varshaben (plaintiffs no.2), Manjulaben (defendant no.3) gave their consent by statement before Talati, it is produced vide Mark 4/5. The plaintiffs had not objected for same before Revenue Officer, as per judgment of Vineeta Sharma vs. Rakesh Sharma AIR 2020 SC 3717. The daughters got status of coparcener as per amendment of Sec.6 of Hindu Succession Act on 09.09.2005, before that only male person was considered as coparcener. Even, a proviso was added in Sec.6 (1) of the Act regarding any property disposed before 20.12.2004 shall not be applied Sec.6 of the Act. The plaintiffs have filed present suit as they are as coparcenar of the suit property under Sec.6(1) of the Act. It is further stated that plaintiffs no.1 executed a contract before Notary on 04.11.2020 for relinquishing their share from the Survey no.12 block no.7 khata no.536 of Sevasi Khanpur TP-1, Vadodara admeasuring 3940.69 sq. mtr. in favour of the defendant no.1 and 2, in lieu of it, the defendant no.1 & 2 relinquishing their share from survey no.441, block no.400, khata no.1128 admeasuring hec. 0-51-60 sq. mtr. in favour of plaintiffs and their father had also given Rs.5 lacs by cheque no.025363 on 17.07.2020 from Survey no.12, block no.7 of Sevasi Khanpur to three brothers and also given assurance that no one has raised any dispute or controversy regarding partition but the plaintiffs have cleverly drafted plaint and not mentioned about said contrat and suppressed the material facts. Thus, the suit property is of sole ownership of deceased Ashabhai and it was given to the defendant no.1 & 2 by executing a registered gift deed dated 10.05.2019 for land admeasuring 1160.31 sq. meter and also handover the possession to them and remaining land admeasuring 3940.69 sq. meter was sold out to the defendant no.4 by executing registered sale deed on 10.05.2019 therefore, no cause of action is arisen for the suit. Thus, it is required to be rejected under Or.7 R.11 (d) of C.P.C.

(2) The plaintiffs have filed reply to this application vide Exh.16, plaintiffs have denied facts of this application and further stated that suit

property is an ancestral property. Partition deed dated 19.01.1980 is null and void and illegal and no consent given by the plaintiffs no.2 in mutation entry no.1902 dated 14.11.1980. Therefore, their right cannot be destroyed by said mutation entry and their legal right is survived in suit land. It is further stated that facts mentioned in para 2 & 3 of the application is not true and relinquishment deed dated 04.11.2020 is illegal, void and not acceptable to the plaintiffs and they have requested to reject the application.

(3) I have heard the ld. advocate Mr.Vijay Goswami for the defendants and Mr.I.N.Bhat for the plaintiffs. For deciding present application, i frame the following issues.

ISSUES:

1. Whether the plaintiffs suit is barred by law and no cause of action, and it is required to be rejected under Order 7 Rule 11 (a) & (d) of the C.P.C.?
2. What order?

(3.1) For my conclusion to issue no.1 with reasoning are as under:-

Now, considering the arguments of both sides and documents produced on record, it is cardinal principal of Law that, while deciding application under O.7 R.11 (a) to (d) of the C.P.C., 1908 only pleading and whatever documents produced by the plaintiffs side are taken into consideration. Now, on plain reading at Exh.1 and documents produced vide Mark.4/1 to 4/12, the plaintiffs have described cause of action in para-7 of Exh.1 that "defendant no.4 purchased suit property from father of the plaintiff by registered sale deed and also executed gift deed in favour of the defendant no.1 & 2 on 10.05.2019, which was came to their knowledge on 8.6.21, therefore cause of action arisen". The plaintiffs have filed present suit for Cancellation of Gift deed and for cancellation of Sale deed dated 10.05.2019, for declaration and for perpetual injunction regarding suit property bearing Old Revenue Survey No.12, admeasuring 1160.31 sq. m. of village Sevasi, Ta. Dist. Vadodara, its TP! and FP 55 of Khanpur Sevasi.

The plaintiffs have produced documentary proof by list of Exh.4. Copy of Panipatrak of R.S.no.12 of village Sevasi for the period of 1937-38 to 1942-43, therein name of Raiji Ashabhai mentioned as owner of the land at Mark 4/1, Copy of Panipatrak of R.S. no.263 of village Sevasi for the period of 1937-38 to 1942-43 is produced at mark 4/2, therein name of Bai Shiv widow of Narsinh Garbad mentioned as owner of the land, Copy of Panipatrak of R.S. no.441 of village Sevasi for the period of 1937-38 to 1942-43 is produced at mark 4/3, therein name of Bai Shiv window of Narsinh Garbad mentioned as owner of the land. Statement of Land Urban and Ceiling Act, 1976 dated 02.09.1976 for survey no.12/1, 13/1, 263/2, 441, 1036 & 17 is produced at mark 4/4, therein name of Ashabhai Mathurbhai Patel is mentioned as holder of the land. Papers of mutation entry no.1902 is produced vide Mark 4/5. There are statements of Ashabhai Mathurbhai Patel dated 14.11.1980 with partition deed dated 21.01.1980 produced, Copy of notice under Sec.135(d) of Bombay Land Revenue Code Act for mutation entry no.1902 dated 14.11.1980 is also produced and Statement of Manjulaben Ashabhai(defendant no.3) and Varshaben Ashabhai (plaintiff no.2) before Talati cum Mantri on 14.11.1980 regarding relinquishment of their share in favour of plaintiffs no.1, defendant no.1 & 2 and deceased Ashabhai Mathurbhai for the survey no.12(suit land), survey no.13/1,263/2,441,1036,17. There is also attached statement of plaintiff no.1 with defendant no.1 & 2 regarding no objection as to entry made for partition made between them for survey no.12,13/1,263/2,441,1036,17. Copy of record of rights is produced vide Mark 4/6 for entry no.1/2, it is regarding purchasing of Survey no.12/1 to 12/4 by Ashabhai Mathurbhai on 27.05.1939, which is supported version of the defendant that said land was purchased by deceased Ashabhai Mathurbhai from his owner Maganbhai Motibhai Patel. Then, another mutation entry no.55 dated 18.11.1952 is regarding partition by oral contract between brothers for Survey no.12/1, 441, 1036. Copy of registered gift deed dated 10.05.2019 is produced vide Mark 4/7, therein mentioned that Ashabhai Mathurbhai Patel (Doner) gifted property land bearing Survey no.12, block no.7 of village Sevasi, Ta. Dist. Vadodara admeasuring 1160.31 sq. m., to Chandrakant Ashabhai(deft.no.1) and Nitinbhai Ashabhai(deft.no.2). therein

also mentioned that said property was purchased by Ashabhai Mathurbhai Patel (Doner) from original owner Maganbhai Motibhai Patel on 29.04.1939 by sale deed no.669, there is also mentioned that said land is also converted for non-agriculture purpose by order of Collector, Vadodara on 08.02.2019 and due to love and affection between the parties it was executed. So, execution of gift deed is admitted position between the parties but the plaintiffs are claiming suit land as their ancestral property, but contention of sale deed is not supported to the version of the plaintiffs. Copy of sale deed executed by Maganbhai Motibhai in favour of Ashabhai Mathurbhai on 29.05.1939 for the survey no.12/1 to 12/4 of village Sevasi is produced vide Mark 4/8. The plaintiff has contended that said suit property was purchased by Mathurbhai Tadsibhai Patel from income of ancestral property on the name of minor Ashabhai Mathurbhai. But It is also on record that Mathurbhai Tadsibhai died before said sale deed and no any other document for stating that it was purchased from income of their ancestral property. Copy of disputed sale deed no.5323 dated 10.05.2019 is produced vide Mark 4/9 therein, Ashabhai Mathurbhai Patel sold land bearing R.S. No.12, block no.7 of village Sevasi, Ta. Dist Vadodara admeasuring area of 5109 sq. m. in favour of the defendant no.4 Shridhar Infrastructure. There is also stated that said land was purchased by him(Ashabhai) on 29.04.1939 from its original owner Maganbhai Motibhai Patel. Copy of Zone Certificate of VUDA for block no.400 dated 01.02.2022 is produced vide Mark 4/10. Copy of village form no.7/12 of R.S. No.400, old Survey no.441 is produced Mark 4/11 therein name of plaintiffs no.1 is mentioned as holder and agriculturist of said land on 15.09.2021. Copy of photographs dated 07.02.2022 regarding construction activity in the R.S. No.12, Block No.7 is produced Mark 4/12/1 & 4/12/2. So it's N.A. land.

(3.2.) The defendants have relied upon following provision and judgments, which are as under :-

- Section 6 of the Hindu Succession Act, 1956, it has held that 16. Devolution of interest in coparcenary property (1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by

the Mitakshara law, the daughter of a coparcener shall,- (a) by birth become a coparcener in her own right in the same manner as the son; (b) have the same rights in the coparcenary property as she would have had if she had been a son; (c) be subject to the same liabilities in respect of the said coparcenary property as that of a son, and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener: Provided that nothing contained in this sub-section shall affect or invalidated any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.

...(5) Nothing contained in this section shall apply to a been effected before the 20th day of December, 2004. Explanation. For the purposes of this section "partition" means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908) or partition effected by a decree of a court. In present case, the suit property was purchased by Ashabhai Mathurbhai vide sale deed dated 27.05.1939 and Mathurbhai died before execution of said sale deed. At that time, Ashabhai Mathurbhai was minor therefore, he was mentioned as "આશાભાઈ મથુરભાઈ સગીર વતી બાઈ લક્ષ્મી તે મથુરભાઈ બરસીની વિધવા". Even, said purchased lands was divided between his sons Chandrakant (deft. no.1), Ramnikbhai (plaintiff), Nitinbhai (deft. no.2) and himself by partition deed dated 19.01.1980 and as per partition deed, suit land R.S. No.12 and 1036 was kept with himself(Ashabhai) and its mutation entry no.1902 dated 14.02.1980 was entered in revenue record accordingly, therein, statement of plaintiffs and defendant no.1 & 2 and deceased Ashabhai Mathurbhai were recorded and partition of land was finalized not only in the record but in reality. It is admitted position that said mutation entry no.1902 has not challenged thereafter and partition made between the concerned parties were binding to them as per settled law. It is also settled that no registration is required for such partition by mutual family settlement agreement between the family members. Therefore, it transpire that suit land was purchased by deceased Ashabhai Mathurbhai Patel, he owned and occupied upto execution of gift deed and sale deed in favour of the defendant no.1,2 & 4. Even the plaintiffs and defendant no.3 have already waived their right earlier in 1980. So, rule of

estoppel is applied them. Even, as per provision of Hindu Succession Act, the daughters cannot claim for such property which was divided and dissolved before the amendment of 2005 of the Act. Even the daughters had also given their consent in said partition and relinquished their share. Even, the plaintiff no.1 has relinquished his share as per partition dated 19.01.1980, and he also got land bearing survey no.441 of village Sevasi. Therefore rule of estoppel is applied to them after passing of long period.

- AIR 1977 SC 2421 in the case of T. Arivandanam v. T.V. Satyapal and Anr. Civil P.C. (5 of 1908), S.35A, O.7 R.11 - *Rejection of plaint - False or vexatious claims - Duty of court and counsel. 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, the trial Court should exercise its power under O. 7, R. 11, C. P. C. taking care to see that the ground mentioned therein is fulfilled. The trial courts should 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. If the trial Court is satisfied that the litigation was inspired by vexatious motives and altogether groundless it should take deterrent action under S. 35A. The counsel, as an officer of justice, can also contribute to the cause of justice by screening wholly fraudulent and frivolous litigation and by not collaborating in shady actions. Petition dismissed.* In present case, it is clear that suit land can not be prima facie considered as ancestral land, Even if it considered for sake of argument though, the plaintiffs have already relinquished their share earlier in 1980. Because such land was owning by Ashabhai Patel. After purchasing said land, Ashabhai Mathurbhai became sole owner of suit property R.S. No.12 in 1980 and no one moved against his ownership and occupancy till his life time. Looking to the another partition deed dated 21.01.1980, Then the plaintiffs have again executed one contract before notary in favour of the defendant no.1 & 2 for suit land survey no.12 about relinquishing their share from the land and the defendant no.1 & 2 have also relinquished their share from survey no.441 block no.400 admeasuring Hector 51-60 sq.meter and also received Rs.5 lacs by cheque no.025363 on 17.07.20 and also admitted

position of earlier partition made in presence of their father and said facts are important to the suit but not mentioned in the plaint by the plaintiff. Even suit land was subsequently granted for non-agriculture purpose by the VUDA. So, the plaint can be said to be based upon contention contrary to the record. which may be meritless in the sense of not disclosing the clear right to sue therefore, it can be exercised power under Or.7 R.11 of C.P.C. and it is clear that drafting has created the illusion of cause of action and it seems to be irresponsible law suit. Therefore, said case law can be applied in favour of the defendant.

- AIR 2020 SC 3717 in the case of Vineeta Sharma v. Rakesh Sharma and Ors. observed that, (E) Hindu Succession Act (30 of 1956), S.6(5) Explan. (as amended by Act 39 of 2005) - Coparcenary right - Plea that status of coparcener conferred on daughters cannot affect oral partition - Plea of oral partition cannot be accepted as statutory recognized mode of partition effected by deed of partition duly registered under Registration Act - Unless and until plea is supported by public documents and partition evinced in same manner as affected by a decree of Court - Plea of oral partition, rejected. Registration Act (16 of 1908), S.17.

127. A special definition of partition has been carved out in the explanation. The intendment of the provisions is not to jeopardise the interest of the daughter and to take care of sham or frivolous transaction set up in defence unjustly to deprive the daughter of her right as coparcener and prevent nullifying the benefit flowing from the provisions as substituted. The statutory provisions made in section 6(5) change the entire complexion as to partition. However, under the law that prevailed earlier, an oral partition was recognized. In view of change of provisions of section 6, the intendment of legislature is clear and such a plea of oral partition is not to be readily accepted. The provisions of section 6(5) are required to be interpreted to cast a heavy burden of proof upon proponent of oral partition before it is accepted such as separate occupation of portions, appropriation of the income, and consequent entry in the revenue records and invariably to be supported by other contemporaneous public documents admissible in evidence, may be accepted most reluctantly while exercising all safeguards. The intendment of Section 6 m of the Act is only to accept the genuine partitions that might have taken place under the prevailing law, and are not set up as a false defence and

only oral ipse dixit is to be rejected outrightly. The object of preventing, setting up of false or frivolous defence to set at naught the benefit emanating from amended provisions, has to be given full effect. Otherwise, it would become very easy to deprive the daughter of her rights as a coparcener. When such a defence is taken, the Court has to be very extremely careful in accepting the same, and only if very cogent, impeccable, and contemporaneous documentary evidence in shape of public documents in support are available, such a plea may be entertained not otherwise. We reiterate that the plea of an oral partition or memorandum of partition, unregistered one can be manufactured at any point in time, without any contemporaneous public document needs rejection at all costs. We say so for exceptionally good cases Where partition is proved conclusively and we caution the courts that the finding is not to be based on the preponderance of probabilities in view of provisions of gender justice and the rigor of very heavy burden of proof which meet intentment of Explanation to Section 6(5). It has to be remembered that courts cannot defeat the object of the beneficial provisions made by the Amendment Act. The exception is carved out by us as earlier execution of a registered document for partition was not necessary, and the Court was rarely approached for the sake of family prestige. It was approached as a last resort when parties were not able to settle their family dispute amicably. We take note of the fact that even before 1956, partition in other modes than envisaged under Section 6(5) had taken place.

129. we answer the reference as under:

v) In view of the rigor of provisions of Explanation to Section 6(5) of the Act of 1956, a plea of oral partition cannot be accepted as the statutory recognised mode of partition effected by a deed of partition duly registered under the provisions of the Registration Act, 1908 or effected by a decree of a court. However, in exceptional cases where plea of oral partition is supported by public documents and partition is finally evinced in the same manner as if it had been affected by a decree of a court, it may be accepted. A plea of partition based on oral evidence alone cannot be accepted and to be rejected outrightly. Said law is applicable to this court and as per settled law and as per Sec.6 (5) of Hindu Succession Act, in case of Co-parcenary right, plea that status of coparcener conferred on daughters

cannot affect oral partition. Plea of oral partition cannot be accepted as statutory recognized mode of partition affected by deed of partition duly registered under Registration Act. Thus, unless and until plea is supported by a document and partition evinced in same manner as affected by a decree of court. In present case, the earlier partition made between the parties was also mutated in the revenue record and invariably supported by other contemporaneous public document which is admissible in evidence. The intention Sec.6 of the Act is to only accept the genuine partition that has taken place under the prevailing law and are not set up as a false defense, when such defense is taken by the daughter about her right as coparcener, the court has to be very careful in accepting the same and only if very cogent, impeccable and contemporaneous documentary evidence in shape of public document in support are available, such plea may be entertained, not otherwise. In said case, also settled that the exception is carved out by us as earlier execution of registered document for partition was not necessary and the court was not rarely approached for the sake of family prestige. It was approached as last resort when parties who are not able to settle their family dispute amicably. Hon'ble S.C. also held that we take note of the fact that even before 1956, partition in other modes then envisaged under Sec.6 (5) had taken place..... there is clear legislative departure with respect to proof of partition which prevailed earlier; thus, the court may recognized the other mode of partition in exceptional cases based upon continue evidence for long time in shape of public document not mere stray entries then, only it would not be in consonance with the spirit of provision of Sec.6(5) and its explanation. In present case, a partition made between the plaintiffs and defendant no.1 & 2 and deceased Ashabhai Mathurbhai was a written document and also, brought on the revenue record and also verified by the Revenue officer and certified said mutation entry on the basis upon partition deed. Said record has been challenged till 2019 when it was alienated and transferred to the defendant no.1 & 2 and defendant no.4 by executing gift deed and sale deed. Therefore, said partition is endorsed by way of revenue record and other public documents admissible in evidence. Even, the plaintiffs have no other contrary proof to rebut such presumption of law

regarding public document. Therefore, the plaintiff's claim as coparcener cannot be sustained as per law which is also time barred.

- 2009 (3) G.L.H. 324, in the case of Virlkumar Natvarlal Patel vs. Kapilaben Manilal Jivanbhai & Ors. HINDU LAW - Hindu Succession Act, 1956 As Amended by Act of 2005 - - S. 6 Devolution of interest in coparcenary property Transaction, disposition or alienation of the ancestral property/coparcenary property prior to 20.12.2004 (relevant date) is saved by the proviso to Section 6 of the Act as amended by the Hindu Succession Amendment) Act, 2005 - Disposition or by the alienation including any partition or testamentary disposition of property done prior to the relevant date shall not be affected and would not become invalidate - Amendment Act, 2005 is prospective in nature - What is relevant is disposition or alienation or sale of ancestral property before the relevant 10 date - It has nothing to do with clear and marketable title of the property - Sale deed executed much prior to the relevant date, hence it cannot be declared invalid Order passed below Ex. 5, restraining the appellant who purchased the property before the relevant date, from transferring and/or changing the suit property is quashed and set aside.

13. Relying upon Sec.6 of the Hindu Succession Act as amended by Amendment Act of 2005, the original plaintiff has claimed that she has a share/right in the ancestral property i.e. disputed land in question. However, considering Proviso to Sec.6 of the Hindu Succession Act as amended by Hindu Succession (Amendment) Act, 2005 it shall not affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004. Thus, any transaction, disposition or alienation of the ancestral property/ coparcenary property prior to 20th December, 2004 has been saved. It can be said that the Hindu Succession (Amendment) Act, 2005 is prospective in nature and as per the Proviso it shall not affect or invalidate any disposition or alienation of the property which had taken place before 20th December, 2004. In the present case, admittedly the property in question has been transferred/alienated/sold by the defendant Nos.2 and 3 in favour of the defendant No.5 by registered sale deed dtd.3/3/2004 i.e. much prior to the relevant date i.e. 20/12/2004. Therefore, merely because the

consent terms entered into between the original defendant Nos.1 and defendant Nos.2 and 3 confirming the sale in favour of the defendant Nos.5 is dtd.22/12/2004 it cannot be said that the title in favour of the defendant No.5 has become clear and marketable only on and from 22/12/2004. Even on fair reading of amended Sec.6 of the Hindu Succession Act any disposition or alienation of the ancestral i property which had taken place before 20/12/2004 shall not affect or invalidate such disposition in view of amendment to Sec.6 of the Hindu Succession Act. Therefore, what is stated is disposition or alienation and not with respect to clear and marketable title. Even otherwise, as stated above, in view of consent terms/decreed dtd.22/12/ 2004 confirming the sale by the defendant No.1 confirming sale deed dtd.3/3/2004, it will relate back to the original sale deed dtd.3/3/2004. Therefore, prima facie it appears that the sale deed dtd.3/3/2004 in favour of the defendant No.5 cannot be declared invalidate in view of the Proviso to Sec.6 of the Hindu Succession Act. In other words, amendment to Sec.6 of the Hindu Succession Act shall not affect the sale deed dtd.3/3/2004 executed in favour of the defendant No.5, as the same is prior to relevant date dtd.20/12/2004. It appears that the learned trial Court has not considered Proviso to Sec.6 of the Hindu Succession Act as amended by Amendment Act of 2005. In present case, partition done prior to the act of 2005 shall not be affected and would not become invalidate, the amendment in Sec.6 of Hindu Succession Act is prospective in nature and devolution of interest in coparcenary property shall not be affected by such amendment. Therefore, it cannot be declared invalid or void or illegal. Such judgment can be applicable to this application.

-2021 SAR (Civ) 1053 in the case of Rajendra Bajoria and Ors. vs. Hemant Kumar Jalan and Ors. *R-Rejection of Plaintiff-Plaint to be rejected-If reliefs claimed cannot be Hemant Kumar Jalan and Ors. granted. Civil Procedure Code, 1908-Order VII Rule 11 and Partnership Act, 1932, Secs. 40, 42, 43, 44, 48-Rejection of plaintiff-Object of Order VII Rule 11 of CPC is that when averments made in the plaintiff read in conjunction with the documents relied upon and the relevant law, does not disclose a cause of action, the court would not permit the plaintiff to unnecessarily protract the proceedings-In the instant case,*

High Court upon an elaborate scrutiny of the averments made in the plaint, the reliefs claimed therein, the provisions of the Partnership Act and the clauses of the Partnership Deed, rightly came to the conclusion that the plaintiffs have no cause of action and that the reliefs as sought in the plaint, cannot be granted- Rejection of plaint by the High Court, therefore, upheld. T. Arivandandam v. T.V. Satyapal 1977 SAR Online (SC) 1 and Pearlite Liners (P) Ltd. v. Manorama Sirsi 2004 SAR Online (Paras 20, 21) (SC) 428, relied.

(32) What should the Court do if it finds that even taking the averments in the plaint at face value, not one of the reliefs claimed in the plaint can be granted? Should the Court send the parties to trial? We think not. It will be an exercise in futility. It will be a waste of time, money and energy for both the plaintiffs and the defendants as well as unnecessary consumption of Court's time. It will not be fair to compel the defendants to go through the ordinarily long drawn process of trial of a suit at huge expense, not to speak of the anxiety and un-peace of mind caused by a litigation hanging over one's head like the Damocles's sword. No purpose will be served by allowing the suit to proceed to trial since the prayers as framed cannot be allowed on the basis of the pleadings in the plaint. The plaintiffs have not prayed for leave to amend the plaint. When the court is of the view just by reading the plaint alone and assuming the averments made in the plaint to be correct that none of the reliefs claimed can be granted in law since the plaintiffs are not entitled to claim such reliefs, the Court should reject the plaint as disclosing no cause of action. The reliefs claimed in a plaint flow from and are the culmination of the cause of action pleaded in the plaint. The cause of action pleaded and the prayers made in a plaint are inextricably intertwined. In the present case, the cause of action pleaded and the reliefs claimed are not recognized by the law of the land. Such a suit should not be kept alive to go to trial....." In present case, the averments made in the plaint read with document relied upon and the relevant law, doesn't disclose a valid cause of action, because the plaintiffs have indirectly challenged partition prior to the amendment of 2005 in Hindu succession Act, So it should be read and refer in proper way of history of property, therefore, the plaintiffs cannot be permitted to proceed with the matter in routine manner. The plaintiffs have prayed for declaration of their

undivided share in suit property and for cancellation of gift deed and sale deed dated 10.05.2019, not supported by due to suppression of material facts and no valid cause of action because no right is survived in the suit property and the parties cannot be sent to the trial. It would be waste of time, money and energy for both the parties as well as unnecessary consumption of court time. It will not be fair to compel the defendant to go through ordinarily long drawn process of trial of suit. No purpose will be served by allowing the suit to proceed to trial since the prayer as framed cannot be allowed on the basis of pleading in the plaint.

- 2016 (0) AIJEL- HC 235154 in the case of *Hermes Marines td. vs. Capeshore Maritime Partners Fzc.* Code of Civil Procedure, 1908 - Or. 7 R. 11(a), 11(d)- Constitution of India - Art. 1 rejection of plaint - 'law' cannot be confined only to mean the enacted law contained in a statute, framed by the legislature-scope and amplitude of the word 'law' is much wider than hat and takes within its sweep the binding precedents of the Supreme Court, being the highest Court in the country - word 'law' connotes judge-made law as much as statute law - final judicial interpretation of any provision of a statute by a Court, especially the Apex Court or the final determination of any issue arising before it is very much 'law' - law s expounded by the Supreme Court is binding on all courts of the country under Article 141 of the Constitution of India - pronouncement or determination on any legal issue decided by the Supreme Court becomes the law of the land - word 'law' as occurring in Order 7 Rule 11(d) would also mean judicial precedent - if the judicial precedent bars any action, that would be the law - it is clear that the claim of the plaintiff is barred by the decision of the Supreme 1 Court in *Liverpool & London (supra)* and that of the Division Bench in *Croft Sales (supra)* - therefore, plaint of the suit is liable to be rejected under Order 7 Rule 11(d) - application allowed.

51.) In the view of this Court, 'law' cannot be confined only to mean the enacted law contained in 15 a statute, framed by the legislature. The scope and amplitude of the word 'law' is much wider than Me that and takes within its sweep the binding precedents of the Supreme Court, being the highest Court in the country. The word 'law' connotes judge-made law as much as statute law. The final

judicial interpretation of any provision of a statute by a Court, especially the Apex Court or the final determination of any issue arising before it is very much 'law'. The law expounded by the Supreme Court is binding on all courts of the country under Article 141 of the Constitution of India. A pronouncement or determination on any legal issue decided by the Supreme -Court becomes the law of the land. In present case, it is applicable and the law expounded by the Supreme Court is binding to this Court and if the plaint is inconsistent with the documentary proof of suit property, then the plaint makes no valid cause of action is therefore liable to rejected under Or.7 R.11 (a) of CPC .

- 2010 (0) AIJEL-HC 223415 in the case of Anandiben Jamabhai Patel vs. State of Gujarat. *It has held that, (9) In view of the above, at least the said statement made by the appellant before the revenue authorities relinquishing her rights in the suit land is binding to the appellant and she is estopped from contending contrary to her statement made by her before the revenue authorities in the year 1969.*

(10.) The contention on behalf of the appellant - original plaintiffs that as the relinquishment of by the appellant of her right in the year 1969 was not in writing and the same was not registered as required under sec. 17 of the Registration Act, it cannot be said that the appellant has waived her the right in the suit lands, is concerned, the same cannot be accepted. The plaintiffs cannot be permitted to take the benefit of her own wrong.

(11.) The contention on behalf of the appellant that at the most the statement made by the appellant before the revenue authorities in the year 1969 can be said to be an arrangement for the management of the lands in question is concerned, the said contention also cannot be accepted. It is the appellant who made statement before the revenue authorities voluntarily relinquishing he right from the suit land in favour of her brother Ravji Jama and she accepted the same till 1986 till the suit is filed by the appellant herein - original plaintiffs and till then no steps were taken by the appellant claiming any right, title or interest in the suit land in question. Nothing is on record that it was for management only. On the contrary, the statement shows otherwise. In present case, the plaintiffs have relinquished their rights in the suit land in the year 1980 which was not

challenged till filing of the suit, thereafter again they executed contract in 2020, which has been suppressed by the plaintiff. So, the plaintiffs cannot take plea that it cannot be accepted as per law has not registered under Sec.17 of Registration Act. Therefore, the plaintiff cannot be permitted to take the benefit of their own wrong. It also, transpired that the plaintiff who made statement before the revenue authorities voluntarily relinquishing their right from the suit land in favour of their father Ashabhai Mathurbhai Patel and they accepted the same till the suit is filed and till then, no steps were taken by the plaintiffs claiming any right, title or interest in the suit land in question is forbidden by estoppel. Therefore, the plaintiffs have no right to file present suit.

- R/ Second Appeal No.408/2019 in the case of Shri Dattatray Ganpatrao Surve vs. Heeraben d/o deceased Bhagvanbhai M Patel; decided on 23.12.2022, *However, if any person relinquishes his rights in the immovable property in a family arrangement, there is no need of such registration. The family arrangement in the shape of partition can also be oral. Therefore, if there is a oral partition between the parties and the same is acted upon by all the concerned on that basis, if there is relinquishment of right in the property by one of the family member in favour of the other family member, that relinquishment action does not require and registration. Therefore, the substantial question raised in this Second appeal is answered to the effect that in case of relinquishment of ones right, in a family partition,, does not require any registration under Sec.17 of the Registration Act.* In present case, the plaintiffs have relinquished their right in land during family arrangement by partition deed, which was executed before revenue authority, and there is no need of registration of partition deed. The family arrangement in shape of partition can also be oral and the same is acted upon by all the concerned parties. Therefore, it doesn't require any registration under Sec.17 of the Registration Act.

- 2019 (2) G.L.H. 559 in the case of Emrald Co-operative Housing Society Ltd. vs. Deceased Gulamkadar S/o Gulam Husain Abdulkadar and Bai Shakarbu and Others. *Held that, B] Code of Civil Procedure, 1908 where -Or. 7, R. 11(a)- Rejection of Plaint-30 tis Suppression of material facts leads to non disclosure of cause of action Held the plaint is liable to be rejected.*

Now to understand and examine this bare assertion in the plaint, undisputedly the revenue proceedings which were carried out by the legal heirs of Bai Shakarbu are clearly suggesting that the plaint is based upon concealment of material fact and suppression of the facts which are touching to the root of controversy and this is in view of the fact that the revenue entry which has been effected pursuant to registered sale transaction appears to have been assailed after around 30 years by the legal heirs of a deceased Bai Shakarbu and throughout the said revenue proceedings, the legal heirs of Bai Shakarbu have lost and this fact is clearly suppressed by the plaintiffs in the suit. So, even for meaningful and a reading of the plaint and the cause of action, if these revenue proceedings are taken note of, it appears to be a clear attempt on the part of the plaintiff to abuse the process so much so that during the course of hearing, the attention is drawn to the appeal as well as revisional proceedings lost under the revenue law and this factum of sale in favour of the petitioner company was very much well within the knowledge of the legal heirs even prior to 2006 when the appeal was filed. So, irrespective of objection, if the cause of action which has been stipulated in the plaint is examined as a part of a smart pleading by concealing material facts, a bald assertion is made as if the plaintiffs came to know only in the year 2010, precisely on 24.2.2010, but the said bald assertion appears to be completely misleading since it is based upon suppression of material facts. In present case, the plaintiffs have indirectly challenged partition of 1980 and the revenue entries also mutated in 1980 then, the gift deed and sale deed executed in 2019 and also changed type of use of suit land, then suit filed in 2022 when the construction activities incurred by the purchasers. Therefore, plaint is also barred by law of limitation also and the smart drafting of the plaint cannot bring the suit within four corner of law. So, it is to be considered that no cause of action and an illusion is created for filing present suit, the provision of Or.7 R.11 (d) of C.P.C can be applied.

(3.3.) The plaintiffs have relied upon the following citations which are as below:-

- R/Civil Revision Application No.405/2018 in the case of Harji Shivji Hirani and Ors. vs. Vishram Harji Hirani and Ors.; decided on 08.04.2019 therein, order of rejection passed under Or.7 R11 of C.P.C., held, *plaint which was submitted was clearly that property was ancestral property arrived from time of grandfather, it has been clearly reflected that there was a stiff protest against said transaction, defense which has been put up before Revisional Court was not permissible when not pleaded in application under Or.7 R.11 of C.P.C. Therefore, revision petition was dismissed.* The facts of the present application is different from the said case. In present case, the plaintiff has avert that the suit property is ancestral property but looking to the document attached with the plaint, suit property was purchased by deceased Ashabhai Mathurbhai. Even, it was divided by execution of partition before Revenue Authority and their statement were also recorded by the authority and the plaintiffs no.1 has been cultivating his share of land survey no.441 and it is individually occupied by him till date same as deceased Ashabhai Mathurbhai was having suit land R.S. No.12 of village Sevasi after partition made between him and three sons i.e. plaintiffs and defendant no.1 & 2 and the plaintiff no.2 and other sister had relinquished their share in whole Survey no. 13/1, 441, 263/2, 12, 1036, 17 in 1980 before Revenue Authority, and as per Section 114 of Ind. Evidence Act such mutation entries shall be presumed to be genuine and true until contrary is proved. In present case, the plaintiffs themselves produced such record of partition vide Mark 4/5 and suit land is also purchased by registered sale deed which is produced vide Mark 4/8 and mutation entry of revenue record is also produced vide Mark 4/6 and all these record have not been challenged by the plaintiffs and as per Section 110 of Ind. Evidence Act, in absence of other evidence those record can be believed for ownership. Even, after partition, deceased Ashabhai Mathurbhai Patel became sole owner of suit property survey no.12 and he executed registered gift deed in favour of defendant no.1 & 2 due to love and affection and said registered document can be presumed to be genuine and it has presumptive value as per Registration Act read with Section 114 of Ind. Evidence Act. So, said judgment cannot be applied in favour of plaintiffs.

- First Appeal No.636 of 2016 in the High Court of Gujarat; decided on 06.09.2016 in the case of Natvarbhai Samubhai Patel vs. Sushilaben and Ors. *the ld. trial court has rejected plaint under Or.7 R.11 of C.P.C. on the ground of not disclosing cause of action in the plaint. However, looking to the relief served for declaration claiming ownership on the basis of registered sale deed dated 28.02.2005, it is required to be considered. Whether non-disclosure of the aforesaid would entail the consequences of rejecting the plaint at threshold in exercise of power under O.7 R.11 of C.P.C. Held, the plaint cannot be rejected at this stage under O.7 R.11 (a) of the C.P.C. and that too on the basis of defense of the defendant. Hence, the appeal was allowed. In present case,* the plaintiffs has claimed his right over the suit property on the basis of their so called ancestral right but looking to the document attached with the plaint, it apparent that deceased Ashabhai Mathurbhai and purchased suit property and after partition in 1980 he was occupying suit property till execution of gift deed and sale deed and three sons also having and enjoying their own land as per partition and they have not challenged it upto life time of deceased Ashabhai Mathurbhai, but after death of Ashabhai, a son and daughter claiming their ancestral right over the suit land which was already disposed by deceased father in his presence. Even, the plaintiffs are indirectly challenging partition deed dated 21.01.1980 by contention in para 4, but same is not challenged before concerned authority and as per law, revenue records shall be presumed to be true and genuine as per sec.114 of Indian Evidence Act that the court may presume the judicial and official acts have been performed regularly where no contrary is proved by the plaintiffs even, not challenged till yet. Then, the limitation has been over and it has passed 43 years to said proceedings. Therefore, allegation against the record cannot be subject to the trial and the defendants cannot be dragged in futile exercise therefore, such judgment cannot be applied in favour of the plaintiffs.

So as per conclusion given above, court does not seem a valid cause of action to proceed further, I have gone through whole plaint and whole documents of the plaintiff, no case arisen for trial on the basis of averments made therein, it can be said that the said pleadings ex-facie disclose valid cause

of action, even, it is bad for delay latches and the plaint does not disclose a real cause of action and may be an illusory cause of action and the suit appears from a statement in the plaint to be barred by law of limitation also. Hence, my conclusion to Issue no.1 is given in the affirmative and plaint is required to be rejected as per O7 R.11(a) of C.P.Code. Hence, I pass the following order of Issue no.2 :

:: O R D E R ::

1. The plaint (suit) is hereby rejected under O.7 Rule 11 (a) & (d) of the Civil Procedure Code, 1908.
2. The plaintiff shall bear his costs and the costs of the defendants.
3. Decree to be drawn accordingly.

Order pronounced in the open Court today on **14th October, 2023.**

Date :14/10/2023
Place:Vadodara

(Atulkumar R. Patel)
GJ00710
2nd Addl. Sr. Civil Judge
& A.C.J.M.,Vadodara.