

ORDER BELOW EXH.19 AND 30
IN
SPECIAL CIVIL SUIT NO.263/2015.

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[1] Read both applications and heard their Ld. Advocates. Also perused written objection filed by the plaintiff side vide Exh.38 and 39 and also heard Ld. Advocate for the plaintiff side. I have also heard oral arguments of Ld. Advocates of defendant No.1 and defendant No.4 to 15 and also heard arguments of Ld. Advocate for the plaintiff and also taken into consideration written arguments filed by the Ld. Advocate of the plaintiff vide Exh.73.

[2] The Ld. Advocate Mr. D. F. Shinde appearing on behalf of one of the Director of defendant No.1 company as argued that, the plaintiff has filed bogus and frivolous suit against defendants. The defendant No.1 company is running since last 30 to 35 years over suit property and till date they are having possession of the suit property but due to some malafide intention the plaintiff has filed the present suit. He has further argued that, from the perusal of Exh.1 the plaintiff has asked rights over suit property as his father's

grandfather was farming the suit property as a Tenant and after so many long years the plaintiff has bring this suit and challenged registered Sale Deed as well as gift deed and will and all other transactions. Actually the suit premises have been purchased by late Narsinhbhai Zaverbhai and thereafter partners of defendant No.1 company have obtained necessary permission from Vadodara Municipal Corporation to construct N. J. Metal Stiffen Manufacturing Pvt. Ltd. and since long years the company is running. From the pleading of the plaintiff, it transpires that, the suit is barred by law of limitation and also bared by provisions of The Bombay Tenancy and Agricultural Land Act, 1948 and also there is no specific cause of action arisen for the plaintiff to file this suit and therefore in absence of sufficient cause of action this suit is also required to be rejected under the provisions of Order 7, Rule 11(a) and (d) of The Civil Procedure Code, 1908. In support of his argument he has produced following Judgments of Hon'ble High Court and Hon'ble Apex Courts.

- (1) Bhimaji Shankar Kulkarni. V/s. Dundappa Vithappa Udapudi and another., reported in AIR 1966 Supreme Court 166.
- (2) Gundaji Satwaji Shinde. V/s. Ramchandra Bhikaji

Joshi., reported in 978 (0) GLHEL-SC 10108.

- (3) Sau. Saraswatibai Trimbak Gaikwad. V/s. Damodhar D. Motiwale., reported in 2002 (0) GLHEL-Sc 25613.
- (4) Maharaj Shri Manvendrasinhji R. Jadeja. V/s. Rajmata Vijaykunverba Wd/o. Maharaja Mahendrasinhji., reported in 1999 (1) GLR 1261.
- (5) Satishbhai Natubhai Patel. V/s. Punjabhai Chhaganbhai Vahivatkar and POA., reported in 2010 (3) G.L.H. 788.
- (6) Motibhai Bijalbhai Bhoi and others. V/s. Sakinabhbib W/o. Sadatali Sahebali and others., reported in 1983 G.L.H. (U.J.) 44.
- (7) Nanba, Wd/o. Deceased Hemantsinh Malubha. V/s. Ajitsingh Noghubha., reported in 1975 (0) GLHEL-HC 208246.
- (8) Maganbhai Madhavbhai Patel. V/s. Patel Dhulabhai Chunibhai., reported in 1978 (0) GLHEL-HC 207101.
- (9) Smt. Dilboo (dead) by L.Rs. And others. V/s. Smt. Dhanraji (dead) and others., reported in AIR 2000 Supreme Court 3146.
- (10) Fatehji and Company and Anr. V/s. L. M. Nagpal and Ors., reported in 2015 (2) G.L.H. 345.
- (11) Anandbhai Maheshbhai Patel. V/s. Jivanbhai Paghabhai Patel – deceased & 2., reported in the High Court of Gujarat at Ahmedabad.
- (12) Om Aggarwal. V/s. Haryana Financial Corporation and others., reported in AIR 2015 Supreme Court 1288.
- (13) T. Arvindandam. V/s. T. V. Satyapal and another., reported in AIR 1977 Supreme Court 2421 (1).
- (14) Samar Singh. V/s. Kedar Nath & Ors., reported in 1988 (1) GLR 73.

[3] The Ld. Advocate Mr. V. S. Goswami appearing on behalf of defendant No.4 to 15 has argued that, the plaintiff has filed bogus and frivolous suit against the defendants and suit is not maintainable as the defendant No.4 to 15 are bonafide purchaser of the suit premises. He has further argued that, from the pleading of the plaintiff in Exh.1, the plaintiff has not shown cause of action to file the present suit. The plaintiff is having farming land situated opposite side of the suit premises and since long back years plaintiff is having knowledge that in the suit premises the defendant No.1 company is running and it is in possession of defendant No.1 and 2. He has further argued that, plaintiff in his plaint mentioned the fact that, plaintiff has filed RTS Appeal regarding mutation entries before competent authority but up to Revenue Tribunal the plaintiff's appeals have been rejected at all stages. In spite of that, the plaintiff has filed present suit only with a view to harass the defendants and having malafide intention. The Ld. Advocate further argued that, there is no sufficient cause of action to file the present suit and as per provisions of Order 7, Rule 11 (a) of the Civil Procedure Code, 1908, the present suit is required to be rejected. He has further argued that, the plaintiff comes with

the case that, his father's grandfather was a tenant as per The Bombay Tenancy and Agricultural Land Act, 1948 and farming the suit properties and therefore being a legal heirs of his grandfather, he has right, title over the suit premises but according to provisions of The Bombay Tenancy and Agricultural Land Act, 1948, the present civil Court has no jurisdiction to entertain the present suit. As per pleading of the plaintiff and as per his prayer clause, the plaintiff has challenged registered Sale Deed as well as Will and Gift Deed and other proceedings, but according to Law of limitation, the present suit is barred by law of limitation because the plaintiff has challenged the registered Will dated 17/8/1953 as well as regd. Gift Deed dated 25/4/62 and registered sale deed no.2595/2011. He has further argued that, as the plaintiff has filed the present suit after so many long years and therefore suit is not within limitation period and hence required to be rejected as per Order 7, Rule 11 (a) and (d) of the Civil Procedure Code, 1908 and in supported of his argument, he has relied upon the Judgments of Hon'ble High Court and Hon'ble Apex Courts.

- (1) Section 85 of The Bombay Tenancy and Agricultural Lands Act, 1948.

- (2) Section 59 of The Limitation Act, 1963.
 - (3) T. Arivandandam. V/s. T. V. Satyapal., reported in 1977 (0) GLHEL-SC 31368.
 - (4) Gandabhai Jinabhai. V/s Deceased Ramubhai Fakirbhai through his legal representatives and heirs Dalpatbhai Ramubhai and others., reported in 1982 G.L.H. 17.
 - (5) Sau. Saraswatibai Trimbak Gaikwad. V/s. Damodhar D. Motiwale and others., reported in AIR 2002, Supreme Court, 1568.
 - (6) Satishbhai Natubhai Patel. V/s. Punjabhai Chhaganbhai Vahivatkarta and POA., reported in 2010 (3) G.L.H. 788.
 - (7) Om Aggarwal. V/s. Haryana Financial Corporation & Ors., reported in I (2015) CLT 290 (SC).
 - (8) Becharbhai Zaverbhai Patel & ANR. V/s. Jashbhai Shivabhai Patel & ORS., reported in Gujarat Law Reporter, Vol. 54 (1) Page No.398.
 - (9) Zoharabibi D/o. Abdulrahim Banglee & 5. V/s. Thakorbbhai Maganbhai Patel & 17., reported in First Appeal No.791 of 2014, in the High Court of Gujarat.
 - (10) Anandbhai Maheshbhai Patel. V/s. Jivanbhai Raghabhai Patel – deceased & 2., reported in Civil Revision Application No.41 of 2015, in the High Court of Gujarat.
- [4] The Ld. Advocate for the plaintiff has argued that, both applications filed under Order 7, Rule 11 of the CPC are not maintainable. The plaintiff comes with a proper cause of action and it is narrated specifically in para 10 of the plaint that, when he applied for under RTI Act and got copies on

27/7/2012, plaintiff came to know that, plaintiff's grandfather was a owner of the suit premises and thereafter, as per bogus and illegal Will and Gift deed and then registered Sale Deed has been executed by defendant No.1. He has further argued that, by using such bogus and fraud documents defendant No.1 and their Directors became owner of the suit premises and therefore plaintiff has filed RTS Appeal and these proceedings are challenged up to Revenue Tribunal and also order of Tribunal is challenged in the Hon'ble High Court of Gujarat. Therefore the present suit has been filed with proper cause of action. He has further argued that, in entire pleading plaintiff has not pleaded that, he be declared as tenant of suit premises as per The Bombay Tenancy and Agricultural Land Act, 1948 and therefore suit is not barred by provisions of The Bombay Tenancy and Agricultural Land Act, 1948. He has further argued that, the defendants raised the question of limitation and the suit is filed after so many long years, but a question of limitation is only to be decided after taking evidence as it is a mixed question of law and fact. The plaintiff after getting certified copies on 27/7/12 this suit is filed within three years . Therefore the present suit is maintainable and request to

reject both applications filed under order 7, Rule 11 (a) and (d) of the Civil Procedure Code, 1908.. in support of his argument he has relied upon following Judgment of Hon'ble High Court and Hon'ble Apex Courts.

- (1) Gulabhai Ravjibhai Patel. V/s. Badriprasad Vithalrao Bende, reported in 2011 (0) GLHEL-C 225546, 2011 (3) GLR 2472, 011 JX (Guj) 821.
- (2) Bhupendrabhai Hasmukhbhai Dalwadi & Ors. V/s. Deceased Savitriben Ganumal Krishnani & Ors., reported in 2010 (3) G.L.H. 596, AIR 2006 SC 1828, (Para 10), 2008 [2] Scale 436.
- (3) Poonam Engineering Works. V/s. Delux Bearings Ltd., reported in 2007 (3) G.L.H. 607, (1999) 3 SCC, 267, 20(2) GLR, 182.
- (4) Bhanabhai Haribhai Patel. V/s. Mangabhai Mithabhai Halpati., reported in 2012 (0) AIJ-GJ 741, 1995 (2) GLR 1409.
- (5) Saburbhai hemabhai Chauhan. V/s. State of Gujarat & Ors., reported in 200 (1) G.L.H. 580, 1997 (4) GCD 234.
- (6) Sabarmati Ashram Gaushala Trust. V/s. Bahilalbhai Nanabhai., reported in 2014 (0) GLHEL-HC 230710, AIR 1979 SC 653.
- (7) S. P. Chengalavaraya Naidu (Dead) by L.Rs. V/s. Jagannath (Dead) by L.R.S and Others., reported in 1994 (10 G.L.H. 81, Civil Appeal No.994 of 1972, Order dated 18/04/1967 of the madras High Court in Appeal No.347 of 1962.
- (8) Balasaria Construction (P) Ltd. V/s. Hanuman Seva Trust., reported in 2005 (0) GLHEL-SC 37596 AIR 1987 Del 165, AIR 1996 Cal 253.

- (9) Saleem Bhai. V/s. State of Maharashtra., reported in 2002 (0) GLHEL-SC 25031, 2015 JX (SC) 211.
- (10) Surjit Kaur Gill. V/s. Adarsh Kaur Gill., reported in 2014 (0) GLHEL-SC 54874, 2005 (SCC 510, 2005 (7) Scale 3.
- (11) Orient Transport Company Gulabra. V/s. Jaya Bharat Credit and Investment Company Limited., reported in 1987 (0) GLHEL-SC 20128, AIR 1951 Cal 147.

The Ld. Advocate Mr. Maheshbhai K. Thaker has given a pursis to the effect that, he is also supporting the arguments delivered by both Ld. Advocates of defendants.

- [5] Now, considering oral as well as written arguments, the present both applications are filed by different defendants. The application below Exh.19 is filed by one of the Director of defendant No.1 company and application below Exh.30 is filed by the defendant No.4 to 15, who are the purchasers of suit premise of survey no.832. Now, the main crux of both applications is that, the plaintiff has no genuine cause of action to file present suit and plaintiff is demanding his tenancy rights over the suit premises under The Bombay Tenancy and Agricultural Land Act, 1948 and as the suit is not filed within time limit as per the limitation act, this suit be rejected under Order 7 Rule 11(a) and (d) of the Civil Procedure Code,1908. Now, on plain reading of Exh.1 the

plaintiff has narrated facts that, after getting information under the RTI Act, he comes to the knowledge that, suit premises were originally in possession and ownership of his late grandfather Lallubhai Zaverbhai and thereafter from bogus and illegal Will and Gift Deed, defendant no.1 and 2 becomes owner of Survey No.831 and 832, the plaintiff has filed Tenancy Appeal No.34/12, which is rejected by the Competent Authority and against that order he has filed appeal in the office of Collector, Vadodara and said appeal is also rejected and thereafter plaintiff has also filed Revision appeal in Revenue Tribunal, which is also rejected and against that, order the plaintiff has moved to the Hon'ble High Court to challenge the order of the Revenue Tribunal. As the plaintiff has not get justice from the Competent Authority, the present suit has been filed against defendants. In para No.10 of the plaint the plaintiff has specifically mentioned the cause of action to file the present suit and therefore the arguments of defendants side are not maintainable and citations relied upon by them are not helpful with their arguments.

[6] There is one of the main argument by the defendants side

that, the plaintiff is claiming tenancy rights over the suit premises and therefore this Court has no jurisdiction to try and decide this Suit as per provisions of The Bombay Tenancy and Agricultural Land Act, 1948. But on plain reading of the entire plaint as well as prayer clause, the plaintiff has not asked any Tenancy Right over the suit premises. The plaintiff being a legal heirs of his deceased grandfather late Lallubhai Zaverbhai filed the present suit challenging registered Will and Gift Deed and Registered Sale Deed and other proceedings and therefore the arguments of the defendant side regarding maintainability of the present suit under The Bombay Tenancy and Agricultural Land Act, 1948, are not maintainable. The citations relied upon by the defendant side on this issue are also not helpful with the arguments of defendants side.

- [7] There is one another argument on the defendants side that, suit is barred by law of limitation as the plaintiff has challenged and prayed to cancel Registered Will, Registered Gift Deed, and the registered Sale Deed. But the question of limitation is a mixed question of law and fact and it can only be decided after taking evidence and therefore the

arguments of defendant side on point of limitation is not maintainable and citations relied upon by them are not helpful with their argument.

[8] It is well settled that, while dealing the application under Order 7, Rule 11 of The Civil Procedure Code, 1908, the Court has to look into the plaint and whatever documents produced by the plaintiff side and Court has not to consider written statement or documents relied upon by the defendants side. The arguments delivered by the plaintiff side and citations relied upon by the plaintiff side are squarely applicable with his arguments.

[9] In view of the above discussion, it is made clear that, the present suit is filed with cause of action and provisions of Section 85 of The Bombay Tenancy and Agricultural Land Act, 1948, is not applicable and the question of limitation can only be decided after taking evidence and also arguments delivered by defendants side in both applications, question of law and facts are involved and it can only be decided after taking evidence and therefore provisions of Order 7, Rule 11 (a) and (d) are not applicable at this stage. Therefore in the interest of justice, I pass the following

Order Below Exh.19 and 30.

order.

:: O R D E R ::

The present applications filed below Exh.19 and 30 by defendant No.1 and defendant No.4 to 15 are hereby rejected.

Copy of this order be kept with Exh.30.

No order as to costs.

Pronounced in the open Court, today on this 31st day of March, 2016.

Date : 31/03/2016.
Place: Vadodara.

(Jayesh A. Dave)
16th(Ad-hoc) Addl. Sr.Civil Judge,
and A.C.J. Magistrate, Vadodara.
Unique ID Code GJ00712