

Order Below Exh. 33

1. The plaintiff has filed the suit for cancellation of the sale deed executed by the defendant no. 1/1 to 1/5/3 in favour of defendant defendant no. 2.

2. The defendant no. 2 has filed an application under the provisions of Order 7 Rule 11 (d) of the Code of Civil Procedure on 05.07.2017 which is recorded vide **Exh. 33** for cancellation of the plaint.

3. Brief **facts** of the application submitted by the **defendant no. 2** under the provisions of Order 7 Rule 11 (d) of the Code of Civil Procedure are as below:

3.1] The defendant no. 2 in the aforesaid application submits that as per averments in the plaint it is an admitted fact that such a sale deed is executed in favour of defendant no. 2 in the year 1995 and thereafter the defendant no. 2 to 4 have also executed the sale deed in favour of defendant no. 5 in the year 2005.

3.2] It is further submitted that the execution of the sale deed is a deemed knowledge of the fact that such sale deed is executed. Further, before selling the suit land to defendant no.5 the Title Clearance certificate is also obtained by publishing the advertisement in the Daily Gujarat Samachar. Further, Canara Bank has also issued

a public notice in Newspaper with respect to the suit property. In such circumstances, it cannot be stated and/or presumed that plaintiff was not within the knowledge of the fact that sale deed of the suit property is already executed by defendant no. 1 to 1/5/3 in favour of defendant no. 2.

3.3.] Futhermore, it is submitted that it is evident that the suit is not filed within 3 years from the date of execution of the sale deed and also within three years from the date of publication of the notice of the Title Clearance in Gujarat Samachar and also publication of the notice by Canara Bank. In this circumstances suit is hopelessly time barred and is required to be rejected under the provisions Order 7 Rule 11 (d).

4. The plaintiff has filed reply against the defendant's application vide Exh. 34. The plaintiff has stated that she has not admitted anything in favour of the defendant and the averments made in para 3 of the application are not true. It is further stated that defendant no. 2 does not obtain Title Clearance Certificate and no notice was published in newspaper hence, no person can know about transaction and therefore, plaintiff was not able to know about title of the suit property and she came to know about it only when she attended a social function therefore, the suit is not time barred. It is further stated that the plaintiff has prima facie case and the issue can be decided after taking evidence as it is question of law and facts and has accordingly prayed to reject the application. Further, it is averred that as per Article 59 and Article 110 the suit is within limitation and has prayed to reject the application.

5. The record of the suit reveals that, since long the parties have not remained present even notice to plaintiff was issued to remain present on 19.10.2022. But Ld. Adv. for the plaintiff has not remained present and have not argued on the issue of Order 7 Rule 11. Today also, when called out neither the plaintiff nor the defendant are present. Ld. Advocates for the parties are also not present. The matter is pending since long and therefore, this Court decided to decide the application filed under Order 7 Rule 11 (d). Hence, it is accordingly decided today.

6. It is settled Law that an application under Order 7 Rule 11 (d) can be filed at any stage. Further, it is also settled principle that while deciding the issue of rejection of plaint as per Order 7 Rule 11 CPC only the plaint and documents produced by plaintiff has to be taken into consideration and written statement of the defendant cannot be looked into. Relying on the above principle, the present application is accordingly decided.

It would be apt to refer some guiding observations of Hon'ble Supreme Court and Hon'ble Highcourts, which are as under.

In the case between I.T.C Debts Recovery Vs.Appellate Tribunal reported in AIR 1998 SC 634, Hon'ble Supreme Court has observed that clever drafting creating illusions of cause of action are not permitted in law and a clear right to sue should be shown in the plaint. Similarly the Court must see that the bar in law of the suit is not camouflaged by devious and clever drafting of the plaint. Moreover, the provisions of Order VII Rule 11 are not exhaustive and

the Court has the inherent power to see that frivolous or vexatious litigations are not allowed to consume the time of the Court.

In the case between Raghvendra Sharan Singh Vs. Ram Prasanna, Civil Appeal No.2960/2019 (SC), Hon'ble Supreme Court has observed that it is the bounden duty of the trial Court to ascertain the materials for cause of action. The cause of action is a bundle of facts which taken with the law applicable to them gives the Plaintiff the right to relief against the Defendant. Every fact which is necessary for the Plaintiff to prove to enable him to get a decree should be set out in clear terms. It is worthwhile to find out the meaning of the words "cause of action". A cause of action must include some act done by the Defendant since in the absence of such an act no cause of action can possibly accrue.'

In the case of K.Akbarali Vs. K.Umarkhan Sp.L.P.(Civil) No.31844/2019, Division Bench of High Court has done substantial justice by nipping in the bud, a suit which is ex facie not maintainable for want of cause of action against the defendants or any of them, thereby saving precious time as also inconvenience and expenditure to the parties to the suit.

In the case of Surjit Kaur Gill vs. Adarsh Kaur Gill reported in 2014(0) GLHEL SC 54874 Hon'ble Supreme Court has observed that language of various paragraphs in plaint and pleadings have to be seen in their entirety to ascertain its terms - for deciding application under Order VII Rule 11, one has to look at the plaint and decide whether it deserved to be rejected for the grounds raised.

7. Thus, relying on the legal provision and the guiding observatins of Hon'ble Higher Court the application is decided. In the present case, the plaintiff has prayed cancellation of sale deed, executed on 05.03.2008. The plaintiff has produced documents vide Exh. 3 wherein, it is found that name of Jivabhai is mutated on 01.01.1965 and on death of Jivabhai name of defendant no. 1/1 to 1/5 were mutated on 25.06.1980. The plaintiff has in her plaint stated that despite she being legal heir of deceased Ratansinh Dungarsinh her name was not mutated by defendant no. 1/2 to 1/5's father and grandfather and the pedigree stated that there was no other legal heir. The plaintiff has not produced such pedigree of defendants. Further, the record reveals that the suit property was sold to defendant no. 2 in the year 1995 and mutation entry of the same was effected on 01.08.1996 which is produced by plaintiff along with other documents.

8. Thus, it is ample clear that the plaintiff is having knowledge about sale of the property though, the plaintiff has in her cause of action stated that she came to know about sale deed dated 05.03.2008 only when she visited her village. The whole plaint if we read as a whole does not show that the plaintiff was not aware about mutation entries and her name as a legal heir of deceased Ratansinh was omitted by playing any fraud or misrepresentation about entering names of other legal heirs. Thus, on perusal of the plaint it becomes clear that there is no allegation of fraud or misrepresentation and plaintiff is deemed to have knowledge about sale deed executed in the year 1995 and 2008 and therefore, as per

Article 58 and 65 of Limitation Act the plaintiff has filed present suit beyond limitation and it is also found that clever drafting has been made to bring suit within limitation though there is no facts or circumstances which can be believed that there was a cause of action to plaintiff to file present suit and therefore, this Court is of the opinion that the present suit is barred by Law of Limitation and having no cause of action. It even becomes crystal clear that the cause of action as mentioned is an imaginary one and plaintiff has cleverly drafted the suit to create a cause of action, which is not a real one. Thus, relying on the above discussion I am of the opinion that the suit is manifestly barred by law of limitation and no cause of action has arisen, and therefore, the plaint is required to be rejected, hence, I pass the following order.

ORDER

1. The present plaint is rejected as per Order 7 Rule 11 (a), (d) of Civil Procedure Code, 1908.

Order pronounced on this 1st day of July, 2025 in Open Court.

Date: 01.07.2025
Place : Gandhinagar

[Chiragkumar Kalidas Pipalia]
2nd Add. Senior Civil Judge,
Gandhinagar.
Judge code GJ00994