

**IN THE COURT OF HON'BLE 3RD ADDITIONAL SENIOR CIVIL
JUDGE, KADI, DISTRICT MAHESANA**

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**ORDER BELOW EXH.94 IN SPECIAL CIVIL SUIT NO.20/2013 (OLD
SPECIAL CIVIL SUIT NO.59/2005)**

1. The plaintiffs have filed the present suit against the defendants for cancellation of the entry No.4062, dated 14/7/1988 and be mutated anew entry and for cancellation of the sale deed registered vide entry No.4841, dated 6/5/2002 in the revenue record and asked for permanent injunction against the defendants. Plaintiffs have stated that the agriculture land bearing survey NO.474 paiki and 470 which are about 16 vigha situated moje Kaiyal, Taluka Kadi, District Mahesana (**Hereinafter referred to as 'suit land' or 'suit property'**) in which entry No.4062 of heirship was mutated on 14/7/88 which was certified by defendant No.5, but did not entered the name in it, which is required to be cancelled and defendants No.1 and 2 have cheated by acting to change the tenure of the lands from new to old and got up the registered sale deed in the months of April/May, 2002 of the suit land on the name of defendant No.3 for which no sale price paid to them and said sale mutated vide entry No.4841, dated 6/5/2002 at the office of defendant No.4 and said entry certified by defendant No.5. More over defendant no. 3 also executed the sale deed in favour of the defendant no. 6,7,8 vide Regi. No. 5456- Dt.07-08-2008, as per the in addition prayer of the suit that Regi. Sale Deed No. 5456 -2008 also not binding to him and declare to be void ,

Hence, present suit is filed for cancellation of above sale deed and also effect of that sale deed in mutation of suit land i. e Entry No. 4841, dated 6/5/2002 as well as registered sale deed got up by defendants as they are the occupiers and possessor of the suit land and inter alia filed the Exh.5 application to get permanent injunction order against the defendants that

defendants not to sell, mortgage, transfer or alienate the suit land to any third party and not to illegally enter into the suit land and not to snatch away the suit land from the plaintiffs and requested the Court to restrain defendants that not to obstruct, interfere and disturb during the actual possession with the plaintiffs.

2. Upon service of summons/notice, defendants No.6 to 9, appeared through their Advocate and filed application at Exh.94 under Order-7, Rule-11 of C.P.C. In their application, they have contended that the plaintiffs have no cause to file the suit, hence under the provision of Order-7, Rule-11 of C.P.C the suit of the plaintiffs is liable to be dismissed. Further, it is contended that they have joined as third party, but plaintiffs have no reason to join them as third parties to the present suit, under the circumstance, suit of the plaintiffs is liable to be dismissed with cost.
3. Upon the application vide Exh.94 of defendant No.6 to 9. Learned Advocate for the plaintiffs have produced written arguments vide Exh.99. In which he has argued that present suit filed by the plaintiffs to get cancellation of the deed got up by the defendants, before it, previously one R.C.S. No.336/2004 is filed which is transferred as SPCS No.59/05. Further, it is argued that as per necessity arise, defendants No.6 to 9 are joined and as per provision of Order-7, Rule-11 it is mandatory to state the cause arisen for the suit and if no cause of suit is mentioned then summarily the suit is liable to be dismissed. Further, it is argued that in para-3 of the suit facts i.e. truthfulness of the suit is mentioned wherein added word that the cause of suit is arisen. Further, it is argued that contention raised by the defendants that, 'facts as stated by the plaintiffs is the part of the pleadings,' and if it is a part of the pleadings then it could not be treated as cause of the suit because no reason/cause arise without pleadings. Under the circumstance, whatever stated by the plaintiffs are the facts of the suit and under the

circumstance, suit of the plaintiff is cause less, under the provision of Order-7, Rule-11 A suit of the plaintiff is liable to be dismissed. In support of the arguments, Ld. Advocate relied upon the following judgments :

A. 1991(1) G.L.R. 261

in which it is held that, if cause of action is not stated then the suit be dismissed.

B. A.I.R 1996 DELHI – 330

in which it is also held that, if cause of action is not stated then the suit be dismissed. So, plaintiffs have not stated the clear cause of the suit, hence under the mandatory provision of Order-7, Rule-11A of C.P.C, suit of the plaintiffs be dismissed.

4. Now, considering the main issue for which the present application filed by the defendant No.9 under Order-VII, Rule-11 of C.P.C. and contended that the suit is time barred under the provision of Order-7, Rule(E) of C.P.C, so prima facie it is not necessary to adjudicate the present suit on evidence for that submission he relied on the present application. Now first of all, considering the nature of suit and jurisdiction of Court and issue regarding the suit is barred by law . First of all let we see the provision of Order-VII, Rule-11 of the Civil Procedure Code, 1908 which is stated herein below :

Rejection of plaint.- The plaint shall be rejected in the following cases:—

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;
- (c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;

- (d) where the suit appears from the statement in the plaint to be barred by any law;
- (e) where it is not filed in duplicate;

- (f) where the plaintiff fails comply with the provision of Rule 9

Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers, as the case may be within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff.

5. It is required to be noted that, it is the proposition of law and various judicial principle held by Honble Apex court - that at the time of deciding application of Order-7, Rule-11 condition precedent for it that consider the averments of the plaint and documents attached with. and, written statement filed by the defendants shall not be considered at this stage.

The plaintiff has filed the present case for declaration and cancellation of the executed documents. Against this, there is submission of the defendant side to dismiss the case of the plaintiff as there is no arisen of cause of action to file said suit. Now looking to

the submissions of both the sides, it seems that the present suit is filed by fixing the value at Rs.8,30,300/-

Now, it is the case of the plaintiff that the defendant no. 1 & 2 told the plaintiff to change the status of the agricultural land of the plaintiff by old tenure to the new tenure and got thumb impression on the blank paper and executed one Sale Deed and even not given any consideration amount to the plaintiff and the mutation - notes regarding it is lying in the office of the defendant no. 5 ,. As per the say of the plaintiff, by looking the Revenue Record, the said land is registered in the name of the defendant, therefore, the present suit is filed to reject the Deed by which the said Notes registered in the Revenue Record and also said Nondh made in the Revenue Record. Thus according to the say of the plaintiff regarding said alleged impugned Registered Sale Deed registered in the year- 2002 in favour of the , the defendant no. 3 from the defendant no. 1 & 2 and in addition defendant no. 3 also execute the sale deed in favou of the defendant no. 6 to 9 before considering the transaction , as per the contention of the plaintiff that defendant no. 1 & 2 ,, has taken in faith the plaintiff and told to change the status of the plaintiff's agriculture land from old tenure to new tenure and got received the thumb impression of the plaintiff on blank paper and executed Sale Deed on it.

Thus, plaintiff contention that aforesaid conduct, there is clear cheating to the plaintiff, and if consider the duration of transaction of sale deed i. e in the year of 2002 and filing of the suit in october 2004, so if examine the pleadings then, suit for cancellation of sale deed and permanent injunction, for that even though consider the first right of sue accure, and first become the known then also suit is within time, there is no inordinacy delay, and if plaintiff cheated by misrepresentation then he has legal right to exercise it.

With this dispute, this court presumes that the present plaintiff has cause of action to file the present suit. Under these circumstances, the said dispute is fit to take evidence on this regard.

With above observation, suit must be tested on evidence. So, in the interest of justice, I pass the following order.

ORDER

1. Present application at Exh. 94 is hereby rejected...
2. No order as to cost.

Pronounced in the open Court on this 18th Day of July, 2023.

Date: 18/07/2023
Place : Kadi.

[Aniket M. Shukla]
3rd Addl.Senior Civil Judge &
Addl. Chief Judicial
Magistrate, Kadi
[Code No.GJ01139]
District Mahesana.