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

Sp. C. S. No. 172/2022

Order Below Exh.-15

(1) Present application has been given by the defendant no.10 to 12/4 for rejection of the suit under Order 7 Rule 11 (d) of C.P.C. The brief facts of the application are as under:

The plaintiff has filed present suit for cancellation of Will of deceased Hirabhai Motibhai Patel dated 23.04.1986 & registered Sale Deed of 2007 or 2010 for bearing block/ survey no.47, 49, 52, 55, 57, 59 & 60/2 of village Tarsali Ta: Di: Vadodara against the defendants. Looking to the facts of the present suit, it is barred by law of limitation. Therefore, required to be rejected as per Or.7 R.11 (d) of the Act. It is also stated that the plaintiff has mentioned in the plaint that his mother deceased Rukhiben Hirabhai Patel executed a Will on 23.04.1986 in favour of father of defendant no.1/1 to 1/5 and defendant no.2 and father of defendant no.3/1 to 3/4 and hand over all the lands by execution of Will. Hirabhai Motibhai Patel died on 06.12.1990 then, mutation entry no. 4717 dated 15.09.1999 was recorded in favour of father of defendant no.1/1 to 1/5 and defendant no.2 and father of defendant no.3/1 to 3/4, which was certified accordingly and no appeal filed against said entry till 2022. Thus, the plaintiff filed present suit after 20 years. Thus, it is barred by limitation. Even, said beneficiary of deceased Hirabhai Motibhai Patel executed registered sale deed no.4953 dated 15.06.2007 and registered sale deed no.3878 and no.3387 dated 24.05.2007, which was also recorded by mutation entry in the revenue record. Even, said sale deeds have not been challenged within three years and it is also challenged after 11 years therefore, barred by limitation. It is also stated that defendant no.10 to 12/4 purchased suit property by registered sale deed no.5909, 5911, 5912 dated

05.06.2010 and their names also entered as owner and occupier in the revenue record. Even, said sale deeds have not been challenged within limitation upto 2013. But it has challenged after 8 years therefore, barred by limitation. Even, the plaintiff has challenged Will of deceased Hirabhai Patel after 17 years of span therefore, it is clearly barred by limitation. It is also stated that the plaintiff has challenged Will of 1986, that time he was major person. His mother and sisters challenged mutation entry no.4717 and it was instituted RTS no.33/1999 before Mamlatdar, Vadodara. But same was disallowed on 24.11.2000 and no appeal filed against said order. Therefore, he was very well aware Will of deceased Hirabhai Motibhai Patel but with false statement and contention, he has cleverly declared himself as unknown with the facts. Even, deceased Rukhiben has not raised any dispute during her life time. But her sister Bachiben @ Taraben Patel filed a suit R.C.S. no.1150/2010 regarding suit property therein, mother of the plaintiff namely Rukhiben joined as defendant no.6. Even, Bachiben Hirabhai Patel filed a suit no. 525/2000 with adjoining plaintiff's mother Rukhiben as defendant no.6 and both suit were withdrawn unconditionally by Bachiben Hirabhai Patel. Thus, plaintiff's mother Rukhiben has no right over the suit property because, she has not raised any dispute. Therefore, her son cannot file present suit as of right. It is also stated that the plaintiff has cleverly mentioned date of knowledge about suit property by getting certified copies of Sp.C.S no.320/2015 but the plaintiff has intentionally hiding true facts by clever drafting. Therefore, the defendants have relied upon 2021 Judgment of Justice J.B.Pardiwala therein observed that, " accordingly, it held the present to be a case where the plaintiffs by clever drafting of the plaint attempted to make out an illusory cause of action in order to bring the suit within limitation and hence deserved to be rejected at the threshold. In coming to such conclusion the supreme court observed that if on meaningful reading of the plaint, it is found that the plaint is manifestly vexatious and without any merit and does not disclose a right to sue, court should be justified in exercising power under Order VII Rule 11." Further it is observed in the

judgment of supreme court year AIR 2000 page no.3146 Observed that, :In the absence of any averment of proof, to show that the suit is within time,Whenever a document is registered the date of registration become the date of deemed knowledge.

In other cases where a fact would be discovered by due diligence then deemed knowledge would be attributed to the plaintiff because a party cannot be allowed to extend period of limitation by merely claiming that.....However, when it is absolutely evident either from any statement made in the plaint or from the documents relied upon by the plaintiff that the suit is barred by the law of limitation, then in such circumstances, the court should not hesitate in rejecting the plaint.

In T. Arivandanam V. Satyapal and Another, Court has held that if the plaint is manifestly vexatious, meritless and groundless, in the sense that it does not disclose a clear to sue it would be right and proper to exercise power under 7 rule 11 of the C.P.C., a mere contemplation or possibility that a right may be infringed without any legitimate basis for that right, would not be sufficient to hold that the plaint disclose a cause of action.” Defendants have prayed for rejection of suit as it is barred by law of limitation and cause of action.

(2) The plaintiff has replied vide Exh.20. She denied facts of the defendants application and also stated that after death of Hirabhai Motibhai Patel, entry of Will was entered intentionally after Nine years by the father of defendant. Even, her mother did not know about subsequent mutation entry no.4717 in the record of right. The plaintiff has referred facts of her plaint and prayed for rejection and defendant no.10 to 12/4's application.

(3) I have framed the following issue to decide the present petition.

:ISSUES:

1. Whether the plaintiff suit is barred for no cause of action and barred by limitation ? whether it is required to be rejected under Order 7 Rule 11 (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 (d) of the C.P.C., 1908 only pleading and whatever documents produced by the plaintiff side are taken into consideration.

Now, on plain reading at Exh.1 and documents produced from plaintiff side are taken into consideration documents produced vide Exh.4, the plaintiff has described cause of action in Exh.1. Present suit has been filed by the plaintiff for cancellation of Will of deceased Hirabhai Motibhai Patel dated 23.04.1986 and registered Sale Deed of 2007 or 2010 for bearing block/ survey no.47, 49, 52, 55, 57, 59 & 60/2 against the defendants. The plaintiff has mentioned cause of action that "it has come to his knowledge about Will of his mother's father by getting certified copies thereof in Sp.C.S. no. 320/2015. The plaintiff has produced copies of pedigree of Hirabhai Motibhai Patel dated 03.06.2022, death certificates of Hirabhai Motibhai and Kalidas Hirabhai Patel dated 16.05.2022, death certificates of Chimanbhai Hirabhai Patel and Chhaganbhai Hirabhai Patel dated 09.5.2022 and 29.05.2022, pedigree of Rukhiben Buddhisakar Patel dated 10.06.2022 along with death certificate of Rukhiben Patel dated 04.03.2011 vide Mark 4/1 to 4/7, those are undisputed fact. Copies of mutation entry 393, 394 & 395 dated 01.06.2022 are produced at Mark 4/8 to 4/10. Copies of mutation entry no.3655, 4717 are produced at Mark 4/11 and 4/12. Copies of Extract form no.7/12 of the suit property dated 25.04.2022 are produced at Mark 4/13 to 4/19. Copy of Will produced in Sp.C.S. no. 320/2015 is produced at Mark 4/20. Copies of Sale deed no.4953, 3878, 3387, 5909, 5911, 5912 produced in SP.C.S. no.320/2015 are produced at Mark 4/21 to 4/26. So, the plaintiff wants to show that he got copies of all the documents from the Sp.C.S. no.320/2015. But Names of defendant no.10 to 12/4 are mentioned as owners and occupier of the suit properties. No other documents produced by the plaintiff.

On examination of contention of plaintiff, the plaintiff has sought for his so called 8th share in the suit properties. So, he also claimed for partition and sought for possession for his so called share, but how it is survived is not clear as per pleading. The plaintiff has claimed as a legal heirs of deceased Rukhiben d/o Hirabhai Motibhai Patel who died on 20.06.2000. So, it has not explained that how the plaintiff does not aware about disputed Will and registered sale deeds 4953 dated 23.04.1986 and registered sale deed no.3878 dated 29.01.2007, registered sale deed no.3387 dated 24.05.2007, registered sale deed no. 5909, 5911, 5912 dated 05.06.2010 because her mother Rukhiben has already challenged fact of Will by litigation before Revenue Court and Civil Court, Said fact is suppressed by the plaintiff therefore those documents are produced by the defendant no.10 to 12/4 by documentary list of Exh.14. Even looking the plaintiff age, it about 60 years in 2023 therefore, he may be 23 years old at the time of execution of Will. Then, he may be 43 years old in 2007 and 46 years old in 2010. Even, he may be 37 years old at the time of suit no.525/2000 and RTS Case no.33/2009, wherein his mother was joined as defendant no.6 and applicant no.2. The plaintiff has no case that he was not residing with his mother or no relation with her mother during her lifetime. Even, it is settled law that date of knowledge would be date of registration of sale deed. Even the defendant no.10 to 12/4 has published notice before execution of sale deed and got title clearance certificate, which it is also suppressed by the plaintiff. Therefore it not a prima facie established that the plaintiff is entitled to get 8th share as a legal heirs of Rukhiben Ashokbhai Patel who is daughter of Hirabhai Motibhai Patel. Even decease Rukhiben Patel has not been declared as co-sharer by the Civil Court. So, it can be said that he is not an established successor of deceased Hirabhai Motibhai Patel a original owner.

The defendants no.10 to 12/4 have relied upon the following judgements which are as under :

- **2000 (0) AIJEL SC 8018, in the case of Dilboo (Dead) by Lrs. V. Dhannraji (Dead)**, it is held that, courts below had rightly held that mere statements in documents prepared by interested parties cannot establish proof of facts stated therein, courts below were right in concluding that it had not been established that predecessors in title of respondent no.1 were related and that respondent no.1 had acquired no title and had no right to claim redemption- suit filed by respondent no.1 was not maintainable- suit was barred by limitation.

- **2019 (0) AIJEL SC 63798, in the case of Raghwendra Sharan Singh v. Ram Prasanna Singh**, it is observed that suit challenging validity of registered gift deed which was barred by limitation as per Article 59 of Limitation Act. For approximately 22 years, neither plaintiff nor his brother claimed at any point of time that gift deed was showy deed of gift- during these 22 years, suti property was mortgaged by appellant original defendant and mortgage deed was executed by defendant- held, considering the averments in the plaint and bundle of facts stated in the plaint, by clever drafting plaintiff has tried to bring the suit within the period of limitation which, otherwise, is barred by law of limitation- as the suit is clearly barred by law of limitation, plaint is required to be rejected in exercise of powers under Or.7 R.11 of C.P.C.

- **R/First Appeal no.417 of 2021 with Civil Application for stay no.1 of 2020, in the case of Bhimabhai Mansibhai Kariya v. General Manger RSPL Ltd.**, it is held that on bare reading of the statement made in the plaint itself it could be said that the suit is hopelessly time barred. The void sale-deed which the plaintiffs are talking about is of the year 2013, whereas the suit came to be filed in the year 2018. It is now well-settled that even if any transaction is void, the suit has to be filed within the period of three years as provided under Article 59 of the Limitation Act. We fail to understand on what basis the plaintiffs assert that the sale deed is void.

- **2022 (0) AIJEL-SC 68357, in the case of Sree Surya Developers and Promoters v. N.Sailesh Prasad with Raja Pushpa Properties Pvt. Ltd. V. N. Sailesh Prasad; decided on 09.02.2022**, it is held that mere clever

drafting would not permit plaintiff to make suit maintainable which otherwise would not be maintainable or barred by law- if clever drafting of plaint created illusion of a cause of action, Court will nip it in bud at earliest so that bogus litigation will end at earlier stage- by asking multiple reliefs, plaintiff by clever drafting wants to get his suit challenging compromise decree as maintainable, which otherwise would not be maintainable.

So, It is settled by the Apex Court in above landmark cases that Court wouldn't permit the plaintiff to protect unnecessarily the proceeding therefore, the plaintiff has to establish that he has legal right to challenge Will of deceased and registration sale deeds of 2007 and 2010. The question then arises as to whether such a suit should be allowed to continue and to go for trial. If it is allowed to continue and go for trial then, it should not only a waste of time, money and energy for both the plaintiff and 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. It is also admitted position that the plaintiff has neither challenged any of mutation entries of the suit land nor established those contrary to the law. Even her mother Rukhiben challenged said entry of Will in the Revenue Record which was also rejected by order of mamlatdar Vadodara dated 24.11.2000 in RTS Case no.33/1999. Even Bachiben D/o Hirabhai Motibhai Patel challenged validity of Will in RCS No.1150/2010, and therein Rukhiben was also joined as defendant no.6 but it appears that she has not challenged before Civil Court. Even one Naginbhai @ Nileshbhai Budhdhisagar Patel, who is son of Rukhiben Patel filed CMA No.70/2014, therein he challenged register deeds, But said application was also rejected by the Civil Court on 31.01.2017. So, it clearly indicate that the plaintiff was well aware with disputed Will and sale deeds But cleverly mentioned cause of action as unaware upto getting cerified copies of RCS No.320/2015. The plaintiff indirectly challenging mutation entries and record of revenue But it has presumptive value and it cannot be foresight when dealing with the matter of agriculture land. Such record of rights as

presumptive value under Section 110, 114 of Ind. Evidence Act and provision of Land Revenue Code. So, such revenue record was finalized in 1991, 1999 & 2010. So, suit may be hit by provision of Land Revenue Code also. As per Article 59 of Limitation Act to cancel or set-aside instrument or decree or for the recession of contract would be filed within three years from the date of instrument because said instruments are registered instruments and mutation entry also executed on the revenue record of suit property. Therefore, it can be believed that the plaintiff had knowledge of such sale deed at the time of execution. Even as per Article 91 and 114 of the Act when the fact entitling the plaintiff to have the instrument cancel or set-aside become known to him, he has to file such cancellation of instrument suit within three years. The plaintiff has failed to challenged said sale deed of year 2007 & 2010 within three years. Even, the plaintiff has failed to challenge instrument of Will within prescribed time limit. Said Will is also a registered Will before Sub-Registrar, Vadodara. But it has also not been challenged within prescribed time limit where there is a various litigation before the Civil Court, Vadodara. The defendants have produced copies of R.C.S. No.1150/2010 by Mark 14/3 which was suppressed by the plaintiff. Therefore, it is necessary to refer here. Mother of plaintiff Rukhiben Patel also joined as defendant no.6 in the said suit. Even, said RCS no.1150/2010 was withdrawn by the plaintiff on 20.07.2013, Even the objection raised before Deputy Collector, Vadodara regarding mutation entry no.6147,6148 & 6149 regarding suit property by RTS appeal no.10/11 by mother of plaintiff was rejected and said mutation entries regarding suit properties were confirmed on 17.02.2012. Even, the defendants have purchased said properties after getting title clearance certificate upon Mark 14/16. Even, public notice also published in Gujarat Samachar on 10.09.2007. Therefore, such plea of date of knowledge cannot be considered for the plaintiff side. So, here cause of action mentioned by the plaintiff seems to be a fictitious or by clever drafting. Even, in 2019 (2)GLH 559 Emerald Co. Hsg. Ltd. vs. Gulamkadar and Others, it has held that failed in revenue proceeding subsequently suit was instituted after 4

years held that the question of limitation is not a mixed question of law and fact in light of such peculiar circumstances therefore, plaint is liable to be rejected at threshold. Smart drafting of plaint cannot bring the suit within limitation abuse of process of law cannot be allowed, registration of document is a deemed notice.

Even, plaintiff's mother deceased Rukhiben D/o Hirabhai Motibhai and wife of Naginbhai @ Nileshbhai Buddhisagar Patel filed Sp.C.S. No.320/2015. and it is contention of the plaintiff that he got to know about disputed sale deeds from Suit no.320/2015 But the plaintiff has not produced any plaint or other details of said suit. So, as per submission of the defendants, it is a suppression of material facts. So it prima facie appears that date of knowledge to the plaintiff cleverly mentioned as wrong or fictitious and Article 59 of Limitation Act provides a period of three years for a suit for canceling or setting aside an instrument from the date when the fact entitling the plaintiff to have the instrument he canceled. This Article is restricted to a suit between the parties to the instrument or their successor- in- interest. In case of **Sukaloo v. Unau AIR 1961 M.P. 176**, it is held that "a stranger to a deed has no right to dispute the validity of deed." *In present case*, the plaintiff would be a stranger because he has not established that as being heirs of deceased Rukhiben Hirabhai, he is entitled to file present suit as legal heirs of original owner. Even, it is also settled that mere statements in documents prepared by concern/ interested parties cannot establish proof of facts stated therein. Even, other family members of original owner have not supported version of the plaintiff by averments. Even, the plaintiff has suppressed facts about litigation between other claimants of suit property and plaintiff's family member namely Rukhiben Naginbhai @ Nileshbhai Patel and Naginbhai @ Nileshbhai Buddhisagar Patel i.e. R.C.S. No.1150/2010, Sp.C.S. no.412/2014 , 525/2000 & C.M.A. No.70/2014, R.T.S. appeal no.10/11. Suppression of material facts itself is a one of the ground to reject the suit where party not come with clean hand before the court. The plaintiff has clearly suppressed

material facts regarding litigation of suit property between his mother Rukhiben, Nileshbhai @ Naginbhai Buddhisagar and other defendants.

This court has read the plaint as a whole to find out whether averments disclose a cause of action or whether the suit is barred by any law ? The cause of action means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment. It means the whole bundle of material facts which are necessary for the plaintiff to prove in order to entitle him to the relief he claimed in the suit where the allegation of the plaint itself is a bogus or frivolous litigation, So it is needless to say that the suit is barred by limitation. Even, it appears to be no legal cause of action. The plaintiff has tried to create an illusion to cause of action by stating that it has come to his knowledge about Will of deceased and registered sale deed of 2007 & 2010 by getting certified copies of proof in Sp.C.S. no.320/2015. But no copies of said suit is produced alongwith. Therefore, suit is manifestly vexatious and meritless in sense of not disclosing any right to sue. Therefore, the Court should exercise power under Or.7 R.11 of C.P.C., the condition enumerated under Or.7 R.11 to exercise of power of rejection of plaint have to be strictly adhere too. I am of the opinion that by clever drafting of the plaintiff cannot bring the suit within period of limitation which, otherwise, is barred by law of limitation, the suit can be said to be clearly barred by limitation under Article 59 of the Limitation Act. The object of aforesaid provision is to speak out irresponsible law suits. The idea underlying Or.7 R.11 (a) is that when no cause of action is disclosed, the Court will not unnecessarily protect hearing of the suit. Even, there is changes in the legislative policy by amendment carried out in C.P.C., the Courts would interpret the provisions in such a manner so as to save expenses, achieves expedition and avoid the Court's resources being used upon cases which will served no useful purpose. The Court should not be used as devised to harass a litigant. It is the duty of the Court to guard against the mischief of litigant misusing the process of court by entering into a fall litigation. As per law

settled in above judgments relied by the defendants, after meaningful examination or scrutinized claim or averment made in the plaint and the document annexed thereto, if no such real cause of action found therefore the plaint has got to be rejected in view of the provision of Or.7 R.11 (a) of C.P.C. In present case, the cause of action mentioned in the plaint seems to be fictitious or frivolous and cleverly drafted upon. So, there is clear bar of under Or.7 R.11 (a) of C.P.C.

Therefore, I found merits in the present application and thus, the suit is required to be rejected straightway. Submissions made by the defendants side are squarely applicable as per law with judgments relied upon and the application of defendants can be sustained as per Order 7 Rule 11(a) and (d) of C.P.C. Therefore, I give my conclusion to issue no.1 is framed in the Affirmative and I pass the following final order of issue no. 2 in the interest of justice :-

:: ORDER ::

1. The defendant no.10 to 12/4's application of Exh.15 is hereby allowed and suit(Plaint) is hereby rejected under O.7 Rule 11(a) and (d) of the Civil Procedure Code, 1908.
2. All the Applications pending in the suit are also disposed of accordingly.
3. The plaintiff shall bear his own costs and costs of the defendants.
4. Decree to be drawn accordingly.

Order is pronounced in the open Court today on **05th August, 2023.**

Date : 05/08/2023
Place :Vadodara

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