

Special Civil Suit No.16/2017**Order under Exh.12****(O.7 R.11(a) & (d))**

1. Brief facts of the present application moved under O.7 R.11 of the Code of Civil Procedure, 1908 (for short 'the Code') under Exh.12 by defendants Nos.1 to 3 are; plaintiff has filed the present suit against defendants for injunction and other reliefs, but plaintiff has not mentioned any reasons i.e. cause of action to file the present suit. That means, present suit is without cause of action and plaintiff has not followed the procedure of O.7 R.11 and hence, this suit deserves to be rejected under O.7, R.11 (a) & (d). Plaintiff has also asked for the relief for the cancellation of sale deed, but it is not filed within three years from the execution of the sale deed and hence, this suit deserves to be rejected in view of the article 58 of the Limitation Act. Plaintiff has not mentioned the four directions of the suit property and hence, it is violation of O.7 R.3. Plaintiff has also not mentioned facts of verifying documents which are produced on affidavit. In this manner, plaintiff has violated several provisions of the Code and hence, present suit deserves to be rejected under O.7, R.11 (a) & (d) of the Code.

2. Plaintiff has filed written reply for the said application at Exh.14. After denying the allegations, he has submitted further that she has mentioned the reasons in the suit and also cause of action. Defendants have made fraud by making fraud deed regarding the suit property. Cause of action arises from the date of knowledge and hence, present suit is not barred by Limitation Act. As per the provisions of Section 17, this suit is within limitation. Four corners

of the suit properties are mentioned and hence, there is no violation of O.7, R.3. After mentioning such facts, plaintiff has requested to reject present application, in view of section 113 with section 17 of the Law of Limitation.

3. Heard both the Ld. advocates of both the parties. Perused the record and taken into consideration legal provisions. At Exh.15 written argument is produced on behalf of plaintiff, whereas Ld. advocate for the defendant has argued orally.

4. Present suit is filed on 16-3-2017. Mainly plaintiff has asked relief against the sale deed for which defendants say that it is not challenged within three years of the execution of the sale deed. Defendant has not mentioned clearly that how it is not within the limitation. Defendant has also taken the contention that present suit does not disclose cause of action, but in plaint, para No.9 clearly mentions the cause of action and which is shown as date of knowledge viz. October, 2016 and hence, present suit is filed.

5. Defendant has further submitted that four corners of suit properties are not shown in the suit and hence, it is barred under O.7, R.3, but in plaint, para 1, specifically block Number and survey number of the suit properties are mentioned. That is enough to identify the suit properties.

6. The questions involved in the present suit are of the nature that the issue of limitation is definitely a mixed question of law and facts which cannot be decided at this stage without recording the entire evidence. The issues raised by present application are of the nature that they do not have relevancy at this juncture.

7. At the stage of deciding the application of O.7. R.11, Court has to consider only facts and documents of plaint and no new fact brought by

defendant on record can be considered. But at the very same time, all the facts and law on which O.7 R.11 relies should be mentioned by the defendant in detail. The contentions have to be mentioned in the application that from which point of view plaint is unjustifiable and against the provisions of law. **But, looking to the nature and the circumstances of the present application, it is crystal clear that present application is filed with insufficient issues and clarifications which cannot be entertained at this stage.**

8. **The question, facts and circumstances mentioned in present application are mixed question of law and facts and they cannot be decided at this stage without recording the entire evidence.** Hence, present application moved under O.7, R.11 (a)& (d) cannot be allowed and if allowed, it will be seer abuse of due process of law and it shall cause greivous miscarriage of justice.

9. In view of the above discussion, present application deserves to be rejected and hence, following final order is passed under Exh.12;

:: O R D E R ::

Application at Exh.12 is hereby rejected.

Pronounced in open Court on 28th August, 2017.

Bardoli.
Date: 28-08-2017

(Dr. Manjudevi Shardaprasad Pande)
Principal Sr. Civil Judge & ACJM,
Bardoli
U.I.Code-GJ00860