

GJVD050011902024

IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE.TA:- SAVLI, DIST:- VADODARA.SPECIAL CIVIL SUIT NO.11/2024ORDER BELOW EXHIBIT-33.-----
PLAINTIFF :- Jitendrasinh Popatsinh Kumpavat

Vs.

DEFENDANTS :- Bhailalbhair Hirabhai Parmat + 12
-----**Appearance:-**

Mr.J.P.Inamdar :- Learned Advocate for the plaintiff.

Mr.M.H.Desai :- Learned Advocate for the defendant
nos.8 & 9.

1. By this order, this Court intends to dispose an application preferred by the defendant nos.8 & 9 seeking rejection of the plaint under Order-VII, Rule-11 of the Code of Civil Procedure, 1908 ('C.P.C.' for brevity). Reliefs claimed by the defendant in present application are as under:

a) *Plaintiff's plaint may be rejected under Order-VII,*

*Principal Senior Civil Judge
Ta:- Savli, Dist:- Vadodara.*

Rule-11(a) & (d) of C.P.C.

- b) Compensatory cost may be awarded in favour of the defendants.*
- c) Any other order this Hon'ble Court deems fit in the facts and circumstances of the present case.*

2. Filing of the present application led to filing of reply by Ld.Advocate for the plaintiff at exhibit-41. In this reply he has submitted that, present plaint cannot be rejected as bar of Section-43 of Bombay Tenancy and Agricultural Land Act is not applicable to the present suit. It is submitted that, on date of filing of the suit, suit land was of new tenure and hence, bar of section-43 of Tenancy Act is not applicable. Reference is also made to the recital made in the agreement to sell to the effect that, limitation will not be applicable to the agreement to sell. Again, recital which stipulates that, time was not an essence of the contract is referred. It is submitted that, plaintiff is before the Court seeking specific performance of the contract. Thus, suit is maintainable. With regard to limitation, it is stated that, till institution of the suit there was no denial by the defendant to perform their part.

*Principal Senior Civil Judge
Ta;- Savli, Dist:- Vadodara.*

It is stated that, all the grounds raised in this application requires leading of evidence. He also submitted that, all the grounds raised by this application are not enough to reject the plaintiff's plaint under Order-VII, Rule-11 of C.P.C.

3. Submissions of the Ld. Advocate of respective parties: -

3.1. The learned advocate Mr.M.H.Desai for the defendant, has produced written-argument vide exhibit-41 in support of the application. In this argument, at the outset he referred to the agreement to sell to say that, plaintiff's suit is not within limitation. It is also stated that, plaintiff has approached the Court seeking specific performance of the agreement to sell after 8 year 7 months. Thus, plaintiff's suit is hit by limitation. Reference is made to the sixth line of pg.no.4 of the agreement to sell produced vide mark-4/1. Having reference to the same, he has submitted that, suit land was of restricted tenure covered under Section-43 of Tenancy Act. He also stated that, when agreement to sell is executed without prior permission of the Collector, suit for specific performance of such agreement to sell

is not maintainable. Reference is made to Section-43 & Section-85 of Tenancy Act. Having reference to both these sections he would submit that, Civil Court does not have jurisdiction decide issue to Tenancy. After that, again reference is made to the condition which stipulates the, time for converting land in to old tenure. Thus, it is submitted that, this suit is not within limitation as time was an essence of the contract. Again, condition is referred to say that, practically agreement to sell was intended to keep alive for indefinite time. Mamalatdar's order is referred by which objections of the plaintiff and other persons were rejected in dispute case No.50/2023. Again and again, bar of Section-43 is mentioned to prayed to reject the plaint. in support of this argument, following judgements are relied upon.

- a) **Dahiben Vs. Arvindbhai Kalyanji delivered in Civil Appeal No.9519 of 2019.**
- b) **T.Arvindandam Vs. T.V.Satyapal reported as AIR 1977 2421.**
- c) **Kamala Vs. K.T.Eshwara delivered in Civil Appeal No.3038 of 2008.**
- d) **Azhar Husaain Vs. Rajiv Gandhi reported as AIR**

1986 SC 1253.

e) Rajendra Bajoria Vs. Hemant Kumar Jalan delivered in Civil Appeal No.5819-5822 of 2021.

f) Emerald Co.Operative Housing Society Ltd. Vs. Gulamkadar reported as 2019(2) G.L.H.559.

g) Vinodchandra Sakarlal Kapadia Vs. State of Gujarat delivered in Civil Appeal No.2573 of 2020.

3.2. Per contra, learned advocate for the plaintiff Mr.J.P.Inamdar carried out arguments. He would start his arguments by stating that, on date of the filing of the suit, suit land was not new tenure land. Thus, bar of Section-43 is not applicable. He also submitted that, in this suit, whether persons who have executed agreement to sell in favour of the plaintiff were really declared as tenant or not, is matter of evidence. During his arguments, he has referred to Section-32G of Tenancy Act. He impressed upon the fact that, as per Section-32M of Tenancy Act amount was paid or not requires leading of evidence. He also submitted that, in this suit, whether as per certificate issue by competent authority whether, defendant nos.1 to 7 falls within ambit of protected tenant or is not, requires to be decided after taking

evidence. He has also stated that, as agreed between parties, time is not an essence of the contract. He also relies upon the fact that, after accepting amount from the plaintiff, sale-deed is executed in favour of the third party by defendant nos.1 to7. Which shows mala-fide intention of the said defendants. Having argued about validity of agreement to sell to enforce right of the plaintiff, he prayed to reject this application.

4. Scope and ambit of Order-VII, Rule-11 of C.P.C.

4.1. At the outset, the present application and submissions call for a determination of the ambit and scope of order-VII, rule 11 of the C.P.C. Hon'ble Supreme Court in **Dahiben v. Arvindbhai Kalyanji Bhanusali (Gajra) dead through legal representatives, (2020) 7 SCC 366 : 2020 SCC OnLine SC 562** explained in detail the applicable law for deciding the application for rejection of the plaint. The relevant paragraphs of the said decision are reproduced below:

"11. 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 to comply with the provisions of rule 9:

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of exceptional nature for correction the valuation or supplying the requisite stamp-paper, 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.

23.2. The remedy under Order VII Rule 11 is an independent and special remedy, wherein the Court

is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.

23.3. The underlying object of Order VII Rule 11 (a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11 (d), the Court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

*23.4. In **Azhar Hussain v. Rajiv Gandhi** [13] this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court, in the following words : (SCC p.324, para 12)*

12. The whole purpose of conferment of such power is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the Court, and exercise the

mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary civil litigation, the Court readily exercises the power to reject a plaint, if it does not disclose any cause of action.

23.5. The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order VII Rule 11 are required to be strictly adhered to.

23.6. Under Order VII Rule 11, a duty is cast on the Court to determine whether the plaint discloses a cause of action by scrutinizing the averments in the plaint[14] read in conjunction with the documents relied upon, or whether the suit is barred by any law.

23.7. Order VII Rule 14(1) provides for production of documents, on which the plaintiff places reliance in his suit, which reads as under:

14. Production of document on which plaintiff sues or relies. (1) Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in Court when the plaint is presented by him and shall,

at the same time deliver the document and a copy thereof, to be filed with the plaint.

13 1986 Supp SCC 315. Followed in Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba, 1998 SCC OnLine Guj 281 : (1998) 2 GLH 823

14 Liverpool & London S.P. & I Assn. Ltd. V. M.V. Sea Success I, (2004) 9 SCC 512

(2) Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.

(3) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

(4) Nothing in this rule shall apply to document produced for the cross examination of the plaintiffs witnesses, or, handed over to a witness merely to refresh his memory. (emphasis supplied)

23.8. Having regard to Order VII Rule 14 CPC, the documents filed alongwith the plaint, are required to be taken into consideration for deciding the

application under Order VII Rule 11(a). When a document referred to in the plaint, forms the basis of the plaint, it should be treated as a part of the plaint.

23.9. In exercise of power under this provision, the Court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.

23.10. At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration[15].

23.11. The test for exercising the power under Order VII Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in Liverpool & London S.P. & I Assn. Ltd. v. M.V.Sea Success I which reads as : (SCC p.562, para 139)

139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from

reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed.

15 Sopan Sukhdeo Sable v. Charity Commr., (2004) 3 SCC 137

*23.12. In **Hardesh Ores (P.) Ltd. v. Hede & Co., (2007) 5 SCC 614** the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact. **D.Ramachandran v. R.V.Janakiraman, (1999) 3 SCC 267.***

23.13. If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order VII Rule 11 CPC.

23.14. The power under Order VII Rule 11 CPC may be exercised by the Court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial, as held by this Court in the judgment of **Saleem Bhai v. State of Maharashtra, (2003) 1 SCC 557**. The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in Azhar Hussain (supra).

23.15. The provision of Order VII Rule 11 is mandatory in nature. It states that the plaint shall be rejected if any of the grounds specified in clause (a) to (e) are made out. If the Court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the Court has no option, but to reject the plaint.

24. Cause of action means every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment. It consists of a bundle of material facts, which are necessary for the plaintiff to prove in order to entitle him to the reliefs claimed in the suit.

24.1. In **Swamy Atmanand v. Sri Ramakrishna Tapovanam, (2005) 10 SCC 51** this Court held:

24. A cause of action, thus, means every fact, which if traversed, it would be necessary for the plaintiff to prove an order to support his right to a judgment of the court. In other words, it is a bundle of facts, which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act, no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded (emphasis supplied)

*24.2. In **T. Arivandandam v. T.V. Satyapal, (1977) 4 SCC 467** this Court held that while considering an application under Order VII Rule 11 CPC what is required to be decided is whether the plaint discloses a real cause of action, or something purely illusory, in the following words: (SCC p. 470, para 5)*

5. The learned Munsif must remember that if on a meaningful not formal reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order VII, Rule 11 C.P.C. taking care to see that the ground mentioned

therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing (emphasis supplied)

*24.3. Subsequently, in **I.T.C. Ltd. v. Debt Recovery Appellate Tribunal, (1998) 2 SCC 170** this Court held that law cannot permit clever drafting which creates illusions of a cause of action. What is required is that a clear right must be made out in the plaint.*

*24.4. If, however, by clever drafting of the plaint, it has created the illusion of a cause of action, this Court in **Madanuri Sri Ramachandra Murthy v. Syed Jalal, (2017) 13 SCC 174** held that it should be nipped in the bud, so that bogus litigation will end at the earliest stage. The Court must be vigilant against any camouflage or suppression, and determine whether the litigation is utterly vexatious, and an abuse of the process of the court.*

..

*28. A three-Judge Bench of this Court in **State of Punjab v. Gurdev Singh, (1991) 4 SCC 1 : 1991 SCC (L&S) 1082** held that the Court must examine the plaint and determine when the right to sue first accrued to the plaintiff, and whether on the assumed facts, the plaint is within time.*

The words right to sue means the right to seek relief by means of legal proceedings. The right to sue accrues only when the cause of action arises. The suit must be instituted when the right asserted in the suit is infringed, or when there is a clear and unequivocal threat to infringe such right by the defendant against whom the suit is instituted. Order VII Rule 11(d) provides that where a suit appears from the averments in the plaint to be barred by any law, the plaint shall be rejected."

4.2. Thus, it is clear that the above provision viz., Order VII Rule 11 CPC serves as a crucial filter in civil litigation, enabling courts to terminate proceedings at the threshold where the plaintiff's case, even if accepted in its entirety, fails to disclose any cause of action or is barred by law, either express or by implication. The scope of Order VII Rule 11 CPC and the authority of the courts is well settled in law. There is a bounden duty on the Court to discern and identify fictitious suit, which on the face of it would be barred, but for the clever pleadings disclosing a cause of action, that is surreal. **Generally, sub-clauses (a) and (d) are stand-alone grounds, that can be raised by the defendant in a suit.** However,

it cannot be ruled out that under certain circumstances, clauses (a) and (d) can be mutually inclusive. *For instances, when clever drafting veils the implied bar to disclose the cause of action; it then becomes the duty of the Court to lift the veil and expose the bar to reject the suit at the threshold. The power to reject a plaint under this provision is not merely procedural but substantive, aimed at preventing abuse of the judicial process and ensuring that court time is not wasted on fictitious claims failing to disclose any cause of action to sustain the suit or barred by law.* Therefore, the present application before this Court requires careful consideration of the scope of rejection of the plaint under Order VII Rule 11 CPC, particularly, in the context of the suit filed based on an agreement to sell in which bar of Section-43 is stated to be applies.

4.3. Apparently, the expression 'shall' used in the very first sentence of the provision implies a mandate of rejection of the plaint for the defects contemplated in clauses (a) to (f). No application seeking rejection of the plaint is necessary, as the same is not contemplated and thus, an obligation is cast upon the Court to examine the

plaint as a whole. In fact, the provision principally deals with admission/rejection of the plaint. It is only in absence of the defects that the plaint would be admitted. While non-disclosure of cause of action and legal bar would inhibit the plaint at the threshold; the defects like undervaluation of the relief, insufficiency of stamp, not filing the plaint in duplicate and non-compliance with Rule 9 would consequent in rejection of the plaint only on plaintiff's failure to cure such defects.

4.4. It can be noticed from the bare perusal of the provision that, there exists a legislative command in it to reject the plaint for one or more of the defects referred to in clauses (a) to (f). The mandate for rejection of the plaint would imply its thorough examination on all counts contemplated in clauses (a) to (f) above.

5. Discussion.

5.1. Whether suit land is of new nature covered under Section-43 of Bombay Tenancy and Agricultural Land Act?.

a) Having understood scope and ambit of Order-VII, Rule-11 of CPC, let us examine whether plaintiff's

plaint can be rejected on the grounds mentioned in this application or not?. ***Before coming to the conclusion whether plaint requires to be rejected or not, this Court would like to discuss herein the whether suit land was of new tenure covered under Section-43 of Tenancy Act or not?.*** Considering principles which are required to be kept in mind while deciding an application filed under Order-VII, Rule-11 of C.P.C., ***this Court would like to refer herein reliefs claimed in plaint itself. Best translation of the reliefs are as under.***

- ***Court may please to pass declaration to the effect that, under agreement to sell no.2415/2015 plaintiff's right, interest as bona-fide purchaser are established in suit land.***
- ***Court may order defendant to execute sale-deed in favour of the plaintiff in pursuance of an agreement to sell no.2415/2015.***
- ***Consequently, sale-deed no.3162/2023, dt.28.04.2023 executed by defendant nos.1 to 7 in favour of defendant nos.8 & 9 may be cancelled.***
- ***It may be declared that, defendant nos.8 & 9 have no right to executed sale-deed no.1533/2024 & 1534/2024 and it may be declared that, both sale-***

deed are liable to cancelled.

- If defendant nos.1 to 7 does not executes sale-deed in favour of the plaintiff then Court Commissioner may be appointed for the same.
- Permanent injunction restraining all the defendant for creating any type of lease, lien, charge may be issued.
- Defendant may be restrained from creating right of any third-party alienating suit property in manner.
- Any other relief as this Court deems fit may be granteed.

b) It is clear from perusal of the plaint that, plaintiff is seeking enforcement of specific performance of an agreement to sell no.2415/2015, dt29.09.2015. This agreement to sell is produced vide mark-4/1. **In this agreement to sell this Court finds that, there is specific mentioning as to suit property being new tenure covered under Section-43 of Tenancy Act. This is mentioned on pg.5 of the agreement to sell, conditions no.b & c. For better clarity same is reproduced herein verbatim.**

“બી. સદરહુ જમીન જે હાલ પ્ર.સ.પ્ર હેડે ચાલે છે અને જેનો વેચાણ દસ્તાવેજ

કાયદેસરની હેતુફેરની મંજૂરી મેળવ્યા સિવાય થઈ શકે તેમ નથી તેથી સદરહુ

જમીન પ્ર.સ.પ્ર માંથી જુની શરતમાં ફેરવવા માટેની કાયદેસરની મંજૂરીઓ મેળવવા તથા તે માટેની કરવી પડતી તમામ કાયદેસરની કાર્યવાહીઓ કરવા અમો લખી આપનારાઓ બંધાયેલા છીએ અને તેની સંપૂર્ણ જવાબદારી અમો લખી આપનારાઓની આગવી સ્વતંત્ર છે અને રહેશે. તેમજ સદરહુ જમીન અંગે પ્ર.સ.પ્ર માંથી જુની શરતમાં તબદીલ કરવા માટે સરકારશ્રી ધ્વારા નિયત કરેલ જંત્રી મુજબનો જે પ્રિમીયમ ભરવાનો હુકમ થાય તે પ્રિમીયમની રકમ અમો લખી આપનારાઓ વતી તમો લખાવી લેનારે ભરવાની છે . જે સાથે અમો લખી આપનારાઓ તથા લખાવી લેનાર સંમત થયેલા છીએ. જે આ બાનાખત કરારની અતિ અગત્યની અને મહત્વની શરત ગણવાની છે અને રહેશે.

સી. સદરહુ બનાખાતની મુદત ઉપરોક્ત શરત મુજબ સાદર જમીનની જુનીશરતમાં ફેરવવાની મંજૂરી મળેથી ૧૨ (બાર) માસર ગણવાની રહેશે.”

c) Perusal of the above recital of an agreement to sell, which sought to be enforced, is more than enough to come to conclusion that, when an agreement to sell came to be executed, suit property was of new tenure covered under Section-43 of Tenancy Act. Even plaintiff himself in para.4 of the plaint pleaded as under .

“(૪) સદરહુ દાવાવાળી મીલકતમાં હકક, હીત, સંબંધ અને અધીકાર ધરાવતા

પ્રતિવાદીઓ નં. ૧ થી ૭ નાઓએ રજીસ્ટર્ડ બાનાખત નં. ૨૪૧૫/૨૦૧૫ ના કામે ભર્યા પુરા અવેજની સ્વીકૃતી કરી પ્રતિબંધીત સત્તા પ્રકારના નીચંત્રણો દુર કરવા સંબંધે પ્રીમીયમની રકમ તથા અન્ય ખચાર્યઓ સીવાય નકકી થયા મુજબનો ઉપરોક્ત અવેજ રૂ. ૧, ૦૦, ૦૦, ૦૦૦/- પૈકી ચુકવાયેલ રૂ. ૨, ૦૦, ૦૦૦/- નો અવેજ બાદ કરી બાકી રહેલ અવેજ રૂ. ૯૮, ૦૦, ૦૦૦/- (અંકે રૂપિયા અઠાણુ લાખ પુરા) શરત ફેર કરી વેચાણ દસ્તાવેજ બાદ એક વર્ષમાં ચુકવવાની શરતે સદરહુ રજીસ્ટર્ડ બાનાખત નં. ૨૪૧૫/૧૫ નુ કરેલ છે.”

d) Even order of Collector annexed with sale-deed produced vide mark-4/2 also indicates that, suit land was of new tenure. Which was converted into new tenure before executing sale-deed in favour of defendant nos.8 & 9. Perusal of the order produced vide mark-4/3 also indicates that, suit land was new tenure when agreement to sell came to be executed in favour of the plaintiff. *Thus, from the documents of the plaintiff, it is established that, suit land was of new tenure.*

e) Thus, it becomes clear that, as and when this agreement sell came to be executed suit land was of restricted tenure covered under Section-43 of Tenancy Act. Having come to the conclusion that, suit land was of restricted tenure, this Court is

supposed to decide the validity and enforceability of the agreement to sell.

5.2. Enforceability of the agreement to sell for the land covered under Section-43 of Tenancy Act.

a) In this suit, as per plaintiff's pleadings as well as from recitals of the agreement to sell, it becomes clear that suit land was of restricted tenure, which is covered under Section-43 of Tenancy Act. To decide the enforceability of such agreement, this Court would like to refer herein judgement of Hon'ble Gujarat High Court's Full Bench delivered in case Decd Shaikh Ismailbhai Hushainbhai Through Lh Vs. Vankar Ambalal Dhanabhai reported as AIR 2024 Guj. 61. The questions which were framed by the Full Bench, read thus:

"9. The main question which falls for our consideration is "whether the plaint is liable to be rejected under Order VII Rule 11 of the CPC on the ground that suit for specific performance of contract based on an illegal or invalid Agreement to Sell, hit by Section 43 of the Tenancy Act, 1948, is not maintainable?"

10. At this stage, the ancillary issues raised by the learned Advocates of the first set appearing

for the vendees, who are agitating that the above question is to be answered in Negative "No", are to be taken note of, inasmuch as, the contention of the learned Advocates is that without answering the following issues, answer to the question of reference is not possible.

"11.The issues raised before us are : -

(i) Where an agreement contains a condition that prior to effecting the sale, the requisite permission of the competent authority under Section 43 or 63 of the Tenancy Act, 1948 shall be sought, such an agreement whether can be specifically enforced strictly in accordance thereof ?;

(ii) Where an Agreement to Sell contains condition that the restricted tenure shall first be converted to old tenure and, thereafter, such old tenure land shall be sold, be invalid under Section 43 of the Tenancy Act, 1948 ?;

(iii) Where an agreement contains condition that the agricultural land shall first be converted to non-agricultural land and, thereafter, such non-agricultural land shall be sold, be invalid under Section 63 of the Tenancy Act, 1948;

(iv) Whether invalidity of agreement under Section

43 or 63 of the Tenancy Act, 1948 is limited to the said Act or does it absolves the parties from their reciprocal rights and obligations under the agreement and make the agreement unenforceable in Civil Court?;

(v) Whether a plaint can be rejected on the ground of transaction being invalid under the Tenancy Act, 1948 when the alternative remedy of refund of earnest money or compensation or other remedy like permanent injunction, protection of possession, damages etc, have also been sought in the suit ?;

(vi) In absence of any order passed by the Competent Authority under The Gujarat Tenancy and Agricultural Land Act, 1948 (in short "the Tenancy Act, 1948), invalidating the Agreement to Sell, whether plaint can be rejected under Order VII Rule 11 of CPC or the suit for specific performance can be dismissed by the Civil Court, on the ground that the said agreement is invalid under Section 43 or 63 of the Tenancy Act, 1948;

(vii) Whether the Civil Court has jurisdiction to adjudicate the issue as to whether such agreement is or not invalid in view of the bar under Section 85 of the Tenancy Act, 1948?;"

a) Hon'ble Full Bench of Gujarat High Court answered the question as under.

"155. The question of reference framed by us "whether the plaint is liable to be rejected under Order VII, Rule 11 of the Code of Civil Procedure on the ground that the suit for specific performance of contract based on an illegal or invalid agreement to sell, hit by Section 43 of the Tenancy Act, 1948, is not maintainable" is answered in the "AFFIRMATIVE". The Reference is answered, accordingly.

b) Thus, Hon'ble Full Bench of Gujarat High Court has clearly held that, any suit seeking specific performance of the contract based on an illegal or invalid agreement to sell, hit by section-43 of Tenancy Act is not maintainable. Hence, this application requires to be granted.

c) This brings this Court to submission of the Ld. Advocate for the plaintiff that, as on date of filing of the suit land was no more of restricted/new tenure land and suit is maintainable. Against this submission, in the judgement of Vijaybhai Shambhubhai Patel Vs. Shushilaben reported as 2021 JX (Guj.) 907 Hon'ble Gujarat High

Court addressed the same issue. In the case before Hon'ble Gujarat High Court there was challenge to the allowing an application rejection of the plaint. In the case before Hon'ble Gujarat High Court, agreement to sell was dt.30.09.2003. Land was converted to old tenure by order dt.29.05.2019. Sale-deed came to be executed on 30.05.2019. Suit by plaintiff seeking specific performance of an agreement to sell came to be filed in year-2021. In that suit, an application for rejection of the plaint was allowed by trial Court. Same was upheld by Hon'ble Gujarat High Court. Hence, submission of Ld. Advocate for the plaintiff as to suit was filed after land was converted does not saves suit of plaintiff.

d)Even otherwise this Court is surprise to hear the submission of the Ld. Advocate for the plaintiff to the effect that, legality of the mutation entries in name of defendant nos.1 to 7 requires to be examined by the Court. He has referred to the issue of Section-32G of Tenancy Act. By which certificate came to be issued by competent authority. This Court fails to understand that, when plaintiff himself has entered into agreement with defendant nos.1 to 7, how this argument can at all help the plaintiff.

This Court believes that, arguing on this aspect lead to believe that, plaintiff is trying to challenge the ownership of the defendant nos.1 to 7 with whom plaintiff himself has entered in to agreement. Ld.Advocate for the plaintiff wisely tried to save suit anyhow by arguing before this Court as to deicing issue of whether amount as order before granting certificate under Section-32G is paid or not. This Court is not impressed with such arguments, which eventually lead to challenging the ownership of the defendant nos.1 to 7 with whom plaintiff himself has entered in the agreement to purchase the suit land.

5.3. Issue of limitation: -

a) Be it stated that, with regard to specific performance of contract, in which immovable property is involved, generally time is not considered to be an essence of contract. However, when parties have fixed the time for performance then in such cases, time becomes an essence of contract. In the suit on hand, as noted, until and unless land is converted into old tenure 12 months period will not be applicable and in such circumstances, time is not held to be essence of contract in this suit. So far cause of action to

file specific performance is concerned wherein time is held not to be an essence of contract, in such cases, when plaintiff gets knowledge as to refusal from the defendant. In the suit on hand, as noted earlier, time was made an essence of contract. Thus, when plaintiff got knowledge as to intention of the defendant nos.1 to 7 to transfer suit land to third party and not to plaintiff, cause of action arise for the plaintiff to file this suit. Thus, suit is not barred by limitation.

6. Conclusion:-

6.1. Thus, present suit also falls within the same category wherein bar of Section-43 of Tenancy Act is attracted. Hence, the one and only one conclusion can be arrived by this Court that, this plaint requires to be rejected exercising powers under Order-VII, Rule-11 of C.P.C. At the same time, this Court believes that, defendants requires to be compensated by awarding cost in their favour. The reason behind this conclusion is simply based on the fact that, suit property was purchased by defendant nos.8 onward after converting the same in to old tenure. Ex-consequently, following order ensues:

-: O R D E R :-

- 1.** Present application is hereby allowed.
- 2.** Plaintiff's plaint is hereby rejected under Order-VII, Rule-11 of the C.P.C. being hit by bar of Section-43 of Tenancy Act.
- 3.** Plaintiff to bear his cost as well as to pay cost of Rs.5,000/- to the each of defendant nos.8 to 12.
- 4.** Decree to be drawn accordingly.

Pronounced & signed in the open Court today on this
23rd day of April, 2025.

Place :- Savli. (Vikram Karsanbhai Solanki)
Date :- 23/04/2025 Principal Senior Civil Judge
self Ta:- Savli, Dist:- Vadodara.
Judge Code No.:-GJ-01099

Principal Senior Civil Judge
Ta:- Savli, Dist:- Vadodara.