



ORDER BELOW EXHIBIT-15

1. The present application under Order VII Rule 11 is filed by the Defendants. The facts of the case as alleged by the parties in brief are that the Plaintiff has stated that on February 28, 2012, the plaintiff, purchased the land plot located in Surat District, Surat City (Adajan) sub-district, the land registered under Revenue Survey No. 1252, Block No. 1196, measures 1-15-35 hectares (11535 square meters) and is classified as non-agricultural premium cultivable land with account number 637. This property along with all associated rights and interests, is consolidated under account number 637. This includes all rights related to the property. Additionally, it encompasses land allocated to Krishna Park Row House Society, Plot No. 43, measuring 18 feet wide and 35 feet long, total 70 square meters. The Plaintiff has in his plaint stated that he purchased the land plot shown in the schedule through a notarized possession receipt and currently, plaintiff's name has been entered in the records of the Surat Municipal Corporation as the possessor. The name of Rameshbhai Morabhai, i.e., defendant no. 1, is listed as the owner, and the name of defendant no. 2, Bhayabhai Dhanabhai Chavda, is recorded as the power of attorney holder in the records of the Surat Municipal Corporation. The tenancy number of Surat

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Municipal Corporation is 094A-35-2641-0-001. It is averred that defendant no. 1 planned to develop the land into a housing colony called "Krishna Park Row House" on the land specified in the schedule. A notarized sale agreement including possession, was provided to the plaintiff on February 28, 2012 indicating that the land is currently classified as agricultural in the revenue records. It is further averred that in 2012 and 2013, defendant no. 1 collected Rs. 10,000/- from each plot holder for internal roads and drainage construction and plaintiff also paid Rs. 10,000/- for these services. It is averred that until 2016, defendant no. 1 and 2 had not provided registered sale documents to the plot holders, leading them to apply pressure on respondents. In response, defendant no. 1 stated to convert the "agricultural land" to "non-agricultural" and to build up to the plinth level, each plot holder would need to pay Rs. 1,75,000/-. It is further averred that the plaintiffs, paid Rs. 1,75,000/- in cash to defendant no. 1 for this purpose.

2. It is averred in the plaint that defendant no. 1 has repeatedly promised to provide a registered sale document but has failed to do so. None has been issued to the plaintiff or any plot holders in the society. The defendants have assured the plaintiff that when the documents for all plot holders were issued, plaintiff would also be included and the plaintiff trusted the defendants. It is further averred that despite multiple requests for the documents, even after the COVID-19 pandemic in 2022, defendant no. 1 assured the plaintiff that they would provide.

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However, on 05/08/2022, defendant no. 1 executed a registered sale document for the entire society's land in favor of defendant no. 3 and 4. This land, with revenue survey no. 1252, block no. 1196, and an area of 11,535 square meters. The registered sale document number is SRT/8/RDR/01010/2022, since defendant no. 1 has sold the land intended for the Krishna Park Row House housing society to defendants no. 3 and 4, this has led to bring present suit.

3. It is further averred that the registered sale document executed by defendant no. 1 in favor of defendants no. 3 and 4 contains false information. The photo on page 11 of the sale deed shows an open field with standing crops, which is impossible for the land (revenue survey number 1252, block number 1196, village Variyav) that has been recorded as occupied by 148 plot holders since 2010. Additionally, a notarized sale agreement for these plots were executed on February 28, 2012, and plots have been sold to 148 individuals/plot holders. It is averred that the standing crops depicted in the registered sale document are inaccurate, as five buildings have been constructed on the land. The South Gujarat Electricity Company has provided two permanent electric supply connections, and these will be verified during the proceedings, confirming they were installed before August 5, 2022. This type of supply differs from agricultural connections, defendant no. 1 has executed a registered sale document in favor of defendant No. 3 and 4, which is the reason for filing the present suit.

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4. The defendants no. 3 & 4 on the other hand filed an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 and have stated in this application that the present suit does not have cause of action against them and it is barred by limitation. It is stated by the defendants no. 3 & 4 that the plaintiff has not provided any reasons in the suit and no grounds have been shown to sustain the claim against defendant no. 3 and 4, warranting the dismissal of the plaintiff's suit under CPC Order 7, Rule 11(d).
5. It is stated by the defendants that the land in question falls under Section 43 of the Tenancy Act, applicable law, being new and indivisible land. Therefore, it cannot be sold, gifted, exchanged, or converted through any written agreement without prior approval from the Collector and payment of the premium determined by the state government. Without such approval, this land or any part related to it cannot be partitioned. It is further stated that the plaintiff has not approached the Hon'ble Court with clean-hands and the claimed land is categorized as restricted under Section 43 of the Bombay Tenancy and Agricultural Lands Act, which is a statutory provision. The plaintiff's purported documents are subject to legal restrictions, and the claimed land is not eligible for conversion and also the possession receipt provided by the plaintiff is not valid evidence, as it lacks appropriate stamp duty.
6. The plaintiff has filed reply to such application and has categorically denied contentions of defendant no. 3 & 4. It is

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stated by the plaintiff that it has been mentioned in application that due to the land being agricultural, a registered sale document could not be executed; thus, a notarized document has been provided. It is further stated that the defendant will execute the document in his favour after obtaining the Collector's permission. It is stated that defendant no. 1 has not provided a registered sale document in favour of the plaintiff and later sold to the third parties, which has led to the need to file this suit. It is further stated the present defendant No. 3 & 4 are subsequent purchasers. However, the original owners of the land were aware when the plots were sold to the plaintiff and other plot holders that the disputed land was agricultural. It is further stated that the plots were transferred and occupied. Furthermore, it is mentioned that many holders of agricultural land have their names recorded as occupants by the Surat Municipal Corporation for property tax purposes. Additionally, three plot holders have obtained electricity connections and hence prayed for the rejection of the present application filed by the defendants.

7. The Ld. Advocate on behalf of defendant has made a detailed submissions as per his application of Order 7 Rule 11 of Code of Civil procedure, 1908. Thereafter, the Ld. Advocate on behalf of plaintiff has made detailed submissions.
8. It is pertinent here to reproduce relevant provisions of law which deals with Rejection of Plaintiff:

According to Order 7 Rule 11- Rejection of plaintiff —

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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 returned 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;

9. It is also pertinent here to discuss latest judgment of Hon'ble Supreme Court of India in ***DECD. SHAIKH THROUGH LH ISMAILBHAI Versus HUSHAINBHAI VANKAR AMBALAL DHANABHAI. R/SECOND APPEAL NO. 208 of 2021 With CIVIL APPLICATION (FOR JOINING PARTY) NO. 1 of 2023 In R/SECOND APPEAL NO. 208 of 2021 IN THE HIGH COURT OF GUJARAT AT AHMEDABAD .***

Issue involved in the case:

6. Before we set out the question (s) of reference on the rival submissions of the learned counsels for the parties,

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a brief look to the previous decisions of this Court on the question “whether the plaint can be rejected on the ground that the suit for specific performance of contract based on an illegal or invalid agreement to sell, being hit by Section 43 of the Gujarat Tenancy and Agricultural Lands Act, 1948 is not maintainable? will be helpful .

147. The test for exercising the power under Order VII, Rule 11 of the Code of Civil Procedure 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. 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 of the Code of Civil Procedure . 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 the case for rejecting the plaint at the threshold is made out. 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 or taken into consideration.

Answer : 151 On a careful reading of the provision in Order VII, Rule 11 of the Code of Civil Procedure and

the law laid down by the Apex Court in Dahiben (supra), in light of the dispute before us, we may note that in order to maintain the suit for specific performance of agreement, which is hit by Section 43 (1) of the Tenancy Act , 1948 , the plaintiff would be required to disclose the cause of action for seeking a decree of specific performance of such an agreement. The cause of action for a suit for specific performance of an agreement of refusal by the Vendor in spite of readiness and willingness of the vendee to execute the sale deed, will not be existing in a case where the agreement itself is invalid being hit by Section 43 (1), in as much as , no cause of action can be said to have arisen asking the defendant to perform his part of the contract when there is no sanction and the agreement itself is illegal or invalid. Further, on the averments made in the plaint, in conjunction with the documents relied upon by the plaintiff, the Civil Court will be in a position to ascertain the question of enforceability of the agreement. It will be in a position to ascertain that the agreement, which is the basis of the suit, whether is hit by Section 43 (1) or not, in as much as, to seek a decree of specific performance of agreement, the plaintiff is required to disclose and establish two circumstances: (i) firstly, that the documents, which is the basis of the suit is a valid document in the eye of law and (ii) secondly , that the cause of action has arisen prior to the presentation of

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*the plaint. If the documents, i.e. the agreement is an illegal or invalid document in the eye of law, the Civil Court from the statement in the plaint itself will ascertain the suit being barred by law. **In any case, a suit basis of which is an invalid document in the eye of law or where there exists no cause of action to institute the suit on the date of the presentation of the plaint, the Civil Court will have no option but to reject the plaint, at the threshold, under Order VII, Rule 11 of the Code of Civil Procedure. The arguments that the Civil court will be required to frame the issue as to the validity of the agreement, which is the basis of the suit and must necessarily proceed with the trial to arrive at the decision as to whether the decree of specific performance of an agreement hit by law, is to be granted or not, does not appeal to us.***

Conclusion :-152 In view of the above discussion from all angles of the matter, we endorse the ratio of the decisions of this Court in Hasvantbhai Chhanubhai Dalal versus Adesinh Mansinh Raval and others; Ganpatlal Manjibhai Khatri Vs. Maguben Babaji Shambhubhai Patel Vijay Sushilaben versus Harshadbhai Patel himself and as Karat versus Versus and Thakor; Sushilaben Dayalbhai Kanjibhai Gajera versus Vinodbhai Dayalbhai; Hardikbhai Amarsang Manager Vijaybhai Nathaji; as Naranbhai Shankarbhai Patel, wherein it has been held that the trial Court shall

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be right in rejecting the plaint under Order VII Rule 11 of the Code of Civil Procedure on the ground that the suit for specific performance based on illegal And invalid agreement for sale is not maintainable. The law laid down therein is a good law.

153. We are in respectful agreement with the decision of the Division Bench in Naranbhai Kanjibhai Gajera (supra), holding that the Division Bench decision in Amarben (supra) can be said to be ‘per incuriam’ ignoring statutory provisions and in view of the decision of another Division in Vijaybhai Shambhubhai Patel (supra), which was challenged in Special Leave to Appeal (Civil) No. 5124 of 2022, and which has been dismissed vide judgement and order dated 10.11.2022 affirming the Division Bench judgement in Vijaybhai Shambhubhai Patel (supra).

*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.*

10. It is pertinent here to discuss relevant provisions of the Tenancy Act:

Section 43: Restriction on transfers of land purchased or sold under this Act :-

(1) No land or any interest therein purchased by a tenant under section 17B, 32, 32F, 32-I, 32-O, 32U, 43-ID or 88E or sold to any person under section 32P or 64 shall be transferred or shall be agreed by an instrument in writing to be transferred, by sale, gift, exchange, mortgage, lease or assignment, without the previous sanction of the Collector and except in consideration of payment of such amount as the State Government may by general or special order determine; and no such land or any interest, there shall be partitioned without the previous sanction of the Collector.

Provided that no previous sanction of the Collector shall be required, if the partition of the land is among the members of the family who have direct blood relation or among the legal heirs of the tenant:

Provided further that the partition of the land as aforesaid shall not be valid if it is made in contravention of the provisions of any other law for the time being in force;

Provided also that such members of the family or the legal heirs shall hold the land, after the partition, on the

same terms, conditions, restrictions as were applicable to such land or interest thereat therein purchased by the tenant or the person.

(1A) The sanction under sub-section (1) shall be given by the Collector in such circumstances and subject to such conditions, as may be prescribed by the State Government.

(1AA) Notwithstanding anything contained in sub-section (1), it shall be lawful for such tenant or a person to mortgage or create a charge on his interests in the land in favour of the State Government in consideration of a loan advanced to him by the State Government under the Land Improvement Loans Act, 1884, the Agriculturists' Loan Act, 1884, or the Bombay Non-agriculturists' Loans Act, 1928, as in force in the State of Gujarat, or in favour of a bank or co-operative society, and without prejudice to any other remedy open to the State Government, bank or co-operative society, as the case may be, in the event of his making default in payment of such loan in accordance with the terms on which such loan was granted, it shall be lawful for the State Government, bank or co-operative society, as the case may be, to cause his interest in the land to be attached and sold and the proceeds to be applied in payment of such loan.

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**Explanation, - For the purposes of this sub-section,
"bank" means -**

(a) the State Bank of India constituted under the State Bank of India Act, 1955;

(b) any subsidiary bank as defined in clause (k) of section 2 of the State Bank of India (Subsidiary Banks) Act, 1959;

(c) any corresponding new bank as defined in clause (d) of section 2 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970;

(d) the Agricultural Refinance and Development Corporation, established under the Agricultural Refinance and Development Corporation Act, 1963.

(1B) Nothing in sub-section (1) for (1AA) shall apply to land purchased under section 32, 32F or 64 by a permanent tenant thereof, if prior to the purchase, the permanent tenant, by usage, custom, agreement or decree or order of a court, held a transferable right in the tenancy of the land.

(2) Any transfer or partition, or any agreement of transfer, or any land or any interest therein in contravention of sub-section (1) shall be invalid."

11. Further, it is discussed in case of **2011 (2) GLH 760 "RAMESHBHAI CHATURBHAI PRAJAPATI AND OTHERS V. MINAXIBEN WD/O RASIKLAL TILAKRAM AND OTHERS,** that,

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"In the case of V. Narasimharaju (AIR 1963 SC 107) [supra], the Apex Court held with regard to unlawful consideration that the agreement would be treated as invalid for the reason that such consideration is opposed to public policy and particularly when previous sanction of the Collector was a mandatory and, admittedly, such previous sanction was not obtained by the parties and the agreement to sell an agricultural land is invalid and even Section 53A of the Transfer of Property Act, 1882 would also not safeguard such agreement.

13. The above aspect is also dealt with by the Bombay High Court in the case of **Himatrao Ukha Mali vs. Popat Devram Patil, AIR 1999 Bombay 10**, wherein it is held that Section 43 imposes a total prohibition or legal bar on alienation of the lands vested in favour of the tenants under the provisions of the Tenancy Act. If an agreement of sale or any instrument in respect of the subject land is executed without taking previous sanction of the Collector under section 43(1) of the Tenancy Act, the said agreement shall be invalid as per Section 43(2) of the said Act. Suffice it to say that Section 43(1) of the Tenancy Act bars even entering into agreement or alienating the land and usage of term 'shall' twice in the section including in the penultimate part of the section reveals mandatory character of the language contained therein and to be interpreted as such and, particularly when the agreement/transaction was barred by sub-section (1) of Section 43 of the Tenancy Act and sub-

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section (2) of Section 43 of the said Act clearly refers such agreement or transfer shall be invalid, the trial court has rightly concluded by not probing into the question of declaration of such transaction/agreement as invalid. The satisfaction of the learned Judge based on the understanding of the language contained in sub-sections (1) and (2) of Section 43 of the Tenancy Act and the relevant materials on record of the case for not passing the decree as prayed for cannot be said to be in any manner contrary to law warranting any interference by this Court in exercise of powers under Articles 226 and 227 of the Constitution of India."

14. **In Hasvantbhai Chhanubhai Dalal Vs. Adesinh Mansinh Raval & Others, First Appeal No.1539 of 2015 Dt.12.04.2019, Hon'ble Gujarat High Court has held that,**

111. My Final Conclusions on the points framed for determination are as under:

The Suit for specific performance of contract based on an invalid agreement of sale hit by Section 43 of the Tenancy Act, 1948, is not maintainable in law. If the agreement is rendered invalid under Section 43 of the Bombay Tenancy and Agricultural Lands Act, 1948, such agreement is incapable of being specifically enforced. If the agreement of sale itself is invalid, no decree for specific performance can be passed by the Trial Court. Section 14 (1) (c) of the Specific Relief Act provides inter alia that a contract, which is in its nature determinable, cannot be specifically enforced.

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In Such circumstances, the suit for specific performance of agreement of sale has rightly not been decreed.

15. While considering the document annexed with the plaint, in the documents produced by the plaintiff, it is showing that the suit property revenue survey no. 1252, block no. 1196 having 1-15-35 sq.mt. area is a non-agricultural premium agricultural land having khata no. 637 in which on 05/08/2022 the name of defendant no. 3 & 4 were entered as they have purchased it from defendant no. 1 and the registered sale-deed was produced by the plaintiff at mark 3/8.
16. Heard the learned counsel appearing on behalf of the respective parties at length. Perused the plaint and documents annexed with the plaint and the relevant provisions, while deciding the application under Order 7 rule 11 Civil Procedure Code, 1908. At the outset, it is required to be noted that the plaintiff has instituted the suit against the defendants as per relief for a cancellation of sale-deed, declaration and permanent injunction on the basis of the registered sale-deed of dated 05/08/2022 and as per the say of plaintiff that the defendant no.2 has done a notarized sale agreement including possession, was provided to the plaintiff and indicating that the land is currently classified as agricultural in the revenue records. Considering the averments in the plaint, it can be seen that, as such, the plaintiff has specifically stated that the land was classified as agricultural in the revenue records and there are

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certain bar as per relevant legal provisions and therefore it cannot be sold or transferred. With the aforesaid facts and circumstances, the application submitted by the defendant no. 3 & 4 to reject the plaint in exercise of powers under Order 7 Rule 11 of the CPC is required to be considered. While considering the scope and ambit of the application under Order 7 Rule 11 of the CPC, few decisions on Order 7 Rule 11 of the CPC are required to be considered.

17. In the case of **T. Arivandandam Versus T. V. Satyapal & Another, 1977 (4) SCC 467**, while considering the very same provision i.e. Order 7 Rule 11 of the CPC, in para 5 it has been observed and held as under:

“5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving complaints. 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 7, Rule 11 CPC 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 by

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examining the party searchingly under Order 10, CPC.

An activist Judge is the answer to irresponsible law suits.....”

18. From the afore-stated provision and the judgments of the Hon’ble the Apex Court and Hon’ble the High Court, it clearly transpires to this Court that the land restricted tenure could not be transferred or agreed to be transferred or sold without the previous sanction of the collector and that any transfer or any agreement of transfer of land or interest therein, if made without the previous sanction of the collector would be invalid. At this juncture, it may be noted that as per Section 10 of the Indian Contract Act, all agreement are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not expressly declared to be void in the Act. Section 23 of the Contract Act, inter alia, states that the consideration or object of the agreement is lawful, unless it is forbidden by law or is of such a nature that if permitted, it would defeat the provisions of any law. It further states that in such cases, the consideration or object of any agreement is said to be unlawful, and every agreement of which the object and consideration is unlawful is void. Since the agreement for sale in question, executed without the previous sanction of the Collector were forbidding under Section 43 (1), they were invalid under Section 43(2) of the Tenancy Act. The consideration or object of such agreement would also, therefore, be unlawful and such agreements would be void agreements in view of Section 23 of

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the Contract Act. There is no provision in the Tenancy Act, which would authorize any authority under the said Act to validate such agreements of sale executed without the previous sanction of the Collector and in violation of Section 43(1) of the said Act. Therefore, such agreements, which are unlawful and void, in view of Section 23 of the Contract Act read with Section 43 of the Tenancy Act, could not be enforced, nor any decree for specific performance of such agreement could be passed by the Court.

19. Therefore, applying the law laid down in the aforesaid decisions on exercise of powers under Order 7 Rule 11 of the CPC to the facts of the case in hand and the averments in the plaint, this Court is of the opinion that when it is found that the agreement to sell executed between the parties itself is void in the eye of law and it has no existence in the eye of law. Therefore, considering the averments in the plaint and the bundle of facts stated in the plaint, this Court is of the opinion that since the agreement for sale in question, executed without the previous sanction of the Collector as forbidden under Section 43 (1) and invalid under Section 43(2) of the Tenancy Act. The consideration or object of such agreement would also, therefore, be unlawful and such agreements would be void agreements in view of Section 23 of the Contract Act therefore, the plaint is required to be rejected in exercise of powers under Order 7 Rule 11 of the CPC.

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20. In view of the above and for the reasons stated above, this Court passes the following order in the interest of Justice:

Order

- The application filed by the defendant no. 3 & 4 for rejecting the plaint under Order 7 Rule 11 of the CPC is hereby allowed and the plaint, being titled Regular Civil Suit No. 504 of 2024 is hereby rejected.
- Decree be dawn accordingly.
- No order as to costs.

**Pronounced and signed in Open Court today on 13th,
August 2026.**

Date: 13/08/2026

(Shagun Deepak Raj)

Place: Surat.

8th Additional Civil Judge, Surat

Judge Code: GJ01655