

ORDER BELOW Exh.-28 & 36

1. The present applications are filed by the defendant No.1 to 4 at Exh.28 and defendant No.5 to 7 at Exh.36 u/O- 7, Rule-11 of the Civil Procedure Code.

2. As per the say of Ld. Advocate for the defendant No.1 to 4 and Ld. Advocate for the defendant NO.5 to 7, plaintiff has challenged Registered Sale deed No.612 to 617, dated 14.02.2000 of land bearing Block No.114 and 115/1 but plaintiff raised objection and filed suit on 29.09.2014 after 14 years of registered sale deed executed in the 14.02.2000. Further, Ld. Advocate for the defendants submitted that the land bearing Block No.114 and 115/1 was sold to defendant NO.5 vide sale deed dated 03.05.1995 registered at Sr.No.1851 by Bhikhabhai Hargovandas and possession of the said land was given to defendant No.5 and defendant No.5 has become the absolute owner of the suit land from 03.05.2015. A mutation entry No.2343 to that effect has been made in village form No.6 on 21.07.1995 and the same has been certified on 23.05.1996. District Development Officer of District Panchayat, Gandhinagar has granted N.A. permission vide order dated

14.02.2000 and thereafter, defendant No.5 has sold the said land to defendant No.7 vide six sale deeds dated 15.02.2000 registered at Sr. No.612 to 617.

Further, it is the say of the Ld. Advocate for the defendants that plaintiff have knowledge of said sale deeds when they were executed, plaintiff has admitted that the cause of action for this suit has arisen on and from the respective dates of the documents. Hence, it is clearly barred by Law of limitation and it is also barred by law for want of statutory notice under Section-167 of the Gujarat Cooperative Societies Act, 1961. Hence, they prayed to reject the suit u/O-7, Rule-11

3. On the other hand, Ld. Advocate for the plaintiff has filed written statement and argument at Exh.46 *and denied contention made by the defendant No.5*

:: REASONS ::

4. The defendants have filed the present application under the provision of order 7 Rule 11 of the Code of Civil Procedure. Before proceeding further, it is desirable to refer the relevant provision of the Code of Civil

Procedure. Order 7 Rule 11 reads as follows -
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 in 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,
- (d) where it 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 an exceptional nature from

correcting 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. The plaint without addition or subtraction must show that it is barred by any law to attract application of Order 7 Rule 11 Code of Civil Procedure, 1908. The principle is, therefore, well-settled that in order to examine whether the plaint is barred by any law, as contemplated by clause (d) of Order 7 Rule 11 CPC, the averments made in the plaint alone have to be seen and they have to be assumed to be correct. It is not permissible to look into the pleas raised in the written statement or to any piece of evidence.

5. In the present case, reading the plaint as a whole and proceeding on the basis that the averments made therein are correct, which is what the Court is required to do, it cannot be said that the said pleadings ex facie discloses that the suit is barred by limitation or is barred under any other provision of law.

5.1 Plaintiff has referred following judgment

- 1) 2014 (O) AIJEL-HC-232606
- 2) AIR 2005 SC 2897
- 3) 2012 (o) GLHEL HC 228986
- 4) Supreme Court Khatai Hotel Pvt.Ltd V/s
Union of India.

On the other side Defendant No.5 to 7 has referred the judgment

- 1) 1981 GLH, 311
- 2) First Appeal No.868/1982
- 3) AIR 1992 H.P.34
- 4) AIR 1972 SC 2685
- 5) 2013 (1) GLR 51
- 6) 2013 (1) GLR 398
- 7) 2016 JX (Guj)1290: 2016 AIJEL_HC 236160
- 8) Second Appeal 109/2016

5.2 The Ld. Advocate for the defendants has produced the judgments in support of the arguments advanced that are discussed in the earlier part of the present order. The respective judgments applies to the fact and the circumstances of the present suit on hand. The present Court has most respectfully perused the judgments produced by the plaintiff but the same does not help the stand of the plaintiff taking into consideration the facts and the circumstances of the present suit on hand.

5.3 As such, the ratio laid down in 2013 Vol (i) GLR Page 51 regarding Date of knowledge and 2013 Vol (i) GLR Page 398 regarding cleverly drafting and AIR 1972 SC 2685 as per section-3 and 4 of Specific Relief Act, the present suit is squarely applies to the fact of the present suit on hand. Further, it is admitted by the plaintiff that in para No.5 in presence of plaintiff, defendant No.1 to 3 have executed registered sale deed no.10107 dated 02.06.2008. Further, plaintiff has also admitted in para No.7 of the suit that RTS Appeal No.653/2008 and 654/2008 have been filed by her. Plaintiff herself produced registered sale deed No.612 to 617 which have been executed on 14.02.2000 at Mark 6/2 to 6/7. Accordingly, it can be stated that the present suit is barred by Law of Limitation and plaintiff failed to give notice which is also barred by law for want of statutory notice under Section-167 of the Gujarat Cooperative Societies Act, 1961.

Further, looking to the para-9 of suit, plaintiff failed to show particular date or time of cause of action as she stated cause of action started since her

rights over the suit property as legal heir and execution of registered sale deed No. 612 and 617 and also from the said registered sale deed is deserved to be cancelled and also since defendants trying to sale suit property to others etc.

In view of aforesaid discussion, following order is passed for the interest of justice-

:::ORDER:::

The present applications at Exh.28 and Exh.36 of the defendants under the provision of order 7 Rule 11 is hereby allowed.

As the present suit is barred by the law of limitation, the plaint is hereby ordered to be rejected under the provision of Order 7 Rule 11 (d) of Code of Civil Procedure.

Cost of suit is bear by plaintiff.

Pronounced in the open court today on this 25th February , 2019 at Gandhinagar.

Gandhinagar.
Date :25/02/2019.

(Jitendrakumar N. Patel)
8th Addl.Sr.Civil Judge,
Code Number - GJ01088
Gandhinagar.