REGULAR CIVIL SUIT NO.313 OF 2021.

ORDER BELOW EXH. 30

1. I have heard the Ld. advocates appearing for the parties, read the present application as well as its reply at Exh.32 and perused the case record on hand.

2. This present application is given by defendant no. 2 under the provisions of Order VII Rule 11 of Code of Civil Procedure for rejection of plaint on the ground that, plaint is barred by limitation act.

   The brief facts of the application as averred by the defendant no.2 is that although the suit property (bearing revenue survey no. 918 (new survey no. 872) situated at village Titoda, District Gandhinagar) stands recorded in the names of defendants no. 1 to 4 as ancestral agricultural land, the plaintiff has wrongly described it as a disputed property. It is further alleged that the plaintiff relies upon a notarized mortgage deed dated 29.01.2013 and a registered agreement to sell dated 06.06.2013 executed without delivery of possession. According to the defendants, the agreement itself stipulates that the remaining consideration and execution of the final sale deed were to be completed within six months. Since the plaintiff failed to initiate any legal proceedings within the prescribed period, the suit is clearly barred by limitation under Article 54 of the Limitation Act. The defendants also assert that the alleged cash payments mentioned by the plaintiff violate the provisions of section 269 of the Income Tax Act, thereby rendering the claim legally untenable.

Since the plaint itself shows that the suit is filed far beyond the statutory limitation period, the suit is ex-facie barred by law, attracting the provisions of Order VII Rule 11. In view of the above, defendant no. 2 has prayed that the plaint and the injunction application be rejected under Order VII Rule 11 (a) and (d) of the Code of Civil Procedure, and that such other just and proper reliefs as deemed fit in the interest of justice be granted.

3. After considering the case records, it transpire that present suit filed for declaration and permanent injunction. the plaintiff has filed the present suit pertaining to the claiming rights over agricultural land bearing revenue survey no. 918 (new survey no. 872), Old Khata No. 636, new khata no. 736, situated at village Tintoda, District Gandhinagar. The plaintiff has alleged that he paid Rs. 5,00,000/- in cash to

defendant no. 1 in installments and that defendant nos. 1 and 2 executed a notarized mortgage deed dated 29/01/2013 in respect of their half share in the said land. The plaintiff further claims that later a registered Banakhat (Agreement to Sell) dated 09/09/2013 bearing Registration No. 8122/2013 was executed before the Sub-Registrar, Gandhinagar, wherein the plaintiff allegedly paid Rs. 12,80,000/- in cash as sale consideration. On the basis of this Banakhat, the plaintiff has filed the present suit seeking specific performance.

4. As per the decision of Hon'ble the Apex Court given in case of Hardesh Ores (P) Ltd. v. Hade and Company, as reported in (2007) 5 Supreme Court Cases Page-614, it is held by Hon'ble the Apex Court that “the language of O-VII, Rule 11 C.P.C. is quite clear and unambiguous. The plaint can be rejected on the ground of limitation only where the suit appears from the statement in the plaint to be barred by any law. “Law” within the meaning of Order-VII, Rule 11(d) must include the law of limitation as well”. Therefore, in the guiding light of above principle, this court firmly believes that an application under O-VII, R-11 can be given on the ground of law of limitation.

5. Having gone through the rival submissions of the parties and perusing the plaint, it is evident that plaintiff has prayed for the declaration and permanent injunction against the defendants as the plaintiff has paid an amount of Rs. 12,80,000/- towards the transaction and the defendants had assured that the remaining mortgage amount would be repaid along with interest. It is further submitted that the defendants have recently refused to pay the said amount and are attempting to sell the land to third parties.

According to the plaintiff, the cause of action arose recently when the defendants refused to honour their obligations. Therefore, it is contended that the suit cannot be rejected at the threshold and the matter requires adjudication after recording evidence. Further the plaint is required to rejected when the sole plaint is barred by any of law, which include the limitation act also. For that only plaint can be read.

6. Now after reading the plaint, it is evident from pleadings that the plaintiff has relied upon a registered document dated 06/06/2013, wherein it is specifically mentioned on the page number 3 of mark 3/13 that the remaining sale consideration would be paid within six months

and thereafter the plaintiff would be entitled to obtain the final registered sale deed. The limitation for filing a suit for specific performance is governed by Article 54 which provides that such a suit must be filed within three years from the date fixed for performance of the contract. In the present case, the period of six months from the date of the agreement expired in December 2013. Therefore, the limitation period of three years expired in December 2016. However, the present suit has been filed only in the year 2021, which is clearly beyond the statutory period of limitation.

7. I would like to re-produce the judgment of, Raghwendra Sharan Singh v. Ram Prasanna Singh in which the Honourable Supreme Court has held that when the suit is clearly barred by limitation on the face of the plaint, the court must reject the plaint under Order VII Rule 11(d) CPC instead of proceeding with trial. Similarly, in Popat and Kotecha Property v. State Bank of India Staff Association, it has been held that while considering an application under Order VII Rule 11 CPC, the court must confine itself to the averments made in the plaint.

8. The contention of the plaintiff that the cause of action arose recently due to refusal by the

defendants cannot be accepted because the document itself fixes the time for performance. When a specific date or period for performance is fixed, the limitation begins to run from that date.

Limitation for a suit for specific performance is governed by Article 54 of the limitation act, which provides:

-3 years from the date fixed for performance, or

-If no date fixed, then 3 years from the date of refusal.

Now if we look at the pleadings of the case then here a clear date is fixed (within six months). So limitation starts from December 2013 and so the last date to file suit is December 2016 But the suit is filed in 2021, which is about 8 years after the agreement. In such circumstances, the second part of Article 54 relating to "date of refusal" does not apply.

9. Therefore, from the averments made in the plaint and the document relied upon by the plaintiff, it is evident that the present suit is clearly barred by limitation. Since the bar of limitation is apparent from the plaint itself, the plaint is liable to be rejected under Order VII Rule 11(d). In light of above discussions, and

also reliance of the judgment above, the grounds for rejection of plaint mentioned under Order 7 Rule 11 are satisfied, hence, I pass following order in the interest of justice:

-: **<u>Order</u>** :-

1. The application filed by the defendant no 2 under Order VII Rule 11(d) of the Code of Civil Procedure is allowed.
2. The present suit is hereby rejected as the suit is barred by limitation under Article 54.
3. No order as to costs.

The present order signed and pronounced in the open Court on this 2nd day of April , 2026.

Place: Gandhinagar
Date :02.04.2026

(F. N. Solanki)
3rd Addl. Civil Judge &JMFC
UIC: GJ01552