

Order Below exhibit 13

RCS 261/2022

On 19th day of January'23 Ld. Advocate of the defendant no. 2 filed this application under **Order 7, Rule 11** with intention to reject the plaint. Thereafter on 19th day of June'24 Ld. Advocate of the plaintiff filed the reply (vide exhibit no. 19). Subsequently the Ld. Advocate of the defendant no. 2 did not conduct his argument in connection with this application. So after hearing the argument from the Ld. Advocate of the plaintiff this matter was kept for the order on such application.

After going through the plaint & other related documents the fact which came within the knowledge of this court can be narrated by the following words:-

The disputed property of this is an agricultural land which descriptions are given below: -

Survey No.	Area	Valuation	Situated at
205	Hec. 4 - 74 - 50 are	Rs. 8.44/-	Bhadreswar, Taluka - Mundra

As per plaint such land was surrounded by certain properties which descriptions are given below:

Northern side	Agricultural land belong to Narubha Jadeja & Deva Naran Rathod
Southern side	Agricultural land belongs to Balubha Jadeja
Eastern side	Agricultural land belongs to Chakubha Jadeja

Western side	Agricultural land belong to Lalji Joshi & Harisinh Jadeja
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As per averment so made in the plaint the present plaintiffs from the last sixty three years their father has been cultivating over such land & the same was done without any type of hindrance. In spite of the fact the present defendants without any valid reason trying to occupy such land. So with intention to prevent them this suit was filed with intention to obtain declaration cum permanent injunction.

During the pendency of this suit the defendant no. 2 filed this application contending that the present plaint should be rejected on the ground that this court has no jurisdiction to try this suit. In support of his claim he emphasized upon the provision so contained **u/s 142** of the **Bombay Tenancy & Agricultural Land, 1958**. So as the present suit is barred by the law of limitation so the plaint in connection with this suit is required to be rejected straight way.

whereas the present plaintiffs in their reply (so filed under exhibit 19) have stated that as per **Section 11** of the **Bombay Judicial Act** this court has the jurisdiction to try this suit. Therefore this application required to be dismissed with cost.

It will be not proper if the plaint is rejected at the prima facie stage. Because whether this suit is maintainable or not it can't be decided merely on technical assumption. Otherwise it will be amounted to injustice. Apart from that Hon'ble Supreme Court in **Balasaria Construction (Pvt) Limited v. Hanuman Seva Trust [Laws(SC) 2005 11 53]** has observed that

An application filed under Order 7, Rule 11(d) of the Civil Procedure Code can't be upheld merely on technical assumption & thereby a suit can't be dismissed as barred by limitation without proper pleadings, framing of an issue of limitation & taking of evidence. Question of law is a mixed question of law & fact.

Apart from that in the case of **"Bardoli Shreerang Exhibitios Pvt. Ltd. V. Maheshbhai Babubhia Hirpara & Ors. [2022(2)63(2) G.L.R 1061** it was held that

"A plaint can be rejected under Order 7, Rule 11 of C.P.C. only if the plaint in the face of it discloses the same to be barred by any law in force & not be referring the materials need to be decided in the light of evidence, after framing of issue and also on the satisfaction of the court.

So from the above direction it is now clear that the discretionary power so vested under **Order 7, Rule 11** can't be exercised in routine manner. But the same must be exercised only on the ground that from the face of the plaint it appeared that there is/are some defect/defects due to which the application so field under **Order 7, Rule 11** can be sustained.

So from the above discussion it is clear that at this juncture there is no valid ground for entertain this application. Therefore for the interest of justice I'm passing the following order on 8th day of December'25 in open court.

ORDER

This application so filed on behalf of the defendant is hereby rejected. No order of cost.

Place: - Mundra

Date: - 8th day of December'25.

(Sudipta Pal)
GJ01419
Principle Civil Judge &
J.M.F.C., Vadali