

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CIVIL REVISION APPLICATION NO. 495 of 2024**

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PATEL GOVINDBHAI NAGARDAS & ORS.

Versus

DECD NAGARDAS KHODIDAS THRO LH & ORS.

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Appearance:

MR TATTVAM K PATEL(5455) for the Applicant(s) No. 1,2,3,4

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CORAM: HONOURABLE MR. JUSTICE DIVYESH A. JOSHI

Date : 18/11/2024

ORAL ORDER

1. Heard Ms. Trusha Patel, learned senior advocate appearing on behalf of Mr. Tattvam Patel, learned advocate for the applicants.

2. Ms. Trusha Patel, learned senior advocate submits that the applicants herein are the original defendants no.1 to 4, the respondent no.1 is the original plaintiff and respondents no.2 is the original defendants no.5. The suit is filed by the respondent – original plaintiff in the year 2024 for declaration, partition and permanent injunction, wherein, after serving the notice, the applicants – defendants appeared through an advocate and filed an application under Order 7 Rule 11 (a) and (d) of the Code of Civil Procedure. The said application has not been entertained by the learned court below by assigning reasons. Being dissatisfied with the said order, the present application has been filed. She further submitted that in-fact, the said

property is belonging to ancestral property of all the parties. The plaintiffs and defendants are the relatives and in the year 1977, the forefather of the respondents passed away and therefore, an entry was mutated in the name of legal heirs, at that relevant point of time, a relinquishment deed was prepared by the mother of the plaintiffs. The said entry was also mutated in the revenue record in the year 1977. Then-after, on the strength of the said entry, the property was mutated in the name of rest of the legal heirs of the deceased. There are total 07 parcels of the land in the said property, out of which, 03 properties were sold out by executing registered sale-deed; one property executed in the year 1994; second in the year 2009 and third in the year 2020. At that relevant point of time, necessary entries were mutated in the records of right. It is an admitted position of fact that the plaintiffs mother has passed away in the year 2017 and during her lifetime of 40 years, she has not challenged the entry mutated in the year 1977, which clearly goes on to show the conduct on the part of the plaintiffs.

3. Considering the above stated factual aspects of the matter, it can be said that execution of first registered sale-deed itself can be treated as a deemed knowledge of execution of registration of sale-deed and therefore, limitation period would be started to be commenced from that day and at the most, the suit has been filed within period of limitation i.e. on or before 1997, but the suit is filed in the year 2024. She further submitted that in-fact, in the year 2017 the mother of the plaintiffs had passed away and at that relevant point of

time also, the name of the mother of the plaintiffs had been entered into the revenue records and then-after, the name was deleted after taking steps and an entry to that effect was also mutated in the revenue record, which clearly goes on to show that at the time of mutation of all entries, the said facts were within the knowledge of the plaintiffs. Therefore, there is gross delay in preferring the suit and the said fact has been brought to the notice of the Court by way of preferring application under Order 7 Rule 11 (a) & (d) of CPC and the said application has not been entertained.

4. Therefore, as per the principle of law laid down by the Hon'ble Apex Court in the case of ***Smt. Dilboo (Dead) by Lrs. & Ors Vs. Smt. Dhanraji (Dead) And Ors.*** reported in ***AIR 2000 SC 3146 : 2000 (7) SCC 702***, the period of limitation would be started to be commenced from the date of registration of the sale-deed. Admittedly, the suit is filed after a lapse of period of more than 15 years and therefore, hopelessly barred by law of limitation. The said fact was brought to the notice of the learned trial Court by way of preferring an application under Order VII Rule 11(a) and (d). Despite the said fact, the learned trial Judge has rejected the application by assigning vague reasons and also, observed that the period of limitation is a mixed questions of law and facts. Therefore, the said view adopted by the learned trial Judge is erroneous one. Therefore, the present application requires consideration.

5. Considering the above stated factual aspects of the

matter, prima-facie, it seems that there is substance in the matter. Let **Notice be issued** to the opponents returnable on **07.01.2025**.

In the meantime, let there be an ad-interim order in terms of Para-8(D).

Direct service is permitted.

(DIVYESH A. JOSHI,J)

A. B. VAGHELA