

Regular Civil Suit No.01/2018**- :: ORDER BELOW EXHIBIT NO.11 :: -**

- (1) Heard the Ld. Advocates for both the parties. Read the application vide exhibit no. 11 given by the Defendant No. 2 in respect of rejection of plaint under Order 7 Rule 11(d). The Plaintiff had filed the reply for the same vide exhibit no. 12.
- (2) The short facts of the said matter is that the present Plaintiff has filed the present suit regarding declaration and permanent injunction that the Sale Deed Dtd.27/10/2006 alleged to have been executed by the Defendant No.1 and his power of attorney in favour of the Defendant No. 2 is null and void. The Plaintiff has also prayed for a permanent injunction restraining the Defendants not to transfer, alienate and enter into the aforesaid disputed land situated in Moje-Zarana Taluka-Netrang, block No.73 old R. S. No.148 and New R. S. No.144.
- (3) That having served with the summons of the said civil suit, the Defendant No. 2 has appeared through his Ld. Advocate and filed written statement vide Exhibit No.09 and also filed this application in the said suit to reject the plaint in exercise of the powers under Order 7 Rule 11(d) of the CPC, on the ground that the suit is barred by law of limitation.
- (4) The ld. Advocate Mr. D. N. Kher on behalf of the Defendant No.2 has vehemently submitted that the said suit have been instituted challenging Sale Deed Dated 27-10-2006 which has been executed in the year 2006 and the said suit have been instituted in the year 2018. Further, looking to the document at Mark-11/1 the Plaintiff had knowledge of transactions between the Defendant No. 1 and Defendant No. 2 since 24/10/2008. Plaintiff has knowledge

that Sale deed has been executed in the year 2006. Further, Plaintiff has to file present suit within three years as per the provision of Limitation Act, but Plaintiff has filed present suit on 02/01/2018. The ld. Advocate for the Defendant No.2 relied upon the decision of the Hon'ble Supreme Court in the case of R.K.Roja V/s. U. S. Rayudu and another Civil Appeal No.5540 of 2016 in support of his submission that as held by the Hon'ble Supreme Court in the said decision-"The Trial Court can exercise the power at any stage of the suit - before registering of plaint or after issuing summons to the defendant at any time before the conclusion of the trial". By making above submissions and relying upon above decision it is requested to allow the said application and should be reject the said plaint by imposing cost and without go into merits of the suit on the ground that the same is barred by law of limitation.

(5) The ld. Advocate Mr. A. H. Pandya on behalf of the Plaintiff has drawn attention of the Court that the certified copy of Sale Deed is received on 28/11/2017, Tenancy court has stayed the matter and decision was given in favour of Plaintiff on 31/07/2008 and though it has in the knowledge of Defendant still he transferred the suit property. Therefore, plaintiff suit is not barred by law of limitation. At present the title transferred in favour of Defendant No.2 by Defendant No.1. But, actually Defendant No.1 has no title of the suit property. Therefore, fact of application of Defendant No.2 is oral which cannot be decided without appreciation of evidence. Hence, the said application of the Defendant No. 2 should be rejected.

(6) In the present case looking to the plaint, the Plaintiffs have filed a suit in the court of learned Civil Judge (S.D.), Bharuch on vide R.C.S. No.193/92 for

possession and mesne profit for three years and suit has been transferred into the court of Ld. Principal Civil Judge, Valiya due to jurisdiction and same is registered and numbered as RCS No.23/02 which was dismissed on Dtd.13/10/2004 vide order passed below Exh.01 in the absence of Plaintiff. Further, said facts came into the knowledge of Plaintiff in the year 2015. Therefore, Plaintiff filed an application to restore the said suit which is still pending in the Court.

Further, looking to the Para-5 of the present Plaint it is stated that :-

“પરંતુ અમારો દાવો ચાલુ હતો તે દરમ્યાન પ્રતિવાદી નં.૧ ભગવતીબેન હીરાલાલ ભટતનાં મુખત્યાર તરીકે કેશવભાઈનાંએ દાવાવાળી પેરા નં.૧ માં વર્ણવેલી ખેતીની જમીન આ કામનાં પ્રતિવાદી નં.૨ નાંને રૂ.૪૫,૦૦,૦૦૦/- ના અવેજ બદલ તા.૨૭/૧૦/૨૦૦૬ નાંરોજ વેચાણ કરી દઈ, તેનાં કબજામાં સુપ્રત કરી દીધી છે.”

Further, looking to the Para-8 of the Plaint it is stated that :-

“દાવાનું કારણ પ્રતિવાદી નં.૧ અને તેમનાં કુ.મું.નાંએ દાવાવાળી મીલકત પ્રતિવાદી નં.૨ નાંને તા.૨૭/૧૦/૨૦૦૬ ના રજી. વેચાણ દસ્તાવેજ કર્યો તેની જાણ થઈ ત્યારથી તેમજ પ્રતિવાદી નં.૨ હાલ તેઓનાં કબજાની જમીન છેલ્લાં એકાદ માસથી તબદીલ કરવા પેરવી કરી રહ્યા છે ની જાણ થઈ ત્યારથી.”

And therefore even considering provisions of the said Act, starting point of limitation at least can be said to be from the date on which the Plaintiff has knowledge of the said transaction between Defendant No.1 & 2. And it is clearly mentioned by Plaintiff in his letter Dtd.24/10/2008, produced vide Mark-11/1, is that as per direction of Bhagwatiben Hiralal Bhagat her power of attorney holder sold the suit land vide Registered Sale Deed No.1185, Dtd.27/10/2006 to Mohanlal Lalabhai Patel and it is duly certified vide entry No.1220, Dtd.27/11/2006 by Mamlatdar office, Valiya and further, the same fact mentioned in order, produced vide Mark-11/2, passed by member of Gujarat Tenancy Panch,

Ahmedabad Dtd.31/07/2008 in Revision Application No. TEN/BA/782/94 filed by Plaintiff. The Plaintiffs choose not to file suit for cancellation of the sale deed within a period of three years from the aforesaid date on which they came to know.

At this stage, Art. 58 of the Limitation Act are required to be considered. And as per the Art. 58 period of limitation to file suit to obtain any other declaration shall be three years from the date on right to sue first accrue to the Plaintiff. As held by the Hon'ble Supreme Court in the case of *Khatri Hotels Pvt. Ltd.* period of limitation would commence when right to sue first accrues.

(7) The contention of the advocate for the Plaintiffs is that while considering application under O. 7 Rule 11(d) of CPC, the court is required to consider the averments made in the plaint only and in Para-8 of the said suit the Plaintiff has averred that he came to know about said transaction between Defendant No.1 & 2 in the year 2008, but cleverly neither stated date or period by him. So, it appears that by clever drafting the Plaintiffs have tried to bring the suit within the period of limitation. Even he has knowledge of said transaction between Defendant No. 1 & 2 in the year 2008 also, present suit have been preferred after a period of ten years, which shows conduct on the part of the Plaintiff.

(8) At this juncture it is required to go through the decision of the Hon'ble Supreme Court in the case of *T. Trivandam V. T. V. Satyapal*, reported in 1977(4) SCC 467 as held by the Hon'ble Supreme Court in the said decision, if clever drafting has created the illusion of the cause of action, it is the duty of the Court to nip in the bud at the first hearing by examining the party searchingly under Order 10 of the CPC. Held by the

Hon'ble Supreme Court in the aforesaid decision, by clever drafting a suit which is otherwise barred by law of limitation cannot be brought within the period of limitation.

Further, in the decision of the Hon'ble Supreme Court in the case of *Khatari Hotels Pvt. Ltd V. Union of India reported in 2011(9) SCC 126* as held by the Hon'ble Supreme Court in the aforesaid decision, period of limitation would start when the right to sue first accrues and successive violation of right will not give rise to fresh cause of action.

Furthermore, the decision of the Hon'ble Supreme Court in the case of *N. V. Srinivasan Murthy V. Mariyamma reported in AIR 2005 SC 2897* as held by the Hon'ble Supreme Court in the aforesaid decision, if it is found that the suit is barred by law of limitation, suit can be rejected in exercise of powers under Order 7, Rule 11(d) of the CPC.

- (9) As held by the Hon'ble Supreme Court in the case of AIR 2005 SC 2897 and 2010(3) GLH 596, if considering the averments in the plaint it is found that the suit is time barred, the plaint can be rejected in exercise of powers under Order 7 Rule 11(d) of the Code of Civil Procedure and accepting the averments made in the plaint as they are it is found that the suit is clearly barred by law of limitation. So in the large interest of the justice this court passed following order -

- :: O R D E R :: -

- (1) The application of the present Defendants is hereby "**Allowed**", and,
- (2) The present suit of the said Plaintiffs is clearly barred by law of limitation and that reason the plaint / suit of the present Plaintiffs is hereby

rejected under Order 7 Rule 11(d) of the Code of Civil Procedure.

(3) The Plaintiff is hereby directed to pay the cost of Rs. 2,500/- (In words Rupees Two Thousand Five Hundred only) to Defendant No.2.

Order is pronounced today on 22nd day of November, 2018 in the open Court at Netrang.

Date : 22/11/2018
Place: Netrang.

(MANOJBHAI SHANTILAL SOLANKI)
PRINCIPAL CIVIL JUDGE, NETRANG,
Dist. BHARUCH.
JUDGE CODE : GJ01300.