

(2017) 03 GUJ CK 0200
In the Gujarat High Court
Case No : 302 of 2013

HEMENDRA ISHWARBHAI PATEL THROUGH POA PIYUSH B
TRIVEDI & ANOTHER

APPELLANT

Vs

GOKULBHAI SHANABHAI-DECD

RESPONDENT

Date of Decision : 17-03-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Order 7Rule 11](#), [Section 115](#), [Order 7Rule 11\(d\)](#), [Order 7Rule 11\(a\)](#) - Revision
[Limitation Act, 1963](#), [Article 54](#)

Citation : (2017) 03 GUJ CK 0200

Hon'ble Judges : Bela M Trivedi

Bench : Single Bench

Advocate : Mihir Thakore, Premal R Joshi, Mehul S Shah, Pratik Y Jasani

Final Decision : Allowed

Judgement

1. Rule. Mr.Pratik Jasani, learned Advocate for the opponents waives service of notice of Rule.
2. With the consent of the learned Advocates for the parties, the matter is heard finally.
3. The present Civil Revision Application, filed under Section 115 of CPC by the applicants (original defendant Nos.13 and 14), is directed against the order dated 4.9.2013 passed by the Senior Civil Judge, Ahmedabad (Rural) (hereinafter referred to as "the trial Court") below Exh. 57 in Special Civil Suit No.474 of 2009, whereby the trial Court has rejected the said application filed by the applicants, seeking rejection of the plaint under Order VII Rule 11 of CPC.
4. A few germane facts as stated in the plaint by the respondent Nos.1, 2, and 3 (original plaintiffs) are that the respondent No.4 Dineshbhai Ambalal (defendant No.1) was the owner of the lands bearing Survey No.228/1/2/3/4/5 admeasuring

2 Hectares 85 Are 31 Sq. mtrs., and Survey No.224/1/2/3 admeasuring 2 Hectares 23 Are 59 Sq. mtrs. The respondent No.4 (defendant No.1) had executed an agreement to sell the said lands in favour of the deceased Gokulbhai Shanabhai (predecessor of the respondent Nos.1/1 to 1/2), deceased Dineshbhai Shanabhai (predecessor of respondent No.2/1) and Hashumatiben Shanabhai - the respondent No.3 (original plaintiffs) on 13.6.1995. The said agreement was also got registered in the office of the Sub-Registrar, Sanand. According to the said plaintiffs, the time was not the essence of the contract and certain conditions as contained in the agreement had to be fulfilled by both the parties, failing which both the parties were entitled to enforce the agreement by seeking specific performance of the said agreement. It has been further stated in the plaint that the deceased Gokulbhai and Dineshbhai, who happened to be the brothers of the plaintiff No.3 Hashumatiben, were managing the affairs of the lands, and therefore, she was not aware about the dealings of the suit lands. The said Gokulbhai expired on 6.5.2004 and Dineshbhai expired on 5.8.2007. The respondent No.3 (plaintiff No.3) thereafter came to know about the various sale deeds having been executed by the original owner Dineshbhai in collusion with the other defendants, and on verifying the record, she had found that the respondent No.4 (defendant No.1) in collusion with the defendant Nos.2 and 3, through their power-of-attorney holder Rajnibhai Jayantibhai Patel (respondent No.13 - original defendant No.10) had executed two registered sale deeds bearing registration Nos.476 and 477 on 15.4.1998 in favour of the respondent Nos.7 to 12 (original defendant Nos.4 to 9) i.e. Kantibhai Joitaram and others. It is also stated that the plaintiff No.3, and her brothers Gokulbhai and Dineshbhai had neither waived their rights under the agreement in question, nor had consented for the execution of any sale deed, however, the sale deeds dated 15.4.1998 and thereafter the confirmation deed dated 23.6.2003 were executed by the defendant No.1 in favour of the defendant Nos.4 to 9. It is further stated that the said deeds being illegal and void ab initio were required to be cancelled. The plaintiffs have further stated in the plaint that the defendant No.1 Dineshbhai, in order to defeat the rights of the plaintiffs under the agreement in question, had executed another sale deed on 17.5.2004 in favour of the respondent Nos.14 and 15 (defendant Nos.11 and 12), which was registered in the office of Sub-Registrar at Sr. No.892, however, the same was cleared by the Sub-Registrar on 7.2.2007 as per the new Sr. No.702. Subsequently pursuant to the order passed in the Civil Suit being No.216/1999 by the Court at Ahmedabad (Rural), the defendant Nos.4 to 9 and the defendant Nos.11 and 12 had executed two separate deeds of reconveyance on 17.8.2007 in favour of the defendant No.1 Dineshbhai, which were also got registered at Sr. No.4276 and 4278. Accordingly the defendant No.1 had again become the owner of the lands in question by virtue of the said deeds of reconveyance. Thereafter the defendant Nos.1, in collusion with the defendant Nos.2 to 7 also executed a sale deed on the same day i.e. on 17.8.2007 in favour of the defendant No.13, (applicant No.1 in the present revision application). The defendant No.13, in turn, executed a sale deed on 24.3.2008 in favour of the defendant No.14, (applicant No.2 in the

present revision application), which was registered at Sr. No.2203. According to the plaintiffs all these sale deeds were executed by the defendants in collusion with each other, in order to defeat the rights of the plaintiffs under the agreement in question and they having been executed without obtaining the signatures or the consent of the plaintiffs, were not binding to the plaintiffs. It is also stated that none of the defendants was bona fide purchaser for value without notice and none of the sale deeds created any right, title or interest in the suit lands, as the agreement executed by the defendant No.1 in favour of the plaintiffs on 13.6.1995 was subsisting. It is further stated that at present the name of defendant No.14 has been entered in the revenue record, and there is a possibility of the said defendant changing the nature of the land. The plaintiffs, therefore, have filed the suit seeking specific performance of the said agreement dated 13.6.1995 and seeking cancellation of the sale deeds executed by the defendant No.1 in favour of the other defendants. The respondent Nos.1 to 3 (the plaintiffs) have produced the copies of the agreement and all the sale deeds and reconveyance deeds along with the plaint as per the list Exh.3.

5. The present applicants - original defendant Nos.13 and 14, had filed an application under Order VII Rule 11 seeking rejection of the plaint on the ground that the suit was barred by law of limitation and was not maintainable against them. The said application having been dismissed by the trial Court vide the impugned order dated 4th September 2013, the applicants have preferred the present Civil Revision Application.

6. The learned Sr. Advocate Mr.Mihir Thakore for the applicants taking the Court to the averments made in the plaint and the documents produced by the plaintiffs along with the plaint submitted that the deceased Gokulbhai, who happened to be the brother of the plaintiff No.3 had signed as witness in the two sale deeds dated 15.4.1998 executed by the respondent No.4 - defendant No.1 through his power-of-attorney holder Rajnibhai - defendant No.10, and that the said signatures of Gokulbhai have not been disputed by the plaintiffs either in the plaint or in the reply to the application filed by the applicants under Rule VII, Rule 11. According to him, the agreement dated 13.6.1995 was sought to be enforced by the plaintiffs against the defendant No.1 by filing the suit in 2009, which was clearly barred by law of limitation. He further submitted that the defendant No.1 and other defendants in the meantime had executed many other registered sale deeds as stated in the plaint itself, and therefore, the plaintiffs had deemed knowledge of the said sale deeds as per the ratio of the judgement in case Bahadurbhai Laljibhai Malhotra Vs. Ambalal Joitaram Heir of Joitaram Ranchhoddas and Ors., 2015 3 GLR 2760. He has also relied upon the decision of this Court in case of Becharbhai Zaverbhai Patel Vs. Jashbhai Shivabhai Patel, 2013 1 GLR 398 to submit that when the sale deeds were registered and the entries were made in the revenue record, the plaintiffs would be deemed to have knowledge of such transactions. According to him, the time limit of six months was fixed in the agreement, and therefore, the limitation had started running on the expiry of six months, or at least when the said Gokulbhai put his signatures

on the sale deeds executed in favour of the defendant Nos.4 to 9. Mr.Thakore has relied upon the various decisions of this Court to submit that when the plaint is barred by the law of limitation, the same deserves to be rejected under Order VII Rule 11 (d) of CPC. Mr.Thakore has also relied upon the decision of Supreme Court in case of Hardeh Ores (P) Ltd. Vs. Hede and Company, 2007 5 SCC 614 to submit that the averments made in the plaint as a whole have to be seen to find out whether the plaint discloses any cause of action or not, and whether the suit is barred under any law or not. The reliance has also been placed on the decision of the Supreme Court in case of N.V. Srinivasa Murthy and Ors. Vs. Mariyamma (Dead) by Proposed LRS and Ors., 2005 5 SCC 548 and also on the decision in case of T. Arivandandam Vs, T. V. Satyapal, 1977 4 SCC 467 to substantiate his contention that if on a meaningful reading of the plaint, it is found to be vexatious and meritless, and if the plaint does not disclose any cause of action, the same is liable to be rejected under Order VII rule 11 of CPC.

7. However, the learned Sr. Advocate Mr.Mehul Shah for the respondent Nos.1 to 3 (the plaintiffs) vehemently submitted that the time was not the essence of the agreement dated 13.6.1995 as both the parties had to carry out their respective obligations. Pressing into service Article 54 of the Limitation Act, he submitted that the limitation would start from the date fixed in the agreement or from the date of refusal by the owner to execute the sale deed, however, in the instant case, time having not been fixed in the agreement and there being no refusal made by the defendant Nos.1, the question of the suit being barred by limitation did not arise. In this regard, he has relied upon decisions in case of Panchanan Dhara & Ors. Vs. Monmatha Nath Maity (Dead) through LRS. & Anr., 2006 5 SCC 340; Rathnavathi & Anr. Vs. Kavita Ganashamdas, 2015 5 SCC 223; Ahmmadsahab Abdul Mulla (deceased by Lrs) Vs. Bibijan & Ors., 2009 AIR(SC) 2193; and Madina Begum Vs. Shiv Murti Prasad, 2016 AIR(SC) 3554. He also submitted that the deceased Gokulbhai had not put his signatures on the sale deeds executed by the defendant No.1 on 15.4.1998, however, even if it was presumed that the deceased Gokulbhai had put his signature, neither he nor the other plaintiffs could be said to have waived their rights under the agreement in question. According to him, the question of limitation would be a mixed question of law and fact, which could be decided by the Court only after the evidence is led in the suit, and therefore, the trial Court had rightly rejected the application of the applicants under Order VII Rule 11 of CPC. Mr.Shah has placed reliance on the various decisions of the Supreme Court, like in case of Balasaria Construction (P) Ltd. Vs. Hanuman Seva Trust & Ors., 2006 5 SCC 658; Ramesh B. Desai Vs. Bipin Vadilal Mehta, 2006 AIR(SC) 3672; C. Natrajan Vs. Ashim Bai and Anr., 2008 AIR(SC) 363, etc.

8. Before advertng to the rival contentions raised by the learned Advocates for the parties it would be beneficial to summarize the legal position on the rejection of the plaint under Order VII Rule 11, as propounded by the Supreme Court in various cases from time to time. The Supreme Court as back as in 1977 had stated in case of T. Arivandandam Vs. T. V. Satyapal and Anr. that if on a

meaningful reading of the plaint it manifestly appears to be vexatious and meritless, not disclosing a clear right to sue, the trial Court should exercise its powers under Order VII Rule 11. It is also stated that if the clever drafting has created an illusion of a cause of action, the Court should nip it in the bud at the first hearing. In case of *Popat and Kotecha Property Vs. State Bank of India Staff Association*, 2005 7 SCC 510 and in case of *Sopan Sukhdeo Sable and Ors. Vs. Assistant Charity Commissioner and Ors.*, 2004 3 SCC 137, it was observed inter alia that the real object of Order VII Rule 11 of the Code is to keep out of courts irresponsible law suits. The word "shall" used in the said provision clearly casts a duty on the Court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even without the intervention of the defendant.

9. Of course, in the latest decision in case of *P.V. Guru Raj Reddy Rep. By GPA Laxmi Narayan Reddy & Anr. Vs. P. Neeradha Reddy & Ors.*, 2015 AIR(SC) 2485 the Supreme Court has put the Courts on guard by observing inter alia that rejection of the plaint under Order VII Rule 11 being drastic power conferred in the Court, to terminate civil action at the very threshold, the conditions precedent to the exercise of such power must be strictly complied with.

10. As regards the scrutiny of a plaint, for the purpose of ascertaining the cause of action, the Supreme Court in case of *The Church of Christ Charitable Trust & Educational Charitable Society, rep. By its Chairman Vs. M/s.Ponniammman Educational Trust rep. by its Chairperson/Managing Trustee*, 2012 AIR(SC) 3912 has observed in paragraph 8 as under:- "8. While scrutinizing the plaint averments, it is the bounden duty of the trial Court to ascertain the materials for cause of action. The cause of action is a bundle of facts which taken with the law applicable to them gives the plaintiff the right to relief against the defendant. Every fact which is necessary for the plaintiff to prove to enable him to get a decree should be set out in clear terms. It is worthwhile to find out the meaning of the words "cause of action". A cause of action must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue."

11. It will also be relevant to reproduce the observations made by the Supreme Court in case of *Liverpool & London S. P. & I. Association Ltd. Vs. M. V. Sea Success I and Another*, 2004 9 SCC 512 which read as under:- "146. It may be true that Order 7 Rule 11(a) although authorises the court to reject a plaint on failure on the part of the plaintiff to disclose a cause of action but the same would not mean that the averments made therein or a document upon which reliance has been placed although discloses a cause of action, the plaint would be rejected on the ground that such averments are not sufficient to prove the facts stated therein for the purpose of obtaining reliefs claimed in the suit. ..."

12. So far as the rejection of plaint on the ground of being barred by law of limitation, the Supreme Court has held in case of *Hardesh Ores (P) Ltd. Vs. Hede and Company* in paragraph 25 as under:- "25. The language of Order VII Rule 11

CPC 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. Mr. Nariman did not dispute that "law" within the meaning of Clause (d) of Order VII Rule 11 must include the law of limitation as well. It is well settled that whether a plaint discloses a cause of action is essentially a question of fact, but whether it does or does not must be found out from reading the plaint itself. For the said purpose the averments made in the plaint in their entirety must be held to be correct.

The test is whether the averments made in the plaint if taken to be correct in their entirety a decree would be passed. The averments made in the plaint as a whole have to be seen to find out whether Clause (d) of Rule 11 of Order VII is applicable. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense. As observed earlier, the language of Clause (d) is quite clear but if any authority is required, one may usefully refer to the judgments of this Court in *Liverpool & London S. P. & I. Association Ltd. Vs. M. V. Sea Success I* and *Popat and Kotecha Property Vs. State Bank of India Staff Association*."

13. In case of *C. Natarajan Vs. Ashim Bai and Anr.*, the Supreme Court observed in paragraph 7 as under:- "7. An application for rejection of the plaint can be filed if the allegations made in the plaint even if given face value and taken to be correct in their entirety appear to be barred by any law. The question as to whether a suit is barred by limitation or not would, therefore, depend upon the facts and circumstances of each case. For the said purpose, only the averments made in the plaint are relevant. At this stage, the court would not be entitled to consider the case of the defence. {See [*Popat and Kotecha Property v. State Bank of India Staff Association*, 2005 7 SCC 510]}."

14. In *Balasaria Construction (P) Ltd. Vs. Hanuman Seva Trust & Ors.*, it has been observed as under:- "After hearing counsel for the parties, going through the plaint, application under Order VII Rule 11(d) CPC and the judgments of the trial court and the High Court, we are of the opinion that the present suit could not be dismissed as barred by limitation without proper pleadings, framing of an issue of limitation and taking of evidence. Question of limitation is a mixed question of law and fact. Ex facie in the present case on the reading of the plaint it cannot be held that the suit is barred by time. ..."

15. Now in the light of the afore-stated legal position let us examine the facts of the present case to ascertain as to whether the plaint is liable to be rejected on the ground of nondisclosure of cause of action or on the ground of being barred by law. It appears from the statements made in the plaint and from the documents annexed to the plaint that the deceased Gokulbhai and Dineshbhai were the brothers of the plaintiff No.3 Hasumatiben. The suit has been filed by the legal heirs of Gokulbhai and Dineshbhai, and by the said Hasumatiben in the

year 2009 seeking specific performance of the agreement dated 13.6.1995 and seeking cancellation of various sale deeds executed by the defendants inter se. It is further transpires that after the execution of the agreement dated 13.6.1995 to sell the lands in question to the predecessors of the plaintiffs Nos.1 and 2 and the plaintiff No.3, the original owner - the defendant No.1 through his power-of-attorney holder Rajnibhai had executed two registered sale deeds on 15.4.1998 in favour of the respondent Nos.7 to 12 (defendant Nos.4 to 9), in which the deceased Gokulbhai had put his signatures as the witness. The plaintiffs have stated that the plaintiff No.3 was not aware about any transaction as her brothers Gokulbhai and Dineshbhai were managing the affairs of the lands. The said Gokulbhai expired on 6.5.2004 and Dineshbhai expired on 5.8.2007. Neither Gokulbhai nor Dineshbhai during their lifetime had taken any action to challenge the said sale deeds executed on 15.4.1998 wherein the signatures of Gokulbhai appeared as witness. The plaintiffs have also not denied in the plaint the signatures of the said Gokulbhai appearing in the said sale deeds, though the copies of the said sale deeds have been produced by them along with the plaint. There is also not a single averment made in the plaint stating as to what action the said Gokulbhai or Dineshbhai had taken during their lifetime or what action the present plaintiffs had taken after their death to perform their part of contract or to call upon the defendants - owners to execute the sale deed pursuant to the said agreement dated 13.6.1995. The only statements made in the plaint with regard to the cause of action are that the cause of action had arisen when the defendant No.1 had executed the agreement on 13.6.1995, and thereafter when the defendant No.1 and his power-of-attorney holder, the defendant No.10 executed sale deeds on 17.5.2004, and thereafter when the defendant No.13 executed sale deed in favour of defendant No.14 on 24.3.2008, and that there was a possibility of the defendant No.14 changing the nature of lands. In the opinion of the Court, the plaintiffs are required to state clearly as to how and when the cause of action to file the suit against the defendants had arisen. As held by the Supreme Court in case of *The Church of Christ Charitable Trust*, a cause of action must include some act done by the defendants, since in absence of such an action no cause of action can possibly accrue. In the instant case, the plaintiffs have failed to aver in the plaint as to which act of the defendants gave rise to the cause of action. As rightly submitted by Mr.Thakore, vague averments or clever drafting creating an illusion of cause of action would not be sufficient. The Court, therefore, is of the opinion that the plaintiffs having failed to clearly disclose the cause of action against the defendants, the plaint is required to be rejected under Clause (a) of Rule 11 of Order VII.

16. The Court also finds substance in the submission of Mr.Thakore that the suit is also barred by law of limitation. It cannot be gainsaid that in case of specific performance of contract, the time would start running from the date fixed for the performance of the contract or from the date of refusal to perform his part of contract by the other party, as per Article 54 of the Limitation Act.

17. Mr.Shah for the respondents has relied upon the decisions of Supreme Court

in case of Panchanan Dhara & Ors. Vs. Monmatha Nath Maity (Dead) through LRS. & Anr. in case of Rathnavathi & Anr. Vs. Kavita Ganashamdas, and in case of Ahmmadsahab Abdul Mulla (deceased by Lrs) Vs. Bibijan & Ors. to submit that in case of agreement to sell immovable property, ordinarily time would not be the essence of the contract. According to him, in the instant case, the time having not been fixed in the agreement, the case of the plaintiffs would fall in the second part of Article 54 of the Limitation Act. There cannot be any disagreement to the proposition of law laid down by the Supreme Court in the decisions relied upon by Mr.Shah, however, in the instant case, even if it is held that time was not the essence of the contract, the respondents - plaintiffs were required to state in the plaint as to how their suit was within the period of limitation, more particularly when the specific performance of the agreement executed in the year 1995 has been sought in the year 2009. Apart from the fact that there is no averment in the plaint as to what action was taken by the plaintiffs to perform their part of contract after the execution of the agreement in question for so many years till 2009 when the suit was filed, it clearly transpires from the averments made in the plaint and the documents annexed thereto that Gokulbhai having put his signatures as witness in the sale deeds executed by the defendant No.1 in favour of the other defendants Nos.4 to 9 in the year 1998, he had knowledge about the denial of performance by the said defendant No.1 in the year 1998, and therefore, the time had started running against the plaintiffs from the said date. It is pertinent to note that the plaintiffs have not denied the signatures of the said Gokulbhai on the said sale deeds, either in the plaint or in the reply to the application filed by the applicants under Order VII Rule 11. The only statement made in the plaint is that Gokulbhai and Dineshbhai were looking after the affairs of the land, and had not waived their rights. In the reply to the applicants' application seeking rejection of the plaint, it is stated that even if Gokulbhai had put his signatures on the said sale deeds as witness, it could not be said that they or the plaintiffs had waived their rights created under the agreement in question. In the opinion of the Court, the plaintiffs and their predecessors having failed to take any action, calling upon the defendant No.1 - owner to perform his part of the contract and execute the sale deed in favour of the plaintiffs for about 24 years, and the plaint being totally silent as to how the suit was within the period of limitation qua other defendants also, the suit ex facie appears to be barred by law of limitation.

18. It is also pertinent to note that during the period of 1995 to 2008 many other sale deeds and reconveyance deeds were executed by the defendants inter se, as stated in the plaint itself, and all the said deeds were also registered in the office of Sub-Registrar. As held by the Supreme Court in case of Dilboo (Smt.) (dead) by Lrs. and Ors. Vs. Dhanraji (Smt.) (Dead) and Ors., 2000 7 SCC 702, whenever a document is registered, the date of registration becomes the date of deemed knowledge. In other cases, where a fact could be discovered by due diligence, then deemed knowledge would be attributed to the plaintiff, because a party can not be allowed to extend period of limitation by merely claiming that

he had no knowledge. When the suit is filed beyond period of limitation, the plaintiffs have to aver in the plaint as to when they came to know about the sale deeds executed by the defendants inter se and how the suit is within limitation. In the instant case, the respondents - plaintiffs are conveniently silent as to on which date they came to know about the denial of performance of the agreement by the defendant No.1 so as to come within the period of limitation as contemplated in Article 54 of the Limitation Act, and on which date they came to know about the execution of the other sale deeds of which cancellation is sought. Apart from the fact that the said Gokulbhai had signed on the sale deeds dated 15.4.1998 executed in favour of the defendant Nos.4 to 9, the said sale deeds being registered documents, deemed knowledge of the plaintiffs could be presumed in respect of the said deed. In absence of any averment in the plaint as to why they did not take any action against the defendants - owners for such a long time, and as to when they came to know about denial of their rights under the agreement by the defendant owners, the Court is constrained to hold that the suit is barred by law of limitation, so far as relief sought in respect of the specific performance of the agreement dated 13.6.1995 is concerned. The very foundation of the claim of the plaintiffs being the said agreement, and if the specific performance of the said agreement is barred by law of limitation, the question of cancellation of the sale deeds executed in favour of the other defendants during the period 1995 to 2008 would not arise. In that view of the matter, the Court is of the opinion that the suit being ex facie barred by limitation, the plaint is also liable to be rejected under Clause (d) of Rule 11, Order VII.

19. In the afore-stated premises, the impugned order dated 4.9.2013 passed by the Senior Civil Judge, Ahmedabad (Rural) below Exh.57 is quashed and set aside. The plaint of the Special Civil Suit No.474 of 2009 is rejected under the provisions contained in Clauses (a) and (d) of Rule 11 of Order VII of CPC.

20. The Civil Revision Application stands allowed accordingly.