

Khatunben Mohammedbhai Polara vs Shaukathussain Mohammed Patel on 6 May, 2019

Author: A.J. Shastri

Bench: A.J. Shastri

C/CRA/354/2017

JUDGMENT

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CIVIL REVISION APPLICATION NO. 354 of 2017

With

CIVIL APPLICATION (FOR VACATING INTERIM RELIEF) NO. 1 of 2019

In R/CIVIL REVISION APPLICATION NO. 354 of 2017

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE A.J. SHASTRI

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| 1 | Whether Reporters of Local Papers may be allowed to see the judgment ? | YES |
| 2 | To be referred to the Reporter or not ? | YES |
| 3 | Whether their Lordships wish to see the fair copy of the judgment ? | NO |
| 4 | Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ? | NO |

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KHATUNBEN MOHAMMEDBHAJI POLARA

Versus

SHAUKATHUSSAIN MOHAMMED PATEL

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Appearance:

MR MEHULSHARAD SHAH(773) for the Applicant(s) No. 1

RAMESH N JADAV(7688) for the Opponent(s) No. 1

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CORAM: HONOURABLE MR.JUSTICE A.J. SHASTRI

Date : 06/05/2019

ORAL JUDGMENT

1. The present Civil Revision Application under Section 115 is filed by the petitioner - original defendant against an order dated 7.3.2017 passed below Exh.16 in Special Civil Suit No.204 of 2016 under Order 7 Rule 11 of the CPC.

C/CRA/354/2017 JUDGMENT

2. The background of the fact on which the present revision petition is filed is that respondent - original plaintiff (original owner) residing in U.K., had filed the civil suit through his power of attorney. The premise on which the suit was instituted is that plaintiff received the land in question by succession and to that effect, a revenue entry No.521 dated 17.10.1985 was mutated and as per the case of the plaintiff, when one Shaukathussain came to India in 2008, he was asked to sign certain documents to convert the land into non-agricultural land and thereby, the defendant got executed a sale deed on 21.3.2008. It is further the case of the plaintiff that the signature was taken in Gujarati and by giving a wrong impression, the sale deed was executed. It has further been the case that revenue entry No.1750 pertaining to this sale deed was not certified and the defendant had preferred Appeal No.362 of 2013 before the Deputy Collector against non-certification of revenue entry pertaining to sell. As per the case of the plaintiff, when power of attorney was in receipt of the notice of appeal proceeding, he came to know about execution of sale deed in 2013. As a result of this, immediately the suit was filed on 13.4.2016 which was numbered as Special Civil Suit No.204 of 2016.

2.1 It is the case of the present petitioner that defendant submitted a written statement, inter-alia, denying all the contentions including a contention that the suit is hopelessly time barred and since it C/CRA/354/2017 JUDGMENT was time barred suit found according to the petitioner, he preferred an application under Order 7 Rule 11d of the CPC for seeking rejection of plaint. The learned Judge was pleased to reject the said application Exh.16 vide order dated 7.3.2017 which is made the subject matter of present revision petition.

3. Mr.Mehul Sharad Shah, learned advocate appearing on behalf of the petitioner, has vehemently contended that the suit which has been filed is hopelessly time barred, as is challenging and questioning the sale which took place in the year 2008. The very fact that sale transaction was a registered transaction, it was deemed notice and having knowledge of the said transaction and as such, since in the year 2016 the suit came to be filed, the proceedings are hopelessly time barred and in view of settled proposition of law, mere clever drafting will not permit the person to bring the proceedings within the limitation period and as such, in view of said proposition of law, the order of rejection is not legal and valid. It has further been contended that Article 58 of the Limitation Act would apply to the suit proceedings and the suit should have been within a period of 3 years from the date of registration. Hence, ex-facie the suit is hit by the provision of law and the power under Order 7 Rule 11d of the CPC ought to have been exercised. By drawing an attention to certain paragraphs of the suit itself, a contention is raised that cause of action which has been postulated in Para.10 itself is suggesting that the suit is time C/CRA/354/2017 JUDGMENT barred. Simply because certain averments have been made about the manner in which the transaction took place would ipso facto not absolve the plaintiff from the provision of the Limitation Act and as such, this kind of small pleadings will not be sufficient enough to adjudicate the proceedings.

3.1 It has further been asserted by the learned advocate for the petitioner that even if some doubts are arising about the transaction, then also the same should have been within a period of 3 years and not beyond that. By referring to one of the sale documents, learned advocate has submitted that the plaintiff has remained present in the sub-registrar's office and has made personally the signature and, therefore, he cannot question the sale in any form. Resultantly, the plaint is ex-facie time barred. For the purpose of strengthening his submission, learned advocate has relied upon few decisions of the Apex Court as well as the High Courts. (i) Van Oil Petroleum Ltd. v. M.V.Denali, reported in 2018 (0) AIJEL-HC 239093 (ii) Becharbhai Zaverbhai Patel & Anr. v. Jashbhai Shivabhai Patel & Ors., reported in 54 (1) GLR 398 and (iii) a decision of the Apex Court rendered in Civil Appeal No.2960 of 2019, decided on 13.3.2019 and by referring to aforesaid decisions, a contention is raised that the suit itself being beyond the period of limitation, the same deserves to be rejected in exercise of power under Order 7 Rule 11(a) and (d) of the CPC. No other submissions have been made.

C/CRA/354/2017 JUDGMENT

4. To meet with the submissions made by learned advocate for the petitioner, Mr.Ramesh N. Jadhav, learned advocate for the respondent, has vehemently opposed the present revision petition on the ground that the limitation being a mixed question of law and fact, at this stage of the proceeding the entire suit cannot be throttled without being adjudicated. Learned advocate has further submitted that applicability of Article 58 at this stage of the proceeding and by relying upon the same, the entire suit to be thrown out is not a question to be dealt with at this stage of the proceedings. It is settled position of law that whenever any element of fact is to be inquired into, the normal trend is not to exercise the jurisdiction under Order 7 Rule 11 of the CPC. It has further been categorically observed and contended that as soon as the notice came from the Deputy Collector's office, the factum of sale came to be noticed and after collecting the papers, the suit is filed within a period of limitation. Hence, the order under challenge since supported by cogent reasons, the same may not be interfered with. Learned advocate has further relied upon and submitted that a clear assertion is made in Para.4 of the plaint that in a sale transaction, the signatures are appearing in Gujarati, whereas the plaintiff is not knowing the Gujarati at all. A clear assertion of doubt about the transaction in question is specifically made which requires an evidence to be led and what has been important at this stage is to C/CRA/354/2017 JUDGMENT look to the averments contained in the plaint itself and no defence can be considered. The contention which has been raised about the limitation and applicability of Article 58, if the question of fact which will have to be established during the course of adjudication and further the stand which has been taken about Section 92 of the Evidence Act read with Section 54 of the Transfer of Properties Act is a question to be examined during the course of trial and not at this stage of the proceedings. This is at the best a defence put up by the present petitioner which cannot be examined at this stage. Accordingly, no error is committed by the court below in passing an order. The order appears to be a well reasoned order and the same was requested not to be interfered with on the basis of filing a detailed affidavit-in- reply reflecting from Page-39 onwards of revision petition compilation. Along with the affidavit, a notice which has been served and the proceedings which went on before the Deputy Collector, Olpad is also attached on page-75 which reflects that hearing was scheduled on 29.1.2016 and that being the position, to infer that from the beginning the original plaintiff was aware about the transaction is pre-judging

the issue and the entire suit cannot be throttled at this stage. Since no error is committed by the court below, a request is made to dismiss the revision petition.

4.1 With a view to substantiate his contentions, learned advocate has relied upon certain observations C/CRA/354/2017 JUDGMENT made by the Apex Court in a decision in case of C. Natarajan v. Ashim Bai & Anr., reported in AIR 2008 SC 363 and by referring to relevant paragraphs from Para.11 to 18, a request is made that no case is made out by the petitioner to call for any interference. Additionally, learned advocate has also submitted that looking to the scope contained under Section 115 of the CPC, none of the conditions precedent for exercise is visible. Accordingly, the revision petition is not to be entertained and the revision petition may be dismissed. No other submissions have been made.

5. Having heard the learned advocates appearing for the respective parties and having gone through the submissions, before dealing with the same, the averments contained in the plaint are to be observed:

5.1 The suit which has been filed in the year 2016 is essentially for the purpose of quashing the sale deed and the declaration and permanent injunction to the effect that sale document dated 21.3.2008 is a concocted documents and as such, the same requested to be quashed, by declaring it to be null and void. For assailing the said document, it has been clearly asserted in Para.4 of the plaint that when Shaukathussain Patel, who entrusted the power of attorney to the present plaintiff, came to India in 2008. The defendant along with other persons deliberated with said Shaukathussain to convert the land from agricultural to non-agricultural land and C/CRA/354/2017 JUDGMENT for that purpose, it was informed that certain documents along with the signatures are requiring and by posing the same, the original plaintiff, who usually knowing the English, has put the signature in English and while obtaining such signature of Saukathussain, an impression was given that this is merely for the purpose of conversion of land from agricultural to non-agricultural land. It has further been asserted clearly that the document in question which is dated 21.3.2008 is a document in which the signature of the plaintiff is in Gujarati is appearing.

5.2 For the purpose of claiming the relief in the suit, a further assertion has also been made that even otherwise also the transaction is not possible to be undertaken in part as other survey numbers are declared as fragmented land and as such also, the document can never take place. It has further been asserted that this document of 2008 came in the knowledge when the defendant made an attempt to mutate the entry pursuant to the sale document and the proceedings were initiated before the Deputy Collector by way of Appeal No.362 of 2013. Now the process of this appeal came within the knowledge of the power of attorney and in turn, came within the knowledge of the plaintiff and after the inquiry, the suit came to be filed within the period of limitation. Now these are the basic averments on the basis of which the plaint is submitted before the court below.

C/CRA/354/2017 JUDGMENT

6. Having heard the learned advocates appearing for the respective parties and having gone through the material on record, ex-facie from the bare reading of the plaint, what has been emerging is that the suit appears to have been presented in the month of April, 2016 for setting aside the registered sale deed which took place on 21.3.2008. So, practically, after a period of almost 8 years, the suit has been submitted. A further reading of the plaint is indicating the mian plea that the petitioner usually signing in English language, whereas the documents are reflecting the signature in Gujarati and as such, an attempt is made that the registered sale document is sham, bogus and fraudulent. Now if this plea in substance is to be considered from the document itself, this document of sale is a registered document signed by respective parties and the same is in the presence of witnesses, as well. The document is not only reflecting the name of the petitioner but, is bearing the signature with Photo ID with thumb impression and it was registered in the presence of witnesses before the office of Joint Sub-

Registrar, Udhna, Surat and as such, it ex-facie reflects that the document in question has been executed apparently in the presence of witnesses and in person and it is simultaneously not a case that the petitioner himself was not in India at the time when the document was executed.

7. A further fact is also not so cogently explained C/CRA/354/2017 JUDGMENT as to why such a huge delay of 8 years took place and for that purpose, if the cause of the suit to be seen, the same appears to be no so cogent to be digested easily. For the purpose of bringing the suit within a period of limitation, an assertion is made that the notices have been served of appeal proceedings from the office of Deputy Collector and at that time, he came to know about this fact. But when such notice was served is nowhere reflecting and as such, it appears that the attempt is made to bring the suit within a period of limitation by smart pleadings. The averment of the plaint itself is not sounding any confidence in view of the fact that the document is apparently making it clear that it was with thumb impression as well and in presence of the plaintiff himself and this document is a part of the plaint itself. Accordingly, it appears that the contention raised by the petitioner is appearing to be falling in the line of proposition of law which has been laid down by several decisions.

8. Even by virtue of the provisions of the Limitation Act, the suit is supposed to have been filed within a period of 3 years, whereas here undisputedly the said period of limitation is not maintained. This Court is of the opinion that bar of limitation has got its own significance and the object and as such, by referring smart averments, such statutory provision cannot be sidelined. It is not understandable as to why a property holder even if away from the country is not inquiring about his C/CRA/354/2017 JUDGMENT properties, especially when he himself has given some signed documents, as has been mentioned in Para.4 of the plaint itself. When the plaintiff came in India in 2008, there was a deliberation took place undisputably with respect to the land in question. But, then, after signing the papers, for a pretty long period of 8 years, the plaintiff has never looked back as to what has happened to his signed papers. That circumstance is not coming forth in any manner of the plaint. As a result of this, the excuse which has been shown appears to be an attempt to just

bring the suit within the period of limitation.

9. At this stage, the Court is having an able assistance of this issue to be dealt by decision of this Court in case of Becharbhai Jhaverbhai Patel (supra), wherein while dealing with an order pertaining to Order 7 Rule 11d of the CPC, the Court has propounded that whenever there is a challenge to the registered document, the date of registration becomes date of deemed knowledge and as such, by clever drafting and vague averments, the suit cannot be brought within the period of limitation which is otherwise hit by the provision. The relevant provisions contained in the said decision are in Para.6.2 and 6.3 are reproduced hereinafter:

"6.2 As stated above, registered sale-deeds was executed by the original defendant No. 1 in (petitioners herein) on dated 25-8-1975. It is also required to be noted and even so pleaded/averred in the plaint that mutation entry in favour of defendant Nos. 3 and 4 on C/CRA/354/2017 JUDGMENT the basis of registered sale-deed was made in the revenue record vide Entry No. 1115 and not only that even in 1981 there was partition between defendant Nos. 3 and 4 and the land bearing Survey No. 380 (disputed suit land) has gone into the share of Ambalal Patel-defendant No. 4 and his name is mutated in the revenue record vide Mutation Entry No. 1283 dated 10-6-1981. As held by the Hon'ble Supreme Court in the case of Dilboo (Smt.) (Dead) by L.Rs.,:

[2000 (7) SCC 702] whenever the document is registered the date of registration becomes the date of deemed knowledge and in other cases where a fact could be discovered by due diligence then deemed knowledge would be attributed to the plaintiff because a party cannot be allowed to extend the period of limitation by merely claiming that he had no knowledge. Thus, when the sale-deed dated 25-8-1975 was registered in the year 1975 itself and even the mutation entry was made in favour of defendant Nos. 3 and 4 on the basis of the registered sale-deed, immediately thereafter, the plaintiff is deemed to have the knowledge of the said transaction and by making such vague averments in the plaint that earlier he had no knowledge and he came to know about the transaction only in the 2010, by such clever drafting, the plaintiff cannot be permitted to bring the suit within the period of limitation which otherwise is barred by law of limitation as the suit challenging the registered sale- deed dated 25-8-1975 has been filed after a period of 35 years. Under the circumstances and considering the aforesaid, it appears to the Court that learned trial Court has materially erred in rejecting the application Exh. 14 and in not rejecting the plaint exercising the power under Order 7, Rule 11(d) of the Code of Civil Procedure. Under the circumstances, the impugned order passed by the learned trial Court cannot be sustained and same deserves to be quashed and set aside.

6.3. Now, so far as the decision of the Hon'ble Supreme Court in the case of Balasaria Construction (P) Ltd., [2006 (5) SCC 658] C/CRA/354/2017 JUDGMENT relied upon by the learned Advocate for the original plaintiffs, as stated above, it cannot be disputed that while considering application under Order 7, Rule 11(d) of Code of Civil

Procedure at that stage, the Court is required to consider the averments in the plaint and supporting documents produced along with plaint only. However, considering the facts and circumstances of the case and as stated above, even considering the averments and the pleadings in the plaint as they are, the suit is clearly barred by law of limitation. Under the circumstances, the impugned order passed by the learned trial Court deserves to be quashed and set aside."

10. Yet another decision which has got the effect of present controversy to some extent is a decision of this Court in case of Van Oil Petroleum (supra), in which also by referring to the provisions of the Limitation Act, it has been observed by the Court that once the time has begun to run, no subsequent disability or inability stops it. Relevant observations contained in Para.8 are reproduced hereinafter :

"8. At this stage, it is required to be noted that the plaintiff is invoking Section 17 of the Limitation Act and is praying for exclusion of time on the ground of fraud. However, it is required to be noted that fraud as such is alleged in view of the subsequent development of transfer of Vessel from one owner to another owner and there are no allegations and/or pleadings with respect to fraud at the time of entering into transaction of supply of Bunker to the Vessel. As observed hereinabove, the period of limitation would start running from 29.03.2012 even considering the specific averments and pleadings in the Plaint. As per Section 9 of the Limitation Act, when once the C/CRA/354/2017 JUDGMENT time has begun to run, no subsequent disability or inability to institute a suit or make an application stops it. Therefore, even considering Section 9 of the Limitation Act, once the period of limitation has started running from 29.03.2012, any subsequent act or omission on the part of the defendant on the basis of which some fraud is alleged, the period of limitation would not be saved considering Section 17 of the Limitation act, as alleged or contended."

10.1 Even the Court has gone to the extent that even the fraud is also to be agitated within the period of limitation.

11. In addition to aforesaid proposition which has been consistently laid down by various decisions, even recent decision delivered by the Apex Court in Civil Appeal No.2960 of 2019, dated 13.3.2019 is also on the very same line, wherein the Apex Court has after analyzing the entire case law on this subject, clearly opined that if the suit proceedings are clearly barred by law of limitation, by smart pleadings the same cannot be maintained by the plaintiff. Relevant observations contained in the said decision are in Para.6.2 to 6.8 are reproduced hereinafter :

"6.2 While considering the scope and ambit of the application under Order 7 Rule 11 of the CPC, few decisions of this Court on Order 7 Rule 11 of the CPC are required to be referred to and considered.

6.3 In the case of T. Arivandandam (supra), while considering the very same provision i.e. Order 7 Rule 11 of the CPC and the decree of the trial Court in

considering such C/CRA/354/2017 JUDGMENT application, this Court in para 5 has observed and held as under:

"5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints. The learned Munsif must remember that if on a meaningful -- not formal -- reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7, Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10, CPC. An activist Judge is the answer to irresponsible law suits....."

6.4 In the case of Church of Christ Charitable Trust and Educational Charitable Society (supra), this Court in paras 13 has observed and held as under:

"13. 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."

6.5 In A.B.C. Laminart Pvt. Ltd. v.

C/CRA/354/2017 JUDGMENT A.P. Agencies, Salem (supra), this Court explained the meaning of "cause of action" as follows:

"12. A cause of action means every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend

upon the character of the relief prayed for by the plaintiff.

6.6 In the case of Sopan Sukhdeo Sable (supra) in paras 11 and 12, this Court has observed as under:

"11. In I.T.C. Ltd. v. Debts Recovery Appellate Tribunal[(1998) 2 SCC 70] it was held that the basic question to be decided while dealing with an application filed under Order 7 Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order

7 Rule 11 of the Code.

12. The trial court must remember that if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a C/CRA/354/2017 JUDGMENT clear right to sue, it should exercise the power under Order 7 Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order 10 of the Code. (See T. Arivandandam v. T.V.Satyapal (supra)."

6.7 In the case of Madanuri Sri Rama Chandra Murthy (supra), this Court has observed and held as under:

"7. The plaint can be rejected under Order 7 Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that the power under Order 7 Rule 11 CPC can be exercised by the Court at any stage of the suit. The relevant facts which need to be looked into for deciding the application are the averments of the plaint only. If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under Order 7 Rule 11 CPC. Since the power conferred on the Court to terminate civil action at the threshold is drastic, the conditions enumerated under Order 7 Rule 11 CPC to the exercise of power of rejection of plaint have to be strictly adhered to. The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. It is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. The averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when the allegations made in the plaint are taken to be correct as a whole on their face value, C/CRA/354/2017 JUDGMENT if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under Order 7 Rule 11 CPC can be exercised. If clever drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage."

6.8 In the case of Ram Singh (supra), this Court has observed and held that when the suit is barred by any law, the plaintiff cannot be allowed to circumvent that provision by means of clever drafting

so as to avoid mention of those circumstances, by which the suit is barred by law of limitation."

11.1 As such, applying the aforesaid principle, the Apex Court has, in terms, held that the suit deserves to be rejected. Relevant Para.7.1 to 9 are also worth to be taken note of, hence, reproduced hereinafter :

"7.1 At this stage, it is required to be noted that, as such, the plaintiff has never prayed for any declaration to set aside the gift deed. We are of the opinion that such a prayer is not asked cleverly. If such a prayer would have been asked, in that case, the suit can be said to be clearly barred by limitation considering Article 59 of the Limitation Act and, therefore, only a declaration is sought to get out of the provisions of the Limitation Act, more particularly, Article 59 of the Limitation Act. The aforesaid aspect has also not been considered by the High Court as well as the learned trial Court.

8. Now, so far as the application on behalf of the original plaintiff and even the observations made by the learned trial Court as well as the High Court that the question with respect to the limitation is a mixed question of law and facts, which can be decided only C/CRA/354/2017 JUDGMENT after the parties lead the evidence is concerned, as observed and held by this Court in the cases of Sham Lal alias Kuldip (supra); N.V. Srinivas Murthy (supra) as well as in the case of Ram Prakash Gupta (supra), considering the averments in the plaint if it is found that the suit is clearly barred by law of limitation, the same can be rejected in exercise of powers under Order 7 Rule 11(d) of the CPC.

9. In view of the above and for the reasons stated above, we are of the opinion that both the High Court as well as the learned trial Court have erred in not exercising the powers under Order 7 Rule 11 of the CPC and in not rejecting the plaint in exercise of powers under Order 7 Rule 11 of the CPC. For the reasons stated above, the impugned judgment and order passed by the High Court as well as the trial Court cannot be sustained and the same deserve to be quashed and set aside. Consequently, the impugned judgment and order passed by the High Court dated 12.03.2013 as well as the order passed by the Munsif, Danapur rejecting the Order 7 Rule 11 application filed by the original defendant are hereby set aside. Consequently, the application submitted by the appellant herein original defendant to reject the plaint under Order 7 Rule 11 of the CPC is hereby allowed and the plaint, being Title Suit No. 19 of 2003 is hereby rejected. The present appeal is allowed accordingly in terms of the above. No costs."

12. Additionally, this Court has also an assistance of yet another decision of the Apex Court in case of Basawaraj & Anr. v. The Spl. Land Acquisition Officer reported in AIR 2014 SC 746, wherein the Apex Court has analyzed the provisions and the object of limitation at length. Hence, the relevant observations contained in Para.12, 13, 14 and 15 are reproduced hereinafter :

C/CRA/354/2017 JUDGMENT "12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. "A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation." The statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it giving full effect to the same. The legal maxim "dura lex sed lex" which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute.

13. The Statute of Limitation is founded on public policy, its aim being to secure peace in the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. It seeks to bury all acts of the past which have not been agitated unexplainably and have from lapse of time become stale.

According to Halsbury's Laws of England, Vol. 24, p. 181:

"330. Policy of Limitation Acts. The courts have expressed at least three differing reasons supporting the existence of statutes of limitations namely, (1) that long dormant claims have more of cruelty than justice in them, (2) that a defendant might have lost the evidence to disprove a stale claim, and (3) that persons with good causes of actions should pursue them with reasonable diligence".

An unlimited limitation would lead to a sense of insecurity and uncertainty, and therefore, limitation prevents disturbance or deprivation C/CRA/354/2017 JUDGMENT of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence' or laches.

(See: Popat and Kotecha Property v. State Bank of India Staff Assn. (2005) 7 SCC 510; Rajendar Singh & Ors. v. Santa Singh & Ors., AIR 1973 SC 2537; and Pundlik Jalam Patil v. Executive Engineer, Jalgaon Medium Project, (2008) 17 SCC

448)."

13. In the wake of aforesaid proposition of law at length which has been consistently observed and maintained by various decisions, a bare perusal of the plaint itself is indicating clearly that the plaintiff did visit India in the year 2008; had admittedly signed some documents related to the land in question and the document registered date 21.3.2008 is reflecting the photo ID, thumb impression and signature of the very petitioner and thereto, before the office of the Joint Sub-Registrar and as such, now after a period of 8 years, coming out with a plea that though the plaintiff is Gujarati, is usually signed in English in routine manner, the documents contained his signature in Gujarati, that bald assertion is not sounding any sufficiency and rather, is not a circumstance which may permit the plaintiff to by-pass the law of limitation and as such, ex-facie it appears that the suit proceedings are beyond the period of limitation.

14. It is no doubt true that issue of limitation is a mixed question of law or law and fact. But if by such mere bald assertion, if the application under C/CRA/354/2017 JUDGMENT Order 7 Rule 11d of the CPC is to be discarded that the same would frustrate the very object of said provision and would allow such kind of frivolous litigation which are hopelessly barred by law, will have to be adjudicated irrespective of its tenability and as such, this Court is of the considered opinion that looking to the aforesaid proposition of law which has been laid down as referred to above, the order in question is not just and proper, suffers from material irregularity in exercise of discretion and has got the effect of frustrating the very object of provision under which the application was made by the petitioner. Accordingly, the case is made out by the petitioner to call for interference.

15. At this stage, learned advocate appearing for the respondent has made an attempt to oppose the revision petition by citing a decision of the Apex Court in case of C. Natarajan v. Ashim Bai & Anr., reported in AIR 2008 SC 363, in which also there was an issue related to Articles 64 and 65 of the Limitation Act and in that context, the Apex Court was examining the issue of limitation. A close reading of the said decision has indicated that suit proceedings in that case were related to the alleged trespass over the suit property of defendant and a declaration was sought for, for seeking title over the suit property and as such, the controversy was different as compared to present case. So, from that angle the Apex Court was considering the issue of limitation, whereas here is a case in which a C/CRA/354/2017 JUDGMENT registered sale transaction which took place when the petitioner was in India, undisputedly had put some signature and the document itself is indicating that the assertions which have been made in the plaint are nothing but clever drafting on the basis of which an attempt is made to maintain the suit even after a period of 8 years.

16. From overall reading and from consideration of the relevant proposition, it appears that this being a litigation generated after more than a period of 8 years, is clearly hit by law of limitation and as such, in view of the proposition of law laid down by the Apex Court, the revision petition deserves to be allowed. Accordingly, the order impugned dated 7.3.2017 passed below Exh.16 in Special Civil Suit No.204 of 2016 is quashed and set aside hereby and accordingly, the application under Order 7 Rule 11(d) of the Code of Civil Procedure stands allowed and the plaint i.e. Special Civil Suit No.204 of 2016 is hereby rejected. Rule is made absolute with no order as to costs.

17. In view of the order passed in main revision petition, the Civil Application No.1 of 2019 does not survive and same stands disposed of accordingly.

(A.J. SHASTRI, J) V.J. SATWARA