

**Daliben Valjibhai & Ors.**

v.

**Prajapati Kodarbhai Kachrabhai & Anr.**

(Civil Appeal No. 14293 of 2024 )

11 December 2024

**[Pamidighantam Sri Narasimha and Manoj Misra, JJ.]**

#### **Issue for Consideration**

Whether a suit for cancellation of a registered sale deed, filed within three years from the date of knowledge as alleged in the plaint, can be dismissed at the threshold under Order 7 Rule 11 of the Code of Civil Procedure, 1908, on the ground that it is barred by limitation.

#### **Headnotes<sup>†</sup>**

**Civil Procedure Code, 1908 (“CPC”) – Order 7 Rule 11 – In 2017, appellants/ plaintiffs filed a suit for cancellation of alleged registered sale deed dated 04.12.2004 on grounds of fraud – Trial Court dismissed suit under Order 7 Rule 11 CPC on the ground of limitation – First Appellate Court reversed the decision – In second appeal, High Court reinstated Trial Court’s decision – Order challenged – Appeal allowed – High Court not justified in allowing the application under Order 7 Rule 11 on issues not evident from the plaint averments – High Court has drawn inferences that were only possible after a trial – Judgment of First Appellate Court restored – Trial Court to take up suit and dispose it of as expeditiously as possible:**

**Held:** In 2017, appellants/plaintiffs instituted a suit for cancellation of alleged registered sale deed dated 04.12.2004 conveying the plaint scheduled property in favour of the respondents/ defendants – It was alleged that sale deed was fraudulently obtained and the appellants/plaintiffs came to know of it only on 31.03.2017, when the Deputy Collector issued notice on defendant’s application for correcting revenue entries – Respondents/defendants filed application for rejection of plaint under Order 7 Rule 11 CPC claiming that suit was barred by

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limitation – Trial Court allowed application under Order 7 Rule 11 and dismissed suit as barred by limitation – First Appellate Court reversed the decision holding that limitation is a mixed question of law and fact, and plaintiffs had alleged they became aware of the fraud only in 2017 – Only relevant material for disposing application under Order 7 Rule 11 are facts mentioned in the plaint, not defendants' contentions – The High Court vide impugned order reinstated Trial Court's decision holding that the suit was barred by limitation and the plaint did not include essential particulars of alleged fraud – Appeal against impugned order allowed – Held, High Court drew inferences possible only after trial even while recording the principle that operation and impact of Order 7 Rule 11, being a drastic remedy, Courts must adhere to the discipline of confining their scrutiny to the plaint averments – High Court carried away by the fact that the suit was filed 13 years after the execution of sale deed – No justification for allowing the application under Order 7 Rule 11 on issues that were not evident from the plaint averments.

Reliance placed on *P.V. Guru Raj Reddy v. P. Neeradha Reddy* – Only if the averments in plaint ex facie do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law the plaint can be rejected – At the stage of consideration of the application under Order 7 Rule 11, the stand of the defendants in the written statement would be altogether irrelevant. [Paras 2-9, 11]

**Limitation Act, 1963 – Article 59 – Registration Act, 1908 – High Court in impugned order held that once a document is registered under the Registration Act, the date of registration becomes the date of deemed knowledge – Held, High Court not justified in holding that the limitation period commences from the date of registration itself – Limitation will arise from date of knowledge:**

**Held:** High Court correctly concluded that under Article 59, Limitation Act, a suit can be instituted within 3 years of the knowledge – However, it found knowledge must be presumed from date of registration under Registration Act – High Court not justified in holding that the limitation period commences from date of registration itself – Reliance placed on *Chhotanben v. Kirtibhai*

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*Jalkrushnabhai Thakkar* – Held that limitation in such cases will arise from date of knowledge. [Paras 10, 12-13]

**Civil Procedure Code, 1908 – s.100 – Reversal of the judgment of the first Appellate Court on facts impermissible:**

**Held:** High Court was examining the issue while exercising jurisdiction under Section 100 CPC and as such reversal of the judgment of the First Appellate Court on facts was impermissible. [Para 14]

**Case Law Cited**

*P.V. Guru Raj Reddy v. P. Neeradha Reddy* [2015] 1 SCR 1108 : (2015) 8 SCC 331; *Chhotanben v. Kirtibhai Jalkrushnabhai Thakkar* [2018] 3 SCR 422 : (2018) 6 SCC 422 – relied on.

**List of Acts**

Civil Procedure Code, 1908; Limitation Act, 1963; Registration Act, 1908.

**List of Keywords**

Order 7 Rule 11 CPC; Rejection of plaint; Limitation Act, Article 59; Fraud; Date of knowledge; Date of registration; Reversal on facts; Powers of appellate court.

**Case Arising From**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 14293 of 2024

From the Judgment and Order dated 26.06.2024 of the High Court of Gujarat at Ahmedabad in R/SA No. 53 of 2024

**Appearances for Parties**

Nikhil Goel, Sr. Adv., Pradhuman Gohil, Mrs. Taruna Singh Gohil, Alapati Sahithya Krishna, Ms. Hetvi K. Patel, Rushabh N. Kapadia, Siddharth Singh, Ms. Siddhi Gupta, Advs. for the Appellants.

Dr. Purvish Jitendra Malkan, Sr. Adv., Jigar Gadhwani, Dharita Malkan, Alok Kumar, Rajesh Udit Singh, Ms. Khushboo Aakash Sheth, Advs. for the Respondents.

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1. Leave granted.
2. The appellants, as plaintiffs, instituted a suit for cancellation of an alleged registered sale deed dated 04.12.2004 said to have been executed by them conveying the plaint scheduled property in favour of the respondents/defendants on 10.04.2017. They have alleged that the said sale deed was brought about through fraudulent means and the plaintiffs came to know of it only on 31.03.2017, when the Deputy Collector issued notice to the appellants on an application filed by the defendants for correcting the revenue entries. After receiving the said notice, the appellants claim to have applied and obtained a certified copy of the alleged sale deed and having realised thereafter that their signatures were forged, they instituted the suit on 18.04.2017 for a declaration and cancellation of the sale deed.
3. Within one month of the institution of the suit, the defendants filed an application under Order 7 Rule 11, CPC, for rejection of plaint on two grounds; the first being that the plaintiffs have not joined the Sub-Registrar as the defendant no. 2 and that the mandatory notice under Section 80 CPC was not given. We are not concerned with this ground. The second ground for rejection of the plaint which has given rise to the present litigation is that the suit is barred by limitation as the registered sale deed was executed on 04.12.2004 and the suit came to be filed only on 10.04.2017, i.e. after a period of 13 years.
4. The Trial Court took up the said application under Order 7 Rule 11, and by its order dated 26.04.2018 allowed the same and dismissed the suit on the following grounds:

*"After going through the Sale deed vide mark 4/1 it is crystal clear that the sale deed have been carried out in favour of the Defendant on Prajapati Kodarhai Kachrabhai in the year 2004 and the present suit has been filed after a delay of 13 years. Further the defendant have rightly relied on the ratio laid down in the case of Kamal Gupta*

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*v/s Uma Gupta in para 31,32,33 wherein the Hon'ble Court have held that the plaintiff have filed the present suit after a delay of 16 years and limitation would also apply: The said decision squarely applies to the present case as the present suit has been filed after a period of 13 years and to challenge the Sale deed the period of limitation as prescribed in the Limitation Act is of 3 years has lapsed. The plaintiff have filed the present suit after a delay of 13 years and as such is beyond the period of limitation Further the plaintiff were well aware of the Sale deed from the year 2004. The suit is not maintainable and required to be rejected in terms of provisions under Order 7 Rule 11."*

5. The appeal filed by the appellants was considered by the Principal Judge, Banaskantha at Palanpur and by its judgment dated 17.10.2023 allowed the appeal on the ground that;
  - (i) The contentions raised in the plaint are that the appellants came to know of the alleged sale deed of 2004 only in the year 2017 when they received notice from the Deputy Collector.
  - (ii) It is also alleged that the signatures and thumb impression on the document were not of the plaintiffs. They allege that the plaintiff's signatures and photographs were forged and they were never present at the place when registration took place. The relevant portion of the plaint extracted herein below, was recorded in the order:

*"4. That the defendants have made false sale deed on 4.12.2004 of the aforesaid ancestral land of the plaintiffs by doing false signatures and thumb impressions and the same is registered vide Registered Sale deed No.1643 at Sub Registrar office at Danta. That the plaintiffs have obtained the True copy of the aforesaid false Sale deed from Sub Registrar office at Danta on 10.04.2017 and looking to the same in the said document the plaintiffs have not made their signatures or also not produced any photographs or Identity card of the plaintiffs. At the*

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*same time on the stamp paper which is produced, the same is also not purchased by the plaintiffs. That the plaintiffs never remained present before the Sub Registrar office at Danta, though the defendants by using their illegal influence registered this false and fabricated sale deed in the Sub Registrar office.”*

- (iii) The final determination as to whether the claim is barred by time or not, can be decided only after considering the evidence led by the parties as limitation is always a mixed question of law and fact. The Trial Court neither verified, nor could find a single document to suggest that the plaintiffs were aware of the execution of the sale deed in the year 2004.
  - (iv) It appears that the stamp papers were purchased by the defendants and not by the plaintiffs and this important fact was not even considered by the Trial Court while deciding the application under Order-VII Rule-11 of C.P.C.
  - (v) Though the law requires the *Talati* to make an entry of the sale deed in the revenue records as per the Resolution of the Department of Revenue, Government of Gujarat in hkp-1087-11-j, dated 15.10.1989, this is not complied.
  - (vi) As per the said Resolution, a duty is cast on the revenue authority to make an entry in the relevant register with respect to sale deeds. There is no material to show that such an entry has been made. The Court can therefore presume that no such notice was issued to the plaintiffs.
  - (vii) The contention of the defendant that they made an application under the RTI Act on 30.05.2014 itself but no response was received is to be rejected on the ground that the appellants were not party to the RTI proceedings.
  - (viii) The various contentions raised by the defendant cannot be taken into account at this stage as the relevant material for disposing of an application under Order 7 Rule 11 would be the facts as mentioned in the plaint and no more.
6. Challenging the decision of the First Appellate Court, the defendants filed a second appeal before the High Court of Gujarat at Ahmedabad.

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By the order impugned before us, the High Court allowed the second appeal.

7. From the tone and tenor of the judgment of the High Court, it appears that the High Court was proceeding to decide the case on merits, rather than an application under Order 7 Rule 11. The High Court referred to and extracted relevant portions of large number of precedents on the subject of Order 7 Rule 11, of the same High Court as well as the decisions of this Court. Having recorded the principle that operation and impact of Order 7 Rule 11, being a drastic remedy, Courts must adhere to the discipline of confining their scrutiny to the plaint averments, the High Court however proceeded to consider other aspects of the matter. The fact that the High Court relied on and has in fact drawn inferences that were possible only after a trial is evident from the following findings:
  - (i) By virtue of the definition of the expression “a person is said to have notice” under Section 3 of the Transfer of Property Act, 1882, coupled with the explanation I, the plaintiff has the burden to prove and establish that he had no knowledge of the sale deed.
  - (ii) In the normal course, nobody will wait for 13 years to institute a suit for cancellation of the sale deed. It is normal to expect any plaintiff to have made some enquiry about the execution of the sale deed.
  - (iii) The First Appellate Court has wrongly shifted the burden on to the defendant, when it is for the plaintiffs to show that they were not aware of the execution of the sale deed in the year 2004.
  - (iv) The “*plaintiff willfully abstained from inquiry which he ought to have made*” when the Deputy Collector in RTS issued notice to him.
  - (v) Mere usage of the expression ‘fraud’ in the pleading is not sufficient. The plaintiff must have given details with material particulars of the fraud alleged. When a plaintiff bases his case on fraud committed by the defendant, there is an obligation to

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plead the details of the said fraud. The essential particulars of such fraud are missing in the plaint.

- (vi) Further, the particulars of the alleged fraud must be *prima facie* enough to rebut the presumption of the validity of a sale deed under Sections 34 and 35 of the Registration Act. No such details are available in the plaint.
  - (vii) Once a document is registered under the Registration Act, the date of registration becomes the date of deemed knowledge.
  - (viii) Though Article 59 of the Limitation Act enables institution of a suit to cancel or set aside an instrument within a period of 3 years, from the date of knowledge, the bar of limitation cannot be saved by simply pleading fraud.
8. For the reasons stated above, the High Court proceeded to allow the second appeal and set aside the judgment of the First Appellate Court and restored the order of the Trial Court, rejecting the plaint and dismissing the suit. This is how the appellants are before us.
9. Having considered the judgment of the High Court in detail, we are of the opinion that the findings of the High Court are primarily factual. The High Court seems to have got carried away by the fact that the suit was filed 13 years after the execution of the sale deed. The question is whether the plaintiffs had the knowledge of the execution of the sale deed. The High Court expected that the plaintiffs must have given meticulous details of the fraud perpetuated in the plaint itself.
10. The First Appellate Court came to the conclusion that the defendants made an application for correcting the revenue records only in the year 2017 and on the said application the Deputy Collector issued notice to the plaintiffs in March 2017 and that was the time when the plaintiffs came to know about the execution of the sale deed. It is under these circumstances that the suit was instituted in the year 2017. While the High Court came to the correct conclusion that under Article 59 of the Limitation Act, a suit can be instituted within 3 years of the knowledge, it proceeded to return a finding that in cases where the document is registered, the knowledge must be presumed from the date of registration.

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11. This Court had to deal with a similar situation in *P.V. Guru Raj Reddy v. P. Neeradha Reddy*<sup>1</sup>. A suit instituted by the plaintiff in the year 2002 for cancellation of sale deed of year 1979 on the ground that the knowledge of fraud was acquired only in 1999, was objected to by the defendant in an application under Order 7 Rule 11 on the ground that it is barred by limitation. This Court held:

*"5. Rejection of the plaint under Order 7 Rule 11 of CPC is a drastic power conferred in the court to terminate a civil action at the threshold. The conditions precedent to the exercise of power under Order 7 Rule 11, therefore, are stringent and have been consistently held to be so by the Court. It is the averments in the plaint that have to be read as a whole to find out whether it discloses a cause of action or whether the suit is barred under any law. At the stage of exercise of power under Order 7 Rule 11, the stand of the defendants in the written statement or in the application for rejection of the plaint is wholly immaterial. It is only if the averments in the plaint ex facie do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law the plaint can be rejected. In all other situations, the claims will have to be adjudicated in the course of the trial.*

*6. In the present case, reading the plaint as a whole and proceeding on the basis that the averments made therein are correct, which is what the Court is required to do, it cannot be said that the said pleadings ex facie disclose that the suit is barred by limitation or is barred under any other provision of law. The claim of the plaintiffs with regard to the knowledge of the essential facts giving rise to the cause of action as pleaded will have to be accepted as correct. At the stage of consideration of the application under Order 7 Rule 11 the stand of the defendants in the written statement would be altogether irrelevant."*

(emphasis supplied)

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12. Further, in *Chhotaben v. Kirtibhai Jalkrushnabhai Thakkar*<sup>2</sup> where again a suit for cancellation of sale deed was opposed through an application under Order 7 Rule 11, on ground of limitation, this Court specifically held that limitation in all such cases will arise from date of knowledge. The relevant portion is as follows:

*"15. What is relevant for answering the matter in issue in the context of the application under Order 7 Rule 11(d) CPC, is to examine the averments in the plaint. The plaint is required to be read as a whole. The defence available to the defendants or the plea taken by them in the written statement or any application filed by them, cannot be the basis to decide the application under Order 7 Rule 11(d). Only the averments in the plaint are germane. It is common ground that the registered sale deed is dated 18-10-1996. The limitation to challenge the registered sale deed ordinarily would start running from the date on which the sale deed was registered. However, the specific case of the appellant-plaintiffs is that until 2013 they had no knowledge whatsoever regarding execution of such sale deed by their brothers, original Defendants 1 and 2, in favour of Jaikrishnabhai Prabhudas Thakkar or Defendants 3 to 6. They acquired that knowledge on 26-12-2012 and immediately took steps to obtain a certified copy of the registered sale deed and on receipt thereof they realised the fraud played on them by their brothers concerning the ancestral property and two days prior to the filing of the suit, had approached their brothers (original Defendants 1 and 2) calling upon them to stop interfering with their possession and to partition the property and provide exclusive possession of half (½) portion of the land so designated towards their share. However, when they realised that the original Defendants 1 and 2 would not pay any heed to their request, they had no other option but to approach the court of law and filed the subject suit within two days therefrom. According to the appellants, the suit*

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*has been filed within time after acquiring the knowledge about the execution of the registered sale deed. In this context, the trial court opined that it was a triable issue and declined to accept the application filed by Respondent 1-Defendant 5 for rejection of the plaint under Order 7 Rule 11(d). That view commends to us.*

...

*19. In the present case, we find that the appellant-plaintiffs have asserted that the suit was filed immediately after getting knowledge about the fraudulent sale deed executed by original Defendants 1 and 2 by keeping them in the dark about such execution and within two days from the refusal by the original Defendants 1 and 2 to refrain from obstructing the peaceful enjoyment of use and possession of the ancestral property of the appellants. We affirm the view taken by the trial court that the issue regarding the suit being barred by limitation in the facts of the present case, is a triable issue and for which reason the plaint cannot be rejected at the threshold in exercise of the power under Order 7 Rule 11(d) CPC."*

(emphasis supplied)

13. In view of the above, there was no justification for the High Court in allowing the application under Order 7 Rule 11, on issues that were not evident from the plaint averments itself. The High Court was also not justified in holding that the limitation period commences from the date of registration itself. In this view of the matter the judgment of the High Court is unsustainable.
14. In any event of the matter, the High Court was examining the issue while exercising jurisdiction under Section 100 of CPC and as such reversal of the judgment of the first Appellate Court on facts was impermissible.
15. In view of the above, we allow the appeal and set aside the judgment and order dated 26.06.2024 passed by the High Court in Second Appeal No.53 of 2024 and we restore the judgment dated 17.10.2023 of the First Appellate Court in Regular Civil Appeal No.6 of 2022.

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16. Since the original suit is of the year 2017, we direct that the trial Court should take up the suit and dispose it of as expeditiously as possible. We also make it clear that we have not expressed any opinion on the merits of the matter and our opinion is confined to determining the question as to whether the plaint should be rejected under Order 7 Rule 11, CPC.
17. Pending application(s), if any, shall stand disposed of.

*Result of the case:* Appeal allowed.

<sup>†</sup>*Headnotes prepared by:* Aandrita Deb, Hon. Associate Editor  
*(Verified by:* Shibani Ghosh, Adv.)