

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2699 of 2003

with

CIVIL APPLICATION NO. 9403 OF 2003

For Approval and Signature:

HON'BLE MR.JUSTICE KSHITIJ R.VYAS

and

HON'BLE MR.JUSTICE M.C.PATEL

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgement?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals?

ANIL MOHAN KARIA

Versus

NARANBHAI MITHUBHAI RAJGOR

Appearance:

MR AS VAKIL for appellant No. 1

MR HARIN P RAVAL for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS

and

HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 27/02/2004

The present appeal arises from the judgment and decree dated 19.11.2003 passed by the learned Civil Judge (SD), Gandhidham - Kutch in Special Civil Suit No.6 of 2003, whereby the learned trial Judge ordered the suit filed by the appellant - plaintiff to be dismissed while rejecting the plaint under Order 7 Rule 11 of the Code of Civil Procedure while allowing the application Exh.11 filed by the respondent - defendants. The original plaintiff is in appeal before us.

2. Short facts giving rise to this appeal are as under:

The plaintiff claiming ownership of plot of land being property No. 439 in Ward No.12/C situated at Gandhidham - Kutch having purchased it under transfer-cum-sale dated 5.4.2000, filed suit against the respondents - defendants inter alia, alleging that the respondents - defendants had forcibly entered into the said plot by encroachment which amounted to criminal trespass. The plaintiff further alleged that the respondents - defendants were approached and asked to vacate the plot, but the respondents-defendants having failed and neglected to vacate the suit plot, the plaintiff was constrained to file the suit after having issued a notice to the defendants on 11.11.2002. The plaintiff averred to be entitled to recover the possession of the suit property on the basis of the ownership of the plaintiff and alleged that forcible possession and encroachment of the land by the respondents - defendants was illegal, unlawful and further prayed that the plaintiff was entitled to recover the amount of Rs.32,500/- from the respondents - defendants at the rate of Rs.500/- per day towards mesne profits. The plaintiff therefore prayed for a decree against the respondents - defendants to hand over vacant and peaceful possession of the suit property and for a sum of Rs.32,500/- as mesne profit for illegal occupation, encroachment and use of the suit property from 13.11.2002 till filing of the present suit and for further sum of Rs.500/- per day towards mesne profit from the date of filing of the suit till actual handing over vacant and peaceful possession.

The suit was presented on 15.1.2003 and summons were ordered to be issued under order dated 17.1.2003. The respondent-defendants on being served with the summons of the suit, filed application dated 29.7.2003 at

Exh.11, inter alia, praying that the suit of the appellant - plaintiff be rejected under Order 7 Rule 11 of the CPC on the following grounds:

- (a) That the plaint was not supported by an affidavit according to the amended Civil Procedure Code Order 6 Rule 15(4);
- (b) That according to the valuation of the plaintiff, the suit was valued at Rs.1,20,000/- which was undervalued and considering the present market value of the property which is approximately Rs.12 lakhs, the suit was insufficiently stamped;
- (c) Thirdly, on the ground that the respondent - defendants were occupying the suit property for last 20 years and more with permission from the original owner of the land on a token rent;
- (d) In the suit, cause of action was alleged to have arisen on 12.11.2002 when the respondents - defendants were staying in the suit property for last number of years and by stating incorrect facts about the sale deed, though no cause of action had arisen, the suit was filed; and
- (e) That the suit was barred by law of limitation since no trespass was committed on the date mentioned in the plaint, but for last number of years the defendants were occupying the suit property and no cause of action has arisen as stated by the plaintiff in the suit.

The appellant - plaintiff filed his reply at Exh.13 and contended that the present suit filed by the appellant - plaintiff could not be rejected under Order 7 Rule 11 and contested the claim of the respondents - defendants.

On such pleadings of the parties, the learned trial Judge raised an issue as to whether the defendants prove that whether prayer made in para 7 of the Exh.11 filed in Special Civil Suit No.76 of 2003, that the suit of the plaintiff deserves to be rejected under Order 7 Rule 11 of the CPC and what order. Having answered the issue in the affirmative, the trial Judge held that the suit filed by the plaintiff was for obtaining vacant and peaceful possession and for mesne profit and eviction of the defendants. The trial Judge after considering the provisions of Order 7 Rule 11 of CPC, held that the suit was liable to be dismissed and accordingly dismissed the

suit while rendering an order below Exh.11 whereby the learned trial Judge rejected the plaint of the appellant - plaintiff under Order 7 Rule 11 of the CPC and directed a decree to be drawn accordingly by the impugned judgment and order dated 19.11.2003.

5. At the time of admitting the present appeal under order dated 22.12.2003, notice for final disposal to the respondents was ordered to be issued. In pursuance to the above order, we have heard learned Advocates for the parties for final disposal.

6. Considering the provisions of Order 7 Rule 11, a plaint can be rejected by a Court only on the following grounds:

- (a) Where it does not disclose cause of action;
- (b) Where the relief claimed is undervalued and the plaintiff on being required by the Court to correct valuation within time to be fixed by the Court fails to do so;
- (c) Where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped and the plaintiff on being required by the Court to supply the requisite stamp paper within time to be fixed by the Court fails to do so;
- (d) Whether the suit appears from the statement in the plaint to be barred by any law or whether it is not filed in duplicate or whether the plaintiff failed to comply with the provisions of Rule 9 of CPC;
- (e) Where it is not filed in duplicate; and
- (f) Where the plaintiff fails to comply with the provisions of Rule 9.

7. We have considered the reasoning given by the learned trial Judge. In our view, none of the conditions prescribed under Clauses (a) to (f) of Rule 11 or Order 7 of CPC are satisfied, which would entitle the trial Court to pass the judgment and order under appeal. On going through the impugned order, we find that the learned trial Judge has held that having regard to Order 7 Rule 11(d) of CPC, the plaint can be rejected when the suit appears from the statement in the plaint to be barred by any law. The learned trial Judge, while passing the

impugned order has not rejected the plaint on the ground that from the statement made in the plaint, the suit appeared to be barred by any law, but in view of the application Exh.11 filed by the defendants, the trial Court has held that the suit appeared to be barred by the Law of Limitation. In any view, the question of limitation is a mixed question of law and facts which could not have been decided without leading any evidence. On perusing the plaint, we are not able to sustain the reasoning of the trial Court that the suit of the plaintiff was barred by law of limitation on the basis of any statement made in the plaint and on this ground alone, we are inclined to set aside the impugned judgment and decree, which is accordingly so set aside. The reasons assigned by the trial Court for rejecting the plaint under Order 7 Rule 11 of CPC are unsatisfactory and unsustainable.

8. In view of the foregoing reasoning, the judgment and decree rendered by the trial Court, rejecting the suit of the appellant-plaintiff under Order 7 Rule 11 of CPC is set aside with a direction to the learned Civil Judge (SD), Gandhidham - Kutch, to try the suit in accordance with law after raising necessary issues in light of the pleadings of the parties and in accordance with the evidence that may be led by the parties. We, however, clarify that the learned trial Judge shall decide all the issues that may be framed including issue of limitation without being influenced by the judgment and order hereunder which is quashed and set aside or the present order in appeal since we have not gone into the merits of the issue as to whether the suit is barred by law of Limitation or not. We have merely set aside the impugned judgment and decree of the trial Court, rejecting the suit under Order 7 Rule 11 of CPC, on the ground that none of the conditions mentioned in Clauses (a) to (f) of Rule 11 of Order 7 are satisfied. It was not open to the trial Court to have rejected the plaint in these circumstances. The view that we have taken is also supported by the judgment of the Division Bench of this Court in the case of Yuvraj Prithviraj Singh v. Maharani Rajendrakunvarba and ors., reported in 1996(2) GLH at page 393.

We direct the respondents - defendants to file their written statements to the suit if so desired, as early as possible and in no case, later than 90 days hereof after which the trial Court shall proceed to decide the Special Civil Suit No.6 of 2003 on merits in accordance with law. In the facts and circumstances of the case, we direct the parties to bear their own costs.

Record & Proceedings to be sent to the trial Court forthwith.

9. In view of the order passed in the main appeal, the Civil Application for stay does not survive and is disposed of.

(Kshitij R. Vyas, J.)

(M.C. Patel, J.)
Sreeram.