

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 57 of 2012
To
CIVIL REVISION APPLICATION No. 66 of 2012

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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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, 1950 or any order made
thereunder ? NO

5 Whether it is to be circulated to the civil
judge ? NO

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KANJIBHAI BHAGWANJIBHAI PATEL - Applicant(s)

Versus

**NANDUBEN SHAMJIBHAI SORATHIYA THROUGH POA DHARMESH P
TRIVEDI & 7 - Opponent(s)**

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Appearance :

MR TATTVAM K PATEL for Applicant(s) : 1,

RULE SERVED BY DS for Opponent(s) : 1 - 8.

MR JINESH H KAPADIA FOR MR ASHISH H SHAH for Opponent(s) : 1 - 7.

MR VIRAL K SHAH for Opponent(s) : 8.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 30/04/2012

ORAL JUDGMENT

1.00. As common question of law and facts arise in this group of revision applications and are between the same parties, all these revision applications are decided and disposed of by this common judgement and order.

2.00. Civil Revision Application No. 57 of 2012 has been preferred by the petitioner herein – original defendant No.1 challenging the impugned order passed by the learned trial court – learned 2nd Additional Senior Civil Judge, Rajkot below Ex.20 in Regular Civil Suit No.305 of 2010 dtd.29/12/2011, by which the learned trial court has dismissed the said application submitted by the petitioner herein – original defendant No.1 to reject the plaint in exercise of powers under Order 7 Rule 11(d) of the Code of Civil Procedure on the ground that the suit is barred by law of limitation.

2.01. Civil Revision Application No. 58 of 2012 has been preferred by the petitioner herein – original defendant No.1 challenging the impugned order passed by the learned trial court – learned 2nd Additional Senior Civil Judge, Rajkot below Ex.20 in Regular Civil Suit No.307 of 2010 dtd.29/12/2011, by which the learned trial court has dismissed the said application submitted by the petitioner herein – original defendant No.1 to reject the plaint in exercise of powers under Order 7 Rule 11(d) of the Code of Civil Procedure on the ground that the suit is barred by law of limitation.

2.02. Civil Revision Application No. 59 of 2012 has been preferred by the petitioner herein – original defendant No.1 challenging the impugned order passed by the learned trial court – learned 2nd Additional Senior Civil Judge, Rajkot below Ex.20 in Regular Civil Suit No.308 of 2010 dtd.29/12/2011, by which the learned trial court has dismissed the said application submitted by the petitioner herein – original defendant No.1 to reject the plaint in exercise of powers under Order 7 Rule 11(d)

of the Code of Civil Procedure on the ground that the suit is barred by law of limitation.

2.03. Civil Revision Application No. 60 of 2012 has been preferred by the petitioner herein – original defendant No.1 challenging the impugned order passed by the learned trial court – learned 2nd Additional Senior Civil Judge, Rajkot below Ex.20 in Regular Civil Suit No.310 of 2010 dtd.29/12/2011, by which the learned trial court has dismissed the said application submitted by the petitioner herein – original defendant No.1 to reject the plaint in exercise of powers under Order 7 Rule 11(d) of the Code of Civil Procedure on the ground that the suit is barred by law of limitation.

2.04. Civil Revision Application No. 61 of 2012 has been preferred by the petitioner herein – original defendant No.1 challenging the impugned order passed by the learned trial court – learned 2nd Additional Senior Civil Judge, Rajkot below Ex.20 in Regular Civil Suit No.311 of 2010 dtd.29/12/2011, by which the learned trial court has dismissed the said application submitted by the petitioner herein – original defendant No.1 to reject the plaint in exercise of powers under Order 7 Rule 11(d) of the Code of Civil Procedure on the ground that the suit is barred by law of limitation.

2.05. Civil Revision Application No.62 of 2012 has been preferred by the petitioner herein – original defendant No.1 challenging the impugned order passed by the learned trial court – learned 2nd Additional Senior Civil Judge, Rajkot below Ex.20 in Regular Civil Suit No.312 of 2010 dtd.29/12/2011, by which the learned trial court has dismissed the said application

submitted by the petitioner herein – original defendant No.1 to reject the plaint in exercise of powers under Order 7 Rule 11(d) of the Code of Civil Procedure on the ground that the suit is barred by law of limitation.

2.06. Civil Revision Application No.63 of 2012 has been preferred by the petitioner herein – original defendant No.1 challenging the impugned order passed by the learned trial court – learned 2nd Additional Senior Civil Judge, Rajkot below Ex.20 in Regular Civil Suit No.313 of 2010 dtd.29/12/2011, by which the learned trial court has dismissed the said application submitted by the petitioner herein – original defendant No.1 to reject the plaint in exercise of powers under Order 7 Rule 11(d) of the Code of Civil Procedure on the ground that the suit is barred by law of limitation.

2.07. Civil Revision Application No.64 of 2012 has been preferred by the petitioner herein – original defendant No.1 challenging the impugned order passed by the learned trial court – learned 2nd Additional Senior Civil Judge, Rajkot below Ex.20 in Regular Civil Suit No.314 of 2010 dtd.29/12/2011, by which the learned trial court has dismissed the said application submitted by the petitioner herein – original defendant No.1 to reject the plaint in exercise of powers under Order 7 Rule 11(d) of the Code of Civil Procedure on the ground that the suit is barred by law of limitation.

2.08. Civil Revision Application No.65 of 2012 has been preferred by the petitioner herein – original defendant No.1 challenging the impugned order passed by the learned trial court – learned 2nd Additional Senior Civil Judge, Rajkot below

Ex.20 in Regular Civil Suit No.315 of 2010 dtd.29/12/2011, by which the learned trial court has dismissed the said application submitted by the petitioner herein – original defendant No.1 to reject the plaint in exercise of powers under Order 7 Rule 11(d) of the Code of Civil Procedure on the ground that the suit is barred by law of limitation.

2.09. Civil Revision Application No.66 of 2012 has been preferred by the petitioner herein – original defendant No.1 challenging the impugned order passed by the learned trial court – learned 2nd Additional Senior Civil Judge, Rajkot below Ex.20 in Regular Civil Suit No.316 of 2010 dtd.29/12/2011, by which the learned trial court has dismissed the said application submitted by the petitioner herein – original defendant No.1 to reject the plaint in exercise of powers under Order 7 Rule 11(d) of the Code of Civil Procedure on the ground that the suit is barred by law of limitation.

3.00. That the respondent Nos.1 to 7 herein – original plaintiffs have preferred the aforesaid respective Regular Civil Suits against the common petitioner – Kanjibhai Bhagwanjibhai Patel and respondent No.8 in respective Civil Revision Applications – original defendant No.2 in the respective Regular Civil Suits, for a declaration that power of attorney dtd.5/1/1997 alleged to have been executed by the plaintiffs in favour of the original defendant No.1, is forged and illegal and to quash the subsequent transactions / sale deeds dtd.12/10/1998 executed by the original defendant No.1, as power of attorney holder of the plaintiffs in favour of the original defendant No.2 and also to declare that they are joint owners/holders of the disputed land bearing Revenue Survey

No.95/Paiki admeasuring 7 Acres and 23 Gunthas situated at Village Mahudi, Taluka : Rajkot. The original plaintiffs have also prayed for a permanent injunction restraining the petitioner herein – original defendant No.2 not to transfer, alienate and/or enter into the aforesaid Survey No.95 Paiki which the defendant No.1 has purchased from the defendant No.1 on the basis of the power of attorney dtd.5/1/1997. That similar suits have been preferred by the respondent Nos.1 to 7 herein – original plaintiff Nos.1 to 7 with respect to different parcels of land. Thus, as such in the aforesaid suits, the original plaintiffs have challenged power of attorney dtd.5/1/1997 alleged to have been executed by the original plaintiffs in favour of the petitioner - original defendant No.1 and registered sale sale deeds dtd.12/10/1998 executed by the original defendant No.1 as power of attorney holder on the basis of the power of attorney dtd.5/1/1997 in favour of the defendant No.2.

3.01. That having served with the summons / notices of the aforesaid civil suits, the petitioner - original defendant No.1 filed application Ex.20 in respective civil suits to reject the plaint in exercise of the powers under Order 7 Rule 11(d) of the Code of Civil Procedure, on the ground that the suit is barred by law of limitation. The aforesaid applications were resisted by the original plaintiffs by submitting that they came to know about the forgery and/or forged signature in the power of attorney dtd.5/1/1997 only when they received the report of the handwriting expert on 27/6/2008 and in the said report it was opined that signature of [1] Kanjibhai Hansrajbhai [2] Pujabhai Hansrajbhai [3] Maganbhai Hansrajbhai and [4] Nandubhai Shamjibhai, who have identified the thump impressions of the plaintiffs are forged and that the suit has

been preferred within 3 years from the date of the receipt of the report of the handwriting expert and therefore, the suit is not barred by law of limitation.

3.02. That the learned trial court by the impugned orders has dismissed the respective applications submitted by the petitioner - original defendant No.1 and refused to reject the plaint under Order 7 Rule 11(d) of the Code of Civil Procedure, by observing that at this stage court is required to consider averments in the plaint only and that considering the averments in the plaint, suit is within the period of limitation. That the learned trial court also observed that considering the contentions of both the parties whether the suit is within the period of limitation or not, is a question which is required to be considered at the time of trial and consequently the learned trial court dismissed the applications submitted under Order 7 Rule 11(d) of the Code of Civil Procedure. Being aggrieved by and dissatisfied with the impugned orders passed by the learned trial court dismissing the applications submitted by the petitioner - original defendant No.1 in respective suits and in not rejecting the plaint under Order 7 Rule 11(d) of the Code of Civil Procedure, petitioner herein – original defendant No.1 has preferred these Civil Revision Applications under section 115 of the Code of Civil Procedure.

3.03. Mr.Tattvam Patel, learned advocate appearing on behalf of the petitioner - original defendant No.1 has vehemently submitted that the learned trial court has materially erred in not rejecting the plaint under Order 7 Rule 11(d) of the Code of Civil Procedure on the ground that the respective suits are barred by law of limitation. It is submitted

that the learned trial court has materially erred in holding that considering the averments made in the respective complaints, suit is within the period of limitation. It is submitted that as such the learned trial court has not properly appreciated and/or considered the contentions raised on behalf of the petitioner herein on the question of limitation. It is further submitted by Mr. Patel, learned advocate appearing on behalf of the petitioner that admittedly respective suits have been instituted challenging power of attorney dtd.5/1/1997 and sale deeds executed in the year 1998 and respective suits have been instituted in the year 2011. It is submitted that as such the original plaintiffs had knowledge of transactions / sale deeds between the original defendant No.1 and defendant No.2 executed by the original defendant No.1 as power of attorney holder of the plaintiff way back in the year 1999. It is submitted that some of the plaintiffs along with other persons preferred Civil Suit No. 1034 of 1999 on 2/9/1999 for declaration and permanent injunction and in the said suit, Written Statement was filed on 12/10/1999, wherein execution of the power of attorney dtd.5/1/1997 and 12/10/1998 and other transactions were clearly mentioned and therefore, as such the original plaintiff Nos.1 and 6 were in fact had knowledge and were in know of power of attorney dtd.5/1/1997 and in the transactions entered into in the year 1998, which are subject matter of the present suits, still the plaintiffs choose not to file suits for cancellation of the power of attorney and the sale deeds within a period of three years from the aforesaid date on which they came to know.

3.04. Mr. Tattvam Patel, learned advocate appearing on behalf of the petitioner - original defendant No.1 has further

submitted that not only that, but even purchasers preferred Civil Suit No.1229 of 1999 before the Civil Court on 15/10/1999 against all the plaintiffs herein for permanent injunction claiming their rights, title and interest on the basis of the sale deeds which were executed on the basis of the power of attorney dtd.5/1/1997 which are subject matter of the present suits. It is further submitted that even within a period of three years from the date of receipt of the summonses / notices of the aforesaid Civil Suit No.1229 of 1999, the original plaintiffs choose not to file the suit either for cancellation of the alleged power of attorney dtd.5/1/1997 and/or sale deeds executed by the defendant No.1 on the basis of the power of attorney in favour of the defendant No.2.

3.05. Mr.Tattvam Patel, learned advocate appearing on behalf of the petitioner - original defendant No.1 has further submitted that not only that but even in the year 2003-2004, plaintiffs challenged Mutation Entries mutated in favour of the purchasers by filing RTS Appeals and still within a period of three years, the plaintiffs choose not to file suit.

3.06. Mr.Tattvam Patel, learned advocate appearing on behalf of the petitioner - original defendant No.1 has further submitted that even in the year 2004, the original plaintiffs filed a private complaint being Inquiry Case No.24 of 2004 for the offences under sections 406, 420, 467, 468 and 471 of Indian Penal Code, inter-alia alleging that the power of attorney dtd.5/1/1997 is bogus and forged one and defendant Nos.1 and others have committed offences alleged in the said complaint, still the plaintiffs choose not to file suit.

3.07. Mr.Tattvam Patel, learned advocate appearing on behalf of the petitioner - original defendant No.1 has further submitted that considering the case from any angle, i.e. considering the starting point of limitation either from 12/10/1999 when Written Statement was filed in Civil Suit No.1034 of 1999 pointing out the sale transactions / sale deeds in favour of the respective defendant No.2 and/or from 15/10/1999 when purchasers preferred Civil Suit No.1229 of 1999 against the plaintiffs for permanent injunction claiming right, title and interest on the basis of the sale deeds which are now challenged in the present suits and/or even considering the period of limitation from the date on which RTS Appeal was preferred in the year 2004 challenging Mutation Entries and/or at least from the date on which Criminal Inquiry Case No.24 of 2004 was filed by the plaintiffs alleging-inter alia that the power of attorney dtd.5/1/1997 is forged and bogus, the respective suits are barred by law of limitation as the suits have been filed in the year 2010.

3.08. Mr.Tattvam Patel, learned advocate appearing on behalf of the petitioner - original defendant No.1 has further submitted that the learned trial court has not properly considered and appreciated the aforesaid undisputed facts. It is submitted that considering the aforesaid facts and circumstances the learned trial court ought to have allowed the respective applications preferred by the original defendant No.1 and ought to have rejected the complaints under Order 7 Rule 11(d) of the Code of Civil Procedure on the ground that the respective suits are barred by law of limitation.

3.09. Mr.Tattvam Patel, learned advocate appearing on

behalf of the petitioner - original defendant No.1 has relied upon the decision of the Hon'ble Supreme Court in the case of **T.Trivandam Versus T.V. Satyapal and another**, reported in **(1977) 4 SCC 467** in support of his submission that as held by the Hon'ble Supreme Court in the said decision, if claver drafting has created the illusion of a cause of action, it is the duty of the Court to nip it in the bud at the first hearing by examining the party searchingly under Order 10 of the Code of Civil Procedure. It is submitted that as held by the Hon'ble Supreme Court in the aforesaid decision, by claver drafting a suit which is otherwise barred by law of limitation cannot be brought within the period of limitation.

3.10. Mr.Tattvam Patel, learned advocate appearing on behalf of the petitioner - original defendant No.1 has relied upon the decision of the Hon'ble Supreme Court in the case of **Khatri Hotels Private Limited and another Versus Union of India and another**, reported in **(2011) 9 SCC 126** in support of his submission that the respective suits are clearly barred by law of limitation. It is submitted that as held by the Hon'ble Supreme Court in the aforesaid decision, period of limitation would start when the right to sue first accrues and successive violation of right will not give rise to fresh cause of action.

3.11. Mr.Tattvam Patel, learned advocate appearing on behalf of the petitioner - original defendant No.1 has also relied upon Article 58 of the Limitation Act in support of his submission that the aforesaid suits are clearly barred by law of limitation.

3.12. Mr.Tattvam Patel, learned advocate appearing on behalf of the petitioner - original defendant No.1 has also relied upon the decision of the Hon'ble Supreme Court in the case of **N.V. Srinivasan Murthy Versus Mariyamma (Dead) by Proposed Lrs.** reported in **AIR 2005 S.C. 2897** in support of his submission that as held by the Hon'ble Supreme Court in the aforesaid decision, if it is found that the suit is barred by law of limitation, suit can be rejected in exercise of powers under Order 7 Rule 11(d) of the Code of Civil Procedure.

By making above submissions and relying upon above decisions it is requested to allow all these Civil Revision Applications quashing and setting aside the impugned orders passed by the learned trial court and consequently to allow the applications submitted by the petitioner in respective suits and to reject the respective complaints on the ground that the same are barred by law of limitation.

4.00. All these petitions are opposed by Mr.Jinesh Kapadia learned advocate appearing on behalf of the respondent Nos.1 to 7 - original plaintiffs and Mr.Viral K. Shah, learned advocate appearing on behalf of the respondent No.8 - original defendant No.2.

5.00. Mr.Kapadia, learned advocate appearing on behalf of the respondent Nos.1 to 7 - original plaintiffs has vehemently submitted that as such the learned trial court has not committed any error and/or illegality in dismissing the applications submitted by the petitioner and in not rejecting the suits/complaints in exercise of the powers under Order 7 Rule

11(d) of the Code of Civil Procedure with respect to the limitation and considering the same the learned trial court has rightly held that the suit is not barred by law of limitation and the suits are not required to be rejected on the ground that the suits are barred by law of limitation in exercise of the powers under Order 7 Rule 11(d) of the Code of Civil Procedure. It is submitted that the learned trial court has rightly held that at this stage what is required to be considered is the averments in the plaint only.

5.01. Mr.Kapadia, learned advocate appearing on behalf of the respondent Nos.1 to 7 - original plaintiffs has drawn attention of the court to averments in the plaints with respect to limitation more particularly paragraph No.10. It is submitted that in the respective suits, it is specifically pleaded that they came to know about the forging of the signature on the power of attorney when they received report of the handwriting expert and immediately thereafter suits have been filed within 3 years. It is submitted that it was the case of fraud and considering sections 17/18 of the Limitation Act, suit can be filed from the detection of the fraud and therefore, the learned trial court has rightly refused to reject the plaint in exercise of the powers under Order 7 Rule 11(d) of the Code of Civil Procedure.

5.02. Mr.Kapadia, learned advocate appearing on behalf of the respondent Nos.1 to 7 - original plaintiffs has relied upon the decision of the Hon'ble Supreme Court in the case of **Yashwant Deorao Versus Walchand Ramchand**, reported in **AIR 1951 S.C. 16** in support of his submission that when the allegations are with respect to fraud and/or transactions

are challenged on the ground of fraud, period of limitation would start from the date on which the fraud is detected.

5.03. Mr.Kapadia, learned advocate appearing on behalf of the respondent Nos.1 to 7 - original plaintiffs has also relied upon decision of the Hon'ble Supreme Court in the case of **C.Natarajan Versus Ashim Bai and Another**, reported in **AIR 2008 S.C.363** in support of his submission that as held by the Hon'ble Supreme Court in the said decision, the plaint cannot be rejected on the ground that the suit is barred by way of limitation. It is submitted that in the present case, the learned trial court has not committed any error and/or illegality in refusing to reject the plaint in exercise of the powers under Order 7 Rule 11(d) of the Code of Civil Procedure on the ground that the suit is barred by law of limitation by observing that whether suits are barred by way of limitation or not is required to be considered at the time of trial.

5.04. Mr.Kapadia, learned advocate appearing on behalf of the respondent Nos.1 to 7 - original plaintiffs has also relied upon the decision of the Division Bench in the case of **Bhupendrabhai Hasmukhbhai Dalwadi & Ors. Versus Deceased Savitriben Ganumal Krishnani & Ors.**, reported in **2010 (3) GLH 596** as well as decision of this Court in the case of **Pravin Ratilal Share and Stock Brokers Ltd. Versus Sagar Drugs & Pharmaceuticals**, rendered in Civil Revision Application No. 41 of 2010 dtd.13/6/2011, reported in **2011 JX (Guj) 734** by submitting that as held by this Court in the aforesaid decision, while considering the application to reject the plaint at a pretrial stage, court has to look into the averments made in the plaint only and the court cannot reject

the plaint looking to the defence of the defendants or appreciating documentary evidence, if any produced on record.

By making above decisions and relying upon above decisions, it is requested to dismiss these Civil Revision Applications by submitting that the period of limitation should be considered from the date of knowledge of the fraud / forgery when the plaintiffs received report of the handwriting expert.

6.00. Mr.Viral K. Shah, learned advocate has appeared on behalf of the respondent No.8 – original defendant No.2 – subsequent purchaser has supported the case.

7.00. Heard the learned advocates appearing on behalf of the respective parties at length.

8.00. At the outset, it is required to be noted that as stated above, in the respective suits the original plaintiffs have prayed to quash and set aside the power of attorney dtd.5/1/1997 and subsequent transactions / sale deeds executed by the original defendant No.1 as power of attorney holder in favour of the respective original defendant No.2 in the respective suits executed in the year 1998. At the outset, it is also required to be noted that the respective suits have been preferred in the year 2010 for declaration and permanent injunction to declare that the power of attorney dtd.5/1/1997 is illegal and bogus and also prayed to quash and set aside the transactions / sale deeds executed in the year 1998 which were executed on the basis of the power of attorney dtd.5/1/1997. Thus, as such the suits have been preferred after a period of approximately 12 to 13 years.

8.01. That the original defendant No.1 submitted respective applications in the respective suits before the learned trial court to reject the plaints in exercise of the powers under Order 7 Rule 11(d) of the Code of Civil Procedure on the ground that the respective suits are barred by law of limitation. It is not disputed by the learned advocate appearing on behalf of the plaintiffs that if on the face of it and considering the averments made in the plaint, it is found that the suit is barred by law of limitation, plaint can be rejected in exercise of the powers under Order 7 Rule 11(d) of the Code of Civil Procedure. Even considering the aforesaid decision of the Hon'ble Supreme Court in the case of **N.V. Srinivasan Murthy** (supra), plaint can be rejected in exercise of the powers under Order 7 Rule 11(d) of the Code of Civil Procedure, if even accepting all the averments made in the plaints, the suit is barred by law of limitation.

Considering the above proposition of law laid down by the Hon'ble Supreme Court it is required to be considered whether considering the facts and circumstances of the case and even considering the averments made in the respective plaints/ suits and even accepting all the averments made in the respective plaints/suits as they are, whether the respective suits are barred by law of limitation or not?

8.02. As stated hereinabove, the respective sale deeds by the defendant No.1 in favour of the defendant No.2 on the basis of power of attorney dtd.5/1/1997 as power of attorney holder, have been executed in the year 1998. It is not in dispute that the original plaintiff Nos.1 and 6 along with other

persons instituted Civil Suit No. 1034 of 1999 before the Civil Court on 2/9/1999 for declaration and permanent injunction with respect to the disputed lands in question and in the said suit, Written Statement has been filed on 12/10/1999 in which sale deeds in question in favour of the respective defendant No.2 came to be disclosed. Therefore, when the Written Statement was filed on 12/10/1999 in the aforesaid suit pointing out the execution of the sale deeds in question, as such the plaintiff Nos.1 and 6 had knowledge with respect to sale deeds in question in favour of the respective defendant No.2 by the defendant No.1 on the basis of power of attorney dtd.5/1/1997.

8.03. Not only that even subsequently on 15/10/1999 all the purchasers – respective respondent No.8 herein - respective defendant No.2 in the receptive suits preferred Civil Suit No.1229 of 1999 against all the plaintiffs for permanent injunction claiming right, title and interest in the parcels of land in question on the basis of the sale deeds executed by the defendant No.1 in the year 1998, as power of attorney holder of the plaintiffs. Thus, on receipt of the summonses/notices of the aforesaid Civil Suit No.1229 of 1999, as such the original plaintiffs had knowledge about the transactions / sale deeds which are impugned in the present Civil Suits, still the plaintiffs choose not to file the suit challenging the sale deeds which are now challenged in the present suits.

8.04. Not only that even in the year 2003-2004, the original plaintiffs challenged Mutation Entries mutated in favour of the purchasers – respective respondent No.8 herein - defendant No.2 in the respective suits, by filing RTS Appeals

before the revenue authorities. Thus, at that time also the plaintiffs had knowledge about the execution of the sale deeds in favour of the respective defendant No.2 by the defendant No.1 as power of attorney holder, still the plaintiffs choose not to file the suits challenging the alleged power of attorney and/or sale deeds executed on the basis of the alleged power of attorney.

8.05. The matter does not end here. Even in the year 2004, more particularly on 20/1/2004 the original plaintiffs had filed one private complaint in the court of learned Judicial Magistrate (First Class), Rajkot being Inquiry Case No.24 of 2004 against the defendants for the offences under sections 406, 420, 467, 468 and 471 of Indian Penal Code, inter-alia alleging that the defendant No.1 – original accused No.1 in the said complaint has forged and concocted the power of attorney dtd.5/1/1997 by forging signature of the complainants – original plaintiffs herein. Still the original plaintiffs choose not to file suit for declaration and permanent injunction and/or for the reliefs which are now prayed in the present suits. Even according to the said complaint, the plaintiffs had knowledge with respect to alleged forged power of attorney dtd.5/1/1997 alleged to have been executed by the plaintiffs in favour of the original defendant No.1 and still no suits were filed within 3 years – within the period of limitation and now the suits in question have been instituted in the year 2010 i.e. after six years from the date of filing of the complaint by the plaintiffs themselves making allegations that the original defendant No.1 has forged power of attorney dtd.5/1/997 etc.

It is required to be noted that the aforesaid facts are not

disputed by the original plaintiffs and even with respect to filing of the suits in the year 1999, there is reference of the same in the respective suits/plaints. Thus, from the aforesaid facts and circumstances of the case and considering the starting point of limitation from any of the angles, either from the date of knowledge of the transactions declared by filing Written Statement in Civil Suit No.1034 of 1999 i.e. on 14/10/1999 and/or from 15/10/1999, the date of filing of the Civil Suit 1229 of 1999 filed by the original purchasers for permanent injunction claiming right, title and interest in the disputed parcels of land, who have purchased the parcels of land by way of registered sale deeds from the defendant No.1 as power of attorney holder of the plaintiffs on the basis of the power of attorney dtd.5/1/1997 and/or even when the plaintiffs preferred RTS Appeals in the year 2003-2004 challenging Mutation Entries in favour of the respective purchasers – defendant No.2 – respondent No.8 and/or at least from the date of filing of the complaint by the plaintiffs themselves being Inquiry case No.24 of 2004 making allegations that defendant No.1 – original accused No.1 has forged and concocted signature on the power of attorney and has created bogus power of attorney dtd.5/1/1997, i.e. on 20/1/2004, the suits filed in the year 2010 are clearly barred by law of limitation.

8.06. It is required to be noted that the only contention on behalf of the plaintiffs in support of their case that the suit is within the period of limitation, is that they came to know about the forged signature on the power of attorney when they came to know from report of the handwriting expert and therefore, from that day, the suit is within the period of limitation. In support of the above submission, the learned

advocate appearing on behalf of the plaintiffs has relied upon section 17 of the Limitation Act. However, considering the facts of the case on hand, plaintiffs can not get benefit of section 17 of the Limitation Act. In the present case as stated above, even the original plaintiffs have instituted a private complaint in the court of learned Judicial Magistrate (First Class), Rajkot on 20/1/2004 for the offences punishable under sections 406, 420, 467, 468 and 471 of Indian Penal Code, against the defendants alleging forgery of the power of attorney dtd.5/1/1997 and therefore, even considering section 17 of the Limitation Act, starting point of limitation at least can be said to be from the date on which the plaintiffs filed complaint alleging forgery of power of attorney and fraud. At this stage, Article 56 of the Limitation Act is required to be considered. As per Article 56 of the Limitation Act, period of limitation to file suit to declare forgery of any instrument issued or registered shall be three years from the date on which issue or registration becomes known to the plaintiffs. As held by the Hon'ble Supreme Court in the case of **Khatri Hotels Private Limited and another (supra)**, period of limitation would commence when right to sue first accrues.

8.07. Now, so far as the contention on behalf of the learned advocate appearing on behalf of the plaintiffs that while considering application under Order 7 Rule 11(d) of the Code of Civil Procedure, court is required to consider the averments made in the plaint only and in para 10 of the respective suits, the plaintiffs have averred that they came to know about forgery when they received report of the handwriting expert in the year 2008 and therefore, it cannot be said that the suit is barred by law of limitation is concerned, it

is required to be noted that this Court has considered and gone through the averments made in the respective suits/plaint. It appears that by claver drafting the plaintiffs have tried to bring the suit within the period of limitation. As stated hereinabove, the respective plaintiffs had knowledge with respect to transactions in the year 1999, even so pleaded in para 10 of the respective suits, and even the respective plaintiffs had knowledge with respect to alleged forgery and/or alleged forged signature on the power of attorney when they filed complaint in the year 2004 against the defendants for the offences punishable under sections 406, 420, 467, 468 and 471 of Indian Penal Code. By receipt of the report of the handwriting expert at the most it can be said that their case with respect to alleged forged signatures is strengthened but by that it cannot give a fresh cause of action to the plaintiffs to institute the suit when they have already alleged forgery in the year 2004.

8.08. It is also required to be noted that even according to the plaintiffs as per the report of the handwriting expert dtd.27/6/2008, the signature of [1] Kanjibhai Hansrajbhai [2] Pujabhai Hansrajbhai [3] Maganbhai Hansrajbhai and [4] Nandubhai Shamjibhai, who have identified the thumb impressions of the plaintiffs and who are witnesses to the thumb impression of the plaintiffs, are forged and the signatures of the said witnesses do not tally with the admitted and specimen signature of the said witnesses. Therefore, it is not the case on behalf of the plaintiffs that from the report of the handwriting expert, it is found that their signatures (signatures of the plaintiffs) are found to be forged and concocted. In any case even after receipt of the report of the

handwriting expert in the year 2008 also, present suits have been preferred after a period of two years, which shows conduct on the part of the original plaintiffs. Considering the aforesaid facts and circumstances of the case, when the respective plaintiffs had knowledge with respect to the transaction in the year 1999 and even in the year 2004, when RTS Appeals were preferred challenging the Mutation Entries in favour of the defendants and even with respect to the alleged forgery in the year 2004 when the plaintiffs filed private complaints, the respective suits are clearly barred by law of limitation. Under the circumstances, the learned trial court has materially erred in rejecting the applications submitted by the respective petitioner - original defendant No.1 and not rejecting the plaint in exercise of the powers under Order 7 Rule 11(d) of the Code of Civil Procedure.

8.09. Now, so far as the reliance placed upon the decision of the Hon'ble Supreme Court in the case of **N.V. Srinivasan Murthy** (supra), is concerned, on facts the same would not be of any assistance to the petitioner - original defendant No.1. As held by the Hon'ble Supreme Court in the case of **N.V. Srinivasan Murthy** (supra), and decisions of this Court in the cases of **Bhupendrabhai Hasmukhbhai Dalwadi & Ors.** (supra) as well as **Pravin Ratilal Share and Stock Brokers Ltd.** (supra) if considering the averments in the plaint it is found that the suit is time barred, the plaint/suit can be rejected in exercise of powers under Order 7 Rule 11(d) of the Code of Civil Procedure.

8.10. Now, so far as the reliance placed upon the decisions of this Court in the case of **Bhupendrabhai**

Hasmukhbhai Dalwadi & Ors. (supra) as well as in the case of **Pravin Ratilal Share and Stock Brokers Ltd.** (supra) are concerned, there is no dispute with respect to proposition of law laid down in the aforesaid decisions, however, accepting the averments made in the complaints/suits as they are, it is found that the suits are clearly barred by law of limitation.

9.00. In view of the above and for the reasons stated above, all the Civil Revision Applications succeed and the impugned orders passed by the learned trial court – learned 2nd Additional Senior Civil Judge, Rajkot below the respective applications submitted by the petitioner herein – original defendant No.1 in the respective Regular Civil Suits rejecting the applications made by the original defendant No.1 to reject the complaint in exercise of powers under Order 7 Rule 11(d) of the Code of Civil Procedure on the ground that the suit is barred by law of limitation, are hereby quashed and set aside and the complaints / Regular Civil Suit Nos.305, 307, 308, 310 to 316 of 2010 are hereby rejected under Order 7 Rule 11(d) of the Code of Civil Procedure. Rule is made absolute to the aforesaid extent in each of the Civil Revision Applications. In the facts and circumstances of the case, there shall be no order as to costs.

[M.R. SHAH, J.]

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