

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD  
FIRST APPEAL NO. 1199 of 1994**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MR.JUSTICE G.R.UDHWANI**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
  - 2 To be referred to the Reporter or not ?
  - 3 Whether their Lordships wish to see the fair copy of the judgment ?
  - 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 ?
  - 5 Whether it is to be circulated to the civil judge ?
- =====

HEIRS OF SHRIMATIBEN K DUDHIA....Appellant

Versus

HARSHADKUMAR B MODI SINCE DECDTHRO.HIS LEGAL HEIRS AND  
LEGAL & 4....Defendants

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Appearance:

MR AN PATEL, ADVOCATE for the Appellant(s) No. 1 , 1.2 - 1.4

MS.TRUPTI A.PATEL, ADVOCATE for the Appellant(s) No. 1.2 - 1.4

DELETED for the Defendant(s) No. 2

MR PRADIPSINH DABHI, ADVOCATE for the Defendant(s) No. 1.1 - 1.2 , 3.1 , 4 - 5

MR UTKARSH R SHARMA, ADVOCATE for the Defendant(s) No. 1.1 - 1.2 , 3.1 , 4 - 5

NOTICE SERVED for the Defendant(s) No. 3.2

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**CORAM: HONOURABLE MR.JUSTICE G.R.UDHWANI**

**Date : 10/05/2013**

**ORAL JUDGMENT**

This appeal arises out of the common judgment and decree dated 24/01/1994 passed by the learned City Civil Judge, City Civil Court, Ahmedabad in group of Civil Suits Nos.2545 of 1990, 4935 of 1985 and 4936 of 1985. learned Counsel for the appellant submits that the present appeal has been preferred only against the judgment and decree in Civil Suit No.2545 of 1990.

2. Briefly stated, the facts of the case were that on 15/01/1982, a sale-deed came to be executed in favour of the defendant-appellant herein and after the sale-deed revenue proceedings were also resorted to by the defendant. In respect of such revenue proceedings, the objections came to be filed by the plaintiff on 24/05/1982 before the settlement Officer objecting to the entry in the revenue records on the basis of the sale-deed dated 15/01/1982. The proceedings were taken in appeal and in revision and ultimately, they were terminated on 15/11/1988 in favour of the defendant. Thereafter, on 14/12/1988 i.e. beyond the period of three years of the date of sale-deed as well as the date of objections, Civil Suit No.2545 of 1990, inter alia challenging the sale deed came to be filed.

2.1 The defendant contested the suit inter alia on the ground that suit, having been filed beyond the period of three years of date of the sale deed as well as the knowledge of the same available with the plaintiff on 24/05/1982, when the objections were filed before the revenue authority, was barred by

Article 59 of Schedule 1 to the Limitation Act, The trial Court therefore raised issue No.3 in this context and after considering the evidence on record and hearing the parties, decreed the suit by setting aside the sale deed dated 15/01/1982.

3. Aggrieved, the defendant is in this appeal before this Court.

4. Learned Counsel for the appellant raised two contentions: (01) that provisions of Section 14 of the Limitation Act were misconstrued by the Court below inasmuch as the revenue proceedings were instituted by the defendant and not by the plaintiff and that such revenue authorities were merely administrators and not the Courts and the proceedings before the revenue authorities were not the civil proceedings and (02) that the Section 14 contemplates the failure of such civil proceedings on a defect of jurisdiction or other cause of a like nature as a reason to set off the period spent in pursuing remedy in such civil proceedings. In his submission, it was only on satisfaction of all the ingredients of Section 14 of the Limitation Act that the suit was to be treated as within limitation and not otherwise.

5. In the alternative, learned Counsel for the appellant submitted that the property in question was ancestral property and defendant being one of the heirs amongst six of them, was entitled to  $1/6^{\text{th}}$  share therein and therefore sale deed to an extent of  $1/6^{\text{th}}$

share was valid and legal and could not have been set aside.

6. Learned Counsel for the respondent argued that Section 14 of the Limitation Act, applies also to the revenue proceedings since by virtue of the proceedings initiated by the defendants, the revenue authorities were called upon to determine the rights between the parties. In his submission, the trial Court was right in relying upon the phrase "judicial proceedings" as contemplated under Bombay Land Revenue Code, within the meaning of Sections 193, 219 and 228 of the Civil Procedure Code. Learned Counsel would submit that after scrutinizing the case in detail, the trial Court came to the right conclusion and therefore this Court may not interfere in appeal.

7. It was, also submitted by learned Counsel for the respondent that in fact the question of limitation would not arise since the power of attorney deed (Exh.41) authorize two persons viz., Chandrikaben Nandkishor Modi and Bhogilal Keshavlal Modi to execute documents including sale deed, but admittedly the sale deed in question was executed only by Bhogilal. Learned Counsel therefore would contend that there was inherent defect in the sale deed and therefore even if the document was not challenged, no right could have accrued in favour of the appellant on the basis of such defective sale deed.

8. Learned Counsel for the appellant however

contended that power of attorney was internal arrangement between the parties with which the appellant was not concerned and therefore non participation of another power of attorney i.e. Chandrikaben in execution of sale deed would not have implication on the transaction in question.

9. Having considered the arguments advanced by the learned Counsel for the parties, a reference to Section 14 of the Limitation Act to determine the issue raised before this Court is required to be made. For ready reference, Section 14 is quoted:

*"14. Exclusion of time of proceeding bona fide in court without jurisdiction.-- (1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to enter it.*

*2. In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.*

*3. Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature."*

10. It follows from the provision that following

are the ingredients which need to be first satisfied before invocation of Section.

- (1) plaintiff must be prosecuting with due diligence another civil proceeding.
- (2) it may be in a court of first instance or of appeal or revision.
- (3) the proceeding must be against the defendant.
- (4) the proceeding must relate to the same matter and issue and is prosecuted in good faith.
- (5) the proceeding must have failed from defect of jurisdiction or other cause of a like nature and thus could not be entertained.

Discussion of rest of the Section is not necessitated.

11. A plain reading of sub-section (1) of Section 14 of Limitation Act clearly indicates that the proceedings, which ultimately were not entertained, must have been prosecuted by the plaintiff. In the instant case, such proceeding was not prosecuted by the plaintiff. Secondly, the proceeding must be civil proceeding. In the suit the plaintiff was interested in the share and ownership right in the property. The revenue authority in the present case was not concerned with the ownership rights amongst the parties. The defendant was interested in getting an entry on revenue record on the basis of the sale deed executed on 15/01/1982.

Therefore, what fell for the determination before the revenue authority was only a fiscal entry and not the rights between the parties on the basis of sale deed dated 15/01/1982. Thus the proceeding before the revenue authorities were not parallel to those involved in the suit and therefore it cannot be said that a wrong remedy was being bonafide pursued within the meaning of Section 14 of the Act.

12. Another requirement of the section is that the proceedings must have been taken out by the plaintiff in good faith and should have been terminated by the Court from defect of jurisdiction or other cause of a like nature. As noticed above, the plaintiff had not instituted the revenue proceedings and therefore there was no question of such proceeding being terminated from defect of jurisdiction or other cause of like nature against the plaintiff. Under any case, the revenue proceeding was not terminated from the defect of a jurisdiction or other cause of a like nature. In fact they were entertained and the defendant succeeded therein.

13. The above discussion would clearly indicate that the case did not fall in any of the ingredients of Section 14 of the Limitation Act. Further, considering the fact that the plaintiff opposed the revenue proceeding on 24/05/1982, he appears to have knowledge of existence of the sale deed in favour of the appellant. Under Article 59 of Schedule 1, cancellation or setting aside of an instrument or

decree can be sought in the civil suit within three years of the knowledge of execution of such instrument or passing of the decree with the suitor. However, the question is whether sale deed was capable enough to convey the title? If not, its implications on the title of its original owner? I find considerable force in the arguments advanced by the learned Counsel for the respondent on this count. The power of attorney deed clearly stated that the donors of power of attorney were reposing a faith in Chandrikaben and Bhogilal. The document further mentions the acts, etc. they were authorized to perform on the basis of the power of attorney deed. The authority was thus possessed jointly and was exercisable by both of them simultaneously. The appellant, however, preferred to rely upon the power of attorney deed without noticing the fact that Bhogilal individually had no authority to execute a sale deed. If a person has no authority to sale, it cannot invest a corresponding right in the receiver of the property. Therefore, such a sale-deed would be void *ab initio*. It would be like a document executed by the stranger in respect of the property of the third party. Such transaction has no value in the eye of law. Under the circumstances, the appellant was not entitled to hold title on the basis of the sale deed. It was therefore rightly cancelled by the Court below.

14. Next contention is that even otherwise the appellant was entitled to 1/6<sup>th</sup> share in the suit property and therefore to that extent his right should



be recognized. I do not find substance in this argument as well since the very sale deed which conveyed the right to own the property to the appellant was itself void *ab initio*, it was incapable of transferring even 1/6<sup>th</sup> share to the appellant.

15. In view of the above discussion, though the finding by the trial court with regard to issue No.3 was not in accordance with law, the ultimate conclusion reached by the Court below was justified. This Court therefore sees no reason to interfere in this appeal. The appeal is therefore required to be dismissed and accordingly the same is dismissed with no order as to costs.

**(G.R.UDHWANI, J.)**

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