

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.90 of 2017

1. Krishna Kumar Sinha and Ors S/o Mahesh Kumar
2. Mithilesh Kumar Singh S/o Jagarnath Kumar
3. Ram Bhajan Prasad S/o Janki Mathon
- 4.1. Shashi kumar Son of late Subhash Prasad Singh and Late Indu Devi resident of Mohalla- Ghugharitand, Raj Kumar Colony, P.O. Chand Chaura, P.S. Vishnupad, District- Gaya.
- 4.2. Ajit Kumar Son of late Subhash Prasad Singh and Late Indu Devi resident of Mohalla- Ghugharitand, Raj Kumar Colony, P.O. Chand Chaura, P.S. Vishnupad, District- Gaya.
5. Ramawatar Prasad S/o Heera Prasad
6. Harisankar Mehta @ Harishankar Prasad Mehta S/o Ramkundan Prasad Mehta
7. Gopal Singh S/o Ram Kishuan Singh
8. Kanta Singh S/o Ram Kishuan Singh
9. Nandu Prasad S/o Mahaveer Prasad
10. Purnima Devi W/o Ramchandra Prasad
11. Sankar Prasad S/o Shiv Nandan prasad
12. Manokamna Sinha W/o Rakesh Raushan
13. Ravinandan Kumar S/o Krishna Nandan Prasad
14. Satya Narayan Kumar S/o Sita Ram Prasad
15. Ramasish Prasad S/o Sita Ram Prasad
16. Baleshwar Prasad S/o Jagdish Mehta
17. Suresh Praasd S/o Jagdish Mehta
18. Sindhu Kumari W/o Ajay Kumar Verma
19. Pramila Devi W/o Anil Singh
20. Savo devi W/o Uma Shankar Prasad
21. Divakar Prasad S/o Durga Prasad All are Resident of Mohalla-Ghugharitand, Raj Kumar Colony, P.O. Chand Chaura, P.S. Vishnupad, District-gaya

... .. Petitioner/s

Versus

- 2.1. Vipendra Paswan @ Biththal Paswan Son of late Bhagwan Paswan, Resident of Mohalla Ghugharitand, P.S. Vishnupad, District- Gaya.
- 2.2. Bhola Paswan Son of Late Bhagwan Paswan, Resident of Mohalla Ghugharitand, P.S. Vishnupad, District- Gaya.
3. Dinesh Chandra Pathak
4. Krishna Chandra Pathak
5. Radha Krishna Pathak



course of trial.

3. Learned counsel for the petitioner in the instant case submitted that the learned trial court committed illegality in refusing the application for rejection of plaint under order VII rule XI of the CPC, and therefore, the impugned order is illegal, improper and against the mandatory provisions of law and is liable to be set aside. The learned trial court failed to appreciate the fact that the plaintiffs/respondents 1st set have sought a very vague relief “B” where they have prayed for declaration of the sale deeds executed by Raj Kumar Pandey or their transferees if any to be canceled as *void ab initio* as in the whole body of plaint there is no mention of any detail or particulars of the any sale deed executed in favour of the petitioners/defendants.

3 (i) He further submitted that the plaint mentions in the paragraph 19 that the plaintiffs/respondents 1st set learned and obtained certified copy of sale deeds on 16.08.2016, which is sans of any details of the sale deed so obtained which makes it apparent that the alleged cause of action never arose.

3 (ii) He further submitted that the plaint itself mentions that the first sale deed was executed in the year 1989



and the presumption of knowledge regarding the execution of the suit property must be assumed from 1989 only, therefore, document/instrument must be brought within a period of 3 years from the date when it first became known to him as per article 59 of the Limitation Act, 1963 (hereinafter Limitation Act) and therefore, the present plaint is fit to be rejected under order VII rule XI (d) as it is barred by limitation.

3 (iii) He again submits that the plaintiffs/respondents 1st set have prayed for cancellation of the sale deeds without giving any details of the sale deeds which clearly demonstrates the fact that the plaintiffs/respondents 1st set have got no cause of action. Further, as per Section 3 of the Transfer of Property Act, 1882, (hereinafter T.P.A.) once sale deed is registered it is presumed that it becomes known to all including the vendors hence, the period of limitation begins from the year 1989 when the suit property was first registered by one Ram Kumar Pandey, Son of Kamal Pandey, the predecessor in title in respect of the petitioners in the instant case.

3 (iv) He further submits that the learned trial court indulged in perversity by not rejecting the plaint as the suit filed is vexatious and meritless and considering the



averments made in the plaint, it is apparent on the face of the record that it does not disclose any cause of action and it is barred by limitation. Further, the impugned order is wholly illegal, perverse and mechanical and is liable to set aside as it is suffering from jurisdictional error.

3 (v) He further relied on the relevant paragraphs of a catena of judgments to bolster his arguments including *Popat and Kotecha Property vs. State Bank of India Staff Association* reported in (2005) 7 SCC 510, *Raghwendra Sharan Singh vs. Ram Prasanna Singh (Dead) by Legal Representatives* reported in (2020) 16 SCC 601, *Padhiyar Prahladji Chenaji (Deceased) Through L.Rs. vs. Maniben Jagmalbhai (Deceased) Through L.R.s & Ors.* reported in (2022) 3 BLJ (SC) 136, *Bhagirath Prasad Singh vs. Ram Narayan Rai & Anr.* reported in (2010) SCC OnLine Pat 737, *T. Arivandandam vs. T.V. Satyapal and another* reported in AIR 1977 (SC) 2421, *Uma Devi & Ors. vs. Anand Kumar & Ors.* reported in (2025) 5 SCC 198, and *Rakesh Narayan Singh vs. Sanjeev Kumar & Ors.* reported in 2025 (2) PLJR.

4. The Learned counsel for the plaintiff/respondent 1st set submits that the suit property is his ancestral property which is pertinently mentioned in the name



of his ancestor in the cadastral survey and the records of the Gaya Municipal Corporation and therefore, they are jagirdars of the same suit land and no man can transfer any property over which he does not have any title.

4 (i) It is further submitted on his behalf that the plaintiff/respondent 1st set were residing outside the mohalla where the suit property is situated and when they came over to their native place, he found that many people have encroached over the land of the suit land. Further, the cause of action arose when the plaintiff/respondent 1st set learned and obtained certified copy of the sale deeds on 16.08.2016 from the registrar office in Mohalla – Ghugharitand, P.S. – Vishnupad, District – Gaya.

4 (ii) He further submitted that the rent receipts are in the name of Laxman Dusadh who was the ancestor of the plaintiff/respondent 1st set and that the predecessor in title (Raj Kumar Pandey) for the plaintiff in the instant case, had committed fraud by executing the suit property to different people from the year 1989 by taking undue advantage of the fact that the plaintiff/respondent 1st set and his family were residing outside the place where the suit property is located.

4 (iii) He further submitted that impugned order



dated 04.04.2017 which rejected the petition under order VII rule XI, filed by the Petitioner is valid, just, proper and unmaintainable in the eye of the law as these matters are complex and cannot be decided on the outset summarily rather it requires adducing of evidence by the parties in the trial.

5. Heard the learned counsel appearing on behalf of the respective parties at length. I have perused the impugned order of the trial Court, whereby and whereunder, the learned trial court refused to reject the plaint in exercise of powers under order VII rule XI of the CPC. I have also considered the averments made in the plaint.

6. Accordingly, the primary questions for this Court's determination are whether the plaint discloses a cause of action, read in conjunction with the documents forming part of the plaint and further, whether the suit is barred by limitation under the Limitation Act.

7. Before testing the correctness of the impugned order, it would be advantageous and appropriate to refer hereunder the order VII rule XI CPC, as also position of law propounded by the Apex Court in various judgments on the subject:

*Order 7 Rule 11. Rejection of Plaint –
The plaint shall be rejected in the*



following cases:

a) where it does not disclose a cause of action;

b) xxx

c) xxx

d) where the suit appears from the statement in the plaint to be barred by any law;

e)xxx

8. The terminology “cause of action” for the purposes of order VII rule XI CPC has been illustrated by the Hon’ble Apex court in case titled as “***A.B.C Laminart Private Limited Vs. A. P. Agencies, Salem*** reported in ***1989 (2) SCC 163***” as follows: -

“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 relief to fight 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 fight 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.”

9. In a number of rulings, the Hon’ble Apex court has elucidated the extent and the jurisprudence of order VII rule 11 of the CPC. In the case of ***Dahiben vs. Arvind Bhai Kalyanji Bhanusali*** reported in ***(2020) SCC ONLINE 563***, the materials to be taken into consideration for rejecting the plaint was covered in detail. The principle was explained by the Hon’ble Court as:

“12.6- At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration.

12.7- The test for exercising the power under Order VII Rule 11 is that if the averments made in the plaint are taken entirety, in conjunction with the documents relied upon, would the same result in a decree being passed”.

“23.2. The remedy under Order 7 Rule 11 is an independent and special remedy, wherein the Court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the



action should be terminated on any of the grounds contained in this provision.

23.3. The underlying object of Order 7 Rule 11 (a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the Court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

23.4. In Azhar Hussain v. Rajiv Gandhi, 1986 Supp. SCC 315 this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court, in the following words :

“12. ...The whole purpose of conferment of such power is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the Court, and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even if an ordinary civil litigation, the Court readily exercises the power to reject a plaint, if it does not disclose any cause of action.”

23.5. The power conferred on the court to terminate a civil action is, however, a



drastic one, and the conditions enumerated in Order 7 Rule 11 are required to be strictly adhered to.

23.6. Under Order 7 Rule 11, a duty is cast on the Court to determine whether the plaint discloses a cause of action by scrutinizing the averments in the plaint [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512], read in conjunction with the documents relied upon, or whether the suit is barred by any law.

23.9. In exercise of power under this provision, the Court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.

23.10. At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint [Sopan Sukhdeo Sable Vs. Charity Commr. (2004) 3 SCC 137] on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration.

23.11. The test for exercising the power under Order VII Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I & Anr., (2004) 9 SCC 512) which reads as:(SCC p.562, para 139)



“139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed.

23.12. In Hardesh Ores (P.) Ltd. v. Hede & Co. (2007) 5 SCC 614 the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact. D. Ramachandran v. R.V. Janakiraman [D. Ramachandran v. R.V. Janakiraman, (1999) 3 SCC 267; See also Vijay Pratap Singh Vs. Dukh Haran Nath Singh, AIR 1962 SC 941].

23.13. If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order VII



Rule 11 CPC.

23.14. The power under Order VII Rule 11 CPC may be exercised by the Court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial, as held by this Court in the judgment of Saleem Bhai v. State of Maharashtra [Saleem Bhai v. State of Maharashtra, (2003)1 SCC 557]. The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in Azhar Hussain case [Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC 315].

23.15. The provision of Order VII Rule 11 is mandatory in nature. It states that the plaint "shall" be rejected if any of the grounds specified in clause (a) to (e) are made out. If the Court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the Court has no option, but to reject the plaint."

10. The Hon'ble Apex Court in judgment dated 31.10.2023 in ***Kum. Geetha Vs. Nanjundaswamy & Ors.*** reported in ***2023 SCC OnLine SC 1407*** reiterated the aforesaid principle and observed in paragraph 7 that in simple terms, the true test is first to read the plaint meaningfully and as a whole, taking it to be true. Upon such reading, if the plaint discloses a cause of action, then the application under order



VII rule XI of the CPC must fail. To put it negatively, where it does not disclose a cause of action, the plaint shall be rejected. Here a reference to the judgement of the Hon'ble Apex Court passed in case titled as ***“Jageshwari Devi and Ors. Vs. Shatrughan Ram”*** reported in ***2007 (15) SCC 52*** also becomes imperative here under:-

“There is difference between non-disclosure of cause of action and defective cause of action, while the former comes within the scope of Order 7 Rule 11, the later is to be decided during the trial of the suit.”

11. Reverting to the case in hand, the perusal of the averments in the plaint, it cannot be said that it does not disclose a cause of action and the plaint shall be rejected. As has been noticed in the preceding paragraphs, the settled principles law laid down by the Hon'ble Apex court for rejection of plaint and also as envisaged under order VII rule XI clause (a) has been that a plaint shall be rejected where it does not disclose a cause of action. No ground like the one defectively pleaded cause of action has been either provided in order VII rule XI CPC or else in any of the pronouncements of the Apex court for rejection of the plaint.

12. At this preliminary stage, the Court is not



concerned with the veracity of the averments, though it is quite evident that it is the plaintiff which bears the eventual burden of proof of proving his averments before the trial court. The inquiry under order VII rule XI is strictly limited to the fact that whether the plaint discloses a cause of action. While the defendant alleges that the pleading lacks vital information, certain incomplete details regarding the cause of action do not equate to an outright non-disclosure of cause of action.

13. From the perusal of the plaint itself, where it is clearly mentioned that the suit property was recorded as *jagir goraiyati* and thus it remained the property of Laxman Dusadh, the ancestor of the petitioner/respondent 1st set, whose name is also recorded in the C.S. Khatiyani. Thereafter, after the demise of Laxman Dusadh, the property devolved upon the petitioner/respondent 1st set who are the only surviving legal heirs, and while they were residing away from the suit property, the suit property was allegedly fraudulently sold and the petitioner/respondent 1st set had knowledge about this fraudulent execution only on 16.08.2016, these facts constitute a bundle of fact which when buttressed by the relevant legal principles entitles the petitioner/respondent 1st set a relief to contest against the petitioner in the instant case, fulfilling the



test laid down by the Hon'ble Apex Court for a "cause of action" in the case of *A.B.C Laminart Private Limited Vs. A. P. Agencies, Salem (supra)*. From the averments made in the plaint, there appears to be a prima facie title in favour of the petitioner/respondent 1st set over the suit property which is disputed by the petitioner of the instant case, which further bolsters the existence of a cause of action in favour of the petitioner/respondent 1st set. The determination of title regarding the suit property is a matter requiring deep evaluation at the appropriate stage and by the appropriate forum, after the parties adduce oral and documentary evidence with respect to the specific point. Though, as pointed out by the petitioner in the instant case, the plain reading of plaint suggests that some key information for the purpose of the adjudication of the title suit are indeed incomplete but nonetheless the cause of action exists and therefore, the present case is not fit to be rejected as order VII rule XI (a) of CPC will not apply.

14. The next issue raised by the petitioner in the instant case is regarding the date of limitation for the purposes of bar of limitation under order VII rule XI (d) of the CPC read with article 59 of the Limitation Act, the position on this issue



of law is no more *res integra* rather the Hon'ble Apex Court in the case of ***P. Kumarakurubaran vs. P. Narayanan & Ors.*** reported in **2025 INSC 598** has stated that:

“11. It is well-settled that Article 59 of the Limitation Act, 1963, governs suits seeking cancellation of an instrument and prescribes a period of limitation of three years from the date when the plaintiff first had knowledge of the facts entitling him to such relief. The emphasis under Article 59 is not on the date of the transaction per se, but on the accrual of the cause of action, which, in cases involving allegations of fraud or unauthorized execution of documents, hinges upon the date on which the plaintiff acquired knowledge of such facts.

12.1. However, we are of the considered view that the issue as to whether the appellant had prior notice or reason to be aware of the transaction at an earlier point of time, or whether the plea regarding the date of knowledge is credible, are matters that necessarily require appreciation of evidence. At this preliminary stage, the averments made in the plaint must be taken at their face value and assumed to be true. Once the date of knowledge is specifically pleaded and forms the basis of the cause of action, the issue of limitation cannot be decided summarily. It becomes a mixed question of law and fact, which cannot be adjudicated at the threshold stage under Order VII Rule 11 CPC. Therefore,



rejection of the plaint on the ground of limitation without permitting the parties to lead evidence, is legally unsustainable.

13. In this backdrop, the approach of the High Court in reversing the well-reasoned order of the trial Court warrants interference. The trial Court had rightly held that the issue of limitation necessitated adjudication upon evidence, particularly in view of the appellant's assertion that the Power of Attorney executed by him did not confer any authority upon his father to alienate the suit property and that the impugned transaction came to his knowledge only at a much later point in time. In such circumstances, the determination of limitation involved disputed questions of fact that could not be summarily decided without the benefit of trial. The High Court, however, proceeded to reject the plaint solely on a prima facie assumption that the suit was barred by limitation, without undertaking any examination as to whether the plea regarding the date of knowledge was demonstrably false or inherently improbable in light of the record. In the opinion of this Court, such an approach amounts to an error of law and constitutes a misapplication of the well-established principles governing the exercise of power under Order VII Rule 11 CPC. For the same reasons, the decisions relied upon by the learned counsel for the respondents are inapplicable, being factually distinguishable."

The Hon'ble Apex Court in the case of ***Daliben Valjibhai &***



Others v. Prajapati Kodarbhai Kachrabhai & Another [2024

SCC OnLine SC 4105], further elucidated regarding the issue of period of limitation that:

“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.

12. Further, in Chhotanben v. Kirtibhai Jalkrushnabhai Thakkar 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 ($\frac{1}{2}$) 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 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.”

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.”

The Hon’ble Apex Court in the case of ***Salim D. Agboatwala & Others v. Shamalji Oddhavji Thakkar & Others*** reported in ***(2021) 17 SCC 100*** has further stated on the issue of bar of limitation under order VII rule XI (d) that:

“11. As observed by this Court in P.V. Guru Raj Reddy v. P. Neeradha Reddy [(2015) 8 SCC 331: (2015) 4 SCC (Civ) 100], the rejection of plaint under Order 7 Rule 11 is a drastic power conferred on the court to terminate a civil action at the threshold. Therefore, the conditions precedent to the exercise of the power are stringent and it is especially so when rejection of plaint is sought on the ground of limitation. When a plaintiff claims that he gained knowledge of the essential facts giving rise to the cause of action only at a



particular point of time, the same has to be accepted at the stage of considering the application under Order 7 Rule 11.

12. Again as pointed out by a three-Judge Bench of this Court in Chhotanben v. Kiritbhai Jalkrushnabhai Thakkar [(2018) 6 SCC 422 : (2018) 3 SCC (Civ) 524], the plea regarding the date on which the plaintiffs gained knowledge of the essential facts, is crucial for deciding the question whether the suit is barred by limitation or not. It becomes a triable issue and hence the suit cannot be thrown out at the threshold.”

15. In the case at hand, the petitioner/respondent 1st set have expressly stated in paragraph 19 of the plaint that the cause of action arose when the petitioner/respondent 1st set learned about the allegedly fraudulent sale deeds executed in the year 1989 only after obtaining the certified copy of the sale deeds on 16.08.2016 from the registration office. Article 59 of the Limitation Act, in cases of suits for cancellation of an instrument, prescribe a limitation period of three years from the date when the petitioner/respondent 1st set first had knowledge of the fact entitling him to such relief. In the instant case, the plaintiff/respondent 1st set first had the knowledge of facts regarding the alleged fraud only on 16.08.2016 and he thereafter, instituted title suit no. 569 of 2016 on 21.09.2016, which is well within the three-year period of limitation



prescribed under article 59 of the Limitation Act.

16. It is also well-settled that the plaintiffs acquired crucial knowledge regarding the facts in connection to the cause of action only on 16.08.2016, whether such an averment made by the Plaintiff /Respondents 1st set is true or not, is a triable issue which must be decided by the trial court after examining evidences and records adduced by the parties. As has been directed by the Hon'ble Apex Court, this court while considering a petition regarding order VII rule XI, must accept the date of knowledge of the plaintiff /respondents 1st set stated in the plaint at the face value and assume it to be true. As stated in numerous preceding judgments of the Hon'ble Apex Court, once the date of knowledge is specifically pleaded and forms the basis of the cause of action, the issue of limitation cannot be decided summarily, as it constitutes a mixed question of law, and therefore it cannot be adjudicated at the threshold stage under order VII rule XI. Therefore, it would be legally unsound if at the outset without even allowing the parties to produce evidence, the plaint is rejected on the ground of limitation under order VII rule XI.

17. Further, as has been held by the Hon'ble Apex Court in *Daliben Valjibhai & Others v. Prajapati*



Kodarbhai Kachrabhai & Another (supra) underpinned by the judgment in the case of *Chhotanben v. Kirtibhai Jalkrushnabhai Thakka (supra)*, where it has been directed that in cases of fraudulent sale of suit property, which constitute a triable issue, the limitation period would be counted from the date of knowledge rather than the date of registration of the alleged fraudulent sale deed.

18. On the issue concerning an improper relief “B” as prayed in the plaint, raised by the learned counsel on behalf of the petitioner in the instant case, it must be stated that order VII rule XI unequivocally provides for non-disclosure of the cause of action as a ground for rejection of the plaint among other grounds but a relief though improper cannot at any point act as a ground of rejection of plaint on the outset under the aegis of order VII rule XI, rather it may constitute an issue to be decided in the course of the trial by the learned trial court.

19. Further, there must be emphasis on the point that filing of a civil suit is matter of right for any person as has been held by the Hon’ble Supreme Court of India in the case of *Vishnu Dutt Sharma v. Daya Sapra* reported in (2009) 13 SCC 729, Section 9 of the CPC, enables a person to file a suit of civil nature excepting those whose cognizance by civil court is



expressly or by necessary implication barred. Taking into considering these factors, it is observed that rejection of a plaint in itself is a departure in the nature of adjudication of a civil suit. The Hon'ble Supreme Court in the case of ***Raj Narain Sarin (Dead) through LRs and ors v. Laxmi Devi and ors, (2002) 10 SCC 501*** had emphasised the well-settled principle of law that the law court should be rather hesitant to exercise the jurisdiction under order VII rule XI unless the factual score warrants such exercise and the matter in concern falls within the conditions specific in the statute.

20. Accordingly, it is amply clear that the plaint filed by the plaintiffs/respondent 1st Set discloses a lucid cause of action involving a substantial dispute between the plaintiffs in the instant case and the plaintiffs/respondent 1st set regarding the title of the suit property which cannot be adjudicated in its whole entirety at this nascent stage. Further, according to the application of article 59 of the Limitation Act and the precedents set out by the Hon'ble Apex Court, the plaint is well within the period of limitation.

21. In view of the aforesaid facts and circumstances and the law discussed above, this Court does not find any valid ground for interference in the impugned order,



dated 04.04.2017 passed by learned Sub-Judge III, Gaya. This Civil Revision is devoid of merit and is liable to be dismissed.

22. Accordingly, the present Civil Revision stands dismissed.

(Ramesh Chand Malviya, J)

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