Reserved On : 27/10/2026
Pronounced On : 23/11/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CIVIL REVISION APPLICATION NO. 377 of 2026

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE MAULIK J.SHELAT

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Approved for Reporting	Yes	No
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PUNIT NARAN DOSA MALI & ANR.
Versus
SAMA HEERABA AMARSANG BHOJRAJJI W/O PARMAR GEMARSING KESARSING & ORS.

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Appearance:
MR SP MAJMUDAR FOR MR SHEGUN B CHOKSHI(12790) for the Applicant(s) No. 1,2
MR N S PARMAR(6785) for the Applicant(s) No. 1,2

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CORAM:**HONOURABLE MR. JUSTICE MAULIK J.SHELAT**

CAV JUDGMENT

1. Heard Mr. S.P. Majmudar, learned advocate assisted by Mr.Shegun Chokshi, learned advocate for the petitioners.

2. This revision application is filed under Section 115 of the Code of Civil Procedure, 1908 (hereinafter referred to as **"CPC"**), arising out of the order dated 16/02/2026 passed by the Additional Civil Judge & J.M.F.C., Mundra, District Kutch, below Exhibit-88 in Regular Civil Suit No.44 of 2014, whereby the impugned application (Exhibit-88) filed by the petitioners herein under Order VII Rule 11(a) and (d) of the CPC came to be rejected.

3. The petitioners herein are the defendant Nos.3 and 4, respondents Nos.1 to 5 herein are the plaintiffs and respondents Nos.6 and 7 are the defendant Nos.1 and 2. For the sake of brevity and convenience, the parties will be referred to as per their original positions in the suit.

BRIEF FACTS OF THE CASE :

4. The Respondents Nos.1 to 5 (plaintiffs) instituted Regular Civil Suit No. 44 of 2014 against respondents Nos.6 and 7 (defendant Nos. 1 & 2) and the petitioners (defendant Nos. 3 & 4), whereby they sought declaration and permanent injunction. According to the case of the plaintiffs, they are daughters of one Amarsang Bhojrajji Sama, who owned the suit land through the order dated 09/12/1973 passed by the Mamlatdar, Anjar, in Inam Abolition Case No.138 to 141 of 1973. The necessary entry in this regard was mutated in favour of the said Amarsangbhai in the revenue record. The said Amarsangbhai and his wife, Pamuba, who was mother of respondents herein (plaintiffs and defendant Nos. 1 and 2) died about 18 and 27 years prior to the institution of the suit, respectively; plaintiffs being their daughters (Class-I legal heirs) have equal share in the property owned by said Amarsangbhai.

4.1 The pedigree of said Amarsangbhai disclosed by the plaintiffs in para-4 of the plaint. According to the plaintiffs, they have 71.43% share and the remaining share would go to defendant Nos.1 and 2, being their real brothers. Since the

defendant Nos.1 and 2 were looking after the affairs of the suit land and plaintiffs are married and residing at their matrimonial homes, they had no occasion to verify the revenue records.

4.2 The plaintiffs came to know around 15/09/2014 that defendant Nos.1 and 2 were trying to deal with the suit land and upon verification of revenue records, it came to the notice of the plaintiffs that on 16/12/2005, defendant Nos. 1 and 2 had executed a registered sale deed in favour of defendant Nos.3 and 4 - petitioners herein. It is also mentioned that prior to the said execution, vide mutation entry No.427, the names of the defendants Nos.1 and 2 were mutated in the revenue records as the only legal heirs and representatives of said Amarsangbhai though plaintiffs were having equal share in the suit land.

4.3 It is specifically pleaded in the plaint that at no point of time the plaintiffs gave any declaration and/or executed any family settlement deed and/or gave any declaration/ undertaking in any manner whereby they relinquished their right in the suit land. Since the plaintiffs came to know about the aforesaid execution of a sale deed by the defendant Nos.1 and 2 in favour of defendants Nos.3 and 4, they approached the civil court by way of the suit.

4.4 The plaintiffs sought declaration that the registered sale deed dated 16/12/2005 executed by defendant Nos.1 and 2 in favour of defendant Nos.3 and 4 is null and void qua the

plaintiffs and it is not binding upon them. The plaintiffs also sought declaration that they are having 71.43% share in the suit land which shall be divided by metes and bounds and plaintiffs shall be given the possession of their share. The prayer of permanent injunction is also sought.

4.5 The defendants appeared and submitted their written statements and contested the suit on merits. Thereafter, defendant Nos. 3 and 4 filed the impugned application below Exhibit-88 dated 19/07/2023, which came to be rejected by the trial court vide its impugned order dated 16/02/2026.

5. At this stage, it is required to be noted that the suit in question was instituted in 2014 and the impugned application below Exhibit-88 was filed by the petitioners herein on 19/07/2023. Therefore, this Court has inquired about the current status of the suit. Mr. Majmudar, learned advocate, upon instruction, has informed this Court that the affidavit in lieu of examination-in-chief of the plaintiff is already filed and it is at the stage of cross-examination of the plaintiff. At that stage of the proceeding, the impugned application came to be adjudicated by the trial court.

SUBMISSIONS OF THE PETITIONERS-DEFENDANT Nos. 3 & 4:

6. Mr. Majmudar, learned advocate for the petitioners would submit that the plaint ought to have been rejected by the trial court exercising its power under Order VII Rule 11(a)

and (d) of the CPC, as the suit itself is time-barred. It is further submitted that the registered sale deed dated 16/12/2005 was challenged by the plaintiffs in the year 2014 and as per Article 58 read with Article 59 of the Limitation Act, 1963 (hereinafter referred to as "**the Act, 1963**"), the suit is time-barred.

6.1 Mr. Majmudar, learned advocate would further submit that by way of clever drafting, the plaintiffs instituted the suit in question, inasmuch as the death of the plaintiffs' father occurred 18 years prior to the institution of the suit and it cannot be believed that for all these years, the plaintiffs were not aware about the non-inclusion of their names in the revenue records. It is submitted that the plaintiffs must be aware about the non-inclusion of their names in the revenue records at the time of the death of their father and as such, the names of defendants Nos.1 and 2 were only mutated in the revenue records at the time of the death of the plaintiffs' father and the cause of action accrued in favour of the plaintiffs to challenge the said non-inclusion at the time of the death of their father.

6.2 Mr. Majmudar, learned advocate would further submit that as per the settled position of law, once the sale deed is registered, it is a notice to the world and from the date of registration, within three years, the aggrieved party ought to have filed the suit. It is submitted that in the present case, since the registration of the sale deed was in the year 2005 and the suit instituted in the year 2014, it is hopelessly time-

barred.

6.3 Mr.Majmudar, learned advocate for the petitioners would further submit that the plaint does not disclosed cause of action, as on the date of the suit, the suit land was already transferred in favour of the petitioners and the suit was brought after a period of nine years from the date of execution of the said sale deed. It is submitted that the trial court has without appreciating the correct position of law and ignoring the decisions cited before it, rejected the impugned application, thereby committed a jurisdictional error.

6.4 In support of his arguments, Mr.Majmudar, learned advocate for the petitioners has relied upon the following judgments:

(i) Umadevi vs. Anand Kumar – 2025 (5) SCC 198.

(ii) Masrur Fatema Jafarali Saiyed vs. Vishnubhai Ambalal Patel – 2016 (0) GUJHC 43467.

(iii) Whiteswan Buildcon LLP vs. Thakor Praveenji Mangaji – 2022 (4) GLH 390.

6.5 By making the above submissions, Mr.Majmudar, learned advocate for the petitioners would request this court to allow this revision application. No other and further submissions are being made.

ANALYSIS & REASONS:

7. Having heard Mr.Majmudar, learned advocate for the petitioners and on perusal of the impugned application and

the order passed thereon, *prima facie*, it appears that the petitioners preferred the application after about 9 years from the date of the institution of the suit, under Order VII Rule 11 of the CPC. It is an undisputed fact that the oral evidence of the plaintiff has already came on record, i.e., the affidavit in lieu of examination-in-chief of the plaintiff. At that stage, the impugned application appears to have been filed.

8. It is true that the application under Order VII Rule 11 of the CPC can be filed at any stage of the proceedings. Nonetheless, as per the decision dated 11.09.2024 of the Full Bench of the Hon'ble Apex Court in the case of ***M/s Bhagya Estate Ventures Pvt. Ltd. Vs. Narne Estates Pvt. Ltd. & Anr.,*** *in* ***Civil Appeal No.4570 of 2023,*** wherein it has been held that if the trial of the suit has begun, such type of application ought not to have been entertained by the trial court. The relevant observation made by the Hon'ble Apex Court in the aforesaid decision reads :

> *"12. The above position holds good as we are not of the opinion that issuance of summons shall foreclose the right of the defendant to seek rejection of plaint;* ***but the focal issue for consideration is that till when and for how long can this right of the defendant survive?***
>
> *13. It is amply clear that the purpose behind such a provision is to ensure that the plaints or petitions which are defective, for any of the reasons enumerated, shall not be allowed to proceed further and shall be put to an end before they progress to an advanced stage. When such is the purpose, we fail to understand as to how an application for rejection of a plaint can be entertained at a stage where written*

submission has already been filed, evidence has been led and the trial has substantially reached the stage of final arguments, as in the present case. This would rather go completely against the objective of the provision and would effectively not serve the purpose which it intended to.

14. ***Moreover, when the proceedings have reached such an advanced stage of trial and the Court has gone through the merits of the case, it is fair to presume that the Court has already applied its mind to the substantive submissions and cannot make a prima facie conclusion about a plaint being improper at the outset or not.*** *Also, it is a settled position of law that when the court is considering an application under Order VII Rule 11, it must only peruse and consider the averments in the plaint to check whether the plaint is defective for any of the reasons provided under the rule or is a proper plaint.* ***Since the plaint is the only material to be considered while deciding an application seeking rejection of plaint, then in a case where plaint has been registered, written submission has been filed, evidence has been recorded, and the parties are ready for final arguments, it is only natural that some form of bias or opinion regarding the merits of the case would crop up in the mind of the court. In such a scenario, looking at the plaint in isolation and deciding the rejection application based solely on prima facie reading of the plaint would not be possible.*** *At this point, the trial has rather fructified to a stage where the dismissal of a suit on merits is a more appropriate course of action instead of rejecting a plaint at the outset which should have been done at a preliminary stage.*

15. It is already a clarified position of law that without disposing of an application under Order VII Rule 11, CPC, the court cannot proceed with the trial. When this is the position of law and the purpose of the provision is also settled, then, ***we see no reason for the right of the defendant to raise such a plea at a far belated stage such as final arguments or nearing conclusion of the trial. Allowing such pleas to be raised after the trial has proceeded***

> ***so far would not only defeat the intent of the provision but would also go against the principle of equity and would lead to wastage of the court resources. Additionally, allowing such rights to survive till eternity only act as a catalyst for the defendant to misuse the provision to prolong or delay the trial and abuse the process of law.***
>
> *16. Having considered the facts and circumstances of the present case, and in particular, having noticed the conduct of the defendant-respondents as recorded by the Trial Court and also the fact that full trial had already been concluded as both the parties had already closed their evidence and the matter was ripe for final arguments, consideration of the application under Order VII Rule 11 was rightly declined by the Trial Court. The High Court erred in allowing the same and rejecting the plaint."*
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> (Emphasis supplied)

9. Be that as it may, since the trial court has adjudicated the issue on merits while rejecting the application filed under Order VII Rule 11 of the CPC, I would like to test the arguments advanced by Mr.Majmudar, learned advocate for the petitioners on merits.

10. It is a well-settled position of law that at the time of exercising power under Order VII Rule 11 of the CPC, the trial court is required to consider only the averments made in the plaint and the documents annexed therewith. At the stage of Order VII Rule 11 of the CPC, the trial court cannot look into defence of the defendants including their documents-evidence. No mini-trial in any manner is permissible at the stage of Order VII Rule 11 of CPC. The trial court should not travel beyond the plaint. At that stage, it is not permissible to

doubt the pleading of the plaintiff; rather, it must be accepted as true.

11. A bare reading of the plaint would show that the plaintiffs, being the Class-I legal heirs of late Amarsangbhai, are entitled to receive equal share in the suit land left by him at the time of his death. Defendant Nos. 1 and 2, happen to be sons of late Amarsangbhai, also equally entitled to receive their respective shares. After the death of said Amarsangbhai, the revenue entry was mutated only in the names of defendant Nos. 1 and 2 in the revenue records. It is a well-settled position of law that a revenue entry does not confer any right, title or interest in favour of any person. Likewise, mere exclusion of names of the persons from the revenue records would also not *ipso facto* extinguish their right, title or interest from the immovable property. So long as the plaintiffs have not relinquished their right in the suit land by way of a registered instrument, their right to claim equal ownership therein cannot be extinguished merely on the ground that their names were not mutated in the revenue records. Such position of law cannot be disputed.

11.1 At this juncture, it would be apposite to refer to and rely upon the decision of the Hon'ble Apex Court in the case of ***P. Kishore Kumar vs. Vittal K. Patkar - (2024) 13 SCC 553***, wherein after noticing its earlier decisions on the issue at hand, it observed as under :

> *"22. It is trite law that revenue records are not documents of title.*

*23. **This Court in Sawarni vs. Inder Kaur and Ors. - (1996) 6 SCC 223, held that mutation in revenue records neither creates nor extinguishes title, nor does it have any presumptive value on title**. All it does is entitle the person in whose favour mutation is done to pay the land revenue in question.*

24. This was further affirmed in Balwant Singh & Ors vs. Daulat Singh (Dead) by LRs and Ors. - (1997) 7 SCC 137, wherein this Court held that mere mutation of records would not divest the owners of a land of their right, title and interest in the land.

25. In Jitendra Singh vs. State of Madhya Pradesh and Ors. - 2021 SCC Online SC 802, this Court after considering a catena of judgments, reiterated the principle of law as follows :

> *"6. ***mutation entry does not confer any right, title or interest in favour of the person and the mutation entry in the revenue record is only for the fiscal purpose."*

26. We may also profitably refer to the decision of this Court in Sita Ram Bhau Patil vs. Ramchandra Nago Patil (Dead) by LRs. and Ors.5 wherein it was held that there exists no universal principle that whatever will appear in the record of rights will be presumed to be correct, when there exists evidence to the contrary. "

(Emphasis supplied)

12. Thus, it is now well-settled position of law that merely because a person's name is not mutated in the revenue records would not by itself extinguish his title over the property.

13. With the aforesaid background of facts and position of law, if I see the averments made in the plaint, the defendant

Nos. 1 and 2 having their names mutated in the revenue records executed a registered sale deed for the entire parcel of land (suit land) in favour of the petitioners (defendant Nos. 3 and 4) on 16/12/2005. It is an undisputed fact that the plaintiffs were neither signatories to the sale deed nor confirming parties to it. It is true that defendant Nos. 3 and 4 purchased the suit land by way of a registered sale deed from defendant Nos.1 and 2; however, defendant Nos.1 and 2 were not the absolute owners of the suit land. Since the rights of the plaintiffs, as daughters of late Amarsangbhai, existed at the time of execution of the aforesaid sale deed, the plaintiffs have every right to challenge the sale deed and claimed their respective shares in the suit land.

14. It is also stated in the plaint that the plaintiffs came to know about such execution of the sale deed in and around 15/09/2014 and the suit was instituted on 20/11/2014. The trial court has correctly referred to Article 59 of the Act, 1963 in its impugned order. It is discernible that after becoming aware about the execution of the sale deed, the plaintiffs ought to have challenged such sale deed within three years and not from the date of its registration. Whether the plaintiffs had knowledge about the execution of the said registered sale deed in the year 2005 or in the year 2014 is a matter of trial and without permitting the parties to lead their respective evidence, it cannot be decided at the stage of Order VII Rule 11 of the CPC.

15. At this stage, I would like to refer to and rely upon the decision of the Hon'ble Apex Court in the case of ***Daliben Valjibhai and Ors vs. Prajapati Kodarbhai Kachrabhai and Anr. - 2025 (3) GLR 1692 (SC)***, wherein it is observed and held thus :

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

Collector in RTS issued notice to him.

(v) Mere usage of the expression 'fraud' in the pleading is not sufficient. The plaintiff must have given details with material particulars of the fraud alleged. When a plaintiff bases his case on fraud committed by the defendant, there is an obligation to plead the details of the said fraud. The essential particulars of such fraud are missing in the plaint.

(vi) Further, the particulars of the alleged fraud must be prima facie enough to rebut the presumption of the validity of a sale deed under Sections 34 and 35 of the Registration Act. No such details are available in the plaint.

(vii) Once a document is registered under the Registration Act, the date of registration becomes the date of deemed knowledge.

(viii) Though Article 59 of the Limitation Act enables institution of a suit to cancel or set aside an instrument within a period of 3 years, from the date of knowledge, the bar of limitation cannot be saved by simply pleading fraud.

8. For the reasons stated above, the High Court proceeded to allow the second appeal and set aside the judgment of the First Appellate Court and restored the order of the Trial Court, rejecting the plaint and dismissing the suit. This is how the appellants are before us.

9. Having considered the judgment of the High Court in detail, we are of the opinion that the findings of the High Court are primarily factual. The High Court seems to have got carried away by the fact that the suit was filed 13 years after the execution of the sale deed. The question is whether the plaintiffs had the knowledge of the execution of the sale deed. The High Court expected that the plaintiffs must have given meticulous details of the fraud perpetuated in the plaint itself.

10. The First Appellate Court came to the conclusion that the defendants made an application for

correcting the revenue records only in the year 2017 and on the said application the Deputy Collector issued notice to the plaintiffs in March 2017 and that was the time when the plaintiffs came to know about the execution of the sale deed. It is under these circumstances that the suit was instituted in the year 2017. While the High Court came to the correct conclusion that under Article 59 of the Limitation Act, a suit can be instituted within 3 years of the knowledge, it proceeded to return a finding that in cases where the document is registered, the knowledge must be presumed from the date of registration.

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

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

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

12. Further, in ***Chhotanben v. Kirtibhai Jalkrushnabhai Thakkar - (2018) 6 SCC 4222,*** *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 (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."***

(Emphasis supplied)

15.1 A bare reading of the aforesaid decision would go to show that there is no absolute proposition of law that the limitation period commences from the date of registration itself. Rather, it would always depend upon the facts and circumstances of each case as to whether by way of any normal mode and due diligence, the plaintiffs acquired any knowledge about the registration of the sale deed or not.

16. It is also apposite to place reliance upon the decision of a Coordinate Bench of this Court in the case of ***Bahadurbhai Laljibhai Malhotra vs. Ambalal Joitaram Heir of Joitaram Ranchhoddas and Ors. - 2015 (3) GLR 2760.*** While interpreting Section 3 of the Transfer of Property Act, 1882, and examined the similar such application filed under Order VII, Rule 11 of the CPC, wherein after taking note of the decision of the Hon'ble Apex Court in the case of ***Smt. Dilboo (Dead) by LRs. & Ors. v. Smt. Dhanraji (Dead) & Ors. - (2000) 7 SCC 702***, the Court held thus:

"[13] Upon perusal of the said portion of section 3 of the Transfer of Property Act, it can be seen that knowledge of a fact is attributed to a person either when he actually knows that fact, or when, but for wilful abstention from an inquiry or search, he ought to have made, or gross negligence, he would have known it. Explanation to the said clause inter alia provides that where any transaction relating to immoveable property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part thereof, or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration. This is subject to the conditions provided in provisions contained to the said explanation. Explanation 1 thus refers to deemed notice and relates to the notice of instrument relating to a transaction of immovable property which is required by law and has also been so registered and such deemed knowledge is imputed to the person acquiring such property or any share or interest in such property. Such provision therefore, cannot be applied in case of a subsequent sale of an immovable property to impute deemed knowledge of such transaction on the erstwhile purchaser/owner merely on the strength of section 3 of the Transfer of Property Act unless facts and attendant circumstances suggest that the person in question was reasonably expected to make search or inquiry which he failed to do, thus suggesting willful act, negligence or lack of due diligence i.e. prudence, expected of a reasonable man. Any such interpretation being quite contrary to the language used in the provision, would also put an unreasonable onus on a owner or a purchaser of an immovable property to be constantly vigilant and apprise himself of any subsequent registered transaction with respect to such immovable property or face unpleasant consequences of his challenge to a totally invalid or even a fraudulent or a bogus sale deed being barred by law of limitation after the statutory period commencing from the date of registration on the principle of deemed knowledge.

In plain terms said provision of section 3 of the Transfer of Property Act applies in case of a person acquiring an immovable property or a share or interest therein of a transaction which

would be an existing and not a future transaction which by law is required and indeed been registered.

[14] In case of ***Tilakdhari Lal and another v. Khedan Lal and others, 1921 AIR(PC) 112,*** *the Privy Council noted with approval observations in case of* ***Lakshmandas Sarupchand v. Dasrat, 1880 6 Bom 168*** *and held as under :*

> "*This decision depended in part upon the consideration of whether registration was equivalent to possession, every subsequent purchaser being deemed to have notice of such title as a person in possession may possess, but in the main it followed a statement of Mr. Justice Storey as to the law in America that the registration of a conveyance operates as constructive notice to all subsequent purchasers of any estate legal or equitable in the same property. It is important to observe that in that case the real question as to notice did not necessarily arise for determination, since the point that was there determined was whether an unregistered mortgage that was optionally registerable was overridden by a mortgage subsequent in date which was compulsorily registerable and was in fact registered. It was decided that it was not, since the registration of the subsequent deed could not operate as notice to the earlier mortgagee at the date when he took his mortgage. None the less, the very careful and exhaustive judgment of the learned Judges upon the point demands close attention.*"

In the later portion of the judgement it was held as under :

> "*After giving all the authorities quoted the fullest consideration, in their Lordships' opinion the true position was best stated in the quotation made from the judgments of Mr. Justice Brett, Mr. Justice Mittra, and Sir Lawrence Jenkins. The real purpose of registration is to secure that every person dealing with property, where such dealings require registration, may rely with confidence upon the statements contained in the register as a full and*

complete account of all transactions by which his title may be affected, unless indeed he has actual notice of some unregistered transaction which may be valid apart from registration. In England such notice would prevent the registered document having priority over that which was unregistered. In India this would not be the result if it were a mortgage for over Rs. 100 or if the unregistered document was one brought within the provisions of Section 49 of the Registration Act. In either case the object of registration is to protect against prior transactions. If, however, the view contended for by the appellants be correct, it has a more extended effect. If after a first mortgage has been obtained a second mortgage were registered and the mere tact of registration constituted notice, the first mortgagee would be bound to search the register before he dealt with the proceeds of the mortgage. Such an extension would go beyond even the dictum of Chief Justice Storey, who expressly limited the doctrine of notice to notice of previous transactions."

[15] In case of ***Parbhu Lal v. Chattar and others, 1925 AIR(All) 557,*** *Learned Single Judge held and observed as under :*

"*Two points have been taken in the memorandum of appeal,* ***The first is that registration is notice. This point has been fully and finally settled by the case of Tilakdhari Lal v. Khedan Lal, 1921 AIR(PC) 112, by their Lordships of the Privy Council, who held that a registration of subsequent transactions was no notice to persons who were parties to earlier transactions.*** *In the case before their Lordships of the Privy Council it was urged that a prior mortgagee should be charged with the notice of a subsequent registered transfer. Their Lordships repelled the argument.* ***On the same principle it cannot be said that the original mortgagors would have notice of the transfer in favour of their respective plaintiffs merely by reason of the fact that the transfers in their favour were registered. This argument therefore fails.***"

[22] In case of Dilboo (SMT) (Dead) by Lrs. and others also relied by Shri Gandhi, the facts were that the plaintiffs had filed the suit for redemption of a mortgage created by persons whom they claimed to be their predecessors. In the meantime, suit property was sold once again. Without challenging such sale deed, the suit for redemption of mortgage was filed. It was in this background the Supreme Court held that suit was barred by limitation. Following observations made in the process need to be noted:

> "*Thus a Suit for redemption of mortgage could be filed within 60 years. But if the mortgagee had created an interest in excess of the right enjoyed by him then to recover possession against the third party the Suit had to be filed within 12 years of the transfer becoming known to the plaintiff. The rational in cutting down the period of 60 years to 12 years is clear. The 60 years period is granted as a mortgagee always remains a mortgagee and thus the rights remain the same. However when an interest in excess of the interest of the mortgagee is created then the third party is not claiming under the mortgagee. The position of such a person could not be worse than that of a rank trespasser who was in open and hostile possession.*
>
> *As the title of the rank trespasser would get perfected by adverse possession on expiry of 12 years so also the title of such transferee would get perfected after 12 years. The period of 12 years has to run from the date of knowledge by the plaintiff of such transfer. It is always for the party who files the Suit to show that the Suit is within time. Thus in cases where the suit is filed beyond the period of 12 years, the plaintiff would have to aver and then prove that the Suit is within 12 years of his/her knowledge. In the absence of any averment or proof, to show that the suit is within time, it is the plaintiff who would fall. Whenever a document is registered the date of registration becomes the date of deemed knowledge. In other cases where a fact could be discovered by due diligence then deemed knowledge would be attributed to the plaintiff because a party cannot be allowed to extend period of limitation by merely claiming that he had no knowledge.*"

> *[23] It is true that in the said case, the Supreme Court did apply the principle of deemed knowledge on a plaintiff who claimed to be having preexisting right when the suit land was subsequently sold.* ***However, such observations cannot be read in isolation and cannot be seen as the Court laying down a ratio that in case of every registered instrument of transfer of immovable property, the world at large would be deemed to have notice of such transaction and period of limitation to question legality thereof would commence from the date of registration of the instrument.*** *In fact the Supreme Court adopted the analogy and applied the principles flowing from section 3 of the Transfer of Property Act in facts of the case where the plaintiffs could and ought to have discovered with due diligence regarding the subsequent sale transaction. It was in this context the Supreme Court held that in absence of any averment or proof to show that the suit is within time, the plaintiff would fail. It was further observed that when a document is registered the date of registration becomes the date of deemed knowledge and in other cases where a fact could be discovered by due diligence then deemed knowledge would be attributed to the plaintiff because a party cannot be allowed to extend period of limitation by merely claiming that he had no knowledge.* ***Thus even in case of a registered document, to any situations which are not covered under section 3 of the Transfer of Property Act, it is always open for the plaintiff to point out as to the manner and source of knowledge of the transaction and to establish that such fact could not have been discovered by due diligence and that therefore, the plaintiff cannot be attributed deemed knowledge of the offending transaction."***
>
> *(Emphasis supplied)*

17. In view of the aforesaid decisions, it is incorrect to observe that, in the case of every registered instrument of transfer of immovable property, the world at large would be deemed to have notice of the said transaction, or that the

period of limitation to question its legality would commence from the date of registration. Rather, it can be safely observed that unless the situation is covered under Section 3 of the Transfer of Property Act, 1882, it is always open for the plaintiffs to point out as to the manner and source of knowledge of the transaction and that such fact could not have been discovered by due diligence and therefore, the plaintiffs cannot be attributed deemed knowledge of the disputed transaction. To prove such a fact, the evidence is required to be led and in such type of cases, the plaint cannot be rejected at the threshold.

18. I would like to deal with the authorities cited by Mr. Majmudar, learned advocate, little latter. Before that, I would like to add another facet of the issue involved in the matter. Even if I accept the argument advanced by Mr.Majmudar, learned advocate, that the plaintiffs had a knowledge of execution of the registered sale deed in favour of defendant Nos. 3 and 4 by defendants Nos. 1 and 2 on 16/12/2005 itself, still as per Article 110 of the Act, 1963, the plaintiffs have 12 years to challenge the sale deed. For the sake of convenience, Article 110 of the Act, 1963 reads as follows:

	Description of suit	*Period of limitation*	*Time from which period begins to run*
110.	*By a person excluded from a joint family property to enforce a right to share therein.*	*Twelve years.*	*When the exclusion becomes known to the plaintiff.*

18.1 As observed above and position of law stands as on date, non-inclusion of the names of the plaintiffs in the revenue records would not *ipso facto* extinguish their title as co-owners over the suit land. The defendant Nos.1 and 2 sold the suit land in favour of defendant Nos.3 and 4 by way of a registered sale deed on 16/12/2005, despite the plaintiffs having an equal share therein, thereby excluding them from the joint-family property. Even assuming for the sake of argument that the plaintiffs had deemed knowledge of the said sale deed, the suit was instituted on 20/11/2014, and is therefore well within prescribed period of limitation. In light of the aforesaid facts and circumstances and considering Article 110 of the Act, 1963, *prima facie*, I am of the considered view that the suit is not hopelessly time-barred.

19. In so far as the decisions cited by learned advocate for the petitioners are concerned, for the reasons supra, they are not helpful to the case of the petitioners. Nonetheless, I would like to deal with each of them as follows:

(i) In the case of ***Umadevi (supra)***, it is evident that due to a family partition which took place in the year 1968, the predecessor of the plaintiff got his share and in fact the daughter-in-law of the plaintiff’s predecessor and his other family members had disposed of their share of the property through a registered sale deed executed in the year 1978. The mutation entry in this regard was also mutated in the revenue records. Having full knowledge of the execution of the partition and sale deed in the

years 1968 and 1978, respectively, the plaintiffs instituted the suit in the year 2023 seeking partition. Therefore, in that background of facts, the Hon'ble Apex Court found that the suit was hopelessly time-barred and accordingly the plaint was rejected under Order VII Rule 11 of the CPC. Whereas in the present case, no such family partition ever took place between the plaintiffs and defendant Nos.1 & 2 and as such, no revenue entry in this regard was mutated in the revenue records.

(ii) In the case of ***Masrur Fatema Jafarali Saiyed (supra)***, again the facts of that case are eloquent, inasmuch as one of the plaintiffs had knowledge of the execution of the registered sale deed in the year 1969 as he was a signatory to such sale deed and the others had knowledge of the said deed in the year 2004; despite such fact, by suppressing the aforesaid material facts, the suit came to be instituted in the year 2008. In such background of facts, the Division Bench of this Court has not disturbed the order passed by the trial court whereby the plaint came to be rejected under Order VII Rule 11 on the issue of limitation.

(iii) So far as the decision in the case of ***Whiteswan Buildcon LLP. (supra)*** is concerned, learned counsel has brought to my notice that the said decision is challenged before the Hon’ble Apex Court and the issue is pending. Be that as it may, it appears that during the lifetime of the predecessor of the plaintiffs, she never

challenged the exclusion of her co-ownership from the suit land and after her demise, after a considerably long period of time, the suit came to be filed by the plaintiffs. It appears that the plaintiff's mother died on 17/03/2003, who happened to be the daughter of the original owner. Thereafter, the mutation entry came to be mutated on 07/06/2005, whereby legal heirs and representatives of the original owner came to be brought on record and registered sale deeds were executed on 22/11/2006, which was challenged by way of a suit in the year 2018. Taking note of the aforesaid peculiar facts and circumstances of the case, a Coordinate Bench of this Court rejected the plaint. It appears that the decision of the learned Single Judge of this Court in the case of ***Bahadurbhai Laljibhai Malhotra (supra)*** was not brought to the notice of the Coordinate Bench.

As far as the facts of the case at hand are concerned, the plaintiffs, being the Class-I legal heirs of late Amarsangbhai, challenged their exclusion from the suit land by challenging the sale deed within period of 12 years. They also sought partition of the suit land as they are having an equal share in the suit land. It is a well-settled position of law that holding possession by one co-owner amounts to holding possession by all the co-owners and in such circumstances, merely because the names of the plaintiffs were not included in the revenue records upon the death of late Amarsangbhai, it would

not preclude the plaintiffs from seeking partition of the suit land.

20. Thus, in view of the afore mentioned facts and the decision of the Hon'ble Apex Court in the case of ***Daliben Valjibhai (supra)*** and of this Court in the case of ***Bahadurbhai Laljibhai Malhotra (supra)*** as well as considering the applicability of Article 110 of the Act, 1963 to the case at hand, I am of the considered view that the decisions cited by Mr.Majmudar, learned advocate, would not dissuade me from dismissing this revision application.

CONCLUSION:

21. The upshot of the aforesaid observations, discussions, and reasons leads to only one conclusion that the suit instituted by the plaintiffs cannot be said to be *ex facie* and hopelessly time-barred; rather, considering the averments made in the plaint and taking note of the ratio of the aforesaid decisions, the impugned application filed by defendant Nos. 3 and 4 - petitioners under Order VII Rule 11 of the CPC is misconceived, having been filed at the stage of recording the plaintiffs' the evidence. Thus, it was correctly rejected by the trial court, *albeit* on merit.

22. Having considered the entire set of facts and circumstances of the case, I am of the considered view that there is no jurisdictional error committed by the trial court while rejecting the impugned application filed under Order VII Rule 11 of the CPC.

23. In view of the foregoing conclusion, the present Civil Revision Application is found devoid of any merit. Accordingly, it is dismissed *in limine*. No order as to costs. The trial court shall expedite the suit proceedings.

(MAULIK J. SHELAT, J)

GAURAV J THAKER

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: GAURAVKUMAR JANARDANBHAI THAKER(HC00951), Principal Pvt. Secretary, at High Court of Gujarat on 23/11/2026 14:38:25