

Shaukathussain Mohammed Patel Vs Khatunben Mohmmedbhai Polara

Court: Supreme Court Of India

Date of Decision: Oct. 22, 2019

Acts Referred: Code Of Civil Procedure, 1908 " Order 7 Rule 11, Order 7 Rule 11(d)

Citation: (2019) 10 SCC 226 : (2020) 1 JLJR 191 : (2020) 1 PLJR 138 : (2020) 1 RCR(Civil) 170

Hon'ble Judges: Uday Umesh Lalit, J; R. Subhash Reddy, J

Bench: Division Bench

Advocate: Somesh Chandra Jha, R.M. Jadhav, Rahul Narang, Anand Darshan, Aniruddha P. Mayee, A. Rajarajan, Sanjeev Kr. Choudhary

Final Decision: Allowed

Judgement

Leave granted.

This appeal arises out of the final judgment and order dated 06.05.2019 passed by the High Court of Gujarat at Ahmedabad in Civil Revision

Application No.354 of 2017.

The instant proceedings arise out of an application preferred by the respondent under the provisions of Order VII Rule 11 of the Code of Civil

Procedure, 1908 which was initially rejected by the Trial Court but came to be allowed by the High Court in its revisional jurisdiction.

Special Civil Suit No.204/2016 was filed by the appellant in the Court of Principal Civil Judge, Surat submitting inter alia that by deception, a sale-deed

came to be obtained on 21.03.2008 under which the appellant purportedly sold away his interest in Block 221 at Survey No.91 situated at Village

Bhanodara, District Surat, Gujarat. Though the sale-deed was effected, the appellant continued to be in possession of the property. The relevant

assertions as regards cause of action and limitation as pleaded in the Suit were as under:

10. The cause of suit: That, the defendant of this case has executed a sale deed No.5728 of the agriculture land occupied by the plaintiff on dated

21/03/2008, without the knowledge of the plaintiff and in collusion with other person and thereby created false and forged, non-executable sale deed,

which affect the plaintiff's right, title and interest. Since then, the cause of action arose for this suit. Further, if the defendant is not prevented to

further continue the above transaction, in that case, on the basis of the aforesaid alleged sale deed, further sale-deeds will be continued. Therefore

also, it is required to prevent the present defendant.

11. Limitation: The present suit is within limitation, because of out of the knowledge of the plaintiff, by rendering wrong understanding, by way of

creating false and forged sale deed No.5728 on dated 21/03/2008 is created in the name of the defendant. Thus, on the basis of this alleged sale-deed,

the defendant has made application to post Entry No.1750 in the Revenue Record on dated 15/06/2013, which came to be rejected on dated

30/07/2013. Thus, against this Entry, the present defendant has preferred an appeal being No.362/2013 before Deputy Collector, the notice of that

appeal was served to me, and therefore, the plaintiff came to know that, the alleged sale-deed is executed in the land owned by the plaintiff.

Therefore, the present suit is filed within limitation as per legal provisions.

With the aforesaid averments, the appellant prayed as under:

“2. As the defendant of this case has, out of the knowledge of the plaintiff, created in his name false, non-executable and forged sale deed

No.5728 on dated 21/03/2008, which affect the interest of the plaintiff over the land, which is requested to be cancelled. It is requested to declare that

it is null and void and the intimation of cancellation of sale-deed may be forwarded to the Sub-registrar office.

Pursuant to the application moved by the respondent-original defendant under Order VII Rule 11 of the Code, the Trial Court considered the issue and

by its order dated 07.03.2017 rejected the prayer. In revision arising therefrom, the High Court by its judgment and order, which is presently under

appeal, interfered in the matter and held that in terms of the provisions of Order VII Rule 11 of the Code, the plaint was required to be rejected. The

High Court observed as under:

“16. From overall reading and from consideration of the relevant proposition, it appears that this being a litigation generated after more than a

period of 8 years, is clearly hit by law of limitation and as such, in view of the proposition of law laid down by the Apex Court, the revision petition

deserves to be allowed. Accordingly, the order impugned dated 7.3.2017 passed below Exh.16 in Special Civil Suit No.204 of 2016 is quashed and set

aside hereby and accordingly, the application under Order 7 Rule 11(d) of the Code of Civil Procedure stands allowed and the plaint i.e. Special Civil

Suit No.204 of 2016 is hereby rejected. Rule is made absolute with no order as to costs.

It is well settled that for the purposes of the provisions of Order VII Rule 11 of the Code, the entirety of the averments in the plaint have to be taken

into account. Going by the version of the appellant as detailed in the plaint, there was an element of deception and fraud which was practised upon him

as a result of which the concerned document got entered into. It is also a matter of record that the consideration in respect of the transfer of the

property in question was stated to have been paid in cash.

Again going by the averments made in the plaint, the information in respect of the transaction came to the knowledge only in the year 2013-2014.

According to the assertions in the plaint, the plaintiff-appellant was always in possession of the property. In the entirety of the circumstances, as

pleaded in the plaint, the issues raised in the matter were certainly required to be considered on merits.

In our view, the High Court was not right and justified in accepting the prayer and holding that the plaint was required to be rejected. We, therefore,

allow this appeal, set-aside the judgment and order passed by the High Court and restore the one that was passed by the Trial Court.

Since the Suit now stands restored, we direct the parties to appear before the concerned Court on 25.11.2019.

We also direct the Trial Court to dispose of the suit as expeditiously as possible and preferably within six months.

The appeal is allowed in aforesaid terms. No costs.