

reversed the aforesaid order and has allowed the appeal of the defendant restoring the plaint for decision on merits.

- 4.** The impugned judgment and order of the High Court dated 08.02.2024 setting aside the order dated 23.10.2018 of the Chamber Judge, City Civil Court, Ahmedabad, and directing to restore the Civil Suit No.1758/2017 for decision on merits in accordance with law, has been assailed in this appeal.
- 5.** The plaintiff-Shri Hitesh P. Sanghvi instituted Suit No.1758/2017 in the City Civil Court, Ahmedabad, against four persons including Smt. Harshaben Vijay Mehta, Smt. Nikhila Divyang Mehta, Smt. Ami Rajesh Parikh and Shri Nilav Divyang Mehta as defendant Nos.1, 2, 3 and 4 respectively seeking direction from the court to declare the Will dated 04.02.2014 and the Codicil dated 20.09.2014 executed by his late father Pramod Kesurdas Sanghavi and all consequential actions thereof to be null and void as also for grant of permanent injunction restraining the defendants from entering into any transaction in furtherance of the aforesaid Will and Codicil.

- 6.** The plaint categorically states that the plaintiff-Shri Hitesh P. Sanghvi is the son of deceased Pramod Kesurdas Sanghavi who died at his residence on 21.10.2014. He was survived by his wife, his three daughters-defendant Nos.1, 2 and 3 and a grandson-defendant No.4 (son of defendant No.2). The plaint further categorically, in unequivocal terms, states that the deceased took his last breath on 21.10.2014. Then in the first week of November, 2014, defendant Nos.1, 2 and 3 revealed to the plaintiff that the deceased had executed a Will and a Codicil as referred to above and he was taken by surprise.
- 7.** The plaintiff further stated that the cause of action for the suit had arisen on three occasions, first on 04.02.2014 i.e., when the Will executed by his father was registered, again on 20.09.2014 i.e., when the Codicil was registered and then finally on 21.10.2014 when his father died.
- 8.** The dispute *per se* in the suit is *inter se* the family members i.e., the son and daughters of the deceased Pramod Kesurdas Sanghavi in connection with his Will and Codicil and for the purposes of seeking the reliefs claimed in the plaint i.e., for declaration of the Will and the Codicil to be null and void, the

plaintiff contended that the cause of action for such a suit arose first on 04.02.2014, secondly on 20.09.2014 and lastly on 21.10.2014.

- 9.** In the above background, defendant No.2 moved an application (*Exh.25*) purported to be under Order VII Rule 11 CPC for the rejection of the plaint on the allegation that the plaintiff had not made any averment with regard to the suit to be within limitation and it is the primary duty of the plaintiff to show that the suit was instituted within the prescribed period of limitation. In the absence of such pleadings, the plaint is liable to be rejected under Order VII Rule 11 CPC.
- 10.** A similar application was filed by defendant No.3 again under Order VII Rule 11 (*Exh.28*) for the rejection of the plaint contending that the suit has not been instituted within the prescribed period of limitation and the plaintiff has failed to aver, show and establish that the suit has been filed within time. The plaintiff had acquired knowledge of both the Will and the Codicil in the first week of November, 2014, but the suit was not instituted within three years from the first week of

November, 2014, rather it was filed on 21.11.2017 and as such is *ex-facie* barred by limitation.

- 11.** Another application (*Exh. 33*) to the same effect was filed by defendant No.4, contending that it is the primary duty of the plaintiff to show that the suit is *prima facie* instituted within the prescribed period of limitation. As the suit was filed on 21.11.2017, it was more than three years after the plaintiff came to know about the Will and the Codicil and as such is clearly barred by law of limitation on the plain reading of the averments of the plaint.
- 12.** The plaintiff filed response to the above applications contending that the suit was instituted within time and that the parties should be allowed to adduce the evidence to prove as to whether the same is within time or beyond the period of limitation.
- 13.** The above three applications (*Exh. 25, 28 and 33*) under Order VII Rule 11 came up for consideration before the City Civil Court, Ahmedabad. The court, upon the plain reading of the averments made in the plaint, held that the action for the suit first arose in the first week of November, 2014 whereas the suit

was filed on 21.11.2017. As per the averments made by the plaintiff that he had come to know of the Will and the Codicil in the first week of November, 2014, in view of Article 58 of the Limitation Act, 1963,² the suit ought to have been filed within three years when the right to sue first accrued. Since the suit was not filed within three years i.e., by the first week of November, 2017, it is patently barred by limitation. Accordingly, applications *Exh.25, 28 and 33* were allowed and the plaint was ordered to be rejected under Order VII Rule 11 CPC.

- 14.** The above judgment and order was, however, reversed by the High Court by the impugned judgment and order dated 08.02.2024 for the reason that the parties ought to have been permitted to lead evidence on the point of limitation and that the plaint was not liable to be rejected in part, as apart from seeking declaration of the Will and the Codicil to be null and void, there were other reliefs which were sought in the plaint.
- 15.** In the above factual background, we have been called upon in this appeal to express our opinion if the suit instituted on

² Hereinafter referred to as 'the Act'

21.11.2017 for the declaration of the Will dated 04.02.2014 and the Codicil dated 20.09.2014 as null & void, is barred by limitation in the light of the averments contained in the plaint.

- 16.** It is clear from the plaint that the prayers made therein are primarily for seeking declaration of the aforesaid Will and Codicil to be null and void as also all actions in pursuance thereof. The relief for permanent injunction is dependent upon the success of the first relief. Therefore, the relief of permanent injunction is simply a consequential relief. The primary relief being for declaring the Will and the Codicil to be null and void.
- 17.** There is no dispute to the fact that the Will was executed and registered by the father of the plaintiff on 04.02.2014 and the Codicil came to be executed and registered on 20.09.2014. The plaintiff, as per his own averments in plaint, had acquired knowledge of the aforesaid Will and Codicil through defendant Nos. 1, 2 and 3 (sisters), only in the first week of November, 2017.
- 18.** Admittedly, a suit for declaration has to be governed by Part III of the Schedule contained in the Act. Part III of the Schedule provides for the limitation for filing suits relating to

declarations. Article 56 deals with declaration with regard to the forgery of an instrument issued or registered and Article 57 relates to declaration in respect to adoption.

- 19.** The relief of declaration claimed in the suit at hand does not fall under Articles 56 and 57 and, therefore, by necessary implication, Article 58 would stand attracted which provides for a limitation period of three years to obtain any other declaration other than that mentioned under Articles 56 and 57. It provides that for such a declaration, the limitation is three years from the date when the right to sue first accrues.
- 20.** The use of the words “*when the right to sue first accrues*” as mentioned in Article 58 is very relevant and important. It categorically provides that the limitation of three years has to be counted from the date when the right to sue first accrues.
- 21.** It would be beneficial to reproduce paragraph 3 (o), paragraph 4 and paragraph 6 of the plaint which contains averments about the knowledge of the Will and the Codicil, the cause of action and the reliefs claimed:

“3 (o). *After a brave struggle with Cancer, the deceased took his last breath on 21.10.2014 at 10.35 pm. Pursuant to his death, defendant nos. 1 to 3 in the first week of November, 2014 disclosed to*

the plaintiff that the deceased had not only executed a Will but had even executed a Codicil

4. *The cause of action has arisen on 04.02.2014, when the Will bearing Registration No. 707 was registered before the Sub-Registrar-3 (Memnagar), which was executed by the father of the Plaintiff Shri Pramodray Sanghavi and the cause of action further arose on 20.09.2014, when Codicil to the said Will bearing Registration No. 6213 was executed before the Sub-Registrar-3 (Memnagar). The cause of action also arose on 21.10.2014, when the father of the Plaintiff expired and thereafter, the Will and Codicil of the father of the Plaintiff came to the knowledge of the Plaintiff. The said Will and Codicil are absolutely illegal, false and fabricated and therefore, are required to be declared as null and void. Further, an injunction is required to be ordered against the Defendants for not to sell, transfer or alienate any of the properties as per the directions of the Will and to maintain status quo till the final disposal of the Suit. Hence, the present Suit.*

6. *The plaintiff prays as under:*

a. The Hon'ble Court may be pleased to declare the Will dated 04.02.2014, bearing Registration No. 707 was registered before the Sub-Registrar-3 (Memnagar) as well as the Codicil dated 20.09.2014, bearing Registration No. 6213 was registered before the Sub-Registrar-3 [Memnagar] as null and void;

b. The Hon'ble Court may be pleased to grant permanent injunction against the defendants, restraining them from entering into any

transaction in furtherance of the directions in the Will or Codicil;

c. The Hon'ble Court may be pleased to declare all the subsequent action taken in furtherance of the said Will and Codicil as null and void status quo ante may be restored;

d. Such other and further relief/s as may be deemed fit and appropriate may be granted;”

22. A bare reading of paragraph 3(o) of the plaint would reveal that the father of the plaintiff died on 21.10.2014 and that the plaintiff acquired knowledge of the Will and the Codicil left behind by him in the first week of November, 2014. Paragraph 4 of the plaint reveals that the cause of action for filing of the suit first arose on 04.02.2014, then on 20.09.2014 and finally on 21.10.2014 i.e., when the Will was executed, when the Codicil was executed and when the father of the plaintiff died respectively. Therefore, according to the plaintiff's own admission, the cause of action for filing the suit commenced on 04.02.2014 and ended on 21.10.2014.

23. In view of the above, according to the plaintiff's own averments the suit had to be brought within time of three years either from the commencement of the cause of action on 04.02.2014 or lastly on 21.10.2014 when his father died or at best when he

acquired knowledge of the Will and the Codicil i.e., the first week of November, 2014.

24. There is no dispute to the fact that the limitation for filing of the suit falls under Article 58 of the Schedule to the Act wherein the limitation prescribed is three years. It may be pertinent to note that the limitation of three years is from the date when the cause of action first arose. So, according to the plaintiff's case, the cause of action first arose on 04.02.2014 and, therefore, the limitation would end on 04.02.2017. However, even if the limitation is calculated from the date of knowledge of the Will and/or the Codicil, it would run from the first week of November, 2014 and would end in the first week of November, 2017. The suit admittedly was instituted on 21.11.2017; much beyond the first week of November, 2017 and as such is apparently barred by limitation, for which neither any defence is required to be looked into nor any evidence in support is needed to be adduced.

25. Section 3 of the Act contemplates that every suit instituted after the period prescribed under the Act shall be dismissed even if limitation has not been set up as a defence. The

aforesaid provision is of a mandatory nature and cannot be ignored by the courts even if not pleaded or argued by the defence. It is obligatory upon the court to dismiss the suit if it is, on the face of it, barred by limitation. The aforesaid provision has been enacted for public good and to give quietus to a remedy after lapse of a particular period, as a matter of public policy, though without extinguishing the right in certain cases. Therefore, once a limitation prescribed for instituting a cause of action expires and even if limitation is not set up as a defence, it obliges the court to dismiss the suit as barred by limitation.

- 26.** In the present case, the plaintiff not only categorically states that he acquired knowledge of the Will and the Codicil in the first week of November, 2014 but also that the cause of action for the suit first arose on 04.02.2014 and lastly on 21.10.2014. The suit was filed on 21.11.2017. As such on the own averments of the plaintiff, the suit was instituted beyond limitation attracting Order VII Rule 11 (d) CPC.
- 27.** The submission that limitation is a mixed question of law and fact and that it cannot be decided without allowing the party to

lead evidence is of no substance. In the present case, we have earlier noted that the suit was admittedly instituted on 21.11.2017 whereas according to the plaint averments the cause of action first arose on 04.02.2014. Even assuming that the cause of action last arose in the first week of November, 2014, the suit ought to have been filed by 07.11.2017. The suit was filed on 21.11.2017. It was *ex-facie* barred by limitation for which, no evidence was required to be adduced by the parties. The above issue is purely an issue of fact and in the admitted facts as per the plaint, allegations stand concluded for which no evidence is needed.

- 28.** The other contention that the plaintiff acquired knowledge of the Will and Codicil in the first week of November, 2014, but that was not a complete knowledge as probably he could read the same subsequently. In dealing with the submission, the appellate Court distinguished between “*having knowledge*” and “*full knowledge*” to hold that the suit is not barred by limitation as the limitation would reckon from the date of full knowledge. It is a complete fallacy to make any distinction between “*knowledge*” and “*full knowledge*”. First of all, the limitation has

to run from the date when the cause of action first accrued and not any subsequent date for the cause of action. According to the plaintiff himself, the cause of action for the suit had arisen much earlier. Secondly, the plaintiff has not pleaded any date on which he acquired complete knowledge and that such argument is only an afterthought and appears to be a simple creation of the first appellate Court.

- 29.** Lastly, the first appellate Court has ruled that in the suit, the plaintiff has claimed different reliefs and even if the plaint is barred by limitation in respect of one of the reliefs, it cannot be rejected in *toto*. The aforesaid submission is also without substance as upon the plain reading of the prayers made in the plaint, it is apparent that the primary relief claimed therein is to declare the Will and the Codicil to be null and void and also all subsequent proceedings thereto. In addition to it, the plaintiff has claimed permanent injunction. The other reliefs are dependent upon the first relief and cannot be granted until and unless the plaintiff succeeds in the first relief. Therefore, once the plaint or the suit in respect of the main relief stands

barred by time, the other ancillary relief claimed therein also falls down.

- 30.** In view of the aforesaid facts and circumstances and the discussion, we are of the opinion that the High Court manifestly erred in law in passing the impugned judgment and order dated 08.02.2024, reversing the judgment and order dated 23.10.2018 of the court of first instance rejecting the plaint of the plaintiff in exercise of powers under Order VII Rule 11 CPC.
- 31.** Accordingly, the judgment and order of the High Court dated 08.02.2024 is set aside and that of the trial court is restored. The plaint stands rejected as barred by limitation under Order VII Rule 11 (d) CPC.
- 32.** The appeal is allowed accordingly.

..... **J.**
(PANKAJ MITHAL)

..... **J.**
(S.V.N. BHATTI)

NEW DELHI;
APRIL 15, 2025