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**IN THE COURT OF 6TH ADDITIONAL SENIOR CIVIL
JUDGE AT GANDHINAGAR**

SPECIAL CIVIL SUIT No. 113 of 2014

Exh. 78

1. Indraajitsinh Jagatsinh Vaghela
 Aged 27 years,
 Occup. : Agriculture
2. Sonalba Jagatsinh Vaghela
 Aged 24 years,
 Occup. : Household
3. Nikitaba Jagatsinh Vaghela
 Aged 21 years,
 Occup. : Household
4. Virendrasinh Jagatsinh Vaghela
 Aged 18 years,
 Occup. : Studying
 All Hindu, All residing at :
 Piplaj, Tal. & Dist. Gandhinagar

... Plaintiffs

V E R S U S

1. Jagatsinh Takhuji Vaghela

Aged adult,

Occup. Agriculture, Residing at :

Block No. 1253, Sector 27,

Shivam Soc., Gandhinagar

2. Pravinkumar Chunilal Doshi

3. Mehulbhai Pravinchandra Doshi

4. Pallaviben Pravinchandra Doshi

5. Nishaben Pravinchandra Doshi

6. Rajankumar Pravinchandra Doshi

7. Rupalben Rajankumar Doshi

8. Minor Khushi Rajan Doshi

9. Minor Jainam Rajan Doshi

Nos. 8 & 9 through their

Natural Guardian

Rajankumar Pravinchandra Doshi

Nos. 2 to 7 aged adult,

Occup. Agriculture, Hindu

Residing at : Plot no. 550/1,

Sector 21, Mahavirnagar,

Gandhinagar

... Defendants

SUIT VALUED AT RS. 2,80,000/- FOR CANCELLATION
OF SALE DEED AND VALUED AT RS.300 FOR PERMANENT
INJUNCTION AND DECLARATION

Appearance:-

Ld. Adv. Shri S.N.Parmar with

Ld. Adv. C.K.Trivedi for the plaintiffs

Ld. Adv. Shri F.K.Lakhani for the defendants

Nos.2 to 9

Ex-parte for defendant no.1.

- : JUDGMENT :-

1. The short facts of the plaintiff's case are as under :-

1/1 Takhuji Bhemaji Vaghela (grand father of the present plaintiffs) was owner and possessor of the agricultural land being Survey no. 669 ad measuring 0-68-47 hectors situated at village Piplaj, Taluka & District Gandhinagar (hereinafter will be referred to as suit land).

1/2 Takhuji Bhemaji was owner of land being survey no. 718 and Jivanji Mangaji was owner of the suit land and they have exchanged each other's land and Entry no. 2326 was carried out to the said effect. By that way the suit land is ancestral land of plaintiffs.

1/3 During the lifetime of Takhuji Bhemaji, all his lands including the suit land was partitioned and the suit land came to the share of Jagatsinh Takhuji (defendant no.1 and father of the plaintiffs) and hence the plaintiffs are legal heirs of defendant no.1 and hence the plaintiffs are having share in the suit land.

But in the revenue record the name of defendant no.1 alone was going on.

1/4 The defendant no.1 sold the suit land to defendant no.2 by executing a registered sale deed no. 10608 dated 13.10.2006. At that time the plaintiffs nos. 1 and 2 were major then also their signatures were not taken. The plaintiffs nos. 3 and 4 were minors then also no permission was taken for sale of suit land. The plaintiffs came to know about the above sale deed upon inspecting the revenue record.

Hence this suit is preferred for cancellation of sale deed dated 13.10.2006 and for declaration to declare that the plaintiffs are having share, right in the suit land and permanent injunction.

2. The defendant No. 1 was served but as he failed to appear and the suit is ordered to be tried exparte against him.

Whereas the defendants nos.2 to 9 are served and they appeared and filed their Written Statement at Exh. 14, wherein it is mainly pleaded as under :-

2/1 The defendants have mainly the denied the pleadings of the suit plaint and further mainly stated that an registered Exchange deed

was executed between Takhuji and Jivanji and by that way Takhuji became the owner of the suit land and that is how the suit land was self acquired land of Takhuji.

2/2 It is further pleaded that Entry No. 3379 is not of the distribution of land but it is of release of mortgage of SBI bank.

2/3 It is further pleaded that Entry No. 3448 was carried out of distribution of land by Takhuji and Takhuji gave the suit land to Jagatsinh and it is not that upon death of Takhuji as heirship Jagatsinh became owner.

2/4 It is further pleaded that the defendant no.2 has obtained Title clearance certificate by public notice before purchasing the suit land and the plaintiffs have not taken any objection at that time. Hence it is pleaded that the defendant no.2 is Bona fide purchaser of the suit land. It is further pleaded that later on the names of defendants nos. 3 to 9 were entered into.

2/5 Hence by that way the defendants Nos. 2 to 9 are owners and occupiers of the suit land and it was pleaded that the plaintiffs does not have any right title or interest in the suit land. Pleading the above defense, they have requested to dismiss this suit.

3. Following issues are framed at Ex-23

I S S U E S

- 1) Whether the plaintiffs proves that the suit property is ancestral property of plaintiffs ?
- 2) Whether the plaintiffs proves that they are having share in the suit property ?
- 3) Whether the plaintiffs proves that the registered sale deed no. 10608 dated 13.10.2006 is illegal ?
- 4) Whether the plaintiffs proves that the suit property is in their possession ?
- 5) Whether the suit is filed within limitation ?
- 6) Whether the defendants nos.2 to 9 proves that the defendant no.2 is bonafide purchaser of the suit property ?
- 7) Whether the plaintiffs are entitled to get the relief as prayed for ?
- 8) What order and decree ?

4. My findings on the above issues are as under :-

- (1) In negative
- (2) In negative
- (3) In negative

- (4) In negative
- (5) In negative
- (6) In affirmative
- (7) In negative
- (8) As per final order

5. The parties have produced the following documentary as well as oral evidence in support of their pleadings are as under :-

Plaintiff's side :-

Oral evidence

No.	Exh.	Witnesses
1	36	Indrajitsinh Jagatsinh Vaghela ... plaintiff no.1
2	54	Closing purshis

Documentary evidence

No.	Exh.	DOCUMENTS
1,2	38,39	certified copies of the village form no. 7
3	40	certified copy of Entry No. 2326
4	40-A	True copy of Registered Exchange Deed no. 117 dated 20.1.1998
5	41	certified copy of Entry No. 3448
6	41-A	True copy of the registered sale deed no. 10608
7	42	True copy of the Election Card of plaintiff no. 1

8	43	True copy of the school leaving of plaintiff no.4
9	44	True copy of the school leaving of plaintiff no.2
10	45	True copy of Adhar card of plaintiff no.3
11 to 16	46 to 51	Certified copies of the Entry Numbers 3821, 4016, 4225, 4519, 4553 & 5097

Defendants side :-**Oral evidence**

No.	Exh.	Witnesses
1	55	Mehulbhai Pravinchandra Doshi ... defendant no.3
2	72	Closing purshis

Documentary evidence

No.	Exh.	DOCUMENTS
1	58	True copy of the Registered Exchange deed no. 117 dated 20.1.1998
2	59	True Copy of the registered sale deed no. 10608 dated 12.10.2006 registered on 13.10.2006
3	63	Certified copy of the Registered Exchange deed no. 117 dated 20.1.1998

4, 5,6	64, 65,66	Certified copies of Entry No. 2326, 3448 & 3687
7	67	original Title Clearance Certificate
8	68	certified copy of Entry no. 4519
9	69	Certified copy of Entry no. 4553
10	70	Certified copy of the village form no. 7 & 12 and 8-A

6. Considered Written arguments at Exh. 76 on behalf of the plaintiffs and written arguments at Exh. 77 on behalf of the defendants.

- : R E A S O N S :-

7. Issues Nos. 1 to 4 & 6 :-

The reasons, findings and outcome of all these issues are analogs to each other and therefore, to avoid the multiplicity of reasons and findings, these issues are decided together.

7/1 Having considered first of all if the copy of the Registered Exchange Deed produced at Exh. 40-A, 58 and 63 are seen then it is evident that Takhuji Bhemaji (grandfather of the plaintiffs) has given Survey No. 718 to Jivanji Maganji and in exchange Jivanji Maganji have given Survey No. 669 (suit land) to Takhuji Maganji. More so Entry No. 2326 is carried to

the said effect, copy of which is produced at Exh. 40 and 64. Hence from the above it is evident that the suit land was self acquired land of Takhuji Bhemaji and not an ancestral land.

7/2 Now if the copy of Entry No. 3448 produced at 41 and 65 are seen then it is evident that upon partition, the suit land came to the share of Jagatsinh Takhuji(father of plaintiffs). Hence from the said entry it is evident that the name of Jagatsinh was entered into by way of partition and not by way of heirship of Takhuji as the partition was done during the lifetime of Takhuji. Hence from the above it is evident that Jagatsinh was absolute owner of the suit land. The plaintiffs have not produced a single document to prove that the suit land was ancestral land.

7/3 Further if the copy of the registered sale deed produced at Exh. 41-A and 59 are seen then it is evident that the registered sale deed No. 10608 is being executed by the defendant no.1 Jagatsinh (father of the plaintiffs) in favour of the defendant no.2 on 12.10.2006 registered on 13.10.2006 of the suit land. It is also mentioned in the said registered sale deed

that the suit land is of independent ownership of Jagatsinh and also binding to the heirs of Jagatsinh i.e. also binding to the plaintiffs. Mutation Entry No. 3887 was also carried out to the said effect which was certified also, the copy of which is produced at Mark 3/8 by the plaintiff and at Mark 56/10 by the defendants.

7/4 Now if the original Title clearance certificate produced at Exh. 67 is seen then it is evident that before the above sale Title Clearance Certificate was obtained. Hence it is evident that the defendant no.2 has purchased the suit land from the person whose name was going on in the revenue record and that too after obtaining Title clearance Certificate. Hence it is evident that the defendant no.2 is bonafide purchaser of the suit land.

7/5 Now if the Entry No. 4519 dated 31.3.2010 produced at Exh. 68 is seen then it is evident that the said entry is carried out to the effect that during the lifetime the defendant no.2 has got entered into the names of his heirs being defendants nos. 2 to 9. It is also evident from the copy of the Entry No. 4553 dated 18.5.2010 produced at Exh. 69 that the said entry was carried out to the effect that

during the lifetime of the defendant no.6, names of his heirs were entered into.

7/6 Hence from the above it is evident that the suit land was given to Jagatsinh Takhusinh by way of partition during the lifetime of Takhusinh and not by way of heirship. More so Takhusinh has also received the suit land not from his heirs but by way of exchange deed. The plaintiffs has not produced any evident to prove that the suit land was ancestral land. Therefore from the above it is evident that Jagatsinh Takhuji was having all power to sell the suit land to defendant no.2 and it cannot be said that the registered sale deed dated 13.10.2006 is illegal.

7/7 As such the plaintiffs have not pleaded that they are in possession of the suit land. But in cross examination of the plaintiff no.1 at Exh. 36 has stated that the plaintiffs were cultivating the suit land and were in possession. But the plaintiffs have not produced any single documentary evidence to prove that they were or they are in possession of the suit land.

7/8 It was argued on behalf of the plaintiffs that inspite the plaintiffs nos. 1 and 2 were major at the time of registered sale deed dated 13.10.2006, their signatures or consent was not taken. But as discussed earlier Jagatsinh has received the suit land not by way of heirship and hence he was all authorized to sell the suit land and for which no consent of plaintiffs were required. Hence the above argument on behalf of the plaintiffs cannot be accepted.

7/9 Therefore looking to the entire evidence, the plaintiffs have failed to prove that the suit land is their ancestral land and also failed to prove that they are having share in the suit land and also failed to prove that the registered sale deed no. 10608 dated 13.10.2006 is illegal and the plaintiffs have also failed to prove that the suit land is in their possession and on the otherside the defendants nos.2 to 9 have proved that the defendant no.2 is bonafide purchaser of the suit land.

In view of the above the issues nos. 1 to 4 are decided in negative & issue no.6 is decided in affirmative.

8. Issue No. 5 :-

8/1 The main prayer of the plaintiffs is to cancel the registered sale deed dated 12.10.2006 registered on 13.10.2006. Now if the entire plaint is seen then the plaintiffs have not stated that when they came to know about the above sale deed and have pleaded only in general that upon receipt of revenue record, they came to know.

8/2 Now the case of the plaintiffs is that the plaintiffs that plaintiff no.1 and 2 were major at the time of above sale deed and plaintiff no.3 and 4 were minors.

8/3 Now so far as the plaintiffs nos. 1 and 2 are concerned in absence of any specific date of knowledge and as Mutation entry No. 3887 was also carried out of the above Registered sale deed dated 13.10.2006 on 1.5.2007 and certified on 2.8.2007.

Now as per Article 59 of the Limitation Act the suit for cancellation of deed has to be filed within 3 years from the date of knowledge of the sale deed.

Now as stated above the plaintiffs have failed to prove that when they came to know about the sale deed. Hence in that case the date of registration of sale deed dated 13.10.2006 can be said to be deed date of knowledge as it

is a public document and the suit has to be filed within 3 years from 13.10.2006. But the suit is filed in 2014 and not within limitation. Hence the suit is barred by Article 59 of the Limitation Act so far as plaintiffs nos. 1 and 2 are concerned who were major at the time of sale deed.

8/4 Now if the judgment in the case of **Murugan V/s. Manickam reported in AIR 2002 MADRAS 129** is seen then it is held in the said judgment that *"The suit challenging alienation has to be filed within 3 years after attaining majority as per Article 60 of the Limitation Act. Failure of elder brother of plaintiffs to challenge alienation within 3 years, the suit by younger brother within 3 years of his attaining majority is time barred."*

In the present case also admittedly the elder brother and sister being plaintiffs nos. 1 and 2 were already major at the time of the registered sale deed under challenge and the suit is not filed within 3 years of the said date of registered sale deed and hence even the plaintiffs nos. 2 and 3 has filed this suit within 3 years of his attaining majority, this suit is time barred as per the Article 60 of the Limitation Act and as per the above judgment.

Hence the reply of issue no.5 is given in negative.

9. Issues Nos. 7 & 8 :-

As the reply of issues nos. 1 to 5 are in negative and as the reply of issue no. 6 is in affirmative, the plaintiffs are not entitled to get any relief as prayed for and hence the reply of Issue no.7 is given in negative and the reply of issue no. 8 is given by passing following order :-

- : ORDER :-

- The suit of the plaintiffs is hereby dismissed.
- Parties to bear their owns costs.
- Decree to be drawn accordingly.

Pronounced in the open Court on this 11th day of the month of April of the year 2018.

Date :- 11.04.2018

Place :- Gandhinagar

(Parimal Parsottambhai Patel)
6th Additional Senior Civil Judge,
Gandhinagar
Judge Code : GJ00942