

Presented on – 02/04/2024

Registered on – 02/04/2024

Decided on – 18/07/2025

Y – M – Ds.

Duration

IN THE COURT OF 2ND ADDL. DISTRICT JUDGE, AT ANJAR.
(Shri K. K. Shukla)

REGULAR CIVIL APPEAL NO.34/2024

Exh.

APPELLANTS(Orig. Defendant No.1 and 2):-

1. **Naynaba Ghanshyamsinh
W/o. Bhupendrasinh Jadeja**
2. **Bhupendrasinh Tapubha Jadeja,**
Age : 46,
Both R/o. – Plot No.83/B, Vijaynagar,
Behind Hanuman Mandir, Anjar – Kachchh.

Versus

RESPONDENTS(Orig.Plaintiff No.1 and 2):-

1. **Dilipsinh Dhirubhai Jadeja**
Age : 43 years,
R/o. – Vill : Khedoi, Tal : Anjar – Kachchh.
2. **Ashwinsinh Aniruddhsinh Jadeja**
Age : 39 years,
R/o. – Krushnagharo Society,
House No.60, Tal : Anjar – Kachchh.
3. **Jitendrasinh Kanubha Gohil**
Age : 51 years,
R/o. – Raghavnagar, Opp. Panchvati Society,
Tal : Anjar – Kachchh. **(Org. Defendant No.3)**

APPEARANCE:-

Ld.Advocate Shri H. J. Sonpar for the Appellants.

Ld. Advocate Shri S. M. Lodhiya for the Respondent No.1 and 2.

Ld. Advocate Shri D. K. Bambhaniya for the Respondent No.3.

APPEAL UNDER SECTION-96 OF CIVIL PROCEDURE CODE.**:: J U D G M E N T ::**

[1] The Respondent No.1 and 2 (Orig.Pltf) had preferred the Regular Civil Suit No.81/2022 against the appellant (Original defendants) before the Additional Senior Civil Court, Anjar. The Trial Court was allowed the suit of the plaintiffs vide order dated 19/08/2023, hence being aggrieved and dis-satisfied with the said impugned judgment and decree passed in this suit, Appellant(Org. defendants) has preferred the present appeal against the Respondent (Org. plaintiffs) before this Appellate Court.

Short facts of the appeal is that respondent NO.1 and 2 original plaintiff NO.1 and 2 had filed the regular civil suit by saying that they have purchased the land of revenue survey No.876 sq. meter 1-66-93 of Tappar village for Rs.4,50,000/- and for that agreement of receipt was also made and this land was sold on 12/11/2020 by registered sale-deed No.7455 to Mr. Sandip Samji Gogara and others and on that basis entry No.3040 was made and for that the dispute was raised and dispute at case No.101/2020 was entered and also filed the police complaint against appellant-original defendants and at that time, appellant-original defendant has made the compromise through Ashwinsinh Aniruddhsinh Jadeja who is social leader and given cheque of Rs.4,00,000/- dated 26/04/2021 and rest of amount of Rs.50,000/- is to be given after one month passing of above cheque. Cheque was deposited in the SBI Bank and it was returned because some eraser on the cheque in the year 2021 and no any initial was there and notice was given by the respondent and reply was given. At

the time of compromise original document like power of attorney, cheque, receipt etc. was given to the respondent to the appellant. By way of this appellant has said that the judgment given by the trial Court is not according to law and settled principle of law because he has not get the chance to cross-examine the plaintiff and to produce the written statement and also said that original document is lies with him because of compromise was made between them and false suit was filed etc. said by the appellant and prayed for allowing the appeal.

- [2] The Appellant herein before this Court were the original defendants, while Respondents No.1 and 2 herein were the original plaintiff No.1 and 2, and hence for the sake of convenience, they shall be referred hereinafter as **"plaintiffs"** and **"defendant"** as they were in their original position in Regular Civil Suit No.81/2022.

Arguments of Appellant:-

- [3] I have heard Ld. Advocate Mr. H. J. Sonpar. He has argued that respondent No.1 and 2 original plaintiff No.1 and 2 had filed the regular civil suit by saying that they have purchased the land of revenue survey No.876 sq. meter 1-66-93 of Tappar village for Rs.4,50,000/- and for that agreement of receipt was also made and this land was sold on 12/11/2020 by registered sale-deed No.7455 to Mr. Sandip Samji Gogara and others and on that basis entry No.3040 was made and for that the dispute was raised and dispute at case No.101/2020 was entered and also filed the police complaint against appellant-original defendants and at that time, appellant-original defendant has made the

compromise through Ashwinsinh Aniruddhsinh Jadeja who is social leader and given cheque of Rs.4,00,000/- dated 26/04/2021 and rest of amount of Rs.50,000/- is to be given after one month passing of above cheque. Cheque was deposited in the SBI Bank and it was returned because some eraser on the cheque in the year 2021 and no any initial was there and notice was given by the respondent and reply was given. At the time of compromise original document like power of attorney, cheque, receipt etc. was given by the respondent to the appellant. Not only that, disputed cheque was in the name of respondent No.2 Ashwinsinh who is plaintiff No.2 and he has no any role in this transaction. The return memo Ex.33 alternation in date reason for return of cheque was said by the bank and as per compromise pursis Ex.31 it was given in the disputed entry No.101/2020 and compromise was made by the party and that is Dilipsinh Vs. Sandip Shamji and others and also said that the power of attorney Will dispute was over etc. facts was written in the above compromise pursis. Original document was not produced in the suit then and then it was exhibited and i.e. Ex.19 to 21 and that original document lies with the appellant and no dispute about it. Appellant has also given a reply of notice and said that he has hand cash borrowed the amount from the Ashwinsinh and cheque was given for that. No evidence that cheque was given to the plaintiff respondent No.1. Not only that, the appellant has purchased this land for Rs.13,41,000/- How can he sold this land for Rs.4,50,000/- and plaintiff respondent is also prevented by Order 2 Rule 2 and Section 115 of Evidence Act. Cheque was not in the name of plaintiff and no any transaction with him and power of attorney is also not in the

name of plaintiff No.2 Ashwinbhai Jadeja and Povernama is in the name of Jitendra K. Gohil. No any evidence that document was in the name of Ashwinsinh Jadeja. He he prayed for allowing this appeal.

Arguments of Respondent:-

At Ex.21 respondent has given a written argument in which he has stated that they are plaintiff and filed the suit and notice was also served to the appellant and they have engaged the lawyer and not remain present when the suit was allowed by the Trial Court. Appellant came in the house of defendant. Respondent-plaintiff has sold the land for Rs.4,50,000/- and amount in cash paid to the appellant by the respondent No.1 and receipt of it was also given by the appellant No.1. Power of attorney was given in the name of Jitendrasinh and also bill was made and respondent-original plaintiff has so many times said for making the sale-deed but, appellant has not execute the sale-deed and tried to sold out this land to others. Public notice of it was given and also power of attorney given to the respondent No.3 was cancelled by the appellant No.1 as per the public notice hence, the complaint of cheating etc. was given to the police by the respondent and compromise was made between the parties. Respondent has also taken an objection of entry No.3040 because the appellant has sold that land to the Sandip Gogara and others on 12/11/2020 and because of say of original defendant No.2 Mr. Ashwinbhai, compromise was made in the police station and SBI cheque dated 26/04/2021 was accepted by the plaintiff and it was returned by the bank. Also given a notice to the appellant. All the document Ex.13 to 45 was produced in the Trial Court and appellant was not remain present hence, the

suit was decreed. Not only that, the execution petition was also filed by the respondent. Warrant was issued and Rs.15,000/- was paid by him and then only Rs.25,000/- was deposited by the appellant. So, considering the reply of notice, appeal memo para-3 police statement Ex.38 all the facts is proved by the respondent-original plaintiff and appellant has admitted the fact that he has sold this land to others. Compromise was made hence, original document was lies with him and cheque was given in the name of Bhupendrasinh. It is not blank cheque and appellant was not come with the clean hands. The oral argument was also made and above arguments was made by the respondent No.2 and prayed for rejection of appeal.

[4] Heard the Ld. Advocates for the respective parties. This Court has gone through the appeal memo and the judgment of Trial Court.

[5] Following points falls for determination before this Court: –

- i. Whether the Trial Court has erred in passing the impugned judgment in Reg.Civil Suit No.81/2022, dated 19/08/2023 ?
- ii. Whether the interference of this Court is required ?
- iii. What order & decree ?

[6] The findings to the aforesaid points are as under:–

- (i) In Affirmative
- (ii) In Affirmative.
- (iii) As per final order.

REASONS

POINT NOS.(I) & (II):-

- [7] Short facts of the appeal is that respondent NO.1 and 2 original plaintiff NO.1 and 2 had filed the regular civil suit by saying that they have purchased the land of revenue survey No.876 sq. meter 1-66-93 of Tappar village for Rs.4,50,000/- and for that agreement of receipt was also made and this land was sold on 12/11/2020 by registered sale-deed No.7455 to Mr. Sandip Samji Gogara and others and on that basis entry No.3040 was made and for that the dispute was raised and dispute at case No.101/2020 was entered and also filed the police complaint against appellant-original defendants and at that time, appellant-original defendant has made the compromise through Ashwinsinh Aniruddhsinh Jadeja who is social leader and given cheque of Rs.4,00,000/- dated 26/04/2021 and rest of amount of Rs.50,000/- is to be given after one month passing of above cheque. Cheque was deposited in the SBI Bank and it was returned because some eraser on the cheque in the year 2001 and no any initial was there and notice was given by the respondent and reply was given. At the time of compromise original document like power of attorney, cheque, receipt etc. was given to the respondent to the appellant. Hence, the appeal is preferred by the appellant-original defendants against that order saying that the order passed by the Trial court was not according to law, without looking into the prima facie documentary evidence on record and without taking evidence and giving chance to cross-examination, suit was falsely allowed etc. reason was given and prayed for allowing the appeal.

EVIDENCE OF PLAINTIFF :-

At Ex.13 Mr. Dilipsinh has given a examination-in-chief and at Ex.14 Mr. Ashwinsinh has given a examination-in-chief before the trial Court. They are plaintiff but, right to cross-examination was closed by the trial Court because the appellant not remain present. No any other oral evidence was produced by the respondent or appellant-original defendants. It also transpires that respondent has given an application for exhibiting the document and the document exh.17 to 38 and also Ex.40 to 46 were exhibited.

It transpires that as per Ex.28 the appellant-original defendant Naynaba and others have sold the land to Mr. Sandip S. Gogara and others of revenue survey No.876 Acre 4 Guntha 5 of Tappar Village and that sale-deed was dated 12/11/2020.

It also transpires that at Ex.23 public notice was given by the Dilipsinh Jadeja about the purchasing of suit land. Other public notice was produced at Ex.22 by the new purchaser. it also transpires that because of sale of the suit land by the appellant, the respondent-original plaintiff has given police complaint before the police station and copy of it was produced at Ex.25. It also transpires from the record that because of sale-deed made by the appellant Naynaba. Respondent No.1 plaintiff has taken a objection of revenue entry No.3040 and also disputed case was start and i.e. of 101/2020. It also transpires that in the above disputed case, compromise was made between the parties and hence, that pursis was produced at Ex.31 and said that no any dispute about the Will and power of attorney. It also transpires that the copy of cheque original produced at Ex.45 of Rs.4 Lacs in

the name of Ashwinsinh and original return memo Ex.46 was produced. original disputed case of Executive Magistrate was produced at Ex.43. It also transpires that because of police complaint Mr. Bhupendrasinh has given a police statement produced at Ex.38. Rest of the document was copy of village form No.7/12, notice and reply of it etc. produced before the Trial Court.

It is transpires that original document Ex.19 to 21 copy of receipt dated 06/05/2019, copy of power of attorney and copy of Will was a xerox copy and original lies with the appellant–original defendant. It also transpires that no any cross–examination was made by the appellant. Right to file W.S. and cross–examination was closed by the Court. So, to give the full opportunity to plead the evidence and cross–examination to the appellant and then matter is to decided on merit rather than exparte.

- [8] So, considering all these evidence and arguments of the parties, the order passed by the Trial Court and the reason given by the Trial Court is not according to law and also not based on settled principle of law. This Court has also going through the R & P. Hence, interference of this Court is required. Hence, the answer of Issue No.1 and 2 are given in the Affirmative and following order is passed in the interest of justice for the issue No.3.

ORDER

- The present appeal is hereby allowed.
- The Judgment passed by Ld. Additional Senior Civil Judge, Anjar in Regular Civil Suit No.81/2022 dated 19/08/2023 is hereby set aside and suit is remanded to the trial Court and trial Court has to give full opportunity of producing the W.S.

and adducing the evidence to the appellant–original defendants No.1 and 2.

- Respondent No.1 and 2 original plaintiff has liberty to adduce further evidence oral as well as documentary in the suit and also the appellants–original defendants have to produce the original Power of Attorney, Will and Receipt which was lies with them, if respondents–original plaintiffs wants to produce it, otherwise appellants have not to take the objection about the above documents which were already exhibited by the Trial court.
- The appellants–original defendants have to file their W.S. within 15 days from this order before the Trial Court.
- The appellants–original defendants have to pay Rs.3,000/ – as a cost to the respondent No.1 – original plaintiff.
- Both the parties have to co–operate the Court for deciding the suit on merits as early as possible.
- Decree be drawn up accordingly.
- R & P of original suit along with copy of this judgment be sent to Trial Court for perusal.

Signed and pronounced today in open Court.

Date: 18/07/2025
Place:Anjar.

(K.K.Shukla)
2nd Addl.District Judge,
Anjar–Kachchh.
(Code: GJ00547)