

Presented on - 07-02-2019
Registered on - 07-02-2019
Decided on - 13-03-2023

Y — M —Ds.

Duration

IN THE COURT OF 5TH ADDITIONAL DISTRICT JUDGE, ANAND.
(*Shri K.K.Shukla*)

REGULAR CIVIL APPEAL NO.42 of 2019

Ex. ____

APPELLANT(Orig.Pltf.):

Parmar Chandubhai Pratapsang

Age:70 Yrs., Occu.:Agri.,

Resi.at: Bhetasi Vanta, Ta.Borsad,

Dist.Anand.

Versus

RESPONDENTS(Orig.Defts.):

1. Raj Balvantsinh Hathisinh

2. Raj Janardsinh Balvantsinh

Both Resi.at. Bhetasi Vanta,
Ta.Borsad, Dist.Anand.

3. L.H. of deceased Natvarsinh Hathisinh Raj:-

1. Sajjanben, Widow of Natvarsinh Hathisinh Raj

2. Narendrasinh Natvarsinh Raj

3. Rinkuben, D/o,. Natvarsinh Raj

4. Purnimaben, D/o. Natvarsinh Raj

5. Atulsinh Natvarsinh Raj

4. Raj Lilaben Hathisinh

5. Raj Jasodaben Hathisinh

6. Raj Kesarben Hathisinh

Above all Resi.at. Bhetasi Vanta,
At. Near Panchayat, Ta.Anklav,
Dist.Anand.

APPEARANCE :-

Ld.Advocate Shri B.G.Parekh for the Appellant.

Ld.Advocate Shri J.S.Thakkar for the Respondents.

APPEAL UNDER SECTION-96 OF CIVIL PROCEDURE CODE.

:: J U D G M E N T ::

- [1] The Appellant(Orig.Pltf.) had preferred the Regular Civil Suit No.11/2013(Old Spl.Civil Suit No.48/1998) before the Principal Civil Judge, Anklav, for execution of registered sale-deed in respect of suit-land and further prayed to grant specific performance in respect of suit-land against the defendants. The Trial Court after considering the documentary evidence as well as oral evidence produced on record by oath the parties, dismissed the suit of plaintiff, hence being aggrieved and dis-satisfied with the said impugned judgment and decree passed in this suit, Appellant(Org.Pltf.) has preferred the present appeal against the Respondents(Org.Defts.) before this Appellate Court.
- [2] The Appellant herein before this Court was the original plaintiff, while Respondents herein are the original defendants, hence for the sake of convenience, they shall be referred hereinafter as "**plaintiff**" and "**defendants**" as they were in their original position in Regular Civil Suit No.11/2013(Old Spl.Civil Suit No.48/1998).
- [3] Ld.Advocate Mr. B.G.Parekh for the Appellant (Orig.Pltf.) has relied upon the contentions

raised in his appeal memo that the impugned judgment and decree passed by the Trial Court is against the established provisions of law and evidence on record. That the Trial Court has not considered the documentary evidence produced on behalf of plaintiff(Appellant herein) and further not considered the admission of defendants made in the cross-examination with regard to sale-banakhat by him and thus, he has wrongly interpreted the same in committed a grave error. The Trial Court has wrongly evaluated the chief-examination of plaintiff. The Trial Court has not considered the registered Banakhat which was duly registered by and between the parties and ignored the said document/deed in the eye of law and committed a grave error without taking into consideration the same on record and at the time of deciding the impugned judgment also. Thus, plaintiff has got miscarriage of justice. The Trial Court has committed error in deciding the Issue No.1 in the negative. The impugned judgment passed by the Ld.Trial Court is against the law, contrary of evidence and also against the pleadings of the parties produced in the case. Thus, the Appellant prayed to allow the present appeal and further prayed to quash and set aside the impugned judgment and decree passed in Regular Civil Suit No.11/2013(Old Spl.Civil Suit No.49/1998) by the Ld.Trial Judge and the above facts were also mentioned in his written arguments produced at Exh.14.

[4] On issuance of notice, Ld.Advocate Mr. J.S.Thakkar

appeared for the Respondents(Org.Defts.) and he has filed his written reply in this appeal vide Exh.11 wherein he has stated that the judgment and order passed by the Trial Court in accordance with the law and no any mistake committed by the Trial Court. It is also merntioned in Exh.11 reply-cum-objection of appeal and injunction application, it was stated that the suit-property bearing R.S.No.140 Acre 5.10 Guntha paikee 2.34 Guntha of Village-Bhetasi, Ta.Anklav, this land known as a "Fatakwalla" was purchased through Tenancy Court by the Respondent Nos.1, 3 to 6(Org.Defts.). He has also admitted that on 21-05-1995 before the Punch writing was made on a stamp paper of Rs.50/- that Rs.2 Lacs were given by the Appellant(Org.Pltf.) and it was signed by the Respondent and witnesses was true, etc., facts were stated, means Respondent - Raj Balvantsinh Hathisinh and No.2 - Raj Janardansinh Balvantsinh have filed the above reply and admitted the facts of the appeal.

It also transpires from the record that all the Respondents was served the notice of this appeal and they have engaged on advocate and Vakalatnama was filed at Exh.8 signed by all the Respondents. Thenafter, the Respondent No.1 hassigned the Vakalatnama of another Advocate Mr. A.N.Solanki and joint reply of Respondent Nos.1 & 2 have given which is produced at Exh.11.

Other Respondents or their Ld.Advocate have not filed any reply or they are not remained present today and previously, hence this appeal was considered on merits after considering the

record of trial Court.

Arguments of Respondents:-

The Respondents have relied the plea taken in their reply at Exh.11 and the same facts were considered as their arguments. Nobody remained present on behalf of any Respondents, then and then, their plea - W.S. of Trial Court was also considered by this Court.

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

[6] Following points falls for determination before this Court:-

i. Whether the Trial Court has erred in passing the impugned judgment and decree in Regular Civil Suit No.11/2013(Old Spl.Civil Suit No.48/1998), dated 07-01-2019?

II. Whether the interference of this Court is required ?

i. What order & decree ?

[7] The findings to the aforesaid points are as under:-

(i) In the affirmative.

(ii) In the affirmative.

(iii)As per final order.

R E A S O N S

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

[8] Present appeal is filed by the Appellant who was the original plaintiff of Regular Civil Suit No.11/2013(Old Spl.Civil Suit No.49/1998) which

was dismissed by the Trial Court and as against that, the present appeal is filed. Now, considering the short facts of the dispute between the parties, it transpires that the Appellant(Org.Pltf.) has filed the suit against the present Respondents(Org.Defts.) for specific performance/execution of registered sale-deed in respect of suit-land by the defendants, etc., relief was claimed in the plaint(Exh.1).

Oral evidence :-

[9] Plaintiff's side :-

Now, considering the oral evidence of the Appellant(original plaintiff) - Parmar C.P. at Exh.23, he has stated all the facts of the suit in his examination-in-chief. Considering his cross-examination, he has admitted that the suit-land belongs to the legal heirs of decd. Balvatsinh Hathisinh and it was of joint ownership and in Exh.27, Agreement was executed by the Balvantsinh and Natvarsinh. He has also said that no any evidence that Rs.2 Lacs was paid there and who has to get permission from the Collector was not written in Exh.27 and he has also not signed in Exh.27 and Revenue Taxes may be paid by anybody, a receipt of its are produced at Exhs.29 to 64. Exhs.27 Agreement was not registered or Notarized and notice or letter was not written to the Respondents for execution of Agreement. No any evidence that from 1985, he is in possession of suit-land and other facts false and the document

was created and it was not signed by the Respondents, etc., facts were denied by him.

At Exh.72, one witness Mr. Raj Angitsinh Sahebsing was examined and he has stated in his examination-in-chief that on 19-01-1995, land of R.S.No.140 Acre 5.10 Guntha paikee land of Acre 2.34 Guntha of Village-Bhetasi, Ta.Anklav was sold for Rs.2 Lacs and Banakhat was executed on that day on a stamp paper of Rs.50/- and Respondents(Org.Defts.) and other witnesses have also signed in his presence and from 1985, plaintiff have possession, etc., facts was stated in his examination-in-chief.

In his cross-examination, he has admitted that the land of R.S.No.140 was of Raj Balvantsinh, Raj Natvarsinh, Raj Janardansinh, Kesarben, Jashodaben and Lilaben, are the joint owners of the above land. In Exh.27, the name of seller was only 2 persons = Raj Balvantsinh Hathisinh and Raj Natvarsinh Hathisinh was written. He has good relations with the plaintiff Chandubhai, they all are helpful to each other. He has voluntarily said that Rs.2 Lacs of Exh.27 was seen by him. He do not know that whether separate writings of payment of Rs.2 Lacs was made between the parties or not. He has also admitted that present suit-land was in the name of Raj Balvatsinh and his sisters' name are in the revenue record. He do not know other who witnesses have signed. In Exh.27, plaintiff - Chandubhai has signed it. Other five persons have signed in

Exh.27 was said by him and rest of the facts were denied by him.

At Exh.77, one another witness Mr. Bhikhubhai S.Gohil was examined. He has stated in his examination-in-chief all the facts which was stated by witness Mr. Raj Rangitsinh(Exh.72)

He has stated in his cross-examination that he was Graduate and from birth, know the plaintiff- Chandubhai and any Banakhat is requires to be registered or notarized, that facts he know and also some payment was required to be given to the seller-party. He has admitted that at present, the disputed land was in the name of Raj Balvatsinh and his family members in the Revenue Record and it is of joint family land and if joint family land wants to sell, all the co-owners consent is necessary. In Exh.27, the names of only Balvatsinh and Natvarsinh were written. He has also said that in the year 1995 economical condition of plaintiff Chandubhai was also not so good. He has not read the Exh.27/Contract. Rest of other facts has been denied or he do not know.

Evidence of Defendants:-

At Exh.84, the defendant Mr. Raj Balvatsinh Hathisinh was examined and he has stated all the facts of his written statements and also said that the suit-land is tenancy land and it cannot be sold and his name was also in Revenue Record and not made any Banakhat in favour of plaintiff and he has also not paid any amount as mentioned in

his banakhat.

In his cross-examination, he has said that he has two sons and two daughters Mr. Janardan and Mr. Raghuvir, both are his sons. His Revenue Survey No. was 140 and in V.F.No.7 x 12, name of Mr. Raj Balvantsinh Hathisinh, Natubhai Hathisinh, Kesarben Hathisinh, Lilaben Hathisinh, Jasodaben Hathisinh were written. Jasoben, Kesarben and Lilaben are his sisters. He is doing administration of this land. Exh.27 was shown and he has admitted that name of purchaser, his name was written and Mr. Janardansinh has purchased on behalf of him. He has denied that all the owners have signed in Exh.27. He has denied other facts and also admitted that all the Respondents have engaged their lawyer Mr. J.S.Thakkar.

At Exh.95, one witness/Co-defendant was examined and he has stated in his examination-in-chief the facts of other defendants at Exh.84.

In his cross-examination, the said witness has also said the facts that this land was of co-owners land and also, he has signed as a purchaser of this land and also as a seller, Balvantsinh, Natvarsinh, Janardansin, Jasodaben, Lilaben, have signed and as a witness Shanabhai, Ramsinh Chhatrasinh, Rangitsinh and Bhikhubhai have also signed. It is denied that suit-land was sold by him and writing on a stamp paper of Rs.50/- was made.

Documentary evidence:-

At Exhs.26 & 28 are the V.F.No.7 x 12 & 6-A

and Exhs.29 to 39 are the receipts of payment of revenue tax of land and at Exh.27, Agreement was produced.

At Exhs.88 to 91, documents were produced by the defendant. It is of copy of V.F.Nos.7 x 12 & 6-A and the receipts of payment of revenue tax of land.

It transpires from the record that the suit was filed by Parmar Chandubhai Pratapsang (Org.Pltf.) against the defendants namely, Raj Balvantsinh Hathisinh, Raj Janardan Hathisinh and legal heirs of Natvarsinh Hathisinh, Sarojben Natvarsinh, Narendrasinh Natvarsinh, Rinkuben Natvarsinh, Purnikaben Natvarsinh, Atulsinh Natvarsinh, Lilaben Hathisinh, Jasodaben Hathisinh and Kesarben Hathisinh, for specific performance of contract, the suit was filed.

Considering document(Exh.27) - (sale Agreement/Banakhat) was executed on a stamp paper of Rs.50/-, dated 21-05-1995, Sunday. It is executed in respect of R.S.No.140, of Village-Bhetasi, admeasuring Acre 2-30 Guntha and **it was sold for Rs.2 Lacs and amount of consideration was given in cash by the Chandubhai Pratapsinh who is present Appellant(Org.Pltf.) to the Raj Balvantsinh Hathisinh, Natvarsinh Hathisinh.** So, it transpires from the record that Respondent No.1 - Raj Balvantsinh Hathisinh and deceased Natvarsinh Hathisinh has made this Sale Agreement in favour of Appellant and it also transpires that

so far Respondent No.2 - Raj Janardansinh Balvantsinh and Respondent No.1 to 5 are the legal heirs of Respondent No.1 - Raj Balvantsinh and deceased Natvarsinh and rest of the Respondent Nos.4 to 6 - Lilaben, Jasodaben and Kesarben are the sisters of Respondent No.1 - Raj Balvantsinh. It also transpires from the record that Respondent Nos.4 to 6 - Lilaben, Jasodaben and Kesarben have not strongly objected the facts of the suit. It was also written in Exh.27/sale deed that after getting the permission from the District Collector/Magistrate, sale-deed is to be executed in favour of Appellant(Org.Pltf.) and also as early as possible, his name is to be entered in the Gram Panchayat Revenue record and the seller has no any right was also written. It also transpires that in the above Agreement, Raj Balvantsinh Hathisinh, Raj Natvarsinh Hathisinh, Raj Janardansinh Balvantsinh, Kesarben Hathisinh, Jasodaben Hathisinh, Lilaben Hathisinh, Respondents herein have put their signatures. Not only that, the witnesses Mr. Shanabhai Hiralal, Ramsinh Fatesinh Parmar, Parmar Chhatrasinh Pratapsinh, Raj Rangitsinh Sahebsinh, Bhikhubhai Salamsinh Gohel, have also signed as a witnesses. Most important evidence is that one witness of this Agreement(Ex.27) was examined at Exhs.72 and 77 namely, Mr. Raj Rangitsinh Sahebsinh and Mr. Bhikhubhai S.Gohel who are remained present at the time of executing the above sale-deed and they have said that Rs.2 Lacs was given to the Respondents and writing was made on a stamp paper

of Rs.50/- and the family members of the Respondents(Org.Defts.) and the witnesses have signed on that Agreement, etc., facts were stated and the above witnesses have also supported the facts of above Banakhat(Ex.27). He has also said that other five persons have signed in the above Agreement. So, the other plea of Respondents that all the co-owners have not signed is also not acceptable because in Exh.27/Agreement, the names of Respondent Nos.1, 3 and 4, 5 & 6 and others have already signed and witnesses have also supported the story and also supports the amount of sale consideration. So far the plea that in the Revenue Record, the names of Respondents were continued, but naturally, when the entry was not changed or after making the sale-deed in favour of the Appellant, the name of Appellant may be entered by the Competent Authority and considering the above Exh.27/Agreement, wherein it is clearly written that seller/Respondents have to get permission from the Collector and permission was not taken, hence naturally, the name of plaintiff was not inserted in revenue record. Not only that, the names in the revenue record are not the proof of ownership and so far paying the tax of land, it can be paid by owner or occupier or other persons and here is not a dispute about the ownership of land.

At Exh.84, Respondent No.1 - Raj Balvantsinh was examined and considering his cross-examination that as a purchaser of stamp of Exh.27, his name

was written. That he was and on behalf of him, Respondent No.2 - Raj Janardan has purchased the above stamp of 16-05-1995 and so far the signature behind the above Agreement, he has denied and said that he had put signature. The Respondent Nos.4 to 6 are his sisters and he has also admitted that in Exh.27, the land was sold and etc., facts were written and in Exh.20, Vakalatnama, he and Respondent Nos.2, 4, 5 & 6 and deceased Natvarsinh have signed. Respondent No.2/Janardansinh was examined and he has also admitted the above facts in his cross-examination.

It also transpires from the record that Respondents have not filed their written statements in the suit, so the facts denied by them or plea of defence was not proved on record because they have not filed written statement, means whether they have not signed in the Agreement or witnesses have not signed or bogus and false Agreement was created or all co-owners of the lands have not signed, etc., facts were not proved on record by him.

It also transpires from the record that Respondent Nos.1 & 2 have strongly contested the suit upto judgment of this suit, but suit was dismissed and original suitor/Appellant has filed this appeal and in this appeal, after serving notices to all the Respondents, all are appeared though their advocate Mr. J.S.Thakkar vide Exh.8, total 10 persons have signed in the Vakalatnama and then, Raj Balvantsinh/Respondent No.1) has

changed his lawyer and engaged Mr. A.N.Solanki, but it also transpires from Exh.11/written reply of appeal and injunction application of this appeal that both Respondents Nos.1 & 2 have signed it. Now, considering the above Exh.11, all the facts of suit and also Exh.27/Sale Agreement dtd. 21-05-1995 was admitted in the above Exh.11 by both Respondent Nos.1 & 2. He has admitted that all the Respondents have signed in presence of witnesses and the facts written in Agreement was proved and the suit-land was purchased by his elders of family through Tenancy Court and that Respondents(Org.Deft.Nos.1 and 2 to 6), means all the co-owners of suit-land i.e. Respondent Nos.1, 2 and 4 to 6 and also admitted that Rs.2 Lacs were also get by him at the time of Sale Agreement and all the necessary parties and witnesses have remained present and they have signed and he had to make sale-deed in favour of Appellant(Org.Pltf.) and has to give title clear of suit-land and all these liabilities were they have accepted. At the relevant time, there is a dispute between the Appellant and with him, the suit was filed by the Appellant(Original suitor) and now, they have good relations, residing in one village and after accepting truth, these facts were narrated in this reply of appeal and the possession of suit-land was lies with the Appellant and they are doing agriculture work and paying taxes of land, etc., facts were stated by him and in support of it, Respondent Nos.1 & 2 have signed and also, it was supported on oath by

the Respondent No.1.

So, considering the above admitted facts of the Respondent Nos.1 & 2 and when the admission made in writing on oath, it is a best evidence and no other supporting evidence is required. So, considering the written arguments of Appellant at Exh.14 and also the written reply of Respondents produced at Exh.11 and the depositions of the parties before the trial Court and after considering the reasons given by the Trial Court in his judgment, it transpires that the Trial Court has committed a grave error in interpreting the evidence on record and committed illegality and mis-interpretation of law and facts, etc., appears on record, hence the answer of Issue Nos.1 & 2 are given in the affirmative and following order in terms of the Issue No.3 is passed in the interest of justice.

O R D E R

- Reg.Civil Appeal No.42/2019 is hereby allowed.
- The judgment and decree passed by Id.Principal Civil Judge, Ankla in Regular Civil Suit No.11/2013(Old Spl.C.S.No.49/1998), dated 7-01-2019 is hereby quashed and set aside.
- Consequently, it is hereby ordered that Respondents(Org.Defts.) shall execute the sale-deed in respect of suit-land i.e. Revenue Survey No.140, Acre 5.10 Guntha Paikar land admeasuring Acre 2-3 Guntha, situated in the Sim of Village-Bhetasi Vanta, Ta.Ankla, Dist.Kheda (As per Exh.1 plaint and Exh.27 Banakhat), subject to getting

necessary permission from the Competent Authority within a reasonable time.

- The Respondents(Org.Defts.) if not executed the above sale-deed in favour of Appellant(Org.Pltf.) then, by filing the Execution Petition, the Appellant has to pray for execution of sale-deed by making appointment of Court Commissioner, subject to getting necessary permission from the Competent Authority.
- The Respondents are hereby directed not to transfer, sell, alienate, pledge, or mortgage or transfer by any other manner the above suit-land till the order of Competent Authority on permission.
- All other applications filed in this appeal which was not decided stands disposed off accordingly.
- Parties shall have to bear their own cost, if any.
- Copy of this judgment be sent to Ld.Trial Court with R & P of original suit.
- Decree be drawn up accordingly.

Signed and pronounced today in open Court on this 13th day of March, 2023.

Date:13/03/2023
Place:Anand.

(K.K.Shukla)
5th Addl.District Judge,
Anand.
(Code: GJ00547)

JALimbachiya-P.S.