



Registered on : 23/03/2023
Decided on : 17/07/2026
Duration :
Year Month Days

**IN THE COURT OF ADDITIONAL CIVIL JUDGE, PANCHMAHAL AT
GODHRA**

**RCS No. 60/2023
EXH –**

PLAINTIFFS :

**LEGAL HEIR OF DECEASED ARJUNSINH PRABHATSINH
MAHENDRABHAI ARJUNSINH RAULJI**

Address : Samli, Godhra, Panchmahal

VERSUS

DEFENDANTS :

1. BHUPATBHAI MOHANBHAI

Address : Ugamna Muvada, Nishal faliyu, Samli, Godhra, Panchmahal

2. MANJULABEN D/O SARDARBHAI

Address : Vachalu faliyu, Timba na movada, Menpur kheda, Thasra,
Kheda

3. MANIBEN D/O SARDARBHAI

Address : Vachalu faliyu, Timba na movada, Menpur kheda, Thasra,
Kheda

4. KALUBHAI BHAGWANBHAI RAULJI URFE

RAMSINGBHAI BHAVANSINH RAULJI

Address : Ugamna Muvada, Nishal faliyu, Samli, Godhra, Panchmahal

5. AKHAMBEN URFE AARATBEN D/O BHAVABHAI

W/O SARTANBHAI CHAUHAN

Address : Tuva, Godhra, Panchmahal

6. DINESHBHAI RANGITBHAI RAULJI

Address : Ugamna Muvada, Nishal faliyu, Samli, Godhra, Panchmahal

7. MUKESHBHAI RANGITBHAI RAULJI

Address : Ugamna Muvada, Nishal faliyu, Samli, Godhra, Panchmahal

8. VIKRAMBHAI SARDARBHAI RAULJI

Address : Goli faliyu, Goli, Godhra, Panchmahal

9. HIRABEN D/O BHAVANBHAI

Address : Goli faliyu, Goli, Godhra, Panchmahal

10. ILYAS YAKUB DURVESH

Address : Mithikhan Mohalla, Near Rajan Masjid, Godhra, Panchmahal

Appearances :

Learned Advocate for Plaintiff	: Mr. H. K. SONI
Learned Advocate for Defendant no. 1 to 9	: Mr. P. M. PADHIYAR
Learned Advocate for Defendant no. 10	: Mr. A. R. PAREKH

**SUIT FOR CANCELLATION, DECLARATION AND
PERMANENT INJUNCTION**

: : JUDGMENT : :

- 1.** The Plaintiff has filed the present suit under the provisions of Specific Relief Act, 1963 for cancellation, declaration and permanent injunction against the defendant.

2. BRIEF FACTS OF THE PLAINT

The subject matter of the present suit pertains to a property situated in Saamli village, taluka Godhra, district Panchmahal having revenue survey no. 179/26k with revenue khata no. 205 admeasuring around 10 guntha and 5 guntha from total 0-31-24 hec-are-sq mtr agricultural land (*hereinafter referred as suit property*).

- 2.1)** A brief fact of the present case, as contended by the plaintiff is that originally the entire suit property bearing revenue survey

no. 179/26k belonged to Amirsinh Gamirbhai. That the defendant no. 1 to 9 are the linear descendants of Amirsinh Gamirbhai. That for monetary requirements and social functions, he gave the possession of 10 guntha land of the suit property from his share to the father of the plaintiff on 12/04/1988 on 50 rupees non judicial stamp paper bearing paper no.2050 in the presence of Raulji Ajabsinh Pratapsinh and Raulji Laxmansinh Nansinh. That since then the plaintiff father is farming the said land and yielding from the said land and accordingly the plaintiff has received the permissive possession of the said 10 guntha land of suit property. Similarly, Bhavabhai Chandubhai and Prabhatbhai Chandubha, who happens to be the ancestors of defendant no. 1 to 9 also gave the possession of 5 guntha land of the suit property from their share to the father of the plaintiff on 16/06/1986 on 10 rupees non judicial stamp paper bearing paper no.653 in the presence of Laxmansinh Nansinh, Ganpatsinh Prabhatsinh and Natwarsinh Ajabsinh Raulji. That since then the plaintiff father is farming the said land and yielding from the said land and accordingly the plaintiff has received the permissive possession of the said 5 guntha land of suit property. That the plaintiff farms the said both lands even today and accordingly they have the vacant and settled possession of the said land since last 35 years without any interruption.

- 2.2)** That the defendant no. 1 to 9 intentionally delayed the execution of the registered sale deed in favour of plaintiffs and that they didn't execute the said sale deed for the want of inflated market price on the said land.
- 2.3)** That inspite of having settled possession with plaintiff, the defendant no. 1 to 9 wrongfully transferred the title of the suit property in favour of defendant no. 10 through registered sale deed bearing serial no. 483/2023 dated 19/01/2023 by hiding the facts about the possession with the plaintiff in the said sale deed and thereby committed fraud. Due to which, the plaintiff is apprehended that the defendant no. 10 may cause interference with the plaintiff. That the plaintiff has taken objection pertaining to the revenue entry no.2980 entered in record of rights in relation to aforesaid registered sale deed vide Dispute case no.50/2023, which is pending. That as the sale has already been done, the registered sale deed executed by defendant no. 1 to 9 in favour of defendant no. 10 is not valid in the eyes of law.
- 2.4)** That plaintiff after having the title of the suit property has incurred huge cost and made the land fertile. That he has made the payment of entire consideration. That defendant no. 1 to 9 were supposed to execute the registered sale deed in favour of plaintiff. That the plaintiff is ready to make the payment of the cost of sale deed proceedings. That inspite of the trust and family relations, the defendants has wrongfully executed the sale deed in favour of defendant no. 10. So, he has filed the present suit

for cancellation, declaration and permanent injunction.

3. WRITTEN STATEMENT

Upon presentation of the suit, summons were issued and served upon the defendant. Accordingly, the defendants appeared before the Court through their advocate. Initially defendant no. 4 to 6 filed their objection against the suit vide Exh – 14 wherein the contentions of the plaintiffs have been denied by the defendants in toto. Thereafter rest of the defendants gave adopting pursis vide Exh-17.

3.1) From the written statement filed vide Exh-14 by defendants, it transpires that the defendant has taken strong objection as to the original ownership of the suit property. It is contended by the defendants that the contention of the plaintiff that the suit property was originally owned by the Amirsinh Gamirbhai is absolutely baseless and vague. That actually the suit property was originally owned by Maganbhai Gamirbhai and the effect of the same is mutated in the revenue record vide entry no. 532. Thereafter name of Chandubhai Gamir is mutated vide revenue entry no. 533. That the property was never owned and/or occupied by Amirsinh Gamirbhai. That the plaintiff has brought false suit with false contention of permissive possession. That he has not led even single document as to original ownership of the suit property with Amirsinh Gamirbhai.

3.2) That it is contended by the plaintiff that his father got the possession of the suit property on 12/04/1988 and 16/06/1986 on

non-judicial stamp paper. However, the document so brought is unregistered document and it comprise of visible alterations in survey numbers with different inks. That the plaintiff has on one side contended that he obtained the possession of suit property from Bhavabhai Chandubhai and Prabhatbhai Bhavabhai, but at the same time has not joined their legal heirs in the present suit inspite of they being necessary party.

- 3.3)** That it is contended by the plaintiff that he is having the uninterrupted possession of the suit property since last 35 years. And that he has incurred expenses to make the suit property fertile but he has not led a single document in support of his possession
- 3.4)** That the plaintiff has never came to the defendants for the execution of sale deed. And if the plaintiff was under impression that defendant will execute sale deed then why he waited for such a long time from the year 1986 till the sale deed executed in favour of defendant no. 10. That the defendant no. 1 to 9 are the owner of the suit property which is reflected from the record of rights and that they have rightfully executed the sale deed in favour of defendant no. 10 after receiving sale consideration so defendant no. 10 becomes the bonafide subsequent purchaser of the suit property. So there lies no cause of action for the suit of the plaintiff and accordingly, prayed to reject the suit of the plaintiff with cost.

4. EVIDENCES LED BY PARTIES

Plaintiff has produced following oral and documentary evidences to establish his case.

ORAL EVIDENCE BY PLAINTIFFS

Sr. No.	PARTICULARS	EXHIBIT
1	Deposition of Plaintiff Mahendrabhai Arjunsinh Raulji	23

DOCUMENTARY EVIDENCE BY PLAINTIFF

Sr. No.	PARTICULARS	EXHIBIT
1.	Stamp paper document dated 12/08/1984	26
2.	Stamp paper document dated 16/06/1986	27
3.	Registered sale deed bearing serial no. 483/2023	28
4.	Village form no.7	29
5.	Village form no. 12	30
6.	Entry no. 2980	31
7.	Objection filed in dispute case	32
8.	Dispute case no. 50/23	33
9.	Aadhar card of plaintiff	34
10.	Collector letter no. stamp/panchmahal/vechan dastavej/2024/149 dated 10/01/2025 with challan	48-49
11.	Collector letter no. stamp/panchmahal/vechan dastavej/2024/150 dated 10/01/2025 with challan	50-51
12.	Collector letter no. stamp/panchmahal/R.Dmu.60 /2023/168 dated 20/01/2025	55
13.	Collector letter no. stamp/panchmahal/R.Dmu.60 /2023/169 dated 20/01/2025	56
14.	Order passed in Dispute case no. 50/23	95

Thereafter upon tendering closing pursis by plaintiff vide Exh-57, the matter proceeded to the defendant evidence.

Defendants have produced following oral and documentary evidences to contest the case.

ORAL EVIDENCE BY DEFENDANTS

Sr. No.	PARTICULARS	EXHIBIT
1	Deposition of defendant no. 1 Bhupatbhai Mohanbhai Raulji	62
2	Deposition of defendant no. 10 Ilyas Yakub Durvesh	81

DOCUMENTARY EVIDENCE BY DEFENDANTS

Sr. No.	PARTICULARS	EXHIBIT
1.	Entry no. 532, 533	66-67
2.	Pedhinama	76

Thereafter closing pursis was moved by defendant no. 1 to 9 vide Exh-78. As defendant no. 10 failed to produce any further evidence, his right to further evidence was closed on 13/10/2025, upon application. Thereafter, the matter proceeded to the argument stage.

5. ARGUMENTS BY BOTH THE PARTIES**5.1 BY PLAINTIFF**

The Learned Advocate of the plaintiff has submitted the written arguments vide Exh-89 & 94 which are in line with the plaint and so the same has not been repeated for the sake of brevity and repetition. Primarily the major argument of the plaintiff is pertaining to the fact that the possession of the plaintiff on the suit property is admitted by the defendant in deposition. And that the stamp of the document has been paid by the plaintiff by impounding procedure during the pendency of the case, and the same is not challenged by the defendant till date so the said document becomes as good as registered sale deed and thereby the plaintiff gets the title of the suit property so that way as well the plaintiff suit needs to be allowed.

5.2 BY DEFENDANT

The Learned Advocate of the defendant has submitted the written arguments vide Exh-92 which are also in line with the written statement and so the same has not been repeated for the sake of brevity and repetition.

6. ISSUES

To adjudicate the dispute between the plaintiffs and the defendants, following issues were framed vide **Exh - 19**.

1. શુ વાદી પુરવાર કરે છે કે, દાવાવાળી જમીન તેમના વડીલોએ પ્રતિવાદી નં. ૧ થી ૯ ના વડીલ પાસેથી તા. ૧૨-૦૪-૧૯૮૮ ના રોજ રૂ.૪૦૧ તથા તા.૧૬/૦૬/૧૯૮૬ના રોજ રૂ. ૩૫૦/- વેચાણ અવેજ ચુકવીને તે અંગેના વેચાણ લેખ કરી વેચાણ રાખેલ છે તથા ૩૫ વર્ષ ઉપરાંતથી દાવાવાળી જમીનમાં વાદીઓનો કબજો ભોગવટો આવેલો છે ?
2. શુ વાદી પુરવાર કરે છે કે, પ્રતિવાદીઓને અનેકવાર કહેવા છતાં તેઓ દાવાવાળી જમીનનો રજુ. વેચાણ કરી આપતા નથી ?
3. શુ પ્રતિવાદી પુરવાર કરે છે કે, અમીરસીંહ ધમીરસીંહ તેમના વડીલ નથી તથા દાવાવાળી જમીનમા અમીરસીંહ ધમીરસીંહનો હક્ક-હિસ્સો આવેલો નથી ?
4. શુ પ્રતિવાદી નં.૧૦ પુરવાર કરે છે કે, તેઓ દાવાવાળી જમીનના શુદ્ધ બુદ્ધીના ખરીદનાર છે અને હાલ દાવાવાળી જમીનમાં તેમને કબજો ભોગવટો આવેલો છે ?
5. શુ વાદીના દાવાને સમય મર્યાદાનો બાદ નડે છે ?
6. શુ વાદીના દાવાને પક્ષકારોની ખામીનો બાદ નડે છે ?
7. શુ વાદીનો દાવો કાયદેસર ટકવાપાત્ર છે ?
8. શુ વાદી માંગ્યા મુજબની દાદ મેળવવા હક્કદાર છે ?
9. શુ હુકમ ? શુ હુકમનામું ?

7. FINDINGS OF THE COURT

1. *first part : In negative and second part : in partially affirmative*
2. *In negative*
3. *In affirmative*
4. *first part : In affirmative and second part : in negative*
5. *In affirmative*
6. *In affirmative*
7. *In negative*
8. *In negative*
9. *As per final Order*

:: REASONS ::**8.1 ISSUE NO. 1 & 3**

1. શુ વાદી પુરવાર કરે છે કે, દાવાવાળી જમીન તેમના વડીલોએ પ્રતિવાદી નં. ૧ થી ૯ ના વડીલ પાસેથી તા. ૧૨-૦૪-૧૯૮૮ ના રોજ રૂ.૪૦૧ તથા તા.૧૬/૦૬/૧૯૮૬ના રોજ રૂ. ૩૫૦/- વેચાણ અવેજ ચુકવીને તે અંગેના વેચાણ લેખ કરી વેચાણ રાખેલ છે તથા ૩૫ વર્ષ ઉપરાંતથી દાવાવાળી જમીનમાં વાદીઓનો કબજો ભોગવટો આવેલો છે ?
૩. શુ પ્રતિવાદી પુરવાર કરે છે કે, અમીરસીંહ ઘમીરસીંહ તેમના વડીલ નથી તથા દાવાવાળી જમીનમા અમીરસીંહ ઘમીરસીંહનો હક્ક-હિસ્સો આવેલો નથી ?

Now as both the above issues are interlinked, the same are discussed concurrently so as to prevent repetition. On bare perusal of the issue no. 1, it is apparent that the said issue can be broken down in 2 parts for better appreciation of evidence. So, let's discuss both the parts, one by one, wherein issue no. 3 will be discussed alongwith first part of issue no. 1.

- Let's deal with the 1st part of issue together with issue no. 3, it is the case of the plaintiff that originally the entire suit property bearing revenue survey no. 179/26k solely belonged to Amirsinh Gamirbhai. That the defendant no. 1 to 9 are the linear

descendants of Amirsinh Gamirbhai. That for monetary requirements and social functions, he gave the possession of 10 guntha land of the suit property from his share to the father of the plaintiff on 12/04/1988 on 50 rupees non judicial stamp paper bearing paper no.2050 in the presence of Raulji Ajabsinh Pratapsinh and Raulji Laxmansinh Nansinh. Similarly, Bhavabhai Chandubhai and Prabhatbhai Chandubhai, who also happens to be the ancestors of defendant no. 1 to 9 also gave the possession of 5 guntha land of the suit property from their share to the father of the plaintiff on 16/06/1986 on 10 rupees non judicial stamp paper bearing paper no.653 in the presence of Laxmansinh Nansinh, Ganpatsinh Prabhatsinh and Natwarsinh Ajabsinh Raulji. That since then the plaintiff father and after his demise, he himself is farming the said land and yielding from the same and accordingly the plaintiff has received the permissive possession of the said 15 guntha land of suit property. That he has also incurred huge cost to make the land fertile. To which, the defendant has objected by contending that Amirsinh Gamirbhai was neither the owner occupant of the suit property. Nor are the defendant no. 1 to 9 linear descendants of Amirsinh Gamirbhai. That Maganbhai Gamirbhai was actually the owner and occupant of the part of suit property and the effect of the same is mutated in the revenue record vide entry no. 532. That they have received the title of the suit property through ancestral rights and that their names are reflected in record of rights of the suit property as well. Further raised

objection that the document so brought is unregistered document which comprise of visible alterations in survey numbers with different inks. That the plaintiff has on one side contended that he obtained the possession of other part of suit property from Bhavabhai Chandubhai and Prabhatbhai Bhavabhai, but at the same time has not joined all their legal heirs in the present suit inspite of they being necessary party.

Now keeping in mind the said contentions and objections, when the record of the case is thoroughly gone through, then it transpire that plaintiff has sought declaration, cancellation and permanent injunction relief based on the documents marked Exh-26 & 27. Upon perusal of the said documents, it is apparent that the said documents are non-judicial stamp papers executed on 12/04/1988 and 16/06/1986 respectively.

- 1) Firstly let's look into the legal technicalities of the said documents. Upon bare perusal of the said documents, it is apparent that they are basically unregistered documents. Here, it is notable to state that during the pendency of the case, plaintiff gave the application to impound the said unregistered documents for the payment of deficit stamp fees, which was rightly allowed by the then Hon'ble Trial Court. And accordingly the said documents have been duly stamped from the Collector through certificates vide Exh-55 & 56 respectively. Now purely based on the said certificates, it is argued by the plaintiff that as the documents has been duly stamped now, and as the same procedure of impounding and stamp payment has

not been challenged by the defendants, said stamped unregistered documents becomes equivalent to registered sale document. Thereby the plaintiff gets the title of the said suit property.

However, there is no doubt that the said unregistered documents have been duly stamped during the pendency of the present suit. But even if the plaintiff has now paid the stamp duty, that only addresses the stamp deficit, it doesn't cure the absence of registration. **SECTION 17 AND SECTION 49 OF THE REGISTRATION ACT** thoroughly addresses the importance of registration of document and its effect, which clearly clarifies that mere stamp duty payment doesn't mean in any way that the said documents become equivalent to the registered document. Moreover effect of non-registration has been well settled in the case of **K. B. SAHA & SONS PVT. LTD. V. DEVELOPMENT CONSULTANT LTD.** that an unregistered document can be used for collateral purposes permitted under section 49 but it cannot prove transfer of title. So, just by making stamp duty payment, the unregistered document doesn't become registered in the eyes of the law. Even if the certificate issued by the Collector in respect of the both documents are gone through, which is reproduced below, it is apparent that no certificate pertaining to registration of the document has been issued by the concern authority.

“જેથી સદર પત્રથી આ અનરજીસ્ટર્ડ વેચાણ દસ્તાવેજ અન્વયે સ્ટેમ્પ ડ્યુટી ભરાયેલ હોવા અંગેનું પ્રમાણપત્ર આપવામા આવે છે. તથા સદર દસ્તાવેજથી થયેલ તબદીલીઓની કાયદેસરતા કે સાતત્યતા અત્રે ચકાસી શકાય તેમ જ હોઈ, ચાલુ દાવા અન્વયે આપશ્રીની કોર્ટ દ્વારા તે સંબંધી ન્યાયનિર્ણય થવા આ પ્રમાણપત્ર રજુ કરીએ

છીએ.”

And the Hon’ble Apex Court has already settled the law in the case of **SURAJ LAMP & INDUSTRIES (P) LTD V. STATE OF HARYANA** that the unregistered sale deed doesn’t convey title. That the title to immovable property passes only by registered conveyance. An agreement to sell or similar document does not by itself transfer ownership.

- 2) Now let’s look into the factual aspects of the said documents. It is the say of the plaintiff that out of the said documents, one was executed in favour of plaintiff’s father by Amirsinh Gamirbhai in the year 1988 and other one was executed in favour of plaintiff’s father by Bhavabhai Chandubhai and Prabhatbhai Chandubhai in the year 1986. Now, here it is inevitable to note that plaintiff has brought nothing on record to prove that the title of 10 guntha of the suit property was with Amirsinh Gamirbhai and 5 guntha with Bhavabhai Chandubhai and Prabhatbhai Chandubhai, in the first place. No pedhinama pertaining to Amirsinh Gamirbhai has been brought on record by plaintiff in the present suit except mere contention that defendant no. 1 to 9 are linear descendants of Amirsinh Gamirbhai, which has been strongly negated by the defendants by placing reliance on pedhinama vide Exh-76. Furthermore, it is admitted by the plaintiff in his deposition vide Exh-23 that Amarsinh Gamirsinh is the brother of Magansinh Gamirsinh and Chandubhai Gamirsinh and that the name of Magansinh and Chandusinh has been entered in record of rights

vide entry no. 532 & 533 respectively, but name of Amarsinh is not on record of rights. So, the defendant has been successful in establishing that the defendant no. 1 to 9 are not the linear descendants of Amarsinh Gamirsinh and that Amarsinh Gamirsinh is not on the record of rights of suit property. Furthermore it is admitted by the plaintiff that he has not brought on record anything to establish that suit property also has the name of Amarsinh Gamirsinh in below words.

એ વાત ખરી છે કે, દાવાવાળી જમીન અમરસિંહ ના નામે હોય તે દર્શાવતો કોઈ પુરાવો
આ કામે રજુ કરેલ નથી

This answers issue no. 3 in affirmative.

Moreover, it is admitted fact that Bhavabhai Chandubhai or Prabhatbhai Chandubhai or any of their linear descendants has not been joined in the present case nor has been examined by plaintiff, inspite of objections raised and issue framed in respect of the same.

Moving ahead, upon bare perusal of the said unregistered stamped documents, it is most apparent on the face of record that there are alterations in the survey number of both the documents with blank ink. Inspite of objections raised pertaining to the same, the plaintiff has remained silent and not given any explanation over the said aspect altogether. So, when there exist discrepancy pertaining to genuineness of any document and when none of the witnesses (including parties of the document) has been examined to remove the same, then the authenticity of the said document remains in cloud. So, this Court firmly believes that the stamped but unregistered documents cannot be considered to be valid

document of sale in the eyes of law, this answers first part of the issue no. 1 in negative.

- Now, let's move on to the 2nd part of issue which is pertaining to the possession of the plaintiff on the suit property. It is the case of the plaintiff that since the day of execution of unregistered documents which goes back to the year 1988 and 1986, the plaintiff father was farming the said 10+5 guntha land and yielding from the said land and accordingly the plaintiff has received the permissive possession. That the plaintiff farms both the lands even today and accordingly they have permissive possession of the said land since last 35 years without any interruption. Now based on that, when the record of the case is scrutinized then it is found that the plaintiff has been successful in bringing on record below admission from the defendant no. 1, in his deposition vide Exh-62 :

એ વાત ખરી છે કે અર્જુનભાઈ પ્રભાતસિંહ એ દાવાવાળી જમીનમાં વચ્ચેના ભાગમાં ૧૦ ગુંઠા અને ૫ ગુંઠા જમીનમાં ખેતી કરતા હતા. એ વાત ખરી છે કે, હાલમાં મહેન્દ્રભાઈ અર્જુનસિંહ તેમના પિતાના અવસાન બાદથી એ દાવાવાળી જમીનમાં વચ્ચેના ભાગમાં ૧૦ ગુંઠા અને ૫ ગુંઠા જમીનમાં ખેતી કરે છે. ...

So from the above deposition as well, it transpire that the plaintiff is farming 10+5 guntha land in the middle of the suit property. So, it is established that the plaintiff is farming the suit property. Now plaintiff has admitted in his deposition vide Exh-23 below facts :

એ વાત ખરી છે કે, દાવાવાળી જમીન છેલ્લા ૩૫ વર્ષથી અમારા કબજા ભોગવટામાં છે તે દર્શાવતો કોઈ દસ્તાવેજ પુરાવો રજુ કરેલ નથી.

So, although possession of the plaintiff on the suit property for

farming purpose is established but the said possession prevails since 35 years is not on record. So, this answers second part of the issue no. 1 in partially affirmative.

8.2 ISSUE NO. 2

2. શુ વાદી પુરવાર કરે છે કે, પ્રતિવાદીઓને અનેકવાર કહેવા છતાં તેઓ દાવાવાળી જમીનનો રજી. વેચાણ કરી આપતા નથી ?

Now in order to determine the said issue, it is necessary to go through the deposition of plaintiff vide Exh-23 pertaining to above issue which is as follows :

એ વાત ખરી છે કે, પ્રતિવાદી નં. ૧ થી ૯ ને દસ્તાવેજ કરી આપવા માટે કોઈ નોટીસ કે લેખીત સુચના આપેલ હોય તેમ બનેલ નથી.

Moreover, plaintiff has not brought on record as to when, where, before whom and how many times, the plaintiff approached the defendants for the execution of registered sale deed. In turn, this answers the issue no. 2 as negative.

8.3 ISSUE NO. 4

4. શુ પ્રતિવાદી નં.૧૦ પુરવાર કરે છે કે, તેઓ દાવાવાળી જમીનના શુદ્ધ બુદ્ધીના ખરીદનાર છે અને હાલ દાવાવાળી જમીનમાં તેમને કબજો ભોગવટઓ આવેલો છે ?

Now, again the said issue has two parts. First let's discuss whether the defendant no. 10 who happens to be the subsequent purchaser is the bonafide purchaser or not. Now the burden of proof was upon the defendant no. 10 to prove that he is bonafide purchaser. Based on the same, when the record is scrutinized it tran-

spire that the defendant no. 10 has gone through the record of right of the suit property prior to the purchase and has made payment of entire sale consideration. However, he has failed to do proper inquiry about the suit property on ground level and doesn't have the knowledge or doesn't remember the survey details of the suit property or the family relations of the seller. Based on the same, plaintiff has argued that he is not a bonafide purchaser.

Now, although the plaintiff has been able to bring the contrast and show that the subsequent purchaser has not did proper inquiry. But the facts that the record of rights showed the defendants as owner, there was no registered encumbrance, there was no mutation in plaintiff's favour, no registered document existed in favour of the plaintiff makes the purchaser's stand quite strong. Now so far as the concept of bonafide purchaser is concern, there is no express provision pertaining to the same but the said provision has been broadly discussed in various Acts like Transfer of Property Act, Specific Relief Act, from which it can be stated that one who had the notice and still purchases the property in dispute cannot be considered a bonafide purchaser. It was the duty of the defendant no. 10 to make due enquiry about the suit property on record as well on ground level. It was his duty to go through title clearance of suit property and invite objections regarding title of suit property. Although he has not made proper requisite inquiry prior to purchase, but the fact that there exists no registered document nor any mutation entry in respect of suit property, which

shall have brought the direct or constructive notice to the subsequent purchaser about the property dispute, brings the subsequent purchaser in the category of bonafide purchaser. Hence I answer the first part of issue no. 4 in affirmative. Now so far as the second part is concern, it is apparent from the deposition of plaintiff and defendant no.1 that the plaintiff is farming on the said land. So, this answers the second part of issue no. 4 in negative.

8.4 ISSUE NO. 5

5. શુ વાદીના દાવાને સમય મર્યાદાનો બાદ નડે છે ?

Now from the bare pleading it shows that as the defendants executed sale deed in favour of defendant no. 10 and made the revenue entry, the plaintiff has brought the present suit from which it appears as if the suit is not barred by law of limitation. But here the plaintiff is not the person with clear title of the said suit property. He has brought the suit based on unregistered document which was executed in the year 1986 & 1988. Although he has been successful in establishing on record that he is farming on the said land and that he has permissive possession but that doesn't make him the owner of the suit property. He was supposed to execute the registered sale deed from the defendant no. 1 to 9 in his favour within period of limitation. But from the record as well as from the reasoning given under para 8.2, it is clear that there is nothing on record to show that the plaintiff approached the defendants for the execution of sale deed between 1986 to 2023. Hence the present suit is expressly

barred by the law of limitation. Accordingly, I answer the issue no.5 in affirmative

8.5 ISSUE NO. 6

6. શુ વાદીના દાવાને પક્ષકારોની ખામીનો બાદ નડે છે ?

Now, the afore said issue has already discussed in the reasoning given under para 8.1, that although it is the say of the plaintiff that his father purchased 5 guntha land from Bhavabhai Chandubhai and Prabhatbhai Chandubhai, it is admitted fact by plaintiff that Bhavabhai Chandubhai or Prabhatbhai Chandubhai or any of their linear descendants has not been joined in the present case nor has been examined by plaintiff, inspite of objections raised from the very first instance and issue framed in respect of the same. So, when the plaintiff is coming up with the unregistered document and shows his possession on the land and specially when there are apparent alterations in the said document with different ink, then it was his duty to examine the heirs of the executors pertaining to the said defects so as to establish his case, which the plaintiff has miserably failed to do. Hence, this answers the issue no. 6 in affirmative.

8.6 ISSUE NO. 7 & 8

7. શુ વાદીનો દાવો કાયદેસર ટકવાપાત્ર છે ?

8. શુ વાદી માંગ્યા મુજબની દાદ મેળવવા હક્કદાર છે ?

As already discussed above, the plaintiff suit for cancellation, declaration and permanent injunction is solely based on the unregistered documents going back to 1986 with alterations. Even if the said document is assumed genuine for a moment, then also the plaintiff must establish who exactly owned the property in

1986/1988, how the executor derived ownership and whether he had the authority to transfer it. If no title documents, revenue record is there of original owner, then the plaintiff cannot derive better title than executor as per the principle of “**Nemo dat quod non habet**”, meaning thereby, a person cannot transfer a better title than he possess. Now, plaintiff has established that he is farming on the land and thereby proved his possession, but possession alone doesn’t invalidate a registered sale deed. Plaintiff has not come up with the prayer of adverse possession but has actually come up based on the unregistered document. Long possession may support plaintiff’s claim but it does not establish his ownership automatically, in the presence of registered sale deed. So, for cancellation of a registered sale deed, the plaintiff must first establish his existing legal right on the property which is affected by that deed. Here, the plaintiff’s document is unregistered, executor’s ownership is not proved then how come the prayer of cancellation or declaration or permanent injunction sustain, solely based on possession. Now, the plaintiff has brought the relief of declaration under the guise of performance of contract. Firstly after the amendment in the Specific Relief Act, the prayer for the specific relief act must be expressly prayed. Otherwise also, the unregistered stamped documents not only have cloud of doubt due to alteration with black ink but they are also hit by the law of limitation. Silence from 1986 to 2023 is not small delay, which can be overseen.

Moreover, there is one point of argument which has been left to be discussed pertaining to revenue entry of the registered sale deed. Plaintiff has placed his reliance on Exh- 95 i.e. an order passed in Dispute case no. 50/23 before the concern revenue authority, wherein the revenue entry arisen out of the registered sale deed i.e. revenue entry no. 2980 has been cancelled. Upon perusal of the said order vide Exh-95, it is apparent that the as per the said order, there is no conclusive evidence before the concern revenue authority on whether the subsequent purchaser i.e. defendant no. 10 in our case is an agriculturist or not. But the mutation entry has been cancelled solely on the fragmentation issue. And that the concern revenue authority has consciously refrained from deciding the validity of the registered sale deed, rather it has merely refused the mutation on account of fragmentation i.e. revenue issue. Now, cancellation of revenue entry does not by itself cancel the registered sale deed. It is well settled principle that the revenue enteries generally used for fiscal purpose, it doesn't automatically mean the registered sale deed has become void. Now, this Court firmly believes that the plaintiff seeking declaration of title should first establish his own title rather than relying on weakness of defendant's title.

Thus, for the reasons recorded under para 8.1 to 8.5 together with the reasoning mentioned above, this Court firmly believes that when the plaintiff has miserably failed to prove any right over the suit property and has failed to bring any evidence as

to his clear title over the suit property. Then there exist no reason to grant any relief sought by the plaintiff. Accordingly, I answer the issue no. 7 & 8 in negative.

8.7 In view of the above discussion and reasons recorded, I pass following order for Issue No. 9 in the interest of justice :

O R D E R

- 1.** The plaintiff's suit is hereby disposed as dismissed.
- 2.** Parties to bear their own cost.
- 3.** Decree be drawn accordingly.
- 4.** Interlocutory applications (if any) hereby stands disposed of, accordingly.

Pronounced and signed in open Court today on 17th July, 2026

DATE : 17/07/2026

**(JINSY JOSEPH THARAYIL)
ADDITIONAL CIVIL JUDGE
PANCHMAHAL AT GODHRA
GJ 01652**