Received on	18/06/2014		
Registered on	18/06/2014		
Decided on	30/06/2026		
Duration	**Years**	**Months**	**Days**
	12	00	12

Exhibit: _______

IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE AT SANAND, AHMEDABAD (RURAL)

Special Civil Suit **No. 491 of 2017**
(Old SPCS No. 385 of 2014)

[1]	**Ravi (Hansol) Non-Trading Corporation,** Through its Secretary, Manojbhai Bhikhabhai Modi Aged 50 years, Occupation Business, **Residing at** 501-502, Agrawal Complex, C.G. Road, Ahmedabad.	
[2]	**Pushparaj Corporation,** A Partnership Firm - Through its Partner Kalpeshbhai Ramniklal Seth Aged 45 years, Occupation Business, **Residing at** 501-502, Agrawal Complex, C.G. Road, Ahmedabad.	**Plaintiffs**

VERSUS

[1]	**Nishant Bhavin Shah** Aged Adult, Occupation Business, **Residing at** 208, Asharvad Paras, Opp. Prahladnagar Garden, Corporate Road, Prahladnagar Ahmedabad - 380 015. **Also At** 3216, First Floor, K.S. Plaza, Street 30-31, Karol Baug, New Delhi - 110 005.	**Defendant**

Subject: -Suit for Declaration as well as cancellation of Registered Allotment Deed and Perpetual Injunction

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Appearance: -
Ld. Advocate Mr. A.P. Solanki for the Plaintiffs
Ld. Advocate Mr. M.M. Kaushik for the Defendant

This Court has set out judgment in Index form for ease of reference and convenience.

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

1. The present suit has been filed by the Plaintiffs for Declaration as well as cancellation of registered Allotment Deed dated 30-03-2011 and Perpetual Injunction against the Defendant. The suit pertains to land bearing Survey Nos.416, 417/1, 417/2, 419/2, 420, 421/1, 405/2, 407/paiki, 322/1, 314/3, 314/4, 323/3, 324/2/1 paiki, 333/2, 336, 345/1, 403 paiki, 357/paiki/2, 414, 412, 427 paiki, 428/1 and 419/1 in the scheme known as "Pushparaj Village" in Sector-3 constructed and situated on the non-agricultural land being Final Plot No.31 having area admeasuring 3090 Square Yards (2583.61 Square Meters) of Mouje Kundal, Taluka Sanand, District Ahmedabad (Hereinafter referred to as "the suit property").

Earlier, the Plaintiffs have filed this suit in the year 2014 and thereafter, upon transfer of the suit in Civil Court at Sanand, new number was given as Special Civil Suit No.491 of 2017.

Brief facts of the Plaintiffs' case: -

2. That the Plaintiff no.1 is a Trading Corporation registered under the Bombay Non-Trading Corporation Act, 1959 vide Regis. No.8334 on date 14-08-1996 and Manojbhai Bhikhabhai Modi act as the Secretary of the said corporation. It has been averred by the Plaintiffs that, they have purchased approx. 15.00 Lakhs Square Yards land with different Revenue Survey numbers of Mouje village Kundal, Taluka Sanand, District Ahmedabad in the name of Plaintiff No.1 - Ravi (Hansol) Non-

Trading Corporation and announced a scheme named "Pushparaj Village" through the said corporation, wherein different plots of 500, 1000, 2000, 3000 Sq. Yds. were allotted. In the said scheme, a plan of open plots of different areas including swimming pool, gymnasium, modern rooms, indoor-outdoor games, children park, open garden, restaurant facilities etc. with modern facilities was laid.

3. It has been further averred that, for obtaining necessary NA permission under the scheme of ***'Pushparaj Village'*** as well as for preparing layout plans and get them approved before the revenue authorities for carrying-out development work and construction of roads, paths, common amenities, street lights, club houses, gardens etc. as per plan, Memorandum of Understanding was entered into between the Plaintiff No.1 Corporation and the Plaintiff No.2 - M/s. Pushparaj Corporation on 27-12-2008. As per the conditions of said agreement, the development work of the scheme was assigned to the Plaintiff No.2 and as per the terms of the agreement, the Plaintiff no.2 got all the right to recover the booking amount and the expenses incurred on the development of the scheme from the member.

4. It has been further averred by the Plaintiffs that, in the year 2010, the Defendant herein contacted the Plaintiffs and requested to allocate him plots of different areas in the scheme of Pushparaj Village and the Plaintiffs allotted the plots to the Defendant. It has been further averred that, later on, the Defendant asked to allocate the plot at the cost of the members and when arrangement of sale consideration be made, he will pay the sale consideration price and requested to register allotment deed of said plot in his favour and upon the trust over the Defendant, the Plaintiffs agreed to for the same.

5. It has been further averred that, the Defendant consented to purchase different plots and in respect thereof, the allotment deed regarding nine plots were registered and executed in favour of the Defendant on different dates and separate registration allotment deed of about 03 plots were executed in the name of his son Nishant Bhavin Shah on different dates.

6. It has been further averred that, out of above allotment deeds, one allotment deed with respect to the suit property registered and executed on 30-03-2011 vide Sr. No.2625 for the sum of ₹10,81,500/- by stating that, the cheque No.000050 drawn on Bank of India, Panchvati Branch, Ahmedabad for ₹10,81,500/- to be paid. It has been averred that, upon the request, the Defendant issued the said cheque on 21.04.2014 by stating that, the same be cleared, but after depositing the said cheque, it came to know that, they said cheque was returned with an endorsement “Insufficient Funds’. It has been averred that, upon the trust and faith on the Defendant, the Plaintiffs executed an allotment deed to and in favour of the Defendant, but till date, the amount of entire sale consideration of above cheque was not paid by Defendant. It has been further averred that, allotment deed has been registered and executed in favour of the Defendant, but the possession of the suit property has not been handed over to the Defendant herein and as of now, the possession lies with the Plaintiffs.

7. It has been further averred that, the Defendant has not paid the entire sale consideration amount to the tune of ₹10,81,500/- to the Plaintiffs herein and accordingly, the Plaintiffs instituted the present suit against Defendant with a prayer to cancel the said allotment deed dated 30-03-2011 executed in favour of the Defendant to be declared as illegal, invalid and voidable.

8. **Cause of action :-** The cause of action for filing the suit are arisen in the year 2010, when Defendant contacted the Plaintiffs and requested to allocate him plots of different areas in the scheme of 'Pushparaj Village' and the Plaintiffs allotted the plots to him, when the allotment deed registered on 30-03-2011 vide Sr. No.2625 for ₹10,81,500/- and upon the faith over the Defendant, the Plaintiffs executed an allotment deed in his favour, but till date, amount of sale consideration was not paid by Defendant, when the cheque No.000050 given by the Defendant returned on 21-04-2014 and the possession of the suit property has not been handed over to the Defendant. Hence, there is a need to file this suit against the Defendant declaring the allotment deed dated 30-03-2011 as illegal, invalid and voidable.

9. The following prayers have been prayed by the Plaintiffs:

(A) May be pleased to declare registered allotment deed No.2625 dated 30-03-2011 in respect of suit property executed in favour of the Defendant as illegal, null and void and to declare that, on the basis of said allotment deed, the Defendant having got no right, interest over the suit property.

(B) May be pleased to restrain the Defendant, himself and his servant, agent, assignee, heirs or any other person shall not interfere, obstruct, interfere with or cause to be interfered with in any way whatsoever in the direct possession of the Plaintiffs into suit property.

(C) May be pleased to allow any other relief which may think just and proper.

(D) May be pleased to direct the Defendant to pay cost of suit.

Submission on behalf of Defendant

10. Upon the institution of present suit, summons was issued against the Defendant, wherein the Defendant appeared before this Court through his Ld. Advocate Mr. M.M. Kaushik, but in spite of been provided with sufficient opportunity remain failed to file his part of written statement. Finally, his right to submit the written statement was ordered to be closed.

Issue arises for consideration of this court to adjudicate the suit

11. Considering the pleadings of the plaint, this Court was pleased to frame the necessary issues vide Exh.24 on 19-01-2026 as per Order 14 of the CPC: -

-:: <u>I S S U E S</u> ::-

1	Whether the Plaintiffs prove that, approx. 15 Lakhs Square Metres. of land with different Survey numbers located in the sim of Mouje Village Kundal was purchased in the name of the Plaintiff No.1 - Ravi (Hansol) Non-Trading Corporation?
2	Whether the Plaintiffs prove that, upon the trust and faith over the Defendant, the Plaintiffs executed Allotment Deed in favour of Defendant on 30-03-2011, which was duly registered in the office of Sub-Registrar at Sanand vide Sr. No.2625 and the Defendant has stated to give a cheque No.000050 for ₹10,81,500/- drawn on Bank of India, Panchvati Branch, Ahmedabad, which was not given to the Plaintiffs and Defendant has not paid total sale consideration of ₹10,81,500/- to the Plaintiffs and thus, said allotment deed is illegal from the beginning, invalid, unsubstantiated and null and void ?
3	Whether the Plaintiffs prove that till date, the suit property is in possession of the Plaintiffs?
4	Whether the Defendant proves that, the suit of the Plaintiffs is barred by any of law as the contention raised vide Exh.14?

5	Whether the Plaintiffs are entitled to get the relief as prayed for?
6	What Order and Decree?

The Court finding to the above issues are as under:

1	In Affirmative
2	In Negative
3	In Negative
4	In Negative
5	In Negative
6	As per Final Order.

12. In order to prove their case, Plaintiffs have produced the following oral as well as documentary evidence in support of their pleadings by placing on record the following documents as under: -

<u>DOCUMENTARY EVIDENCE</u>

Sr. No.	Particulars	Exhibit
1	Certified copies of Index-sheet in respect of Revenue Survey Nos.417/2, 417/1, 419/2, 407/ paiki, 416, 420, 422/1, 421/1, 422/2, 335/1, 406, 405/4, 405/3, 421/2, 408, 411/1, 414, 412, 428/1, 427, 419/1, 314/4, 314/3, 322/1, 312, 357/2, 405/2, 323/3, 323/1, 314/1, 322/2, 324/2/1/2, 333/2, 336, 345/1, 357/paiki, 324/2/1/paiki/4,	27

	403/paiki, 314/4 and 310 regarding sale transaction in favour of the Plaintiffs	
2	Original two photographs of the disputed suit property (Plot No.31)	28

13. The Plaintiffs have been provided with sufficient opportunity to produce their part of evidence and after producing the above evidences, produced the closing pursis vide Exh.29 declared their part of evidence to be closed. Thereafter, the Defendants have also been provided with an opportunity to lead their evidence, but they have not adduced either ocular or documentary evidence. Hence, this Court has passed an order to close the right of Defendants to adduced evidence.

14. While appreciating evidence on records, plaintiff also not preferred application to exhibit certain document based on which reliance is placed by him for claiming his right and defendant also not contended the same and choose not to file written statement and only filed affidavit vide Exh 14 to argue their case before Court. Considering these facts Court had read the important document like copy of allotment sale deed and photocopies of the demand notices and the relevant RPAD acknowledgments, Cheque Return Memos etc. for decide issues framed to adjudicate the present dispute.

Plaintiff Oral augments

15. Ld. Advocate for the Plaintiffs has put forward his oral argument stating that, the Plaintiffs are the owners and occupiers and in possession of the disputed property as the allotment deed executed in favour of the Defendant is without possession and without consideration. He further argued that the Plaintiffs have purchased approximately, 15 Lakhs Square Yards of land with different Revenue Survey numbers in the sim of Village Kundal in the name of Ravi (Hansol) Non-Trading Corporation and announced a scheme namely, "Pushparaj Village" wherein different plots of 500, 1000, 2000, 3000 Square Yards were allotted and in the said scheme, plan of open plots of different areas including swimming pool, gymnasium, modern rooms, indoor-outdoor games, children park, open garden, restaurant facilities etc. with modern facilities was laid and for obtaining NA permission for the lands under the scheme of 'Pushparaj Village' as well as for preparing layout plans and get them approved in the revenue authorities for carrying-out development work and construction of roads, paths, common amenities, street lights, club houses, gardens etc. as per plan, Memorandum of Understanding Agreement was entered between the Plaintiff No.1 Corporation and the Plaintiff No.2 on 27-12-2008. He further argued that, as per the conditions of said agreement, development work of the scheme was assigned to the Plaintiff No.2 and as per the terms of the said agreement, Plaintiff no.2 got all the right to recover the booking amount and expenses incurred for development of the scheme from the member.

He further argued that, in the year 2010, the Defendant contacted the Plaintiffs and requested to allocate him plots of different areas in the scheme of Pushparaj Village and the Plaintiffs allotted the plots to the Defendant and later on, the Defendant asked to allocate the plot at the cost of the members and when arrangement of sale consideration be made, he will pay the sale consideration amount and requested to execute Allotment Deed of said plot in his favour. He further argued that, Defendant consented to purchase different plots and in respect thereof, the allotment deed regarding nine plots were executed in favour of the Defendant on different dates and separate registration allotment deed of about 03 plots were executed in the name of his son Nishant Bhavin Shah on different dates. That out of above allotment deeds, one allotment deed with respect to suit property registered and executed on 30-03-2011 vide Sr. No.2625 for the sum of ₹10,81,500/- by stating that, cheque No.000050 drawn on Bank of India, Panchvati Branch, Ahmedabad for ₹10,81,500/- to be paid. It has been averred that, upon the request, the Defendant issued the said cheque on 21.04.2014 by stating that, the same be cleared, but after depositing the said cheque, it came to know that, said cheque was returned with an endorsement “Insufficient Funds’. He further argued that, upon the trust and faith on the Defendant, the Plaintiffs executed an allotment deed to and in favour of the Defendant, but till date, the amount of entire sale consideration of above cheque was not paid by Defendant. He further argued that, allotment deed has been registered and executed in favour of Defendant, but the possession of the suit property has not been handed over to Defendant. He further argued that, the Defendant has not paid the total sale consideration amount of ₹10,81,500/- to the Plaintiffs and as of now, the possession of the disputed suit property lies with the Plaintiffs and prayed for declaring allotment deed dated 30-03-2011 as illegal, invalid and voidable and requested to allow the suit.

Discussion and Analysis (Appreciation of Evidences led during the course of proceedings and conclusion drawn therefrom)

16. It is a settled principle of law, as enshrined under Section 101 of the Indian Evidence Act, 1872, that the burden of proof lies upon the party who asserts the existence of a fact. In a civil proceeding, the initial onus squarely rests upon the Plaintiff to establish his case by leading cogent and convincing evidence. The Plaintiff must succeed on the strength of his own case and cannot derive any advantage from the weakness, if any, in the defense of the opposite party. Unless and until the Plaintiff discharges this primary burden, no relief can be granted in his favour. Keeping in mind the aforesaid fundamental principle of law, this Court now proceeds to appreciate the evidence on record in order to examine the facts of the case and to determine the entitlement of the Plaintiff to the reliefs sought for.

Though the defendant has failed to file written statement and the plaintiff has not led oral evidence, the plaintiff has produced documentary evidence on record to prove his case. After considering all material available on record and affidavit Exh.14 on defendant's contention, this Court proceeds to pass a reasoned order on merits in accordance with law.

17. Issue No. 1

Whether the Plaintiffs prove that, approx. 15 Lakhs Square Meters of land with different Survey numbers located in the sim of Mouje Village Kundal was purchased in the name of the Plaintiff No.1 - Ravi (Hansol) Non-Trading Corporation?

17.1 To adjudicate upon this issue, it is imperative to first analyse the nature of the burden of proof and the evidentiary standard required to establish absolute title over immovable property. The Plaintiffs assert that they are the absolute owners in possession of the suit land. In civil jurisprudence, the initial burden to establish the factum of ownership lies squarely on the shoulders of the plaintiff, as conceptualized under Section 101 of the Bharatiya Sakshya Adhiniyam, 2023 [formerly Section 101 of the Indian Evidence Act, 1872]. To discharge this burden, the Plaintiffs have placed reliance on primary documentary evidence, specifically producing Index copies of various registered Title Deeds.

For the purpose of structured clarity in identifying the property under dispute, the specific descriptions of the land parcels acquired by the Plaintiffs are tabulated hereinbelow:

Different Survey numbers of Mouje Kundal purchased in the name of Plaintiff No.1 - Ravi (Hansol) Non-Trading Corporation					
Sr. No.	**Exhibit**	Revenue Survey No.	Acquired Land (In Sq. Mt₹)	Land from whom Purchased	Date of Purchase
1	**27**	417/2	1-73-00	Manojbhai Bhikhabhai Modi	12-02-2009
2	**27**	417/1	1-55-80	Manojbhai Bhikhabhai Modi	12-02-2009
3	**27**	419/2	1-73-00	Manojbhai Bhikhabhai Modi	12-02-2009
4	**27**	407/paiki	0-92-07	Saurin Virendrabhai Shah	19-01-2010
5	**27**	416	1-61-88	Harikrushna Prabhubhai Raval	12-02-2009
6	**27**	420	1-40-63	Harikrushna Prabhubhai Raval	12-02-2009
7	**27**	422/1	1-51-76	Saurinbhai Virendrabhai Shah	18-02-2009
8	**27**	421/1	1-34-56	Saurinbhai Virendrabhai Shah	08-06-2009
9	**27**	422/2	1-16-35	Saurin Virendrabhai Shah and Mittalben Saurinbhai Shah	02-05-2011
10	**27**	335/1	0-21-25	Harikrushna Prabhubhai Raval	03-09-2009
11	**27**	406	0-79-93	Manojbhai Bhikhabhai Modi	05-07-2011
12	**27**	405/4	0-63-74	Manojbhai Bhikhabhai Modi	05-07-2011
13	**27**	405/3	0-61-71	Manojbhai Bhikhabhai Modi	05-07-2011
14	**27**	421/2	1-10-07	Saurinbhai Virendrabhai Shah	16-07-2011

15	**27**	408	2-91-38	Manojbhai Bhikhabhai Modi	21-07-2011
16	**27**	411/1	0-77-90	Manojkumar Bhikhabhai Modi	21-07-2011
17	**27**	414	1-48-72	Manojbhai Bhikhabhai Modi	13-10-2010
18	**27**	412	2-19-54	Saurin Virendrabhai Shah	03-11-2010
19	**27**	428/1	1-22-42	Manojbhai Bhikhabhai Modi	03-11-2010
20	**27**	427/paiki	1-06-23	Harikrushnabhai Prabhubhai Raval	03-11-2010
21	**27**	419/1	1-65-92	Manojbhai Bhikhabhai Modi	04-11-2010
22	**27**	314/4	1-62-86	Saurin Virendrabhai Shah	08-06-2009
23	**27**	314/3	0-81-95	Harikrushna Prabhubhai Raval	17-06-2009
24	**27**	322/1	1-14-32	Harikrushna Prabhubhai Raval	17-06-2009
25	**27**	312	0-23-78	Manojbhai Bhikhabhai Modi	29-03-2011
26	**27**	357/2	0-35-41	Harekrushna Prabhubhai Raval	12-08-2009
27	**27**	405/2	0-50-59	Harekrushna Prabhubhai Raval	12-08-2009
28	**27**	323/3	0-43-50	Harekrushna Prabhubhai Raval	12-08-2009
29	**27**	323/1	0-16-19	Harekrushna Prabhubhai Raval	12-08-2009
30	**27**	314/1	1-14-32	Manoj Bhikhalal Modi	01-06-2011
31	**27**	322/2	2-66-08	Manojbhai Bhikhabhai Modi	13-06-2012

32	**27**	324/2/1/2	0-06-07	Harekrushna Prabhubhai Raval	03-09-2009
33	**27**	333/2	0-63-74	Harikrushna Prabhubhai Raval	03-09-2009
34	**27**	336	0-16-19	Harikrushna Prabhubhai Raval	03-09-2009
35	**27**	345/1	0-41-48	Harikrushna Prabhubhai Raval	03-09-2009
36	**27**	357/paiki/3	0-32-37	Harikrushna Prabhubhai Raval	08-07-2011
37	**27**	324/2/1/paiki 4	0-07-08	Raval Harikrushna Prabhubhai	08-07-2011
38	**27**	403/paiki	1-13-31	Manojbhai Bhikhabhai Modi	30-12-2009
39	**27**	314/4	0-84-00	Saurin Virendrabhai Shah	03-11-2010
40	**27**	310	1-35-57	Harekrushna Prabhubhai Raval	03-11-2010

17.2 A bare perusal of the aforementioned evolutionary lineage of title instruments demonstrates that the Plaintiffs purchased the explicitly demarcated land parcels through valid, legally executed, and registered Sale Deed as stated in the Index copies. Registration of a document gives it a sanctity of law and operates as a public notice under Section 3 of the Transfer of Property Act, 1882. Furthermore, Index copy as documentary evidence brought on record convincingly establishes that the tenure and character of the suit land is Non-Agricultural NA. The land has been cleared, demarcated, and sanctioned by competent revenue authorities to be utilized exclusively for residential plotted development schemes.

17.3 A critical aspect of evaluation in this matter is the complete absence of any adversarial challenge to these legal entity ownership records. At no stage of the pleadings or during the final trial did the Defendant mount any substantial challenge, present counter-evidence, or offer specific, structured denials to dispute the lawful ownership and possession of the Plaintiffs. In terms of Order VIII Rules 3 and 5 of the Code of Civil Procedure, 1908, a dynamic duty is cast upon the defendant to deny specifically every allegation of fact. Evasive denials or a complete failure to plead a structural challenge amount to an admission.

The title records produced by the Plaintiffs stand completely unchallenged, unimpeached, and unrebutted on record. Ergo, in the absence of any contrary evidence or specific denial by the Defendant, the initial burden of proof placed upon the Plaintiffs stands fully discharged. It is convincingly proved that the Plaintiffs hold valid, undisputed, and lawful title over the schedule property. Thus, this Court answers Issue No. 1 in the **Affirmative**.

18. Issue No. 2

Whether the Plaintiffs prove that, upon the trust and faith over the Defendant, the Plaintiffs executed Allotment Deed in favour of Defendant on 30-03-2011, which was duly registered in the office of Sub-Registrar at Sanand vide Sr. No.2625 and the Defendant has stated to give a cheque No.000050 for ₹10,81,500/- drawn on Bank of India, Panchvati Branch, Ahmedabad, which was not given to the Plaintiffs and Defendant has not paid total sale consideration of ₹10,81,500/- to the Plaintiffs and thus, said allotment deed is illegal from the beginning, invalid, unsubstantiated and null and void ?

A. Factum of the Transaction and the Recitals of the Deed

18.1 The main dispute under this issue rests on the execution and financial performance of Allotment Sale Deed No. 2625, registered on 30/03/2011 before the Sub-Registrar Office, Sanand for plot being Final Plot No.31 having area admeasuring 3090 Square Yards 2583.61 Square Meters of Mouje Kundal, Taluka Sanand, District Ahmedabad. The Plaintiffs contend that they reposed implicit trust in the representations made by the Defendant and executed the instrument for a total recorded sale consideration of ₹10,81,500/-, drawn on the Bank of India, Panchvati Branch Ahmedabad. The entire sale consideration to Plaintiff remains unpaid even after execution of sale deed.

18.2 The core of the Plaintiffs' grievance is that total consideration, the Defendant promised to deliver subsequent cheque post-execution: Cheque No. 000050 for ₹10,81,500/-. The Plaintiffs argue that because the Defendant completely failed to honor financial instruments, entire sum of ₹10,81,500/-. remained unpaid. Thus, they claim the deed is prima facie illegal, void ab initio, and entirely devoid of valid consideration.

18.3 To evaluate this claim, a meticulous, contextual perusal of the copy Allotment Sale Deed produced on record is necessary. The instrument reveals the following material facts:

- **Property Identification:** Paragraph/Point No 5 Page 5 of the deed explicitly clarifies that plot being Final Plot No.31 having area admeasuring 3090 Square Yards 2583.61 Square Meters of Mouje Kundal, Taluka Sanand, District Ahmedabad., was allotted alongside rights in the society's common plot and internal roads for a settled consideration of ₹10,81,500/-.

- **Mode of Payment:** Paragraph/Point No 6 Page No 5 of the deed outlines that the mode of payment was structured via cheque No. 000050 for ₹10,81,500/- dated [_______], drawn on the Bank of India.
- **The Acknowledgment Clause:** Crucially, the contractual recital explicitly records that the Plaintiffs had received the said consideration in its entirety and had duly issued an absolute receipt and acknowledgment of the same to the Defendant.

B. Evaluation of Evidentiary Proof Regarding Default

18.4 Despite the formal acknowledgment clause within the registered deed, the Plaintiffs maintain that they never received the actual payment of ₹10,81,500/- for cheque stated in allotment sale deed. To discharge their secondary burden of proof, the Plaintiffs have produced photocopies of both subsequent cheques along with their corresponding bank Cheque Return Memos, which explicitly cite the reason for dishonor as "Insufficient Funds."

The presentation of these dishonor memos creates an unrebutted factual presumption. Looking at common human conduct, business logic, and the standard of a prudent mind under Section 119 of the Bharatiya Sakshya Adhiniyam, 2023 [formerly Section 114 of the Indian Evidence Act, 1872], no commercial entity or reasonable individual would issue separate, subsequent cheques if the underlying consideration had already been fully settled or cleared. The physical existence of these unpaid, bounced instruments on the court record convincingly proves that the Defendant failed to fulfill his financial promises under the broader transaction, despite the formal receipt language inside the text of the deed.

The Defendants chose not to file a written statement, and their right to lead evidence was closed after being given a reasonable opportunity. In the absolute absence of any written defense or rebuttal evidence from the Defendants, this Court accepts the documentary evidence produced by the Plaintiffs. Therefore, this Court holds that the entire sale consideration of ₹10,81,500/- remains unpaid.

C. The Application of Law on Partial Non-Payment

18.5 Having established the factual default of ₹10,81,500/-, this Court must now measure this default against the settled statutory landscape and the binding precedents governing the field of property transfer. The central legal question is whether the partial non-payment or subsequent nonpayment of entire sale consideration can legally collapse a registered contract and result in the cancellation of an Allotment Sale Deed.

18.6 We must first turn to the statutory definition of a "Sale" under Section 54 of the Transfer of Property Act, 1882. The statute defines a sale as a transfer of ownership in exchange for a price paid or promised, or part-paid and part-promised. The definition indicates that a sale requires an absolute transfer of all rights and interests in the property from the transferor to the transferee. The transferor cannot retain a residual ownership interest in the property as a security for unpaid money, unless explicitly contracted. Price constitutes an essential ingredient, but the law explicitly visualizes a scenario where the price is merely "promised" or "part-paid and part-promised."

18.7 This statutory mechanism was interpretatively solidified by the Supreme Court of India in the landmark case of ***Vidyadhar v. Manikrao & Anr. 1999 3 SCC 573***. The Apex Court held that the words 'price paid or promised or part paid and part promised' indicate that actual payment of the whole of the price at the time of the execution of the Sale Deed is not a *sine qua non* for completion of the sale. Even if the whole of the price is not paid, but the document is executed, and thereafter registered, the sale would be complete, and the title would pass on to the transferee under the transaction. The non-payment of a part of the sale price would not affect the validity of the sale.

18.8 The principle is crystal and clear: once title has passed upon registration, the sale cannot be invalidated or rolled back simply because the balance consideration was not paid.

This rule was further reinforced in ***Dahiben v. Arvindbhai Kalyanji Bhanushali 2020 7 SCC 366***, a case emerging directly from the State of Gujarat. In Dahiben, the Supreme Court flatly rejected a plea for the cancellation of a registered sale deed where a portion of the transaction cheques had bounced or remained entirely unpaid. The Apex Court clarified that a plaintiff's legal recourse in a scenario of partial failure of consideration is not the cancellation of the instrument, but rather the institution of a civil suit for the recovery of the unpaid balance money against the defaulting buyer.

The singular exception to this sweeping rule is outlined in ***Kaliaperumal v. Rajagopal 2009 4 SCC 193***. The Supreme Court ruled that the passing of title depends entirely on the intention of the parties. If the explicit text of the document establishes that the actual passing of the full, cleared consideration is a strict condition precedent for the transfer of title, ownership does not pass until full payment is realized. To fall within this exception, a deed must contain clear, explicit conditional language, such as: Ownership will transfer only after the full and final clearance of all cheques, and if any cheque fails, this deed shall stand void.

18.9 On a going through Allotment Sale Deed No. 2625, this Court finds no such conditional, restrictive language. The recitals show an absolute, unconditional intent to transfer ownership upon execution, coupled with a formal acknowledgment of receipt. The subsequent failure to pay entire consideration as explicitly agreed in allotment sale deed does not systematically dismantle the legal transfer of title. The remedy lies in recovery, not cancellation. Thus, Issue No. 2 is answered in the **Negative**.

19. Issue No 3

Whether the Plaintiffs prove that till date, the suit property is in possession of the Plaintiffs?

A. Evaluation of Photographic Evidence and Procedural Omissions

To adjudicate upon the grant of a permanent injunction, this Court must critically determine the factum of actual, physical possession over the suit property at the time of the institution of the suit. Possession is not a mere abstract concept; it requires the coexistence of the intention to possess *animus possidendi* and physical control over the property *corpus possessionis*. To substantiate their claim of continuous, exclusive physical possession over the open suit land, the Plaintiffs have placed reliance upon a site photograph produced at Exhibit 28, dated 10/04/2026.

A fundamental procedural and evidentiary omission in the Plaintiffs' approach must be highlighted. The Plaintiffs failed to prove possession themselves using title deeds, tax receipts, electricity bills, or witness testimony. It is a settled rule of evidence that merely placing solitary, uncorroborated photographs of an open plot on record are insufficient to establish lawful physical possession. In civil jurisprudence, photographs of open land are neutral entities; they do not provide conclusive proof of exclusive legal occupancy, nor do they demonstrate who exercises active dominion over an open tract of land.

B. Contradictory Recitals in the Registered Instrument

The oral and photographic assertions made by the Plaintiffs are directly contradicted by the explicit written terms of the registered instrument they voluntarily executed. A perusal of the Allotment Sale Deed reveals the following material facts:

- **Express Handover of Possession:** In Paragraph 7 of the said deed on page no 6, it is clearly and unambiguously recited that the actual, vacant physical possession of the suit property was formally handed over by the vendors to the Defendant in the presence of two witnesses.

- **Technical Measurement:** The records further demonstrate that the technical engineer of Defendant had conducted an on-site measurement of the suit property, confirming that the net plot area was fully identified, demarcated, and allotted to the Defendant.

Under Section 91 and Section 92 of the Bharatiya Sakshya Adhiniyam, 2023 [formerly Section 91 and Section 92 of the Indian Evidence Act, 1872], when the terms of a contract or disposition of property have been reduced to the form of a document and registered, no oral evidence can be admitted to contradict, vary, add to, or subtract from its terms. The registered deed contains an express admission of delivery of possession. This admission binds the Plaintiffs unless disproved by cogent documentary evidence.

C. Failure to Discharge the Burden of Proof and Legal Consequences

This Court notes that the record is entirely silent on whether the Plaintiffs took any reasonable or administrative steps to maintain, protect, or pay statutory dues for the land during the 15-year gap between the execution of the sale deed in 2011 and the taking of the photographs in 2026. Possession of an open piece of land is ordinarily presumed to follow the title possession follows title. Once a registered sale deed is executed declaring that possession has been transferred, the burden shifts heavily onto the Plaintiffs to provide convincing, continuous, and unbroken documentary proof to the contrary.

In the complete absence of independent corroborative evidence, this Court cannot rely on the photographs at Exhibit 28 to hold that the Plaintiffs have retained exclusive physical possession of the suit land. The registered recitals of Allotment Sale Deed stand unimpeached on this point. Thus, this Court answers Issue No. 3 in the **Negative**.

20. Issue No 4

Whether the Defendant proves that, the suit of the Plaintiffs is barred by any of law as the contention raised vide Exh.14?

A. Context of the Preliminary Objections

The structural integrity of the present proceedings has been formally challenged by the Defendant through a preliminary affidavit filed at Exhibit 14. By way of this application, the Defendant seeks the summary dismissal of the suit on two distinct technical pillars concerning the legal capacity *persona standi in judicio* of the Plaintiffs.

First, the Defendant contends that Plaintiff No. 1, being registered as a Non-Trading Corporation under the Bombay Non-Trading Corporations Act, 1959, lost its corporate existence and legal personality upon the complete repeal of the said Act by the State of Gujarat in the year 2005. Thus, the Defendant argues that Plaintiff No. 1 is a legal non-entity incapable of maintaining a civil suit. Second, the Defendant asserts that Plaintiff No. 2 is an unregistered partnership firm, and therefore, the present suit is expressly barred under the mandatory, non-discretionary provisions of Section 69 of the Indian Partnership Act, 1932.

Per contra, the Plaintiffs have resisted the preliminary objections at Exhibit 14. They submit that this Civil Court possesses absolute jurisdiction to try and decide the suit on its merits. The Plaintiffs contend that the Defendant executed the registered title deeds with full knowledge of the legal status of the vendor corporation. They argue that the Defendant cannot, after deriving contractual and title benefits from the transaction, turn around to raise an unconscionable plea to evade financial liability. To establish their historical legal existence, the Plaintiffs produced a photocopy of Certificate of Incorporation No. 8334, issued on 12th August 1996 by the Office of the Registrar of Non-Trading Corporations, Gujarat State. Crucially, the Plaintiffs emphasize that the Defendant's technical objections are mere bald assertions, unsupported by any specific statutory provisions or binding judicial precedents.

B. Corporate Capacity of Plaintiff No. 1 and the Effect of Legislative Repeal

To determine the legal status of Plaintiff No. 1 following the legislative repeal of the Bombay Non-Trading Corporations Act, 1959, this Court must look to the statutory mechanisms governing the repeal of legislative enactments. It is a foundational principle of statutory interpretation that the plain repeal of an incorporating statute does not instantly obliterate existing corporations or wipe away rights that accrued while the Act was active.

This statutory protection is explicitly enshrined in Section 7 of the Bombay General Clauses Act, 1904, which governs the State of Gujarat. The law explicitly mandates that the repeal of an enactment, unless a different intention appears, shall not:

- Affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder;
- Affect any right, privilege, obligation, or liability acquired, accrued, or incurred under any enactment so repealed;
- Affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, or liability.

Plaintiff No. 1 was validly incorporated on 12th August 1996, as evidenced by Certificate of Incorporation No. 8334. The legal status and the immovable property assets acquired by the corporation while the Act of 1959 was active represent vested statutory rights. The legislative repeal in 2005 did not work as a corporate death to dissolve existing entities or strip them of their properties without an explicit saving or winding-up mechanism to that effect. Therefore, Plaintiff No. 1 retains its legal personality to protect its property assets through the medium of a civil suit.

Furthermore, the Defendant's challenge is completely barred by the rule of estoppel under Section 115 of the Bharatiya Sakshya Adhiniyam, 2023 [formerly Section 115 of the Indian Evidence Act, 1872]. The Defendant knowingly, deliberately, and with open eyes entered into a registered real estate transaction with Plaintiff No. 1 as the vendor. Having acknowledged and accepted the corporate capacity of Plaintiff No. 1 for the purpose of taking over a title asset, the Defendant is legally precluded from pivoting to claim that the exact same entity does not exist when called upon to pay the remaining consideration. A party cannot be permitted to blow hot and cold *allegans contraria non est audiendus*.

C. Maintainability of the Suit by Plaintiff No. 2 Unregistered Firm

The second limb of the Defendant's preliminary objection concerns the operational bar under Section 69 of the Indian Partnership Act, 1932. The Defendant argues that because Plaintiff No. 2 is an unregistered partnership firm, it is completely barred from approaching a civil court. This argument represents a fundamental misapplication of the statutory bar.

Section 69 (2) of the Indian Partnership Act, 1932, dictates that no suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered. The keywords in the statutory provision are "to enforce a right arising from a contract." The bar is strictly limited to suits brought to enforce rights arising out of commercial, business contracts entered into by the firm with third parties in the ordinary course of its business. It does not operate as a blanket prohibition against an unregistered firm enforcing its common-law, constitutional, or statutory property rights.

The law on this issue was definitively settled by the Hon’ble Supreme Court of India in the landmark judgment of ***Shiv Developers v. Aksharay Developers & O₹ 2022 SCC Online SC 114***. The Apex Court, while analyzing the exact boundary of Section 692, explicitly ruled that a suit filed by an unregistered partnership firm for the declaration of title, permanent injunction, and cancellation of a sale deed is completely maintainable. Property enforcement actions seek to secure statutory title assets under the Transfer of Property Act or the Specific Relief Act, meaning the unregistered status of the firm does not operate as a legal bar.

The reliefs claimed in the present suit—relating to title evaluation, financial default under a registered transfer instrument, and the determination of physical possession—are standard property enforcement remedies. They do not stem from regular commercial business contract of an unregistered firm. Therefore, the statutory bar under Section 692 has no application to the matrix of the present dispute.

D. Conduct of the Defendant and Conclusion

This Court notes with concern that after filing the preliminary affidavit at Exhibit 14 and making these broad technical assertions, the Defendant chose to absent himself from the trial. He failed to produce a single statutory provision, written argument, or precedent to substantiate his claims, leaving his pleadings completely unproven.

For the reasons recorded above, the preliminary objections raised by the Defendant regarding the legal capacities of Plaintiff No. 1 and Plaintiff No. 2 are found to be devoid of legal merit and are hereby rejected. Accordingly, this Court answers Issue No. 4 in the **Negative**.

21. Issue No 5

Whether the Plaintiffs are entitled to get the relief as prayed for?

21.1 In view of the findings recorded on the preceding points for determination, this Court must now systematically channel those conclusions into a definitive adjudication on the ultimate reliefs to be awarded. The primary prayers sought by the Plaintiffs encompass the absolute cancellation of registered Allotment Sale Deed No. 2625 dated 30/03/2011, a declaration that the said instrument is null and void, and the grant of a permanent injunction to restrain the Defendant from interfering with the suit property.

21.2 This Court has answered Issue No. 2 in the **Negative.** It has been conclusively held that under the statutory framework of Section 54 of the Transfer of Property Act, 1882, and the binding precedent of the Hon'ble Supreme Court in ***Dahiben v. Arvindbhai Kalyanji Bhanushali 2020 7 SCC 366,*** the partial non-payment of a promised sale consideration due to subsequent cheque dishonor does not invalidate a registered instrument. It does not provide actionable legal grounds for judicial cancellation. Title, dominion, and ownership over Plot No. 31, of the "Pushpraj Village" scheme legally and irreversibly passed to the Defendant upon the formal registration of the Allotment Sale Deed before the Sub-Registrar Office, Sanand.

21.3 Furthermore, this Court has answered Issue No. 3 in the **Negative**. The Plaintiffs have completely failed to discharge their burden of proof to establish exclusive, continuous physical possession over the suit land. The casual site photographs produced at Exhibit 28 possess no independent evidentiary value and stand flatly contradicted by the express contractual terms in Paragraph 7 of the registered deed, which records an absolute delivery of physical possession to the Defendant. In the absence of established physical possession *corpus possessionis*, the equitable and discretionary relief of a permanent injunction cannot be granted under Section 38 of the Specific Relief Act, 1963. This Court has arrived at the definitive conclusion that the primary prayers for absolute cancellation and a permanent injunction are legally unsustainable under the strict operation of Section 54 of the Transfer of

Property Act, 1882, therefore plaintiff is not entitled for relief as prayed for and this Court answer the issue No 5 in the **Negative** and answer to Issue No 6 as per the Final Order as stated herein below.

FINAL ORDER

1. The suit of the Plaintiff is hereby **Rejected**.
2. It is hereby declared that the Plaintiff is not entitled to any of the reliefs, including declaration and permanent injunction, as prayed for in the plaint.
3. Considering the facts and circumstances of the case, there shall be no order as to costs.
4. Decree be drawn accordingly.

Pronounced & signed in the open Court today on this 30th day of June, 2026.

Date: 30-06-2026
Place: Sanand

Ronakben Saurabhbhai Shah
Principal Senior Civil Judge & ACJM,
Sanand, Ahmedabad Rural
Judge Code No. GJ00941