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**IN THE COURT OF ADDITIONAL DISTRICT JUDGE
 AHMEDABAD [RURAL] @ DHOLKA**

REGULAR CIVIL APPEAL NO.11 OF 2025.

Appellants. (Original defendants)	Heirs of deceased Hirabhai Laxmanbhai Bharwad.	
	1.1	Hardik Rambhai Bharwad.
	1.2	Piyush Rambhai Bharwad
	1.3	Umang Rambhai Bharwad
	1.4	Anand Jayantibhai Bharwad
	1.5	Payalben Jayantibhai Bharwad
	1.6	Priyankaben Jayantibhai Bharwad
	1.7	Gitaben Hirabhai Bharwad W/o.Vinodbhai
	1.8	Devalben W/o. Late Hirabhai Laxmanbhai
	All age : Adult.	
	All Occupation : Agriculture/Household work.	
	All Residing At:	
	Bharwadvas, Nava Vadaj, Ta. & Dist.	
	Ahmedabad.	
	Heirs of deceased Karmanbhai Laxmanbhai Bharwad.	
	2.1	Baldevbhai Karmanbhai Bharwad
	2.2	Vijay Karmanbhai Bharwad
	2.3	Mahesh Karmanbhai Bharwad
	2.4	Vishnu Karmanbhai Bharwad
	2.5	Madhuben Karmanbhai Bharwad
	2.6	Laxmiben Karmanbhai Bharwad

	2.7	Jashiben Karmanbhai Bharwad
	2.8	Pinalben Karmanbhai Bharwad W/o. Ankitbhai.
	All age : Adult. All Occupation : Agriculture/Household work. All Residing At: Bharwadvas, Nava Vadaj, Ta. & Dist. Ahmedabad.	
	Vs.	
Respondents. (Original Plaintiffs)	(1)	Hareshbhai Kalubhai Bharwad
	(2)	Vijuben W/o.Hareshbhai Bharwad
	(3)	Minor Vivekkumar Hareshbhai Bharwad.
	(4)	Minor Mitkumar Hareshbhai Bharwad
	All Residing At: Bharwadvas, Bavla, Dist. Ahmedabad.	

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Appeal under Section 96 and Order 41, Rule 5 of CPC.

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APPEARANCE :

Mr. J. R. Patel, Ld. Advocate for the Appellants.

Mr. S. R. Pathan, Ld. Advocate for the Respondents.

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

1. The Appellants/original defendants have filed the present appeal against the respondent/original plaintiff. For the sake of convenience, the appellants are mentioned hereinafter as ‘defendants’ and respondents are mentioned hereinafter as ‘plaintiff’.

Learned Additional Civil Judge and JMFC, Bavla has passed the order and decree in RCS No. 28/2017 below Exh. 106 on dated 27.12.2024 and learned Trial Court has allowed the plaintiff's suit. Being aggrieved and dissatisfied with the order and decree passed by learned Trial Court Bavla, the defendants have preferred the present appeal under Section 96 read with O.41 of the C.P.C. In the memo of appeal, appellants have raised following grounds :

- 1) The registered sale deed has been executed by respondent no. 01 in favour of predecessor of appellants no. 1/1 to 1/8 are just and proper. The respondent no. 01 is educated and graduated and the same has been admitted by respondent no. 01 in his cross examination. Both the registered sale deed executed were registered before the Sub-Registrar who is a public servant and it was officially executed after verifying the lands in question as well as status of the parties. In pursuant to that, sub-Registrar has approved all

those documents despite the erroneous interpretation has made and therefore, order and decree passed by learned Trial Court is required to be quashed and set aside.

- 2) Issues framed by learned Trial Court below Exh. 30 are not properly evaluated as well as in the finding of the judgment and subject matter of the suit as well as the evidences adduced by the parties to the suit are not properly considered.
- 3) The respondents have adduced 17 documents and two depositions before the learned Trial Court and affidavit of examination-in-chief under Order XVIII Rule 4(1) of the C.P.C. vide Exh. 15 has been adduced. In pursuant to that, respondent no. 01 in his deposition has submitted according to the pleadings and it is admitted in the cross examination that he has studied since collage and after reading the examination-in-chief along with affidavit it appears that the said document bears his signature. The documentary evidences vide

Exh. 61 was being shown to the respondent no. 01 wherein he has identified the signature of the vendor and it is admitted in the cross examination that being an attested witness Kalubhai Bharwad has made the signature into deed and he is living along with his father and admissions of the respondent no. 01 read with plaint vide para 03 and according to the cross examination respondent no. 01 is graduated and degree holder educated person and whatever reasons mentioned to give loan in para 03 are not believable that respondent No. 01 has made signature about cattle loan. So, respondent no. 01 had read all those documents and it is proved that respondent no. 01 was present at the time of the execution of the registered sale deed. At the time of registration of the sale deed the presence of the vendor must be there and registration must be in the presence of the sub-Registrar. The respondent no. 01 had asserted the consideration

amount and thereafter, registered sale deed has been executed. Therefore no question has been arisen to breach of trust and cheating.

- 4) Respondent No. 01 has also admitted in the cross examination of deposition vide Exh. 50 that except the disputed land, he has having other agriculture lands and he has carrying-on agriculture work and also paid the revenue for the said lands, village From 7/12 for 02 to 03 years were also obtained by him but the loan was not received as cattle loan. No police complaint has been lodged and according to the admissions in the cross examination of respondent no. 01, he has not lodged any complaint. If the loan of Bavla Seva Sahkari Mandali are unpaid according to documentary evidence vide Exh. 65 but no objection has been raised at the time of execution of the registered sale deed vide Exh. 61-62. Therefore genuineness of the validity of the registered sale deed are proved and documents

vide Exh. 65 are not believable. In the cross examination witness has admitted that every 02-03 years he obtained the village Form 7/12 and original plaintiff of the suit have knowledge about the village Form 7/12 and mutation entries. At the relevant point of time, he has ample knowledge about the registered sale deed and therefore plaintiff have not instituted the suit within limitation period and it is proved that respondent no. 01 was well conversant with the execution of the registered sale deed despite the pecuniary benefits from the defendants.

- 5) It is also admitted in the cross examination vide Exh. 50 that being an original plaintiff no. 03 & 04, no signature has been made and plaintiff No. 03 & 04 had not got any permission to institute the suit. In pursuant to that, no application has been submitted. The original defendant no. 01 is deceased Hirabhai Bharwad and defendant no. 02 - deceased Karmanbhai Bharwad is the real

maternal uncle of defendant no. 01 and no documents were handed over to get the loan on dated 29.11.2004. The mutation entries No. 1122/84 with regard to the sale in the revenue record, no information has been provided and original defendants have not submitted any application as to the same.

- 6) The original plaintiff/respondent's witness has submitted affidavit under O.18 R.4 of the CPC in favour of the plaintiff and it is admitted that he has not received summons/notice and as per the say of Hareshbhai Bharwad, the oral testimony has been submitted and plaintiff has not been read by him and witness in favour of plaintiff is not acquainted with the fact of disputed land despite the say and the instruction of the plaintiff. To prove the possession, deposition has been submitted and therefore oral testimony of the witness is not required to be believable and witness has no information. When the neutral

person deposition are not submitted by plaintiff and according to the examination in chief vide Exh. 74, the land of witness are 05 KM far and therefore the original defendants are not coming on the agriculture land regularly. Therefore the said fact is not required to be accepted that no cause of action has been arisen.

- 7) Appellants predecessor is the agriculturist and evidences were adduced. In pursuant to that, the appellant's predecessor Karmanbhai and Hirabhai Bharwad had got the land bearing Block No. 286/1, agriculture account No. 207 and therefore it is the cogent evidence as to the status of the agriculturist.
- 8) The witness Kalubhai has deposed vide Exh. 96 and it is admitted in Para 06 that the deceased Hirabhai was residing at Ahmedabad and they have relation with brother-in-law (*Sala-Banevi*). Therefore Hirabhai Bharwad has handed over the possession of the agriculture land to witness

Kalubhai Bharwad and the income yield after season of crop would be decided between then and share of the income would be paid to deceased Hirabhai and the wrong fact has been narrated.

- 9) In favour of the original defendants witness Kalubhai has deposed and the responsibility is on the shoulder of the respondent no. 01 to prove the facts of false registered sale deed. The plaintiff has not in the possession of the disputed land since the last 20 years and no tax receipt, light connection documents are adduced. The mutation entries in the revenue record are used for fiscal purpose. The respondent no. 01 filed the revision application before the District Magistrate, Ahmedabad and it is disposed of and no review application has been filed. The City Mamlatdar Ghatlodiya office has declared that the predecessor of appellants No. 01 and 02 are agriculturist.

- 10) The learned Trial Court has passed erroneous order in Para 13.2 and learned Trial Court has wrongly interpreted the disputed mutation entries but the said entries have not been certified.
- 11) The cause of action, date of knowledge are not properly mentioned in the plaint.
- 12) Learned Trial Court has falsely interpreted in Para 13.5 of the judgment and falsely finding given as to 'Issue No. 4 and 5'
- 13) The order and decree passed by learned Trial Court is erroneous, arbitrary and against the provision of law so it is required to be set aside and appellant is in the possession of the disputed property and respondent is not entitled to snatch the possession and appellant sought the relief for the perpetual injunction.

2. The brief facts of the plaintiff/respondent case are as under:

A plaintiff is the agriculturist and he is maintaining his family by carrying on agriculture work. The defendant is not agriculturist and land bearing revenue survey No. 1205/2 (old tenure) land admeasuring 1-91-29 Hectr.Sqr.Mtr. situated at Bavla and it is plaintiff's independent and actual possession property and in the revenue record the plaintiffs are the owner, occupier and in the possession of the land and plaintiffs are paying the taxes as to agriculture land. The defendants had never seen the disputed agriculture land. No agriculture income had obtained by the defendants. The defendants have no right over the agriculture land and plaintiffs are the relatives of the defendants and under the guise of the delusional relationship the defendants have done wrong. The predecessor of defendants no. 1/1 to 1/8 namely Hirabhai had wrongfully pretext that the documents would be prepared for cattle loan and thereafter the

signature were obtained and after that no money as to cattle loan were received. In pursuant to that, upon asking to defendants for the sale, the plaintiffs are in the occupation and the possession of the disputed agriculture land and the defendants and people of village are knowing about the legal right of the ownership as to agriculture land and plaintiffs obtained income without any hindrance and interference and therefore predecessor of the plaintiffs have committed the breach of trust and cheat with them. They have no knowledge about the tortious act but recently, plaintiff obtained the documents from Mamlatdar wherein the Dy. Collector of Dholka by order in the said case, he came to know that the predecessor of the defendants namely Hirabhai Bharwad had breached the trust and taken disadvantage and kept the plaintiff in dark. When the consent was unimplemented, non-consideration and fraudulent the registered

sale deed vide 1093 has been illegally executed and also wrongfully mentioned about Rs. 2,00,000/- consideration amount in the registered sale deed dated 23.06.2004 and it is false and concocted registered sale deed. Thereafter the predecessor of the defendant no. 1/1 to 1/8 namely deceased Hirabhai is the real brother of the predecessor of the plaintiffs deceased Karmanbhai and fraudulent sale deed vide Sr. No. 1217 has been wrongfully executed on dated 08.07.2004 in favour of him is absolutely illegal, non-implemented and non-consideration amount. In pursuant to that, the entry no. 1284 the record of right, entry no. 12285 and other record of rights are mutated by wrong way. In pursuant to that, no notice under Section 135D of the land revenue code has been received by plaintiff and both revenue entries were rejected by Circle officer with a reason that the predecessor were not agriculturist. Against the

said order the defendants have challenged it before SDM/Dy. Collector of Dholka vide RTS No. 42/2015 and accordingly Dy. Collector of Dholka has adjudicated the said case. In pursuant to that, as per the order of Dy. Collector of Dholka, Mamlatdar of Bavla has sent notice to the plaintiff and plaintiff had got the knowledge about the tortious act committed by the predecessor of the defendants and as per legal advice, the revision application was filed before the District Magistrate Ahmedabad on dated 14.02.2017. The disputed suit property was originally in occupation, possession and ownership of plaintiff no. 01 and plaintiff has initiated the proceedings to add the name of plaintiff no. 02 to 04 in the revenue records and according to the record of right and entry no. 17806 the name of plaintiff no. 02 to 04 were inserted as an owner of land in the disputed property. No execution of registered sale deed

transaction took place between the defendant's predecessor and plaintiff and no possession of the disputed agriculture land has been handed over. The defendant has no right, title, occupation, possession of the disputed land. The disputed registered sale deed is illegal since the outset of the transaction and there was encumbrance of Seva Sahkari Mandali Bavla on the agriculture land against the obtained loan and in pursuant to that, the entry of encumbrance in the revenue record as to record of right vide entry no. 10964 and it is continued, so, the registered sale deed is illegal and false since the inception of the execution. The predecessor of both the parties namely deceased Hirabhai and Karmanbhai were agriculturist. The disputed agriculture land is old tenure land and therefore the registered sale deed vide Sr. No. 1093/04 is false, fabricated and no title clear certificate has been obtained. No public notice in the newspaper has been published. So

the defendants predecessor had committed the tortious act and done civil wrong and kept the plaintiff in dark and predecessor of defendants no. 2/1 to 2/8 have not right for better title and instead of entire agriculture land, the registered sale deed of fragmentation was executed without prior sanction and no consideration amount has been obtained. Therefore relief sought by plaintiff in the pleadings are required to be allowed.

3. The notice and summons were duly served to the defendants and by and large the facts of the plaintiff suit are denied and it is contended that plaintiff suit is barred by non joinder and misjoinder of parties. Plaintiff suit is also barred by law of limitation, estoppel, laches and res-judicata. In fact, plaintiff no. 01 was in occupation and possession as to the disputed agriculture land in the year 2004 and they are about to sale the property. Therefore plaintiff met to the predecessor of defendants no. 1/1 to 1/8 namely Hirabhai and as plaintiff was in need of money, the

signature in the english language had been before the sub-Registrar and at that time, the possession of the disputed land was handed over to defendant's predecessor Hirabhai but plaintiff and his father was carried out agriculture work and requested the father of the defendants to carry on the cultivation and defendant's predecessor have given consent for cultivation and father of plaintiff frequently cultivated the land and carried out the agriculture work. Thereafter, they also obtained yield and income and the same were shared with predecessor of the defendants. Out of exclusive land of disputed land the registered sale deed was executed by the father of the defendant no. 1/1 to 1/8 in favour of the deceased predecessor of defendant no. 2/1 to 2/8 vide Sr. No. 1217/4. Affidavit has been submitted and father of plaintiff no. 01 namely Kalubhai Bharwad before the Notary, (1) Affidavit has made and the land had sold by plaintiff to vendee Hirabhai on dated 23.06.2004 by way of registered sale deed vide Entry no. 1093

before the sub-Registrar Dholka. In the said registered sale deed duly attested by the witness, the plaintiff is highly educated and well conversant with the legal knowledge and wealthy person for taking money by illegal means and false facts have been narrated in the plaint as well as in the injunction application the sympathetic order has been passed by learned Trial Court in the revenue record. The agriculture land was on the name of plaintiff no. 01 and under the mutation entry no. 17806 the name of the defendant no. 02 to 04 was inserted as the legal heirs and the deceased Hirabhai was the sole owner of the disputed agriculture land and his name was on the revenue record. The plaintiff has to challenge the validity of the registered sale deed within 03 years of limitation period but after the passage of 13 years i.e. in the year 2017 the plaintiff had instituted the suit therefore the plaintiff is absolutely barred by the law of limitation. According to the provision of O. 7R.11 D of the CPC and the registered sale deed is the

public document and it is presumed that plaintiff has knowledge about the execution of the registered sale deed. Whatever the facts mentioned in the plaint are absolutely against the provision of law and the relief sought by plaintiffs in the plaint are required to be dismissed and set aside.

4. Having regards to the contentions raised by rival parties, it is pertinent to note that, considering the pleadings of the parties to the suit for final adjudication, following points have been arisen for the determination of this appeal.

(1) Whether the plaintiff proves that they are the owner, occupier and in possession of the disputed property ?

(2) Whether plaintiff proves that predecessor of defendant no. 1/1 to 1/8 Late Hirabhai Bharwad had kept plaintiff in dark and registered sale deed vide Sr. 1093/2004 executed on dated 23.06.2004 and the said registered sale deed is false,

fabricated, concocted, illegal, non-implemented and without non-consideration transaction ?

- (3) Whether the plaintiff proves that predecessor of the defendant No. 1/1 to 1/8 Late Hirabhai had no title, ownership and possession despite the predecessor of plaintiff Late Karmanbhai had executed registered sale deed vide Sr. No. 1217/2004 dated 08.07.2004 was illegal, non-implemented, and without non-consideration amount transaction ?
- (4) Whether the defendants prove that the plaintiff's suit is barred by the law of limitation?
- (5) Whether the plaintiff is entitled to seek the relief of injunction as prayed for ?
- (6) Whether the plaintiff proves that he is entitled to get the relief mentioned in para 10 of the plaint ?
- (7) Whether the order passed by Addl. Civil Judge, Bavla on dated 27.12.2024 below Exh. 106 in RCS No. 28/17 are erroneous, arbitrary, perverse and against the provision of law ?

(8) What order?

5. Reply of the above points for the reasons recorded herein are as under.

- (1) In the Affirmative.
- (2) In the Affirmative.
- (3) In the Affirmative.
- (4) In the Negative.
- (5) In the Affirmative.
- (6) In the Affirmative.
- (7) In the Negative.
- (8) As per final order.

:: REASONS ::

6. I have heard Ld. Advocates appearing for the respective parties. I have perused the appeal memo and the documents adduced on record. I have gone through the impugned Judgment passed by the Ld. Trial Court. I have considered the citations relied on by the respective parties.

7. The ratio laid down by the **Hon'ble Apex Court in Civil Appeal No.670-671 of 2011 in case of C. Venkata Swamy vs. H. N. Shivanna (D)** are required to be considered and it is held that:-

"11. It is a settled principle of law that a right to file first appeal against the decree under Section 96 of the Code is a valuable legal right of the litigant. The jurisdiction of the first Appellate Court while hearing the first appeal is very wide like that of the Trial Court and it is open to the appellant to attack all findings of fact or/and of law in first appeal. It is the duty of the first Appellate Court to appreciate the entire evidence and arrive at its own independent conclusion, for reasons assigned, either of affirmance or difference.

12. Similarly, the powers of the first Appellate Court while deciding the first appeal are indeed well defined by various judicial pronouncements of this Court and are, therefore, no more res integra. It is apposite to take note of the law on this issue.

13. As far back in 1969, the learned Judge – V.R. Krishna Iyer, J (as His Lordship then was the judge of Kerala High Court) while deciding the first appeal under Section 96 of the Code in Kurian Chacko vs. Varkey Ouseph, AIR 1969 Kerala 316, reminded the first Appellate Court of its duty to decide the first appeal. In his distinctive style of writing with subtle power of expression, the learned judge held as under:

"1. The plaintiff, unsuccessful in two Courts, has come up here aggrieved by the dismissal of his suit which was one for declaration of title and recovery of possession. The defendant disputed the plaintiff's

title to the property as also his possession and claimed both in himself. The learned Munsif, who tried the suit, recorded findings against the plaintiff both on title and possession. But, in appeal, the learned Subordinate Judge disposed of the whole matter glibly and briefly, in a few sentences.

2. An appellate court is the final Court of fact ordinarily and therefore a litigant is entitled to a full and fair and independent consideration of the evidence at the appellate stage. Anything less than this is unjust to him and I have no doubt that in the present case the learned Subordinate Judge has fallen far short of what is expected of him as an appellate Court.

3. Although there is furious contest between the counsel for the appellant and for the respondent, they appear to agree with me in this observation.....” (Emphasis supplied)

14. This Court also in various cases reiterated the aforesaid principle and laid down the powers of the Appellate Court under Section 96 of the Code while deciding the first appeal. We consider it apposite to refer to some of the decisions.

*15. In **Santosh Hazari vs. Purushottam Tiwari (Deceased) by L.Rs. (2001) 3 SCC 179**, this Court held (at pages 188-189) as under:*

“15.....the appellate court has jurisdiction to reverse or affirm the findings of the trial court. First appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate

court.....while reversing a finding of fact the appellate court must come into close quarters with the reasoning assigned by the trial court and then assign its own reasons for arriving at a different finding. This would satisfy the court hearing a further appeal that the first appellate court had discharged the duty expected of it.....”

*16. The above view was followed by a three-Judge Bench decision of this Court in **Madhukar & Ors. v. Sangram & Ors.**, (2001) 4 SCC 756, wherein it was reiterated that sitting as a Court of first appeal, it is the duty of the High Court to deal with all the issues and the evidence led by the parties before recording its findings.*

*17. In **H.K.N. Swami v. Irshad Basith**, (2005) 10 SCC 243, this Court (at p. 244) stated as under: (SCC para 3)*

"3. The first appeal has to be decided on facts as well as on law. In the first appeal parties have the right to be heard both on questions of law as also on facts and the first appellate court is required to address itself to all issues and decide the case by giving reasons. Unfortunately, the High Court, in the present case has not recorded any finding either on facts or on law. Sitting as the first appellate court it was the duty of the High Court to deal with all the issues and the evidence led by the parties before recording the finding regarding title."

*18. Again in **Jagannath v. Arulappa & Anr.**, (2005) 12 SCC 303, while considering the scope of Section 96 of the Code, this Court (at pp. 303-04) observed as follows:*

"2. A court of first appeal can reappreciate the entire evidence and come to a different conclusion....."

19. Again in ***B.V Nagesh & Anr. vs. H.V. Sreenivasa Murthy***, (2010) 13 SCC 530, this Court taking note of all the earlier judgments of this Court reiterated the aforementioned principle with these words:

“3. How the regular first appeal is to be disposed of by the appellate court/High Court has been considered by this Court in various decisions. Order 41 CPC deals with appeals from original decrees. Among the various rules, Rule 31 mandates that the judgment of the appellate court shall state:

- (a) the points for determination;
- (b) the decision thereon;
- (c) the reasons for the decision; and
- (d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.

4. The appellate court has jurisdiction to reverse or affirm the findings of the trial court. The first appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate court. Sitting as a court of first appeal, it was the duty of the High Court to deal with all the issues and the evidence led by the parties before recording its findings. The first appeal is a valuable right and the parties have a right to be heard both on questions of law and on facts and the judgment in the first appeal must address itself to all the issues of law and fact and decide it by giving reasons in support of the findings. (***Vide Santosh Hazari v. Purushottam***

Tiwari, (2001) 3 SCC 179 at p. 188, para 15 and Madhukar v. Sangram, (2001) 4 SCC 756 at p. 758, para 5.)

5. In view of the above salutary principles, on going through the impugned judgment, we feel that the High Court has failed to discharge the obligation placed on it as a first appellate court. In our view, the judgment under appeal is cryptic and none of the relevant aspects have even been noticed. The appeal has been decided in an unsatisfactory manner. Our careful perusal of the judgment in the regular first appeal shows that it falls short of considerations which are expected from the court of first appeal. Accordingly, without going into the merits of the claim of both parties, we set aside the impugned judgment and decree of the High Court and remand the regular first appeal to the High Court for its fresh disposal in accordance with law.”

8. The appellants have submitted the written arguments and in support of his submission the documents list vide Exh. 21 has been adduced but the said documents are not the part and parcel of the pleading at the time of institution of the suit before the learned Trial Court and the documents produced by the appellants vide Mark 21/1, 21/2, 21/3, 21/4 are not the part and parcel with regard to the controversial question between the parties to the suit and

agriculture land converted into non-agriculture land according to the documents but non-agriculture land dispute is not the attack or defence in the pleadings by rival parties before the learned Trial Court and therefore without amending the pleading, court cannot give permission to appellants to adduce non-agriculture lands application documents and when any agriculture lands purchased by non-agriculturist after adjudication of the case admitted to covert the agriculture lands into the non-agriculture therefore such type of contention raised by appellants are not consistent to the original facts of the case and court cannot be permitted the appellants to change nature of the suit and legal devices cannot be supported to the appellants and when documents has been submitted by appellants are against the cause of action of plaintiff suit are not taken into consideration as a strict proof or standard proof.

9. Plaintiff have adduced 17 documentary evidences as well as the deposition of two witnesses and plaintiff

Hareshbhai Bharwad has deposed vide Exh. 50 and in the cross examination he has admitted that he has studied till graduation and the registered sale deed vide Exh. 61 was being shown to him and he had identified his signature in the registered sale deed. The plaintiff has admitted that attested witness in the registered sale deed is Kalubhai Bharwad who is his father and he is living along with him. The plaintiff is having disputed agriculture land along with other agriculture lands and he is carrying the agriculture work and revenue of the said land has been paid by him every 2-3 years. He got the copy of Village From 7/12 and under the pretext of getting cattle loan, a registered sale deed has been executed and loan as to same was not obtained but he has not lodged any police complaint. The certificate of Bavla Seva Sahkari Mandali vide Exh. 65 was being shown to plaintiff and he has admitted that, after getting loan, an installments has been regularly paid and plaintiff has also admitted that if any loan as to society, every

year it would be paid and new loan must be sanctioned and if any loan gets by lonee, an entry of encumbrance/charges has been made in Village Form 7/12 and after paying loan, the entry is to be cancelled. The plaintiff have instituted the present suit on his wife and children and in registered sale deed vide Exh. 61 Vijuben and minor children had not made their signature and bottom of the plaint, plaintiff no. 01 and 02 had made signature being a guardian or best friend of plaintiff No. 03 and 04. The plaintiff no. 3 and 4 had not obtained any permission to institute the suit and in pursuant to that, no application has been submitted. The plaintiff has declined to accept the fact that in the affidavit at Mark 46/5 name of his father has been mentioned but photo of his father is unclear and cannot be visible. The deceased no. 01 Hirabhai Bharwad and defendant no. 02 deceased Karmanbhai Laxmanbhai are the real maternal uncle. Hirabhai passed away in the year 2008 and Karmanbhai passed away in the

year 2006. In pursuant to that, the plaintiff has stated that when they died he does not know and plaintiff has handed over the documents to his maternal uncle for obtainment cattle loan. Plaintiff and his two brothers one is living outside the village and in the year 2004, he was having 15 buffaloes and 10 cows and plaintiff has refused to admit the fact that his father was maintaining cows and buffaloes and he was knowing nothing about the maintenance of cattles. He has not known that on dated 29.11.2004 the mutation entry no. 122/84 and 122/85 as to sale. The defendants had submitted one application but it is admitted that if any application has been given to mutate the entry, the concern person would get the notice under Section 135-D of the Bombay Land Revenue Code. It is also admitted that the village Form No. 06 - Record of rights, revenue entry no. 122/84 and 122/85 are well within the knowledge and it is adduced vide Exh. 60. He is not known to the facts that on dated 23.06.2004 the entire amount as to

sale deed has obtained by him and registered sale deed has been executed. The defendant no. 1 had executed registered sale deed in favour of the defendant no. 02 as to half area of the agriculture land while registered sale deed no. 1217 on dated 08.07.2004 but most important denial in the deposition of plaintiff that “he felt that the disputed agriculture land would not be a wastage land of government and therefore present suit has been instituted.”

10. Considering the deposition of plaintiff mentioned herein above the main controversial question between the rival parties to the suit is whether the deceased - the defendants were agriculturist or not at the time of execution of the registered sale deed in the year 2004? Whether the agriculture land bearing survey no. 1205/2 old tenure land admeasuring Hctr.sqr.mtr. 1-91-29 was fraudulently, forged, false and fabricated documents executed in favour of the defendants and

thereafter executed the sale deed and eventually the lands was inserted in his name or not? The witness of complainant Mr. Dinesh Vaghela has deposed vide Exh. 74 and it is submitted that disputed agriculture land are on the name of plaintiff occupation and possession as well as ownership since the last 20 years and the defendants no. 2/1 Baldev Karmanbhai Bharwad has admitted in his deposition vide Exh. 77 that since the last 10 years no yield or income as to agriculture crop has been given and disputed agriculture land is in the occupation and the possession of the plaintiff in the revenue records till date the name of plaintiffs are mentioned and it is admitted by the defendants.

11. The second main controversial question between the parties to the suit is the predecessor Late Hirabhai Bharwad of the defendants no. 1/1 to 1/8 had kept the plaintiff in dark and registered sale deed vide sr. no. 1093/2004 on dated 23.06.2004 was illegal, non-

consideration amount deed and non -implemented and to prove its case the plaintiff has submitted in his plaint that predecessor of defendant no. 1/1 to 1/8 Late Hirabhai Bharwad has told plaintiff in the year 2004 that requisite documents would be filled up for obtainment cattle loan on agriculture land. In pursuant to that, they would be secure their presence before the sub-Registrar office and under the guise of fiduciary relation and trust the plaintiff's signature was got and after execution of the registered sale deed in the revenue records, the entry as to registered sale deed was not certified at the time of its execution. The defendant no. 1 was not agriculturist and therefore the revenue entry was not mutated and certified in the record and witness of defendant Mr. Kalubhai Bharwad has admitted in his cross examination vide Exh. 96 that in favour of Hirabhai no mutation entry has been certified as to registered sale deed and Mr. Hirabhai became unable to adduce the certificate as to the status of agriculturist. Therefore the mutation

entries were rejected. The agriculture land in which Mr. Hirabhai Bharwad was the agriculturist, the said land was sold previously and therefore Hirabhai has not obtained the certificate of the status of the 'Agriculturist' and defendant no. 2/1 Mr. Baldevbhai Bharwad admitted in his deposition vide Exh. 77 that at the time of execution of the registered sale deed the deceased Hirabhai or deceased Karmanbhai had not obtained any title clearance certificate and the defendants have not adduced any documents with regard to the applications submitted in the revenue authority office as well as supported evidences as to agriculturist like expenses made in the agriculture land as well as bill of the disputed land etc. are not adduced and it does not clear that the defendant is the agriculturist till date. At the time of execution of the registered sale deed in the year 2004 the deceased defendant no. 01 was not agriculturist and therefore he was unable to purchase the agriculture land and at the time of execution of the sale deed on dated

23.06.2004 consideration amount was not received. The registered sale deed was false fabricated, illegal, concocted, non-implemented and without consideration amount deed and therefore whatever transaction has been made in favour of the defendant no. 1 has an agriculturist are absolutely the void transaction and predecessor of defendant no. 01 Mr. Hirabhai had executed the registered sale deed in favour of the predecessor of defendants namely Karmanbhai as to admeasurement 0-95-15 Hectr.Sqr.mtr. agriculture land out of entire disputed land on dated 08.07.2004 and some portion of the disputed agriculture land registered sale deed executed by the deceased of defendant no. 01 in favour of deceased of defendant no. 02 and when Late Hirabhai had not got the disputed property by way of execution of legal sale and therefore the deceased defendant no. 02 wold not execute the registered sale deed either conclusive land or partial land in favour of the deceased defendant no. 02 and

when predecessor of defendants was not agriculturist at the time of execution of the sale deed and therefore the record of rights entry no. 12284/12284 were not certified.

12. Case on hand cannot be relied upon on the revenue entries, documents to determine the controversial questions as to title between the parties to the suit because revenue entries are absolutely the presumptive entries and evidence of revenue entries are used for the fiscal purpose. It is not the trustworthy or reliable evidence of title and considering the revenue entries the Court cannot come to the conclusion about the disputed land of the title between the rival parties. But the status of the agriculturist is the main controversial question and crux of the dispute between the parties to the suit is either vendor or vendee is not agriculturist. In that circumstances no one can be participated in the transaction of the execution of the registered sale deed because exchange of ownership deed with regard

to the agriculture land are absolutely relied on the status of the parties to the suit and when defendants no. 01 predecessor was not the 'agriculturist' and therefore the entire transaction as to sale of agriculture land is void and all the affiliated questions with regard to the execution of registered sale deed cannot be abide by law and when law prevents any transaction as to execution of registered sale deed, therefore court cannot assist the defendants as to equitable relief and it is the cardinal principle of equity that "he who comes equity must come with clean hand" and equitable relief is absolutely discretionary relief and discretion must be exercised in judicious manner and not arbitrarily and discretion is always guided by sound legal principle and not in a arbitrary manner.

13. Case on hand since the outset of the transaction of the registered sale deed execution predecessor of defendants was not "agriculturist" and therefore

entire transaction as to registered sale deed cannot be abide by law. Under the Gujarat Tenancy and Agriculture lands Act 1948, as per section 63 and 63 (AA) 'only individual who are already farmer (agriculturist) any part of India are eligible to buy agriculture land. No farmer himself either getting the land converted to non agriculture (NA) used or proved farmed 'status' and defendant are absolutely failed to prove 'status' of farmer and non agriculturist are strictly prohibited from buying agriculture land unless they are converting it for legal non farming purposes (like industry, residential with prior permission)'. The defendants had not got any permission from Dy. Collector for specific purchase. They are restricted under the maximum amount of the land a person can own but when at the time of execution of the registered sale deed the defendants have not got the status of 'agriculturist' and provision herein above is absolutely barred for vendor non agriculturist or vendee non agriculturist.

14. The question of limitation is the mix question of law and facts and limitation to cancel the registered sale deed and affiliated cause of action has been accrual when facts of fraudulent transaction first came to the knowledge of plaintiff and date of knowledge of fraud and taken from the starting point of limitation period and the proceedings pending for in the revenue office and its affiliated documents are not the supporting point of limitation period. The plaintiff has mentioned in the plaint that they have not obtained cattle loan money. In pursuant to that, plaintiff asked to defendant no. 1/1 to 1/8 and those defendants told that some time would be taken to give cattle loan and at the time of institution of suit plaintiffs have received the notice of Mamlatdar Bavla and documents and thereafter plaintiffs have instituted the present suit and in case of relief seeking cancellation of deed, the limitation period is 03 years according to Article 59 of the Limitation Act and any

suit seeking cancellation of a instrument is void or voidable must be filed within 03 years from that but plaintiff 'first' knew of its existence. The word 'first' in Article 59 of the Limitation Act means : From first time the right to sue arises, if not acted upon within 03 years the suit will be barred and in the present case first time it is came to the knowledge to the plaintiff that after receipt of the notice issued by Mamlatdar Bavala and thereafter upon perusal fo the documents as to Mamlatdar notice, the said date is the starting point of the limitation period as per Article 59 under the Limitation Act and plaintiff has instituted this suit within limitation period.

15. When any civil case instituted by any litigant, principle of preponderance probability can be applied and admissions by the parties to the suit must be taken into consideration as a creditworthy/trustworthy evidence but if any admissions made by any party to the suit which are

not relevant to the facts of the case, such type of admission are not taken into consideration as clinching and cogent evidence and at the time applying of 'preponderance probability' the provision of law and admissions are also must be taken into consideration. Mere pleadings are not sufficient and the pleadings of the parties to the suit are absolutely Say Vs. Say in written documents. In support of pleadings, there must be supportive evidence on record and when any party instituted a suit being a plaintiff, the following 03 characteristic must be simultaneously in favour of the plaintiff which are as under :-

i. Pleadings.

ii. Proof.

iii. Prove

- 16.** Considering the aforesaid essential ingredients, it is pertinent to note that in support of pleading, the plaintiff have adduced the trustworthy/creditworthy documentary evidence and pleading of the plaint are

proved by plaintiff with support of oral evidences as well as admissions made by rival parties in their respective depositions.

17. Equitable relief is a discretionary relief and when granting injunction application in favour of plaintiff, mere allowing of the suit as to cancellation of the registered sale deed became fruitless and therefore Section 38 of the Specific Relief Act connotes :

Perpetual injunction only granted when :

- (1) Subject to the other provision contained in or referred to by this Chapter, a perpetual injunction may be granted to the plaintiff to prevent the breach of obligation existing in his favour whether expressly or by implication,
- (2) When any such obligation arises, Court shall be guided by a rules and provision contained in Chapter 02,
- (3) When the defendant invades or threatens to invade the plaintiff's rights to or enjoyment of property.

The Court may grant a perpetual injunction in the following cases namely:

- (a) xxxxx
- (b) Where there exists no standard for ascertaining the actual damages existed or likely to be existed by invasion.
- (c) Where the invasion is such that compensation in money would not afford adequate relief.
- (d) Where injunction is necessary to prevent a multiplicity of judicial proceedings.

18. Considering the above provisions determination of invasion or threatens to invade plaintiff's right or enjoyment of property, the lodgment of criminal complaint is not necessary for the plaintiff and when some question has been asked by the defendant during the course of cross examination and in the reply it is admitted by the plaintiff that no criminal complaint lodged but point of determination as to civil rights are based on the principle of 'preponderance probability' and having regard to the contention raised by rival parties along with documentary evidence and produced by the parties to the suit and admissions in the depositions, admissions of the parties to the suit are also a main factor and all those component implies that the evidence on one side, outways or is more convincing than the evidence on the other side (plaintiff) and evidences in favour of plaintiff as balance of probabilities or more probable than not in favour of the defendants and Court has to

invade conflicting probabilities to choose the most plausible scenario. Therefore standard of proof are also taken into consideration and it determines the type, degree and the amount of evidence that plaintiff needs to provide to establish proof and ultimately plaintiffs have succeeded. Therefore it is the duty of the Civil Court to pass order in favour of the plaintiff to prevent multiplicity of the proceedings.

19. In the light of above discussions, the order passed by Ld.Addl. Civil Judge, Bavla on dated 27.12.2024 below Exh. 106 in RCS No. 28/17 is just and proper. The reasons recorded, observations made, findings given by Ld. Trial Court in its Judgment and Order are not erroneous, arbitrary and not perverse, therefore, no need to interfere to the Judgment and Order of the Ld. Trial Court and looking to the findings given by Ld. Trial Court, it is not against the provision of law. Hence, the issues are decided accordingly and the following Order is

passed in the interest of justice.

:: O R D E R ::

1. This Regular Civil Appeal No. 11 of 2025 is hereby **DISMISSED**.
2. The Judgment and decree passed by Ld.Addl. Civil Judge, Bavla on dated 27.12.2024 below Exh. 106 in RCS No. 28/17, **stands confirmed**.
3. R & P of the RCS No.28/2017 be sent back to the Ld. Trial Court along with a copy of this Judgment.
4. No order as to costs.

Pronounced in the open Court today on this 28th April, 2026.

Date : 28/04/2026.
Place: Dholka.

[Naresh Girikant Dave]
[UIC No. GJ00467]
Addl. District Judge,
Ahmedabad [Rural] at Dholka.