EXHIBIT:115

1. No. of the case: RCS 24/2015 Old Civil Suit No. : RCS187/2013
2. Date of registration of the case: 05.10.2013
3. Date reserved for order: 28.12.2023
4. Date of Judgment: 28.12.2023
5. Duration: 10 years 2 month 23 days

IN THE COURT OF PRINCIPAL CIVIL JUDGE, ANKLAV

DISTRICT:ANAND

Regular Civil Suit No. 24/2015

(Old Civil Suit No. : RCS 187/2013)

PLAINTIFF/S

1. LRs of Late Somabhai Khodabhai Makwana

1/1.Rameshbhai Somabhai Makwana

Age: Major, Occupation: Farmer

1/2. Sitaben Somabhai Makwana

Age: Major, Occupation: Farmer

Both above resident of: Navakhal, Taluka: Anklav, District: Anand

Versus

DEFENDANTS

1. **Dipikaben w/o Gajendrasinh Pratapsinh Parmar**

   Age: Major, Occupation: Farmer

2. **Hemlataben w/o Narendrasinh Pratapsinh Parmar**

   Age: Major, Occupation: Farmer

   Both above resident of:Moto Bhag, Sherkhi, Taluka: Vadodara, District: Vadodara

Subject : Suit for Cancellation of sale deed, declaration and permanent injunction.

Appearance:

- Ld. Advocate Mr.S.B.Vyas for the plaintiffs.
- Ld. Advocate Ms.B.G.Parekh for the defendants.

J U D G M E N T

1. The facts of the present suit which are narrated in a succinct manner in the plaint of the plaintiffs are as follows:

1.1 The plaintiffs vide exhibit 1 submit that survey no. 265/2 (admeasuring area 0-39-46 Hec.RA), survey no. 265/3(admeasuring area 0-23-27 Hec.RA) and both survey numbers come under block no.30 and survey no. 2274/4 (admeasuring area 0-38-45 Hec.RA) block no.31 situated at Village:Navakhal, Taluka: Anklav, District: Anand are ancestral properties of the plaintiffs. They submit that they cultivate the suit properties and use well water of Jenabhai Manibhai Patel and they reside at the suit properties and therefore, they submit that they are in possession of the suit properties.

1.2 They submit that one Mr. Gajendrasinh Pratapsinh Parmar who is related to the defendants approached the plaintiff Late Somabhai Khodabhai Makwana and proposed to purchase survey no. 274/4 only for the consideration of Rs. 42,00,000/- and he lured Somabhai Khodabhai to execute a registered agreement to sell so that he could sell survey no. 274/4 to some person on the basis of the registered agreement to sale. They submit that Gajendrasinh Pratapsinh promised to pay Rs. 42,00,000/- and also promised to provide them 4 Bighas land at some other nearby place @ Rs. 10,00,000/- per Bigha. They submit that it was said that the consideration amount will be given later and not at the time of execution of registered agreement to sell. They submit that Somabhai Khodabhai Makwana went to the office of registrar on request of the husband of the defendant no.1 for the purpose of executing registered agreement to sell of survey no. 274/4. They submit that signature of Somabhai Khodabhai Makwana were obtained upon many papers and such papers were not given for perusal to Somabhai Khodabhai Makwana.

1.3 They submit that the plaintiffs came to know about the sale deed when a notice under section 135 D of the Gujarat Land Revenue Code was served to the plaintiffs about the mutation entry no. 6718 of dated 20/09/2012 which was made in the revenue records regarding the sale deed of the suit properties. They submit that they filed objections before the revenue authorities against such entry but the authorities rejected the objections of the plaintiffs and certified the entries made in favor of the defendants on 28/02/2013 and thereafter, the defendants have been criminally intimidating the plaintiffs whereby the defendants have been trying to get the possession forcefully from the plaintiffs.

1.4 They submit that when they checked the revenue records then they came to know that they have been subjected to cheating by the defendants and the defendants have fraudulently got executed a sale deed with respect to all the suit properties on 16/08/2010 vide entry no. 2576/2010 in the guise of executing an agreement to sell for survey no. 274/4. They submit that they have not received any amount of consideration from the defendants and they have never sold the suit properties to the defendants and presently the plaintiffs are in legal possession of the suit properties. They submit that the defendants have an ill intention to usurp the property of the plaintiffs. They submit that the defendants are trying to dispossess the plaintiffs unlawfully and also, the defendants have criminally intimidated the plaintiff of dire consequences. They submit that the defendants have no right, title and interest with respect to the suit property. The plaintiffs submit that such unlawful acts of the defendants made the plaintiffs to file the present suit and hence, the plaintiffs have filed present suit seeking following reliefs against the defendants:

a) To order the defendants that the defendants have no right to transfer the suit properties to any person, institution etc and the defendant must not to do any act in order to damage the rights of the plaintiffs.

b) To cancel the sale deed no. 2576/2010 dated 16/08/2010.

c) To permanently restrain the defendants that the defendants shall not create any encumbrances over the suit properties or sell, mortgage, gift or transfer the suit properties in any manner whatsoever which may be detrimental to the plaintiffs' rights with respect to the suit properties.

d) Any other relief which the Hon'ble Court deems fit.

2. Upon the service of summons, the defendants appeared before the then Court by filing Vakilatnama and thereafter, the defendants filed their reply vide exhibit 20, against the plaintiffs' plaint.

2.1 Besides the general denial to the plaintiffs' claim, the defendants submit that the husband of the defendant no.1 does not do real estate business rather the suit properties were purchased for their own use. They submit that the suit properties were sold by Somabhai Khodabhai Makwana to the defendants after carefully verifying and examining the revenue records and after receiving full and final consideration for the suit properties. They submit that a legally entry was made in the revenue records regarding such sale vide entry no. 6718 and thereafter, such entry was also certified by the concerned revenue authorities. They submit that the present suit has been filed with mala fide intention of extorting money from the defendants. They submit that the claim of the plaintiffs that they are owners and occupiers of the suit properties is false and bogus as the plaintiffs have no right, title and interest in the suit property. They submit that the plaintiffs are nowhere related to the suit property and the plaintiffs have no cause of action to file the present suit and they have made false averments to cause annoyance to the defendants. They submit that the plaintiffs have not approached the Court with clean hands and therefore, the suit is liable to be dismissed with costs.

3. Analyzing the plaint, written statement of the defendants and documents presented on record, the issues were framed by the then Court vide exhibit 25 in Gujarati language which are hereby translated in English language for adjudication of present suit on merits:

<u>Issues</u>

(1) Whether the plaintiffs prove that the suit properties are in possession of the plaintiffs?

(2) Whether the plaintiffs prove that registered sale deed of dated 16.08.2010 was executed fraudulently and the defendants fraudulently

got their name entered in the revenue records and hence. Such sale deed is liable to be cancelled?

(3) Whether the suit of the plaintiffs is barred under the law of limitation?

(4) Whether the plaintiffs are entitled for the reliefs as prayed for in the plaint?

(5) What is the final order and decree?

4. The documentary and oral evidence which have been produced by the parties are as follows:

ORAL EVIDENCE OF THE PLAINTIFFS		
Sr. No.	Particulars	Exhibit No.
1.	Deposition of the plaintiff 1/1 Mr.Rameshbhai Somabhai Makwana	40
2.	Deposition of witness Jenabhai @ Maheshbhai Manilal Patel	80
3.	Deposition of witness Jaswantbhai Punambhai Solanki	81
4.	Deposition of witness Rameshbhai Pujabhai Thakor	82

DOCUMENTARY EVIDENCE OF PLAINTIFFS

Sr. No.	Particulars	Exhibit No.
1.	Copy of registered sale deed dated 16.08.2010	43
2.	Copy of revenue record form no. 8A	44, 45
3.	Copy of revenue record form no. 7 of block/s.no. 513, old block/s.no. 265/2	46
4.	Copy of revenue record form no. 7 of block/s.no. 515, old block/s.no. 265/3	47
5.	Copy of revenue record of rights form no. 6 showing entry no. 7417 date 24/03/2017 for block/s.no. 513, 515 and 532	48
6.	Notice issued by surveyor to the defendants	49, 50, 51
7.	Affidavit of Makwana Rameshbhai Somabhai regarding pedigree.	52
8.	Padigree of Makwana Somabhai Khodabhai	53
9.	Copy of revenue record of rights form no. 6 showing entry no. 6861 date 15/10/2013 for block/s.no.265/2, 265/3, 274/4	54
10.	Copy of revenue record of rights form no. 6 showing entry no. 6599 date 17/12/2011 for block/s.no.265/2, 265/3, 274/4	55

11.	Copy of revenue record of rights form no. 6 showing entry no. 6365 date 14/10/2010 for block/s.no.265/2, 265/3, 274/4	56
12.	Copy of revenue record of rights form no. 6 showing entry no. 6663 date 04/05/2012 for block/s.no.265/2, 265/3, 274/4	57
13.	Copy of revenue record of rights form no. 6 showing entry no. 6852 date 04/10/2013 for block/s.no.265/2, 265/3, 274/4	58
14.	Copy of revenue record of rights form no. 6 showing entry no. 10268 date 06/03/2012 for block/s.no.611	59
15.	Copy of revenue record form no. 7 and 12 of block/s.no.611	60
16.	Report prepared by the Court Commissioner(Panchnama)	61
17.	Map prepared by the Court Commissioner	62
18.	Copy of order of Assistant Collector, Borsad in RTS case no. 251/2016	68
19.	Copy of revenue record form no. 7 of block/s.no.532 (Old S.no. 274/4)	69
20.	Copy of revenue record form no. 7 of block/s.no.515	70

	(Old S.no. 265/3)	
21.	Copy of revenue record form no. 7 of block/s.no.513 (Old S.no. 265/2)	71

ORAL EVIDENCE OF DEFENDANTS		
Sr. No.	Particulars	Exhibit No.
1.	Deposition of Gajendrasinh Pratapsinh Parmar (Power of attorney holder of the defendants)	90

DOCUMENTARY EVIDENCE OF DEFENDANTS		
Sr. No.	Particulars	Exhibit No.
1.	Agreement to sell	92
2.	Sale deed	93
3.	Power of attorney holder document	94
4.	Copy of revenue record form no. 7 of block/s.no.513 (Old S.no. 265/2)	95
5.	Copy of revenue record form no. 7 of block/s.no.515 (Old S.no. 265/3)	96
6.	Copy of revenue record form no. 7 of block/s.no.532	97

	(Old S.no. 274/4)	
7.	Consent letter	101

5. Thereafter, The Ld. Advocates Ms. B.S.Vyas for the plaintiffs presented her final written arguments at exhibit 111 and the Ld. Advocate Mr. B.G.Parekh for the defendants presented his final written arguments (final arguments) at exhibit 112 and 113 and thereafter, the Ld. Advocates for both the sides preferred to orally argue the matter at length. This Court has considered oral and written arguments of the parties.

5.1 The LD. Advocate Ms. B.S.Vyas for the plaintiffs reiterated the version of the plaint and contended that the plaintiffs are the owners and occupiers of the suit properties and the suit properties are the ancestral properties of the plaintiffs. She contended that the plaintiffs were subjected to fraud and cheating by the defendants and the defendants unlawfully got an entry no. 6718 dated 20/09/2012 entered in the revenue records. She contended that the plaintiffs have produced documentary evidence at exhibit 43 to 60 and 68 to 71 in support of their case. She contended that independent witnesses have been examined by the plaintiffs at exhibit 80 and 81and such witnesses favor the case of the plaintiffs. She contended that entry no. 6718 has been disapproved by the revenue authorities. She contended that the report (exhibit 61) and map (exhibit 62) prepared by the Court commissioner support the contention of the plaintiffs that the plaintiffs are in possession of the suit properties. She contended that the defendants willfully did not come for their deposition before this Court though both the defendants are doing well. She contended that the plaintiffs have proved issues framed by the then Court in their favor without any doubts but the defendants have failed to prove issues which were supposed to be framed by the defendant. She contended that the defendants have an ill intention to usurp the property of the plaintiffs and are trying to dispossess the plaintiffs unlawfully. The Ld.Advocate for the plaintiffs contended that the plaintiffs have proved all the issues, framed by the Court, which were required to be proved by the plaintiffs and therefore, she prayed this that the plaintiffs are entitled for all the reliefs as prayed for.

5.2 The learned advocate Mr. B.G. Parekh for the defendants contended that the suit properties are in actual possession of the defendants and the defendants have legally purchased the suit properties on the strength of registered sale deed dated 16.08.2010. He contended that the Somabhai Khodabhai Makwana himself entered into the contract with the defendants and after the completion of sale, the names of the defendants have been added in the revenue records. He submitted that the claim of the plaintiffs that they are owners and occupiers of the suit properties is false and bogus as the plaintiffs have no right, title and interest in the suit property. He contended that the witnesses examined by the plaintiffs cannot be considered as reliable piece of evidence. He contended that registered sale deed was executed before the registrar and also, in presence of witnesses and therefore, plaintiffs cannot seek for the resort that they were kept in dark while sale deed got executed in favor of the defendants. He contended that the defendants have produced enough documents in order to defend the suit. He contended that the plaintiff Rameshbhai Somabhai has admitted in his deposition that the suit properties were in the name of the Somabhai Khodabhai in the revenue records and he also admitted that the suit property was sold to the defendants by Late Somabhai Khodabhai. He contended that the other two witnesses examined at exhibit 80 and 81 cannot be considered reliable as they have not supported the case of the plaintiffs and henceforth, he prayed to dismiss the suit with costs. The Ld. Advocate for the defendants presented following authorities in support of his contentions:

1. *Bhimappa and ors. V. Allisab and ors.-AIR 2006 KARNATAKA 206*
2. *Kailashi Devi V. Matadeen Agrawal and ors.- AIR 2001 RAJASTHAN 306*
3. *Gadhvi Garavdan Govindbhai V. Patel Mangabhai Shambhi and ors.- 2008 2 GLH 474*

6. Findings of this court on the above stated issues are as under:

Sr.No.	Issue No.	Findings
1.	1	Affirmative
2.	2	Partly affirmative
3.	3	Negative
4.	4	Affirmative
5.	5	As per the final order

7. REASONS

7.1 The abovementioned issues are inter-connected and hence they are discussed in group for the sake of convenience. The plaintiffs have come up with their case that that the suit properties are ancestral properties of the plaintiffs and that the husband of the defendant no.1 Mr. Gajendrasinh Pratapsinh Parmar falsely and unlawfully got a sale deed executed with respect to the suit properties in favor of the defendants on 16/08/2010 vide entry no. 2576/2010 in the guise of executing an agreement to sell for survey no. 274/4.

The plaintiff Mr.Rameshbhai Somabhai Mkawana S/o Late Somabhai Khodabhai Makwana entered into the witness box for proving issues framed by the Court in favor of the plaintiffs and his examination-in-chief affidavit was recorded by the Court at exhibit 40 whereby he deposed that survey no. 265/2 (admeasuring area 0-39-46 Hec.RA), survey no. 265/3(admeasuring area 0-23-27 Hec.RA) and both survey numbers come under block no.30 and survey no. 2274/4 (admeasuring area 0-38-45 Hec.RA) block no.31 situated at Village:Navakhal, Taluka: Anklav, District: Anand are ancestral properties of the plaintiffs. He deposed that the plaintiffs reside at the suit properties and are in possession of the suit properties. He deposed that Mr. Gajendrasinh Pratapsinh Parmar approached the plaintiff Late Somabhai Khodabhai Makwana and proposed to purchase survey no. 274/4 only for the consideration of Rs. 42,00,000/- and he lured Somabhai Khodabhai to execute a registered agreement to sell so that he could sell survey no. 274/4 to some person on the basis of the registered agreement to sale. He deposed that Gajendrasinh Pratapsinh promised to pay Rs. 42,00,000/- and also promised to provide them 4 Bighas land at some other nearby place @ Rs. 10,00,000/- per Bigha. He deposed that Somabhai Khodabhai Makwana went to the office of registrar for the purpose of executing registered agreement to sell of survey no. 274/4. He deposed that the plaintiffs came to know about the sale deed when a notice under section 135 D of the Gujarat Land Revenue Code was served to the plaintiffs about the mutation entry no. 6718 of dated 20/09/2012 which was made in the revenue records regarding the sale deed of the suit properties. He deposed that the defendants have been trying to get the possession forcefully from the plaintiffs. He deposed that when the plaintiffs checked the revenue records then they came to know that they have been subjected to cheating by the defendants and the defendants have fraudulently got executed a sale deed with respect to all the suit properties on 16/08/2010 vide entry no. 2576/2010 in the guise of executing an agreement to sell for survey no. 274/4. He deposed that the plaintiffs have not received any amount of consideration from the defendants and they have never sold the suit properties to the defendants. He deposed that the defendants were not agriculturists when the registered sale deed was executed and henceforth, the sale of the suit properties in favor of the defendants has no force in the eyes of law.

During his cross examination, he admitted that the suit properties were in the name of Somabhai Khodabhai in the revenue records and the suit properties were sold by Somabhai to the defendants but he denied that Somabhai Khodabhai executed registered sale deed in favor of the defendants. He deposed that he has neither given any affidavit of his examination-in-chief nor produced any documents along with his deposition nor he produced his family pedigree nor he produced revenue records form no. 7 and 12. He admitted that he is not aware of the transactions took place between Late Somabhai Khodabhai Makwana and the defendants and also, he deposed that he does not know whether any agreement to sell or any other agreement was executed or not by his father Somabhai Khodabhai in favor of the defendants.

As far as issue no. 1 and 2 are concerned, it appears from the revenue record of rights form no. 6 produced by the plaintiffs at exhibit 55, 56 and 57 that the mutation entry no. 6599 dated 17/12/2011, 6365 dated 14/10/2010, 6663 dated 04/05/2012 respectively made in favor of the defendants were cancelled by the revenue authorities on 01/03/2012, 24/12/2012 and 21/08/2012 respectively as the purchasers of the suit properties did not produce any evidence of them being agriculturists.

7.2 The order of the Assistant Collector, Borsad produced by the plaintiffs at exhibit 68 in RTS case no. 251/2016 clearly shows that mutation entry no. 65718 of dated 20/09/2012 about the sale deed of the suit properties which was certified on 28/02/2103 was ordered to be cancelled on 20/04/2018. The Assistant collector, Borsad clearly mentioned that the names of the defendants were added in the revenue records vide mutation entry no. 10268 dated 06/03/2012 with respect to survey no. 611, Taluka: Vadodara, District: Vadodara and such mutation entry was certified on 01/05/2012. He made it clear in his order that the purchaser of the suit properties were not original farmers at the time when the sale deed was executed in their favor on 16.08.2010.

Further, the copy of the revenue records produced by the plaintiffs at exhibit 69, 70 and 71 show that the name of Somabhai Khodabhai Makwana was added in the revenue records as possessor of the suit properties after the order of the Assistant Collector passed in RTS Case no. 251/2016 on 20/04/2018. Most importantly, the copies of the revenue records from no. 7 with respect to the suit properties produced by the defendants at exhibit 95, 96 and 97 show that the names of the plaintiff are present in the revenue records as possessors of the suit properties. The documents at exhibit 95, 96 and 97 also show that the revision application RA/138/2018 filed by the defendants before the Collector, Anand, after getting aggrieved from the order of the Assistant Collector, Borsad passed in RTS case no. 251/2016, was also dismissed on 16.12.2019 and the order of the Assistant Collector, Borsad in RTS case no. 251/2016 kept confirmed.

7.3 Here, this Court finds it pertinent to mention section 63 of The Bombay Tenancy and Agricultural Lands Act, 1948. Section 63 of the Act reads as under:

63. Transfers to non-agriculturists barred.

(1) Save as provided in this Act:-

(a) no sale (including sales in execution of a decree of a Civil Court or for recovery of arrears of land revenue or for sums recoverable as arrears of land revenue), gift, exchange or lease of any land or interest therein, or

(b) no mortgage of any land or interest therein, in which the possession of the mortgaged property is delivered to the mortgage, or

(c) no agreement made by an instrument in writing for the sale, gift, exchange, lese or mortgage of any land or interest therein,

shall be valid in favour of a person who is not an agriculturist or who being an agriculturist cultivates personally land not less than the ceiling area whether as an owner or tenant or partly as owner and partly as tenant or who is not an agricultural labourer:

Provided that the Collector or an officer authorised by the State government in this behalf may grant permission for such sale, gift, exchange, lease or mortgage, or for such agreement on such conditions as may be prescribed.

Provided further that no such permission shall be granted, where land is being sold to a person who is not an agriculturist for agricultural purpose, if the annual income of such person from other sources exceeds five thousand rupees.

(1A) The State Government may, by notification in the Official Gazette, exempt from the provisions of sub- section (1), for the transfer of any agricultural land to any public trust established for the charitable purpose and which is non-profitable in nature, for the use of such land in the field of health and education, subject to such conditions as may be specified therein.

(2) Nothing in this section shall be deemed to prohibit the sale, gift, exchange or lease, or the agreement for the sale, gift, exchange or lease, of a dwelling house or the site thereof or any land appurtenant to it in favour of an agricultural labourer or an artisan or a person carrying on any allied pursuit.

(3) Nothing in this section shall apply or be deemed to have applied to a mortgage of any land or interest therein effected in favour of a co-operative society as security for the loan advanced by such society or any transfer declared to be a mortgage by a court under section 24 of the Bombay Agricultural Debtors' Relief Act, 1947.

(4) Nothing in Section 63A shall apply to any sale made under sub-section (1).

Section 63 of the Act gives that the transfer of property by sale, gift, exchange, or lease of any land or interest therein is not valid if that person is not an agriculturist or who is not an agricultural laborer. In addition to being an agriculturist or an agricultural laborer, their landholdings should not exceed two-thirds of the ceiling area determined. The principal reason for the conferral of ownership rights only upon a cultivating tenant was to ensure that the cultivators be protected, conferring the right of purchase upon the cultivators and to ensure that there is a direct relationship between the cultivators and the land. Section 63 protects the farmlands and the rights of the cultivators.

The law acts as an antidote against “absentee landlordism”. It protects naive and gullible persons from disadvantaged categories from transferring cultivable land to non-agriculturists, through any means to be used for other purposes.

Now, it becomes duty of the defendants as per **section 102 of the Indian Evidence Act, 1872** to prove that they were original farmers on the date when the disputed sale deed was executed by Somabhai Khodabhai Makwana in favor of the defendants. This Court opines that the deposition of the Power of Attorney holder Mr. Gajendrasinh Pratapsinh Parmar of the defendants at exhibit 90 does not suffice the case of the defendants as the execution of sale deed with respect to the suit properties in favor of the defendants is explicitly barred as per section 63 of The Bombay Tenancy and Agricultural Land Act, 1948.

The registered agreement to sell produced by the defendants at exhibit 92 and the registered sale deed at exhibit 93 do not suffice the case of the defendants as this Court is of considered opinion that the parties to a contract cannot bring the contract within the ambit of law by executing a registered sale deed when the execution of such contract is specifically and explicitly barred by law. Further, the consent letter of dated 16.08.2010 produced at exhibit 101 by the defendants cannot be considered as a reliable piece of evidence as the names of 5 persons are shown as sellers but the signatures of all the parties do not appear on such consent letter.

The defendants of the present case have failed to bring any document in support of their case to prove that they were agriculturists at the time of execution of the sale deed with respect to the suit properties in the favor of the defendants on 16/08/2010 by Somabhai Khodabhai Makwana. The record of the case along with the documents produced by the plaintiffs make it crystal clear that the names of the defendants were added in the revenue records vide mutation entry no. 10268 dated 06/03/2012 with respect to survey no. 611, Taluka: Vadodara, District: Vadodara and such mutation entry was certified on 01/05/2012 but the disputed sale deed with respect to the suit properties was executed in their favor on 16/08/2010 and at the time, the purchasers of the suit properties were not original farmers. In Section 63 of The Bombay Tenancy and Agricultural Lands Act, 1948, it is explicitly mentioned that there should be no transfer of property in any form to a non-agriculturist party. Such a transaction will not be considered valid.

7.4 Further, this Court is of humble opinion that the case of the plaintiffs does not get vitiated merely because Rameshbhai Somabhai Makwana had admitted, during his cross examination, that the suit properties were sold by Somabhai to the defendants and that he has neither given any affidavit of his examination-in-chief nor produced any documents along with his deposition nor he produced his family pedigree nor he produced revenue records form no. 7 and 12 nor he is aware of the transactions took place between Late Somabhai Khodabhai Makwana and the defendants and nor he knows whether any agreement to sell or any other agreement was executed or not by his father Somabhai Khodabhai in favor of the defendants. The deponent Rameshbhai Somabhai Makwana appears to be a villager and it is not expected from a villager to know about each and every legal terminology and the intricacies involved in a particular case. In the present case, though Mr. Rameshbhai Somabhai denied everything but the record of the case shows that the plaintiffs have produced revenue records, family pedigree of Late Somabhai Khodabhai Makwana and all other relevant documents.

The documents produced by the plaintiffs at exhibit 44 and 45 show that Somabhai Khodabhai was in possession of the suit properties and after entry no. 6718 which was certified on 28.02.2013 the names of the defendants were added in the records as the possessors of the suit properties. But, after the entry no. 6718 got cancelled the names of the plaintiffs again came as possessors of the suit properties at it clearly appears from perusal of exhibit 69, 70 and 71. Also, the documents produced by the defendants at exhibit 95, 96 and 97 show the present plaintiffs as possessors of the suit properties. The oral deposition of the plaintiff Rameshbhai Somabhai Makwana at exhibit 40 about the possession of the plaintiffs upon the suit property is supported and corroborated by the oral depositions Jenabhai Manibhai Patel (exhibit 80) and Jaswantsinh Punambhai Solanki (exhibit 81). Both these witnesses deposed nothing wrong during their cross examination that goes against the case of the plaintiffs. This Court is of opinion that non-production of water supply bills or usage of tractor bills does not make the case of the defendants strong. Therefore, this Court is of opinion that issue no.1 of possession can be decided on the basis of the principle of preponderance of probabilities in favor of the plaintiffs.

7.5 Further, the plaintiffs has failed to satisfy this Court that the sale deed produced by the plaintiffs at exhibit 43 and by the defendants at exhibit 93 was executed by means of fraud and misrepresentation. This Court is of opinion that the plaintiffs have not brought any document on record of this case to support their contention that Gajendrasinh Pratapsinh promised to pay Rs. 42,00,000/- as consideration to Somabhai Khodabhai Makwana and also promised to provide them 4 Bighas land at some other nearby place @ Rs. 10,00,000/- per Bigha. Therefore, this Court is of considered opinion that the sale deed executed between the Somabhai Khodabhai Makwana and the defendants cannot be said to be fraudulently executed though such execution of the sale deed has no legal force as it is barred as per section 63 of The Bombay Tenancy and Agricultural Lands Act, 1948. Henceforth, issue no. 2 is partly decided in favor of the plaintiffs so far as the issue of cancellation of sale deed is concerned.

7.6 With regard to issue no. 3, nothing has come on record of the present case from which it can be said that the suit of the plaintiffs is barred by the law of limitation and therefore, issue no. 3 is decided in negative.

7.7 After having discussed all the issues prudently and as per the provisions of law, this Court is of considered opinion that the possession of the plaintiffs upon the suit property is proved by the plaintiffs. Therefore, on the basis of plaint, deposition of the plaintiff Rameshbhai Somabhai Makwana (Exhibit 40), depositions of the witnesses at exhibit 80 and 81 and with the corroborative and supportive document produced by the plaintiffs at exhibit 44, 45 and 53 to 60 and 68 to 71, this Court holds the opinion that the plaintiffs are in possession of the suit property and therefore, they are legally entitled to protect such possession. The defendants have failed to prove the validity and legality of the disputed sale deed execute on 16.08.2010 by Late Somabhai Khodabhai Makwana in favor of the defendants. The issue no. 1 is decided in affirmative and the issue no.2 is decided in partly affirmative i.e. the sale deed is liable to be cancelled and the issue no. 3 is decided in negative and therefore, issue no. 4, to the satisfaction of this Court, is decided in favor of the plaintiffs. This Court has gone through the authorities of the Honourable High Courts produced by the defendants, but, with due respect, the facts and circumstances of the present case are different from the authorities presented and therefore, the authorities are not applicable in the present case. Under these circumstances, the Issue No.5 is decided as per the Final Order mentioned below.

FINAL ORDER

1. The suit of the plaintiffs, Rameshbhai Somabhai Makwana and Sitaben Somabhai Makwana (LRs of Somabhai Khodabhai Makwana) against the defendants, Dipikaben Gajendrasinh Parmar and Hemlataben Narendrasinh Parmar, is hereby allowed.

2. The registered sale deed no. 2576/2010 of dated 16/08/2010 is hereby declared null and void and therefore, it is ordered that the registered sale deed no. 2576/2010 of dated 16/08/2010 is liable to be cancelled.

3. The defendants, their servant, agents, power of attorney holders etc. are directed not to transfer the suit property in any manner, whatsoever, to any person on the basis of the registered sale deed no. 2576/2010 of dated 16/08/2010.

4. The defendants, their servant, agents, power of attorney holders etc. are hereby restrained from creating any encumbrances over the suit property, in any manner whatsoever, on the basis of the registered sale deed no. 2576/2010 of dated 16/08/2010.

5. A copy of this order shall be sent to the office of Sub-Registrar, Borsad and the concerned officer shall make an entry, for compliance of this order, in

the relevant register about the cancellation of the registered sale deed no. 2576/2010 of dated 16/08/2010.

6. The defendants shall pay the costs of the present suit.
7. Decree sheet to be prepared accordingly.

Pronounced in the Open Court on this 28th of December, 2023.

Date: 28th December, 2023
Place:28/12/2023

(Dr.AbhinavMudgal)
GJ01332
Principal Civil Judge
Anklav