

GJAR010027322024



Received on	10.12.2024
Registered on	10.12.2024
Decided on	19.09.2025
Duration	DD.MM.YY



In the Court of
Additional District Judge,
At: Modasa

Regular Civil Appeal No: 39 of 2024

Exhibit:-

: APPELLANTS :-
[Original Defendant]

Mr. Arvindbhai Pranlal Patel
Age: Adult, occupation: Agriculture
R/O:-Ramnagar, Dist. Dahegam, Dist. Gandhinagar

Versus

: RESPONDENTS :-
[Original Plaintiff]

Mr. Kevadiya Pankajbhai Trikambhai
Age: Adult, occupation: Agriculture
R/O:-A/F 07, Sardar Patel Society, № Diamond Mill,
Jikol Gam Road, Ahmedabad.

-:: Advocate Appeared ::-

Mr.J.J.Patel Ld. Advocate for the appellant

Mr.B.H.Oza Ld. Advocate for the respondent

: J U D G M E N T :

1. This First Appeal under Section 96 of the **Code of Civil Procedure 1908** (for short, 'the C.P.C.') is at the instance of the original defendants and is directed against the judgment and decree passed by the Ld. Principal Senior Civil Judge, Bayad (now referred as the Ld. Court) in the **Special Civil Suit No. 07 of 2018** whereby the civil suit instituted by the original plaintiffs/respondents against the original defendants/appellants for cancellation of sale deed was allowed on dated 04/09/2022.
2. Notice of the appeal was issued to the respondents. TCR (Trial Court Record) was summoned.
3. Filtering the unnecessary details, the facts which are requisite to be frescoed for the purpose of disposal of the present appeal are as under. (While discussing factual aspects of the case the parties are referred in their original capacity as plaintiff and defendants instead of appellant and respondents for the sake of brevity and convenience).

4. **Brief facts leading to the suit:-**

(A) In the suit, **The plaintiffs alleged that** the plaintiff was owner and occupier of the properties (1) agricultural land bearing **Revenue Survey No: 687 (New No.900 paiki2)** admeasuring Hect.Are.Sq.Mts.1 5335(referred as to "Land - A") and (2) agricultural land **Revenue bearing Survey No .694 (New No.949/paiki 1)** admeasuring Hect.Are.Sq.Mts.1 3297(referred as to "Land - B ") are situated at Village Ambaliyara Tal.Bayad,Dist.Arvalli (both the said properties are hereinafter referred as "**suit properties** ".)

(B) **It is further alleged that the plaintiff** agreed to sale the "**suit properties** " to the defendant for the consideration of Rs.5,99,000/ in respect of Land- A and Rs.5,19,000/ in respect of Land-B and defendant agreed to pay the whole consideration for suit properties by way of cheque and therefore ,the plaintiff executed registered sale deed on dt.26/04/2017 in respect of suit properties.

(C) **It is further alleged that** at the time of registration of sale deed ,the defendant showed the cheques to the plaintiff and therefore, at the time of video recording of registration proceedings, plaintiff replied before the authority in affirmative for receiving of consideration.

(D) **It is further alleged that** ,the defendant

asked to the plaintiff to return the cheques which were given at the time of registration because he needs some alterations and he will give new cheques. More so, at that relevant time defendant asked to the plaintiff to hand over possession of the suit properties ,but plaintiff refused because of ,he did not have received the consideration. Then after ,plaintiff asked for the cheques for consideration ,but the defendant had bluntly refused.

(E) It is further alleged that on the bases of registered sale deeds entries were made in revenue records vide entry no.5407 and 5408 on dt.06/04/2017 and same were objected by plaintiff.

(F) It is further alleged that sale without consideration is not enforceable in law. Therefore, as the defendant has not paid the consideration, said sale deeds are not enforceable at law and the same are null and void. As the said sale deed were executed by fraud, false, fabricated and without consideration and therefore, the plaintiff has filed a suit for the cancellation of sale deeds and any other related documents along with permanent injunction.

5. In the suit, **the defendant have filed the written statement at Exhibit:12** wherein, he mainly denied all the allegations in the plaint.

(A) The defendants mainly contended that plaintiff did not come with clean hands and suppressed the material facts.

(B) It is further contended that the defendant had given the cheque no.461764 of Rs.5,99,000/ qua Land-A and cheque No.461765 of Rs.5,19,000/ qua Land-B. of Punjab National Bank, Gandhinagar Branch to the plaintiff ,but the plaintiff, being avarice objected the revenue entries based on the sale deeds and filed this false suit against the defendant.

(C) It is further contended that the case of the defendant that he is still ready to give that cheque but plaintiff is not accepting the same by stating that defendant had to give more amount than it was decided. Therefore, plaintiff had filed this suit to harass the defendant for grabbing more money and prayed to reject the suit with cost.

6. In the suit, the Id. Trial Court has framed the issues at Exhibit: 18, which are as under with its finding.

Issue No.	Issue	Findings
1	Whether the plaintiff proves that impugned sale qua suit properties are null and void for	In Affirmative

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	want of consideration?	
2	Whether the plaintiff proves that defendant had not paid the full consideration qua suit properties?	In Affirmative
3	Whether the plaintiff proves that impugned sale deeds were executed by fraud, false representation, fabricated and bad for want of consideration and needs to be canceled?	In Affirmative
4	Whether the defendant proves that he is ready and willing to pay the consideration qua suit properties?	In Negative
5	Whether the defendant proves that plaintiff has no right to file such suit and he is not entitled for any relief as prayed for?	In Negative
6	Whether the plaintiff proves that he is entitled to get relief as prayed for?	In Affirmative
7	What order and decree?	As per Final Order

7. In the suit, the plaintiff has examined Mr. Kevadiya Pankajbhai Trikambhai at Exhibit: 22 and Mr. Parmar Nareshbhai Bhikhabhai at Exhibit: 33 and produced documentary evidence at Exhibit: 24 to 29 and 35. As

against the defendant did not adduced any oral as well as documentary evidence in the suit.

8. Mr.J.J.Patel, Id. Advocate for the appellant has mainly submitted that the judgment & Decree passed by the learned Trial Court is illegal, beyond the provision of law and perverse, hence required to be interfered with. The order below at Exh.5 was passed without hearing our lawyer, and thereafter, our lawyer remained absent. Subsequently, the court proceedings were suspended due to the COVID-19 pandemic. When the court resumed after the pandemic, the plaintiff discharged their previous lawyer and engaged a new one. On the very same day the new lawyer appeared, the court passed an order dated 02/07/2021, based on arguments made prior to the pandemic, and in the absence of our counsel. Furthermore, the defendant never given an opportunity to present any evidence. That, the Learned Trial Court has not framed issues as per the plaint and passed an erroneous judgment, and therefore, the impugned order is liable to be quashed and set aside. He has further submitted that, the Learned Trial Court has failed to appreciate the evidences in its true perspective and passed an erroneous judgment, and hence, the same is liable to be quashed and set aside. He has further submitted that, the Learned Trial Court has gravely erred in deciding the judgment decree passed in Special Civil Suit No.7 of 2018. Therefore, the appellant herein has prayed to admit

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the appeal and to set aside the judgment & decree passed by the learned Trial Court.

9. Ld. Advocate Mr. B.H.Oza written arguments vide Exhibit: 11 and cited following case laws:

1. In the Case of Smt. Renusinh V/s. Shubhang Chauhan and Ors. (SC) 2024 AHC-LKO 22243.
2. In the Case of Hussain Ahmed Choudhury & Ors. V/s. Habibur Rahman (Dead) Through LRs & Ors. in Civil Appeal No.5470 of 2025 (SC)

10. POINT FOR DETERMINATION: -

Having noted aforesaid, at the outset on hearing and reading submission of both the side, following points arise for consideration before this Court:

Point No:1	Whether the Judgment & decree passed by the lower court is required to be interfered with, modified or set aside
Finding :	In the Affirmative.
Point No: 2	What order and decree?
Finding :	As per final order.

// The reason for the decision Order 41 Rule 31(c) of Code Of the Civil Procedure 1908] //

14. It is well settled position of law that, the first appeal is statutory right and the First appellate Court is last Court of appreciation of evidence and fact. The scope of first appeal is very wide, comprehensive and inclusive. The first appellate Court can re appreciate evidence and record finding different from those recorded by the trial court. If appraisal of the trial court suffers from material irregularity, e.g. when its decision is based on mere conjecture or surmises, or when its decision relies upon inadmissible evidence or ignores material evidence or when it draws inferences and conclusions, which do not naturally or logically offer from proved facts, the appellate Court is bound to interfere with finding of the trial court. Where the trial court has considered the entire evidence and recorded several material findings, the first appellate court would slow in reversing them on the basis of conjecture or surmises or without analyzing the relevant evidence in entirety. As the first appellate Court is final Court of fact, if the first appellate court decides to reverse the Judgment of the trial Court, it is bound to independently consider the entire evidence.

15. First appeal, as noted earlier, is valuable right and party have right to be heard, both on question of law and fact and such Judgment must address itself to all

question and must be decided by giving reason. All questions of law and fact decided by Ld. Trial Court are open to Appellate Court for re-consideration and therefore, first Appellate Court has every jurisdiction to independently reappraise entire fact and issue in dispute and come to the independent conclusion than the conclusion of the Ld. Trial Court.

16. POINT NO : 1:-

(1) The present appeal has been preferred by the appellant/defendant challenging the judgment and decree dated 03.09.2022 passed by the Ld. Trial Court in Special Civil Suit No.7 of 2018, whereby the suit filed by the plaintiff was allowed. The main ground has been taken by the appellant is that the Ld. Trial Court has passed the impugned judgment **in the absence of the his advocate** and without affording the defendant **a fair and reasonable opportunity to lead evidence or produce relevant documents** in support of the case. On perusal of the record of the Ld. Trial court reveals that although the defendant was given initial opportunities, the matter proceeded ex-parte or without effective participation from the defendant at a later stage, and **no substantial evidence was recorded on behalf of the defendant.** The daily order sheets do not reflect any detailed hearing of the defendant's case or that any meaningful opportunity was given to present his evidence. It is a settled principle of law that **no party should be condemned**

unheard, and that **substantial justice must not be sacrificed at the altar of procedural rigidity**. In case of **Sangram Singh vs. Election Tribunal, AIR 1955 SC 425**, and various subsequent decisions, the Hon'ble Supreme Court has held that a litigant must be afforded a fair opportunity to represent his case on merits. Furthermore, it is pertinent to note that the right to lead evidence and be heard through legal representation is not a mere procedural formality but a fundamental component of fair trial jurisprudence, enshrined under Article 14 and 21 of the Constitution of India. The denial of an adequate opportunity to the defendant to participate in the proceedings and to present his case materially prejudiced his right to defend the suit effectively. The consequences of such denial are far-reaching, as the decree passed becomes unsustainable in law due to procedural infirmities, regardless of the merits of the case. Courts are duty-bound to ensure that the adjudication is not only legally sound but also appears just and fair to both parties. The absence of recorded evidence on behalf of the defendant and the absence of effective legal representation are sufficient grounds to vitiate the proceedings. Therefore, in the interest of substantial justice, it becomes imperative that the matter is remanded for a fresh trial, after ensuring compliance with the principles of natural justice. It is also worth emphasizing that civil litigation is inherently adversarial in nature, and justice can only be effectively

administered when both parties are granted a reasonable and equal opportunity to present their respective cases. The essence of a fair trial lies not merely in the final decision but in the **process through which that decision is reached**. The absence of participation by the defendant due to lack of effective notice, absence of legal representation, or procedural missteps undermines the legitimacy of the adjudication process. Even if a party is partly at fault for their non-appearance, the courts have consistently held that where such absence results in an unjust outcome, the matter must be reopened in the interest of fairness. In case of **Rafiq and Another v. Munshilal and Another**, (1981) 2 SCC 788, the Hon'ble Supreme Court observed that the litigant should not suffer for the fault of his advocate. This reinforces the view that the justice delivery system must be both **procedurally fair and substantively just**, and courts must exercise their **inherent powers cautiously but liberally** where failure of justice is evident. In the present case, this Court is of the considered opinion that the interests of justice demand that the matter be remanded back to the trial court, so that the defendant is given **a full and fair opportunity to file all relevant documents, adduce evidence, and be heard through his advocate**, in accordance with law. Upon a thorough examination of the trial court judgment and the accompanying record, it becomes evident that the Trial Court has committed a grave error. Taking into consideration all these

circumstances, it seems justified to remand back the matter to the Ld.Trial court for adjudication afresh. Hence, I answered Point No.1 in affirmative and for the issue no.2, I pass the following order.

-:: F I N A L O R D E R ::-

1. This Regular Civil Appeal No. 39 OF 2024 is hereby **ALLOWED**.
2. The impugned Judgment and Decree passed by the Ld. Principal Senior Civil Court, Bayad in Special Civil Suit No: 7 of 2018 dated 03/09/2022 is hereby ordered to be SET ASIDE
3. The matter is **remanded** to the Ld. Trial Court for fresh adjudication.
4. The Ld. Trial Court shall afford the defendant:
 - **Ample and reasonable opportunity to file relevant documents;**
 - **Opportunity to lead oral and documentary evidence** in support of the plaintiff's case;
 - **Full hearing through his advocate** before passing any judgment.

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5. The defendant shall also be permitted to cross-examine the plaintiff's witnesses and adduce rebuttal evidence, if any.
6. The Ld. Trial Court is requested to **expedite the proceedings** and dispose of the matter **preferably within six months** from the date of this order.
7. This Court has not entered into the merits of the matter and the Ld. Trial court shall consider the same afresh, without being influenced of this order.
8. The parties are directed to co-operation the Ld. Trial Court for disposal.
9. TCR is order to be sent to the Ld. Trial court forthwith.
10. Parties to the appeal shall bare their own costs.

signed and pronounced in the open Court today.

Date:-19/09/2025

(**Kirti J. Darji**)
Additional District Judge
Arvalli @ Modasa
Code No. GJ00461

Place:-Modasa

MLR