

F I L E D	29/08/2013
ON	
REGISTERED	29/08/2013
ON	
DECIDED ON	30/04/2026
Duration	Year- Month Days

IN THE COURT OF PRINCIPAL CIVIL JUDGE, DHANSURA.

Regular Civil Suit No.9/2013

Exh-

Plaintiffs: (1) RAMAN BHAIR DALSUKHBHAI PATEL
(2) MUKESHBHAI DALSUKHBHAI PATEL
(3) KAMLABEN MAWJIBHAI PATEL
(4) MADHUBEN MAGANBHAI PATEL
(5) SAVITA BEN MAGANBHAI PATEL
(6) CHAYABEN MAGANBHAI PATEL
(7) VANITABEN MAGANBHAI PATEL
(8) HINABEN MAGANBHAI PATEL
(9) ELABEN MAGANBHAI PATEL

Age-All Adults, Occupation- Farming/Agriculture
Residing at present - Kolwada,
Taluka-Dhansura Dist-Arvalli

V/s.

Defendants:-

(1) MOHAMMED YUSUF ABDULLAHBHAI MEGHREJI

(2) ABDUL RAZZAK ABDULLAHBHAI MEGHREJI
Age-Both adults. Occupation-Farming/Agriculture
Both residing at present - Meghriji Karm House, P.O.Box-
Ramana, Taluka-Dhansura Dist-Arvalli

(3) VITTHALBHAI DALSUKHBHAI PATEL

(4) DAHYABHAI MAWJIBHAI PATEL

Age-Both adults. Occupation-Farming/Agriculture
Both residing at present - Kolavada, Taluka-Dhansura
Dist-Arvalli

Appearance :

Learned Advocate for the plaintiffs Mr.A.V.Kadiya

Learned Advocate for the defendants Mr.V.B.Bharvaad.

J U D G M E N T

(1) The plaintiffs have filed this suit against the defendants seeking declaration and regaining possession of the suit property in their favour.

(2) The facts in short, of the present suit of the plaintiffs are as under :

2.1 That, the plaintiffs and defendant no.3 & 4 were and are the joint owners/occupiers of the land admeasuring 4 h-04 ra-69 sq.m. bearing survey no.145 situated within the limits of the village Khelwada of Dhansura Taluka in Aravalli district. It is further stated that as the suit property is undivided land ; so none of the joint owners had the right to sell, transfer or deal in any form without the consent of the remaining others.

(2.2) It is further mentioned that in spite of this fact, the defendant no. 3 & 4 had sold the suit property to defendant no. 1 & 2 along with handing over the possession of the same. The so-called sale is neither within the knowledge of the plaintiffs nor their consent was sought before performing the same and have also not received any consideration against it. Thus ; the first two defendants do not acquire any right or interest in the suit property as the land revenue records still run in the name of the plaintiffs & the last two defendants only as the joint owners of the suit property . The land revenue is being paid by the plaintiffs only and the written sale agreement itself being illegal is neither binding on the plaintiffs nor the first two defendants derive any right through it in any manner .

It is also stated that the first two defendants on being served notice regarding this by their advocate ; had received the reply that all the joint owners of the suit property have sold and its possession has been handed over to them jointly ; which is not true as only the last two defendants have done this unauthorised transaction and sale.

(2.3) Till date, the first two defendants have not got any registered sale deed executed as per the legal provisions and have only illegally retained the possession of the said land thereby the cause of action arose to file this suit seeking possession and declaration of the same . It is further stated that the suit very well lies within the jurisdiction of this court and proper court fees has been preferred. The plaintiff has thus filed this suit and prayed for reliefs which are shown in para 9(A) & (B) of the plaint along with any other reliefs which may be just and reasonable.

(3) The summons/notice were issued upon the defendants which were duly served. Though on the last two defendants it was served in the 1st attempt itself yet they didn't appear in the Court leading to the passing of ex- parte order against them on 07/10/2013. Once the process was served, the defendant no.1 & 2 along with their Id advocate appeared in the Court and have produced their written-statement through exh.18 .

(3.1) In the written- statement, the defendants have inter-alia stated that the facts which are not specifically admitted are hereby denied. It is stated that as the suit is barred by the non-joinder of necessary parties thereby it is liable to be dismissed. They have further stated that this suit is filed by the plaintiffs with the malafide intention simply because the revenue records for the suit property runs in the name of the plaintiffs. The true facts as stated by them are that the original 3 owners namely Maganbhai Jaisinghbhai Patel, Dahyabhai Maavjibhai Patel & Vithalbhai Dalsukhbhai Patel had mortgaged this suit property to Thakor Kodarbhai Dhudabhai for an amount of Rs. 1,06,000/- who used to cultivate this land since then. But when they failed to repay the mortgage money to the mortgagee on his demand, they (the original owners/ mortgagors) entered into a sale with the first two defendants of the suit property at the rate of Rs.22,001 per bhiga of land . An amount of Rs. 1,20,000/- was paid to them by the purchasers as advance amount and the remaining amount was to be paid once the original owners were to execute the registered sale deed. A sale agreement was executed between the parties on 26/02/2001 and on that very date the defendant number 1 & 2 were handed over the possession of the suit property.

(3.1) Since that day till today , the defendant number 1 & 2 have been in possession of the suit property and have been cultivating it and have incurred expenses of drip irrigation as well as levelling the land. Even the mortgage money of Rs.1,06,000/- was paid to Thakor Kodarbhai Dhudabhai by the first two defendants in addition to the agreement amount and payment receipt was received for the same. As loan ran on the suit property along with one tractor loan taken by Dahyabhai Mawjibhai Patel against this land these two defendants paid Rs.50,000/- on 24/3/2001 to him on his asking for it and took a receipt from him. Similarly on 03/06/2001, during the illness of one of the original owners Maganbhai Jaisinghbhai Patel who at that time was residing at 1 of his daughter's house ie plaintiff number 4, at Vadodara ,the husband of plaintiff number 4 Mohanbhai Patel on behalf of his father in law received Rs 50,000/- from the defendant number 1 and 2 on 3/06/2001 and also took a receipt for the same duly signed by the witnesses. Thus in this manner , on some other occasions also these defendants have paid in part to the original sellers' the amount from the consideration amount pending & then only rs. 45000/- were left out to be paid for the suit property.

(3.2) As the Plaintiffs have filed bogus suit, they are not even aware of the four corners of the suit property and so have not mentioned it in the plaint also. In spite of the fact that this suit property is in the possession of the defendant number 1 and 2 for past so many years (that is since year 2001) yet the registered sale deed could not be executed due to the land being mortgaged with the bank along with it (suit property) also being the land of original block division which cannot be sold without the permission of officer

of the authorized (block division) officer if it is to be sold. After the death of Maganbhai Jaisinghbhai Patel, in the revenue records of this suit land, the names of all his legal heirs (5 daughters ie defendant no.4-9) came to be recorded.

(3.3) Defendant number 4 was one of the sellers of this sale agreement and his mother Kamlaben ie plaintiff no.3 having full acquaintance of this sale ; both have been added as defendant as well as plaintiff no.3 respectively with malafide intention only. Moreover the plaintiff number 2 had sent a notice through an advocate regarding the suit property stating false facts, on 30th June 2012. Therefore defendant number 1 and 2 reply to the notice in detail on 12th July 2012 which was sent to plaintiff number 1 through a registered post and realizing that the plaintiffs are acting in bad faith bad faith we had also filed a caveat petition number 2/ 12 stating the true facts in it ,in the Civil Court Dhansura. After this the first three plaintiffs for the 2nd time sent a notice on 7/08/2012 to these two defendants comprising of false and fabricated facts but reply was sent to that notice also by the latter to the former on 16/08/12. This suit has been filed by the plaintiffs with the use of fabricated facts due to their malicious intent as the land prices have increased. The plaintiffs being guided by their malafide intention even went to the extent of mortgaging the suit property continuously to create financial liabilities on the defendant number 1& 2 ; leading these defendants to serve notices by registered post to different banks and cooperative societies in the year 2012 to curtail that menace. Thus it is prayed to reject the suit.

(4) Considering all the averments made in the present suit following issues have been framed by my predecessor Judge vide Exh-19 on 21.02.2015.

મુદ્દાઓ

- (૧) શું વાદીઓ સાબિત કરે છે કે, દાવાવાળી જમીનના વાદીઓ તથા પ્રતિવાદીઓ નં .૩, ૪ સંયુક્ત માલિક છે?
- (૨) શું વાદીઓ સાબિત કરે છે કે, પ્રતિવાદીઓ નં.૩ અને ૪ ને દાવાવાળી જમીન પ્રતિવાદીઓ નં.૧, ૨ ને વેચાણ આપવાનો હકક અધિકાર નથી ?
- (૩) શું વાદીઓ સાબિત કરે છે કે, દાવાવાળી જમીન ઉપર પ્રતિવાદીઓ નં.૧,૨ નો કબજો ભોગવટો કાયદા વિરુદ્ધનો ગેરકાયદેસર છે?
- (૪) શું વાદીઓ માંગ્યા મુજબની દાદ મેળવવા હકકદાર છે?
- (૫) શું હુકમ અને હુકમનામું ?

(5) In view of the evidence placed on record,the rival submissions made by the parties and the reasons as mentioned hereinafter, findings of the above issues as under :

- (1) In the affirmative
- (2) In the negative
- (3) In the negative
- (4) In the negative
- (5) As per final order.

(6) The plaintiff side has submitted the following oral as well as documentary evidence on record in support of the plaint.

6.1 Oral Evidence :-

Sr.No.	Exh.	Description of documents.
1	Exh.26	Affidavit on oath of plaintiff no.8 Hinaben Maganbhai Patel Order-18, Rule-4 of Civil Procedure Code, 1908, dated 18.04.2016.

6.2 Documentary Evidence :-

Sr.No.	Exh.	Description of documents.
1.	Exh-28	Certified Copy of Kolavada village form no:7 of survey no.145 dated 13.07.2012
2.	Exh-29	Certified Copy of Kolavada village form no:12 of survey no.145 dated 13/07/2012
3.	Exh-30	Certified Copy of Kolavada village form no:8A of survey no.145 dated 13/07/2012
4.	Exh-31	Original Copy(o/c) of legal notice sent to the defendant no.1 & 2 through plaintiff no.1 to 3 via advocate dated 07.08.2012
5.	Exh-32	Original Copy of reply of legal notice from the defendant no.1 & 2 dated 16.08.2012

(7) As no other oral or documentary evidence was to be submitted by the plaintiffs, the plaintiff's evidence was closed after the submission of closing pursis which is on record vide Exh.39.

(8) The defendants' side has produced the following oral and documentary evidence respectively in support of their contentions.

8.1 Oral Evidence :-

Sr.No.	Exh.	Description of documents.
1.	Exh-51	Affidavit on oath of Defendant No.02 Mahammadyusuf Abdullahbhai Meghraj Order-18, Rule-4 of Civil Procedure Code, 1908, dated 31.07.2017.
2.	Exh-85	Affidavit on oath of Defendant (Witness) Armutbhai Kahyabhai Patel Order-18, Rule-4 of Civil Procedure Code, 1908, dated 20.09.2021.

8.2 Documentary Evidence :-

Sr.No.	Exh.	Description of documents.
1.	Exh-53	Original Copy of suit land's sale agreement dated.10.03.2014 with plaintiff no.1, 2 & defendant no.3
2.	Exh-54	Original Copy of suit land's agreement dated.10.03.2014 with plaintiff no.1,2 & defendant no.3
3.	Exh-55	Original Copy of land sale agreement dated 04.12.2014 with plaintiff no.3 & defendant no.4
4.	Exh-56	Original Copy of suit land's agreement dated.04.12.2014 with plaintiff no.3 & defendant no.4
5.	Exh-88	Original deed of agreement of suit property along with possession signed by defendant no.3,4 & bearing the thumb impression of the father of plaintiff no.4-9 in the presence of witness dated.26.02.2001.
6.	Exh-89	Original receipt from Dahyabhai Mavjibhai Patel dated.24.03.2001
7.	Exh-90	Original receipt from Kodarbhai Dhulabhai Patel dated.19.04.2001
8.	Exh-91	Original receipt from Mohanbhai Pratapbhai Patel in the presence of witness dated.03.06.2001
9.	Exh-92	Original Copy of reply of notice to the first 3 plaintiffs from the first two defendants dated 16.08.2012
10.	Exh-93	Original Copy of reply of notice to the 2nd plaintiff from the first two defendants dated 12.07.2012

(8.3) No other oral or documentary evidence was submitted by the defendants, except the affidavit of the plaintiff no.2 which was recorded as his examination in chief but was discarded later on due to his continuous absence thereby depriving the plaintiffs' side from the cross-examination. Even after that, the defendants failed to produce any further evidence so their right of evidence was closed by this Court through an order below exh1 dated 06/02/2026.

(9) Thereafter the matter was fixed for final arguments. After considering the written arguments by the plaintiffs' side (vide ex.117) and hearing the Learned advocates for the defendants' side, perusal of the case record along with going through the relevant material on record the reasons for my findings are discussed below.

: REASONS :

(10) The onus to prove all the issues was upon the plaintiffs' side only. It is well settled that a suit has to be tried on the basis of the pleadings of the contesting parties which is filed in the suit in the form of plaint and written statement and the nucleus of the case of the plaintiff and the contesting case of the defendant in the form of issues emerges out of that. Being a civil suit, this suit is to be decided on the basis of preponderance of probabilities. The plaintiff cannot succeed relying upon the weakness or a flaw in

the case set up by the defendant. The law is that the plaintiff can succeed in the suit only on the strength of his own case.

(10.1)Section 101 of the Evidence Act, 1872 defines "**burden of proof**"which is reproduced as below:

" 101. Burden of proof - Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person."

Section 101 of the Evidence Act has clearly laid down that the burden of proving a fact is always lying upon the person who asserts the facts. Until such burden is discharged, the other party is not required to be called upon to prove his case. The court has to examine as to whether the person upon whom the burden lies has been able to discharge his burden. Until he arrives at such conclusion he cannot proceed on the basis of weakness of other party. This Court has also to examine the contentions of the parties being reasonable and plausible in reference to the act of a reasonable man and as to facts stated by which of the parties appears to be more probable and inspire more confidence. Keeping these law points in mind, the findings have been arrived at.

(11) ISSUE NO.1-3 - For the sake of convenience and in order to avoid repetition all these issues have been taken up for discussion and determination together.

Firstly ,the issue of the joint ownership of all the plaintiffs and defendant number 3 and 4 of the suit property is taken up for discussion. The defendants in their reply have stated that this suit property was originally owned by three persons

namely by Maganbhai Jaisingh Bhai Patel, Dahyabhai Mawjibhai Patel and Vitthal Dalsukhbhai Patel but the revenue records produced by the plaintiffs' side vide exh 28,29 & 30 shows that the revenue records run in the names of all the plaintiffs and defendant no.3 & 4 jointly which shows their ownership though revenue entries have value for the fiscal purpose only. But there is nothing on record which can deny the joint ownership. Even they (defendants) have admitted the joining of all legal heirs of late Maganbhai Jaisanghbhai Patel (plaintiff no.4-9), Mawjibhai Patel being succeeded by Kamlaben & Dahyabhai Mawjibhai Patel & Dalsukhbhai Patel having 3 heirs (first two plaintiffs & no.3) as owners of the suit property.

(11.1) Thus it can be inferred from the evidence produced that a sale agreement(exh88) was entered duly between the parties regarding the sale of the suit property. But that sale agreement (exh88) alone is not sufficient to create a valid and lawful sale of the suit property. Moreover when the possession of the defendant since the year 2001 is being admitted by the plaintiff's side in the plaint itself (calling it illegal) as discussed above, this fact being an admitted fact under section 58 of the Indian Evidence Act is neither required to be proved nor leaves any scope to doubt the same; amounting to being duly proved in itself.

11.2 As the honourable Supreme Court has reiterated repeatedly the settled law in a catena of judgments that sale of immovable property requires compulsory registration and in its(registered sale deed) absence no interest , right

or title in the said immovable property can be conferred. Section 17 of the Registration Act, 1908 clearly provides that a document which requires compulsory registration under the Act, would not confer any right, much less a legally enforceable right to approach a court of law on its basis. At best, in the case in hand, on the basis of the sale agreement the purchasers(defendant no.1 & 2) could have claimed the relief of specific performance within the stipulated time which they have failed to do. Thus it is absolutely clear that the unregistered sale agreement (exh88) dated 26/02/2001 cannot under any circumstance create, convey any right , title or interest in favour of the defendant no1 & 2 under section 54 of the Transfer of Property Act,1882 .

11.3 Moreover the honourable **Apex Court in the case of Suraj Lamp & Industries (P) Ltd vs. State of Haryana [(2012) 1SCC 656]** has held that unregistered agreements to sell, even if coupled with possession, do not convey title or create any interest in the immovable property. It was further clarified that such documents are insufficient to complete a sale unless duly registered and appropriate conveyance (duly stamped and registered sale deed as required by law).

11.4 Thus it can be concluded that even though the defendants are as of now enjoying the possession of the suit property since the year 2001, they have not acquired any ownership by that sale agreement(ex88) thereby wrongfully claiming/ considering it as a lawful sale. So,

they cannot step into the shoes of the lawful purchaser claiming its possession on the basis of the same as lawful . Therefore as a result of the facts discussed above in the light of the existing legal position, the lawful purchase by the defendant side (no 1 & 2) is held in the negative but the the latter's possession since the date of sale agreement is proved . Thus as held by the honorable Apex court in a catena of judgments, in absence of any registered sale deed the ownership rights cannot be transferred, the plaintiffs along with defendant no.3 & 4 continue to be the owners of the suit property. Hence finding to this first issue is held in the affirmative.

(12) As far as the question of the defendant no.3 & 4 not lawfully entitled to sell the suit property to defendant no 1 & 2 is concerned, the sale agreement (exh88) dated 26/02/2001 bears the thumb impression of Maganbhai Jaisangbhai Patel , signature of defendant no.3 & 4. The plaintiffs(no4-9) in their denial to this agreement have pleaded their ignorance and also not receiving any consideration amount but when their father who was alive had himself agreed to sell the suit land, then later on they as legal heirs are bound by estoppel and cannot deny the same. Moreover the receipt given by husband of plaintiff no.4 Mohanbhai Patel (exh91) duly signed by him and declaring of receiving Rs 50,000/- on behalf of his father in law against the 6 bighas of survey no 145 also remains disproved by the plaintiffs' side. Mohanbhai has not come in the witness box to deny this fact and bring the real facts if any as to challenge this receipt.

(12.1) Similarly the facts stated by the defendants no. 1 & 2 as to partial payments to the plaintiffs side on various occasions is also being proved by the receipts produced vide exh 89 & 90 . the plaintiffs have not brought anything on record that the thumb impression on exh 88 is not of Maganbhai Jaisangbhai Patel , which proves that the father of plaintiff no. 4-9 had himself entered into a sale agreement with first two defendants along with defendant no. 3 & 4. Moreover the agreements and sale agreements (exh 54-58) entered in the year 2014 during the pendency of this suit also are in the favour of defendant no. 1& 2. In these documents Kamlaben (plaintiff no. 3) , the first two plaintiffs have admitted that the banakhat karar (exh 88) was entered by no. 3& 4 on behalf of them and with their consent the land was sold to the first two defendants who were also put in the possession of the suit property on that date of agreement itself and continues to be in possession. Also it is admitted that no consideration amount is to be collected and all joint owners shall be executing the registered sale deed of the suit property soon. The genuineness of these documents also cannot be disproved/ challenged by the plaintiffs(no4-9) in any manner.

(12.2) The plaintiff no.8 in her cross examination has admitted that she in her chief examination has not revealed the fact of she being a teacher and residing outside the village since last 22 years and that in the year 2001-02 the names of plaintiff no4-9 were not in the revenue records as owners of the suit property and was not aware of any transaction of this land due to her residing in her in laws house. Similarly from her cross examination it appears that she has no idea about the four boundaries, irrigation

manner etc of the suit property which all together asserts the defendants' version of the story that the plaintiffs have filed this suit with fabricated facts having malafide intention due to rise in land price.

(12.3) The plaintiff no.8 in her examination in chief(exh.26) has supported the contents of the plaint, which having already mentioned above, are not being repeated here. But the plaintiffs' side has brought nothing forward in proof which supports their alleged version of story . They have failed to bring even a single witness from their family / village to support this version. No documentary piece of evidence supporting their claim has been brought forward by them. Even in the cross- examination by the plaintiff side of the defendant no.1(exh51) and other witness (exh85) and their witness nothing material could be brought on record apart from formal denials. Merely vague allegations that too after the passage of almost 12 years without any evidence does not inspire any confidence in their words. So when it can be concluded from this discussion that the defendant no 3 & 4 have not illegally sold the suit land but it was done with mutual consent of all the joint owners at that time.

(12.4) Similarly when the sale agreement appears to have been done with the consent of all the joint owners of that time and the possession was handed over on the date of sale agreement itself which was well within the knowledge of them all rather had the consent of all , the possession of the defendant no 1& 2 can in no manner be considered as illegal. Thus my finding to issue no 2 & 3 both is in the negative only.

13 ISSUE NO.4 - As all the factual aspects and evidentiary value of the evidence of both sides have been discussed in detail, this issue doesn't require repetition of the same again. In short, it has been unveiled before this court that the plaintiffs have not come with clean hands and have concealed and twisted the facts so as to suit them by painting an entire different picture in this suit comprising of seeking possession. After conducting detailed discussion on all the 4 issues as mentioned above, there remains no need for undue repetition to support the finding on this issue. So putting it straight and simple, it is inferred from the observations made above, that the plaintiffs have not been able to substantiate their claim and so are not entitled to any relief asked for in this suit and thereby this issue is being decided in negative. The following order is passed in the interest of justice regarding issue no.5

::FINAL ORDER::

- (1) The suit of the plaintiffs is hereby rejected.
- (2) The parties shall bear their own costs.
- (3) Decree shall be drawn accordingly.

Pronounced today in this open court on the thirtieth day of April, 2026.

DHANSURA

Date: 30/04/2026

(Ms. Saba Syed)

Principal Civil Judge

At- Dhansura

(Code : GJ-01578)