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IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE,
JAMBUSAR

Special Civil Suit No. 11/2017

Exhibit - 69

Plaintiff : - Inayat Yakub Patel
Age - 39, Occupation – Business,
Resident of – at B-33, Besides Riazpark
Taluka & District - Bharuch

v/s

Defendants : -

1. Ibrahim Ismailbhai Patel
Age - Adult, Occupation – Business,
Resident of – at po.- Samni,
Taluka – Amod, District – Bharuch
2. Mohammad Ismail Patel
Age - Adult, Occupation – Business,
Resident of – at po.- Samni,
Taluka – Amod, District – Bharuch

Subject : - Suit for specific performance of contract and declaration. Suit valued at Rs. 10,00,000/-.

Appearance : -

Ld. Advocate for the plaintiff	Mr. S. R. Rajput
Ld. Advocate for the defendant no. 1	Mr. B. R. Choksi

- :: JUDGMENT :: -

The brief facts of the plaintiff's case are as under :-

1. The present suit was originally filed by the present plaintiff Special Civil Suit No. 15/2017 on 14.02.2017 before Principal Senior Civil Court, Bharuch and then after, it was transferred to Principal Senior Civil Court, Jambusar and it was renumber as Special Civil Suit No. 11 of 2017.

The plaintiff has stated in the plaint that he & defendant no. 1 resides on the above mentioned residence and the defendants are the joint owners & possessor of the property whose details are mentioned below:

Revenue Survey No. 142 Paikki Plot No. 1, 2, 3 along with non-agricultural land Adm. 1123.40 Sqr. Mtrs. (12098.00 Sq. Fts) situated at Village - Samni, Ta.: Amod & Dist.: Bharuch.

Further the plaintiff has 1/2 share in the above mentioned property i.e., 561.70 Sqr. Mtrs. (6043.90 Sqr. Fts.) which is an open residential space and the remaining land is in the share of defendant no. 2 and its four directions is as under:

East : Private Road,

West : Private Road,

North : Open Land of Mansur & Company

South : 10 Feet Mosque Road.

Further the plaintiff has submitted that the defendant no. 1 contacted the plaintiff to sell his part 1/2 part of land at it was decided to sell the same at sale consideration amount of Rs. 10,00,000/- and deal was done between plaintiff and defendant no. 1 and out of the said amount, an amount of Rs. 9,35,000/- was paid to the defendant no. 1 on 06.02.2016 in cash by the plaintiff and remaining amount of Rs. 65,000/- was subject to pay at the time of execution of register sale deed i.e., within 12 months and agreement (Banakhat) was executed on Rs. 100/ non-judicial stamp paper in presence on 2 witnesses before notary Shri. M. P. Bodana on 06.02.2016 and banakhat was notarized vide register no. 825/2016. Further the plaintiff has submitted that as per the conditions of banakhat the registered sale deed was meant to be executed in 12 months however, even on repeated request to execute the same the defendant no.1 did not execute the sale deed and the defendant no. 1 told that his brother is out of India and once he comes back then he will execute the sale deed as his brother's name is also running in the revenue record and gave such false promises. Further the plaintiff has submitted that he has told the defendant no. 1 to execute the power of attorney of defendant no. 2 in his favour and execute the sale agreement but then also he has not taken any action moreover, the plaintiff is ready to pay the remaining amount of sales consideration however, the defendants have not executed the sale agreement. Further, the plaintiff has submitted that he has given notice to the defendant on 11.10.2016 and the defendant no. 1 gave a false & vague reply on 08.11.2016. Further the plaintiff has submitted that an another notice was given & served to the defendant no. 1 on 30.01.2017 through RPAD to execute the sale agreement but defendant no. 1 has not given any reply to it till date. The plaintiff further submitted that despite the repeated instruction to execute the sale deed as per the condition of Banakhat executed on 06.02.2016, the defendants have not taken any action upon it and hence the

plaintiff has filed the present suit for Specific Performance of Contract & Declaration.

2. The plaintiff has sought following reliefs from the court ;
 - (a) To order & declare that the Banakhat executed by the defendants before Notary Adv. Shri Mahendra P. Bodana vide Registration No. 825/16 dated 06.02.2016 is binding to the defendants of the present suit.
 - (b) To order & declare the defendants to receive the remaining amount of Rs. 65,000/- from the plaintiff and execute the registered sale deed in favour of plaintiff of the suit property bearing Revenue Survey No. 142 Paiki Plot No. 1, 2, 3 along with non-agricultural land Adm. 1123.40 Sqr. Mtrs. (12098.00 Sq. Fts) situated at Village - Samni, Ta.: Amod & Dist.: Bharuch in which the plaintiff has 1/2 share in the above mentioned property i.e., 561.70 Sqr. Mtrs. (6043.90 Sqr. Fts.) which is an open residential space.

ALTERNATIVELY

To order & declare that if the defendants fails to execute the registered sale deed then the court may appoint a court commissioner and execute the registered sale deed.

- (c) To pass an order & decree that if the defendants fails to execute the registered sale deed or if it is not possible to execute the registered sale deed in favour of the plaintiff then the earnest money of Rs. 9,35,000/- which was paid to the defendant no. 1 at the time of execution of the Banakhat be recovered along with interest of 12% from the defendants.
 - (d) Any other order or relief that the Hon'ble Court deems fit and proper.
3. The summons of the present suit was duly served upon the defendant no.1 and defendant no. 1 appeared through his counsel and filed his written

statement vide Exh. 23 however a notice was also issued to the defendant no. 2 but the same was not served as he was living outside India at that relevant time and an order was passed on 24.01.2019 observing that plaintiff and his counsel was not present and also they have not produced any address of defendant no. 2 and hence the suit of the plaintiff was ordered to be dismissed for default against the defendant no. 2 under Order 9 Rule 5 of C.P.C..

The defendant no. 1 has mainly denied the facts of the plaint and further submitted in his written statement that true and correct fact is that the father-in-law of defendant no. 1, namely Yusuf Musa Bapu, currently resides in Bolton, U.K. and he is a close friend of the Plaintiff and plaintiff manages his entire property portfolio in India. Further the defendant no. 1 has stated that his father-in-law intended to purchase a property in Bharuch and required a bank loan for the same and to facilitate this, the plaintiff suggested mortgaging the suit property and to process the loan, the plaintiff's father-in-law requested defendant no. 1 to execute an Agreement to Sell (Banakhat) to be presented to the bank and it is pertinent to note that the suit property is jointly owned by defendant no. 1 and his brother, defendant no. 2 (Mohammad Ismail Patel) and there has been no partition of the said property however, the defendant no. 1 was misled into believing that the document was merely a formality for the bank loan and that only his signature was required.

Further, the defendant no. 1 has stated that his father-in-law contacted him telephonically and instructed him to meet the plaintiff (Inayat Yakub Patel) and sign the documents as directed and trusting both his father-in-law and the Plaintiff, defendant no. 1 signed the said Agreement to Sell in good faith without receiving any monetary consideration, solely to assist his

father-in-law in securing the loan. He further stated that in view of the aforesaid facts, the Plaintiff and the father-in-law of defendant no. 1 exercised undue influence to obtain signatures on the said agreement without payment of any consideration and the plaintiff is now illegally seeking to enforce this unregistered Agreement to Sell and has served a false legal notice and the plaintiff is attempting to use this void document as a legitimate instrument, which is an illegal act. Further the defendant no. 1 stated that it is a settled principle of law that in respect of joint and ancestral property, no single co-owner can enter into a contract or transaction for sale without the express consent of all other co-owners and in the present case, the alleged agreement lacks the signature and consent of defendant no. 2 and consequently, any transaction involving the joint property is null and void (void ab initio) as per the provisions of law and the plaintiff's claim is legally unsustainable and liable to be dismissed and prayed that in light of the aforementioned facts and circumstances, the Plaintiff is not entitled to the reliefs sought in paragraph (10) of the plaint or the interim reliefs sought in the injunction application and the plaintiff is not entitled to any equitable relief and the suit and the application of the plaintiff are liable to be dismissed with exemplary costs.

4. The plaintiff has filed following oral and documentary evidence in support of the case ;

Oral evidence of the plaintiff :-

Sr. No.	Particulars	Exhibit
1.	Examination in chief of plaintiff	29
2.	Examination in chief of plaintiff's witness M. P. Bodana (Notary Advocate)	56

Documentary evidence of the plaintiff :-

Sr. No.	Particulars	Exhibit
1.	Copy of Index-2 of the Suit Property.	43
2.	Copy of Banakhat executed between the plaintiff and defendant.	44
3.	Copy of Notice sent to the defendant by the plaintiff.	45
4.	RPAD Postal Receipts of Notice sent to the defendant.	46
5.	Copy of Reply given by the defendant to the plaintiff's notice.	47
6.	Copy of 2nd Notice sent to the defendant by the plaintiff.	48
7.	RPAD Postal Receipts of 2nd Notice sent to the defendant.	49
8.	Copy of registered deed regarding right of relinquishment by defendant's brother Yusuf Ismail	50
9.	Attested Copy of Notary Register	58

Oral evidence of the defendant :-

Sr. No.	Particulars	Exhibit
1.	Examination in chief of defendant no. 1 Ibrahim Ismailbhai Patel	61

The Ld. Advocates of plaintiff & defendant no. 1 have filed their closing pursis vide Exh. 59 & Exh. 66 respectively declaring that they do not want to produce further any evidence.

- : Issues : -

Following Issues were framed by my ld. predecessor vide Exh.- 27 which are as under ;

- શુ વાદી પુરવાર કરે છે કે પ્રતિવાદી નં.૧ એ તેઓના હિસ્સાની રહેણાંકની ખુદ્દી જમીન વેચાણ કરવાની હોય વાદીનો સંપર્ક થતા રૂ.૧૦,૦૦,૦૦૦/- (અંકે રૂપીયા દશ લાખ પુરા) માં વેચાણ લેવાનું નક્કી કરી રૂ.૮,૩૫,૦૦૦/- બાના પેટે અને તે પેટે તા.૦૬-૦૨-૨૦૧૬ ના રોજ નોટરી રૂબરૂ બાનાખત તૈયાર કરવામાં આવેલ ?

૨. શુ વાદી પુરવાર કરે છે કે બાકીની અવેજની રકમ રૂ.૬૫,૦૦૦/- (અંકે રૂપીયા પાંસઠ હજાર પુરા) લઈને વાદી અગર તો તે કહે તેના નામે કોઈ પણ જાતની તકરાર કર્યા વિના ૧૨ માસની અંદર દસ્તાવેજ કરી આપવાનું નક્કી કરવામાં આવેલ ?
૩. શુ વાદી પુરવાર કરે છે કે તેઓ કરારનું પાલન કરાવવા રાજી ખુશી હતા અને છે ?
૪. શું વાદી પુરવાર કરે છે કે પ્રતિવાદી નં.૧ ને દસ્તાવેજ કરી આપવા જણાવતા ઈન્કાર કરેલ છે અને બાનાખતનો અમલ કરવા તૈયાર નથી ?
૫. શું પ્રતિવાદી પુરવાર કરે છે કે, કહેવાતો બાનાખત પ્રતિવાદીએ તેમના વેવાઈ યુસુફ મુસા બાપુના કહેવાથી કોઈ પણ જાતની લેવડ દેવડ વગર લોન લેવા માટે વાદીને કરી આપેલ છે ?
૬. શું પ્રતિવાદી પુરવાર કરે છે કે વાદીનો દાવો પ્રિમેર્યોર છે ?
૭. શું પ્રતિવાદી પુરવાર કરે છે કે, વાદી તર્ફથી કોઈ પણ જાતની રકમ બાનાખત અન્વયે પ્રતિવાદીને મળેલ નથી ?
૮. શું વાદી માંગ્યા મુજબનું હુકમનામું મેળવવા હકકદાર છે ?
૯. શું વાદી માંગ્યા મુજબ વૈકલ્પિક દાદ મેળવવા હકકદાર છે ?
૧૦. શું વાદી માંગ્યા મુજબનું વ્યાજ મેળવવા હકકદાર છે ?
૧૧. શુ હુકમ શુ હુકમનામું?

Issue No. 1	In Affirmative
Issue No. 2	In Affirmative
Issue No. 3	In Affirmative
Issue No. 4	In Affirmative
Issue No. 5	In Negative
Issue No. 6	In Negative
Issue No. 7	In Negative
Issue No. 8	In Affirmative
Issue No. 9	In Affirmative
Issue No. 10	In Affirmative
Issue No. 11	As per final order

5. Arguments :-

Heard the Ld. Advocate for both the respective parties at length.

The Ld. Advocate for the plaintiff & defendant no. 1 have filed

written arguments vide Exh.- 67 & Exh.- 68 respectively.

6. Oral evidence of the plaintiff : -

In the examination in chief of plaintiff no. 1 vide Exh.-53, the plaintiff no. 1 has reiterated the facts stated in the plaint and has referred the oral and documentary evidences produced and hence, for the sake of brevity and convenience and to avoid repetition of facts, the same has not been mentioned hereunder.

Further, the plaintiff in the cross examination submitted that he has been residing in Bharuch since his childhood and he is a resident of Bharuch. He further admitted that the defendant, Ibrahim Ismail Patel, is a resident of Samni. He further admitted that if the defendant intended to sell the property under agreement and if any public notice was issued in that regard, he had not read any such notice. He further admitted that he had perused the revenue records of the land before deciding to purchase the same and at that time, the property was running in the names of three persons. He further admitted that there was no documentary evidence in the revenue records regarding any partition among the said three persons and the land was running in the joint names of those three persons. He further admitted that the defendant no. 2, Mohammad Ismail Patel, was abroad in the year 2015 on the date of the agreement. He further admitted that there was no communication or transaction regarding the sale of the land took place with defendant no. 2. He further admitted that he had not entered into an agreement to purchase the entire land, but he had entered into an agreement to purchase 6,000.43 square feet of land. He further admitted that it is not mentioned in the agreement as to in which direction (location) of the total land the 6,000.43 square feet is situated. He denied that the land for which I have entered into an agreement is not specific and he had fixed

the price for the land being purchased as a lump sum amount. He further admitted that the the purpose for which he intend to purchase the land is not mentioned in the sale agreement. He further admitted that the since the disputed land stands in the names of three persons, he had not obtained the signatures and consent of the remaining two owners, other than Defendant No. 1, regarding the agreement. He further admitted that the he had documentary evidence to show that he was in possession of an amount of approximately Rs. 9,35,000/- on the date of the agreement, which he was willing to produce. He further admitted that the time limit for the agreement was twelve months. He further admitted that the agreement was executed in February 2015. He further admitted that the agreement at Exh. 51 is not registered before the Sub-Registrar. He further admitted that the he know Yusuf Musa Bapu, who resides in the society adjacent to him and he is abroad, but he does not know in which country he is currently located. He further admitted that the he is not aware that Yusuf Musa Bapu is a father-in-law (Vevai) of defendant no. 1. He further admitted that the until the disputed property is partitioned, a sale deed for a specific area cannot be executed and he is aware of this fact.

Examination-in-chief of Plaintiff's Witness Mahendrasinh Pratapsinh Bodana vide Exh. 56

The plaintiff has examined his witness namely Mahendrasinh Pratapsinh Bodana by filing examination-in-chief on oath vide Exh. 56 and wherein he has stated that he has been practicing as a Notary in Bharuch since the year 2008 and his registration number is 6829/2008 and he maintain his Register. He further stated that when both parties come to him for notarizing a document, he verify the evidence regarding their identity and then record the same and he maintain the Register regarding these registrations. He

further stated that the original Agreement to Sale (Banakhat) vide Exhibit-51 is shown to him; upon perusal, he state that it was registered on dated 07.02.2016. He further stated that both parties, after reading the documents, had signed and affixed their thumb impressions in his presence, and the witnesses had also signed and affixed their thumb impressions, which were recorded before him, after which he signed the same. He further stated that the document vide Exhibit-51 is recorded in his Register, and he has brought that original Register with him today and he is producing a certified true copy of the same today in the Court at Mark - 57/1, which is admitted and exhibited as Exhibit-56 and document vide Exhibit-51 was recorded following the legal process.

Cross Examination of Plaintiff's Witness Vide Exh. 56.

He admitted that along with being a Notary, he also practice as an Advocate and he has been practicing as an Advocate since the year 1990. He further admitted that it came to his notice that the transaction of the document vide Exhibit-51 was for a value exceeding Rs. 100/-. He further admitted that the he is aware that there is a provision in the Registration Act that a document for a transaction exceeding Rs. 100/- is required to be registered in the Sub-Registrar's Office. He voluntarily stated that as per law, they can also act as Notaries for documents of transactions exceeding one hundred rupees. He further admitted that the before notarizing any document, the documents related to it must be verified. He further admitted that the it came to his notice that Rahim Ismail Patel, Mohammad Ismail Patel, and Yusuf Ismail Patel were the owners of the property for which he notarized the document produced vide Exhibit-51. He further admitted that the Mohammad Ismail Patel and Yusuf Ismail Patel are not shown as parties in the document produced vide Exhibit-51 and he voluntarily stated that Ibrahim Ismail Patel

has executed the document only to the extent of his share.

Question: Did any occasion arise for you to see any document such as a written authorization letter given by both owners to Defendant No. 1 for the sale of the property?

Answer: Ibrahim Ismail Patel has executed the Agreement to Sale (Banakhat) only for the land falling to his share.

He further admitted that the financial transaction mentioned in the agreement between both parties did not take place in his presence. He further admitted that the parties had the agreement vide Exhibit-51 prepared by themselves and brought it to him.

7. Oral evidence of the defendant no. 1: -

In the examination in chief of defendant no. 1 vide Exh.- 61, the defendant no. 1 has reiterated the facts stated in the written statement and has referred the oral evidences produced and hence, for the sake of brevity and convenience and to avoid repetition of facts, the same has not been mentioned hereunder.

Further, the defendant no.1 in the cross examination submitted that he had studied up to the 7th grade and he is literate. He further admitted that he had read the written statement filed by him in this suit as well as his testimony in the form of an affidavit. He further admitted that the Yusuf Musa is his Vevai (daughter's father-in-law) and his third daughter, Bilkisben, is married to Ruhul Amin, son of Yusufbhai and he had known Yusuf Musa since then. He further admitted that he had not produced any documentary evidence to show that the plaintiff manages the properties of Yusuf Musa situated in India. He further admitted that his statement regarding the plaintiff managing Yusuf Musa's properties is merely oral, and he possess no other evidence to that effect. He further admitted that the

Yusuf Musa owns a very large house near Jambusar Chokdi, Bharuch. He further admitted that the none of Yusuf Musa's sons reside in India. He further admitted that the whenever Yusuf Musa and his sons visit, they stay at the residence located at Jambusar Chokdi, Bharuch. He further admitted that the his Vevai is financially sound and is an N.R.I. holding a Green Card for London. He further admitted that the an N.R.I. can only purchase property in India with the permission of the Government and his Vevai had not disclosed the name of the bank from which he intended to take a loan. The witness voluntarily stated that he had only mentioned the fact that a loan was to be taken. He further admitted that the he did not inquire from his Vevai as to which bank the loan was being sought from, the quantum of the loan, or the purpose for which the loan was being taken. He further admitted that the his statement regarding his Vevai intending to take a loan is merely oral and he had no documentary evidence for the same. He further admitted that the if a loan is to be obtained against his property, the signatures of all joint owners are mandatory. He further admitted that the no loan can be obtained without the signatures of the joint account holders/owners. Upon showing him Exhibit-51, and upon perusing it, he stated that his name, Ibrahim Ismailbhai Patel, appears as the Seller/Executant in the said Banakhat (Agreement to Sell). He further admitted that the the name of the Purchaser/Beneficiary is Inayat Yakub Patel. He further admitted that he and the plaintiff have signed on every page of the said Banakhat. He further admitted that the they have agreed to sell the property described in the Banakhat for a consideration of Rs. 10,00,000/- (Rupees Ten Lakhs). He further admitted that the he had read the Banakhat produced vide Exhibit-51. He further admitted that the he does not currently remember whether a copy of the index of the Banakhat produced vide Exhibit-51 has been placed on record and he also currently

does not remember that whether the Banakhat at Exhibit-51 was notarized in the presence of a Notary. He further admitted that the suit property is undivided. He further admitted that the he had not served any notice to the plaintiff for the cancellation of the Banakhat at Exhibit-51, nor had he filed any civil suit in court to have it set aside. He further admitted that the he had not made any written statement to his Vevai, Yusuf Musa, alleging that he fraudulently obtained the Banakhat under the pretext of a loan. He further admitted that the he had not filed any police complaint or court complaint against the plaintiff alleging that the Banakhat at Exhibit-51 was obtained through fraud. He further admitted that the he is not familiar with laws such as the Stamp Act or the Income Tax Act. He further admitted that the he had not mentioned any facts regarding the Stamp Act in his statement. He further admitted that the plaintiff has not served any notice to him regarding the execution of Banakhat and he had not replied to any notice and he had not met his advocate to give reply of any notice.

He further admitted that the he reside at Samni, Taluka Amod, District Bharuch. He was shown the notice at Exhibit-45 he denied that the Plaintiff sent him a notice via R.P.A.D. at his residential address on 11.10.2016. He was shown Exhibit-47, which is a reply to the notice and he denied that the counter-notice at Exhibit-47 dated 08.11.2016 was sent via R.P.A.D. by his advocate. He further admitted that the they have not contacted the Plaintiff for the execution of the sale deed. He further admitted that the Plaintiff is engaged in the travel business and owns a general store at Bambakhana, Bharuch. He further admitted that the Plaintiff owns a house and a shop and his financial condition is sound. He further admitted that the he does not file the income tax return. He further admitted that he had not filed any complaints against his Vevai. He further admitted that he does not wish to examine his Vevai as a witness in this case. He further admitted that he had

no information whether the property is in the joint names of the plaintiff and his Vevai. He further admitted that there is no domestic relationship between the plaintiff and his Vevai. He further admitted that the possession of the property described in Exhibit-51 has not been handed over and the Banakhat at Exhibit-51 is a "possession-less" agreement.

Question: Are you ready to execute the registered sale deed for your share in favor of the Plaintiff upon receiving the balance consideration of Rs. 65,000/- as per the Banakhat at Exhibit-51?

Answer: No.

Question: Are you ready to refund the Rs. 9,35,000/- received in cash from the Plaintiff as per Exhibit-51?

Answer: No.

He further admitted that he is not ready to implement the Banakhat at Exhibit-51. It is not true that I am providing false testimony on solemn affirmation.

- : REASONING AND ANALYSIS : -

Issue Nos. 1 to 4 :-

Issue nos. 1 to 4 are interconnected & co-related issues hence for the sake of brevity and convenience they are to be discussed together.

As the issue nos. 1 to 4 are concerned and to prove these issue the plaintiff has filed his examination in chief on oath vide Exh. 29 wherein he has stated all the facts which are stated in the plaint and the plaintiff was cross-examined by the defendant no. 1. On perusal of the cross-examination of plaintiff it seems that defense taken by the defendant no. 1 is in denial form and particularly defendant no. 1 has setup the defense that they have executed the Banakhat for the purpose of taking the mortgage loan from the bank. The plaintiff has produced the original Banakhat vide Exh. 51 and on perusal of Exh. 51 it seems from page 2 of the said

agreement to sell the name of seller & purchaser are mentioned as Ibrahim Ismailbhai Patel i.e., Defendant No. 1 and Inayat Yakub Patel i.e., Plaintiff of the present suit. On further perusal of the agreement from page 3 it is mentioned that the suit property mentioned on page 3 of the Banakhat was mutually decided to sell at a consideration amount of Rs. 10,00,000/- and on perusal of page 4 of the said Banakhat it is mentioned that out of the said consideration amount an amount of Rs. 9,35,000/- was paid to the defendant no. 1 in cash on 06.02.2016 as earnest money i.e., the date on which the Banakhat was executed and the remaining amount of Rs. 65,000/- was decided to pay on the day of execution of Registered Sale Deed i.e., within twelve months from the date of execution of Banakhat. On further perusal of document produced vide Exh. 51 it seems that the plaintiff & defendant no. 1 have affixed their signature on each and every page of the Banakhat and on last page of Banakhat the Notary Advocate M. P. Bodana made his signature along with his Stamp & Round Seal and the sign & thumb impression of two witnesses namely Yusuf Ismail Patel & Yusuf Musa Bapu was made. Further on perusal of the said Banakhat produced vide Exh. 51 it seems that the the photographs of both the parties are pasted on laste page and copy of Property Index No. 2, Voter ID Card , & Driving License of the parties are also attached.

Further, the plaintiff has examined the Notary Advocate M. P. Bodana as his witness vide Exh. 56 where in he has stated in his chief that both the parties came before him and they read and affixed their signature & thumb impression on the said Banakhat an both the witnesses also signed & gave their thumb impression on it and thereafter it was registered in his presence and afterward he affixed his signature on the said Banakhat and he has produced the abstract of the original register vide Exh. 58 and he also stated that the said Banakhat was legally registered & executed. The said witness was cross-examined by the defendant no. 1 and on perusal of the cross-examination of the said witness it does not seems that the defendant no. 1 was not present before the notary and he has not made his signature & thumb impression.

The defendant no. 1 has categorically admitted in his cross-examination that upon showing him Exhibit-51, and upon perusing it, he stated that his name, Ibrahim Ismailbhai Patel appears as the Seller/Executant in the said Banakhat (Agreement to Sell) and the name of the Purchaser/Beneficiary is Inayat Yakub Patel. He further admitted that he and the plaintiff have signed on every page of the said Banakhat and they have agreed to sell the property described in the Banakhat for a consideration of Rs. 10,00,000/- (Rupees Ten Lakhs). He further admitted that the suit property is undivided and he had neither served any notice to the plaintiff for the cancellation of the Banakhat vide Exhibit-51, nor had he filed any civil suit in competent court to have it set aside. Further the defendant no. 1 admitted that he had not made any written document from his Vevai, Yusuf Musa, alleging that he fraudulently obtained the Banakhat under the pretext of a loan. He further admitted that he had not filed any police complaint or court complaint against the plaintiff alleging that the Banakhat vide Exhibit-51 was made fraudulently and moreover he admitted in his cross-examination that he is not ready & willing to execute the Registered Sale Deed in favour of the plaintiff as per the condition of Banakhat vide Exh. 51.

In view of the above admission made by the defendant no. 1 it seems that the facts that the defendant no. 1 executed a Banakhat for selling his share of the suit property for a sale consideration amount of Rs. 10,00,000/- out of which the plaintiff paid an amount as earnest money of Rs. 9,35,000/- in cash to the defendant no. 1 on 06.02.2021 i.e., on the day of execution of Banakhat in favour of the plaintiff and the remaining amount of Rs. 65,000/- were decided to pay on the day of execution of Registered Sale Deed i.e., within twelve months from the date of execution of Banakhat and the plaintiff was and is ready & willing to execute the Banakhat however, on the contrary the defendant no. 1 is not ready & willing to execute the said

Banakhat.

In view of the above discussion it seems that the plaintiff has successfully proved the facts of issue nos. 1 to 4 to the satisfaction of this court and Hence, I answer Issue No. 1 to 4 In Affirmative.

Issue Nos. 5 to 7 :-

As the issue nos. 5 to 7 are concerned and to prove these issues the defendant no. 1 has filed his examination-in-chief on oath vide Exh. 61 wherein he has reiterated the defense taken by him in written statement. However, in his cross-examination he has admitted that he has studied till 7th standard and he is able to read and write. Further, he admitted that he has read his written statement and examination-in-chief on oath. It is clear that the defendant no. 1 is not illiterate and he is able to read & write and also able to affix his signature. The defense taken by the defendant no. 1 that he executed the Banakhat only for the purpose of availing loan from the bank and moreover, he is able to read, write & capable to make signature then how the defendant no. 1 can execute the Banakhat without knowing the contents of the agreement is quite unacceptable and also unbelievable. The defendant no. 1 has clearly admitted in his cross-examination that he read the Banakhat vide Exh. 51 and the property mentioned in Banakhat was decided to sell at a consideration amount of Rs. 10,00,000/- and he has made his signature on each & every page of Banakhat and Photographs were pasted and he affixed his Thumb Impression on the last page of the Banakhat in presence of Notary Advocate. Now, in view of the above admission it is a failed attempt of defendant no. 1 to escape from the execution of Registered Sale Deed as it is the main condition of the said Banakhat. The defendant no. 1 has clearly refused to execute the Banakhat however, he has not challenged the aspect of plaintiff's readiness & willingness to execute the said Banakhat. Further, taken into consideration the evidence produced by the defendant no. 1 it seems that the defendant no. 1 has not examined any single witness to substantiate the facts that the impugned Banakhat

was executed as per the say of the Vevai Yusuf Musa Bapu without any consideration for the purpose of availing the loan from the bank and on the contrary looking to the cross-examination of the defendant no. 1 which has supported the averments of the plaint of the plaintiff. Further, the defendant no. 1 has not produced any oral or documentary evidence which proves that the plaintiff's suit is premature. Further looking to the documentary evidence produced vide Exh. 51 i.e., Banakhat it is mentioned on page no. 3 that an amount of Rs. 9,35,000/- were paid to the defendant no. 1 by the plaintiff out of total sales consideration amount of Rs. 10,00,000/- and the defendant no. 1 has merely denied that he has not received any amount regarding the Banakhat. The impugned Banakhat is produced vide Exh. 51 and it is a written document which is also admitted its execution by the defendant no. 1 in his cross-examination. The defendant no. 1 has not examined any witness to substantiate the fact that he has not received any amount towards the Banakhat.

Now, in view of the above discussion the defendant no. 1 has miserably failed to prove the facts of issue nos. 5 to 7 to the satisfaction of this court and hence, I answer Issue Nos. 5 to 7 In Negative.

Issue Nos. 8 to 10 :-

As the issue nos. 8 to 10 are concerned and to prove these issues the plaintiff has adduced his oral and well documentary evidence in support of his case. Looking to the evidence adduced by both the parties it clearly seems that plaintiff and defendant no. 1 were entered into an agreement to sell (Banakhat) and defendant no. 1 executed the Banakhat agreement in favour of plaintiff on 06.02.2016 and registered before the Notary Advocate M. P. Bodana vide registration no. 825/2016 regarding the defendant no. 1's share in the suit property. The plaintiff has successfully proved the execution of Banakhat regarding the suit property by way of filing his own and his witness notary advocate's examination-in-chief and hence, it seems that the impugned Banakhat was duly executed by the defendant no. 1 and hence it is legally binding to the defendant no. 1. Now, in view of the above facts it

is also proved that the property mentioned in para 1 of the plaint which is the share of defendant no. 1 in the suit property and defendant no. 1 decided to sell his share and he executed the said Banakhat in favour of plaintiff before notary advocate on 06.02.2016 and an amount of Rs. 9,35,000/- was paid to the defendant no. 1 as earnest money by the plaintiff and it was decided to pay the remaining amount of Rs. 65,000/- at the time of execution of Registered Sale Deed i.e., within 12 month of execution of Banakhat and the said Banakhat was executed on 06.02.2016 and the at present in 2026 it is justifiable to grant the alternative relief of recovering the earnest money with 12% interest per annum and therefore, the plaintiff has proved that he is entitled to get the decree as prayed for and hence I answer Issue Nos. 8 to 10 In Affirmative & Issue No. 11 is followed as per Final Order.

- : FINAL ORDER : -

1. The present suit of the plaintiff bearing Spl.C.S. No. 11 of 2017 is hereby Allowed.
2. It is hereby ordered and declared that the impugned Banakhat executed by defendant no. 1 in favour of plaintiff regarding the suit property before notary advocate M. P. Bodana vide registration no. 825/16 dated 06.02.2016 is legally binding to the defendant no. 1.
3. The defendant is hereby directed to accept the remaining sale consideration amount of Rs. 65,000/- from the plaintiff and execute the Registered Sale Deed in favour of the plaintiff as per the condition of the said Banakhat and if the defendant no. 1 or his power of attorney fails to do so then a court commissioner be appointed to execute the Registered Sale Deed in favour of plaintiff and the plaintiff will bear the expenses of the same.

Alternatively

If the defendant no. 1 fails to do so, then the plaintiff is hereby entitled to recover the amount of earnest money of Rs. 9,35,000/- along with an interest @12% per annum from the date of filing of the suit till its realization from the defendant no. 1

4. The defendant no. 1 is hereby ordered to bear the cost of his own and the cost of the plaintiff.
5. Decree to be drawn accordingly.

Pronounced & signed today in open court on this 13th day of May, 2026.

Date :- 13.05.2026

Place :- Jambusar

(A. D. Rao)
Principal Senior Civil Judge,
Jambusar
UIC : GJ01480