



Instituted On : 29/03/2010

Registered On : 29/03/2010

Decided On : 18/04/2026

Duration : 16Y 00M 20D

**IN THE COURT OF PRINCIPAL CIVIL JUDGE,
TAL. AMOD, DIST. BHARUCH
(Presided Over By : Mr. Ravikumar R. Parmar)**
=====

Regular Civil Suit No. 15/2010

Exh. No. : 99

PLAINTIFFS :

HEIRS OF YAKUB ISP BAPU

(1/1) RAJIBEN WD/O HAJI YAKUB

(1/2) GULAM MAHAMMAD HAJI YAKUB

(1/3) USMANGANI HAJI YAKUB

(1/4) ABDULREHMAN HAJI YAKUB

(1/5) NASEEMA D/O HAJI YAKUB

(1/6) SEHNAAZ D/O HAJI YAKUB & W/O DAUD IBRAHIM

(1/7) ZUBEDA D/O HAJI YAKUB

(1/8) FIROZA D/O HAJI YAKUB

(1/9) MOHSINA D/O HAJI YAKUB

(1/10) HASEENA D/O HAJI YAKUB & W/O DAUD AHMED
GHARDIWALA,

(1/11) RABIYA D/O HAJI YAKUB & W/O HAROON HASAN
DIWANJI,

(1/12) MUMTAZ D/O HAJI YAKUB & W/O ZAKIR UMARJI

All RESIDING AT : Chanchvel, Ta. Vagra, Dist. Bharuch.

V/S

Ravikumar R. Parmar,
Principal Civil Judge, Amod

DEFENDANTS:

(1) SHANTABEN WD/O RANCHODSHANKAR

(2) BABUBHAI RANCHODSHANKAR

(3) ARVINDBHAI RANCHODSHANKAR

ALL RESIDING AT : Roja Tankaria, Ta. Amod, Dist. Bharuch.

APPEARANCES:

PLAINTIFFS : LD. ADV. M.V. RANA

DEFENDANTS : LD. ADV. M.U. PATEL

JUDGEMENT**FOR SUIT FOR SPECIFIC PERFORMANCE OF
CONTRACT & PERMANENT INJUNCTION.**

(1) Present suit was registered and numbered as a Regular Civil Suit by this court on dt. 29/03/2010. Mr. Yakubisap Bapu was a sole plaintiff, but during pendency of suit he died and his legal heirs were implemented as plaintiffs in present matter. The names of the parties mentioned in the heading are as per the parties on record on the day of writing present judgement.

(2) Description of Suit Property

An Agricultural Land situated at Village Rozatankariya of Taluka Amod, bearing Block No. 341 (Old Survey No. 108/19, the total area is Hectare 4-Are 35-Prati Are 98, with an assessment of Rs. 37.40/-.

(3) Fact of the Suit and the pleadings in Nutshell

3.1) The original plaintiff(Yakubisab Bapu) purchased the suit property from the deceased husband of defendant No. 1 and the father of defendants No. 2 and 3 namely Mr. Ranchod Sankar, on 06.05.1971, for a total consideration amount of Rs. 20,694/- and out of this amount, the original plaintiff had paid Rs. 13,000/- in cash to the husband of defendant No. 1 as earnest money and it was agreed that the remaining consideration amount would be paid at the time of the execution of the Registered Sale Deed. It is further submitted by the plaintiffs that the land was originally of "New Tenure" (restricted tenure) and the husband of defendant No. 1 executed a Registered Agreement to Sell (Bana-Khat) in favor of the plaintiffs on the same day and physical possession of the suit property was handed over to the original plaintiff at that time, and the plaintiffs have been in continuous, peaceful possession and enjoyment ever since, cultivating crops like cotton.

3.2) Plaintiffs further submitted in their plaint that due to interference and attempts to take over possession by the husband of defendant No. 1, the original plaintiff previously filed a suit for Permanent Injunction in the Court of the Principal Civil Judge, Jambusar vide Reg. Civil Suit No. 84/76 and the Hon'ble Court passed an order in favor of the plaintiffs, granting a Permanent Injunction thus, the plaintiffs have remained in lawful possession of the property since 1971. Further the plaintiffs have submitted that according to the Agreement to Sell, the registered Sale Deed was to be

executed once the land was converted from "New Tenure" to "Old Tenure" (unrestricted tenure). However, the husband of Defendant No. 1 Ranchhodbhai Shankarbhai passed away before the conversion took place and on 05.09.2009, the competent authority passed an order converting the land to Old Tenure and upon this the original plaintiff approached the legal heirs i.e., the defendants to accept the remaining balance of Rs.7,694/- and execute the final Sale Deed but the defendants initially delayed under various pretexts and due to the rising market value of the land, the defendants now intend to sell the property to a third party at a higher price and despite a Legal Notice sent via RPAD, the defendants have refused to perform their part of the contract. Hence plaintiffs have filed the present suit specific performance of contract & permanent injunction against the defendants.

(4) Pleadings by defendant

4.1) The summons of the present suit were served upon the defendants and filed written statement vide Exh. 16 wherein while denying the facts of the plaint and contend that the true and factual position is that the in the present proceedings, the plaintiff have mentioned the fact of having previously filed a suit bearing Regular Civil Suit No. 84/96 against defendants predecessor, Ranchhodbhai Shankarbhai and based on a list of documents, a decree has been produced in that regard upon obtaining and perusing a copy of the plaint of R.C.S. No. 84/96, it is evident that the said suit was filed solely for the purpose of seeking a permanent injunction and neither in the plaint of R.C.S. No. 84/96 nor until the filing of the present

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suit has the plaintiffs mentioned or established that they were "ready and willing" to perform their part of the alleged contract thus, when the plaintiff are not ready and willing to perform their part under the alleged contract, they have no legal right to institute the present suit. Further the present suit is for Specific Performance of Contract, and such relief is considered a discretionary relief under the Specific Relief Act and the Hon'ble Court must exercise such discretion based on the principles of equity and looking at the facts of the present suit, from the date of the alleged contract until today, the Plaintiff has failed to show continuous readiness and willingness to perform their part.

4.2) Further the defendant No. 2 has contended that according to the plaintiffs' contention, the alleged contract was executed on 06.05.1971 and at that time, the suit land was of "Restricted Tenure" (New Tenure) but as per Section 43(1) of the Bombay Tenancy and Agricultural Lands Act, prior permission from the competent authority was mandatory for the transfer of such land however, it is not the plaintiffs' case that any such prior permission was obtained before the contract but when a contract is entered into which circumvents or defeats the provisions of the prevailing law, such a contract is deemed void ab initio and no benefit can be derived by the plaintiffs based on such a contract; therefore, the plaintiffs' suit and the interim injunction application are liable to be dismissed. Further the defendant No. 2 has stated that the plaintiffs have filed the alleged contract took place in 1971, which is now 39 years old and given that such a long period

has elapsed, the price of the land has appreciated significantly and the plaintiffs have filed the present suit only to take undue advantage of this, in truth, the Plaintiff's suit is barred by the Law of Limitation and is liable to be dismissed with compensatory costs to the defendants, from the plaintiffs.

(5) Points of Determination

5.1) From the pleadings, documents produced, and from the entire record this court had framed below issues vide Exh. 28, which are as below:

1. Whether the plaintiff proves that they have been in possession and using of suit property ?
2. Whether the plaintiff proves that deceased Ranchodbhai Sankarbhai had executed a Sale Agreement on dt. 06/05/1971?
3. Whether the plaintiffs proves, they were always ready and willing to perform their part of contract?
4. Whether the plaintiff is entitled to get the relief as prayed for?
5. What order and decree?

(6) Findings

For issue No. 1 : **IN NAGATIVE,**

For issue No. 2 : **IN NAGATIVE,**

For issue No. 3 : **IN NAGATIVE,**

For issue No. 4 : **IN NAGATIVE,**

For issue No. 5 : **AS PER FINAL ORDER**

(7) Evidences Produced**7.1) By plaintiffs**

Sr. No	Type of Evidence	Detail	Exh. No.
1.	Verbal	Examination in chief on affidavit of Plaintiff Abdulrehman Haji Yakub	59
2.	Verbal	Examination in chief on affidavit of Plaintiff's witness Salim Ahmed Hasan	86
3.	Verbal	Examination in chief on affidavit of Plaintiff's witness Solanki Babubhai Amarsangbhai	92
3.	Documentary	Original Copy of Village Form No. 6 (Haq Patrak) of Entry No. 7937	62
4.	Documentary	Photo Copy of Decree passed in R.C.S. No. 84/1976.	63
5.	Documentary	Photo Copy of Registered Banakhat	64
6.	Documentary	Original Copy of Village Form No. 8A of A/c No. 354	65
7.	Documentary	Original Copy of Village Form No. 7 x 12 of Block No. 341	66
8.	Documentary	Office Copy of Legal Notice served to the defendants.	67
9.	Documentary	Certified Copy of Decree passed in R.C.S. No. 84/1976.	68
10.	Documentary	Certified Copy of Registered Banakhat	69
11.	Documentary	Certified Copy of Village Form No. 7 of Amod bearing Block No. / Survey No. : 435	70
12.	Documentary	Original Copy of R.C.S. 69/1976's Exhibit No. 1 & Final Order.	71
13.	Documentary	Original Copy of R.C.S. 69/1976's Exhibit No. 5 & Order.	72

7.2) The plaintiff Abdulrehman Haji Yakub, PW 1 in Examination-in-chief by way of affidavit vide Exh. 59, has

reproduced facts stated in the suit. Whereas in his cross examination he admitted that, he was not born in 1971 and currently, his age is 47 years. His father passed away in the year 2012 and Ranchhodbhai has two heirs, one is Babu Ranchhod and the other is Arvind Ranchhod. He is not aware of the fact whether Ranchhodbhai has two daughters, namely Madhuben and Manjuben, they have not been made parties in the present suit. He is not aware of whether they have filed any suit for the specific performance of the agreement prior to the year 2010 and he had given a deposition in this matter. Prior to this suit, the defendants had filed a suit in 1996. He submitted that they did not file any suit for specific performance of the contract between 1996 and 2009. He did not know whether the suit property was of 'Restricted Tenure' in 1971. He submitted that he knows how to read and write and Exhibit No. 62 is being shown to him, and upon seeing it, he stated that the entry number 7937 was mutated on 22.06.2009 and in condition number 6 of the said entry, it is mentioned that any transfer made prior to the date of the order shall not be considered legal by virtue of this order, and upon such notice, the permission shall be deemed automatically cancelled. He submitted that he is not aware of whether an agreement contrary to law is considered null and void. He submitted that from 1971 to 2025, in the revenue records of the suit property, in the columns of ownership and possession the names of the defendants are running (mentioned). He submitted that he is not aware of whether there has been an encumbrance/burden (Boja) on the suit property for years. He submitted that the property is situated

in Roza Tankaria village and he reside at Chanchvel, Taluka: Vagra and the property is approximately 11 to 12 acres. He submitted that the Panchayat maintains a Crop Registration Register through the Talati. He submitted that it has never happened that he cultivated crops in the suit property and had it registered with the Talati in the village records. He submitted that it has never happened that he cultivated crops in the suit land, sold the produce to traders, and produced any such bills in court.

7.3) Thereafter, a witness of disputed sale agreement Mr. Salim Ahmed Hasan Vali, PW2 during his examination before court vide Exh. 86 has stated that the signature on the disputed sale agreement Exh. 64 is of his Late father Mr. Hasan Vali Adam. Whereas in cross examination he admitted that on May 06.05.1971 his age was 4 years. His father passed away in the year 1995. He submitted that prior to today, he had never entered a witness box, nor has the plaintiffs' Advocate ever shown him any documents.

7.4) Thereafter, witness Mr. Maheshkumar Dineshbhai Damor, Sub-registrar, Amod, PW3 during his examination before court vide Exh. 91 has stated that, the disputed sale agreement was registered at their office. Whereas in cross examination he admitted that, he is deposing from the record and is not aware regarding signature or drafting of said agreement.

7.5) Thereafter, witness Mr. Solanki Babubhai Amarsang,, PW4 during his examination before court vide Exh. 92 has stated that, he was owning a property adjoining to suit property. He has seen the plaintiffs cultivating suit property since long years and defendants were never cultivated it. Whereas in cross examination he admitted that, he has not produced any evidence along with this deposition to prove that his land was situated to the East of the suit land. He has not produced any evidence to prove that he is a registered agriculturist (Khedut Khatedar). He only knows that his property is adjacent to the suit property. He submitted that apart from this, he did not know anything else.

7.6) Thereafter the plaintiff declared closing of stage of evidence vide Exh. 94 pursis.

7.7) By Defendant

Sr. No.	Type of Evidence	Detail	Exh. No.
1.	Verbal	Examination in chief on affidavit of defendant No.2 Arvindbhai	59

7.8) The defendant DW 1 is his examination-in-chief by way of affidavit Exh. 93 and has reproduced facts stated in his reply. Whereas in cross he has admitted that he is fully aware of the facts of the suit and read the plaint of the suit, his written statement (reply)and he is aware of the Law of Limitation. Upon being asked, he submitted that he knows about the Law of Limitation in the sense that we all appear before the Court. He is not aware if the Plaintiff's ancestors

had filed a suit against our ancestors vide R.C.S. No. 84/76. In the year 1971, he was approximately 1–2 years old. If his father had given anything in writing to anyone in 1971, he would not know about it as he was a child. It is not the case that after the filing of this suit, he went to the Sub-Registrar's office to search for any writings/documents from the year 1971. After the filing of this suit, they have not filed any suit against the Plaintiff. Upon being shown Exhibit-63, he submitted that he cannot say what order has been passed therein because the handwriting is illegible. He is not aware if an interim injunction (stay order) has been passed against them in this matter. He is not aware if the plaintiffs' ancestor, Yakub Isap, had filed any criminal case against him and his brother, Babubhai. He is not aware if they had filed an appeal against the interim injunction of the Hon'ble Court and if an order was passed against them in that appeal as well. He had not given any testimony on affidavit in this matter previously. He is not fully informed about the suit. He is also unaware of what orders were passed by the Court in the present suit or in the suit against his father. Until today, neither he nor his father have filed any suit regarding the possession of the suit property. They have taken loans twice against the suit property. Meenaben is his sister-in-law (brother's wife). He is not aware if Meenaben had filed any complaint against the Plaintiffs regarding the harvesting of the Tuvar (pigeon pea) crop. He is not aware if an application for breach of injunction has been filed against him in this suit. He does not know whether the plaintiffs have published an advertisement in the newspaper stating that no one should purchase the suit

property. He did not have the occasion to see the Plaintiff's documents produced in this suit. He did not have the occasion to produce any evidence in this suit. He is not aware that the present suit is for the Specific Performance of Contract.

7.9) Thereafter the defendant side declared closing of stage of evidence vide Exh. 94 pursis.

(8) Arguments

8.1) The Ld. Adv. from sides have argued orally wherein they reproduced facts of the plaint and written statement and evidence produced by them.

8.2) Ld. Adv. Mr. M.V. Rana, appearing for plaintiff, has argued that they have successfully proved execution of the sale agreement by virtue of testimony of PW2 & PW3 . They have also proved ready and willing to perform their part of the contract. Further, argued that, it was agreed between the parties that, the sale deed to be executed after obtaining permission from The collector and even after obtaining permission the defendant has not executed sale deed. They have successfully proved due execution of sale agreement, their ready and willingness, Further, argued that, they have also proved possession of suit property by virtue of PW4. Therefore, present suit to be decreed in their favour.

8.3) On the other side Ld. Adv. M.U.Patel appearing for defendants has argued that, the original agreement is not produced, and no explanation is given for its non-production. The alleged agreement is therefore not proved in accordance with law. Further argued that, the plaintiff side had failed to Prove Execution of sale agreement. No attesting witness has been examined. Further argued that, PW2 has no personal knowledge and PW3 is only a formal witness. Further argued that, the Suit Barred by Limitation, the agreement is of the year 1971, whereas the suit is filed after several decades. Further argued that the land was of new tenure at the time of agreement. Transfer without prior permission is prohibited. Any agreement in violation of the said provision is void and unenforceable. Therefore, suit is liable to be dismissed.

(9) Reasoning & Appreciation of Evidence

9.1) Key Facts of the suit is that, a disputed sale agreement was executed in 1971, between the original plaintiff and father of defendants. Possession was allegedly handed over to the original plaintiff since then. The land was of restricted tenure and sale deed was to be executed after conversion. Conversion to old tenure occurred on 05.09.2009. Despite readiness to pay balance consideration, defendants failed to execute sale deed. Plaintiffs claim continuous possession since 1971 and rely on earlier injunction decree.

9.2) On the other side the defendants contend that Plaintiffs were never ready and willing to perform their part of the

contract. The alleged agreement is void being in violation of Section 43 of the Bombay Tenancy Act. The suit is barred by limitation.

9.3) Considering contentions from both parties and documents produced during trial, my reasoning and appreciation of evidence are as below :

Issue No.4

“4. Whether the plaintiff is entitled to get the relief as prayed for??”

9.4) As the present issue involves legal prospect, therefore I consider it proper to discuss it prior.

9.5) Pertinent to note that, an Agreement on which the Plaintiff is seeking specific performance states that at the time of execution of sale agreement, the suit property was a new tenure land and in the Plaint also, there is a clear averment of the Plaintiff that the suit property was a new tenure land.

9.6) At this juncture it is very important to cite Section 43 of the Gujarat Tenancy and Agricultural Land Act, 1948, which reads as under:-

“43. (1) No land or any interest therein purchased by a tenant under section 17B, 32, 32F, 32-I, 6[], 7[32U, 43- 1D or 88E] or sold to any person under section 32P or 64 shall be transferred or shall be agreed by an instrument in writing to be transferred, by sale, gift, exchange, mortgage, lease or*

assignment, without the previous sanction of the Collector and except in consideration of payment of such amount as the State Government may by general or special order determine; and no such land or any interest, therein shall be partitioned without the previous sanction of the Collector.

[Provided that no previous sanction of the Collector shall be required, if the partition of the land is among the members of the family who have direct blood relation or among the legal heirs of the tenant:

Provided further that the partition of the land as aforesaid shall not be valid if it is made in contravention of the provisions of any other law for the time being in force: Provided also that such members of the family or the legal heirs shall hold the land, after the partition, on the same terms, conditions and restrictions as were applicable to such land or interest therein purchased by the tenant or the person.”

9.7) The Hon’ble Gujarat High Court in **Patel Amitkumar Bhagwanbhai Versus Thakor Jhemaben Wd/O Meruji Kala (2025 (0) AIJEL-HC 251357)**, had decided a second appeal wherein the issue was resembling the issue in present suit. In para No.11 the Hon’ble High Court discussed the fact which reads as below :

“8. Having heard learned advocate for the plaintiff, the fact remains that Agreement on which the Plaintiff is seeking specific performance also states that at that time, the suit property was a new tenure land and in the Complaint also, there

is a clear averment of the Plaintiff that the suit property was a new tenure land.”

Further in Para No. 11 to 15 the Hon’ble High Court has discussed and laid down as below :

“11. The Division Bench of this Court in the case of Bharatbhai Devashibhai Ukani vs. Vinaben Babaji and ors. in First Appeal No. 4023 of 2023 in Para 11, has referred to the issue in question that has been decided by the Full Bench in the case of deceased Shaikh Ismailbhai Husenbhai thro Legal Heirs (supra), which reads as under:

11. Issue, in question is no longer res-integra in view of the recent judgment of the Full Bench, in the case of deceased Shaikh Ismailbhai Hushainbhai through legal heirs (supra). The Full Bench, has confined its examination to the provision of Section 43 of the Act of 1948. Paragraph 21 in this behalf reads thus;

21. Furthermore, in light of the controversy before us, as can be seen from the previous decisions of this Court noted hereinbefore, we do not find any reason to enlarge the scope of the reference and confine ourselves to the question of reference to examine whether a plaint is liable to be rejected on the ground that the suit for specific performance of contract based on an illegal or invalid agreement to sell, hit by Section 43 of the Tenancy Act, 1948, is not maintainable?

12. In view of the said judgment it has been held and observed that it is only the Civil Court that can look into the

fact as to whether the agreement on the basis of which the suit for specific performance is instituted is a valid agreement and not hit by any statutory provisions or forbidden by law or opposed to public policy.

13. If the agreement itself is invalid being hit by section 43 of the Tenancy Act, no cause of action can be said to have arisen asking Defendant to perform his part of the contract and there is no sanction and the agreement itself is illegal and invalid. Para 12 of the decision rendered in First Appeal No. 4023 of 2023 reads as under:

12. It has been held and observed that the Civil Court, alone can look into the fact that as to whether the agreement on the basis of which, the suit for specific performance is instituted is a valid agreement, not hit by any statutory provision, or forbidden by law or oppose to public policy. The Full Bench, has also considered the object and scope of Order VII Rule 11 of the Code, and referred to the judgment in the case of Dahiben vs. Arvinbhai Bhanusali (Gajara) dead through LHS., reported in (2020) 7 SCC 366, wherein, it has been held and observed that the cause of action for a suit for specific performance of an agreement of refusal by the Vendor inspite of readiness and willingness of the vendee to execute the sale deed, will not be existing in a case where the agreement itself is invalid being hit by Section 43 of the Act of 1948, inasmuch as, no cause of action can be said to have arisen, asking the Defendant to perform his part of the contract when there is no sanction and the agreement itself is illegal or invalid. Paragraphs 138, 139, 151 and 153 of the judgment of Full Bench, read thus;

138. We may clarify that we are not concerned with the dispute pertaining to the validity of an agreement, i.e. the dispute whether an agreement is hit by Section 43 or not, i.e. whether it is valid or not? The issue before us is plain and simple; as to whether the agreement which has been executed with a view to transfer a restricted tenure land as prescribed in Section 43(1), without the permission of the Collector, can be specifically enforced by the Civil Court by granting a decree of specific performance of such an agreement. Our concern is about the jurisdiction of the Civil Court to decide on the question of enforceability of such an agreement of sale, which in our considered opinion clearly resides in the Civil Court as held by the Division Bench in Ganpatlal (supra). The Civil Court alone will have jurisdiction to adjudicate on the question of enforceability of the agreement of sale, on the basis of which the suit for specific performance has been executed. It is the Civil Court which alone can look into the fact as to whether the agreement on the basis of which the suit for specific performance is instituted is a valid agreement, not hit by any statutory provision, or forbidden by law or opposed to public policy.

139. The question as to enforceability of an agreement hit by Section 43 of the Tenancy Act, 1948, to grant a decree of specific performance, cannot be by any stretch of imagination, a question within the scope of the jurisdiction of the revenue authority under the Tenancy Act, 1948. There is no gainsaying that Civil Court will not be required to stay a suit for specific performance based on an agreement hit by Section 43(1) of the Tenancy Act, 1948 and relegate the

parties to approach the Mamaltdar to decide on the question of validity of such an agreement. (g) Enforceability of the agreement hit by Section 43 of the Tenancy Act:-

151. On a careful reading of the provision in Order VII, Rule 11 of the Code of Civil Procedure and the law laid down by the Apex Court in Dahiben (supra), in light of the dispute before us, we may note that in order to maintain the suit for specific performance of agreement, which is hit by Section 43(1) of the Tenancy Act, 1948, the Plaintiff would be required to disclose the cause of action for seeking a decree of specific performance of such an agreement. The cause of action for a suit for specific performance of an agreement of refusal by the Vendor inspite of readiness and willingness of the vendee to execute the sale deed, will not be existing in a case where the agreement itself is invalid being hit by Section 43(1), inasmuch as, no cause of action can be said to have arisen asking the Defendant to perform his part of the contract when there is no sanction and the agreement itself is illegal or invalid. Further, on the averments made in the plaint, in conjunction with the documents relied upon by the Plaintiff, the Civil Court will be in a position to ascertain the question of enforceability of the agreement. It will be in a position to ascertain that the agreement, which is the basis of the suit, whether is hit by Section 43(1) or not, inasmuch as, to seek a decree of specific performance of agreement, the Plaintiff is required to disclose and establish two circumstances: (I) firstly, that the documents, which is the basis of the suit is a valid document in the eye of law and (ii) secondly, that the cause of action has arisen prior to the

presentation of the plaint. If the documents, i.e. the agreement is an illegal or invalid document in the eye of law, the Civil Court from the statement in the plaint itself will ascertain the suit being barred by law. In any case, a suit basis of which is an invalid document in the eye of law or where there exists no cause of action to institute the suit on the date of the presentation of the plaint, the Civil Court will have no option but to reject the plaint, at the threshold, under Order VII, Rule 11 of the Code of Civil Procedure. The arguments that the Civil court will be required to frame the issue as to the validity of the agreement, which is the basis of the suit and must necessarily proceed with the trial to arrive at the decision as to whether the decree of specific performance of an agreement hit by law, is to be granted or not, does not appeal to us.

153. We are in respectful agreement with the decision of the Division Bench in Naranbhai Kanjibhai Gajera (supra), holding that the Division Bench decision in Amarben (supra) can be said to be per incuriam ignoring statutory provisions and in view of the decision of another Division Bench dated 21.06.2021 in Vijaybhai Shambhubhai Patel (supra), which was challenged in Special Leave to Appeal (Civil) No.5124 of 2022, and which has been dismissed vide judgement and order dated 10.11.2022 affirming the Division Bench judgement in Vijaybhai Shambhubhai Patel (supra).

14. In any case, this Court is bound by the judgment of the Honble Full Bench in Shaikh Ismailbhai Hushainbhai through legal heirs (supra) and Honble Division Bench in

Bharatbhai Devashibhai Ukani vs. Vinaben Babaji and ors. (supra). These judgments squarely cover the position of law on the application of Order VII Rule 11 to Agreements hit by Section 43 of the Tenancy Act and hence, they squarely apply to the facts of the present case.

15. Therefore, in view of provisions of Section 43 of the Tenancy Act and the admitted position that the suit property was a new tenure land, the suit for specific performance of the contract based on illegal and invalid agreement to sale is hit by section 43 of the Tenancy Act.”

9.8) By perusing section 43 of Gujarat Tenancy and Agricultural Land Act, 1948, and from the judgement cited above, it is very clear that, the present suit for specific performance of the contract based on illegal and invalid agreement to sale is hit by section 43 of the Tenancy Act. Therefore, as per above discussion my answer to issue No.4 is in **NAGATIVE**.

Issue No. 1

“Whether the plaintiffs prove possession of the suit property?

The burden to prove possession lies upon the plaintiffs.

9.9) The plaintiffs have pleaded continuous possession since 1971. However, the evidence on record does not support this contention. The plaintiff (PW1) has categorically admitted in cross-examination that, the revenue records since 1971 till date reflect the names of the defendants in the ownership and possession column. No entry regarding cultivation has ever

been recorded in their favour. No documentary evidence such as crop registration, sale receipts of agricultural produce, or revenue extracts has been produced. Further, The witness PW4 has made a bald statement regarding possession, but, he has not produced any documentary proof of adjacent ownership. His testimony is general and not reliable. Mere oral assertions without documentary corroboration cannot establish possession, especially when revenue records consistently contradict such claims. Therefore, the plaintiffs have failed to prove lawful and continuous possession. Therefore, as per above discussion my answer to issue No.1 is in **NAGATIVE**.

Issue No. 2 & 3

“Whether the plaintiffs prove execution of Agreement to Sell dated 06.05.1971?

Whether the plaintiffs prove they were always ready and willing to perform their part of the contract?”

9.10) Pertinent to note that, during the entire trial, the original agreement to sell has not been produced before the Court. Sections 61 to 65 mandate that contents of documents must be proved by primary evidence, i.e., the original document. The plaintiffs have not filed any application explaining loss or non-availability of the original.

9.11) Further, perusing testimony of PW2 (son of attesting witness) it appears that he was 4 years old in 1971. He has no personal knowledge of execution. Thereafter perusing testimony of PW 3 (Sub-Registrar), it appears that he has

merely produced a record. He has no knowledge of actual execution or signatures. No attesting witness has been examined. Therefore, the document is not proved as required under evidence law.

9.12) Apart from it is also pertinent to note that, the disputed Agreement was executed in 1971, and the present suit was filed after almost 39 years. Even considering conversion in 2009, no convincing evidence of a subsisting contract. No continuous assertion of right has come on record. Therefore, as per above discussion my answer to issue No.2 and 3 are in **NEGATIVE**.

(10) Final Conclusion

10.1) In view of the foregoing discussion and appreciation of evidence, this Court holds that, the sale agreement executed between parties is hit by Section 43 of the Bombay Tenancy Act, therefore illegal and invalid, therefore, Specific performance of said contract cannot be granted. Further, The alleged agreement to sell is not proved. Thus, this court is of view that, the plaintiffs are not entitled to the discretionary relief of specific performance or injunction. Thereby my answer to issue No.5 is as final order :

-:: FINAL ORDER ::-

- 1) The suit is hereby dismissed.
- 2) No order as to costs.
- 3) Interim Injunction stands vacated.

4) Decree be drawn accordingly.

Pronounced and signed in the open court on dt. 18th Apr.
2026.

Date : 18/04/2026
Place : Amod

Ravikumar R. Parmar
Principal Civil Judge
Tal. Amod, Dist. Bharuch.
(Judge Code : GJ 01603)

Ravikumar R. Parmar,
Principal Civil Judge, Amod