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Exhibit :

**IN THE COURT OF PRINCIPAL DISTRICT JUDGE,
BHAVNAGAR.**

Regular Civil Appeal No. 27/2023.

Appellants : **Rumibhai Karimbhai Shaikh,**
[Ori. defendant No.4] Age 52 years,
Occ. Advocate & Social Worker,
R/o. Hathiyadhar, Tal. Palitana,
District Bhavnagar.

Versus

Respondents : (1) **Trustees of Arisa Bhuvan Jain**
[Ori. plaintiffs] **Dharmashala Trust,**

(1/1) **Lalitkumar Maganlalji,**

(1/2) **Anilkumar Maganlalji,**

(1/3) **Uttamchand Rikhavchandji,**

(1/4) **Shantilal Rikhavchandji,**

(1/5) **Prakashchand Rikhavchandji,**

All R/o. Arisa Bhuvan,
Jain Dharmshala,
Taleti Road, Mu. Palitana.

[Ori. defendant No.1] (2) **State of Gujarat,**
Through its Principal Secretary,
Address: Sachivalay,
Gandhinagar.

- [Ori. defendant No.2] **(3) The Collector, Bhavnagar.**
Collector Office, Bhavnagar.
- [Ori. defendant No.3] **(4) Palitana Nagarpalika,**
Through its Chief Officer,
Office of Palitana Nagarpalika
Office, Palitana.
- [Ori. defendant No.6] **(5) Keshubhai Jivabhai Makwana,**
Palitana Nagarpalika Office,
Mu. Palitana.

Re: - Appeal under Section 96 read with Order 41, Rule 1 – 2
of Civil Procedure Code,1908 against the judgment and
decree passed by learned Principal Senior Civil Judge,
Palitana in Regular Civil Suit No.136/2017 (Old RCS
No.546/2003) on 27.08.2019

Appearance:

Mr. S. H. Trivedi, learned Advocate for the Appellant.

Mr. S. S. Dodiya, learned Advocate for the Respondents No.1/1,
1/2, 1/4 and 1/5.

Respondent No.1/3 – Died (Ex.8).

Respondents No.2 – Duly Served (Ex.12).

Respondent No.3 – Duly Served (Ex.9).

Respondent No.4 – Duly Served (Ex.10).

Respondent No.5 – Dismissed as per order passed below Ex.1.

* * *

J U D G M E N T

01. The present appeal emanates from the judgment and decree, dated 27.08.2019, passed in **Regular Civil Suit No.136/2017 (Old Regular Civil Suit No.546/2003)**, passed by the **learned Principal Senior Civil Judge, Bhavnagar** (hereinafter referred to as "**the learned Trial Court**"), whereby the suit preferred by the original plaintiffs (present respondents No.1/1 to 1/5) came to be allowed.

02. For the sake of convenience and brevity, the parties of the present appeal are hereinafter referred to as they were arrayed before the learned Trial Court i.e. the present appellant is referred to as the original defendant No.4, whereas the present respondents No.1/1 to 1/5 are hereinafter referred to as the original plaintiffs, the respondent No.2 is hereinafter referred to as the original defendant No.1, the respondent No.3 is hereinafter referred to as the original defendant No.2, the respondent No.4 is hereinafter referred to as the original defendant No.3 and the respondent No.5 is hereinafter referred to as the original defendant No.6.

03. The factual matrix of the present proceedings are as under :-

3.1 That the original plaintiffs i.e. the present respondents No.1/1 to 1/5 had preferred **Regular Civil Suit No.136/2017 (Old Regular Civil Suit No.546/2003)**, *inter alia*, contending therein that prior to August, 1957 late Shri Bhurmalji Rikhavdasji hailing from Rajasthan purchased the land being Survey No.285, which was initially an agriculture land and which was being used for non-agricultural work, *vide* registered sale deed No.489 executed on 27.08.1957 admeasuring 1 Acre – 6 Guntha *plus* kharaba land from its original owner – Mali Makanbhai Lakhabhai. The aforesaid land was mutated in the revenue record at Revenue Account No.370 in the name of Bhurmalji Rikhavdasji *vide* letter, dated 20.12.1957 learned Mamlatdar, Palitana confirmed the legality and validity of the above referred sale deed and thereafter, Bhurmalji Rikhavdasji applied for converting the

above referred land into non-agriculture land for Charitable Institution and the then Collector, Bhavnagar *vide* order, dated 27.08.1958 granted the said permission. Thereafter, Palitana Nagarpalika *vide* order, dated 27.06.1962 sanctioned the layout plan proposed by the plaintiff – Trust and Nagarpalika publicly instructed that all the open plots of the Trust be covered by constructing fencing wall. Accordingly, the plaintiffs have carried out construction and erected the fencing wall on the Survey No.285. It was the further case of the plaintiffs that under the provisions of the Bombay Land Revenue Code, the City Survey was made applicable to the area including the suit property. Accordingly, the suit property was included in city survey area bearing City Survey No. 229. Kakda Nondh No. 229. Tav No. 30 admeasuring 5163 Sq. Mtrs. and Sanad was issued in the name of the plaintiff.

- 3.2** The plaintiff apprehended the threat and, therefore, decided to set apart a strip of land running West in East in its own land possessed by the Trust itself, to which the public or Municipality has no concern. That strip of land was subjected two gates, one on the Eastern side and another on the Western side. It was also pleaded that the strip of land earmarked by the plaintiff in its own land, for its personal convenience and future development, is an internal road land and not a public street. Any land which belongs to private ownership can be made a public street subject to acquisition of ownership rights by defendant No.3, in accordance with the provisions of Land Acquisition Act and

subject to further procedure as envisaged by the Gujarat Municipalities Act, but without the same, the land remains of private ownership of the concerned owner and no public interest can be claimed. It was further averred that the strip of land was and was in exclusive possession of the plaintiff trust as private property and same was never demarcated adopted as public street as contemplated by the provisions of all laws prevailing in the State of Gujarat and the then Municipality had approved the layout plan on 26.06.1962, no action could be taken against the plaintiffs. It was pleaded that somewhere in 2002 abruptly all Government and municipal Authorities woke up and started demolition drive and accordingly without verifying the validity and legality of the constructions, the Municipality on 03.01.2002 demolished the gates of the plaintiff and created a wrong impression that the plaintiff trust has indulged itself into illegal activity. Accordingly, a notice was issued to defendant No.3 and was called upon to pay the sum of Rs.5 Lac as damages and Municipality after realising its illegal action, the Municipality *vide* its order 23.07.2002 bearing No. Municipal/Vashi/Land/71/2002-03 issued permission in favour of the plaintiff.

- 3.3** However, the defendants No.4 to 6, who were the Corporator of the defendant No.3 – Nagarpalika, *inter alia*, projecting that they are working in the public interest, moved an application on 30.08.2000 before the learned Collector, Bhavnagar *inter alia* alleging that the construction put up by the plaintiffs in Survey No.285, running from East

to West is illegal and should be removed. After hearing the concerned parties, *vide* order, dated 05.08.2003 the learned Collector was pleased to remove the said construction and was further pleased to set aside the order passed by the learned Chief Officer, Palitana granting permission to the plaintiff to construct the compounding wall with two gates attached on the eastern and western side of the said site.

3.4 Being aggrieved and dissatisfied with the order passed by the learned Collector, dated 05.08.2003, the plaintiffs preferred the above referred suit for declaration and permanent injunction, *inter alia*, praying that the order, dated 05.08.2003 passed by the learned Collector – the defendant No.2 is required to be quashed and set aside and it was also prayed that the order passed by the defendant No.3, dated 23.07.20202 may be declared as illegal and inoperative and it was also prayed that the strip of land, which is forming part of Survey No.285 running from East to West having two gates on each side together with fencing wall is legal construction – which was duly authorised by the Local Authority.

04. After issuance of the notice, the **defendants No.1 and 2** appeared and filed written statement at **Ex.43** and contended that the suit of the plaintiffs is barred in absence of any statutory notice issued u/s. 80 of the Code and suit of the plaintiffs is required to be dismissed as no sufficient stamp has been affixed on the suit and the suit preferred by the plaintiff – Trust is not in public interest and, therefore, the suit is not maintainable more particularly when the strip of

land claimed by the plaintiffs is not the private property of the Trust.

05. The **defendant No.3** appeared and filed written statement at **Ex.47** and contended that the plaintiffs do not have *prima facie* case and the defendant No.3 is entitled to recover Rs.75,000/- as the plaintiffs have erected illegal construction.
06. The **defendants No.4 to 6** have filed their common written statement at **Ex.60** and denied the averments made in the suit and it was mainly contended that the defendants No.4 to 6 are not necessary party and the order passed by the learned Collector, dated 05.08.2003 is valid – which did not call for any interference and it was lastly contended that the Civil Court has no jurisdiction to deal and decide the suit preferred by the plaintiffs and, therefore, it is required to be dismissed.
07. After completion of the pleadings, the learned Trial Court framed various issues *vide* **Ex.78**, which are as under :-
 - (1) Whether plaintiff/s prove/s that the rights claimed by him / her is in existence ?
 - (2) Whether plaintiff/s prove/s that the defendants have invaded the existing rights ?
 - (3) Whether plaintiff/s prove/s that the order / act specifically stated in plaint of the defendants is illegal, arbitrary, null and void ?

- (4) Whether this Court has jurisdiction to try and decide the suit of the plaintiff ?
 - (5) Whether the suit filed by the plaintiff is barred under the Law of Limitation ?
 - (6) Whether the suit filed by the plaintiff is barred under the principle of delay, laches and acquiescence ?
 - (7) Whether plaintiff is entitled for the relief of decree and injunction either perpetual or mandatory ?
 - (8) What Order and Decree ?
- 08.** After hearing learned Advocates for the parties, the learned Trial Court was pleased to decide the above referred issues in the following terms :-
- (1) In Affirmative.
 - (2) In Affirmative.
 - (3) In Affirmative.
 - (4) In Affirmative.
 - (5) In Negative.
 - (6) In Negative.
 - (7) In Affirmative.
 - (8) As per final order.
- 09.** Ultimately, the learned Trial Court was pleased to allow the suit of the plaintiffs as mentioned in paragraph 1 of the present order.

10. Learned Advocate for the appellant – original defendant No.4 has relied upon the provisions of **Section 11** of the **Bombay Revenue Jurisdiction Act, 1876** (“Act” for short) and submitted that against the order passed by the learned Collector, dated 05.08.2003, the appeal is maintainable before the Revenue Authority and since the suit is not maintainable in view of the provisions contained u/s.11 of the Act, the suit ought not to have been decreed by the learned Trial Court. He further submitted that the learned Trial Court has specifically framed the issue No.4 with respect to the jurisdiction of the Civil Court to try and decide the present suit, but surprisingly no specific findings have been given/assigned by the learned Trial Court – which call for interference of this Court. He further submitted that the present appellant is a social worker and in the capacity of social worker, the present appeal is maintainable inspite of the fact that at present he is not an elected member of the original defendant No.3 – Nagarpalika. He lastly submitted that the impugned judgment and decree may be quashed and set aside and may be remanded back so as to enable the present elected members of Nagarpalika to challenge the act of the plaintiffs *qua* carrying out the constructions on the public road.
11. *Per contra*, learned Advocate for the original plaintiffs (present respondents No.1/1 to 1/5) has submitted that no construction had been carried out on the public land and two gates were erected by the plaintiffs just with a view to

protect their property from any unwanted encroacher. He further submitted that the present appellant has no authority to challenge the impugned judgment and decree as he does not have any *locus standi* or authority to challenge the impugned judgment and decree because he is not an elected member of the defendant No.3 – Nagarpalika. He further submitted that the deposition of Chitnis to Collector has been recorded at Ex.162 and on careful perusal of the cross-examination of Chitnis to Collector reveals the fact that no action had been initiated by the Collector under any Law and the plaintiffs were not served with any show-cause notice for the violation of any law. This deposition has been taken into consideration by the learned Trial Court while decreeing the suit of the plaintiffs and, therefore, no interference in the impugned judgment and decree is called for.

12. Though appeal is ordered to be proceeded *ex parte* against the original defendants No.1 to 3, the learned AGP submitted that admittedly the construction was put up in the private property and the same has been admitted by the Chitnis to Collector in his deposition and as construction was not put up on the public land, no action has been initiated against the impugned judgment and decree, dated 27.08.2019, passed by the learned Trial Court and in that view of the matter, it is prayed to pass an appropriate order.
13. Heard learned Advocates appearing on behalf of the respective parties. From the above rival submissions of the

respective parties, following points emanate for my consideration :-

- (1) Whether the present appellant has authority to continue with the present appeal more particularly when the appellant is not holding any position in the respondent No.3 – Nagarpalika ?
- (2) Whether the suit of the plaintiffs was barred u/s.11 of the Bombay Revenue Jurisdiction Act, 1976 ?
- (3) Whether the impugned judgment and decree passed in **Regular Civil Suit No.136/2017 (Old RCS No.546/2003)**, passed on **27.08.2019** by the **learned Principal Senior Civil Judge, Palitana** is bad in the eyes of law and is required to be interfered with ?
- (4) What Order and Decree ?

14. My findings on the aforesaid issues are ascribed hereinbelow :-

- (1) In Negative.
- (2) In Negative.
- (3) In Negative.
- (4) As per final order.

:: REASONS ::

ISSUE NO. 1 :-

15. Learned Advocate for the appellant has filed *pursis* at Ex.19, *inter alia*, declaring therein that the appellant is the Nagar Sevak and Social Worker and as such, he has authority to continue with the present appeal. During the

course of argument, learned Advocate for the appellant has admitted that the appellant is not the elected member of the defendant No.3 Nagarpalika. Along with the above referred undisputed fact, it is also required to be noted that the along with the present appellant, defendants No.4, 5 filed written statement at **Ex.60** and in the said written statement, the stand was taken by them that they are not the necessary party and they may be deleted as party defendants. Thus, right from the inception, the stand of the present appellant was to an effect that he was not necessary part. In spite of this, the appellant has continue with the present appeal. This Court has a serious doubt about the *locus standi* of the present appellant more particularly when the appellant has taken a specific stand in his written statement that he was not the necessary party in the suit. It is also required to be noted that along with the present appellant, the other elected members namely Chandrikaben B. Chauhan and Keshubhai Jivabhai Makwana were joined as the defendants No.5 and 6, respectively. It depicts from the record that Chandrikaben B. Chauhan died during the pendency of the suit and the suit against Chandrikaben B. Chauhan was ordered to be abated. Though Keshubhai Jivabhai Makwana is alive, he has not been joined as one of the co-appellant, which goes to show that the appellant is having vested interest in the above referred litigation and without there being any authority with the appellant, has preferred the present appeal and even during the course of argument of the appeal, the appellant shown his willingness to continue with the appeal under the pretext that he is a social worker. In my opinion, the

appellant does not have any *locus standi* to prefer the present appeal. It is also required to be noted that only at the behest of the defendants No.4 to 6, the proceedings were initiated against the plaintiff by the defendants No.1 to 3. Since the appellant does not have any locus and on bare perusal of the record of the learned Trial Court further depicts that no civil rights of the appellant is violated, the present appeal is preferred at the behest of the appellant and, therefore, I hold that the present appeal is not maintainable. Therefore, my reply to the **issue No.1** is in **Negative**.

ISSUE NO. 2:

16. It is mainly contended, which is the only legal submission, by the learned Advocate for the appellant is to an effect that though specific plea was taken before the learned Trial Court with respect to the provision of Section 11 of the Act, the same has not been properly dealt with by the learned Trial Court and without assigning any reason with respect to the issue No.4, the suit of the plaintiffs is ordered to be decreed. If we carefully peruse the written statement of the defendants No.4 to 6, which is recorded at Ex.60, there is no reference with respect to Section 11 of the Act. In fact, sub-para of para 27 of the written statement, it is mentioned that against the order passed by the learned Collector, dated 05.08.2003 appeal lies and since the appellant is not the necessary party, the suit against the defendant No.4 and also against defendants No.5 and 6 is not maintainable. Thus, there is no specific plea taken by the defendant No.4 (appellant) or the defendant No.5 to 6 that the suit of the

plaintiffs is not maintainable in view of the provisions contained u/s.11 of the Act, therefore, no fault can be found with the impugned judgment and decree passed by the learned Trial Court. It is cardinal principle of law that when the party himself has taken a stand in his written statement that he is not necessary party and he may be deleted from arraying of party then such party against whom no decree has been passed, has no authority to challenge the decree, which is in no terms violative of his rights more particularly his civil rights. Since no decree is passed against the appellant and his civil rights are not adversely affected and further taking into consideration the fact that no plea with respect to Section 11 of the Act was taken before the learned Trial Court, the second line of argument advanced on behalf of the appellant cannot be accepted.

16.1 At the cost of repetition, it is required to be noted that only affected party i.e. the original defendants No.1 to 3 viz. State of Gujarat, Collector and Nagarpalika. But none of the affected party have challenged the impugned judgment and decree passed by the learned Trial Court and only good reason for not challenging the impugned judgment and decree is to an affect that while obtaining the N.A. permission, the plaintiff was permitted to put-up two gates in the personal property of the plaintiff – Trust. It is also not in dispute that, without verifying the validity and legality of the constructions, the Municipality on 03.01.2002 demolished the gates of the plaintiff and created a wrong impression that the plaintiff trust has indulged itself into

illegal activity. Thereafter, plaintiffs issued a notice upon the defendant No.3 and was called upon to pay the sum of Rs.5 lac as damages and after realising its illegal action defendant No.3 *vide* its order 23.07.2002 bearing No.Municipal/Vashi/Land/71/2002-03 (Exh.124) issued permission in favour of the plaintiff, which goes to show that plaintiffs have not indulged into any illegal activity. In this view of the matter, I do not find it fit to accept the second argument advanced on behalf of the appellant. In view of the above, I answer the issue No.2 in **Negative**.

ISSUES NO.3:

17. Since this Court has answered the issues No.1 and 2 against the appellant and upon careful reading of the impugned judgment and decree, this Court do not find any good reason to interfere with the impugned judgment and decree and, therefore, I deem it fit to confirm the impugned judgment and decree passed by the learned Principal Senior Civil Judge, Palitana in Regular Civil Suit No.136/2017 (Old RCS No.546/2003), dated 27.08.2019 and, therefore, I answer the **issue No.3** in **Negative**.

ISSUES NO. 4:

18. In view of the foregoing discussions, I answer the issue No.4 accordingly and pass the following Order : -

ORDER

- (1) This present **Regular Civil Appeal No.27/2023** stands **dismissed**.

- (2) The Judgment and decree, passed by the **learned Principal Senior Civil Judge, Palitana** in **Regular Civil Suit No.136/2017 (Old RCS No.546/2003)**, passed on **27.08.2019** stands **confirmed**.
- (3) Interim relief, if any, stands vacated forthwith.
- (4) Decree be drawn accordingly.
- (5) No order as to cost.
- (6) Copy of this Judgment be sent to the learned Trial Court along with record and proceedings.

Pronounced in the open Court today, i.e. on this **15th** Day of **May, 2026** at **Bhavnagar**.

(H. S. MULIA)
PRINCIPAL DISTRICT JUDGE,
BHAVNAGAR.
UNIQUE ID CODE NO.GJ00915
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