



सत्यमेव जयते

Received on	12	06	2017
Registered on	12	06	2017
Decided on	12	03	2026
Duration	00	09	08
	DD	MM	YY

IN THE COURT OF HON'BLE ADDITIONAL DISTRICT AND
SESSIONS JUDGE, COURT No:03, AT: DAHOD.

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Regular Civil Appeal No:21/2017
(Arising from the Order of RCS No:159/2010)

appellant :

(Original Plaintiff of RCS No:159/2010)

1. Jokhnabhai Hurtanbhai Meda & Ors.-09,

All Age: Adult, Occupation: Agri./Household
All Residing at: Chhapari, Ta.Dist: Dahod.

Versus

Respondents:

Partners of M/s JK Industries

- [1] Mustufabhai Jainudin Kolsawala
- [2] Murtuzabhai Jainudin Kolsawala
- [3] Hakimudin Rasulbhai Kolsawala

All Age: Adult, Occupation: Business

All Residing at: Chhapari, Ta.Dist: Dahod.

(de-facto Respondent/Defendant)

FOR Appellant	: Ld. Advo. : Mr. B.R. Sevak.
FOR Respo.	: Ld. Advo. : Mr. S.H. Saraiya.

J U D G M E N T

[1] The appellant has preferred this appeal under Section 96 of the Code of Civil Procedure (CPC), against the judgment/order passed on Dt:30-03-2015, below Ex:1 in RCS No:159/2010 by the Ld. 5th Addl.(Ad hoc) Sr. Civil Judge, Dahod, Dist:Dahod (In short 'the Ld. Trial Court'), whereby the learned trial Court has rejected the suit preferred by the appellant u/07 R-11(b) of CPC, hence the present appellant

has challenged the legality, propriety and correctness of the judgment passed in RCS No:159/2010.

[2] The brief facts of the appellant's case are that, suit for declaration and injunction instituted by the plaintiff with the main prayer that, plaintiff are owners of the land situated upon RS No:109 and defendants are illegal trespassers but their name have been mutated into city survey records and they have established poultry farm upon it and after giving notice to defendant on Dt:30-04-2010, the defendant are trying to windup their business and trying to sale off the property and hence suit filed for injunction and declaration.

As RCS No:159/2010 is dismissed by the Ld. Trial Court, the appellant preferred present

appeal.

[3] The appellant in support of their appeal filed copy of the Order/Judgment of RCS No:159/2010, Dt:30-03-2015.

[4] Being aggrieved and dissatisfied with the judgment/Order dated Dt:30-03-2015, appellant has filed this appeal under Section 96 of the CPC and has submitted various grounds in appeal memo.

The learned Advocate for the appellant has filed written argument vide Ex:13 and therein stated that, the Appellant (Original Plaintiff) has preferred this Appeal on the ground that the Order/judgment passed by the Learned Trial Court is perverse, contrary to law, and suffers from serious errors of fact and law. The impugned judgment is therefore liable to be

quashed and set aside, and the present Appeal deserves to be allowed.

[5] Per contra, learned advocate for the respondent, de-facto-defendant has vehemently argued that, the defendant has made a categorical denial of averments of appeal and has mainly alleged that, the plaintiff has deliberately not declared the suit-valuation before the Ld. Trial Court within 30-days from the order Dt:13-11-2014, which passed below Ex:1 and hence as plaintiff have not complied to the judicial order Dt:13-11-2014, Ld. Trial Court dismissed the suit on Dt:30-03-2015 u/O-7 R-11(b) of CPC.

Ld. Ad. for the respondent further stated that, the Order/judgment passed by learned trial judge is just, proper and in consonance with evidence on record and principles of law, so no

interference is warranted and it is urged to dismiss the Appeal.

[6] Considering the appeal memo, arguments of both sides and evidence adduced by the complainant before the learned trial Court following following points/issue arise for my determination.

[1] Whether the appellant proves that the impugned Order/Judgment of dismissal of the of dismissal of the RCS No:159/2010 is perverse, invalid and illegal?

[2] What Order?

[7] My findings for said issues shall be as follows.

[1] In Negative.

[2] As per final order.

:: REASONS ::

[8] Before dealing with the legality of the judgment in question, the settled legal proposition is required to be considered. It is required to be noted that the present appeal has been preferred u/s 96 of CPC. So, the power of the Court to interfere in the judgment are subject to the settled legal proposition.

[9] As per the record of the case, the appellant/plaintiff herein preferred the RCS No:159/2010 in the Ld. Trial Court, with prayers mentioned in Ex:1 of the suit. This suit was adjudicated by Order/judgment and decree Dt:30-03-2015 which came to be dismissed.

[10] As per the Order/judgment of the RCS No:159/2010, Ld. Trial Court, observed that, the

plaintiff has deliberately not declared the suit-valuation before the Ld. Trial Court within 30-days from the order Dt:13-11-2014, which order was passed below Ex:1 and hence as plaintiff have not complied to the judicial order Dt:13-11-2014, the suit dismissed on Dt:30-03-2015 u/O-7 R-11(b) of CPC.

It is on the record that, from Dt:13-11-2014 till Dt:30-03-2015, the plaintiff has not cared to adhered to the judicial order regarding proper suit-valuation and hence Ld. Trial Court passed an order below Ex:1 on Dt:30-03-2015 and dismissed the suit of the plaintiff.

[11] Considering all the aspects described in the impugned judgment no such fact found which remain helpful to the appellant. The judgment/order passed by the Ld. Trial Court does not bear any illegality, perversity and

the same is not devoid of full reasoning on facts and law applicable to the case. It is on the record that, while rejecting the suit, the Ld. Trial Court court had granted a reasonable opportunity and sufficient time (from Dt:13-11-2014 till Dt:30-03-2015) to the plaintiff to adhere to the judicial order.

[12] In view of discussion made herein above, I find no infirmity in the judgment/order passed by the Ld. Trial Court and by no stretch of imagination it can be said to be perverse and therefore this court render the answer of issue No. 1 in Negative and for issue No:2, I pass the following order.

-:: O R D E R ::-

[1] The present RCA No:21/2017 preferred by the appellant/s is hereby dismissed.

[2] The Judgment passed by the learned trial court in RCS No:159/2010 is hereby affirmed.

[3] Interim relief, if any granted, stands vacated.

[4] Any pending application of the appeal stands disposed off accordingly.

Decree be drawn accordingly.

R & P be sent back to the Ld. Trial Court along with the copy of this order.

Pronounced and declared in open Court on this 12th day of March, 2026.

Place: Dahod.
Dt:12-03-2026

[Sandipsinh G. Dodiya]
UIC No:GJ00902
3rd Addl. District & Sessions Judge,
Dahod.