

// 1 // Regular Civil Appeal No.33 of 2019

Received : 05.07.2019

Registered : 05.07.2019

Decided : 27.03.2026

Duration : 06 Y 08 M 22 D

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**IN THE COURT OF PRINCIPAL DISTRICT JUDGE**  
**AT GANDHINAGAR.**

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Exh.18

**Regular Civil Appeal No. 33 of 2019**

**Appellants :**

- Legal heirs of deceased Udaysinh Kalabhai Baraiya
1. Jamnaben widow of Udaysinh Kalabhai Baraiya
  2. Legal heir of deceased Rameshchandra Udaysinh Ilaben Rameshchandra Baraiya
- Both : Age : Adult,  
Occupation : Agriculture/Household  
At present residing at : 7, Rajkamal park society,  
Near swati society, Lakhudi circle, Navrangpura,  
Ahmedabad - 380014.

**Versus**

**Respondents :**

1. Minaxiben Trikamlal Patel
  2. Hemantkumar Trikamlal Patel
  3. Mukeshbhai Trikamlal Patel
- No.1 to 3 : Age : Adult, Occupation : Agriculture,
4. Legal heirs of deceased Bharatbhai Ramanbhai Patel
  - 4/1. Lalitaben widow of Bharatkumar Ramanbhai

Principal District Judge  
Gandhinagar

4/2. Jatin Bharatbhai Patel

4/3. Dipikaben Bharatbhai Patel

4/4. Nitaben Ramanbhai Patel

All : Age : Adult, Occupation : Agriculture/Household,  
Residing at : Adalaj gam, Taluka & District : Gandhinagar  
and B-202, Shriji Avenue, Near swagat city, Adalaj,  
Taluka & District : Gandhinagar - 382421.

**Appearance :**

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Mr. S.K.Yadav, learned advocate for the appellants.  
Mr. N.N.Shah, learned advocate for respondents.  
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**:: J U D G E M E N T ::**

[1] The present appeal is preferred by the appellants/original plaintiffs, being aggrieved and dissatisfied by the judgment and decree passed in Special Civil Suit No. 232/2008 vide Exh. 77 & Exh. 78 respectively, by the learned 5th Additional Senior Civil Judge, Gandhinagar.

[2] The present appellants are original plaintiffs and present respondents are original defendant No.3 to 7 and for the sake of brevity and convenience, both the parties hereinafter are referred to as their original status i.e. 'plaintiffs' and 'defendants'. The judgment and decree under challenge is referred to as the 'impugned judgment and decree' for the sake of brevity and convenience.

[3] The brief facts of the plaintiffs' case are as under:-  
Plaintiffs have filed the Special Civil Suit No.232 of 2008 for the old tenure agricultural land bearing Block/Survey No.870 and 870 A admeasuring 2-55-80 Hector-Are-Sq.Mtrs. Akar Rs.19.03 paisa situated at village : Adalaj, Taluka & District : Gandhinagar (said property is hereinafter referred to as "suit property" for brevity and convenience). Further, plaintiffs have prayed to direct the defendants to execute the registered sale deed in pursuance of registered Banakhat No.1133, dated 17.06.1981 executed before the Sub-Registrar, Gandhinagar and to hand over the peaceful and vacant possession to the plaintiffs and in default of execution of registered sale deed, defendants be restrained from transferring, mortgaging, alienating or parting with possession of the suit property to the third party.

[3.1] It is submitted that it was agreed between the plaintiff No.1 and the husband of plaintiff No.2 to purchase the suit property by fixing Rs.8.25 paisa per vigha, in total consideration Rs.2,52,398/- and earnest money Rs.27,250/- was paid and thereafter, Banakhat No.1133 was executed on 17.06.1981. Thereafter, defendants had to obtain Title Clearance Certificate. During the period, ancestor of plaintiffs viz. Uaysinh Kalabhai

Baraiya and Rameshchandra Udaysinh Baraiya had expired. Thereafter, on 05.08.2008, plaintiffs have told defendants to execute the sale deed in favour of legal heirs of deceased, at that time, defendants have demanded additional amount over and above the amount of consideration, which was denied by plaintiffs, at that time, defendants have threatened the plaintiffs that if they are not ready to pay additional amount of consideration then they will sell the suit property to the third party. Though plaintiffs are ready and willing to pay rest of the consideration amount for purchase of the suit property, defendants are not ready to execute the sale deed, therefore, plaintiffs have filed Special Civil Suit No.232 of 2008. The learned Trial Court after conclusion of the trial rejected the suit of plaintiffs.

- [3.2] Being aggrieved by the impugned judgment and decree, present appeal has been preferred by the plaintiffs on the grounds that the impugned judgment and decree passed by the learned Trial Court is contrary to the provision of law and passed by making incorrect interpretation of law thus, deserves to be set aside. Judgment and decree passed by the learned Trial Court is against the principles laid down by the various Hon'ble High Court while deciding cases of Specific Performance Act. Learned Trial Court has not given any

reasons regarding time is essential part of the agreement. The learned Trial Court has failed to consider the oral as well as documentary evidence produced by the plaintiffs. Plaintiffs have proved their case by producing documentary evidence. It is submitted that judgment and decree passed by the Trial Court is erroneous. Thus, it is lastly submitted to allow this appeal and quash and set aside the impugned judgment and decree passed by the learned Trial Court.

[4] On presentation of appeal, R&P of Special Civil Suit No.232/2008 has been called for and has been taken into consideration. On perusal of the record of Special Civil Suit, it appears that following oral as well as documentary evidence has been produced by the parties:-

[5] **Oral evidence of plaintiffs:-**

<b>Sr. No.</b>	<b>Description</b>	<b>Exh. No.</b>
1	Examination-in-chief of plaintiff - Ilaben Rameshchandra Baraiya	32

**Documentary evidence of plaintiffs:-**

<b>Sr. No.</b>	<b>Description</b>	<b>Exh. No.</b>
1	Village Form No.7/12 of Block No.870/A/1 of village : Adalaj	56

<b>Sr. No.</b>	<b>Description</b>	<b>Exh. No.</b>
2	Village Form No.7/12 of Block No.870/A/2 of village : Adalaj	57
3	Copy of Banakhat No.1132, dated 17.06.1981	57
4	Village form of entry No.1742	58
5	Village form of entry No.1743	59
6	Village form No.8 of entry No.13602	60
7	Village form No.8 of entry No.13421	61
8	Certified copy of SPCS No.291 of 2008 and its order	62
9	Certified copy of withdrawal pursis vide Exh.31 filed by the plaintiff	63
10	Certified copy of withdrawal pursis vide Exh.32 filed by the plaintiff	64
11	Certified copy of agreement to sale No.1133	65

[6] Defendants have not produced oral evidence. Defendants have produced documentary evidence, which are as under :

**Documentary evidence of defendants :-**

<b>Sr. No.</b>	<b>Description</b>	<b>Exh. No.</b>
1	Certified copy of Exh.5 in SPCS No.291/2008	71
2	Certified copy of Order of DD passed in SPCS No.291/2008	72

[7] The learned advocate Mr. S.K.Yadav appeared for the appellants-plaintiffs and has argued that the learned Trial Court has not taken into consideration the evidence led and the arguments addressed by the learned advocate. It has been argued that banakhat No.1133, dated 17.06.1981 was executed before sub-registrar office, Gandhinagar regarding suit property and in this regard, plaintiffs have paid earnest money, thereafter, plaintiffs are ready and willing to pay remaining amount of consideration but defendants have demanded more amount than fixed consideration amount and for which plaintiffs were not ready. Defendants have threatened the plaintiffs that if they will not pay additional amount than they will sell suit property to the third party. Plaintiff have produced the oral as well documentary evidence before the Trial Court but the Trial Court has not properly evaluated the evidence produced by the plaintiffs in the suit. Plaintiffs have clearly proved their case beyond reasonable doubt before the Trial Court but Trial Court has failed in considering the the same and rejected the suit of the plaintiffs, therefore, it has been prayed that the present appeal be allowed and judgment and decree passed by the learned Trial Court be quashed and set aside.

[8] No one is appearing on behalf of the respondent No.1 to 3 and 4/1. Learned advocate for the respondent No.4/2 to 4/4 have appeared and filed written arguments vide Exh.10 that the Trial Court has observed that plaintiffs are entitled to receive amount paid at the time of executing banakhat but plaintiffs are not entitled for specific performance of suit property and accordingly, they have deposited necessary amount on 17.06.2019 before the Nazir branch of the Court. Plaintiffs have produced copy of banakhat dated 17.06.1981 vide Exh.57 and for that plaintiffs have not shown their readiness and willingness for execution of sale deed, even plaintiffs have not issued notice to defendants regarding the same. It is clearly mentioned in the banakhat Exh.57 about terms of period, while plaintiffs have filed suit after unexplained delay of 26 years. Plaintiffs have filed suit in the year-2008 for the specific performance of banakhat dated 17.06.1981, which is filed after 26 years, which is barred by law of limitation. He has contended that appeal filed before the Hon'ble Court is frivolous and not maintainable under law. It is lastly prayed that under such circumstances, present appeal deserves to be dismissed with cost.

[9] Considering the above mentioned facts and circumstances, following points arise for the determination of the appeal:-

**POINTS**

- (1) Whether the impugned judgment and decree passed by the learned 5th Additional Senior Civil Judge, Gandhinagar in Special Civil Suit No. 232/2008, dated 29.10.2018 is erroneous and passed without appreciation of evidence and without application of law?
- (2) Whether any interference is required in the impugned judgment and decree?
- (3) What order and decree?

[10] My findings on the above points are as under for the reasons following thereafter:-

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

**# REASONS #**

**Point Nos. 1 and 2:-**

[11] I have heard learned counsel appearing for the parties and perused the record. It transpires that it is undisputed fact before the learned Trial Court that defendants have executed banakhat No.1133 on 17.06.1981 in favour of plaintiff regarding suit property and received earnest money Rs.27,250/-

[12] It appears that plaintiffs have failed to show documentary evidence regarding their readiness and willingness to pay balance consideration amount of suit property. The plaintiffs have not issued notice towards defendants for specific performance of contract regarding banakhat of suit property. Banakhat No.1133 was executed on 17.06.1981 while Special Civil Suit No.232/2008 filed in the year 2008 i.e. after about 26 years for execution of sale deed on the basis of said banakhat. Plaintiffs have not shown sufficient cause of such unexplained delay, which shows negligence on the part of plaintiffs towards execution of sale deed. Plaintiffs have only taken contention that they were/are ready and willing for payment of part consideration amount of suit property while defendants have issued notice to plaintiffs regarding cancellation of contract. Plaintiffs have not come with clean hand before the Court. Plaintiffs have not paid full amount of consideration of suit property to defendants, in that case, plaintiffs cannot be said to be entitled for specific performance of contract.

[13] Looking to the record, it appears that the plaintiffs have to make an averment and had to prove such averment of readiness and willingness on oath but plaintiff have nowhere mentioned that they are/were ready and willing to perform their part of contract. The plaintiffs

have not even issued notice to the defendants to perform their part. Plaintiffs have not produced any documentary evidence showing that the amount to be paid to the defendants was ready with them. The plaintiffs have not taken care for execution of sale deed. The plaintiffs have not paid the entire amount to the defendants. Learned Trial Court has held that the plaintiffs have failed to prove their suit against the defendants. It is held that readiness and willingness is not shown as per the provision of Specific Relief Act by the plaintiff side. Plaintiffs have failed in proving that they were having sufficient financial resources to fulfill terms of agreement. Learned Trial Court has rightly held that the plaintiffs have produced highly insufficient, and unacceptable evidence and therefore plaintiffs have miserably failed to prove their case.

[14] So far as the defense taken by the plaintiffs that defendants have not obtained title clearance certificate regarding suit property is concerned, Trikambhai Manibhai Patel has given notice to the Bipinchandra Udesinh that no permission is require to be obtained from the competent authority as suit property is nature of agricultural and both parties to the transaction are farmers. Said notice issued by Trikambhai Manibhai Patel to Bipinchandra Udesinh on 06.07.2004 for cancellation of banakhat dated 17.06.1981 and

plaintiffs have filed the Special Civil Suit No.232 of 2008 and prayed to direct the defendants to execute the registered sale deed in pursuance of registered banakhat dated 17.06.1981 in the year 2008. Thus, plaintiffs can easily be presumed to have knowledge of the refusal by the defendants to execute sale deed at least from the date when they received notice dated 06.07.2004. Even then, the suit was filed in 2008. Plaintiffs have not filed the suit within 3 years, in such circumstances, suit is barred by law of limitation. As per the settled position of law, when a person approaches Court for exercise of its discretionary powers, has to come with clean hands, but plaintiffs have not come before the Court with clean hands and have suppressed the material facts. As per the law of limitation, plaintiffs have to file suit within 3 years from the date of registered document. Banakhat of suit property was executed on 17.06.1981 while Special Civil Suit No.232 of 2008 was filed before the Trial Court in the year 2008, further, there is no explanation of such delay in filing suit. Thus, the learned Trial Court has rightly decided that the plaintiffs are not entitled to get the relief of declaration and permanent injunction as prayed for in their suit.

[15] Thus, as discussed above, learned Trial Court has rightly dismissed the suit of plaintiffs and there appears no error or impropriety in the impugned judgment and

decree passed by the learned Trial Court and no interference is required. Accordingly, in the present appeal, point Nos. 1 and 2 are decided in the Negative. Hence, present appeal deserves to be dismissed and accordingly following order is passed:-

**:: ORDER ::**

- (1) Present Regular Civil Appeal No.33 of 2019 is hereby dismissed.
- (2) The judgment and decree dated 29.10.2018 passed by learned 5th Additional Senior Civil Judge, Gandhinagar in Special Civil Suit No. 232/2008 vide Exh. 77 and Exh. 78 respectively, are hereby confirmed.
- (3) Interim relief/stay, if any, stands vacated.
- (4) Decree to be drawn accordingly.
- (5) No order as to costs.
- (6) Copy of this judgment alongwith the R&P's be sent to the concerned Trial Court, forthwith.

Signed and pronounced in the open Court on this  
27th day of March, 2026.

Date:- 27/03/2026  
Place:- Gandhinagar.

/pbshah/

Principal District Judge  
Gandhinagar

**[Ashish J.S.Malhotra]**  
**GJ01504**  
**Principal District Judge**  
**Gandhinagar**