R.C.S No. 24/14

In the Court of Additional Civil Judge, At Dehgam.

Plaintiffs:-

Legal heirs of deceased Mangalprasad Chunilal Thakar

(1) Savitaben Mangalprasad Thakar

(2) Indravadan Mangalprasad Thakar

(3) Legal heirs of deceased Sunilbhai Mangalprasad Thakar

1. Mrudulaben Sunilbhai Thakar
2. Keyur Sunilbhai Thakar
3. Pritiben Sunilbhai Thakar

(4) Legal heirs of deceased Manuprasad Chunilal Thakar

1. Manjulaben Manuprasad Thakar
2. Nayanaben Manuprasad Thakar
3. Hansaben Manuprasad Thakar

all are residing at. Aadinathnagar, Odhav,
Ahmedabad.

All are represented through their Power of attorney Hardik Sunilbhai Thakar Res. at. Odhav, Dist. Ahmedabad.

V/S

Defendants :-

(1) Patel Taraben Kantibhai

(2) Patel Bharatbhai Kantibhai

Both are residing at. Odhav,

Dist. Ghandhinagar.

For Plaintiffs :- Ld. Advocate Mr. B. R. Sharma

For Defendants :- Ld. Advocate Mr. R. A. Mansuri

Order Below Exh. 5

1. That plaintiff's has filed the present suit for the cancellation of document of sale as well as to get perpetual inunction against the defendants herein. That, brief fact of the present suit are, agriculture land bearing Revenue survey No. 693 ad-measuring 1-92-65 was ancestral land of the plaintiff's herein. That said land was amalgamated into Block No. 733 vide Entry No. 2610, which resulted into the survey No. 1114, 1085/1, 1085/2, 1086. That out of the said land plaintiff's has considered the Revenue survey No. 1114 ad-measuring 1-17-73 land as their ancestral land of the plaintiff's herein and considered the same as a suit property (For the sake convenience herein after called "suit property") for the present suit as well as for the present application. That, plaintiff's are a legal heirs of deceased Mangalbhai Chunilal Thakar. Plaintiff's herein submitted that, defendants ancestors deceased Parshottambhai Bakorbhai Patel, Ambalal Bakorbhai Patel and Kantibhai Bakorbhai Patel has fabricated a false agreement to sale alleged to have been executed by the plaintiff's ancestor deceased Mangalprasad Chunilal, deceased Taraben Vishnuprasad & Deceased Manuprasad Chunilal Thakar on 22/10/1963 and muted the said transaction in the revenue record vide Entry No. 1541. Plaintiff's herein submitted that their ancestors had never executed any agreement to sale as alleged as well as no such consideration was ever received, which makes it crystal clear that,

defendants ancestors has fabricated a false document of agreement to sale and converted the suit land in their name in the revenue record. Plaintiff's herein further submitted that, suit property was came into the hand of deceased Kantibhai Bakorbhai by mutual partition amongst the brother of the Kantibhai and after the life time of the said Kantibhai Bakorbhai on 30/01/2003 name of the his legal heirs Taraben Kantibhai, Shilpaben Kantibhai, Kailashben Kantibhai and Bharatbhai Kantibah were entered into the revenue record. That vide Entry No. 4496 on 25/02/2004 Shilpaben and Kailashben had waived their rights in favor of the defendant No.2. Hence, since than suit property are running in the name of the defendants herein. Plaintiff's herein submitted that they were residing out side the village, hence after verifying the revenue record they came to know regarding all these revenue mutation. Hence, in order to cancellation of the said agreement as well as to get perpetual injunction against the defendants herein plaintiff's has filed the present suit. That during the pendency of the present suit in order to protect the present suit property plaintiff's has filed the present application under the provision of O.39, R. 1 & 2 of C.P.C. Under the present application plaintiff's herein submitted that, they are having a primafacie case, balance of convenience is also in their favor and they are likely to be caused with irreparable loss if present application not been allowed. That plaintiff's has submitted documents vide list of documents Exh.3 in support of the present application.

2. That defendants herein has been served with the summons of the present suit as well as notice of the present application and appeared before this court through their Ld. Advocate and filed their reply vide Exh. 21. That defendants herein has by specifically denying the

pleadings of the plaint, submitted that present suit is not maintainable due to filed without any cause of action; due to barred by law of limitation. Defendants herein has specifically deny each and every pleadings of the plaint and submitted in their defence that, their ancestor has legally purchased the suit property by paying the due consideration for the sum of Rs. 3,000/- on 22/01/1996 to the plaintiff's ancestor and taken the legal possession of the suit property and the said transaction got muted in the revenue record vide Entry No. 1541 and competent revenue authority has sanctioned the same entry after recording the statement of the plaintiff's ancestor on 30/12/1965 and since than suit property is running in the name of the defendants ancestor. Defendants herein further submitted that, suit property was came into the hand of the Kantibhai Bakorbhai by virtue of mutual understanding amongst the brother of the kantibhai, which fact also got muted in the revenue record vide Entry No. 3657. That Kantibhai Bakorbhai was expired on 30/08/2003 and it is therefore name of his legal heirs was muted in the revenue record vide Entry No. 4486 and than after Shilpaben Kantibhai & Kailashben Kantibhai has waived their right in favor of the defendant No. 2 which also got muted in the revenue record vide Entry No. 4496 and since than defendants herein are in possession with the suit property. Defendants herein submitted that, since 1963 plaintiff's herein has not challenged the said transaction as well as all the revenue entry till today, which itself prove that, all these transaction was done with the consent of the plaintiff's herein. Finally defendant herein submitted that, defendants herein has filed the present false suit without possessing any right or interest in the suit property. Finally defendants herein pray to dismiss the present application. That, against the present reply plaintiff's herein has filed their counter affidavit vide Exh.24, wherein they have specifically deny the pleadings of the rely vide Exh.21. That defendants has submitted documents vide list of documents Exh. 28 in support of their defence.

3. That under the present application heard Ld. Advocate on both the side. That considering the pleadings, documents and submissions made by both the parties to the present suit, following issues has been raised before this court in order to determine the present application,

ISSUE

A) Whether plaintiffs prove that, plaintiffs have a prima facie case?
B) Whether plaintiffs prove that, balance of convenience is in their favor ?
C) Whether plaintiffs prove that, plaintiffs are likely to be caused with irrepairable loss if injunction as prayed for is not granted in their favor?
D) What order

That answer of the above issues are as under,

A) “Negative”
B) “Negative”
C) “Negative”
D) “ As per final order”

4. That reasons for the answer of the above issues are discussed and determined in detail as under,

4.1) **Issue No. A :-** Before determining the present issue, it is pertinent to discuss the settled principle of law so far as the present provision is concern under which present application has been filed. That it is the settled principle of law that, present provision is based on the principle of Equity, no parties to any suit are entitle to get the relief under the present provision as a matter of right. That relief under the present provision is purely within the discretion of the court. In order to get the relief under the present provision, concern party has to establish three basic criteria - prima casie case; balance of convenience and irrepairable loss, based on his own pleadings and documents. Now, keep in mind the said settled principle of law, if the present issue be determined than, first of all before determining the disputed facts it is pertinent to clarify herein an admitted/undisputed facts amongst the parties to the present suit,

- That Deceased Mangalprasad Chunilal Thakar being the fore-father and main ancestor of the plaintiff's herein.
- That, Defendants herein are the legal heirs of deceased Kantibhai Bakorbhai Patel.
- Originally suit property was possessed by the deceased Mangalprasad Chunilal.
- Defendants are in possession with the suit property since 1963.

That, except the above said admitted/undisputed facts, considering the pleadings of both the parties following facts are appears to be disputed amongst the parties to the present,

✗ It is the case of the plaintiffs herein that, Ancestor of the defendants herein has fabricated the false agreement to sale alleged to have been executed by the plaintiff's ancestor in the year 1963 and in fact no such agreement was ever executed by their ancestor as well as not any consideration amount was ever received by their ancestor. That, plaintiff's herein further taken the plea that, defendants ancestor has muted their name into the revenue record based on the said false agreement to sale and ultimately name of the defendants herein are running in the revenue record it itself being false. It is therefore based on the said ground plaintiff's herein has sought cancellation of the said agreement as well as sought perpetual injunction against the defendants herein without sought any declaration as to their right, share or interest into the suit property.

✗ Defendants herein has specifically deny the said pleadings of the plaint and submitted that, ancestor of the plaintiff's herein has executed agreement to sale in favor of the defendants ancestor in the year 1963, in turn defendants ancestor has paid the due consideration to the plaintiff's ancestor and obtained legal possession of the suit property and the said transaction was muted by the competent revenue authority based on the deposition deposed by the plaintiff's ancestor themselves. That suit property finally came into the hand of the defendants ancestor Kantibhai and which ultimately came into the hands of the defendants herein. Hence, suit property being an ancestral property of the defendants herein.

That, considering the admitted as well as disputed facts amongst the parties to the present suit, if record of the present suit be determined than, looking to the nature of the disputed facts amongst the parties to the present suit, before determining the primafacie case, it appears appropriate to this court to discuss the ration laid down in the citation submitted by the Ld. Advocate for the defendants herein vide Mark 28/7, which is as under, That, defendants has submitted judgment passed by the **Honb'le Gujarat high court** in ***2010 AIH 2468 Anandiben Jamabhai Patel V/S State of Gujarat & ors.***

That, brief fact of the case in the present judgment was, disputed land in question were of the ownership of the father of the original plaintiff (daughter). That, after the life time of the father in the year 1967, plaintiff & her brother inherited the said land. It was admitted position that, in the year 1969 statement of the original plaintiff was recorded by the revenue authorities and original plaintiff had relinquished her right in to the disputed land. Hence, disputed land came into the hand of plaintiff's brother Ravjibhai. But after the life time of Ravjibhai, his wife inherited the disputed land. Than, under the Gujarat Agriculture Lands (Ceiling) Act disputed land found excess and competent authority has passed order accordingly. That widow of the Ravjibhai challenged the said order till the final appellate authority at the state level but order passed by the Mamlatdar was remain confirm. Hence, said excess land was about to goes to the Govt. Hence, in order to protect the possession of the said land, Original Plaintiff (sister of the Ravjibhai) filed the suit before the court of Senior civil judge challenging the revenue order as well as sought her right, interest and share in the disputed land. That said suit was order to be dismiss which remain confirmed even by the Honb'le District court. Which order came up to the Honb'le High court in the present second Appeal under Sec. 100 of C.P.C. *That main point decided by the Honb'le high court in the present judgment are, "Once sister's statement recorded before the revenue authorities relinquishing her right in favor of her brother and accordingly revenue entry muted in the name of the brother as an exclusive owner than said statement binding to the sister and afterwards sister is estopped from contending contrary to her own statement and sister can not be permitted to take advantage of her own wrongs. "*

In short, ratio decided by the Honb'le high court in the present judgment are, ***once any person make statement before the revenue authority***

relinquishing his/her right in respect to any land in favor of his/her relatives and by virtue of the said statement land being muted in favor of such person, than afterwards said person can not be permitted to say contrary to the prior statement and he/she is estopped by virtue of the principle of Estoppel as provided by the Sec. 115 of The Indian Evidence Act, to say or act otherwise.

That, considering the disputed facts amongst the parties to the present suit as well as considering the whole record, it appears crystal clear that parties to the present suit are solely rely upon the revenue entries with respect to the suit property. It is therefore ratio laid down by the Honb'le High court (supra) are appears to be helpful to this court in order to determine the primafacie case at this juncture.

Now, if documents produced by the plaintiff's herein be determined than, Mark 3/1 shows revenue Entry No. 96 which was muted on 28/12/1951 and it shows that suit property was running in the name of the plaintiff's fore-father Chunilal Vaikunthram Thaker. It is pertinent to note here that, present entry is not challenged by any parties to the present suit either in the present suit or in the form of the revenue way.

Moreover, if the document vide - Mark 3/2 be perused than, it is the succession entry of the deceased Chunilal Vaikunthdas passed on 17/11/1965 vide Entry No. 1539, wherein suit property muted in the name of the Mangalprasad Chunilal, Taraben Vishnuprasad & Manuprasad Chunilal (Plaintiff's ancestor) by way of succession. Hence, it is clear that by virtue of the present entry suit property inherited by the plaintiff's ancestor. It is pertinent to note here that, neither parties to the present suit has challenged the present entry in the present suit nor by way of revenue way.

Moreover, if Entry No. 1541 vide Mark 3/3 be determine than, it appears that, suit property was came into the hand of the Parshottambhai Bakorbhai Patel, Ambalal Bakorbhai Patel & Kantibhai Bakorbhai Patel and the same was further conveyed by the plaintiff's ancestor. That said entry reveals that, plaintiff's ancestor has given the possession of the present suit property to the Parshottambhai Bakorbhai Patel, Ambalal Bakorbhai Patel & Kantibhai Bakorbhai Patel by executing an agreement to sale on 22/10/1963 for the consideration a sum of Rs. 3,000/-. It is pertinent to note an endorsement made by the sanctioned authority in the present entry vide final clause that, “sanctioned authority has sanctioned the said entry after obtaining statements of all the concern”. It is pertinent to note here that, present entry has not been challenged by the plaintiff's herein till to day in revenue way. Hence, unless the said entry not been cancelled nor declared null & void either by the revenue authority or by the competent court, no reason appears to disbelieve the existence of the said Entry as well as facts contained in the same. Along with the present Entry No. 1541, it is pertinent to scrutinize the document vide Mark 3/9 & 3/10, which is being the record of proceedings of the revenue authorities and said proceedings conducted by the Talati cum Mantri of Nandol village at the relevant point of time and the said record came from the Gram panchayat Nandol itself. Hence, considering the whole record vide Mark 3/9 & 3/10, it appears that, Plaintiff's ancestor themselves admitted the alleged transaction of the suit property to have been entered into by them in favor of the Parshottambhai Bakorbhai Patel, Ambalal Bakorbhai

Patel & Kantibhai Bakorbhai Patel; plaintiff's ancestors themselves admitted to have received consideration a sum of Rs. 3,000/- and in turn hand over the possession of the suit property. Moreover, it appears crystal clear that, plaintiff's ancestors has given statement before the Talati cum Mantri and admitted before the Talati cum mantri that, they have sold the present suit property to the Parshottambhai Bakorbhai Patel, Ambalal Bakorbhai Pate & Kantibhai Bakorbhai Patel for the consideration a sum of Rs. 3,000/- and they have received the said consideration amount and also given consent to muted the revenue record of the present suit property in favor of Parshottambhai Bakorbhai Patel, Ambalal Bakorbhai Patel & Kantibhai Bakorbhai Patel. That, considering the present document vide Mark 3/9 & 3/10 it appears crystal clear that, plaintiff's ancestors themselves has given the said statement before the Talati cum Mantri that, they have sold the present suit property to the Parshottambhai Bakorbhai Patel, Ambalal Bakorbhai Patel & Kantibhai Bakorbhai Patel, and obtained whole consideration amount as well as they have themselves given consent to enter the name of the Parshottambhai Bakorbhai Patel, Ambalal Bakorbhai Patel & Kantibhai Bakorbhai Patel in the revenue record of the present suit property and accordingly revenue authority has after carrying the said proceedings sanctioned the revenue Entry vide Mark 1541 Vide Mark -3/3. It is pertinent to note here that, Present record of proceedings of the revenue authority vide Mark 3/9 & 3/10 as well as revenue Entry No. 1541 has not been challenged by the plaintiff's herein till today neither in the revenue way nor the same has ever been declared null & void either by the revenue authority or by the competent court. It is therefore untill the said entry not been cancelled or declared null & void either by the revenue authority or by the competent court, said revenue entry remain in existence and no reason appears to disbelieve the same. At this juncture it is pertinent to apply the ration laid down by the Honb'le high court of Gujarat (supra). That, while plaintiff's ancestor has themselves given statement before the competent revenue authority on 17/11/1965 that, ***"They have sold the present suit property to the Parshottambhai Bakorbhai Patel, Ambalal Bakorbhai Patel & Kantibhai Bakorbhai Patel and received the consideration amount for the sum of Rs. 3,000/- and in turn given the possession of the suit property and finally they have themselves given consent to muted the revenue record of the present suit property in the name of the Parshottambhai Bakorbhai Patel, Ambalal Bakorbhai Patel & Kantibhai Bakorbhai Patel"***. It is therefore not only said Parshottambhai Bakorbhai Patel, Ambalal Bakorbhai Patel & Kantibhai Bakorbhai Patel but the plaintiff's herein as being the legal heirs are estopped from contending the contrary to the said fact as well as estopped to act or say otherwise with respect to the said fact by virtue of the principle of Estoppel Sec. 115 of the Indian Evidence Act. It is therefore at this juncture it can be said that, once plaintiff's ancestor admitted the said transaction of agreement to sale of the suit property; admitted the fact of receive of consideration amount from the Parshottambhai Bakorbhai Patel, Ambalal Bakorbhai Patel & Kantibhai Bakorbhai Patel; admitted to have hand over the possession of the present suit property to the Parshottambhai Bakorbhai Patel, Ambalal Bakorbhai Patel & Kantibhai Bakorbhai Patel; admitted to have given consent to muted the revenue record of the present suit property in the name of Parshottambhai Bakorbhai Patel, Ambalal Bakorbhai Patel & Kantibhai Bakorbhai Patel. It is therefore at this juncture present plaintiff's herein are not permitted to to deny the said fact as well as not permitted to plead otherwise by virtue of Sec. 115 of The Indian Evidence Act. It is therefore it can be said that, plaintiff's herein are not entitle to take pleadings what they had pleaded in the present suit as well as in the present application and accordingly they are estopped from denying all these revenue records as produced by them in the present suit as well as present application. Hence, it can be said that, by virtue of the Sec. 115 of the Indian Evidence Act, plaintiff's herein are not permitted to take pleadings what they have pleaded in the present suit and present application, hence at the outset pleadings of the plaintiff's herein appears to be unsustainable.

It is therefore considering the discussions as made herein above, it appears crystal clear that, pleadings pleaded by the plaintiff's herein appears to be unsustainable and at this juncture revenue record of the present suit property appears to be in the name of the defendants herein vide Mark 28/1 to 28/3. Moreover, it is being the admitted fact that defendants herein are in possession with the suit property. Hence, considering the discussions as made herein above it appears crystal clear that, plaintiff's herein remain absolutely failed to prove the facts with which they have filed the present suit as well as present application. Hence, considering the discussions as made herein above it can be said that plaintiff's herein remain failed to prove their primafacie case.

Moreover, it is pertinent to note here that, plaintiff's has sought the main relief for the cancellation of the main document of agreement to sale executed in the year 1963. So far as the present fact is concern, it is pertinent to determine herein that, *whether the said document was executed by the plaintiff's ancestor by their voluntariness or not!* the same fact being within the personal knowledge of the plaintiff's ancestor only. It is therefore by virtue of the Sec. 106 of the Indian evidence Act, they are being the best witness to corroborate or verify the said fact, but looking to the documents vide Mark 3/9 & 3/10 , it appears crystal clear that plaintiff's ancestor themselves has admitted the said fact before the competent revenue authority in the year 1965. Except this in order to prove or otherwise raised a strong reason to believe the ground of the main relief, plaintiff's herein remain absolutely failed to prove the same. It is therefore it can be said that, plaintiff's herein remain absolutely failed to prove any reason to believe that, plaintiff's ancestors had not enter into the alleged agreement to sale; plaintiff's ancestors had not received consideration amount for the sum of Rs. 3,000/-; plaintiff's ancestors has not given any consent to muted the revenue record of the present suit property in the name of the Parshottambhai Bakorbhai Patel, Ambalal Bakorbhai Patel & Kantibhai Bakorbhai Patel. It is therefore it can be said that, at this juncture plaintiff's main relief does not appears to be sustainable.

Hence, considering the discussions as made herein above, it appears crystal clear that, plaintiff's herein remain absolutely failed to prove the main basic facts of the present suit as well as present application; remain absolutely failed to prove the main basic ground of the main relief as sought in the present suit and on the contrary it appears crystal clear that, by virtue of the Sec. 115 of The Indian Evidence Act, plaintiff's herein are estopped from taking the plea as pleaded by them. it is therefore it appears crystal clear that, plaintiff's herein remain absolutely failed to prove their primafacie case and considering the whole record no reason appears to disbelieve the same. Hence, considering the discussions as made herein above present **Issue No. A** hereby answer in “ **Negative** ”.

4.2) **Issue No. B and C :-** That considering the discussions as made in Issue No. A as well as without prejudice with the same, if present both the issues be determined than, at this juncture it appears crystal clear that, plaintiff's herein remain absolutely failed to prove the main basic facts with which they have filed the present suit as well as present application. Moreover, it also appears crystal clear that, plaintiff's herein are estopped from taking the plea what they has pleaded by virtue of the Sec. 115 of the Indian Evidence Act. Hence pleadings of the plaint itself appears to be unsustainable. On the contrary defendants herein appears to be in possession with the suit property since the life time of their ancestors since 1963 and at this juncture their possession itself appears to be legal one and the said possession remain unchallenged till the filling of the present suit and at this juncture plaintiff's herein remain failed to prove the possession of the defendants herein either illegal or unauthorized. It is therefore at this juncture clearly balance of convenience appears to be in favor of the defendants herein. So far as the irreparable loss is concern, primafacie it appears that, plaintiff's ancestor has never challenged the alleged transaction entered into by them as well as not challenged the possession of the defendants herein till their life time, even after the life time till the filling of the present suit plaintiff's herein remain absolutely silent, and while since 1963 till 2014 neither plaintiff's ancestor nor the plaintiff’s herein suffered with any kind of loss or damages than, after filling the present suit, no reason appears on record that, by disallowing the present application, plaintiff's herein are likely to be caused with any kind of loss or damages whatsoever and considering the whole record no reason appears to deny the said fact. It is therefore considering the discussions as made herein above it appears crystal clear that plaintiff's herein remain absolutely failed to prove the present both the Issues. It is therefore present both the **Issue No. B and C** hereby answer in " **Negative** ".

4.3) **<u>Issue No. D :-</u>** That considering the discussions as made in Issue No. A to C at this juncture it appears crystal clear that, plaintiffs herein remain absolutely failed to prove all the basic elements of the O. 39 R. 1 & 2 of C.P.C. Hence, certainly plaintiffs herein do not appears to get any relief as prayed for in the present application. Before coming to the conclusion portion, at this juncture it is pertinent to note here that, all these observations made at this juncture are purely made based on the pleadings and documents produced on record and without prejudice with the subject matter of evidence. Hence, with this clarification considering the discussions as made herein above this court is of the certain view to pass the final order below the present application as under,

<u>FINAL ORDER</u>

(I) present application hereby order to be disallowed.

(II) No order as to cost.

Present order declared in the open court today on this 15th day of October, 2015.

Date :- 15/10/2015

Dehgam.

(Raja Ranchhodbhai Patel)

(Additional Civil Judge, Dehgam)

GJ00922