

In the Court of Additional Civil Judge, At Dehgam.

Plaintiff:-

Shantaben Ramanbhai Patel Power of Attorney of
Pushpaben Ramanbhai Bhatt
Age. Adult,
Res. at. Bahiyal, Ta. dehgam,
Dist. Gandhinagar.

V/S

Defendants:-

1. Manibhai Jivabhai Patel
2. Madhuben Jivabhai Patel
3. Revaben Jivabhai Patel
4. Naranbhai Jivabhai Patel
5. Bhailalbhai Jivabhai Patel
6. Anilkumar Ramabhai Patel
7. Alpeshbhai Ramabhai Patel
8. Pulkitbhai Nareshbhai Patel
9. Veenaben widow of deceased Nareshbhai Patel

No. 1 to 09 are res. at. Bahiyal,
Ta. Dehgam, Dist. Gandhinagar

10. Shantaben Ramabhai Patel
11. Rameshbhai Ramabhai Patel

12. Chandrikaben Ramabhai Patel
13. Geetaben Ramabhai Patel
14. Bharatbhai Ramabhai Patel

No. 10 to 14 are res. at. Bhuvaladi,
Ta. Dehgam, Dist. Gandhinagar.

For Plaintiff :- Ld. Advocate Mr. A. K. Mansuri

For Defendant No.1 to 09 :- Ld. Advocate Mr. G. H. Parmar

For Defendant No. 10 to 14 :- Ld. Advocate Mr. A. C. Sharma

Order Below Exh. 5

1. That plaintiffs has filed the present suit for the purpose of cancellation of sale deed as well as for the perpetual injunction against the defendant herein. That, brief fact of the present suit are, plaintiff's ancestor Ramanbhai Ambalal was possessing agriculture land bearing revenue survey No. 411/2 ad-measuring 1 Aker – 15 Guntha as well as revenue survey No. 411/3 ad-measuring 1 Aker – 15 Guntha situated at. Bahiyal, Ta. Dehgam, dist. Gandhinagar. Wherein 1 Aker – 03 Guntha land of both the survey Number has been sold by the plaintiff's ancestor to the Ramabhai Jiva bhai, Naranbhai Jivabhai, Samir Bhailalbhai, Jasubhai Jivabhai, Nareshbhai Jivabhai by receiving full consideration on 24/06/1968. That out of said land 12 Guntha land was remain kept by the plaintiff's ancestor and cultivated the same till his life time, which land has been considered by the plaintiff's herein as a suit property (For the sake of convenience herein after referred to as “ suit property “) for the present suit as well as for the present application. Accordingly to plaintiff's their ancestor has mixed up the suit property along with their

remaining agriculture land and cultivated the same till his life time. Hence, plaintiff's ancestor has not sold the suit property to the defendants ancestor and that is how no title was ever conveyed to the defendants herein. But present defendant No. 1 to 9 has sold the present suit property along with the revenue survey No. 411/2 ad-measuring 1 Akar – 03 Guntha & 411/3 ad-measuring 1 Akar – 03 Guntha in favor of the present defendant No. 10 to 14 for the consideration a sum of Rs. 9,01,000/- by executing the registered sale deed No. 1877 on 05/11/2012 and the said transaction has been muted in the revenue record vide Entry No. 3717 on 05/11/12. To which plaintiff's herein has filed their respective objection before the revenue authority. Hence, as the defendants herein do not have any right to deal with the suit property but as they have entered into the transaction of the same without possessing any power to do so. It is therefore in order to sought cancellation of the said sale deed as well as in order to sought perpetual injunction with respect to the same, plaintiff has filed the present suit. During the pendency of the present suit, plaintiff's herein has filed the present application under the provision of O.39, R. 1 & 2 of C.P.C. Wherein plaintiff's herein has submitted that, she is having a prima facie; balance of convenience is also in her favor and if injunction as prayed for is not granted than she is likely to be caused with irreparable loss. Finally plaintiff's herein pray to allow the present application. That plaintiff's has submitted documents vide list of documents Exh. 3, 47 in support of the present application.

2. That, defendants has been served with the summons of the present suit as well as notice under the present application. That defendants herein appeared through their Ld. Advocate but in spite of providing with more

than sufficient opportunity to file their reply as they remain failed to do so, hence their right to file their reply was order to be closed. But at the final hearing of the present application, Ld. Advocate for the defendant No. 1 to 9 filed purshish vide Exh. 48 and submitted documents vide list of documents Exh. 49.

3. Under the present application heard Ld. Advocate on both the side. Finally considering the pleadings and documents produce on record, following issues has been raised before this court in order to determine the present application,

ISSUE

- A) Whether plaintiff prove that, plaintiff have a prima facie case?
- B) Whether plaintiff prove that, balance of convenience is in their favor ?
- C) Whether plaintiff prove that, plaintiffs are likely to be caused with irreparable 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) “Affirmative”
- 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 irreparable 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 perusing the main basic facts of the present application, document vide Mark 3/10 & 3/16 appears to be important one. Perusing the sale deed vide Mark 3/10 it appears that, plaintiff's ancestor Ramanlal Ambalal has sold revenue survey No. 411/2 ad-measuring 1 Akar – 3 Guntha as well as revenue survey No. 411/3 ad-measuring 1 Akar – 3 Guntha land to the Ramabhai Jivabhai, Naranbhai Jivanbhai, Bhailalbhai Jivabhai, Jasubhai Jivabhai and naranbhai Jivabhai. Which means remaining land which is being the present suit property was remain kept with the plaintiff's ancestor and the same has not been sold by virtue of the present document. Than after perusing the document vide Mark 3/16 it appears that, present defendant No. 1 to 9 has sold the revenue survey No. 411/2 and 411/3 total ad-measuring 0.99.89 to the present defendant No. 10 to 14. Wherein based on the present document defendant No. 10 to 14 had tried to muted the revenue record by virtue of revenue entry No. 3717, but looking to the document vide Mark 47/1 it appears that, present plaintiff has filed their respective objections what has been pleaded in the present suit, where as the same was registered vide Takrari case No. 218/12 in the revenue authority and competent revenue authority has after verifying the revenue records believed the objections of the present plaintiff and thereby rejected the

entry No. 3717. Observations made by the competent revenue authority in its judgment vide Mark 47/1 appears to be important one, wherein authority has observed that, Ramanbhai Ambalal has sold revenue survey No. 411/2 ad-measuring 1 Akar – 3 Guntha to the Ramabhai Jivabhai, Naranbhai Jivabhai, Bhailalbai Jivabhai, Jasubhai Jivabhai, Narendrabhai Jivabhai by virtue of registered sale deed on 24/06/68, but at the relevant point of time due to mistake the revenue record was muted in the name of the purchaser with respect to the whole revenue survey No. 411/2 and by considering the said aspect, competent revenue authority has rejected the entry No. 3717 which was muted based on the registered sale deed vide Mark 3/16. Meaning thereby revenue authority has by its judgment vide Mar 47/1 authenticate the remaining 12 Guntha land of revenue survey No. 411/2 was not sold and it was remain kept with the Ramanbhai Ambalal. Moreover, perusing the document vide Mark 49/1 & 49/2 it appears crystal clear that, present defendants has again registered the sale deed with respect to the present suit property and wherein it was accepted by the defendants herein that, in the previous sale deed by mistake the measurement of the land was stipulated as 0-99-89 in place of 0-87-89. That is how defendants herein impliedly accepted that, in the sale deed vide Mark 3/16 measurement of the property was written as 0-99-89 by mistake in place of 0-87-89. Hence, present defendant rectified the said mistake by registering another document of sale which has been registered on 01/03/14. Hence, looking to all these record one fact is clear that, the fact with which plaintiff's herein came into the present suit as well as in the present application appears to have substance but defendants herein has rectified their mistake which appears to be bonafide on their part. But looking to the whole record the fact with which plaintiff's has filed the

present application got due corroboration on record and thereby it is proved on record. It is therefore considering the record and discussions as made herein above no reason appears to deny the prima facie case of the plaintiff's herein. Accordingly present **Issue No. A** hereby answer in “ **Affirmative** ”.

4.2) Issue No. B and C :- That considering the discussions as made in Issue No. A and without prejudice with the same, at this juncture it appears crystal clear that, plaintiff's herein remain succeed to prove the facts with which they have filed the present suit as well as present application and accordingly remain succeed to prove their prima facie case. So far as the remaining both the issues are concern, considering the document vide Mark 49/2 right now it is clear on record that, defendants herein has rectify its bonafide mistake with respect to the measurement of the property contained in the previous sale deed vide Mark 3/16 by re-registering the sale deed and now it is on the public record with the sub-registrar office at Dehgam. Hence, at this juncture as the defendants herein has rectified its bonafide mistake, main relief as prayed for by the plaintiff's herein not remain in existence and the same appears to have been infructuated. On the contrary defendants herein has impliedly accepted their bonafide mistake as well as claim of the plaintiff's herein which has been ultimately satisfied by the defendants herein and that is why now no claim of the plaintiff's herein remain in existence. It is therefore as after re-executing as well as re-registering the sale deed as shown in Mark 49/2, final relief of the plaint as well as relief sought in the present application automatically infructuated, hence in such a situation no reason appears to consider the balance of convenience in favor of the plaintiff's herein as well as no reason appears

to believe that, if injunction as prayed for in the present application not been granted than plaintiff's herein is likely to be caused with any kind of loss or damages. Hence, considering the discussions as made herein above present both the **Issue No. B and C** hereby answer in “**Negative**”.

4.3) Issue No. D :- That considering the discussions as made in Issue No. A to C at this juncture it appears crystal clear that, plaintiff's herein remain failed to prove the basic elements of the O. 39 R. 1 & 2 of C.P.C. Hence, certainly plaintiff's herein do not appears to be entitle to get the 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,

FINAL ORDER

(I) present application hereby order to be disallow.

(II) No order as to cost.

Present order declared in open court today on this 13th day of May, 2016.

Date :- 13/05/2016

Dehgam.

(Raja Ranchhodbhai Patel)

(Additional Civil Judge, Dehgam)

GJ00922