

	Received on	:	22/12/2024		
	Registered on	:	24/12/2024		
	Decided on	:	17/06/2026		
	Duration	:	Years	Months	Days
CNR No. : GJJN200005782024			1	5	24

**IN THE COURT OF THE
4TH ADDITIONAL DISTRICT JUDGE,
VISAVADAR**

REGULAR CIVIL APPEAL NO. 19 of 2024

Exh.-

APPELLANT/ORIGINAL PLAINTIFFS:

Heirs of deceased Bachubhai Ghusabhai Kapadiya

(1) Heirs of deceased Shantaben W/o. Bachubhai Kapadiya

(1/1) Hareshbhai Bachubhai Kapadiya

Age about: 60 Yrs.

Occupation : Farming, Religion : Hindu,

(1/2) Lalitbhai Bachubhai Kapadiya

Age about: 47 Yrs.,

Occupation : Farming, Religion : Hindu,

Both R/o. Rafaliya, Tal. Bhesan, District Junagadh.

(Appellant Nos. 1/1 to 1/2 were joined as parties pursuant to the order passed below Exh. 6.)

(2) Hareshbhai Bachubhai Kapadiya

Age about: 60 Yrs.,

Occupation : Farming, Religion : Hindu,

(3) Lalitbhai Bachubhai Kapadiya

Age about: 48 Yrs.,
Occupation : Farming, Religion : Hindu,
R/o. All Rafaliya, Tal. Bhesan,
District Junagadh.

(4) Heirs of deceased Muktaben Mohanbhai Sakhreliya

(4/1) Mohanbhai Bavabhai Sakhreliya

Age about: 66 Yrs.,
Occupation : Farming, Religion : Hindu,

(4/2) Nitibhai Mohanbhai Sakhreliya

Age about: 35 Yrs.,
Occupation : Farming, Religion : Hindu,

(4/3) Sagarbhai Mohanbhai Sakhreliya

Age about: 33 Yrs.,
Occupation : Farming, Religion : Hindu,
R/o. No. 1 to 3 E-2-101, Gangotri Residency,
Mota Varachha, Sudama Chok, Surat.

(4/4) Jinalben Jitendrabhai Katiriyia

Age about: 38 Yrs.,
Occupation : Housewife, Religion : Hindu,
R/o. B-53, 54, Vishalnagar-1,
Behind Anath Aashram,
Katargam, Surat.

(4/5) Kiraben Bharatbhai Savaliya

Age about: 36 Yrs.,
Occupation : Housewife, Religion : Hindu,
R/o. 39, Shiv Darshan Society,
Near Kanteshwar Mahadev,
Katargam, Surat.

(Appellant Nos. 4/1 to 4/5 were joined as parties pursuant to the order passed below Exh. 6.)

- (5) **Hansaben D/o. Bachubhai Kapadiya**
W/o. Dineshbhai Bhagvanbhai Vaghasiya
Age about: 58 Yrs.,
Occupation : Housewife, Religion : Hindu,
R/o. Station Plot, Chalala, District Amreli.
- (6) **Bhanuben D/o. Bachubhai Kapadiya**
W/o. Girdharbhai Dungarbhai Ranpariya
Age about: 56 Yrs.,
Occupation : Housewife, Religion : Hindu,
R/o. Ranpur, Bhesan, District Junagadh.
- (7) **Ilaben D/o. Bachubhai Kapadiya**
W/o. Pravinbhai Vaghabhai Pansuriya
Age about: 51 Yrs.,
Occupation : Housewife, Religion : Hindu,
R/o. Dhudhiya Pipaliya,
Tal. Vadiya, District Amreli.

V E R S U S

RESPONDENT/ORIGINAL DEFENDANT:

Ramratanbhai Narbheram Nimavat, (Bavaji)
Aged about : 68,
Occupation : Farming, Religion : Hindu
R/o. Rafaliya, Tal. Bhesan, District Junagadh.

Sub:- Appeal under C.P.C. Section-96 against the
Judgment and Decree passed by the Principal
Civil Judge, Bhesan in R.C.S. No.5/2021, dated
30/11/2024.

APPEARANCES :

Mr. J.H.Dhamani, Ld. Advocate for Appellants.
Ex parte against the respondent.

:- J U D G M E N T :-

1. This is an Appeal preferred by the present Appellants/original plaintiffs against the judgment and decree dated 30/11/2024 passed by the Ld. Principal Civil Judge, Bhesan in R.C.S. No.5/2021 by which the suit instituted by the Appellants/Original plaintiffs was rejected. For the sake of brevity and convenience, the parties are referred to by their original status as in the suit, namely, the plaintiffs and the defendants.

The brief facts stated in the appeal memo by the appellant are set out as follows:

2. The present Appellants/Original plaintiffs had instituted R.C.S.No.5/2021 in the Court of the Principal Civil Judge, Bhesan for specific performance of contract as per the provisions of the Specific Relief Act; on the grounds that parties of the suit executed agreement to sell and out of total sale consideration of Rs.13,162.50 Ps., plaintiffs have paid Rs. 6,000/- at the time of agreement and after paying the remaining amount of Rs.7,163/- to the defendant, the sale deed was to be executed. Despite repeated instructions to the defendant to accept the remaining sale consideration and execute the sale deed, the defendant did not act and sought time. Therefore, the plaintiffs had given legal notice dt. 02/11/2020. The defendant has given an improper and evasive reply to the notice. Therefore, the plaintiffs were constrained to institute the suit, in which the Learned Trial Judge was pleased to issue summons upon the defendant, who appeared and resisted the suit by filing a written statement vide Exh.-12.

Thereafter, based upon the pleading, issues were framed in the suit vide Exh.-25, and after recording oral and documentary evidence of the parties and having heard the arguments of the parties to the suit, the Ld. Trial Court was pleased to reject the suit of the plaintiffs vide impugned Judgment dated 30/11/2024. Being aggrieved and dissatisfied with the said Judgment and Decree, the Appellants-original plaintiffs have preferred this Appeal under Section 96 of the Code of Civil Procedure.

The present appeal has been preferred on the following grounds :

3. The present appeal is instituted by the appellant on various grounds mentioned in the appeal memo, thereby contending that the plaintiffs have been in possession of the suit property for the last 43 years, having obtained lawful possession on the basis of the Agreement to Sale; the Ld. Trial Court committed a serious error in not accepting this fact. The evidence, oral testimony, and documentary material produced by the plaintiffs have not been properly appreciated by the Ld. Trial Court. The defendant has never filed any suit regarding possession, and the plaintiffs have continuously remained in possession of the suit property for a long period. The Ld. Trial Court has also failed to consider the relevant provisions of the Limitation Act, and has incorrectly interpreted the cause of action, under the Limitation Act, a suit for specific performance can be filed within three years from the date when performance of the contract is refused, the notice dated 02/11/2020 and the defendant's reply dated 29/12/2020 clearly establish that the suit could have been filed up to

28/12/2023, therefore, the finding of the Ld. Trial Court that the plaintiff's suit is barred by limitation is erroneous. The Agreement to Sale, Exh. 34, has been duly proved, and the defendant has not filed any counter-claim, the Ld. Trial Court has committed a grave mistake in not accepting the Agreement to Sale at Exh. 34. Hence, the appellant has urged to allow the Appeal with costs and set aside the Judgment and Decree passed by the Learned Trial Court under challenge and to grant additional reliefs as may be deemed just and proper in the facts and circumstances of the case.

4. Notice of the present appeal was being issued to the respondent/defendant, and on service of the same vide Exh.7, neither respondent No. 1 appeared personally nor through his Ld. Advocate. Hence, the present appeal is proceeded ex parte against the respondent/defendant by passing an order below Exh. 1.

Arguments advanced by the appellants :

5. Ld. Advocate of the appellants has filed the written arguments vide Exh.-8 and have vehemently argued as per the the appeal memo and mainly relied on the contention that the appellants are ready to give remaining sale consideration and have lawfull possession of the suit property since 1978 and was filed their suit within the limitation and the said facts are proved by the plaintiffs by adducing oral as well as documentary evidence in the suit records and prayed to allow the present appeal.

Plaintiff's Suit before the Ld. Trial Court :

6. It is the case of the plaintiffs that they are residents of Rafaliya Village, Bhesan Taluka, and their father was the owner of agricultural land, the defendant had consented to sell 5 Vigha & 1 Guntha of the western part of his agricultural land, situated at Revenue Survey No. 110/1 of Rafaliya village of Bhesan Taluka, for a total consideration of Rs. 13,162.50 and both parties agreed to this arrangement, and on 04/05/1978, at the time of executing the Agreement to Sale, the plaintiffs paid Rs. 6,000/- to the defendant. It is further the case of the plaintiffs that it was mutually agreed that upon payment of the remaining sale consideration, the defendant would execute the sale deed in favor of the plaintiffs, however, despite repeated reminders, the defendant neither accepted the remaining consideration nor executed the sale deed, consequently, the plaintiffs issued a legal notice dated 02/11/2020, to which the defendant replied on 19/12/2020, but refused to perform his part of the contract. In view of the defendant's refusal, the plaintiffs filed R.C.S. No. 5/2021 before the Ld. Trial Court under the provisions of the Specific Relief Act, seeking a declaration for the specific performance of the Agreement to Sale dated 04/05/1978.

Defendant's defence before the Ld. Trial Court :

7. The defendant has filed his written reply in the suit record vide Exh. 12 and denied the allegations made by the plaintiffs in the plaint. The defendant further contends that the plaintiffs filed the suit after 42 years, which is barred under the provisions of the Limitation Act. It is submitted that the agricultural land owned

by the defendant is ancestral property, not self-occupied, and the defendant is not the sole owner, and the suit land is currently recorded in the name of the defendant, and he had obtained a loan on the property. The defendant denies having executed any Agreement to Sale as alleged by the plaintiffs. It is further contended that the plaintiffs forcibly took possession of the suit land on 04/06/2020, and a criminal complaint regarding the same was lodged at Bhesan Police Station vide CR No. 1120300720028/2020, along with a complaint for land grabbing and to protect themselves from these criminal and land-grabbing proceedings, the plaintiffs have allegedly framed a false story after 42 years and instituted the suit, concealing these facts from the court. Hence prayed to dismiss the suit of the plaintiffs with costs.

8. On the basis of the Plaint and the written statement, the Ld. trial court has framed the following issues vide Exh. 25 and their answers :

Sr. No.	Issues	Findings of Ld. Trial Court
(1)	Whether the plaintiffs proves that the defendant agreed to sell the suit property to this Husband/Father for a consideration of Rs.13163/- and after accepting Rs.6000/- as an earnest money has executed an agreement of sale in favour of the plaintiff's Husband/Father on dated 04/05/1978 ?	In negative
(2)	Whether the plaintiffs proves that he was ready and willing to perform his part of agreement ?	In negative

(3)	Whether the plaintiffs proves that the defendant has refused/declined to execute registered sale deed in favour of the plaintiffs ?	In Affirmative
(4)	Whether the suit is barred by law of limitation ?	In Affirmative
(5)	Whether the plaintiffs proves that he is entitled to specific performance of contract ?	In negative
(6)	Whether the plaintiffs is entitled to get relief, as prayed for ?	In negative
(7)	What order & decree ?	As per final order

9. Evidence at Ld. Trial Court :**9.1 Oral Evidence of Plaintiffs' side :**

Sr. No.	Particular	Exhibit
1.	Oral evidence of plaintiffs No.2 Hareshbhai Bachubhai Kapadiya.	26
2.	Oral evidence of plaintiff's witness Hansrajbhai Ghusabhai Kapadiya.	39
3.	oral evidence of plaintiff's Witness Rameshbhai Nathubhai Movaliya.	40

9.2 Documentary Evidence of Plaintiffs' side :

Sr. No.	Particular	Exhibit
1.	Notice issued by the plaintiffs to the defendant	30
2.	Window slip of the notice	31
3.	Post acknowledgment of the notice	32
4.	Reply of the defendant qua notice	33
5.	Agreement to sale	34
6.	Death certificate of Bachubhai Ghusabhai	35

7.	Village form No. 8-a for survey no. 141	36
8.	Village form no. 7 for survey no. 230	37
9.	Judgment of Criminal Case No. 187/2020	69
10.	True copy of Entry No. 659	70
11.	True copy of Entry No. 614	71
12.	True copy of Entry No. 763	72

9.3 Oral Evidence of Defendant's side :

Sr. No.	Particular	Exhibit
1.	Oral evidence of defendant Ramratan Narbheram Nimavat.	45

9.4 Documentary Evidence of Defendant's side :

Sr. No.	Particular	Exhibit
1.	Village form no.8-a for survey no. 141	51
2.	Receipt of Rafaliya Village Panchayat	52
3.	Village form no. 6	53
4.	Election card of the defendant	54
5.	F.I.R.	55
6.	Reply to the plaintiff's notice	56
7.	Complaint of Gujctok	57
8.	Village form no. 7-12 & 8-a	58
9.	Village form no. 6	59
10.	Death certificate for defendant's mother	60

The Ld. Trial Court Held That

10. The Id. Trial Court, on consideration of the oral and documentary evidence produced by the plaintiffs & defendant; on appreciation of available evidence on record and arguments advanced; after discussing issues jointly & severally in detail, has decided the given issues. The Ld. Trial Court held that the plaintiffs did not succeed to prove his suit and further held that as the agreement to sale produced on record was executed on 09/05/1978, and as per the say of the plaintiffs, he instituted the suit for specific performance of the contract dated 04/05/1978, and no contract of said date was produced on record. Ld. Trial court also held that the suit of the plaintiffs is barred by the provisions of the Limitation Act and also held that the defendant alone was not the owner of the suit land, but his mother's right title and interest as a co-owner of the suit land. The said agreement to sale does not bear the signature of the co-owner. The plaintiffs failed to prove the consent of this co-owner; as a result, the Ld. Trial Court has been pleased to reject the suit of the Plaintiff.

11. Considering the arguments advanced by both sides, and having gone through the appeal memo, the original record and proceedings of the Trial Court, as well as the impugned judgment, the following points have arisen for my determination.

12. Points of Determination :

1. Whether the appellants prove that the contract between the parties is valid and legally executable ?

2. Whether the suit is not barred by the provisions of the Limitation Act ?
3. Whether the appellants prove that they were willing to perform their part of contract ?
4. Whether the appellant proves that the Judgment and Decree passed by the learned Trial Court in R.C.S. No.5/2021 is erroneous, illegal and the same is required to be set aside ?
4. What Order ?

13. My findings on the above issues are as follows;

1. In the Negative.
2. In the Negative.
3. In the Negative.
4. In the Negative.
5. As per the final Order.

-: REASONS :-

Point of Determination No. 1 & 2:

14. As it is the first appeal, this court is reevaluating the evidence on record and giving its finding independently, considering the oral as well as documentary evidence on record. I have carefully examined the Record & Proceedings of the Trial Court.

15. The dispute between the parties is with regard to the agricultural land in Rafaliya village of Bhesan Taluka,

comprising revenue survey numbers 141 (Old Survey No. 110/1), admeasuring 5 Vigha & 1 Guntha. For the sake of convenience and brevity, the said land is hereinafter referred to as the suit land. Parties of the suit executed an agreement to sell, and out of the total sale consideration of Rs. 13,162.50 Ps., the plaintiffs had given Rs. 6,000/- at the time of the agreement. After paying the remaining amount of Rs. 7,163/- to the defendant, the sale deed was to be executed. Despite repeated instructions to the defendant to accept the remaining sale consideration and execute the sale deed, the defendant did not act and sought time. Therefore, the plaintiffs had given legal notice dt. 02/11/2020, the defendant has given an improper and evasive reply to the notice. Therefore, the plaintiffs were constrained to institute the suit before Ld. Trial Court, which was rejected by the Ld. Trial Court.

16. I have carefully re-appreciated the oral as well as documentary evidence available on record. The case of the plaintiffs is that the suit land stood exclusively in the name of the defendant on the basis of Mutation Entry No. 442 and, therefore, the defendant alone was competent to execute the agreement to sell dated 04/05/1978. However, the said contention is not borne out by the revenue record produced on record. Though the plaintiffs have relied upon Village Form Nos. 7 and 8-A, wherein reference to Mutation Entry No. 442 is found, they have not produced the said mutation entry along with their documentary evidence. No explanation has been offered by the plaintiffs as to why the very document on which they sought to place reliance was withheld from the Court. In such circumstances, an adverse

inference can legitimately be drawn against the plaintiffs. Moreover, the certified copy of Village Form No. 6 produced by the defendant clearly reveals that Mutation Entry No. 442 was entered on 01/10/1970 and certified on 16/05/1971. The said entry records the names of both Ramratan Narbheram and his mother Labhuben Narbheram as successors to the deceased Narbheram Vitthaldas in respect of the suit survey numbers. Thus, the revenue record unequivocally establishes that the rights in the suit property did not vest exclusively in the defendant, but were jointly held by Ramratan Narbheram and Labhuben Narbheram.

17. Further, the subsequent Mutation Entry No. 2786 indicates that the name of Labhuben Narbheram was deleted from the revenue record on 15/06/2003, and the defendant's name continued alone as owner and occupier of the land. Therefore, on the date of the alleged agreement to sell, i.e., 04/05/1978, both Ramratan Narbheram and Labhuben Narbheram were co-owners of the suit property. In view of the above evidence, it cannot be accepted that the defendant was the sole owner of the suit land on the date of execution of the alleged agreement to sell. Since one of the co-owners, namely Labhuben Narbheram, was not a party to the agreement and had not executed the same, the alleged agreement cannot be said to have been executed by all the persons having ownership rights in the suit property.

18. Moreover, the alleged agreement to sell at Exh. 34 neither mentions the co-owner nor bears her signature or consent. The plaintiffs have failed to explain this omission. The plaintiff's own

witness has admitted that the land was not exclusively owned by the defendant. Further, the execution of the alleged agreement has not been satisfactorily proved. The document is neither registered nor notarized, and the evidence regarding its attestation is inconsistent. One attesting witness was not examined, while the witness examined by the plaintiffs had no personal knowledge of the execution of the document. In these circumstances, the plaintiffs have failed to establish the due execution and authenticity of Exh. 34. Consequently, the agreement to sell dated 04/05/1978 cannot be treated as a valid and enforceable agreement binding upon the entire suit property. Therefore, this Court finds no infirmity in the finding recorded by the learned Trial Court on this aspect, and the same deserves to be affirmed.

19. As per the admission of the plaintiffs in his oral evidence at Exh. 26, the said agreement to sale was executed on 04/05/1978, and till 18/09/2014 no suit was instituted regarding the said agreement to sale, and during the period 18/09/2014 to 24/02/2021, the plaintiffs or their family members have not instituted any suit for the present agreement to sale. The plaintiffs have contended that the suit is within the limitation as the defendant refused to perform the alleged agreement only after receipt of the notice dated 02.11.2020, and the suit was instituted on 24.02.2021. It is true that where no date is fixed for performance, Article 54 of the Limitation Act provides that limitation commences when the plaintiffs have notice of refusal. However, the facts of the present case cannot be examined in isolation from the conduct of the parties. According to the

plaintiff himself, the alleged agreement was executed on 04.05.1978. Admittedly, neither the original purchaser, Bachubhai Ghusabhai, during his lifetime, nor the present plaintiffs thereafter took any steps for enforcement of the alleged agreement for more than four decades. No explanation worth acceptance has been offered for such an extraordinary delay. The record further reveals that the plaintiff was aware, or ought to have been aware, of the revenue entries relating to the suit property, including the succession entries and the death of the co-owner. Despite such knowledge, no action was taken for the enforcement of the alleged rights for several decades. The notice dated 02.11.2020 appears to be the first step taken after an unexplained lapse of about 42 years. Though Article 54 contemplates refusal of performance as the starting point where no date is fixed, the law does not permit a party to indefinitely postpone the accrual of limitation by remaining inactive for an unreasonable period and then issuing a notice at its own convenience. A party seeking specific performance must demonstrate continuous readiness and willingness to enforce the contract, which is conspicuously absent in the present case. Therefore, considering the unexplained delay of more than four decades, the absence of any steps towards enforcement during the lifetime of the original purchaser, and the lack of diligence on the part of the plaintiff, this Court finds that the suit is clearly barred by limitation. The finding recorded by the learned Trial Court on this issue is legal, proper, and does not warrant interference. Accordingly, **I answer points of determination no.1 and 2 in Negative.**

Point of Determination No. 3:

20. The plaintiffs have sought the relief of specific performance on the basis of the alleged agreement to sell dated 04.05.1978. Under Section 16(c) of the Specific Relief Act, the plaintiff is required not only to plead but also to prove his continuous readiness and willingness to perform his part of the contract from the date of the agreement until the final adjudication of the suit. In the present case, except for the notice dated 02.11.2020, no documentary evidence has been produced to show that either the plaintiffs or their predecessor-in-title ever called upon the defendant to accept the balance sale consideration of Rs. 7,163/- and execute the sale deed. The plaintiff's assertion that repeated demands were made over the years remains unsupported by any independent evidence. Significantly, the original purchaser, Bachubhai Ghusabhai, remained alive until 18.09.2014, yet no notice, demand, payment, tender of consideration, or legal proceeding for enforcement of the alleged agreement was initiated during his lifetime. Even thereafter, the present suit came to be filed only on 24.02.2021. Thus, for several decades, no conduct indicative of readiness and willingness to perform the contract is forthcoming from the record. Readiness and willingness are not a mere formality in pleadings but must be established through consistent conduct and surrounding circumstances. The prolonged inaction on the part of the plaintiffs and their predecessor, coupled with the absence of any material showing efforts to pay the balance consideration or secure execution of the sale deed, clearly does not support the plaintiff's case. Accordingly, this Court is of the view that the

plaintiffs have failed to prove the essential requirement of continuous readiness and willingness to perform their part of the contract. The finding recorded by the learned Trial Court on this aspect is based on proper appreciation of the evidence and warrants no interference. **Hence, I answer point of determination no.3 in Negative.**

Point of Determination No. 4:

21. Upon re-appreciation of the oral and documentary evidence available on record, it also emerges that the plaintiffs have consistently pleaded that the agreement to sell was executed on 04.05.1978 and that possession of the suit land was delivered on the very same day. The plaintiffs, as well as the supporting witnesses, have also deposed on oath that the transaction had taken place on 04.05.1978. However, the documentary evidence relied upon by the plaintiffs does not satisfactorily support the said version. The agreement to sell was produced at Exh. 34 is written on a stamp paper admittedly purchased on 05.05.1978, and the contents thereof further indicate a writing dated 09.05.1978. Thus, the dates emerging from the document itself are inconsistent with the plaintiff's specific case that the agreement was executed on 04.05.1978. Significantly, neither the plaintiffs nor the attesting witnesses have offered any convincing explanation during their oral evidence regarding this discrepancy. The case now sought to be advanced that an oral understanding was arrived at on 04.05.1978, the stamp paper was purchased on 05.05.1978, and the document was subsequently reduced into writing on 09.05.1978, but this does not find place in the

pleadings or depositions and appears to have been raised for the first time at the stage of arguments. It is a settled principle that a party cannot improve its case beyond the pleadings and evidence already adduced on record. When the foundation of the plaintiff's claim rests upon a specific agreement alleged to have been executed on 04.05.1978, the burden lies upon the plaintiff to establish the same by cogent and reliable evidence. In view of the material inconsistency between the pleaded date of execution and the dates reflected from Exh. 34, coupled with the absence of any satisfactory explanation for such inconsistency, the existence and execution of the alleged agreement on 04.05.1978 becomes doubtful. Therefore, this Court finds no error in the conclusion that the plaintiffs have failed to satisfactorily prove the agreement to sell in the manner pleaded.

22. The plaintiffs' case rests upon the assertion that possession of the suit land was delivered pursuant to the alleged agreement dated 04.05.1978 and that the plaintiffs have remained in continuous possession for more than 42 years. However, the defendant has consistently denied both the execution of the agreement and the delivery of possession. The evidence on record shows that on the date of the alleged transaction, the suit land was not exclusively owned by the defendant but was jointly held by the defendant and his mother as co-heirs. Despite this, the alleged agreement does not bear the signature or consent of the other co-owner, for which no satisfactory explanation has been furnished by the plaintiff. Further, the defendant's case that the plaintiffs attempted to take forcible possession in June 2020 is supported by contemporaneous complaints and proceedings.

The plaintiffs have also admitted the existence of such a dispute. Except for oral assertions, no convincing evidence has been produced to establish uninterrupted possession for over four decades.

23. However, the revenue record does not support such a claim. The record reveals that the suit land is an agricultural property containing a well and irrigation facilities, and that various charges and mortgages in favour of cooperative societies and banks have been entered in the revenue record from time to time at the instance of the defendant. Significantly, the plaintiffs have not produced any revenue receipts, cultivation records, or other documentary evidence to establish that he was cultivating or possessing the suit land for the last four decades. Further, despite the repeated entries of mortgages and encumbrances in the revenue record, the plaintiffs never raised any objection before the revenue authorities nor challenged such entries at any point in time. Had the plaintiffs been in actual and exclusive possession of the suit land, it would be natural for them to object when third-party charges were created over the property. His complete inaction in that regard is inconsistent with his claim of long-standing possession. Therefore, the evidence on record does not satisfactorily establish that possession of the suit land was delivered to the plaintiffs under the alleged agreement or that he remained in continuous possession thereafter. The finding recorded by the learned Trial Court on the issue of possession is, therefore, justified and does not warrant interference.

24. Upon an overall re-appreciation of the pleadings and evidence, this Court finds no reason to take a view different from that of the learned Trial Court. The revenue records continuously stood in the name of the defendant, and the defendant had, from time to time, created lawful encumbrances over the suit property in favour of banks and cooperative institutions. The plaintiffs neither challenged such entries before the competent authorities nor produced any convincing evidence to establish their alleged possession of the suit land. Further, the plaintiffs have failed to satisfactorily prove the execution and contents of the alleged agreement to sell at Exh. 34. The document does not bear the consent of all co-owners of the property, and material discrepancies exist between the plaintiff's pleadings, oral evidence, and the contents of the document itself. Consequently, the plaintiffs have failed to establish that possession of the suit land was delivered pursuant to the alleged agreement. The record shows that no effective steps were taken either by the original purchaser or by the present plaintiffs for the enforcement of the alleged agreement for several decades. No satisfactory evidence has been produced to show continuous readiness and willingness to pay the balance consideration or to secure execution of the sale deed. The long and unexplained delay in asserting the alleged contractual rights further weakens the plaintiff's case.

25. Thus, the plaintiffs have failed to prove the essential ingredients required for the grant of specific performance, namely, a valid and enforceable agreement, lawful delivery of possession thereunder, continuous readiness and willingness to perform their part of the contract, and institution of the claim

within the permissible period of limitation. Accordingly, the plaintiff is not entitled to the relief of specific performance, and the findings recorded by the learned Trial Court call for no interference in the present appeal. It is settled law that granting relief of specific performance of a contract is a discretionary relief, and the plaintiff can not claim it as of right. The order of the Ld. Trial Court for non-granting of relief of specific performance of contract is a speaking order. The judgment of the Ld. Trial Court is exhaustive in the sense that it has covered each and every contention that has been raised by the parties before it. The Ld. Trial Court has rightly applied the principles of law and is correct in its factual matrix, which does not require any interference. Ld. trial court has elaborately discussed the relevant provisions with direct judgments and applied the provisions of law rightly. Ld. trial court has applied the provision of adverse inference for the mutation entry no. 442. But in para 11.5 of the judgment of the Ld. trial court had taken in to consideration the same mutation entry which was produced by the defendant vide exh.58. So legally the adverse inference can not be drawn. But except this, all the other findings are correct. Ld. trial court had rightly considered the fact that on the date of execution of Agreement to Sell, the co-owner Labhuben was live and has right, title and interest in the suit property. The pleadings of the plaintiff was regarding Agreement to sell dated 04/05/1978. But the Agreement to sell on record is dated 05/05/1978. The plaintiff has not amended it's plaint. Evidence from the plaintiff side also with respect to the agreement dated 04/05/1978. In these circumstances, the Ld. trial court has all the reasons to disbelieve

the case of the plaintiff. The Ld. trial court has rightly held that the plaintiff failed to prove the possession over the suit land for more than 12 years. The plaintiff failed to prove that the possession of the suit property was given to him in the year of 1978. In absence of clarification regarding charge over the suit property, the Ld. trial court rightly held that the possession was with the defendant as he created charge over the suit land. Ld. trial court has rightly and with reasoned order held that the plaintiff failed to prove his continuous readiness and willingness. Ld. trial court has rightly applied the ratio laid down by the Hon'ble Apex court in this regard. Neither the plaintiff nor his father tried to carried out the execution of the sale deed during the lifetime of the father of the plaintiff. Hence findings of the Ld. trial court on this point is also sustainable. The disputed Agreement to Sale was executed as per the say of the plaintiff on 04/05/1978. The father of the plaintiff Bachubhai Ghusabhai died on 18/09/2014. The suit is filed on 24/02/2021. Ld. trial court has rightly held that in absence of specific date, the plaintiff has to file suit within the resonable time. Filing the suit after 42 years and that too with out showing sufficient reason. In these circumstances, the Ld. trial court, after applying the ratio laid down by the Hon'ble Apex court had rightly gave findings on this point of limitation by correctly applying the law of Limitation. Ld. trial court has rightly applied the provisions of Article 54 and 58 of the Limitation Act. Ld. trial court has aloborately discussed the provisions of Adverse Possession and rejected the said contention after applying ratio laid down by the higher courts. This court does not find any reason to interfere with the findings

of the Ld. trial court. Even after reevaluating the evidence, this first appellate court is giving its concurrent findings on the issues. **Hence, point of determination No.4 is decided in the Negative.**

26. In view of the above discussions, re-appreciation of evidence, findings arrived at, reasons recorded, and observations made, the present Appeal deserves to be rejected. **Accordingly, the following final order is passed in answer to Point of Determination No. 5.**

-: ORDER :-

- 1.** Regular Civil Appeal No. 19 of 2024 is hereby **rejected**.
- 2.** Interim reliefs, if any, prevailing will stand immediately vacated in consonance with this decision.
- 3.** Interim or other applications, if any undecided, shall stand disposed in consonance with this decision.
- 4.** The Judgment and decree dated. 30/11/2024 passed by the Ld. Principal Civil Judge, Bhesan in R.C.S. No.5/2021 is hereby confirmed.
- 5.** Looking at the facts and circumstances, parties are directed to bear their own cost.
- 6.** Decree to be drawn accordingly.
- 7.** Record and Proceedings of RCS No.05/2021, if any, and certified copies of this Judgment and decree be sent to Ld. Trial court.

8. Record of this appeal be sent to the central record room as per the rule.

Signed and pronounced in open Court on this **17th day of June, 2026.**

Place: Visavadar.
Date : 17/06/2026

(Hetalkumar Vinodray Joshi)
4th Additional District Judge,
Visavadar,
UID No.GJ00599.