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	Duration	Years	Months	Days
		03	11	10

**IN THE COURT OF 3rd ADDL. DISTRICT JUDGE
KHEDA AT, NADIAD.**

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**Regular Civil Appeal No. 147 of 2022**  
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Appellants:- (Original Defendants)

1. **Jamnaben Shanabhai Senva**
Aged: 63 Years, Occ.: Household,
2. **Jasiben @ Javiben Shanabhai Senva**
Aged: 65 Years, Occ.: Household,
3. **Shantaben Babarbai Singhva,**
Aged: 78 Years, Occ.: Household,
4. **Punambhai Ramabhai Senva**
Aged: 75 Years, Occ.: Retired,
5. **Legal Heirs of Deceased Fulabhai Ramabhai Senva**
 - 5.1. **Minaben Wd/o. Fulabhai Ramabhai Senva**
Aged: 42 Years, Occ.: Farming,
 - 5.2. **Maheshbhai Fulabhai Senva**
Aged: 23 Years, Occ.: Farming,
 - 5.3. **Bhumikaben D/o. Fulabhai Senva**
Aged: 22 Years, Occ.: Household,
 - 5.4. **Prashantbhai Fulabhai Senva**
Aged: 21 Years, Occ.: Study,
6. **Kamlaben Ravjibhai Senva**
Aged: 60 Years, Occ.: Retired,

- 7. Madhiben Kantibhai Senva**
Aged: 53 Years, Occ.: Household,
All residing at: Nandara,
Tal: Galteshwar, Dist: Kheda.

Versus

Respondents:-(Original Plaintiffs)

- 1. Patel Jitendrabhai Mahadevbhai**
Aged: 57 Years, Occ.: Business,
- 2. Patel Rameshkumar Mahadevbhai**
Aged: 54 Years, Occ.: Business & Job,
All residing at: Yogiraj Bunglow No. 4,
Jasodanagar, Ahmedabad.

Appearance:-

Ld. Advocate **Shri K. N. Patel** for the Appellants.

Ld. Advocate **Shri K. G. Shahpatel** for the Respondents.

An Appeal Under Section-96 of the Code of Civil Procedure, 1908

-:: JUDGMENT ::-

1. The present Regular Civil Appeal arises from the Judgment and Decree passed by the Ld. 4th Addl. Sr. Civil Judge Nadiad (hereinafter said to " Ld. Trial Court"), in Special Civil Suit No. 175 of 2016, dated 28-04-2022, by which, the Ld. Trial Court has allowed the suit of the present respondents-Original Plaintiffs and the counter claim of the Appellants-

Original Defendants was rejected. Being aggrieved by and dissatisfied with the said Judgment & Decree of the trial Court, the present Appeal has been preferred by the present appellants.

2. For the sake of convenience, parties are referred to their original status as Plaintiffs and Defendants and so here, the Appellants are the original Defendants and the Respondents are the original Plaintiffs, for sake of brevity.
3. The facts of the case are as narrated by the Plaintiffs in their plaint, are as under:-

3.1. The present suit was instituted by the plaintiffs against the defendants and sought relief of specific performance as to execute a registered sale deed in respect of the suit property and restrained them perpetually from grabbing possession over it. The dispute regarding the suit property is described to be the land situated in Sanadara Village, Tehsil - Galteshwar, Dist. Kheda; bearing Block/Survey No. 345, ledger no. 516 admeasuring 5-00-00 Hectare-Are-Square meters with an assessment of Rs.10.00/- and it has been surrounded by the below mentioned properties. This land

would now be described shortly as “suit property” for brevity. The reasons, alleged to have been given rise to institute the present litigation,

(1.1) That the suit property was owned by the defendants in common and they had executed an agreement to sell in favour of the plaintiffs which was registered at Serial No. 114/16 on 21.03.2016 and this agreement of sale was allegedly with possession. When the defendant nos. 4 & 5 had approached the plaintiffs for sale of this property, both litigating parties agreed to execute the transaction for Rs.39,50,000/- (Rupees Thirty- ine Lacs Fifty Thousand only) as consideration amount and accordingly, the defendants have handed over its possession to the plaintiffs. It is alleged that the plaintiffs had paid an amount of Rs.30,00,000/- (Rupees Thirty Lacs only) at the time of executing this alleged agreement of sale and it was acquiesced that remaining amount of Rs.9,50,000/- (Rupees Nine Lacs Fifty Thousand only) would be paid at the time of actual sale. This agreement was allegedly registered at the Sub-registrar Office, Galteshwar on 21.03.2016.

(1.2) Further, it is alleged that the defendants had also appointed plaintiffs as their power of attorney on the day of

registration of the alleged agreement of sale, i.e. 21.03.2016, in order to handle procedure for title clearance and converting the suit property into an old tenure land from the restricted tenure. It was also agreed that all expenses that might incur while completing these administrative formalities would be borne by the plaintiffs and in return, the defendants would co-operate by signing all necessary papers, applications, documents required for this. It is also alleged that both litigating parties had a common agreement regarding executing a final sale deed once the title of suit property is cleared by accepting remaining amount of consideration, i.e. Rs.9,50,000/- and in case the defendants fail to discharge their promise, the plaintiffs would take recourse to legal remedies by knocking doors of justice. Moreover, it is alleged that defendants had agreed not to deal away with the suit property with any other third party than the plaintiffs and in case any dispute arises as to its ownership, it would be tackled by the defendants.

(1.3) The real dispute allegedly arose when the plaintiffs gained knowledge, at the time of doing procedure for title clearance, that the actual area of suit property is 3-67-25 Hectare-Aare- Square meters instead of 5-00-00 Hectare-

Aare-Square meters and therefore, the Mamlatdar Office, Galteshwar rectified the error on 27.06.2016 in pursuance of defendant no.4's application dated 19.05.2016. Thus, it is alleged that the defendants intentionally gave incorrect measurement of the suit property to the plaintiffs in order to usurp hefty amount as consideration and have committed an offence of cheating. When the plaintiffs approached the defendants stating that as per the actual measurement of the suit property, the consideration amount could only be Rs.29,01,275/- (Rupees Twenty-Nine Lacs One Thousand Two Hundred Seventy-Five only) instead of Rs.39,50,000/- and demanded Rs.98,725/- (Rupees Ninety-Eight Thousand Seven Hundred Twenty-Five only) back from the defendants, they refused to do so and did not execute the actual sale deed.

(1.4) It is alleged that the defendant nos. 4 & 5 are trying to transfer the tile over suit property to any other third party and instead of executing an actual registered sale deed in favour of plaintiffs, they served a legal notice upon plaintiffs on 24.10.2016 through R.P.A.D. through their legal advisor Mr. S. T. Pateliya wherein it is mentioned the suit property was agreed to be sold for Rs.60,00,000/- (Rupees Sixty Lacs

only) and plaintiffs are required to pay remaining amount of Rs.30,00,000/- within 10 days of receipt of this notice failure to which would render the agreement of sale as cancelled. The plaintiffs submitted their reply to this notice along with a counter-notice on 04.11.2016 which has been served upon defendant nos. 4 to 6 whereas returned as unserved qua defendant nos. 1, 2, 3 and 7 due to their absence. The plaintiffs also published a public notice in daily newspaper "Gujarat Samachar" on 05.11.2016 as a measure to intimate the public at large about their registered agreement of sale 114/2016 dated 21.03.2016 in respect of the suit property with the defendants and hence, nobody would enter into any kind of transaction pertaining to it. It is averred that the defendants also revoked the power of attorney given by them to the plaintiff by a notice dated 24.10.2016 and it was referred to by plaintiffs in their reply cum counter-notice dated 04.11.2016.

(1.5) Thus, it is contended that the defendants have cheated upon plaintiffs by breaking their trust and are trying to usurp more money from plaintiffs due to ever rising prices of land. The defendants are not executing the actual sale deed in favour of plaintiff in respect of suit property and even not

returning their Rs.98,725/- which is paid in excess of Rs.30,00,000/-. This entire sequence of events has led the plaintiffs seeking relief as directing the defendants to comply with the condition of an alleged agreement of sale by executing an actual sale and repay Rs.98,725/- to plaintiffs and in case they fail to do so, the Court Commissioner be appointed for executing the actual sale deed and restrain the defendants, through self and/or their agents, assignees, servants or any other persons, from selling or gifting or mortgaging or transferring or alienating or dealing away with the suit property to any other third party.

4. Notice was Issued in the Plaint and upon Service, Ld. Advocate Mr. R. M. Saraiya has appeared and filed Written Statement at Exh. 18 and denied the case of the Plaintiffs, in toto. The defendants have basically contended that suit of plaintiffs suffers from the bar of limitation period, jurisdiction, affixation of insufficient amount of Court fees, non-joinder of parties, principles of delay and laches. Then after, they have made a categorical denial of plaintiffs' averments and have admitted facts of their giving power of attorney to the plaintiffs and a unanimous decision that actual sale deed had to be executed once entire amount of consideration is paid by the

plaintiffs to defendants, after title clearance procedure gets over. They have also admitted the fact that the plaintiffs had given a public notice in "Gujarat Samachar" newspaper but have denied the authenticity of its contents.

The real contentions of defendants are mentioned in their written statement. It is averred that the defendants are illiterate people having no knowledge of law or other procedures whereas plaintiffs deal in the properties and hence, are well versed with intricacies of land dealings. The main contention of defendants is that the agreement of sale was finalized for Rs.60,00,000/- and out of this, the plaintiffs had paid Rs.30,00,000/- at the time of agreement to sell and agreed to pay remaining amount of Rs.30,00,000/- once the title of suit property gets cleared and it gets converted into an old tenure land. It is averred that the deal was never finalized for Rs.39,50,000/- and the theory of less measurement of suit property than the actual area of 5-00-00 Hectare-Aare-Square meters has been concocted by the plaintiffs as an afterthought just in order to grab the suit property in meagre amount Rs. 29,01,275/-. It is alleged that the plaintiffs want to escape their performance of promise of paying remaining Rs.30,00,000/- and defendants are not liable to repay

Rs.98,725/- to plaintiffs. It is further averred that the defendants have never applied for any rectification in suit property's area and it might have been done by the plaintiffs as they used to get their signatures in whatever applications, documents they liked in the guise of title clearance and conversion of tenure of suit property. Moreover, it is alleged that the plaintiffs are affluent people and therefore, tried to pressurize defendants for executing a registered sale deed by sending some unknown people. This is the time when defendants came to know that plaintiffs are ready to pay only Rs.9,00,000/- as remaining amount of consideration and giving an excuse of less area of suit property than actual one. It is alleged that the plaintiffs had checked the land before deciding to purchase it and had got it surveyed and on being satisfied with its clarity, they agreed to deal for Rs.60,00,000/-. When the defendants gathered plaintiffs' malafide intentions, they served a legal notice and revoked their power of attorney and also published it in the public newspaper, in reply of which the plaintiffs also gave a public notice. It is contended that plaintiffs tried to get possession over the suit property and for that, they sent few persons to intimidate defendants. This incident led the defendants lodge

a police complaint on 05.11.2016 against the plaintiffs but a person namely Mr. Manish Bharwad interfered and consoled that he would help in sorting out the matter by 08.11.2016 and therefore, no complaint was lodged. However, instead of compounding this dispute, plaintiffs' people attacked the defendants on 07.11.2016 for which defendants have filed a police report and a crime is registered against plaintiffs being Crime Register No. II/105/2016 for allegedly committing offence punishable u/s. 323, 504, 506(2) of Indian Penal Code and also under the Atrocity Act and it is also averred that police has not charged offence punishable u/s. 325 of IPC despite defendants had a fracture just because of plaintiffs' good connections.

The defendants have averred that plaintiffs built a small room admeasuring 10*10 overnight over the suit property in order to prove their possession over the suit property before instituting this suit and moved an application for appointing Court Commissioner to prepare a site panchnama. Despite all these things, the defendants have shown their readiness and willingness for executing a registered sale deed in favour of plaintiffs if plaintiffs pay remaining consideration amount of Rs.30,00,000/- and have sought a counter-claim to get 12%

interest over Rs.30,00,000/- and entire cost of this litigation.

5. After considering the pleadings of the parties, the Ld Trial Court has framed Issues at Exh. 16. The Plaintiff got examined himself at Exh.31, and other witnesses at Exhs.65 & 69 whereas, the Defendant has examined himself at Exh.86 and other witness at Exh.88. After rival submissions by both the parties and considering the oral as well as documentary evidence, Ld. Trial Court was pleased to allow the Suit of the Plaintiff on 28-04-2022. And being aggrieved by and dissatisfied with the said Judgment & Decree, the present Appeal has been preferred by the present Appellants– original Defendants.
6. Notices were issued to the Respondents. Ld. Advocate Mr. P. G. Shahpatel has appeared for Respondents and filed their Written Argument at Exh. 21.
7. Ld. Advocate Mr. K. N. Patel appearing for the Appellants has assailed the Judgment and Decree of the Ld. Trial Court on the ground that Ld. Trial Court has erred in considering the oral and documentary evidence and, therefore, the same is required to be set aside. He has further submitted that Respondents are the businessmen and he had taken advantage of illiteracy of the Appellants and also made them

fool, and by committing fraud, had made the documents which are at Exh. 45 & 64. It is further submitted that Police complaint was also filed by the Appellants, which is not considered by the Ld. Trial Court. It is further submitted that the due amount of the Appellants was not taken into consideration by Ld. Trial Court. It is further submitted that Ld. Trial Court has failed to consider the facts of Agreement to Sale at Exh. 64 and Sale Deed at Exh. 45, and passed the Order in favour of the Respondents, which requires interference, by this Court. It is further submitted that the Respondents want to escape their performance of promise of paying remaining Rs.30,00,000/- and the Appellants are not liable to repay Rs.98,725/- to plaintiffs. It is further submitted that Respondents have never applied for any rectification in suit property's area and it might have been done by the plaintiffs as they used to get their signatures in applications and documents for getting title clearance and conversion of tenure of suit property. It is also submitted that the Respondents tried to pressurize the Appellants for executing a registered sale deed. It is alleged that the Respondents had visited the land before purchasing and had got it surveyed and on being satisfied with its clarity, they agreed to deal for

Rs.60,00,000/-. It is further submitted that the Respondents tried to get possession over the suit property and for that, they tried to intimidate the Appellants. This incident led the Appellants to lodge a police complaint against the Respondents but no complaint was lodged. However, instead of compounding this dispute, people attacked upon the Appellants, for which they had filed a police complaint against the Respondents. It is further submitted that Ld. Trial Court has further, by wrongly interpreting the document before it, has passed Judgment and Decree which is required to be set aside and the Appeal is required to be allowed.

8. Ld. Advocate, Mr. P. G. Shahpatel, appearing for the Respondents, has submitted that the Judgment & Decree passed by Ld. Trial Court is just, legal and proper, which requires no interference by this Court. It is further averred that after considering all the documentary as well as oral evidence, Ld. Trial Court has passed the Order. It is further averred that Agreement to sale of area of suit property 5-00-00 was done at Registrar Office, Galteshwar and the Respondent had already paid Rs.30,00,00/-, however, when the measurement of the suit property was started, it was only 3-67-25 and the value of the same was Rs. 29,01,275/-. It is

further averred that after the payment of the same, the Appellants wanted to extort the more money, for which, he had sent the RPAD. It is further averred that Sub-Registrar, Galteshwar was examined at Exh. 69, wherein, he has produced documentary evidence apropos the Agreement of Sale, at various exhibits. It is further averred that there is no *prima-facie* case of the present Appellants. It is further averred that the findings given by Ld. Trial Court is sustainable, therefore, the Judgment and Decree passed by Ld. Trial Court requires affirm. Hence, by making the aforesaid submissions, he has prayed to reject the present Appeal with costs.

9. After considering the grounds raised in the Appeal Memo and the arguments as well as submission, submitted by the Ld. Advocate for the Appellant and perusing the record of the Ld. Trial Court, and perusing the Judgment & Decree of the Ld. Trial Court, following points arise before this court, for the consideration:~

-: ISSUES :-

1. Whether the Appellants prove that Ld. Trial Court has erred in coming to the conclusion that defendants have executed an agreement for the sale of suit property in their favour?

2. Whether the Appellants prove that Ld. Trial Court has erred in coming to the conclusion that they have paid part consideration of Rs.30,00,000/- to the defendants in pursuance of the suit agreement?
3. Whether the Appellants prove that Ld. Trial Court has erred in coming to the conclusion that the plaintiffs are ready and willing to perform their part of the contract?
4. Whether the Appellants prove that Ld. Trial Court has erred in coming to the conclusion that the defendants have not performed their part of contract and thereby committed breach of the contract?
5. Whether the Appellants prove that Ld. Trial Court has erred in coming to the conclusion that the plaintiffs prove that the actual area of the suit property is 3-67-25 Hectare – Are - Sq. meter?
6. Whether the Appellants prove that Ld. Trial Court has erred in coming to the conclusion that the plaintiffs prove that they are entitled to get back Rs.98,725/- from the defendants?
7. Whether the Appellants prove that Ld. Trial Court has erred in coming to the conclusion that the plaintiffs prove that they are entitled to get specific performance of contract dated 21.03.2016 from the defendants?
8. Whether the Respondents prove that Ld. Trial Court has erred in coming to the conclusion that the defendants are entitled to receive balance consideration of Rs.30,00,000/- along with interest @ 12% p.a. from the plaintiffs along with cost of this counter-claim?

- 8.a. Whether the Appellants prove that Ld. Trial Court has erred in coming to the conclusion that the plaintiffs have got the suit agreement executed from them by committing fraud?
9. Whether the Appellants prove that Ld. Trial Court has erred in coming to the conclusion that the plaintiffs are entitled to get reliefs as prayed for?
10. Whether the Appellants prove that Ld. Trial Court has erred in coming to the conclusion that What is due to the plaintiff?
11. What order and decree?

10. My findings for the above issues are as under :

1. In Negative.
2. In Negative.
3. In Negative.
4. In Negative.
5. In Negative.
6. In Negative.
7. In Negative.
8. In Affirmative.
- 8.a. In Affirmative.
9. In Negative.

10. In Negative.

11. As per final Order.

-:: REASONS ::-

Issue Nos. 1 & 2

- 11.** Heard, Ld. Advocates for the Appellants as well as the Ld. Advocate for Respondent; perused the impugned Judgment as well as R&P of the Ld. Trial Court, very minutely.
- 12.** Since the determination of first two issues involves appreciation of common facts, documents, they are discussed together in order to avoid repetition. The plaintiffs have averred, in their plaint, that they had agreed with the defendants to purchase the suit property and therefore, both the litigating parties entered into an agreement of sale. Now, in support of this averment, the plaintiffs have produced a copy of the alleged registered agreement of sale at Exh-45 wherein it is stated that defendants have handed over the possession over the suit property to the plaintiffs, at the time of alleged execution, and the deal is finalized for consideration amount of Rs.39,50,000/-. In the same document, details of part payment, i.e. Rs.30,00,000/- was

given by plaintiffs to defendants at the time of alleged execution, are mentioned. This fact has been admitted by the defendants in their written statement at Exh-18. In this written statement, the defendants have admitted that there was an agreement between these two litigating parties about selling the suit property by defendants to plaintiffs. The only and major contention is regarding amount of consideration. The defendants have also admitted in this written statement that the deal was finalized in Rs.60,00,000/- and accordingly the plaintiffs had prepared agreement of sale and had read over to defendants and got their thumb impression. This admission clearly proves that there was a deal regarding an agreement of sale in respect of suit property by the defendants to the plaintiffs. The contention of defendants that the alleged registered agreement of sale at Exh-45 has been executed by committing a fraud upon them by the plaintiff is a different issue, which has been dealt with in detail while determining answer to Issue No.8.

On the other hand, if the contention of defendants that the alleged deal was finalized with plaintiffs for consideration amount of Rs.60,00,000/- is considered, they have relied upon a document at Exh-64 which is an

unregistered agreement of sale. If for an instance, this document is believed to be true and/or genuine, the details of payment of Rs.30,00,000/- by plaintiffs to defendants as a part payment – tallies exactly as that mentioned in document at Exh-45. It is mentioned that the plaintiffs have paid multiple amounts to the defendants. So, if the defendants rely upon this document and contends it to be the genuine and true one then it means that every detail, mentioned in it, are true and genuine and it is also mentioned in this document that the defendants have handed over the possession over the suit property to the plaintiffs on 21.03.2016, i.e. date of alleged agreement of sale. So, as per the principle of estoppel, no party can first claim some things to be true and then deny some of them after sometime when circumstances reverse or appear to be not in their favour. Therefore, it is proved that defendants had executed an agreement of sale in respect of suit property in favour of plaintiffs and had received part consideration of Rs.30,00,000/- in pursuance of the alleged agreement of sale. Hence, answers to issue nos. 1 & 2 are given in “Affirmative”.

13. Since the determination of Issue nos. 3 to 6, 8 and 8(a) involves appreciation of common facts, documents, they are

discussed together in order to avoid repetition. In order to decide these issues, document at Exh-50 requires consideration. That a legal notice served upon plaintiffs by defendants. In this notice, it is stated that the actual area of suit property was 3-67-25 Hectare – Aare - Sq. meters but the plaintiffs intentionally mentioned it as 5-00-00 Hectare Are Sq. meters in the contested agreement of sale at Exh.64 in order to commit fraud. However, if the document at Exh.64 is perused very carefully, it is manifestly clear that no any description of the property, in respect of which the alleged agreement of sale was desired to be executed, is given. It is very difficult to believe that any written agreement of sale can ever been occurred between its executing parties wherein no any mention or description is given for which the consideration amount is decided at Rs.60,00,000/-. At this juncture, the defence of defendants that they are illiterate and do not possess knowledge of law proves completely futile. It is a well-claimed presumption of law that ignorance of law can never be an excuse for any person. He is always supposed to be aware of the law of his own land. Further, the document at Exh. 64 is an unregistered agreement of sale where the defendants aware that consideration amount was

decided to be Rs.60,00,000/-. The provision of Section-17(1) (b) of the Indian Registration Act, 1908 comes to the rescue of plaintiffs here. The purpose of registration has been laid down by the Hon'ble Apex Court in Lachhman Dass v. Ram Lal, (1989) 3 SCC 99, wherein it is held that the real purpose of registration is to secure that every person dealing with the property, where such document requires registration, may rely with confidence upon statements contained in the register as a full and complete account of all transactions by which title may be affected. It means that the defendants served a legal notice upon plaintiffs on the basis of a document which is not valid in the eyes of law. The plaintiffs have filed their reply as well as counter-notice at Exh.52 wherein they have simply negated the contentions of legal notice at Exh.50 and have mentioned, in Para-9, that the defendants had willfully appeared before the Sub-registrar Office, Galteshwar on 21.03.2016 and signed the agreement of sale in presence of independent witnesses after understanding its contents and also executed a power of attorney in respect of suit property in favour of plaintiffs, and that is the reason the alleged agreement of sale (at Exh-45) was registered by the Sub- registrar. The plaintiffs have

contended that they had already paid an amount of Rs.30,00,000/- as part consideration to defendants on 21.03.2016 itself and in return of which, the defendants handed over the possession over the suit property to plaintiffs on the same day, i.e. 21.03.2016. Also, the plaintiffs were always ready and willing to pay the remaining amount of consideration, i.e. Rs.9,50,000/- but when they approached the concerned authority for title clearance of the suit property, they recollected the knowledge that the actual area of suit property is 3-67-25 Hectare – Aare - Sq. meters and not 5-00-00 Hectare – Aare - Sq. meters and as per this real area, consideration amount for purchasing the suit property can only be Rs.29,01,275/- and not Rs.30,00,000/-. This thing has been brought to the notice of defendants vide counter legal notice at Exh-52. In support of this contention, the plaintiffs have produced a copy of public notice at Exh-53 issued by them on 05.11.2016 in local newspaper “Gujarat Samachar” in which the area of suit property is mentioned as 3-67-25 Hectare – Aare - Sq. meters. The defendants have contended this averment by stating, in Para-14 of their written statement, that when they came to know about plaintiffs’ malafide intention to defraud defendants, they issued a public

notice in local newspaper and in response to that, the plaintiffs issued a public notice at Exh- 53. However, if this contention is true then the defendants could have definitely produced on record their public notice but no such notice is adduced by them. The defendants have also not clarified as to exactly when they recollected knowledge of plaintiffs' alleged malafide intention. The document at Exh-47 is a copy of Village Form No. 7/12 of suit property, revealing situation as on 07.02.2016, wherein area is mentioned as 5-00-00 Hectare – Aare - Sq. meters whereas the document at Exh.48, which is again a copy of suit property's 7/12 record, is showing the actual area as 3-67-25 Hectare – Aare - Sq. meters as on 08.09.2016. This means the area of suit property got varied within seven months and if the defendants were the actual owners of it then it cannot be believed that they are not aware of this drastic change. It is an admitted fact that the defendants had executed a power of attorney, at Exh.46, in favour of plaintiffs on 21.03.2016 for doing procedures like title clearance, converting suit property from restricted tenure to an old tenure, etc. and in consequence of it, the application at Exh. 49 requires consideration. It is an application allegedly given by the

defendants on 19.04.2016 to the Mamlatdar, Galteshwar for converting the tenure of suit land. In this application, it is mentioned that land bearing Block No.345 is consolidated and included in it land bearing old Survey Nos. 416, 417, 418, 419, 420, 421 and 422 along with 516 which was given to the defendants under the provision of Tenancy Act. However, in order to prove the authenticity of its contents, the defendants have not adduced any other supporting document which can prove that even after completing the procedure of removing restriction of tenure, the area of suit property did not get altered. After the date of this application, the village form no. 7/12 is taken at Exh. 48 on 08.09.2016 and in that, area of suit property is mentioned as 3-67-25 Hectare – Aare - Sq. meters. So, the contention of defendants that the area of suit property was 5-00-00 Hectare – Aare - Sq. meters only and it has not been reduced and does not get momentum from any independent reliable source.

To clarify more on these issues and to determine their apt answers, oral evidence adduced by both parties require consideration. The plaintiff no.1 has deposed on an oath at Exh-31 and in his examination-in-chief, he has simply reiterated the averments of his plaint. In addition to that, he has

referred to the panchnama (Exh-76) and map (Exh-77) of the suit property, prepared by the duly appointed Court Commissioner stating that their possession over the suit property is proved by these documents and he has referred all the documents, adduced by him with his pleading, which are already discussed above. From this deposition of plaintiff no.1 and in support of the documents adduced by him, it is apparently clear that two agreements of sale at Exh-45 and Exh-64 respectively, are not identical at all. The signatures of two witnesses, namely Mr. Chimanbhai Girdharlal Senva and Mr. Ramchandra Ghanshyambhai Patel do not match with each other in both these agreements of sale. Moreover, in the document at Exh-64, there is no mentioning of suit property, it's description, it's measurement, etc. and the question asked to the plaintiff no.1 that he did not obtain any endorsement on the photocopy of Exh-45, when it was given to the defendants, from the defendants as he feared that it would reveal his intention of cheating answers negatively in itself. Meaning thereby, if it was at all the intention of plaintiffs to cheat upon defendants, they could have avoided to provide even a copy of the agreement at Exh-45, and therefore not taking endorsement over it does not sense reasonable. The

defendants have admitted the fact that they gave power of attorney to plaintiffs in respect of suit property and therefore, in case they ever found that plaintiffs have misused it, a public notice in that regard must have been given or a complaint regarding that must have been lodged, but nothing is done of that sort by the defendants and it seems that they waited as to when the plaintiffs would sue against them and they would prefer a counter-claim. If genuinely they were cheated upon by the plaintiffs, they could have mentioned about rescinding the entire sale consideration and could not have demanded alleged remaining consideration of Rs.30,00,000/-. Many questions have been asked to the plaintiff no.1 regarding no right of way directly to the suit property which are not helping the defendants to prove their allegations, because none of the parties has contended it. It is indeed a mistake on part of the plaintiffs that they do not make an actual measurement of suit property but that does not mean that defendants can take benefit of it after having pocketed part consideration of huge amount of Rs.30,00,000/-. Further, if at all the defendants are that innocent that they do not understand plaintiffs' alleged malafide intention, they could have definitely raised question

to them when they signed two different agreements of sale, i.e. Exh.45 and Exh.64. Though one of them is unregistered but one is the registered one and when the defendants went to the Sub-registrar Office, Galteshwar, they could have raised question as to why two agreements are signed on the same day and why only one of them is getting registered. The document at Exh-45 contains a check list as to questions to be asked to the persons who execute the document and it is mentioned in it that the alleged agreement is with possession and defendants have received consideration as stated in the agreement and have signed it after reading, understanding. Therefore, if at all defendants claim that they have been cheated upon by the plaintiffs, they could have arraigned the Sub-registrar for not explaining or reading over the contents of the agreement, since a question in this regard has been asked to the plaintiff no.1. Thus, from this deposition one thing is crystal clear that document at Exh- 64 does not attain any legal validity and it does not have any legal sanction. Also, defendants have been unable to prove that the real and actual measurement of suit property was 5-00-00 Hectare – Aare - Sq. meters and it never got varied.

14. The plaintiffs have adduced a documentary proof in that

regard at Exh-48 but the same has not been disproved by the defendants and hence, stands proved. The plaintiffs have examined one of the witnesses, Mr. Ramchandra Ghanshyambhai Patel, at Exh-65, whom they have admitted a witness on their side. This witness has supported plaintiffs' claim in his examination-in-chief and his cross-examination has been conducted by the defendants' learned Adv. which is re-produced hereunder in order to adjudicate the dispute. Looking to the deposition of this witness, it is quite contradictory in itself. In his examination-in-chief, he has admitted all averments of plaintiffs. In his cross-examination, initially he deposed that he did not sign as a witness in Exh-45 document and signed in document at Exh-64 because it was true but then he stated that whatever is written in Para-2 and Para-4 of his affidavit are true and he went to the Sub-registrar Office, Galteshwar where consideration amount was exchanged in his presence. So now, if he did not sign the document at Exh-45 then how come he went to the Sub-Registrar office on 21.03.2016 because the document at Exh.64 is an unregistered agreement and it did not require him to visit the Sub-registrar office. It means that this witness has not been able to truly depose over whether he signed the

document at Exh-45 or Exh-64 but his contradictions lean towards the claims of plaintiffs, of course. In addition to this, the Sub-registrar, Galteshwar has been examined by the plaintiffs at Exh-69. Perusing to the same, he is undoubtedly a govt. official witness who has no prejudice towards any of the litigating parties and therefore, there is no reason to disbelieve his version. He has clearly deposed as to his taking charge as Sub-Registrar, Galteshwar on 23.10.2018 and when he took charge, the original C.D. was in his custody and it was not seen by him earlier that means there are no probabilities of it having been tampered. In case the defendants desired to prove that it is a tampered piece of evidence then it becomes their responsibility to prove so. The official deeds of any Govt. employee may be presumed to have been done in a regular course of their duty as per the provision of Section-114(e) of the Indian Evidence Act, 1872. The veracity of the C.D. produced at Exh-72 has not been rebutted by the defendants by any means and in that scenario, there is no reason to doubt its genuineness. This is another piece of supporting evidence that the document at Exh-45 (Exh-71 as well) is the true and authentic agreement of sale.

In order to determine as to what readiness and willingness mean, the decision rendered by the **Hon'ble Apex Court in Shenbagam & Ors. Vs. K K Rathinavel, Civil Appeal No. 150 of 2022 decided on 20.01.2022** requires a thorough look. Its relevant paragraph has been reproduced hereunder for apt decision:

Para-15: Similarly, in His Holiness Acharya Swami Ganesh Dassji vs. Sita Ram Thapar (1996) 4 SCC 526, a two-judge Bench of this Court observed that 'readiness' means the capacity of the plaintiff to perform the contract which would include the financial position to pay the purchase price. To ascertain 'willingness', the conduct of the plaintiff has to be properly scrutinized. The Court noted:

"2. There is a distinction between readiness to perform the contract and willingness to perform the contract. By readiness may be meant the capacity of the plaintiff to perform the contract which includes his financial position to pay the purchase price. For determining his willingness to perform his part of the contract, the conduct has to be properly scrutinized. [...] The factum of readiness and willingness to perform the plaintiff's part of the contract is to be adjudged with reference to the conduct of the party and

the attending circumstances. The court may infer from the facts and circumstances whether the plaintiff was ready and was always ready and willing to perform his part of the contract. The facts of this case would amply demonstrate that the petitioner/plaintiff was not ready nor had the capacity to perform his part of contract as he had no financial capacity to pay the consideration in cash as contracted and intended to bide for the time which disentitles him as time is of the essence of the contract.”

Thus, from the aforementioned discussion and the ratio established in the decision of the Hon’ble Supreme Court, it is proved that the plaintiffs were ready and willing to perform their part of contract by paying balance consideration of Rs.9,50,000/- but it was found by them that the actual area of the suit property is lesser than the one contracted for (i.e. 3-67-25 Hectare – Aare - Sq. meters) and hence, asked the defendants to repay excess amount that has been already paid (i.e.Rs.98,725/-), considering the total value as Rs.29,01,275/-, but they did not do so and therefore, answers to issue nos. 3 to 6 are given in “Affirmative”.

15. On the other hand, the contention of defendants that the alleged agreement of sale has been executed by committing

a fraud by plaintiffs stands disproved. They have not been able to prove as to when they gathered knowledge of this fraud, what steps they took in order to get remedy. The defendant no.4 has deposed over an oath at Exh-86 wherein he has pleaded that he is almost a blind and has lost his eyesight. It is stated, in his examination-in-chief, that the defendants came into contact with plaintiffs through one of his known person Mr. Bhikhabhai, and then a deal was finalized to sell the suit property to plaintiff for total consideration amount of Rs.60,00,000/-. It is admitted that an agreement of sale was registered and at that time, Rs.30,00,000/- were paid as part consideration and it was decided to execute an actual sale deed on receipt of balance consideration of Rs.30,00,000/-. Remaining facts of written statements are reiterated and it is alleged that plaintiffs have taken disadvantage of defendants' physical weakness as well as illiteracy. It is also alleged that on the day of registration of alleged agreement of sale, the plaintiffs had purchased Rs.100/- non-judicial stamp paper no. A.T.786096 and an unregistered agreement was reduced down to writing over it but they did not know, at the time of registration, that plaintiffs would play a fraud and commit breach of their trust in them.

He has stated that defendants are ready and willing to execute an actual sale deed in favour of plaintiffs if they get part consideration amount of Rs.30,00,000/- from plaintiffs. From this deposition of defendant no.4, it is manifestly clear that possession over the suit property was handed over to the plaintiffs at the time of executing registered agreement of sale. Now, if he is denying as to authenticity of document at Exh-45, he could have examined the Sub-registrar in presence of whom the alleged agreement was registered. Neither the defendants have rebutted genuineness of Exh-72, i.e. video recording of their entire transaction at Sub-registrar Office, Galteshwar on 21.03.2016 nor have they proven as to the actual area of suit property is 5 Hectare as on today also. Mere repetition of averments can never take place of evidence. He has also admitted that they are now not ready and willing to perform their part of promise. The defendants have examined a witness namely Mr. Punambhai Shabhaibhai Solanki at Exh-88 who has initially supported defendants' claims in his examination-in-chief but then he denies his own statement on oath that he gathered knowledge about this alleged agreement from plaintiffs. Instead, he deposes that he got it from defendant no.4, that

means he is merely a hearsay witness. He has admitted that only one agreement of sale was executed in respect of the suit property and that was registered in Sevaliya Sub-registrar Office. His deposition has not inspired confidence of this Court. Thus, defendants have been unable to prove that they are entitled to get relief sought for in their counter-claim and hence, answers to issue nos. 8 as well as 8(a) are given in "Negative".

16. Since determination of issue nos. 7, 9 and 10 involves discussion of connected facts and/or evidence, they are discussed together. Till now, all evidence that is adduced by both litigating parties has been discussed at length. Now, in order to determine answer to issue no.7, provision of Section-20 of the Specific Relief Act, 1963 needs discussion. It clearly states that jurisdiction of Court to grant specific relief is discretionary which must be guided by the judicial principles and must be sound as well as reasonable. In order to determine such claims, time is also of essence. Here, it is an admitted fact that defendants have already accepted Rs.30,00,000/- as part consideration from the plaintiffs on 21.03.2016 and now, deny to perform their part of contract. That means, the case of plaintiffs does not fall under any of

the situations as narrated in Section-20(2) of the Act. Regarding its applicability, the decision rendered by the Hon'ble Apex Court in Sughar Singh vs. Hari Singh (dead) through LRs. & Ors., Civil Appeal No. 5110 of 2021 can be referred wherein it has been held that though the amendment to Section-20 of the Act may not be applicable retrospectively but can be a guide on the discretionary relief. In the present case, the plaintiffs have shown their readiness as well as willingness to perform their part of contract because after paying a part consideration of Rs.30,00,000/-, they conducted all procedure to clear title of the suit property and get it converted into an old tenure land. It was the prime condition of agreement between both parties that plaintiffs would have to do all such formalities and when they would be over, an actual sale deed would be executed. Accordingly, the suit property got converted into an old tenure from restricted tenure and during that time only, plaintiffs learnt about different in area of suit property. Despite that, they intimated the defendants of it and asked them to repay balance Rs.98,725/- and execute a sale deed. But the defendants did not do so and on the contrary, came up with another agreement of sale at Exh-64 which is an

unregistered piece of document and holds no valid legal sanctity. To support this determination, ratio established by the Hon'ble Supreme Court in *S. Kaladevi vs. V. R. Somasundaram & Ors.*, Civil Appeal No. 3192 of 2010 [Arising out of SLP (C) No. 1451 of 2009], over an issue of admissibility of unregistered sale deed in a suit for specific performance, requires consideration. Its relevant paragraphs are re-produced hereunder:

Para-10: Section 17 of 1908 Act is a disabling section. The documents defined in Clauses (a) to (e) therein require registration compulsorily. Accordingly, sale of immovable property of the value of Rs. 100/- and more requires compulsory registration. Part X of the 1908 Act deals with the effects of registration and non-registration. Section 49 gives teeth to Section 17 by providing effect of non-registration of documents required to be registered. Section 49 reads thus: "Section 49- Effect of non-registration of documents required to be registered- No document required by Section 17 or by any provision of the Transfer of Property Act, 1882 (4 of 1882), to be registered shall –

- (a) affect any immovable property comprised therein, or
- (b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:

Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877), or as evidence of any collateral transaction not required to be effected by registered instrument.”

Para-11: The main provision in Section 49 provides that any document which is required to be registered, if not registered, shall not affect any immovable property comprised therein nor such document shall be received as evidence of any transaction affecting such property. Proviso, however, would show that an unregistered document affecting immovable property and required by 1908 Act or the Transfer of Property Act, 1882 to be registered may be received as an evidence to the contract in a suit for specific performance or as evidence of any collateral transaction not required to be effected by registered instrument. By virtue of proviso, therefore, an unregistered sale deed of an immovable property of the value

of Rs. 100/- and more could be admitted in evidence as evidence of a contract in a suit for specific performance of the contract. Such an unregistered sale deed can also be admitted in evidence as an evidence of any collateral transaction not required to be effected by registered document. When an unregistered sale deed is tendered in evidence, not as evidence of a completed sale, but as proof of an oral agreement of sale, the deed can be received in evidence making an endorsement that it is received only as evidence of an oral agreement of sale under the proviso to Section 49 of 1908 Act.

In the case on hand, the document at Exh-64 which is an unregistered agreement to sell has been given in evidence by defendants not as a collateral transaction but they allege it to be the basis of their claims of cheating and fraud. Also, the peculiar facts and circumstances of this case make it difficult to believe as to how two agreement of sale are alleged executed on same day, i.e. 21.03.2016, that too in respect of same suit property between same parties, out of which one is registered whereas another is un-registered. The oral evidence adduced by both parties do not support averment of defendants. On the contrary, defendants' claim

that area of suit property has always been 5-00-00 Hectare – Aare - Sq. meters is also not proved. This entire sequence renders plaintiffs' claim of getting specific performance of contract legible because the defendants have manifestly admitted the fact of having accepted part consideration of Rs.30,00,000/- from plaintiffs on 21.03.2016 and that they had gone to the Sub-registrar Office for registration of the agreement of sale at Exh-45. Therefore, the finding of the **Hon'ble Supreme Court in the decision rendered in P. Ramasubbamma vs. V. Vijayalakshmi & Ors., Civil Appeal No. 2095 of 2022** decided on 11.04.2022, in this regard, can be relied upon wherein it is held in Para-5.2 that "once the execution of agreement to sell and the payment/receipt of advance substantial sale consideration was admitted by the vendor, thereafter nothing further is required to be proved by the plaintiff-vendee and therefore, answer to issue no.7 is given in 'Affirmative'.

Since the plaintiffs have been able to discharge their burden of proof, if they are not given specific performance of contract, it may result in hardship to them because they have already paid Rs.30,00,000/- as part consideration on 21.03.2016 and defendants never expressed their desire to

rescind the contract when alleged to have been defrauded by plaintiffs. So, if the bonafide purchasers' claim is protected, ends of justice would be secured and, on that belief, answer to issue no.9 is given in 'Affirmative' and that makes the plaintiffs entitled to get back their Rs.98,725/- (Rupees Ninety Eight Thousand Seven Hundred Twenty Five only) from defendants – as an answer to issue no.10. The following final order is passed in wide interests of justice as answer to issue no.11.

17. Thus, upon over all re-appreciation and re-evaluation of the oral and documentary evidence on record, as well as, the Judgment passed by the Ld. Trial Court, the finding, given by the Ld. Trial Court are just, legal and proper and this Court does not find any illegality and/or perversity in findings of law as well as in facts of the case and I do not find any merit in the present Appeal, hence, following Order is passed, in the interest of justice.

: ORDER :

1. Regular Civil Appeal No. 147 of 2022 is hereby **DISMISSED** with no order as to costs.
2. The Judgment & Decree passed by the Ld. 4th Addl. Sr. Civil Judge, Nadiad, in SPCS No. 175 of 2016,

dated 28-04-2022, is hereby confirmed.

3. The Record & Proceedings of Ld. Trial Court shall be sent immediately with the copy of this Judgment.
4. Decree is be drawn accordingly.

Pronounced in the open Court on this day **23rd** Day of **April' 2025**.

Date: 23/04/2026
Place: Nadiad

(Prakashkumar P. Purohit)
3rd Addl. District Judge,
Kheda at, Nadiad.
GJ00685