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Duration 11y 3m 15d

IN THE COURT OF ADDITIONAL SENIOR CIVIL JUDGE,
KAPADWANJ

SPECIAL CIVIL SUIT NO. 86 OF 2017
(Old Special Civil Suit No. 199 of 2014)

Exh.-

Plaintiff:

- (1) **Shree Dineshbhai Bachubhai Kathiriya**
Age: Adult, Occupation: Agriculture,
R/o. 10, Radhekrishna Banquet Apartment, India Colony,
Behind Naran Chambers, Opposite Kirti Dugdhalay,
Bapunagar, Ahmedabad - 382350.

:: V E R S U S ::

Defendants:

- (1) **Phulabhai Damodardas Gajjar**
Age: Adult, Occupation : Agriculture
R/o. Vania Vadi, behind Derasar, Vanch,
Ta. Daskroi, Dist. Ahmedabad.
- (2) **Natvarlal Damodardas Gajjar**
Age: Adult, Occupation : Agriculture,
R/o. Mirzapur, Ta. Kathlal, Dist. Kheda.
- (3) **Legal heirs of deceased Ratilal Damodardas Gajjar**
(3.1) **Madhuben Ratilal Gajjar**
(3.2) **Komal Ratilal Gajjar**
(3.3) **Alpa Ratilal Gajjar**
(3.4) **Nirav Ratilal Gajjar**
All R/o. 20, Mangalam Society, Behind Arbudanagar
Odhav, Ahmedabad-382415.
- (4) **Kailashben Damodardas Gajjar**
Age: Adult,
R/o. Dhaniol Village, Patna Kuva,
Ta. Dahegam, Dist. Gandhinagar.

- (5) **Shree Gautam Kishorkumar Jaynarayan**
Age: Adult,
C/o. Natvarlal Damodardas
R/o. Mirzapur Village, Ta. Kathlal,
Dist. Kheda.
- (6) **Shree Ashokbhai Ambalal Patel**
Age: Adult,
R/o. B/104, Hometown Flat, New Ranip,
Ahmedabad - 382482.
- (7) **Prajapati Mansukhbhai Bhanjibhai**
Age : 28, Occupation: Agriculture and Business
R/o. 47, Girivar Galaxy, Opp. Reliance Petrol Pump,
Vastral, Ahmedabad.
- (8) **Patel Chinubhai Gopaldas**
Age: 49, Occupation: Agriculture and Business
R/o. A/51, Sahajanand States, Sola, Ahmedabad.
- (9) **Ankitkumar Rajnikant Patel**
Age: Adult, Occupation: Agriculture
R/o. 60, Karnavati Bungalows, Vastral Nagarpalika,
Vastral, Ahmedabad.
- (10) **Ketanbhai Manubhai Patel**
Age: Adult, Occupation: Agriculture
R/o. Chandra Society, Odhav, Ahmedabad.
- (11) **Anandiben Ashokbhai Patel**
Age: Adult, Occupation: Agriculture
R/o. 9, Sayona Prasad Bungalows, Chandlodiya,
Ahmedabad.

Appearance:

Ld. Advocate Shri R. N. Patel for the plaintiff

Ex-parte for the defendant No. 1,3,5

Ld. Advocate Shri D. C. Talpada for the POA of defendant No. 2 and 4
defendant No. 6

Ld. Advocate Shri D. J. Macwan for the defendant No. 7 and 8

Ld. Advocate Shri B. R. Patel for the defendant Nos. 9 to 11

Suit for Specific Performance, Declaration and Permanent Injunction

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

1. The plaintiff has instituted present suit on 24/12/2014 and the said suit is transferred from Nadiad to Kapadwanj on 16/11/2017 to the Principal Senior Civil Court, Kapadwanj, which came to be registered as SPCS

No. 86/2017.

2. Brief facts giving rise to the present suit according to plaint are as under:-

2.1 The plaintiff Dineshbhai Bachubhai Kathiriya instituted the suit on 02/12/2014 claiming specific performance of the Agreement to sell on dated 13/09/2010 in respect of the land bearing Survey No. 259 and 260 situated at Village Mirzapur, Ta. Kathlal District Kheda and as per the said Agreement to sell, the sale consideration was fixed at Rs. 22,00,000/- per vigha and also plaintiff had paid Rs. 1,00,000/- to defendant No. 1 Phulabhai, Rs. 2,00,000/- to defendant No. 2 Natvarbhai and defendant No. 3 Ratilal against the payment of earnest money.

2.2 A Agreement to sell was prepared on 13/09/2010 and that was signed by the defendant No. 1 to 3 with revenue stamp. The original agreement to sale (banachhithi) was kept with the plaintiff and photo copies were given to the defendant No. 1 to 3 and it is also mentioned therein that the condition of the sale deed are binding on the parties. Significant terms and conditions of the Agreement to sell were that the net sale price will be decided after deduction of the road measurement, defendants have to remove all obstacle and taken responsibility to bring signature of defendant No. 4.

The terms of payment were decided that after 5 to 10 days of obtaining the title clearance certificate 33% payment would have to be made and thereafter within 4 months 33% payment would have to be made and remaining total payment would be paid within 4 months thereafter.

2.3 Further, plaintiff has pleaded that during Navratri of 2014, he came to know that defendant 1 to 3 are trying to sale out the suit land to the third party, therefore, plaintiff has issued notice to defendant No. 1 to 4 on 07/11/2014. The defendant No. 1 to 3 informed plaintiff that Mr.

Natvarlal i.e. defendant No. 2 has mortgaged suit land to defendant No. 4, Ms. Kailashben on 02/02/2014 and had handed over possession to the defendant No. 4 and plaintiff also submitted copies of public notice published in Sandesh Newspaper on 14/09/2014 and 05/11/2014. After few days the defendant Nos. 1 to 3 has hand over one registered sale deed No. 997, dt. 17/07/2014 to the plaintiff, in which the defendant No. 2 and 4 had agreed to sale their portion of share in suit land to the defendant No. 6 Ashokbhai A. Patel, for the consideration of Rs. 16,26,700/-.

- 2.4 Being aggrieved of the above reasons, the plaintiff had instituted the present suit for specific performance of agreement to sell and restraining to defendants for further alienation and cancellation of the Sale deed and has shown willingness to perform his part of the agreement to sell.
3. After filing of the suit, the notice has been duly served upon the defendant No. 1 to 6 vide Exh. 10, 12, 13, 17, but they remain absent. Therefore, my Ld. Predecessor has passed an order to proceed with ex-parte vide Exh. 18 and 19 on 06/01/2016. The defendant No. 1 to 6 was served with the transfer notice regarding the transfer of Suit from Nadiad to Kapadwanj, but again has remained absent.
- 3.1 The plaintiff has filed application under Order 22 Rule 10(1) vide Exh. 25 to join legal heirs of defendant No. 3 and application vide Exh. 79 under Order 6 Rule 17 to join proposed party defendant No. 7 and 8, as they were the subsequent purchasers of suit land and has also sought the amendment of the plaint, which came to be allowed by the order dated 25/11/2021 and accordingly notices were issued to the newly added defendant No. 7 and 8, and after service they have filed their written statement vide Exh. 61 on 08/05/2018, wherein they contended that the suit of the plaintiff is false, frivolous and vexatious and has denied all averments of the plaint and interim injunction application.

Further they contended that they have paid valuable consideration and they are bonafide purchaser.

- 3.2 The defendant No. 6 has filed written statement vide Exh. 85 as power of attorney holder of defendant No. 2 and 4 and defendant No. 9 to 11 wherein they contended that the suit of the plaintiff is false, frivolous and vexatious and has denied all averments of the plaint and interim injunction application. Further they have also contended that they have not entered any such document and they have not signed any agreement to sale. Further they have contended that the plaintiff's suit is barred by law of limitation and not maintainable under Section 17(AA) and 49 of Registration Act. Further they have also contended that they have paid consideration to the owner of the land and they are bonafide purchaser of the suit property.
4. On the basis of the pleadings following issues are framed by my Ld. Predecessor at Exh. 65 on 19.11.2018, thereafter issues were added on 07.05.2022 and 16.10.2025, which are as under:

ISSUES

1. Whether plaintiff proves that the defendant Nos. 1 to 4 are agreed to sell the suit property to the plaintiff for a consideration of Rs. 22,00,000/- per vigha and total consideration amount is of Rs. 1,68,16,484/- and after accepting Rs. 3,00,000/- as an earned money have executed an Agreement to sell in favour of the plaintiff on date 13.09.2010?
2. Whether the plaintiff proves that he was and is ready and willing to perform his part of Agreement to sell?
3. Whether the plaintiff proves that the mortgage agreement executed by defendant No. 2 in favour of defendant No. 5 is illegal?
4. Whether the plaintiff proves that defendant Nos. 2 & 4 have executed power of attorney on Dt. 16.10.2025 Agreement to sell

on dated 17.07.2014 in favour of defendant No. 6 is illegal?

5. Whether the plaintiff is proves that the legal heirs of defendant Nos. 1 to 3 have executed registered sale deed No. 1197 dated 08.12.2015 in favour of defendant Nos. 7 to 8 is absolutely illegal?
- 5-A Whether the plaintiff is proves that defendant Nos. 7 & 8 have executed R. S. D. No. 1085 dated 11.4.2017 in favour of defendant Nos. 9 &10 is null and void?
- 5-B Whether the plaintiff proves that defendant Nos. 2 & 4 have executed R. S. D. No. 787 dated 27.06.2018 in favour of defendant No. 11 is null and void?
6. Whether the suit is maintainable in eye of law?
7. Whether the plaintiff is entitled for relief as prayed for?

(૭.૧) શું વાદી પુરવાર કરે છે કે, દાવાવાળી મિલકતનુ ટાઈટલ વિવાદીત હતુ?

(૭.૨) શું વાદી પુરવાર કરે છે કે, દાવાવાળી મિલકતની વેચાણ અંગેની સમજુતી અમલમાં આવેલ છે?

(૭.૩) શું વાદી પુરવાર કરે છે કે, દાવાવાળી સંચુકત માલીકીની મિલકતની વેચાણ અંગેની સમજુતી પ્રતિવાદી નં.૪ વતી કરી આપવાની ઓથોરીટી પ્રતિવાદી નં.૧ થી ૩ પાસે હતી?

(૭.૪) શું વાદી પુરવાર કરે છે કે, દાવાવાળી મિલકતનો અવેજ રૂ.૩,૦૦,૦૦૦/- કાયદેસર રીતે પ્રતિવાદી નં.૧ થી ૪ ને ચુકવી આપેલ છે?

(૭.૫)શું વાદી પુરવાર કરેલ છે કે, નિશાની ૩/૬ ની અન રજીસ્ટર્ડ

બાનાચિઠ્ઠીના આધારે વાદી દાવાવાળી મિલકત માલીકી હકકે

મેળવવા હકકદાર છે?

(૭.૬)શું પ્રતિવાદી પુરવાર કરે છે કે, વાદીના દાવાને સમયમર્યાદાના

કાયદાનો બાધ નડે છે?

8. What order and what decree?

5. My finding to the above issues are as under with the reasons to follow.
1. In the Negative
 2. In the Negative
 3. In the Negative
 4. In the Negative
 5. In the Negative
 - 5-A. In the Negative
 - 5-B. In the Negative
 6. In the Negative
 7. In the Negative
 - 7.1. In the Negative
 - 7.2. In the Negative
 - 7.3. In the Negative
 - 7.4. In the Negative
 - 7.5. In the Negative
 - 7.6. In the Negative
 8. As per final order
6. The plaintiff has submitted following oral as well as the documentary evidence in support of his case.

Oral Evidence

Sr. No	Exh.	Description
1	112	Examination in chief of plaintiff Dineshbhai Bachubhai Kathiriya

Documentary Evidence

Sr. No.	Exh.	Description
1	97	Certified copy of village form No. 7 and 12 of survey/ block No. 259
2	98	Certified copy of village form No. 7 and 12 of survey/ block No. 260
3	99	Original unregistered Agreement to Sell
4	100	Copy of Legal notice Dt. 07.11.2014
5	101	Copy of Legal notice Dt. 10.11.2014
6	102	Copy of public notice in Sandesh newspaper, Dt.14/09/2014
7	103	Copy of public notice in Sandesh newspaper, Dt.05/11/2014
8	104	Certified copy of original registered agreement to sell
9	105	Original copy of lis pendency notice
10	106	Certified copy of sale deed No. 1197 in favour of defendant No. 7 and 8
11	107	Certified copy of sale deed No. 1085 in favour of defendant No. 9 and 10
12	108	Certified copy of sale deed No. 787 in favour of defendant No. 11
13	109	Certified copy of sale deed No. 788 in favour of defendant No. 11
14	110	Certified copy of Power of Attorney in favour of defendant No. 6
15	111	Copy of case status of A. O. No. 295/2018 filed in the Hon'ble High Court of Gujarat.
16	130	Copy of Family Settlement of the defendant No. 1 to 4, Dt. 20/02/2006

17	131	Closing Pursis from plaintiff
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7. The defendants have submitted following oral as well as the documentary evidence in support of their case.

Oral Evidence

Sr. No	Exh.	Description
1	136	Examination in chief of defendant No. 9 Ankitkumar Rajnikant Patel

Documentary Evidence

Sr. No	Exh.	Description
1	137	Village Form No. 7, Survey No. 259/1, Mirzapur
2	138	Village Form No. 7, Survey No. 259, Mirzapur
3	139	Village Form No. 7, Survey No. 260, Mirzapur
4	140	Closing pursis from defendant No. 9 and 10
5	141	Closing pursis from defendant No. 11

8. Thereafter, the Ld. Advocate for the plaintiff has submitted written argument vide Exh. 147 and additional argument after submission of written argument from defendants at Exh. 151, wherein he submitted that the plaintiff, has filed the present suit for the Specific Performance of the agreement to sell executed by Defendants No. 1 to 3 on 13/9/2010 in his favour. Despite Agreement to sell in his favour. The defendant No. 2 had earlier executed a General Power of Attorney in favour of Defendant No. 6. on Dt 03/12/2014 before Sub Registrar office Kathlal vide serial No. 1477/2014 and also a mortgage in favour of defendant No. 4 and handed over possession of the suit property to defendant No. 4 and thereafter defendants No. 2 and 4 executed registered agreement to sell (No. 997) in favor of defendant No. 6 on 17/7/2014. According to the plaintiff the agreement to sell

(banachitthi) was executed by Defendants No. 1 to 3 on 13/9/2010 in his favour and is prior to the mortgage in favour of defendant No. 4 and also registered agreement to sell (No. 997) in favour of the defendant No. 6, therefore the said mortgage deed and registered agreement to sell are not binding upon the plaintiff, hence, the mortgage deed and registered Agreement to sell and sale deed are illegal, should be declared null and void.

9. Further the plaintiff has submitted that after filing the present suit the plaintiff had registered documents of Lis Pendens on 28/04/2015 vide register no. 463. Despite of the registered document of Lis Pendens defendant No. 1 and legal heirs of defendant No. 3 had executed registered sell deed on 08/12/2015 vide register No. 1197 qua their share in the suit property in favour of the defendant Nos. 7 and 8 and defendant Nos. 2 and 4 had signed in the said registered sale deed as confirming parties. Thereafter, defendant Nos. 7 and 8 had wrongfully executed a sale deed on 14.11.2017 before the Sub-Registrar Office, Kathlal by Serial No. 1085 in favour of the defendant Nos. 9 and 10 during pending of the suit proceeding. Further the plaintiff has averred that the all sale deed were carried out illegally and in collusion to defeat his prior agreement and lawful rights over the suit property. Therefore, the sale deed executed in favor of Defendant Nos. 9 and 10 is alleged to be fraudulent, illegal, void, and unenforceable.
10. Further the Plaintiff has submitted that defendant Nos. 2 and 4 have executed sale deeds dated 27.06.2018 before the Sub-Registrar Office, Kathlal, vide serial No. 787 and 788 transferring their portions of Survey Nos. 259 and 260 in favour of the defendant No. 11. Further during the proceedings before the Hon'ble High Court of Gujarat arising out of Exh 5, and the defendant No. 11 was subsequently added as a party to the present suit. The plaintiff alleges that all these

documents were executed in collusion during the pendency of the suit, and are therefore illegal, fraudulent, void, and unenforceable.

- 11.** Further the Plaintiff has submitted that the summons of the suit was duly served upon to all the defendants they have remained absent hence, suit was ordered to proceed ex parte against the defendants No. 2 to 6 vide Exh. 18 vide order dated 06/01/2016 and qua Defendants No. 1 to 3 vide Exh.20 on 06/01/2016. The Defendants No. 7 and 8 had filed their written statement vide Exh. 61 and power of attorney holder of defendant No. 2 & 4, defendant No. 6 and 9 to 11 have filed their written statement vide Exh. 85.
- 12.** Further the plaintiff has filed a rejoinder affidavit wherein he has submitted that the defendant Nos. 9 and 10 contend in their written statement that the plaintiff's agreement to sell is unregistered and the name of the defendants are appeared on the Village Forms 7 and 12 of the disputed property and according to the defendants they are bona fide purchasers. However, despite the pending registered claim, the defendant Nos. 9 to 11 have purchased the disputed property without properly verifying its title. Therefore, the claims of defendant No. 6 to 11 cannot be accepted. Further, the plaintiff has proved all the issues framed by the Hon'ble Court and established that defendants Nos. 6 to 11 are not bona fide purchasers. Further he had submitted that principle held in the following citation the plaintiff's suit is maintainable, and accordingly, the plaintiff is entitled to the reliefs sought.
- 13.** Further to support his claim plaintiff has relied on the following Judgments:

Sr No.	Details
1	1999 AIR(SC) 1441 (1999 Law Suit (SC) 316) Vidhyadhar vs Manikrao & Anr.
2	1982 2 GLR 455 (1982 Law Suit(SC) 66) Tribhovan C Panchal vs Ladhibai

	W/O Punjaram
3	2025 LawSuit (Guj) 66) Chowdamma (D) BY LR and Another versus Venkatappa (D) BY LRS and another
4	APPEAL ORDER NO. 457 of 2016 Ghnshyambhai Dhirubhai Barvaliya versus Rasikbhai Dhirubhai Ambaliya & An.
5	2023 AIJEL SC 70776 R. Hemalatha versus Kashthuri
6	2025 LawSuit (SC) 685. (para 10) Muruganandam versus Muniyandi (Died) Through LRS
7	2018 LawSuit(SC) 1280 Urvashiben & ANR v/s Krishnakant Manuprasad Trivedi
8	2024 LawSuit(SC) 1048 Manjit Singh & ANR. V/S Darshana Devi & Ors.
9	2020 LawSuit(SC) 581 B Santoshamma & Anr v/s D Sarala & Anr.
10	2012 LawSuit(GUJ) 1533 Amrutbhai Nazabhai Chavda V/S Valjibhai Palabhai Chavda
11	2024 LawSuit(SC) 584 Yogesh Goyanka V/S Govind & Ors.
12	2023 LawSuit(SC) 1123 P Kishore Kumar V/S Vittal K Patkar
13	2024 (0) AIJEL-SC 74117 Shingara Singh v/s Daljit Singh & Anr.
14	1953 (0) AIJEL-SC 8352 Durga Prasad Versus Deep Chand
15	1969 LawSuit(SC) 414 Nathulal versus Phoolchand
16	2009 LawSuit(SC) 240 Azhar Sultana versus B Rajamani and Ors.
17	High Court of Gujarat R/Appeal from order No. 295 of 2018 with Civil Application No. 1 of 2018 Dineshbhai Bachubhai Kathiria versus Fulabhai Damodardas Gajjar
18	2016 (0) AIJEL-SC 59174 Syscon Consultants P. Ltd. Versus Primella Sanitary Prod. Private Limited
19	2010 (0) AIJEL-SC 48942 Kammana Sambamurthy (D) By Lrs. versus Kalipatnapu Atchutamma(D)
20	2014 (0) AIJEL-SC 55848 Rathnavathi versus Kavita Ganashamdas
21	2010 LawSuit(SC) 2 Daya Singh and Ant. versus Gurdev

Singh (Dead) By Lrs. and Others.

The aforementioned Judgments produced by the plaintiff in support of his written argument, additional arguments but he has not highlighted and not explained that on which point and how this Judgments are helpful to his case.

14. Thereafter, the Ld. Advocate for the defendant No. 9 has submitted written argument vide Exh. 148, wherein he submitted that according to the Plaintiff, the plaintiff had entered into oral negotiations with the defendants No. 1 to 3 to purchase the suit land, pursuant to which an allegedly unregistered agreement to sell dt.13/09/2010 was executed in his favour. The sale price was fixed at Rs. 22,00,000/- per Vigha, 33% of the consideration was to be paid after obtaining title clearance, then after next 33% was to be paid within 4 months and then after, the remaining amount was to be paid within next four months. At the time of Banachithi the plaintiff has paid Rs. 3,00,000/- in cash as earnest money to the defendant No. 1 to 3, but no any kind of document or receipt was produced by the plaintiff.
15. Thereafter, the defendant No. 9 has submitted that, in sale for an immovable property the value of which exceeds Rs. 100/-, the three requirements of law are that the transfer of property of sale must take place through a validly executed sale deed, i.e., it must be in writing, properly attested and registered. Therefore, the claim of the plaintiff is founded upon an unregistered banachitthi is not maintainable under section - 17 of the Registration Act and same is entered into after the amendment of 2001 in the Registration Act and hence it is not enforceable. Further he submitted that, Section 54 of the T.P. Act makes it clear that a contract of sale, that is, an agreement of sale does not, of itself, create any interest in or charge on such property, therefore, on the

basis of such document plaintiff is not entitled relief of specific performance.

- 16.** Thereafter, the defendant No. 9 has submitted that, the plaintiff has not produced any kind of documentary evidence to prove that consideration which was alleged to have been paid to the defendant No. 1 to 3 as mentioned in Agreement to sell (banachitthi) of dated 13/09/2010. Even otherwise, the defendant No. 4, Kailashben has not signed Agreement to sell though her name is mentioned in banachitthi, the plaintiff has served legal notice to defendant No. 1 to 4 before filing the present suit. In fact, the legal heirs of the defendants No. 1 to 3 had executed a registered Sale Deed No. 1197 dated 08/12/2015 in favour of the defendants No. 7 & 8. Thereafter, as a owner of the suit land on 14/11/2017, the defendants No. 7 & 8 had executed a registered Sale Deed No.1085/2017 in favour of the defendants No. 9 & 10 in connection to the suit land bearing Survey No. 259/p/1 0-72-37 and Survey no. 260/p/1 0-16-18 situated at Village Mirzapur, Ta. Kathlal. Further he has stated that upon payment of valid consideration of Rs. 12,00,000/-, the defendant No. 9 & 10 became a bonafide purchaser and are enjoying the peaceful and uninterrupted possession of the suit property since 2017, accordingly their names have been duly entered in the revenue record as owner and the plaintiff was aware of the subsequent transactions but did not raise any effective objection at the relevant time and did not challenged the revenue entry in favour of defendant Nos. 9 to 11. Therefore, they are being a bonafide purchaser for value without notice, is entitled to protection under section 53 -A of the Transfer of the Property Act.
- 17.** Further the defendants in their written statement have disputed execution of any such banachitthi and have denied the allegations made in the plaint and have specifically contended that the alleged

unregistered agreement to sell relied upon by the plaintiff is illegal, invalid, unenforceable and barred under the provisions of the Registration Act, the Limitation Act and the Transfer of Property Act. It is further contended that the application for temporary injunction of the plaintiff was rejected after considering the pleadings and submissions of the parties. While rejecting the said application, the Court observed that the alleged agreement appeared doubtful, that the signature or consent of the defendant No. 4, who was a co-sharer, had not been obtained, and that the plaintiff, being an educated person engaged in land transactions, had not demonstrated seriousness in pursuing the alleged transaction. Therefore, the plaintiff is not entitled to the discretionary relief of specific performance and that the suit deserves to be dismissed.

- 18.** Further, the defendants has submitted that the plaintiff has instituted the present suit seeking specific performance of an alleged unregistered agreement to sell, it is referred to Para 19(a) to (f) of the plaint in respect of the suit land. In addition to specific performance, the plaintiff has prayed for declaration, cancellation of subsequent registered sale deed and other documents and also prayed for permanent injunction. Further the defendant No. 9 has submitted that, the principle held by the Hon'ble Supreme Court in the case of Om Prakash vs Laxminarayan, Indian Overseas bank vs M.A.S. Subramniam, Mahnoor Fatima vs. Visheswar Infrastructures Pvt. Ltd., Balkrishna Dattatrays Galande vs. Balkrishna Rambharose and Yogesh Gonanka vs Govind, the suit of the plaintiff is deserves to be dismissed.
- 19.** To support his submission the defendant No. 9 has relied on the following Judgments:

Sr No.	Details
1	Om Prakash vs Laxminarayan 2014

2	Indian Overseas bank vs M.A.S. Subramniam 2025
3	Mahnoor Fatima va Visheswar Infrastructures Pvt.Ld
4	Balkrishna Dattatrays Vs Balkrishna Rambharose 2020 .
5	Yogesh Gonanka vs Govind 2024

REASONS

(20) **Issue Nos. 1 & 7.1 To 7.4 :-** For the sake of convenience and to avoid the repetition of facts, I discuss above issues together.

20.1 The plaintiff Dineshbhai Bachubhai Kathiriya has filed his examination in chief vide Exh. 112. wherein, has repeated the same facts of the plaint and referred documents at Exh. 97 to 111 and 130. In his cross examination the plaintiff has admitted that he has filed the present suit against Ratilal, Phulabhai, Natvarbhai, Kailashben and other two mortgagee on the basis of Agreement to sell dated 13/09/2010, the original defendant has not executed registered Agreement to sell, banachitthi is unregistered and the plaintiff neither produced any kind of mortgage deed nor examine any witness to prove execution of the alleged mortgage deed. Further the plaintiff has admitted that the agreement to sell (Banachithhi) Exh. 99, is simply hand written on full-scale paper and he has not produced any documentary evidence in respect of consideration mentioned in agreement to sell. The defendant Kailashben has not signed agreement to sell, he has served notice to defendant No. 1 to 4 before filing the present suit and not even challenged revenue entry in favour of defendant Nos. 9 to 11. Therefore, the evaluation of above version of the plaintiff it is clear that his agreement to sell is unregistered, it is simply hand written on full-scale paper and the plaintiff has not produced any documentary evidence, which is reflects that he had paid any kind of consideration as mentioned in the said agreement to sell. Furthermore, according to the plaintiff, the defendant Kailashben has not signed to the said agreement

to sell and he has not paid any kind of consideration to the defendant No. 4, Kailashben, even though he has served notice to defendant No. 4, before filing the present suit.

20.2 The defendant No. 9 Ankitkumar Rajnikant Patel has filed examination in chief vide Exh. 136. In his examination in chief he has repeated the facts of the written statement and referred documents at Exh. 137 to 139. In his cross examination he admitted that he is engaged in construction business along with the business of chemical industries and steel works, he is deposing on behalf of Ketanbhai too, he has possess many other agriculture land including the suit property and because of that possess little knowledge to the land related laws. He has purchased the suit property from Chinubhai Patel and Mansukhbhai Prajapati, he had contacted to Chinubhai Patel and Mansukhbhai Prajapati and then after he stated that Chinubhai Patel and Mansukhbhai Prajapati had contacted him, Ketanbhai Manubhai Patel belongs to his community and villages and also his business partner. Further he had admitted that, when any person purchased land shall inspect the title and revenue record to the concern land, their Ld. Advocate had already inspected the revenue records including village form No. 7/12 of the suit land and there was no any entry to the present suit on the record of the village form No. 7/12 therefore, they purchased the suit land. Further after referring Exh. 105, registered lis pendent No. 463 dated 28/04/2015 at sub-registrar, Kathlhal the defendant No. 9 had admitted that, the registered sale deed No.1197 dated 08/12/2015 in their favour has been executed during pendency of the present suit. Further he denied that Chinubhai Patel and Mansukhbhai Prajapati had not informed him to the pendency of the present suit and lis pendent, even otherwise he purchased the suit land and they have not contacted the original land owner. Further, after referring Exh. 104, from the court record he has stated that it is registered Agreement to sell No. 997,

which was executed by the defendant No. 2 & 4 in favour of the defendant No. 6 on 17/07/2014 and he had not inquired that the said Agreement to sell is canceled or not. Further, he has admitted that after being joined as a party to the present suit, he had seen agreement to sale in favour of the plaintiff and total consideration paid by him is less than as the Agreement to sell of the plaintiff.

20.3 The suit of the plaintiff is based on Exh. 99 i.e. agreement to sell (Banachhithi) and after perusing the agreement to sell (Banachhithi) it transpires that the agreement to sell (Banachhithi) which is written on simple full-scale paper and “Lakhiapnar” were Phulabhai Damodardas, Natvarlal Damodardas, Ratilal Damodardas and Kailashben Damodardas, who are the defendant No. 1 to 4 in the present case, are ready to sale the suit land to the present plaintiff, Dineshbhai Bachubhai Kathiriya. On perusing the Agreement to sell Exh. 99, which is executed in respect of land bearing survey No. 259 ad-measuring H-0-32-37 & 260 ad-measuring H-01-50-75, which, situated at Village Mirzapur, Ta. Kathlal, Dist. Kheda, at the relevant point of time it was decided consideration to Rs. 22,00,000/- per vigha. It is transpired from the Exh. 99, Agreement to sell that it is executed in so casual manner, unregistered and the defendant No. 2 has denied execution of any such document. On perusing the banachitthi some writings are altered and edited later on, the amount portion of the banachitthi in question reflects different ink and different writing, without any counter signature or any endorsement to that effect, without consent of Kailashben Damodardas, especially when she is having right, title, interest in the suit land, her signature not obtained on it. Further even in entire banachithi the full and final consideration amount is not mentioned and also when the amount of part payment made in cash, is paid, is also not mentioned.

20.4 The plaintiff has filed present suit only on the basis of banachitthi at

Exh. 99, and as per, Section 54 of Transfer of Property Act, A contract of sale does not of itself create any interest in, or charge on the property. Herein the case on the hand, the plaintiff relies on banachitthi Exh. 99, and under the provision of section 54 of T. P. Act, it does not of itself create any interest in, or charge on the property. Furthermore, banachitthi Exh. 99, is unregistered. The provision of Section 17 (1) of Registration Act is as under :-

17. Documents of which registration is compulsory

1. *The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the The Registration Act, 1908 (Applicable to the Gujarat State) 4 Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877 or this Act came or comes into force, namely:-*

(a) instruments of gift of immovable property;

(aa) instruments which purport or operate to effect any contract for transfer of immovable property;

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees, and upwards, to or in immovable property;

20.5 The Ld Advocate for plaintiff has relied on the case tiled as R.Hemalatha Vs Kashthuri reported in 2023 AIJEL SC 70776, wherein it held in para-12 &13 as under:-

12. At this stage, it is required to be noted that the proviso to Section 49 came to be inserted vide Act No.21 of 1929 and thereafter, Section 17(1A) came to be inserted by Act No. 48 of 2001 with effect from 24.09.2001 by which the documents containing contracts to transfer or consideration any immovable property for the purpose of Section 53 of

the Transfer of Properties Act is made compulsorily to be registered if they have been executed on or after 2001 and if such documents are not registered on or after such commencement, then there shall have no effect for the purposes of said Section 53A. So, the exception to the proviso to Section 49 is provided under Section 17(1A) of the Registration Act. Otherwise, the proviso to Section 49 with respect to the documents other than referred to in Section 17(1A) shall be applicable.

13. Under the circumstances, as per proviso to Section 49 of the Registration Act, an unregistered document affecting immovable property and required by Registration Act or the Transfer of Property Act 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, or as evidence of any collateral transaction not required to be effected by registered instrument, however, subject to Section 17(1A) of the Registration Act. It is not the case on behalf of either of the parties that the document / Agreement to Sell in question would fall under the category of document as per Section 17 (1A) of the Registration Act. Therefore, in the facts and circumstances of the case, the High Court has rightly observed and held relying upon proviso to Section 49 of the Registration Act that the unregistered document in question namely unregistered Agreement to Sell in question shall be admissible in evidence in a suit for specific performance and the proviso is exception to the first part of Section 49.

In the instant case, agreement to sell exhibited in present case Exh. 99, but the contents of the same are required to be proved by cogent evidence and it is the duty cast upon the plaintiff to prove his case, but in present case the plaintiff has made only averment but has failed to prove it by leading evidence that the said document was executed and

also the consideration was remitted to the defendant no. 1 to 3. Thus, in light of above distinguishing fact of the present case, the decision in question would not come to rescue the plaintiff is unregistered and as discussed above banachitthi does not create any right, title and interest.

20.6 In the case of Mahnoor Fatima Imran vs. M/s Visweswara Infrastructure Pvt. Ltd. (online) held in para 22 that *an instrument of conveyance is compulsorily registrable as required under the Registration Act, Section 23 prescribes four months time for presenting a document for registration from the date of its execution. Section 24 provides that if there are several persons executing a document at different times, such document may be presented for registration or re-registration within four months from the date of such execution. In the instant case, all the executor, parties to the agreement, have signed on the day shown in the agreement. The proviso to Section 34 also enables the Registrar to condone the delay, if the document is presented within a further period of four months, on payment of a fine.*

In the case on hand, the sale agreement banachitthi is executed on 13/09/2010 and the present suit has been instituted on 02/12/2014 and the banachitthi is already exhibited and admitted in evidence as per the provision of the section 49 of the Registration Act.

20.7 *Loonkaran Sethia v. Ivan E. John (1977)1 SCC Online SC 379 in Question No. 5 :--Before proceeding to determine this question it would be well to advert to the legal position bearing on the matter As aptly stated in paragraph 1378 of Volume 12 of Halsbury's Law: of England (Fourth' Edition) "if an alteration (by erasure, interli-neation, or otherwise) is made in a material part of a deed, after it execu- tion, by or with the consent of any party to or person entitle, under it, but without the consent of the party or parties liable under it, but without the consent of the party or parties liable under it, the deed is rendered*

void from the time of the alteration so as to prefer the person who' has made or authorised the alteration, and those claiming under him, from putting the deed in suit to enforce against an party bound by it, who did not consent to the alteration, any obligation, covenant, or promise thereby undertaken or made.

In the instant case the defendants denied execution of bananchitthi Exh. 99, and an alteration is "self-evident"(different ink and overwriting), the plaintiff has not brought on record that why such alteration made and even not explain in which situation by whom alteration been made, therefore under Section 73 of the Evidence Act (section 71 of BSA) this Court can exercise its power to compare the handwriting itself and reject the document without waiting for a forensic report.

20.8 In the present suit the plaintiff has failed to prove, the content of the banachitthi, Agreement to sell in question by leading cogent evidence, even if for the sake of argument the same is believed to be true, then also it is not having signature of defendant No. 4 , then it is to be seen that the said contract is contrary to the Contract Act, as since he aspect of getting signature of defendant No. 4 is depend on the future contract. Thus, the banachitthi, itself not maintainable in the eye of law. So far as the aspect Discharging the Burden of Proof under Section 101 of the Bharatiya Sakshya Adhinyam, 2023 (IE Act 98), whoever desires any Court to give judgment as to any legal right must have to prove that those facts exist. Because the defendants have completely denied executing the document, the plaintiff cannot simply submit the agreement to the court and expect it to be accepted. Under Section 65 of the Bharatiya Sakshya Adhinyam, 2023(IE Act 67), the plaintiff has the absolute duty to prove that the signature, handwriting, or thumb impression on the disputed document actually belongs to the defendant. It is the duty cast upon the the plaintiff Examine independent witnesses

so as to prove the banachitthi. Even the plaintiff ought to have applied to the court to get examined the defendant's signature on the banachitthi by a forensic handwriting expert, when the defendants have disputed execution of any such document. Since the agreement mentions a cash payment but there is no separate receipt is produced on record and the defendant denies entire execution of banachitthi, then it is the duty cast upon the plaintiff to prove that the money actually changed hands so as to make out his case.

20.9 It is transpire from the said contract in question there is ample ambiguities, changes of hand writing, material alteration and so called payment of Rs. 3,00,000/- is also without specific date and receipts to that effect. It is upon on plaintiff to prove his case with cogent evidence and herein present case plaintiff has miserably failed to prove his own case that alleged banachitthi is executed and he has paid Rs. 3,00,000/- earnest money to defendant No. 1 to 3. Hence I reply issue No. 1 and 7.1 to 7.4 in Negative.

21. Issue Nos. 2 & 3 :-

21.1 According to the plaintiff, as per the banachitthi, the sale consideration was fixed at Rs. 22,00,000/- per vigha and he had paid Rs. 1,00,000/- to defendant No. 1 Phulabhai, Rs. 2,00,000/- to defendant No. 2 ,3 Natvarbhai and Ratilalbhai against the payment of earnest money and averred that the total value of the suit land was decided Rs.1,68,16,484/- and he will ready and willing to pay remaining amount of sale consideration. Though, the amount sale consideration is not mentioned in the banachitthi Exh. 99 as well as the legal notice Exh. 100 and 101 served to the defendants no. 1 to 4 immediately before institution of the present suit.

21.2 As per the Provisions of Section 16(C) of the Specific Relief Act the plaintiff has to prove his readiness and willingness towards the

Agreement to sell but in present case the plaintiff is failed to do so because he has not furnished any evidence to show that he is ready and willing to perform his part, barring the immediate notices, where also the amount of full and final consideration is not mentioned. Further whatever evidence furnished by the plaintiff, specially banachitthi Exh.99, creates doubt on the conduct of the plaintiff. Further, on perusing the legal notice produced vide Exh. 100, it established that plaintiff has not paid any consideration amount to the land owner Kailashben Damodardas when she was having right, title, interest in the suit land, even her consent was not obtained at the time of executing agreement to sell (Banachitthi).

21.3 The plaintiff has merely mentioned that he is ready and willing to perform his part but the total consideration of Rs. 1,68,16,484/- is not mentioned banachitthi at Exh. 99 as well as legal notice at Exh.100 and Exh.101. Further the plaintiff has for the first time disclosed same in the present suit, where also there is variation in amount in Para 19 and 20 of Suit in question. Even during the Trial of the suit plaintiff has not bring any oral or documentary evidence regarding actual consideration amount. Thus, according to the plaintiff which consideration is fixed at the time of banachitthi at Exh. 99 and legal notice at Exh.100 and Exh.101.

21.4 In the Judgment of Pydi Ramana @ Ramulu vs. Davarasety Manmadha Rao, Hon'ble Supreme Court has held in para 13 and 14 as under :-

13. In order to obtain a decree for specific performance, the plaintiff must aver and prove that he has performed his part of the contract and has always been ready and willing to perform the terms of the contract which are to be performed by him. Section 16(c) of the Specific Relief

Act mandate 'readiness and willingness' of the plaintiff to be averred and proved and it is a condition precedent to obtain the relief of specific performance.

14. There is distinction between the terms 'readiness' and 'willingness'. 'Readiness' is the capacity of the plaintiff to perform the contract which includes his financial position to pay the sale consideration. 'Willingness' is the conduct of the party.

21.5 In the present case plaintiff has made only averment in the plaint as well as before the Hon'ble Gujarat High Court that he is ready and willing to perform his part, but to prove his averment he has not produced any relevant documentary evidence to show his financial capacity to pay sale consideration. The plaintiff has remained silent and inactive for four years till filing of present Suit, even he has failed to bring on record that after the said Agreement to sell (banachitthi) that he has contacted, the defendant for performing his part of contract. Even, the plaintiff has not bring any evidence i.e. bank passbook, band draft or receipt of fixed deposit, that reflect his readiness to pay remain consideration. Thus, the plaintiff is failed to prove his readiness and willingness to perform his part.

21.6 There is averment in the plaint that defendant No. 2 had executed mortgage agreement in favour of defendant No. 5 and he has prayed for cancellation of that document but he is failed to bring that mortgage deed on record. Therefore, in absence of such mortgage deed on record, the plaintiff has failed in his duty to prove his case. It is also pertinent to mention here that the plaintiff has joined defendant no. 5 as party to suit proceeding and has not even made an attempt to bring that document mortgage deed on record by making even application for production of the document. Thus, in absence of mortgage deed, this

court cannot examine the prayer in suit qua that document.

- 21.7** It is upon the plaintiff to prove that he had the financial means to pay the cash amount on that specific date, he will need to produce bank statements showing a cash withdrawal matching the amount paid, occurring just before the execution of the agreement and he must produce reliable witnesses who can testify that the cash was counted and handed over to the defendants in their presence.
- 21.8** In view of the above discussions plaintiff fail to prove that he is ready and willing to perform his part of Agreement to sell and defendant No. 2 has executed the mortgage deed in favour of defendant No. 5 Hence, I reply issue No. 2 and 3 in Negative.

22. Issue Nos. 4, 5, 5A & 5B :-

- 22.1** It is the case of the plaintiff that power of attorney of defendant No. 2 in favour of defendant No. 5, Agreement to sell on dtd. 17/07/2014 vide Exh. 104, registered sale deed 1197, dtd. 08/12/2015 vide Exh. 106, registered sale deed 1085, dtd 11/04/2017 vide Exh. 107, and registered sale deed No. 787 and 788, dtd. 27/06/2018 vide Exh. 108 and 109 are illegal and null and void.
- 22.2** It is case of the plaintiff that defendants No. 1 to 3 had executed an agreement to sell (banachitthi) on date 13.09.2010, i.e, Exh. 99, which is unregistered, written on simple fullscape paper and signed by defendant No. 1 to 3 and the plaintiff has failed to proved the alleged agreement to sell executed by defendant No. 1 to 3 in his favour. The defendant No. 2 and 4 original owner Natvarbhai and Kailashben had executed registered agreement to sell without possession in favour of defendant No. 6 Ashokbhai Ambalal Patel land bearing survey No. 259 paiki 7418.5 Sq.Mtr. Survey No. 260, 1618.5 Sq.Mtr., total 9037

Sq.Mtr. It transpires from, the page No. 5 and 6, agreement to sell Exh. 104, the consideration of Rs. 12,00,000/- was paid through the cheque of The Mehsana Urban Co-operative Bank. The defendant No. 2 and 4 have executed agreement to sell for their 50% share from the suit property bearing Survey No 259 and 260.

22.3 The plaintiff has produced registered sale deed No. 1197/15 at Exh. 106 which was executed by defendant No. 1 Phulabhai, defendant No. 3.1 Madhuben, defendant No. 3.2 Komalben, defendant No. 3.3 Alpaben, defendant No. 3.4 Niravbhai in favour of defendant No. 7 Mansukhbhai Prajapati and defendant No. 8 Chinubhai Patel of their 50% share from the suit property bearing Survey No. 259 ad-measuring 1-44-76, Survey No. 260 ad-measuring 0-32-37 and defendant No. 2 Natvarbhai and defendant No. 4 Kailashben are the confirming parties of sale deed. The detail of consideration of Rs. 10 lakh was paid through cheque of Kalupur Co-operative Bank and H. D. F. C. Bank which is reflected on page No. 13 to 15 of the said document.

22.4 It is transpires from the Exh. 107 that registered sale deed No. 1085/17, Dt. 14/11/2017 came to be executed by defendant No. 7 and 8 i.e. Mansukhbhai Prajapati and Chinubhai Patel in favour of defendant No. 9 and 10 i.e. Ankitbhai and Ketanbhai for the suit property No. 259/paiki 1 ad-measuring 0-72-37 and suit property No. 260/paiki 1 ad-measuring 0-16-18. The detail of consideration of Rs. 12 lakhs was paid through cheque of Ahmedabad Mercantile Co-operative Bank which is reflected on page No. 10 and 11 of Exh. 107 document.

22.5 Thereafter, power of attorney holder defendant No. 6 of defendant No. 2 Natvarbhai and defendant No. 4 Kailashben had executed registered sale deed No. 787/18 in favour of defendant No. 11 Anandiben Patel for the land bearing Survey No. 259 ad-measuring 0-78-38 vide Exh. 108.

The detail of consideration of Rs. 14,13,350/- was paid through cheque of The Mehsana Urban Co-operative Bank and I.C.I.C.I. Bank which is reflected on page No. 10 and 11 of Exh. 108 document. This sale deed was signed by defendant No. 6 Ashok Patel on behalf of the defendant No. 2 Natvarbhai Damodardas as power of attorney holder and Kailashben has signed herself.

- 22.6** Thereafter, power of attorney holder defendant No. 6 at Exh. 110 of defendant No. 2 Natvarbhai and defendant No. 4 Kailashben had executed registered sale deed No. 788/18 in favour of defendant No. 11 Anandiben Patel for the land bearing Survey No. 260 ad-measuring 0-16-19 vide Exh.109. The detail of consideration of Rs. 2,10,000/- was paid in cash which is reflected on page No. 10 of Exh.109. This sale deed was signed by defendant No. 6 Ashok Patel on behalf of the defendant No. 2 Natvarbhai Damodardas as power of attorney holder and Kailashben has signed that document by herself.

Thus, the power of attorney which is registered with No. 1477/2014, in respect of the suit property bearing survey No. 259 and 260 executed by defendant No. 2 Natvarbhai Damodardas in favour of defendant No. 6 Ashokbhai Patel is not challenged by defendant No. 2 Natvarbhai Damodardas. Further the plaintiff has no say to in the power of attorney and one who can challenge that document is defendant no. 2, who has not challenged the same till date, nor he has disputed such document in Written Statement, therefore, the said power of attorney cannot be termed as illegal.

- 22.7** The plaintiff has challenged the agreement to sell No. 997/14, prayed relief for declaration and permanent injunction. Further prayed for sale deed Nos. 1197/15, 1085/17, 787/18 and 788/18 are null and void and not binding to him. The above instruments, power of attorney and

registered sale deed were executed and registered before the sub-registrar in purview of the registration procedure. The parties of the instruments were not challenged, not denial therefore there were no dispute to execution of the instruments.

Section 54 of the Transfer of Property Act define as under:

"Sale" as the transfer of ownership of immovable property in exchange for a price paid, promised, or part paid and part-promised.

Sale how made.- Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of reversion or other intangible thing, can be made only by a registered instrument. In the case of tangible immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property. Delivery of the tangible immovable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Further as per section 19(B) of Specific Relief Act, 1963 defines any other person claiming under him by a title arising subsequently to the contract, except a transferee for a valuable who has paid his money in good faith and without notice of the original contract.

22.8 The Hon'ble Supreme Court in case of **Chowdamma (D) BY LR and Another vs. Venkatappa (D) BY LRS and another** Civil Appeal No. 11330 of 2011 dated 25.08.2025 observed while dealing with Burden of Proof and Onus of Proof in para 43 has referred case of Anil Rishi v. Gurbaksh Singh has observed as under that:

19. There is another aspect of the matter which should be borne in mind. A distinction exists between burden of proof and onus of proof.

The right to begin follows onus probandi. It assumes importance in the early stage of a case. The question of onus of proof has greater force, where the question is, which party is to begin. Burden of proof is used in three ways: (i) to indicate the duty of bringing forward evidence in support of a proposition at the beginning or later; (ii) to make that of establishing a proposition as against all counter-evidence; and

(iii) an indiscriminate use in which it may mean either or both of the others. The elementary rule in Section 101 is inflexible.

In terms of Section 102 the initial onus is always on the plaintiff and if he discharges that onus and makes out a case which entitles him to a relief, the onus shifts to the defendant to prove those circumstances, if any, which would disentitle the plaintiff to the same.”

22.9 In case of **Addagada Raghavamma and Anr. v. Addagada Chenchamma and Anr.** 8, The Hon'ble Supreme Court observed in para no.12 as under :-

“12. ... There is an essential distinction between burden of proof and onus of proof : burden of proof lies upon the person who has to prove a fact and it never shifts, but the onus of proof shifts. Such considerations, having regard to the circumstances of a particular case, may shift the onus of proof. Such a shifting of onus is a continuous process in the evaluation of evidence. ...” 7 (2006) 5 SCC 558 8 1963 SCC OnLine SC 37.

22.10 The Hon'ble Supreme Court in case of **Rathnavathi v/s. Kavita Ganashamdas** reported in 2014 (0) AIJEL-SC 55848 held in para 19 and 20 as under that:

19. The High Court in its judgment held that the plaintiff was in possession of suit house; that the plaintiff performed her part of the agreement; that the plaintiff paid the entire sale consideration of Rs.

3,50,000/- to defendant No. 2; that the plaintiff was ready and willing to perform her part of agreement; that defendant No. 2 failed to perform her part of the agreement thereby rendering her liable to perform her part of agreement; and that subsequent sale even if made by defendant No. 2 in favour of defendant no. 1 was not binding on the plaintiff because it was not bona fide.

20. The High Court, however, after deciding the issues in favour of the plaintiff, directed that in order to weigh the equities between the parties and keeping in view the price escalation, which is unavoidable in present days, the plaintiff will pay an additional sum of Rs. 4 lacs over and above Rs. 3,50,000/- to defendant no. 2 for obtaining sale deed in her favour.

22.11 The Hon'ble Supreme Court in case of **Indian Overseas Bank vs. M.A.S. Subramanian & Ors.** in civil appeal of 2025 (Arising out of Diary No. 38616 of 2018) held in para 6 and 7 as under that:

6. It is well settled that an agreement for sale in respect of an immovable property does not transfer title in favour of the purchaser under the agreement. Section 54 agreement of for the sale Transfer does of not Property create any In view of Act, 1882, interest in an the property. The only mode by which an immovable property worth more than Rs.100/- (Rupees one hundred) can be sold is by a sale deed duly registered in accordance with the Indian Registration Act, 1908.

7. In this case, the NCLAT has recorded a finding that late Shri M.A.Shanmugam who was the owner of the property subject matter of these appeals had agreed to sell the property to the company against the transfer of shares of the company in his favour. that the company was in performance of the contract. The NCLAT has recorded a finding possession by way of part Based on the said finding, the sale deed

dated 31 st October, 2011 purportedly executed by the legal representatives of late Shri M.A.Shanmugam has been held as not binding on the company. So long as the original owner had not sold the property by execution of a registered sale deed, property. He continued to be the legal owner of the Admittedly, he had not executed a sale deed in favour of the company. Therefore, the NCLAT in its limited jurisdiction could not have held that the sale deed dated 31 st October, 2011 was not binding on the company as the company was in possession by way of part performance of the contract.

22.12 It is prayed by the plaintiff that the all documents executed by the defendants in favour of other defendants are illegal, null and void. As per the issues No. 4, 5, 5A and 5B it is upon the plaintiff to prove these issues by leading independent and cogent evidence. As discussed above, plaintiff has neither examined any witness nor produced any documentary evidence to bring on record that the Agreement to sell No. 997/14, sale deed Nos. 1197/15, 1085/17, 787/18 and 788/18 illegal and null and void. The respective parties of the instruments have not denied the execution of the said instruments. Thus, plaintiff is failed to prove that the Agreement to sell No. 997/14, dt. 17/07/2014, sale deed No. 1197/15, Dt. 08/12/2015, Sale deed No. 1085/17, Dt. 11/04/2017, Sale deed No. 787/18 and 788/18, Dt. 27/06/2018 are illegal and it should be declared null and void. Hence, I reply issue No. 4, 5, 5A and 5B in Negative.

23. Issue No. 6, 7.5 & 7.6

The plaintiff has filed the present suit seeking specific performance of the Agreement to sell of 13/09/2010 and preferred the present suit on dtd. 02/12/2014 after approximately 4 years. Before filing the present suit he has served legal notice to the defendant No. 1 to 4 on

17/07/2014 and claiming the date of issuance of legal notice as cause of action arise to file the present suit. The plaintiff has relied upon the Judgment of Hon'ble Supreme Court in case of **Urvashiben & ANR v/s Krishnakant Manuprasad Trivedi** reported in 2018 Law Suit(SC) 1280, Ld. Advocate for the plaintiff stated that Hon'ble Supreme Court has held that "When the time is not fix in the agreement the limitation of 3 years to file a suit for specific performance would begin, when the plaintiff has notice that the defendant has refused. ATS Dated 13.03.1992". In present case the banachitthi was executed on 13/09/2010 and as per limitation act the limitation to preferred suit of the specific performance is 3 years. Plaintiff has mentioned that he has contact defendant but no specific date was narrated in the plaint stating when he contacted the defendant seeking performance of banachitthi. Therefore, the plaintiff has remained silent till before issuing legal notices. Even other the plaintiff has not examined any witness and have failed to produce any documentary evidence to show that he has made effort and defendants have denied the performance. As discussed earlier unregistered Agreement to sell does not create any right and interest.

As per section 54 of the Limitation Act, it provides a limitation period of 3 years for filing a suit for specific performance of a contract. Time runs from the date fixed for performance, or if no date is fixed, when the plaintiff has notice that performance is refused.

Looking to the decision of Urvashiben (supra), the same pertains to the issue of Order 7 Rule 11(d), whereas in the present case entire trial is concluded and even during the course of trial the plaintiff has failed to establish that the suit is filed within the period of limitation. Thus, he decision of Urvashiben would not be helpful to the plaintiff. As per above discussion the suit of the plaintiff is barred by the law of

limitation plaintiff failed to prove that he has filed the present suit in limitation period and having right and interest in the suit property as per Agreement to sell (banachitthi). Hence, I reply issue No. 6, 7.5 and 7.6 in Negative.

24. Issue No. 7

24.1 The Ld. Advocate for the plaintiff had submitted list of 21 Judgments, some are discuss at relevant issues. The facts of the present case is differ and not helpful to the plaintiff.

Sr No.	Details	Crux of the matter	It is not helpful to the plaintiff in present case
1	1999 AIR(SC) 1441 Vidhyadhar vs Manikrao & Anr. (1999 Law Suit (SC) 316)	The suit for redemption of the mortgage by conditional sale, disputed land was in possession of plaintiff, defendant No. 2 admitted the whole claim of the plaintiff and defendant No. 1 contested the suit and pleaded that the document is in favour was not a mortgage.	Here in present case the suit of the plaintiff is related to specific performance on the basis of unregistered banachitthi and disputed land is not in possession of the plaintiff.
2	1982 2 GLR 455 Tribhovan C Panchal vs Ladhibai W/O Punjaram (1982 Law Suit(SC) 66)	The suit is under Bombay Rents, Hotel and Lodging Houses Rates Control Act, the plaintiff is a tenant, thus, the dispute between the parties capacity of landlord and tenant.	Here in present case the suit of the plaintiff is related to specific performance.
3	2025 LawSuit (Guj) 66 Chowdamma (D) BY LR and Another versus Venkatappa	Dispute between the parties regarding partition and legitimacy of heirs. In the Hon'ble Supreme Court held that, under Section 50 of Evidence Act	Though original land owner not challenged the plaintiff suit adverse inference cannot drawn against them. It is duty of plaintiff to prove his case.

	(D) BY LRS and Anr.	presumption from long cohabitation and adverse inference under Section 114(g)	
4	IN THE HIGH COURT OF GUJARAT AT AHMEDABA D APPEAL FROM ORDER NO. 457 of 2016 Ghnshyambha i Dhirubhai Barvaliya versus Rasikbhai Dhirubhai Ambaliya & Anr.	It is order under Order 43, Rule 1(r) against temporary injection application. The plaintiff had paid Rs. 26,00,000/- in total consideration of Rs. 51,00,000/- and possession of this subject land was handed over to the plaintiff.	It is order related to temporary injunction. Hence, it is not helpful to the plaintiff in final order.
5	2023 AIJEL SC 70776 R. Hemalatha versus Kashthuri	It is regarding on registered Agreement to sell can be admitted as evidence of a contract in a suit for specific performance under Section 49 of the Registration Act.	The Agreement to sell Exh. 99 is admitted as evidence and as per Section 49 of the Registration Act.
6	2025 LawSuit (SC) 685. (para 10) Murugananda m versus Muniyandi (Died) Through LRS	It is regarding interlocutory order under Order 7 Rule 14(3) of the CPC for bringing on record and marking the document for genuine reason unable to produce and photocopy of the said document was enclosed with the plaint on ground of Section 70(1)(A) and Section 49 of the Registration Act.	The plaintiff has produced original banachitthi and it was already Exhibited.
7	2018 LawSuit(SC) 1280 Urvashiben &	When the time is not fix in the agreement the limitation of 3 years to file a suit for specific	In present case the banachitthi was executed on 13/09/2010 and as per limitation act suit of the

	ANR v/s Krishnakant Manuprasad Trivedi	performance would begin, when the plaintiff has notice that the defendant has refused. ATS Dated 13.03.1992	specific performance will be filed within 3 years. Plaintiff has mentioned that he has contact defendant but no specific date was narrated in the plaint.
8	2024 LawSuit(SC) 1048 Manjit Singh & ANR. V/S Darshana Devi & Ors.	Subsequent, purchaser bear burden to prove good faith under Section 19(b) of SRA.	Being master of plaint it is duty of plaintiff to prove his case. In the present case plaintiff failed to prove that defendant No. 1 to 3 have executed banachithhi in his favour. Therefore, as per Transfer of Property Act, Section 54, Section 19(b) of SRA defendant is not bound to prove bonafide purchaser of the suit property.
9	2020 LawSuit(SC) 581 B Santoshamma & Anr v/s D Sarala & Anr.	Necessary party to a suit for specific performance.	Herein present case plaintiff failed to prove execution of banachitthi in his favour. Therefore, no need to discuss part performance.
10	2012 LawSuit(GUJ) 1533 Amrutbhai Nazabhai Chavda V/S Valjibhai Palabhai Chavda	Suit property given to the defendant for the residential purpose and there was no intention for sell, Agreement to sell is unregistered. The stamp paper is purchased in plaintiff's name. Consideration received by cheque. Section 53(A) of Transfer of Property Act.	The plaintiff failed to prove payment of consideration.
11	2024 LawSuit(SC) 584 Yogesh Goyanka V/S Govind & Ors.	Doctrine of lis pendancy does not rendered transfer void but subject to litigation outcomes, implement of transfere pendent lita permissible to protect interest amib potential collusion	It is not in dispute that plaintiff has registered lis pendant in respect of the suit property before sub-registrar.

		among original party.	
12	2023 LawSuit(SC) 1123 P Kishore Kumar V/S Vittal K Patkar	No one can confer a better title than what he himself has. The dispute regarding personal and government.	It is plaintiff's case that defendant No. 1 to 3 are not sole owner of the suit property. Hence, it is not helpful to plaintiff.
13	2024 (0) AIJEL-SC 74117 Shingara Singh v/s Daljit Singh & Anr.	Principle of lis pendancy, constructive notice	It is not in dispute that plaintiff has registered lis pendant in respect of the suit property before sub-registrar.
14	1953 (0) AIJEL-SC 8352 Durga Prasad Versus Deep Chand	A prior purchaser can enforce their contract against a vendor even if a subsequent sale deed was registered with a third party. The court held the subsequent purchaser must join the conveyance.	In the present case plaintiff has already joined subsequent purchaser as a defendant.
15	1969 LawSuit(SC) 414 Nathulal versus Phoolchand	Case regarding contract law and part performance (Section 53A of the TP Act. The court ruled that a buyer who took possession but didnt pay the full price could retain it because the seller failed to fulfill prior obligations, such as clearing land records and obtaining transfer permissions.	Plaintiff is not in possession of suit property and he is failed to prove consideration in respect of banachitthi.
16	2009 LawSuit(SC) 240 Azhar Sultana versus B Rajamani and Ors.	Agreement to sell does not create ownership. ownership transfer only through a registered sale deed. Bona fide purchaser protection if a later puchaser buys the property for value, has	The suit of the plaintiff is on basis of unregistered banachitthi and no any kind of documentary proof that he has paid any consideration.

		no knowledge of earlier agreement, and the sale deed is properly registered.	
17	Dineshbhai Bachubhai Kathiria versus Fulabhai Damodardas Gajjar	Plaintiff had declared before the Hon'ble High Court showing readiness and willingness to perform his part.	The plaintiff has filed the present suit in the year of 2014 and he merely mentioned about his readiness and willingness to perform his part but he has not produced any documentary evidence that he intend to pay consideration.
18	2016 (0) AIJEL-SC 59174 Syscon Consultants P. Ltd. Versus Primella Sanitary Prod. Private Limited	Limitation is for arbitrator to decide. the question whether a claim is time barred is generally a matter for the arbitral tribunal to decide. Limited scope of court at referral stage, doctrine of kompetenz - kompetenz	-----
19	2010 (0) AIJEL-SC 48942 Kammana Sambamurthy (D) By Lrs. versus Kalipatnapu Atchutamma (D)	Authority and co-owners. A seller cannot bind a co-owner in an agreement when that co-owners share devolved separately and no express or implied authority was proved. since the agreement was binding on the vendor to the extent of his half share, specific performance could be granted to that extent. contractual obligation related to the vendors share only.	Plaintiff is failed to prove execution of banachitthi in his favour, he has paid consideration in respect of banachitthi.
20	2014 (0) AIJEL-SC 55848 Rathnavathi versus Kavita	No bar under order II rule 2 C.P.C. The bar applies only where the cause of action in both suits is the same and the	Plaintiff is failed to prove execution of banachitthi in his favour, he has paid consideration in respect of banachitthi. Therefore no

	Ganashamdas	<p>plaintiff was entitled to the second relief in the earlier suit. no date for performance is fixed in agreement limitation under article 54 begins when refusal to perform is first communicated or know.</p> <p>Limitation:- When no specific date is fixed for performance in an agreement, the limitation period for filing a suit for specific performance begins only when the plaintiff has notice that the defendant has refused to perform the contract.</p>	question arise to discuss about limitation.
21	2010 LawSuit(SC) 2 Daya Singh and Ant. versus Gurdev Singh (Dead) By Lrs. and Others.	cause of action doesn't arise at the time of compromise. suit not barred simply due to delay.	Considering the fact of the daya singh vs Gurdev Singh it is not helpful to the plaintiff.

24.2 The plaintiff has claimed his right over the suit property on the strength of the banachitthi dated 13/09/2010 as discussed above the plaintiff himself failed to established his case, execution of banachitthi and payment of earnest money. Even the defendant's set of evidence in any manner cannot be taken into consideration for the purpose of taking the case of plaintiff as proved, which is the fundamental basic principle. In the present case the plaintiff has failed to prove execution of banachitthi in his favour and recently in case of **Natubhai Dhirubhai Naik v. Alkeshbhai Kashiram Patel (2025)**, The Hon'ble High Court Of Gujarat held that "*where transactions look like "camouflaged money-lending" (simple paper, cash payments, no registration), the court will*

refuse to grant specific performance.

24.3 According to the plaintiff, after execution of banachitthi in favour of plaintiff', the original owner of the suit land were executed sale deed in favour of the subsequent defendant No. 7 to 11 as per the Transfer of Property Act Section 54, the purchaser (the subsequent defendant No. 7 to 11) become registered owner of the suit property and under the provision of section-19(b) of S R Act,they are bonafide purchaser of the suit property. The plaintiff has already admitted that the defendant No.11 having the possession of the suit land .Therefore, the plaintiff has failed to prove that the said sale deed No. 1197, 1085, 787 and 788 were illegal, null and void.

24.4 The Hon'ble Supreme Court in case of **Shingara Singh vs. Daljit Singh & Anr.** and referred in **Sanjay Verma vs. Manik Roy³** was dealing with a suit for specific performance. During pendency of the suit, a temporary injunction was granted in favour of the plaintiff and different portions of the suit land were sold where after the purchasers applied for implement, which was rejected by the Trial Court but allowed by the High Court against which special leave to appeal was filed. In the above background, this Court observed the following in para 12:

“12. The principles specified in Section 52 of the TP Act are in accordance with equity, good conscience or justice because they rest upon an equitable and just foundation that it will be 3 (2006) 13 SCC 60812 impossible to bring an action or suit to a successful termination if alienations are permitted to prevail. A transferee pendente lite is bound by the decree just as much as he was a party to the suit. The principle of lis pendens embodied in Section 52 of the TP Act being a principle of public policy, no question of good faith or bona fide arises. The principle underlying Section 52 is that a litigating party is exempted from taking notice of a title acquired during the pendency of

the litigation. The mere pendency of a suit does not prevent one of the parties from dealing with the property constituting the subject-matter of the suit. The section only postulates a condition that the alienation will in no manner affect the rights of the other party under any decree which may be passed in the suit unless the property was alienated with the permission of the court.”

In present case according to the plaintiff subsequent registered sale deed were executed after registration of lis pendent as held in above case "The mere pendency of a suit does not prevent one of the parties from dealing with the property constituting the subject-matter of the suit". In present case defendant has admitted that he has no knowledge about registration of lis pendency. Furthermore, when plaintiff failed to execution of the banachitthi at Exh. 99 principle laid down in above mentioned case it is not helpful to the plaintiff.

24.5 The Hon'ble Supreme Court in case of **Sukhwinder Singh vs. Jagroop Singh on 28 January, 2020** held in para 12 as under that:

12. In the background of the above consideration, the plaintiff in any event was not entitled to a decree for specific performance and possession of the property against the defendant No.1. In the circumstance the declaration of the Sale Deed dated 11.06.2004 executed by the defendant No.1 in favour of the defendant No.2 to term the same as null and void as claimed by the plaintiff also did not arise. Despite the said position what is necessary to be taken note is that the sale in favour of the defendant No.2 was on 11.06.2004 i.e. subsequent to the date of the suit agreement dated 03.01.2004. Despite holding that the defendant No.2 is a bonafide purchaser, what cannot be lost sight is that the defendant No.1 had received a sum of Rs.69,500/- from the plaintiff as far back as on 03.01.2004. That apart if the transaction was concluded at that stage the plaintiff would have been entitled to the benefit of the land. Even as per the ground at (Para x) raised by the

defendant No.2 in this appeal, it would indicate that there has been considerable appreciation in the market price. Though in the normal circumstance the return of the advance received and the compensation for denial of the property was to be paid by the defendant No.1, as noted, the defendant No.1 having lost interest in the property has not appeared in the instant proceedings nor is there any material to indicate that he has benefited from the appreciation since even as per the contention of the plaintiff he has sold the property for a lesser price. In that situation the plaintiff cannot be left 'high and dry'. If that be the position the defendant No.2 who has benefited from the property will have to repay the advance and compensate the plaintiff in the peculiar facts of the instant case. In that circumstances the defendant No. 2 (the appellant herein) is required to be directed to pay a sum of Rs. 3,50,000/- only which is inclusive of the advance amount of Rs. 69,500/- to the plaintiff (the respondent No. 1 herein) in full quit of all claims. the said amount is also to be directed to be paid by the defendant No. 2 to the plaintiff within a period of three months failing which the same should carry interest at 12% per annum till payment. The plaintiff should also be entitled to withdraw the amount of Rs. 70,500/- stated to have been deposited by him before the Trial Court.

In instant case plaintiff is failed to prove execution of banachitthi, in absence of any payment receipt of Rs. 3,00,000/- paid to the defendant No. 1 to 3. The plaintiff had neither examine any witness nor produced any documentary evidence to prove the payment of Rs. 3,00,000/-. The plaintiff had not even prayed for recovery of earnest amount of Rs. 3 lakh. Therefore, the question has not arise regarding return the said amount.

25. In view of the aforesaid discussion, the facts and circumstance of the case, the findings given on the above issues, documents placed on

record and evidence led, the plaintiff has failed to prove his case on the balance of preponderance of probabilities. In view of the above discussions and observation made by this Court, I pass the following order in the interest of justice towards Issue No.8. :-

:: FINAL ORDER ::

- (i) The Special Civil Suit No. 86/2017 is hereby Rejected.
- (ii) Parties to bear their own cost.
- (iii) No order as to cost.
- (iv) Decree be drawn accordingly.

Sign and Pronounce in the open court today on 17th day of March in the year of 2026.

Place:- Kapadwanj
Date:- 17/03/2026

(Mayadevi R. Shukla)
Additional Senior Civil Judge
Kapadwanj
Code No. GJ00681