

SPCS/1/18
ORDER BELOW EXH- 06

1. By this order I shall dispose of this application with the prayer of local investigation of the disputed property which is the subject matter of this suit.

2. Learned Advocate for the plaintiff Mr. A A Mehta has submitted that the local inspection of the property is necessary to decide the questions involved in this suit for cancellation of the document. The plaintiff and the defendants are relatives. He has further submitted that it is necessary to have local inspection of the spot to decide interim application as the plaintiff is seeking relief of cancellation of the sale-deed. Learned Advocate for the plaintiff has, further, submitted that local inspection of the suit property will not make any harm to the defendant as the possession is already with the plaintiff. The plaintiff is an old person and the defendants have not acted in a manner in which they were supposed to act as per terms of the contract.

3. *Per contra*, Learned Advocate Mr. Bhatt for the defendant has submitted that the document submitted with the plaint does not have consistency. He has drawn the attention of this Court to the

documents at Mark 3/6 and 3/8 and submitted that the document for which the prayer of cancellation is asked for does not show date of its execution. It is a notarised document and that too the relief for this instrument is beyond the period of limitation. He has further argued that the plaintiff cannot be permitted to collect evidence of the possession in guise of spot inspection, and therefore, this application be rejected. In support of his submission, he has relied upon the Judgment of the Hon'ble High Court of Gujarat in the case of *Merani Kalubhai Jivabhai Vs. Gangaben Devshibhai Makwana, Special Civil Application No. 11622 of 2014*.

4. Read the application and the reply to the application. The main reason mentioned in the application is to show that the plaintiff is in possession of the property and cultivating the land. This fact is required to be brought on record. Hon'ble High Court of Gujarat in the case of *Merani Kalubhai Jivabhai Vs. Gangaben Devshibhai Makwana, Special Civil Application No. 11622 of 2014*, in para 4 of the judgment it is held :

“The question as to who is in possession, is an issue to be decided by the Court on the basis of evidence either oral or documentary to be adduced by the parties. Such function cannot be delegated to the Court

Commissioner would not be in a position to determine as to who is in possession of the property when there is dispute between the parties regarding the same.”

5. Considering all the contentions raised by both the sides and the judgment (*Supra*) relied by the defendant and keeping in mind **Rule 9 of the Order 26** of the Code of Civil Procedure, 1908 and **Rule 7 of the Order 39** of the Code of Civil Procedure, 1908, I do not find any justifiable reason for granting this application. Therefore, this application is rejected.

6. No Order as to cost.

Pronounced in the open Court today i.e. 6th February, 2018.

Place : KHEDA

(PRIYADARSHINI PINAKINBHAI MOKASHI)

Principal Senior Civil Judge,
And, Additional Chief Judicial Magistrate.

Date : 06-02-2018

Code No. GJ00654