

**IN THE COURT OF HON'BLE 3RD ADDITIONAL SENIOR CIVIL JUDGE,  
KADI, DISTRICT MAHESANA**

=====

**ORDER BELOW EXH.21  
IN REGULAR CIVIL SUIT NO.75/2022**

1. The plaintiff has filed the present suit for specific performance in respect of the land bearing old block No.70 area ad measuring 21285 Sq.mt., paiki undivided land 3608 Sq.mt. after being re-survey new block NO.252 area 3537 situated moje Bavlu, Taluka Kadi (**Hereinafter referred it to as 'suit property' and / or 'suit land'**) for which agreement/Banakhat were executed on 2/8/2013 in favour of deceased Kusumben Pravinchandra Patel at Sr. No.4074, for which defendant No.1 be executed register sale deed in favour of the plaintiffs and sale deed No.3435/2022, dated 3-3-2022 executed by defendant No.1 in favour to defendant No.2 before the Sub-Registrar be declared illegal, malicious and bogus and asked for permanent injunction against the defendants that defendants and it's person not to sale either through Banakhat, mortgage or any other way and transfer, alienate or to give to any other third party and cost of the suit be awarded from defendants.
2. The present application has been preferred by the Ld. Advocate for the defendant No.1 under the provision of Order-7, Rule-11(d) of the Civil Procedure Code, 1908. The plaintiff has filed the present suit against the defendants for the specific performance of contract/Banakhat No.4074/2013, dated 02-08-2013 and to

get declaration of cancellation and illegal sale deed No.3435/2022 executed by defendant No.1 in collusion with defendant No.2 in his favour in respect of the agriculture land bearing old block No.70 area 21285 Sq.mt. out of which undivided land area 3608 sq.mt. after being it's re-surveyed new block number given as 252 area 3537 sq.mt. and asked permanent injunction order against defendants. Present suit filed by the plaintiffs on the basis of bogus, illegal and contrary deed dated 02/08/2023 against the provision of Indian Contract Act and contrary to the provision of Registration Act and by making clever drafting and filed the suit to get decreetal order of specific performance against the defendants. It is further contended that as the plaintiffs have stated that Banakhat was in their favour, but on that date the suit land was being recorded as block number and as per Land Revenue Code and Act of Fragmentation, there was no division of the lands and contrary to the Act if any contract or agreement executed which was barred by the law and until permission not granted by the competent revenue authority there cannot be transaction of transfer be done and suit land shown in the so called Banakhat of the plaintiffs was of having nature of block number type and Banakhat of such type of undivided land was done, hence it is barred by by the law and it cannot be enforced by the law. As such, Banakhat of the plaintiffs is illegal from ab initio, hence it cannot be enforced. It is further contended that after execution of Banakhat dated 02/08/2013,

plaintiffs have not initiated any legal proceeding in respect of the suit property till 2022. It is further contended that after after division of blocks, block survey No.70 devolved in favour of defendants and given number as block No.70 paiki 1 and after re-survey given new survey No.252 and continued in the name of defendants, but plaintiffs denied the said facts which cannot be believable. So considering the above fact, present suit filed by the plaintiff is false, illegal and beyond time limit and barred by the provision of C.P.C, suit of the plaintiffs be dismissed under the Order-7, Rule-11(d) of the Civil Procedure Code, 1908 and cost of the application be awarded from plaintiffs.

3. Against the present application of defendant No.1, plaintiffs have filed written statement at **Exh.22** and averred that the facts of of defendant No.1 are not true and correct and denied in *toto*. It is contended that allegation in respect of suit is filed contrary to the provision of Indian Contract Act, Stamp Act and Registration Act and bogus, illegal, fraudulent and by making clever drafting and till permission not given as per Fragmentation Act and contrary condition of the law for which Banakhat is deemed as barred by law and so called Banakhat is illegal and contrary from ab initio to the provision of law and suit is filed after the Banakhat dated 2-08-2013 in the year 2022, hence there is barred of law of limitation are false and frivolous and denied

the same and facts as stated by defendant is required to be dismissed.

4. Against the reply of the defendant Nos.1 to 4, Ld. Advocate for the plaintiffs has filed rejoinder affidavit at Exh.15 and denied the averments and submission made by the defendants NO.1 to 4 in reply (Exh.11) denied in toto and adhere to the facts and averments of the suit as well as injunction application filed by them.

5. This Court has kept the matter for argument. Ld. Advocate for the plaintiffs has submitted written argument vide Exh.23 and heard the arguments of Ld. Advocates for the defendants at length. In support of the arguments, Ld. Advocate for the plaintiffs has produced following citations :

1) 2006(0) AIJEL-SC 36978 SUPREME COURT OF INDIA (BOMBAY HIGH COURT) Gunwantbhai Mulchand Shah Versus Anton Elis Farel, (Civil Appeal No. 1492 of 2006, dated 6/03/2006).

2) 1992(0) AIJEL-HC 213058, Thakorlal V. Patel Versus Lt. Col. Syed Badruddin, (First Appeal No.658 of 1980, dated September 7, 1992).

6. Ld. Advocate for the defendants has submitted authorities which are as under :

1) 2019 (2) G.L.H, 559, Emarld Co-operative Housing Society Versus Decd. Gulamkadar & otrs.

2) Manubhai Mayabhai Aahir Versus Hemaben Narsinh.

3) Shantilal Shankarbhai Patel V/s. Patel Dalsukhbhai Nanabhai (Decd).

7. Now, it is well settled law that at the time of deciding an application under Order-7, Rule-11 of the C.P.C, only plaint and whatever documents adduced by the plaintiff can be taken into consideration. Now on plain reading of the plaint-Exh.1 the plaintiffs have filed the present suit to get specific performance of contract on the basis of registered Banakhat dated 2/08/2013
  
8. From the aforesaid fact it becomes clear that as per the nature of the suit along with interest of the defendant no.1,  
so far as the suit property he has possess the undivided share in the subject matter property the partition of the plot is not done. At that time with the hope of the block partition out of the land having joint ownership, the registered Banakhat No. 4074 dated 02-08-2013 was executed by the defendant in favour of the late mother of the plaintiff.
  
9. After that the share of defendant No.1 and in this regard the sale price of Rs. 9,25,000-/( Rupees nine lacks twenty five thousands ) was fixed and towards it Rs.8,25,000-/- ( Rupees eight lacks twenty five thousands only ) paid to defendants. not only afterwards remaining amount of Rs.1,00,000-/- (Rupees one lacks only ) also paid and get receipt for it, and by this way whole consideration paid to defendants before executing the sale deed.

10. At this juncture also noted that irrespective of the suit property other property of the defendant which is situated at Village Bavlu also purchased by the plaintiff so, present transaction is not the sole or first transaction for both the parties , they have also in contact from earlier transaction.
11. Now considering the document in question I,e Banakhat , as per important condition of the Banakhat, upon transferring the suit property being the land in N.A. by the Vendor and clearing the title thereof when the Vendor would execute the Sale Deed, at that time the remaining payment was to be done by the purchaser of the suit property and the Vendor has also to get done the block partition at his costs.
12. **Thus, it is submitted by the plaintiff that in this case he has implemented his conditions regarding the Banakhat,** but the opposite side has not co-operated the plaintiff. Regarding this submission the defendant by giving the present application contended that regarding the Banakhat of the year 2013, and subject matter of the suit property I,e S N. 70 also divided as block and create a new S.N. 70 paiki 1 , in the year 2016, and also village form i.e Pani patrak notified in revenue record for the said number, but plaintiff not attempt to aware about the parting in survey number in question,

13. Hence, when separate Survey Number i.e. 70/1 is given in the year-2016 which is after known Re-Survey No.252 , yet the plaintiff has not done appropriate preparation for the implementation of the conditions of the Banakhat and also not discharge his duty in respect to Banakhat Dt.02-08-2013 vide Regi.No. 4074-2013, hence the suit filed by the plaintiff is time barred.

14. Regarding the aforesaid submission, this court clarifies that the Banakhat agreement was in force in the year 2013,, but for the conditions stipulated therein the obligations are upon both the parties i.e. upon fulfilling the liability of the definite incident the cause of action arises for the implementation of the agreement. With the said condition the plaintiff has raised the dispute by implementing the , Banakhat in question at Mark.3/2 More over other dispute raised by the defendant about the Fragmentation Act and contended that on the date of execution of the Banakhat in question of the suit property which is already barred for any transaction, considering the said dispute , it is no doubt that no deny from the other side for the execution of the Banakhat in question of the suit matter, but for that evidence will have to be recorded for taking the decision specifically that in this regard for definite local village,, the fragmentation of which area should be considered.

Further to executed the document with regard to the property having fragmentation, there is a caveat that the same is subject to obtaining the permission from revenue department. And also another rider that adjacent land owner has privilege to purchase the so called land of fragmentation.

So there is no strait jacket formula to admit the other side submission for rejection of plaint in dispute raise in respect to Fragmentation Act. Further prima facie the fact is on the record that along with the other lands of the plaintiff already previously the transaction of Village Bavlu Ta Kadi is done upon executing the registered Sale Deed by the defendant No.1.

Moreover, it is also to be noted that even though the Banakhat dated -02-08-2013 executed by the defendant in favour of the late mother of the plaintiff was in force, thereafter in the year 2022 the registered Sale Deed is executed by defendant no. 1 in favour of the defendant no.2 and as per pleading that the plaintiff, inquire in record of right of suit land in respect to , change of Number of Survey Number at that time plaintiff, has come to know about it from the revenue record. So prima facie plaintiff give to particulars and stages that how to reach about the knowledge of the transaction of suit land in question ,

15. Considering such pleading when there is no any specific date of any year for the exact time limit in the original subject matter of the Banakhat in question at Mark 3/2, which is indicate the final limit for the discharge both side obligation , further more when the registered Sale Deed executed by the defendant No.1 to the defendant No.2 is of the year 2022, which the plaintiff learnt can be believed the cause of action for the plaintiff to file the present suit.
16. Further this court believes that as the plaintiff learnt specifically, denial of defendant No.1 for executing the registered Sale Deed instance of the subject matter Banakhat which is at Mark3/2,,so first time as per the pleading in which defendant no.1 and 2 jointly say to plaintiff that after lapse of 9 years , escalation in price of property , so they offer to plaintiff if plaintiff ready to pay addition amount of Rs.10,00,000-/( Rupees ten lacks only ) there after they jointly execute the sale deed in favour of the plaintiff, now as per such averments, present contention of the other side that is the counter offer which is consider as refusal.

In addition, It is submitted by the plaintiff that as the village form- 7/12 of the land were scattered, it is necessary to have consent of all the co-sharer in this regard and as the time passed,

in that regard there was no any dispute as per the submission of the plaintiff. Thus, with regard to the Banakhat dated 02-08-2013 ,, it is submitted by the plaintiff that the condition was stipulated that the event of partition was important condition and similarly the plaintiff has also submitted that as the new survey number was given to the all Survey Number of the land before one month of filing the suit, all the procedures in that regard was done in all the revenue records and hence revenue entry no. 9605 of the registered Sale Deed no. 3435-2022 was done in this case which was executed by the defendant No.1 in favour of the defendant no.2 and receiving the copy of the said registered Sale Deed On date 11-04-2022, the transfer of the suit land was found to have been done.

17. Thus, this court has noted that the plaintiff has specifically mentioned all the stages of communication to other side , in his pleading after executing the Banakhat on date 02-08-2013, which cannot be believed as the general /ordinary pleadings. More over plea that suit is barred by the Fragmentation Act for that dispute as per discussion in forgoing paragraph bar of fragmentation subject to some restriction and relaxation.
18. So considering the pleading, prayer of the suit, conduct of the defendants and litigation contested by the

