

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

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ORDER BELOW EXH. 20

IN REGULAR CIVIL SUIT NO. 74/2023

1. The plaintiff has filed the present suit for specific performance in respect of the agriculture land bearing survey No.446 old survey No.77/paiki 1 area Hecter-ARE-Sq.mt. 0/64/32, value /Aakar at Rs.1.70kps. of old tenure situated moje Sedarana, Taluka Kadi, District Mehsana (Hereinafter referred it to as 'suit property' and / or 'suit land') for which agreement/Banakhat were executed on 23/5/1976 and on 21/5/1980 and draft written by defendant No.4 in favour of plaintiffs for which defendants be executed register sale deed in favour of the plaintiffs and be declared that plaintiffs are the owners of the suit property and defendant No.1 in collusion with defendant No.4 executed registered sale deed No.6438/2010, dated 10-08-2010 be declared as illegal, null and void and sought for permanent injunction against defendants.
2. The present application has been preferred by the Ld. Advocate for the defendant No.4 under the provision of Order-7, Rule-11 of the Civil Procedure Code, 1908. The plaintiff has filed the present suit against the defendants for the specific performance of contract in respect of agriculture land bearing survey No.446 old survey NO.77/paiki 1 area Hecter-ARE-Sq.mt. 0/64/32, value /Aakar

at Rs.1.70kps. of old tenure situated moje Sedarana, Taluka Kadi, District Mehsana which is continued in the name of defendant No.4. It is further submitted that land was purchased by him from Thakor Gambhirji Motiji by paying the sale consideration amount by the registered sale deed No.6438, dated 10/08/2010 and since then land is in his occupation. It is further submitted that before re-survey land of area Hector-ARE-Sq.mt. 0-71-35 mutated in his name in the abstract of 7/12 of revenue record and thereafter being re-surveyed notified area as Hector-ARE-Sq.mt. 0-64-32 and mutated sale entry No.2441, dated 18/08/2010 which was certified and continued in his name in the abstract 7/12 of revenue record. It is contended that plaintiffs have not filed any appeal against the said sale entry nor filed any objection application before filing of the suit. It is further contended that contents of para-2 of the plaint wherein plaintiffs have stated that the suit property was purchased from defendant Nos.1 to 3 on 28/05/1976 and got agreement to sale and it was given in writing to Bharvad Gokalbhai Rudabhai on 21/05/1980 and in presence of witnesses obtained thumb impression of defendant Nos.1 and 2 on stamp paper of Rs.3.50/- and it was asked lamp sum amount of Rs.12000/- to be paid and after his death husband of plaintiff namely Kalubhai Gokalbhai was possessed it and after his death, possession is with the plaintiff and keep plaintiff in dark, defendant No.1 sold the suit property to defendant No.4 through registered sale deed NO.6438, dated 10.08.2010 and then after

defendant No.4 decided to sale at the cost of Rs.5,00,000/- and given in writing the draft are false and frivolous and filed the suit. It is further contended that the plaintiffs have suppressed the material facts that even having knowledge about the deed dated 10-08-2010, filed the suit beyond time limit and filed the suit beyond time limit. Also, it is contended that defendant No.4 never met to plaintiffs and not made signature in any of the draft and stated about sale and created forged draft against him and produced at mark 31. Also, plaintiffs have stated in para-1 and in sub-para(1) of para-11 of the plaint stated old survey NO.77/paiki 1, but the true old survey number is 76 paiki. So, plaintiffs have filed the suit beyond time limit and plaintiffs have filed the suit for specific performance of agreement / Banakhat as well as cancellation of the deed , but the plaintiffs suit is barred by the provision of Transfer of Property Act and law of limitation, hence suit of the plaintiffs be dismissed under the provision of Order-7, Rule-11 of the Civil Procedure Code, 1908.

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.4 are not true and correct and denied in toto. It is submitted that by considering the judgement of Hon' ble Apex Court passed in the P.V. Guru Raj Reddy REP. by G.P. Laxminarayan Reddy V/s. P. Niradha Reddy and others, in which it is laid down which documents be taken into consideration while deciding application

Order-7, Rule-11 of C.P.C. So, considering the judgment of Hon' ble Apex Court, present application of defendant is not tenable. It is contended that the present suit is for cancellation of the sale deed and specific performance and declaration and for permanent injunction. It is further submitted that father-in-law of plaintiff namely Bharvad Gokalbhai Rudabhai had purchased the suit property from defendant Nos.1 to 3 through the sale deed and then after defendant Nos.1 to 3 had executed Banakhat on stamp of Rs.3.50/- in favour father-in-law of plaintiff namely Bharvad Gokalbhai Rudabhai and amount of the sale consideration was fixed Rs.12,000/- out of which Rs.5,000/- paid on 21/5/1980 at the time of Banakhat and they have given assurance that after payment of rest of Rs.7,000/- they execute the registered sale deed and as such father-in-law of plaintiff namely Bharvad Gokalbhai Rudabhai had paid Rs.7,000/- to defendants and defendants handed over the suit property to plaintiffs and same was taken the actual possession of the suit property. Name of her father-in-law of plaintiff namely Bharvad Gokalbhai Rudabhai was mutated in the abstract manual 7/12 and since then the actual possession was with Bharvad Gokalbhai Rudabhai and after the death of her father-in-law her husband namely Kalubhai Gokalbhai was possession and occupied the suit property and after his death, by the right of heirship possession came to the plaintiffs and still she is doing agriculture and taking yields. It is further submitted that as assurance given by defendant, her father-in-law did not get registered sale deed and

defendant No.1 had created encumbrance over the suit property for which mutated entry No.2032, 28/11/2005 and said fact came to knowledge of her father-in-law, he had filed objection which was being numbered as Dispute Case NO.44/2005-06, which was Ld. Mamlatdar Kadi confirmed the objection application and passed an order dated 5/10/2006 for cancellation of entry of encumbrance No.2032. Also, defendant No.3 had made affidavit dated 30/12/2005 before the Mamlatdar, Kadi and declared that Thakor Gambhirji Motiji gave assurance and decided that the suit property sale to Bharvad Gokalbhai Rudabha and executed said Banakhat and he had stated that out of the sale consideration amount he has received from his brother Gambhirji Motiji and for which by his consent Thakor Gambhirji Motiji had decided to sale the suit property to Bharvad Gokalbhai Rudabhai and since 1980 possession is with Bharvad Gokalbhai Rudabhai and he paid Vighoti/tax on their behalf. Thenafter defendant No.1 kept plaitniff in dark/illusion and sold the suit land to defendant No.4 on 10/08/2010 at the sale price of Rs.1,40,000/- for which registered sale deed NO.6438/2010 and mutated it' s sale entry No.2441, dated 18/08/2010, but they did not know about it, hence they could not file objection application and after later came to know husband of plaintiff namely Bharvad Kalubhai Gokalbhai, who met defendant No.4 and stated fact about the suit property, there they arrived at settlement and husband of plaintiff has decided to give Rs.12,25,000/- to defendant No.4 and on 14/6/2011 paid Rs.5,00,000/- and rest of the amout shall pay on

30/06/2011 and defendant No.4 agreed to execute registered sale deed, but even after now and often made request about execution of registered sale deed in favour of plaintiffs, defendant No.4 ignored and gave evasive reply. To get title clearance certificate, defendant No.4 published notice against the said notice plaintiffs has filed objection application dated 18/1/2022 and meeting with the defendant No.4 party-in-person he gave assurance for execution of registered sale deed, but still not executed. Later, defendants threatened to plaintiffs and they try to snatch away the possession of the suit property. Hence present suit as well as injunction application filed against the defendants. It is stated that from the facts of the plaint, plaintiffs have prima facie case, balance of convenience is in favour of the plaintiffs and in respect of issue of irreparable loss which is in favour of the plaintiffs and if injunction order is not granted in favour of the plaintiffs then they would suffer huge loss which cannot be compensated in terms of money and if it is granted then defendants have nothing to loss. Present application filed by defendant No.4 with a view to delay the matter and present suit is filed within time limit and there is no bar of law to the suit. So considering the above, present application of the defendant No.4 is liable to be dismissed with cost and cost be awarded to plaintiffs.

4. 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.

In addition further consider the provision of rejection of
plaint-

Rejection of plaint. - The plaint shall be rejected in the following cases:-

- (a) where it does not disclose a cause of action;
 - (b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;
 - (c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;
 - (d) where the suit appears from the statement in the plaint to be barred by any law;
 - (e) where it is not filed in duplicate;
 - (f) where the plaintiff fails to comply with the provision of Rule 9
- Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers, as the case may be within the

time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff.

7. It is required to be noted that, it is the proposition of law and various judicial principle held by Honble Aprx court - that at the time of deciding application of Order-7, Rule-11 condition precedent for it that consider the averments of the plaint and documents attached with. and, written statement filed by the defendants shall not be considered at this stage.

Now considering the above facts, and also peruse the submissions, the plaintiff has prayed for cancellation of sale deed , and also claim that he has succession right in the suit property.

Now on plain reading of the plaint-Exh.1 the plaintiffs have filed the present suit to get specific performance of dated 23/2/2021 executed by defendants in respect of suit property, the plaintiff in his plaint para No.5 narrated cause of action for filing of this suit. Moreover, it is well settled law that to determine cause of action, entire plaint and pleadings are taken into consideration.

Now on plain reading of the plaint-Exh.1 the plaintiffs have filed the present suit to get specific performance of dated 23/2/2021 executed by defendants in respect of suit property, the plaintiff in his plaint para No.5 narrated cause of action for filing of this suit. Moreover, it is well settled law that to determine cause of action, entire plaint and pleadings are taken into consideration. First of all looking the events of the litigation from very beginning as per the pleading, so far as the banakhat executed by the late Gokulbhai rudabhai bharvad father in law of the plaintiff dt. 21-05-1980 and executed by the defendant no 1 and 2, and in furtherance of it as per terms, further payment in future, done on dt. 21-05-1981 subject to execution of the regi sale deed and thereafter payment also done, as per the terms of the banakhat coupled with possession of suit property in favour of the plaintiff, as per the pleading in the year of 2005-06 defendant mortgage the suit property and because of it record of right affect that time plaintiff side raise the objection and ultimate that entry registered as objected entry, so as per the claim and position of the plaintiff that possession of the suit property is under control of the plaintiff and support of it also submitted the nearest farmer affidavit vide Exi.23 to 25 along with the village form no 7 /12, more over other document vide Mark 3/3 affidavit of Thakor kaluji Motiji one of the co owner of the suit land, under it he declare that, since 1980 suit land under the possession of the late father in law of the plaintiff and more over

both i.e defendant no 2 and 3 also get the consideration of it, which is executed on dt. 30-12-2005, as per the pleading and attached documents, that is transparent that ,land owner of the suit property are admitted the possession of the plaintiff , further in the year 2010 Dt. 10-08-2010 defendant no .1 sold the property to defendant no. 4 and consideration passe Rs. 1,40,000-/(Rupees one lack forty thousand only) vide Regi Sale Deed NO. 6438-2010 , after affecting the said transaction late Kalubhai Bharvad husband of the plaintiff entered with the defendant no .4 in written agreement dt. 10-06-2011 and total amount of consideration for it fix Rs. 12,25,000-/(rupees twelve lacks twenty five thousand only), out of it for scheduled to sequences specified in it for payment of Rs,500,000-/(Rupees five lacks only) paid to defendant no.4 in cash future Dt. 14-06-2011 and remaining amount of the consideration Rs. 7,25,000-/(Rupees seven lacks twenty five thousands only) paid at the time of execution of sale deed, and also clause of default in case then 10 percent interest impose on the parties ,

Now looking to the record of case , plaintiff execute the agreement to sale initially with original land owner after that who purchase the suit property i.e defendant no 4 , and also plaintiff entered with him dt.10-06-2011 agreement to sale , so far as the above discussion , possession of the suit land is continue with the plaintiff and nothing to other side to show on record about the present and moment of delivery of possession , so from 1980

possessory title with plaintiff which is derive from her late father in law there after her late husband who execute the another banakhat vide mark 3/5 Dt 10-06-2011, with defendant no. 4

At this juncture court also noted that there is no any document as per the pleading of the dt. 23/2/2021

Further , It is noted that both agreement mark 3/1 Dt.28-05-1976 and in addition to it further one more document executed on Dt. 21-05-1980 is not cancelled and continue in force, in addition to it , defendant no.4 himself become a owner through Regi Sale Deed no.6438-2010, which is at mark 3/5 yet , even though it , defendant no 4-, entered with one agreement to sale with plaintiff late husband and which is not cancelled by either party , So as prima facie right and interest on premise of the documents which is executed by the late husband and father in law of the plaintiff, along with affidavit of nearest farmer of the suit land and which is confirmation by the one of the co owner of the suit property i.e Thakore Kaluji Motiji Resi Kand Morva vide declaration at mark 3/5 and in favor of the present plaintiff, , it is manifest that possession with the plaintiff, and which cannot be denied, so prima facie it is established that plaintiff lady in possession of the suit property and having her right at the relevant time , as successor of the late her father in law and husband , so consider the claim of the petitioner in prayer clause that specific performance of the agreement to sale which is

executed by the defendant no 1 to 3 and there after when title devolve in favor of the defendant no 4 , and in furtherance of it , plaintiff late husband also enter with new purchaser i.e defendant no.4 and there is no specific refusal from either side to not to perform the agreement at Mark 3/15,

Further that if looking the event on record particular in respect to the plaintiff side that her late husband also execute the agreement to sale with defendant no 4, -in the year 2010 and plaintiff claim the specific performance and also cancellation of sale deed which is executed in favour of the defendant no 4 i.e Regi no 6438-2010 and also claim protection of the possession , and if peruse the record public notice given by the defendant no 4 , in local newspaper , Dt. 15-01-2022,with intention to sell it so, against this notice plaintiff filed objection and filed this suit dt 02-05-22 , thus prima facie agreement to sell dt. 10-06-2011, continue in force there is no specific averments or incidents to refuse it and other side not proceed for cancellation of it , thus, at this juncture consider the possession of the plaintiff , which is prima facie not disputed by the other side more over , agreement on records are not cancelled by the other side and also not any proceedings for it, which is shows that plaintiff right is evaluate by the evidence in trial , Therefore, prima facie consider the possession of the plaintiff, her right has to be determined by the

adjudicating the trial, so in the interest of justice, I pass the following order.

O R D E R

1. The present application below **Exh. 20** preferred by the defendant No.4 under the provision of Order-7, Rule-11 of the Civil Procedure Code, 1908 is hereby rejected .
2. No order as to costs.

Pronounced in the open Court on this 26th Day of December, 2023.

Date : 26/12/2023 Place : Kadi.	[Aniket M. Shukla] 3rd Addl. Senior Civil Judge & Addl. Chief Judicial Magistrate, Kadi District Mahesana. [Code No. GJ01139]
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