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**IN THE COURT OF PRINCIPAL DISTRICT JUDGE
at PORBANDAR.**

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REGULAR CIVIL APPEAL NO.22 OF 2022

Exh.....

APPELLANTS:-

1. THE DISTRICT COLLECTOR,
Porbandar.
3. THE MAMLATDAR,
Porbandar.

V E R S U S

RESPONDENTS:-

1. MER RAJABHAI GANGABHAI.
2. MER BHURABHAI GANGABHAI.

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Appearance:

Mr. A. J. Lila, Ld. A.P.P. for the appellants.

Mr. B. B. Lakhani, Ld. Advocate for the respondents.

***Appeal against judgment & decree passed in Regular Civil Suit
No.135/2012***

Under Section 96, Order XLI of the Code of Civil Procedure

-// J U D G M E N T \\\-

[1] This appeal seeks to challenge the judgment & decree dated 09.08.2018 passed by the learned Principal Senior Civil Judge, Porbandar (Hereinafter referred to as learned Trial Court) in Regular Civil Suit No.135 of 2012, whereby the suit filed by the respondents herein was partly decreed.

[1.1] The appellants herein were defendants before the learned Trial Court whereas the respondents herein were plaintiffs before the learned Trial Court and henceforth for the sake of brevity and convenience, parties are referred to in accordance with their respective standing before the learned Trial Court.

Introduction:

[2] The respondents (original plaintiffs) instituted the suit for declaration and consequential relief, contending that the suit lands were purchased in their names by registered sale deeds dated 28/03/1979 through their guardian during minority. It was further contended that their names were mutated in revenue records vide mutation entry Nos. 3154 and 3155 in 1980; however, subsequently, the defendants illegally conducted auction proceedings and mutated the land in the name of the Mamlatdar without issuing notice under Section 135D of the Bombay Land Revenue Code. It was also pleaded that the alleged loan pertained to the original owner and was not binding upon the plaintiffs and that the subsequent entry in favour of the Mamlatdar pursuant to alleged auction proceedings was illegal,

void, and without notice.

[2.1] The learned trial Court, after appreciating oral and documentary evidence, held that, the plaintiffs are lawful owners and occupiers of the suit properties; and that the auction proceedings were illegal for want of notice. It was also held that the defendants failed to prove mortgage or lawful recovery; however, the plaintiffs were directed to pay Rs. 8,856-40 paise.

[2.3] Therefore, being aggrieved and dissatisfied by the impugned judgment and decree passed by the Ld. Trial Court, present appeal is filed.

Arguments of appellants/defendants:

[3] The appellant/defendant side mainly contends that, the Ld. trial Court erred in holding the auction illegal despite the fact that the plaintiffs had outstanding dues. It is also argued that the plaintiffs were minor at the time of purchase of properties and they have no knowledge about the affairs of the property, but the said aspect has been ignored by the Ld. Trial Court. It is contended that the decree is contrary to law and evidence and that the Ld. Trial Court has not appreciated the fact that the plaintiffs did not file any objection to auction proceedings and that the Bank was not joined as party to the suit. The appellant/defendant side also filed written note at Exhibit-13 signed by the Mamlatdar, Porbandar (Rural) that he has no authority to mutate the properties in the name of plaintiff/respondents or re-grant the properties to respondents as per the resolution of the Government of Gujarat dated 20.06.2019 resolution no. JMM/311/812/L-1. It is prayed that the impugned

judgment and decree may kindly be set-aside inasmuch as the same is passed without proper appreciation of the material on record and without appreciating the fact that Land Development Bank was a necessary party.

Arguments of respondent/plaintiffs:

[4] The respondents (plaintiffs) have supported the view taken by the Ld. Trial Court and contend that the plaintiffs were not aware about any encumbrance over the properties and that the same was also never reflected in the revenue records at the relevant time and therefore the plaintiffs are bonafide purchasers of the property for value and Ld. Trial Court has rightly decreed the suit. It is also submitted that the plaintiffs were minor at the time of purchase of suit properties in their names and having regard to the difficulty on the part of plaintiffs to get their names mutated on record of the properties direction may be issued to the defendants. It is submitted that the plaintiffs attempted to deposit the amount to the defendants but the same was not accepted and that the plaintiffs are also ready and willing to re-pay the amount of bank loan with reasonable rate of interest as per the banking rates, despite having not taken any loan with a view to ensure that the defendants do not sustain any financial loss.

Points for Determination:

[5] In light of submissions of either side and perusal of record and proceedings of the Ld. Trial court, following points arise for just adjudication of this appeal:

- 1. Whether the Trial Court erred in holding the auction invalid despite the land being "charged" for a bank loan.*
- 2. Whether the minor age of the Plaintiffs at the time of*

purchase affects their title.

3. *Whether the Ld. Trial Court erred in holding that non-issuance of notice under Section 135-D of the Bombay Land Revenue Code vitiates the auction.*
4. *Whether the suit is bad for non-joinder of the Land Development Bank.*
5. *Whether the judgment and decree passed by the trial Court is legal, proper, and in accordance with evidence?*
6. *What order?*

The findings of this Court in respect of the above cited points of determination are as under:

1. In the negative.
2. In the negative.
3. In the negative.
4. In the negative.
5. In the affirmative.
6. Judgment of the Ld. Trial Court declaring the Respondents as legal owners and setting aside the auction is Confirmed, however, the decree is modified to the effect that the respondents (plaintiffs) shall pay a sum of Rs. 8,856-40 paise with simple interest at the rate of 6% per annum from from 01/4/1989 to 01/04/2026 to the defendants within a period of 30 days of this order

Reasons:

Reasons for above findings, in light of submissions of either side and perusal of record and proceedings called upon from the Ld. Trial Court are as under:

[6] It is well settled law that a first appeal is a valuable right of the parties, and the First Appellate Court is the final Court on facts. In **Santosh Hazari v. Purushottam Tiwari**, (2001) 3 SCC 179, the Hon'ble Supreme Court has held that, the appellate court has jurisdiction to reverse or affirm the findings of the trial court, and First appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. It was also observed that the judgment of the appellate court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate court, and that while reversing a finding of fact the appellate court must come into close quarters with the reasoning assigned by the trial court and then assign its own reasons for arriving at a different finding. Therefore, this Court has independently examined the oral and documentary evidence on record before arriving at its conclusions.

[7.1] In light of the above referred legal position it would be necessary to refer the pleadings and evidence adduced before the Ld. Trial Court.

Case of plaintiff:

[8] The suit underlying this appeal was filed by the plaintiffs contending that they are the owners and occupiers of the land properties bearing Revenue Survey No.250 paiki admeasuring Acre-4, Guntha-39 located in village Garej, Taluka Porbandar and the said property was purchased in the name of plaintiff No.1 vide registered sale-deed on 28.03.1979 whereas

the property bearing Revenue Survey No.250 paiki admeasuring Acre-2, Guntha-20 located in the vicinity of village Garej, Taluka Porbandar was purchased in the name of plaintiff No.2 vide registered sale-deed on 28.03.1979 and at the time of purchase of the said properties, the plaintiffs were minors.

[8.1] It is further the contention of the plaintiffs that the properties were purchased from its original owner Mer Malde and Ram Kana and as per the revenue record of the properties at the relevant time, there was no encumbrance over the said properties; and accordingly, vide mutation entry Nos.3154 & 3155 the names of plaintiffs were mutated on the revenue records of the respective property.

[8.2] It is the further case of plaintiffs that without issuing any notice to the plaintiffs under Section-135 D of the Bombay Land Revenue Code, the Mamlatdar has transferred the suit properties by way of auction on account of encumbrance of Rs.8,856/- of the Land Development Bank. It was further pleaded that the plaintiffs are ready and willing to pay the amount of encumbrance, but the defendants are not ready to accept the said amount and despite issuance of notice in this regard, the defendants did not agree to comply with the said notice; and therefore, the suit underlying this appeal was filed on 18.10.2012.

[8.3] The plaintiffs sought following reliefs:

1. The plaintiffs be declared as lawful owners and occupiers of the suit properties.
2. The mutation entry in favour of the defendant No.2 Mamlatdar, Porbandar is against the law and the defendant had no authority to cancel or cause changes in the mutation entry favouring the plaintiffs based on registered

sale-deeds.

3. It may be declared that the mutation entry No.3730 was posted without following the due procedure prescribed by the law and that the mutation entry Nos.3154 & 3155 are lawful.
4. The defendants are not authorized to dispossess the plaintiffs from the suit property inasmuch as the plaintiffs have purchased the suit property by registered sale-deed.
5. Any other and further relief in light of the pleadings may be granted.

Case of defendants:

[9] Pursuant to filing of the suit, the defendants were served with the notices and the defendants filed written statement at Exh.11 contending that the averments made by the plaintiffs are not correct. It was also contended that the suit is barred by non-joinder of necessary parties as well as limitation. The defendants also contended that the suit is barred by estoppel and that the plaintiffs have no cause of action to file the present suit.

[9.1] It was also pleaded by the defendants side that the plaintiffs availed loan from the Land Development Bank by mortgaging the suit properties and failed to repay the loan, hence, the auction proceedings done by the recovery officer is justified and accordingly, the land was confiscated to the Government.

Issues framed by the Ld. Trial Court:

[10] In light of the pleadings of either side, the learned Trial Court was pleased to frame Issues at Exh.12. The Issues framed by the learned Trial Court and findings thereof are as under.

1. *Whether plaintiffs prove that when the plaintiff No.1 was at the age of 11 years, he has purchased suit land situated at village Garej by Regd. Sale Deed bearing R.S.No.250 paiki, A.2, G.19 from A.4, G.39 from their father Gangabhai Lakhmanbhai on 28/03/1979 ?*

Held in the affirmative.

2. Whether plaintiffs proves that suit land is legally entered on their name in the Revenue Record?

Held in the affirmative.

3. Whether plaintiffs prove that they are the legal owner and possessor of suit land & without serving notice under Sec. 135 (d) of Bombay Land Revenue Code, and act of deft. No.2 creating false dues over the suit land, of original vendors, the suit land is entered on the name of Mamlatdar in public auction?

Held in the affirmative.

4. Whether defendants prove that the suit land is mortgaged with the Co-operative Land Development Bank by both the plaintiffs and incurred debt on it ?

Held in the negative.

5. Whether defendants prove that the suit land has been confiscated to the Government legally as the plaintiffs have not paid the dues?

Held in the negative.

6. Whether defendants prove that the notice under Section 135(d) of the Code is duly served upon the plaintiffs?

Held in the negative.

7. Whether defendants prove that the suit of the plaintiffs is barred by non joinder of parties, limitation and estoppel & acquiescence?

Held in the negative.

8. Whether plaintiffs are entitled to get relief as claimed?

Held Partly in the affirmative.

9. What order and decree ?

Held As per final orde.***Evidence:***

[11] The documentary evidence produced before the learned Trial Court is as under.

Sr. No.	Particulars of documents	Exh.
1	A copy of registered sale deed	28
2	A copy of registered sale deed	29
3	A copy of Village form No. 6	46
4	A copy of Village form No. 6	47
5	A copy of Village form No. 6	48

Sr. No.	Particulars of documents	Exh.
6	A copy of Village form No. 8 A	50
7	A copy of Village form No. 7 & 12	51
8	Legal Notice	30
9	RPAD Acknowledgement	31
10	RPAD Acknowledgement	32
11	Village Form No.6	33
12	Village Form No.8 A	34
13	Village Form No.1 & 12	35
14	Village Form No.1 & 12	36
15	A copy of Rojkam	59
16	A copy of order of recovery officer	55
17	A copy of Rojkam	56
18	A copy of Panch Rojkam	57
19	A copy of auction order	58

[11.1] The plaintiff No.1 filed examination in chief at Exh.23 reiterating the facts narrated in the plaint. In his cross-examination by the defendants side, it is admitted that the property was purchased when he was 10/11 years of age and the said property was purchased through registered sale-deed from Malde Karna. It is admitted that he does not know survey number and area of the property and it was not inquired as to whether there is any encumbrance on the said property. It is admitted that all the transactions in respect of the said property were known by his father, however, he voluntarily says that his father was not alive in 2007. It is further stated that he came to know about property being confiscated by the Government when he went to the revenue authority for the purpose of inheritance entry. It is admitted that he has not preferred any revision or appeal against revenue authority confiscating the property to the Government. It is admitted that he has not joined the Land Development Bank as

well as the persons who purchased property as party of the suit.

[11.2] The plaintiff no. 1 has reiterated the facts stated in the plaint, asserting lawful purchase of the suit properties and continuous possession over the properties; absence of any loan liability; and lack of notice prior to auction. The testimony of plaintiff no.1 has remained consistent and unshaken in cross-examination. The supporting witness examined at Exhibit-38 has also corroborated the possession of the plaintiffs and the factum of purchase of the suit properties through guardian. Nothing substantial has been elicited to discredit his testimony.

[11.3] The plaintiff also examined Pareshbhai Parbatbhai Muchhal, Clerk of Sub-Registrar Office as witness at Exh.44. This witness confirms that the documents produced at Exh.24 & Exh.29 are as per the record of the Sub-Registrar Office. It is further stated by the said witness that as per the Government notification if any due of the Government are pending, the sale transaction is not permitted to be registered by the Sub-Registrar and that the sale-deed are registered only on issuance of No Due Certificate from the Government. In his cross-examination by the defendant side, it is admitted that he is serving as Clerk at the Office of the Sub-Registrar since last two years and that the registration of documents is done by the Sub-Registrar. It is admitted that he has no personal knowledge of the sale-deeds produced at Exh.28 & Exh.29. He claims ignorance as to what procedure is followed if 'No Due Certificate' is not produced at the time of registration of the document and admits that he can not say as to whether No Due Certificate was produced or not while registering these two sale-deeds.

[11.4] The plaintiff examined Bharatbhai Kanabhai Ratiya, Talati-Cum-Mantri at Exh.45. This witness confirms the mutation of the names based on sale-deeds favouring the plaintiffs vide mutation entry Nos.3154 & 3155. It is also admitted that the Office of the Talati-Cum-Mantri has no record or proceedings about the auction proceedings held by the Mamlatdar. He confirms that the mutation entry No.3730 was posted on 25.03.1989 whereas the entry in furtherance of the sale-deed of plaintiff was posted on 01.05.1980. It is also confirmed that in 1989 when the entry No.3730 was posted on the record of the said property, the name of Malde Karna was not reflected as owner or occupier of the property. He further states that he cannot confirm as to whether there is no mention of Survey No.250 in the order passed by the Mamlatdar and that the Survey No.250 was inadvertently written in mutation entry. In his cross-examination, the witness admits that he has no material in his record on the basis of which the mutation entry at Exh.48 (mutation entry No.3155) was posted. He also confirms that upon mutation of the last entry, all the previous entries are to be treated as cancelled.

[11.5] This witness has categorically stated that registration of sale deeds is done only after verifying that there are no Government dues or encumbrances. This contention assumes importance, having regard to the nature of issue involved in the matter at hand.

[11.6] The plaintiff also examined Dipakbhai Niranjandhai Joshi as witness at Exh.54. The said witness states that the Land Development Bank does not have any record available about any

mutation entry pertaining to the loan taken by Malde Karna and that he does not have any record to indicate that any effort was made by the said Bank to mutate the encumbrance on the property on which loan was availed. He also confirms that the Land Development Bank has the copy of mutation entry Nos.3154 & 3155 indicating purchase of property in the name of plaintiffs in their record. It is admitted that the property would not be transferred if there was any encumbrance on the record of the property. It is further stated that as per the record on Land Development Bank, the procedure for auction first initiated on 07.12.1988 and it was resolved that the auction proceedings would take place on 02.02.1989. It is confirmed that no notices were issued to the plaintiffs despite of mutation of the names of the plaintiffs over the suit property in the year 1980. It is also admitted that when the auction proceedings were initiated and auction notices were issued, no one came forward to participate in the auction proceedings. It is also confirmed that he does not have any record as to who deposited the amount with the Bank.

[11.7] This witness has produced Resolution dated 10.03.1989 at Exh.55. The property in question along with other property was ordered to be confiscated to the Government and a sum of Rs.8,856.40 paise was ordered to be deposited on behalf of the Government to the Land Development Bank, Porbandar.

[11.8] In his cross-examination by the defendant side, it is stated that on 10.01.1967 sum of Rs.4,000/- was given as loan and that the borrower of the said loan has not obtained any No Due Certificate from the Bank. It is confirmed that the auction proceedings were conducted by the Special Recovery Officer of the Gujarat State Co-operative Land Development Bank. It is

also admitted that no representation was made by the borrower or the plaintiff to the Land Development Bank.

[11.9] The defendants side has not examined any witness.

Appreciation of Oral and Documentary Evidence:

[12] In light of the submissions of either side and upon perusal of to the record and proceedings called upon from the learned Trial Court, it is evident that as per the sale-deed produced at Exh.28 & Exh.29, the property bearing Survey No.2 paiki admeasuring 4 Acre, 39 Guntha and 2 Acre, 20 Guntha of village Garej, Taluka Porbandar were purchased in the names of plaintiff No.1 and plaintiff No.2 respectively on 28.03.1979 from its original owner.

[12.1] It is further evident that pursuant to execution of registered sale-deed, mutation entry in furtherance of these two sale-deeds were posted on the record of the suit property vide mutation entry Nos.3154 & 3155 on 01.05.1980 and accordingly the names of plaintiffs were mutated on the revenue record of the suit properties. It has also surfaced on record that sale-deed would not be registered in case if there is any encumbrance in property in question and since the mutation based on registered sale-deed was also proceeded promptly, it can be safely inferred that there was no encumbrance on the Land Development Bank on the record of right of the suit properties at the time of execution sale-deed as well as mutation of names of the plaintiffs on the basis of the registered sale-deed.

[12.2] Further, there is nothing to indicate that the plaintiffs were aware about the encumbrance over the suit property or they

were aware about any defect in the title of the previous owners at the time of execution of sale-deed in their favour. Hence, the plaintiffs are bonafide purchasers of the suit property for value and without notice and the defect in the title of the previous owner and without any notice of encumbrance on the suit property.

[12.3] The plaintiffs have produced certified copies of registered sale deeds dated 28/03/1979 at Exh. 28 & 29. These documents clearly establish that, the suit lands bearing Revenue Survey No. 250 paiki were purchased in the names of the plaintiffs; and at the relevant time, both plaintiffs were minors and the transaction was effected through their natural guardian; and the sale deeds are duly registered and their execution is proved through the evidence of the clerk of the Sub-Registrar's office (Exh. 44). These documents have remained unchallenged and unimpeached and no evidence has been adduced by the defendants to dispute their genuineness. Thus, the title of the plaintiffs over the suit land stands firmly established.

[12.4] As noted above the the registered sale deeds at Exh. 28 & 29 conclusively establish that the plaintiffs acquired title over the suit properties in the year 1979. It is settled legal position that title to immovable property passes upon execution and registration of sale deed. Thus, the plaintiffs' ownership stands proved.

[12.5] The Revenue Recors Entries and Village Forms No. 6, 7/12, and 8A produced on record indicate that, Entry Nos. 3154 and 3155 were posted on 01/05/1980 and certified on 22/10/1980; whereby the names of the plaintiffs were mutated on

the basis of the registered sale deeds; and there was no entry reflecting any charge, encumbrance, or outstanding loan at the time of such mutation. These entries carry presumptive value of correctness and corroborate the possession and ownership of the plaintiffs.

[12.6] The above referred Evidence of Talati (Exh. 45) and Bank witness (Exh. 54) clearly shows that no charge entry existed in Village Form No. 6 at the time when the sale deeds were executed in favour of plaintiffs. It is evident that loan was taken by original owner in they year 1967. It is also clear that the Plaintiffs never mortgaged the land or took any loan from the Land Development Bank, thus the alleged liability cannot bind the plaintiffs.

[12.7] The evidence of the witness from the Land Development Bank (Exh. 54) confirms that the loan was sanctioned in 1967 to the previous owner. However, this "charge" was never reflected in the Revenue Record (Village Form No. 6) and when the Plaintiffs purchased the land in the year 1979 there was no mention of any charge or encumbrance over the suit properties on the revenue record. Therefore plaintiffs being bonafide purchaser without notice of an unregistered charge deserves protection from the Court of law.

[12.8] The defendants have relied upon documents at Exh. 55 to 58, in the form of Order of Recovery Officer, Rojkam and Panch Rojkam, Auction proceedings. However, these documents merely indicate that auction proceedings were conducted. But, these documents do not establish any service of mandatory notice upon the plaintiffs while passing the order of recovery or prior to

auction of the properties. Moreover, there is no material on record to indicate existence of any legally enforceable charge against the plaintiff at the relevant time. The charge over the suit properties was not reflected on revenue record at the time of purchase of properties by the plaintiffs. Besides, there is absence of compliance with statutory provisions. Thus, these documents fail to support the legality of the defendants' action.

[12.9] It is a settled principle that before any adverse entry is made in the Revenue Records or before a property is auctioned for recovery of dues, the "occupant" must be served with a notice. Section 135-D of the Bombay Land Revenue Code is mandatory. The defendants failed to produce any evidence (Acknowledgement or Rojkam) proving service of notice upon the Respondents before the auction. It is to be noted that any revenue entry posted without following the principles of natural justice and the mandatory procedure of Section 135-D would be void ab initio.

[12.10] In case titled **State of Orissa v. Dr. Binapani Dei**, 1967 SCR (2) 625 it was held that any action affecting rights must comply with principles of natural justice. The relevant observations of the Hon'ble Apex Court are as under:

'It is true that the order is administrative in character, but even an administrative order which involves civil consequences as already stated must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence. No such steps were admittedly taken; the High Court was, in our judgment, right in setting aside the order of the State.'

[12.11] The Hon'ble Supreme Court has emphasized fairness and reasonableness in administrative action. The auction conducted without notice is therefore illegal.

[12.12] It also needs to be appreciated that having regard to the pleadings put forward by the defendant side, the defendants were duty bound to prove that the plaintiffs mortgaged the suit properties or that the plaintiffs took a loan by creating charge over the suit properties. However, there is no Proof of Mortgage of the suit properties or borrowing of loan by Plaintiffs and the defendants have failed to discharge this burden.

[12.13] It is settled legal position that burden lies on the party asserting a fact. The said principle has been approved in the judgment of the Honourable Apex Court reported in 2011(3) LW 48 (SC) (**Rangammal v. Kuppuswami & anr.**). The relevant observations are as follows:

"14. when the plaintiff/respondent No.1 pleaded that the disputed property fell into the share of the plaintiff by virtue of the sale deed dated 24.2.1951, then it was clearly for the plaintiff/respondent No.1 to prove that it was executed for legal necessity of the appellant-while she was a minor. But, the High Court clearly took an erroneous view while holding that it is the defendant/ appellant who should have challenged the sale deed after attaining majority as she had no reason to do so since the plaintiff/ respondent No.1 failed to first of all discharge the burden that the sale deed in fact had been executed for legal necessity of the minor's predecessor mother was without permission of the court. It was not the defendant/ respondent who first of all claimed benefit of the sale deed or asserted its genuineness, hence the burden of challenging the sale deed specifically when she had not even been dispossessed from the disputed share, did not arise at all.

15. Plethora of commentaries emerging from series of case laws on burden of proof which are too numerous to cite, lay down that when a person after attaining majority, questions any sale of his property by his guardian during his minority, the burden lies on the person who upholds/ asserts the purchase not only to show that the guardian had the power to sell but further that the whole transaction was bona fide."

[12.14] It needs to be appreciated that there is a registered sale deed executed in favour of the plaintiffs and the same has not been challenged in any civil proceedings, much less set aside; therefore the revenue authority is bound by the sale deeds. Hon'ble Gujarat High Court in case titled Javerbhai Savjibhai Patel vs. Kanchanben Nathubhai Patel & ors. [2005 (3) G.L.H. 657] laid down that an entry in the revenue record has to be mutated when the transaction is by a registered document. It was held in the case titled Nathubhai Meraman Darji vs. Special Secretary (Appeals) [1996(3) GCD 691] that when the transaction is represented by a registered document, the revenue authority is required to take suo motu cognizance thereof for the purpose of mutation in the revenue record. Such transaction vide registered document cannot be disputed by the revenue authority unless the competent civil court annuls the same.

[13] The plaintiffs were minors at the time of purchase. However, under the Transfer of Property Act, a minor can be a transferee (buyer) of property. While a minor cannot contract to sell, a sale deed executed in favor of a minor through a natural guardian is valid in law. The registered sale deeds (Exh. 28 & 29) clearly show the father of plaintiffs acting as the guardian. Thus, the title passed legally to the plaintiffs in the year 1979 and the contention that the plaintiffs were minors and they were not aware about the transactions relating to the suit properties cannot be made the basis of inferring that they have no right over the suit properties.

Non-Joining of the Land Development Bank as party:

[14] The defendants (appellant side) has argued that the

suit must fail because the Land Development Bank (the creditor) was not a party. However, in this regard it needs to be noted that the dispute was not regarding the existence of the debt, but the legality of the auction procedure carried out by the Revenue Authorities. Since the Mamlatdar acted as the recovery agent and the land was "confiscated" to the State, the State was the necessary party. The absence of the Bank would not defeat the Plaintiffs' case for declaration of title against the State.

[15] As discussed above, upon reappraisal of the entire record and proceedings and in light of the legal position cited above, this Court is of the view that the registered sale deeds (Exh. 28 & 29) clearly establish the title of the plaintiffs. The revenue entries (Entry Nos. 3154 and 3155) were duly certified and remained unchallenged. There is no documentary evidence produced by the defendants to prove that the plaintiffs had mortgaged the suit properties to Land Development Bank or that the plaintiffs had taken any loan. There is nothing to establish that the mandatory notice under Section 135D of the Bombay Land Revenue Code was served. Therefore, the trial Court has rightly appreciated the evidence and correctly concluded that the auction proceedings were illegal and violative of principles of natural justice. Since this Court finds no perversity, illegality, or error in the findings recorded by the learned trial Judge; there is no requirement of interference in the view taken by the Ld. Trial Court.

Regarding Payment of Debt and Interest

[16] The Ld. trial Court directed the plaintiffs to pay Rs. 8,856-40 paise, considering their willingness. However, before this Court upon being questioned on the aspect of loss of interest

to the State on account of unpaid amount of Rs. 8,856-40 since the purchase of lands by the Mamlatdar in auction in March 1989. It is submitted by the Ld. Advocate for the plaintiffs that the plaintiffs are ready and willing to pay such amount to the State through Mamlatdar along with reasonable rate of interest.

[16] The Trial Court has aside the auction, and allowed the Respondents to pay only the principal amount of ₹8,856-40. However, the debt has remained unpaid for decades, and the plaintiffs have enjoyed the possession over the suit properties and also the equitable relief of the Court. The plaintiffs have displayed willingness to deposit the amount along with reasonable rate of interest to balance the equities. Therefore having regard to the fact that sum of Rs. 8856-40 paise was paid by the State to the Land Development Bank in March-1989 and having regard banking rates of interest, and considering the agricultural nature of the land, this Court is of the view that a simple interest rate of 6% per annum from 01/4/1989 to 01/04/2026 would be appropriate. Accordingly, it would be just and proper to direct the plaintiffs to pay the sum of **Rs. 8,856-40 paise along with simple interest at the rate of 6% per annum from from 01/4/1989 to 01/04/2026.**

[17] The appeal is devoid of merits and deserves to be dismissed, with a slight modification on the basis of fair indulgence of Ld. Advocate for the respondents regarding interest.

ORDER

1. The present Regular Civil Appeal seeking to set aside the impugned judgment and decree passed by the Ld. Principal

Senior Civil Judge, Porbandar in Regular Civil Suit no. 135 of 2012 is hereby **dismissed**.

2. The judgment and decree dated 09/08/2018 passed by the learned Principal Senior Civil Judge, Porbandar in Regular Civil Suit No. 135 of 2012 declaring the Respondents (plaintiffs) as legal owners and setting aside the auction is Confirmed is hereby **confirmed**.
3. The decree is **modified to the extent** that, the respondents (plaintiffs) shall pay a sum of **Rs. 8,856-40 paise with simple interest at the rate of 6% per annum from from 01/4/1989 to 01/04/2026** to the defendants within a period of 30 days of this order. And pursuant to tender of such amount the Appellant no.2 (defendant no.2) shall comply with the direction of Ld. Trial Court in para (3) of the operative part of the judgement and decree of the Ld. Trial Court.
4. No order as to costs in this appeal. Parties shall bear their respective costs.
5. Decree be drawn accordingly.

Signed and pronounced in the open Court today on
this **21th DAY OF APRIL, 2026 at Porbandar.**

Date:- 21.04.2026.
Place:- Porbandar.

(**M. A. BHATTI**)
Principal District Judge,
P O R B A N D A R
Code No. **GJ01506**