


Ex. _____

GJPM010004412024 	Received on :	15-02-2024		
	Registered on :	15-02-2024		
	Decided on :	30-04-2026		
	Duration :			
		Y	M	D

=====

IN THE COURT OF 5th ADDITIONAL DISTRICT JUDGE,
PANCHMAHALS AT GODHRA.

=====

REGULAR CIVIL APPEAL No. 13/2024

Appellants (Original Plaintiffs) :-

1. Legal Heirs of Deceased Harijan Babubhai Manabhai
 - 1/1. Harijan Kantaben wd/o. Babubhai
 - 1/2. Harijan Dilipbhai Babubhai
 - 1/3. Harijan Sanatbhai Babubhai
 - 1/4. Harijan Mukeshbhai Babubhai
 - 1/5. Harijan Vasantbhai Babubhai
 - 1/6. Harijan Himmatbhai Babubhai
2. Harijan Sanatbhai Babubhai
3. Harijan Dipsinh Babubhai
4. Harijan Mukeshbhai Babubhai
5. Harijan Kamlaben Kalubhai
6. Harijan Sanjaykumar Kalubhai
7. Harijan Nareshbhai Kalubhai

8. Harijan Shivrambhai Kalubhai
 9. Harijan Parvatbhai Lakhabhai
 10. Harijan Vinodbhai Parvatbhai
 11. Harijan Gulabbhai Parvatbhai
 12. Harijan Madhuben Parvatbhai
- Residing at Sarsav, Ta. Godhra.

VERSUS

Respondents (Original Defendants) :-

1. Legal Heirs of Deceased Patel Bhemabhai Kalubhai
 - 1/1. Somiben d/o. Bhemabhai
 - 1/2. Parvatiben d/o. Bhemabhai
 - 1/3. Maniben d/o. Bhemabhai
 - 1/4. Patel Arvindhbai Bhemabhai
 2. Patel Kalubhai Ramabhai
 3. Patel Bharatbhai Bhikhabhai
- Residing at Sarsav, Ta. Godhra.

Regular Civil Appeal U/Sec. 96 of C.P.C

Appearance

Ld. advocate Mr. C. C. Baria for the Appellants

Ld. advocate Mr. T. R. Patel for the respondent No.3

None appeared for other respondents

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

1. The present Regular Civil Appeal is filed by the appellants (original plaintiffs) against the respondents (original defendants) under Section 96 of Civil Procedure Code, challenging the Judgment and decree dated 27-06-2023 passed in Regular Civil Suit No.67/2017 passed by the Ld. Principal Sr. Civil Judge, Godhra, whereby the Ld. Trial Court has rejected the suit of the plaintiffs.

For the sake of brevity and convenience, the parties are referred according to their status before the Ld. Trial Court, i.e. the appellants as “the plaintiffs” and the respondents as “the defendants”.

2. **Plaintiffs' case** :- The plaintiffs have filed the original suit before the Ld. Trial Court, seeking declaration, cancellation of sale deed and permanent injunction against the defendants.

Brief facts of the plaintiffs' case is that, since the time of their ancestor, the plaintiffs are the joint owner and having possession over the land of old tenure bearing Revenue Survey No.191 paiki 2 of Account No.151, admeasuring 2-49-07 hectare-are-sq.mtr. situated at village-Sarsaav, Ta.- Godhra, Dist.- Panchmahals. The said property is considered as suit property in the suit (For the sake of convenience herein after would referred to as “**suit property**”).

It is the case of the plaintiffs that the defendants had filed Regular Civil Suit No.101/2016 against the plaintiffs, wherein the defendants have produced a registered sale deed to show that they have purchased the suit property which is of the ownership of plaintiffs. After receiving the copy of the sale deed, the plaintiffs came to know that the defendants have produced the false, forged and concocted deed. Then after, the names of the defendants are entered in the revenue record of the suit property in connivance of the Talati-cum-Mantri and on basis of the same, the defendants have filed the suit i.e. Regular Civil Suit No.101/2016 to establish their ownership and for getting possession over the suit property.

It is the say of the plaintiffs that they are in possession of the suit property and they are cultivating the suit property. The plaintiffs or their ancestor have never sold the suit property. The defendants are illegally trying to grab the suit property by way of filing the suit i.e. Regular Civil Suit No.101/2016. Therefore, the plaintiffs have filed the suit before the Ld. Trial Court and prayed to declare the sale deed as null and void and grant perpetual injunction against the defendants, restraining them from taking over the peaceful possession of the plaintiffs over the suit property.

The defendants No.1 & 2 have failed to file their part of written statement. The defendant No.3 has failed to appear before the Ld. Trial Court.

3. Considering the pleadings of all the parties, Ld. Trial Court framed the necessary issues vide Exh.38 under the provision contained in Order-14 of CPC which are as under :

1. Whether the plaintiffs prove that, they are the joint owner and occupier of the suit land as mentioned in para-2 of the present suit ?
2. Whether the plaintiffs prove that, the defendants have got up false and concocted sale deed ?
3. Whether the plaintiffs prove that, they are in possession of the suit land and cultivating the suit land ?
4. Whether the suit is barred by limitation ?
5. Whether the plaintiffs are entitled to get the relief as prayed for?
6. What order and decree?

3.1 The Ld. Trial Court has answered the above issues as under:

1. In negative.
2. In negative.
3. In negative.
4. In affirmative.
5. In negative.
6. As per final order.

4. In order to prove the above stated issues, the plaintiffs have produced the following evidences:

Plaintiffs' Oral Evidence:

Exh.	Particulars
21	Deposition of the plaintiff Sanjaykumar Kalubhai Harijan

Plaintiffs' Documentary Evidence:

Exh.	Particulars
28	Certified copy of sale deed
29	Copy of Village Form No.6
30	Copy of Village Form No.7/12
31	Copy of Village Form No.6
32	Copy of Caste Certificate

5. Before the Ld. Trial Court, the defendants have been given sufficient opportunities to lead their part of evidence, but they failed to do so. Even they have not remained present to cross-examine the plaintiff.
6. At the conclusion of the trial, after hearing the plaintiffs' sides, the Ld. Trial Court has rejected the plaintiffs' suit by passing the Judgment on dtd.27-06-2023. It is the said Judgment which is challenged before this Court under Sec.96, read with Order-41 of CPC.

7. Submission on the part of the appellants :

Ld. Advocate for the appellants has argued in line of appeal memo and contended that the Judgment & decree passed by the Ld. Trial Court is false, illegal and unjust. The Ld. Trial Court has not considered the guidelines given in the various Judgments of Hon'ble Supreme Court and Hon'ble High Courts. The Ld. Trial Court has committed grave error by not evaluating the documentary evidence properly, produced by the appellants before the Ld. Trial Court. The respondents have not challenged the facts of the suit and not rebutted the evidence of the plaintiffs. The appellants came to know about the sale deed when they have been served with the notice of the Regular Civil Suit No.101/2016, filed by the respondents so, the suit filed by the appellants is within the limitation period. The respondents have not produced any kind of evidence before the Ld. Trial Court. Therefore, the ld. advocate has prayed to allow the appeal and to set aside the Judgment & decree passed by the Ld. Trial Court by allowing the suit of the appellants. The ld. Advocate for the appellants has also submitted written arguments vide Exh.9. This Court has perused the same also.

Though the respondents were served with the notices of this appeal, the respondents No.1/1 to 1/4 & No.2 have not appeared before this Court and not filed any reply to the appeal. The respondent No.3 has appeared through his ld. Advocate, but did not file any reply.

8. Regard being had to submissions of Ld. Advocate for appellants' side, considering the pleadings of the appellants' side, as well as, entire evidences placed on record, the following points arises for determination of this appeal :

POINTS OF DETERMINATION

- (I) Whether the Ld. Trial Court was correct in holding that lawful title & possession of the suit property is not lying with the appellants, but lying with the respondents ?
 - (II) Whether the appellants are entitled to get the relief sought by them to declare the sale deed as null and void and grant perpetual injunction against the defendants ?
 - (III) Whether the impugned Judgment & decree passed by the Ld. Trial Court in Regular Civil Suit No.67/2017 on dtd.27-06-2023 is required to be interfered with ?
 - (IV) What order?
9. My findings on the above points for determination are as under :
- (I) In affirmative.
 - (II) In negative.
 - (III) In negative.
 - (IV) As per final order.

REASONS

10. Before we venture to decide the fate of this appeal, let us take notice about the scope and ambit of the Appellate Court while dealing with the present appeal.

SCOPE OF SEC. 96 OF THE CIVIL PROCEDURE CODE - 1908 :

1. First appeal, is valuable right and parties have right to be heard, both on question of law and fact and such Judgment must address itself to all questions and must be decided by giving reasons. All questions of law and fact decided by Ld. Trial Court are open to appellate Court for reconsideration and therefore, first appellate Court has every jurisdiction to independently reappraise entire fact and issue in dispute and come to the independent conclusion than the conclusion of the Ld. Trial Court¹.
2. The first appeal is a statutory right. First appellate Court is last Court of appreciation of review and fact. The scope of first appeal is very wide, comprehensive and inclusive. The first appellate Court can re-appreciate evidence and record finding different from those recorded by the Trial Court. if appraisal of the Trial Court suffers from material irregularity, e.g. When its decision is based on mere conjecture or surmises, or when its decision relies upon inadmissible evidence or ignores material evidence or when it draws inferences and conclusions, which do not naturally or logically offer from proved facts, the appellate Court is bound to interfere with finding of the Trial Court. Where the Trial Court has considered the entire evidence and recorded several material findings, the first appellate Court would slow in reversing them on the basis of conjecture or surmises or without analyzing

¹ Referred decision of Hon'ble Apex Court in Civil Appeal No. 1485 of 2020 (arising out of SLP (C) No.18092/2014) Malluru Malappa (D) through LRS Vs. Kuruvathappa & Ors. - 12/02/2020.

the relevant evidence in entirety. As the first appellate Court is final Court of fact, if the first appellate Court decides to reverse the jurisdiction of the Trial Court, it is bound to independently consider the entire evidence².

3. Further, Hon'ble Apex Court held³ that "Pleading of the parties in a Civil Suit is significant and important. It is foundation of the stance/stand taken by the parties in Civil Suit. Order-6 Rule-1 provides that plaint is a pleading of the plaintiff and written statement is pleading of the defendant. Parties have to lead their evidence according to their pleading, especially oral evidence cannot be in the absence of pleading, as has been provided under Order-6 Rule-2 of the C. P. C., Oral evidence in the absence of pleadings, has to be ignored.
4. It is also held by the Hon'ble Supreme Court⁴ that the burden of proof u/s. - 101 of the Indian Evidence Act, 1872 on the party who pleads his case. Thus, it is the duty of the plaintiff to prove his pleadings.

11. Issue No. I & II :-

Keeping in mind the settled law noted herein above, if the evidence produced before the Ld. Trial Court be re-appreciated on factual aspects, as well as, legal aspects, then first of all, it is pertinent to note here that since the plaintiffs came before the Ld. Trial Court with specific facts and invited the Ld. Trial Court to believe the same and to pass the Judgment in his favour based upon the said facts so, in view of the Sec.101 & 102 of The Indian Evidence Act, 1872, it was the burden on the part of the

2 Referred decision of Hon'ble Supreme Court in case of M. N. Ashwathama v/s. P. Prakash : 2009 AIR SCW 5439.

3 In 2008 (3) GLH 512 (SC) State Bank of India And Others v/s. S. N. Goyal.

4 In the Case of Rangammal v/s. Kuppaswami and others reported in 2011 SAR (Civil) 712 Hon'ble Supreme Court.

plaintiffs to prove the same based upon their own evidences. Therefore, it was the duty of the plaintiffs to prove their right, title and interest over the suit property. For the said aspect, if the record of evidence is perused, then it transpires that the defendants' ancestors have purchased the suit property from the plaintiffs' ancestors by way of registered sale deed, executed in the year-1969. On basis of the said registered sale deed, the names of the defendants' ancestor are entered in the revenue record. The entire record of evidence is clearly evident to the fact that, the title & possession of the suit property was originally lying with the plaintiffs' ancestor who have executed registered sale deed in favour of the defendants' ancestor. The said fact is specifically proved on record by the plaintiffs themselves. Now, as per the basic pleadings of the plaintiffs, it is being the specific case of the plaintiffs that, their ancestors have never executed the said sale deed and the sale deed produced in the record of Regular Civil Suit No.101/2016 is false and concocted sale deed and thereby the plaintiffs have prayed to declare the said sale deed null and void. It was the duty of the plaintiffs to prove their contentions by producing enough supporting oral and documentary evidence. The plaintiffs have examined their witness before the Ld. Trial Court to prove the aspect of false and fabricated sale deed and stated the said facts. It is required to note that the defendants have not rebutted the said allegation and not cross-examined the

plaintiffs' witness. However, the plaintiffs have not produced any cogent evidence and not examined any independent witness to establish their pleadings. The plaintiffs have not applied before the Ld. Trial Court for appointing Court Commissioner to establish the fact that the plaintiffs are in possession of the suit property and they are cultivating the suit property. Even the plaintiffs have not produced any document like receipt of revenue tax paid by them. The registered sale deed produced on record is clearly evident to the fact that the possession of the suit property was handed over to the defendants' ancestor by the plaintiffs' ancestor after taking the total amount of consideration and thus, the transfer of suit property took place between the parties by way of a registered instrument. Furthermore, it is pertinent to note here that the said registered sale deed was executed by the plaintiffs' ancestor in favour of the defendants' ancestor in the year-1969 and after the period of 48 years, the plaintiffs have filed the suit to declare the said sale deed null and void. It is the say of the plaintiffs that they came to know about the registered sale deed in the year-2016 when the defendants have filed the Regular Civil Suit No.101/2016 and the plaintiffs have been served with the notice of the said suit. However, the said fact cannot be believed that a huge period of 48 years is elapsed and during that period, the plaintiffs didn't come to know about the sale deed with respect to their own land. So, upon comprehensive re-

appreciation of the entire evidence on record, both oral and documentary, it emerges that the plaintiffs have failed to produce any cogent, reliable or affirmative evidence to establish that the sale deed is forged or fabricated or concocted with malafide intentions. It is pertinent to note that on basis of the said registered sale deed, the names of the defendants' ancestor are entered in the revenue record and thereby they are having right, title and interest over the suit property. Therefore, when the said aspect of forged or fabricated or concocted sale deed could not be established by the plaintiffs' side, hence, under these circumstances, the plaintiffs cannot be said to have lawful title & possession of the suit property. Therefore, the Ld. Trial Court was correct in holding that lawful title & possession of the suit property is not lying with the plaintiffs/appellants, but lying with the defendants/respondents.

In view of the foregoing discussion, this Court is of the considered opinion that during the trial, the plaintiffs remained unsuccessful to prove the factum as involved in the present points No.I & II. The Ld. Trial Court appears to have rightly not considered the aspects of title and possession of the plaintiffs over the suit property, as well as, the aspect of forged or fabricated or concocted sale deed, in its proper perspective and in consonance with law and has rightly rejected the suit. Under these circumstances, when the aspect of forged or fabricated or concocted sale deed could not be established by the

plaintiffs' side, the appellants are not entitled for the relief sought by them. Hence, present Points No.I & II are hereby answered accordingly.

12. **Point No.III :-**

Considering the discussion and determination as made in the above the issues, appreciation and re-appreciation of the entire record of evidence of the Ld. Trial Court makes it clear that the Ld. Trial Court has evaluated the entire evidence on record in its true perspective, in its letter and spirit, in relation to all the issues raised before it and answered the same correctly both on factual aspect as well as on legal aspect. Since the plaintiffs remained unsuccessful to prove their title over the suit property, hence, the Ld. Trial Court has rightly rejected their relief of declaration U/Sec.34 of the Specific Relief Act, 1963. The Ld. Trial Court has not committed any error by not believing the plaintiffs' possession over the suit property. In the present situation, in absence of the title over the suit property, the relief of protection to the possession cannot be granted in favor of the plaintiffs against the defendants being lawful owner. Hence, by not believing the plaintiffs' possession over the suit property, decision of the Ld. Trial Court to dismiss the plaintiffs' suit appears to be legal & valid one to which no interference is required. In view of the above discussion, this Court is of the certain view to answer the present **Point No.(III)** in "***Negative***".

Considering the discussions and conclusion arrived at in the above Points No.I to III, this Court is of the certain view to pass the final order as under :

ORDER

1. The present appeal is hereby rejected.
2. The Judgment & decree, passed by the Ld. Trial Court in Regular Civil Suit No.67/2017, dated 27-06-2023 is hereby confirmed.
3. Decree to be drawn accordingly.
4. R & P of Regular Civil Suit No.67/2017 be sent back to the Ld. Trial Court immediately, along with the copy of this Judgment.

Signed and Pronounced in the open Court today on this 30th day of April, 2026.

Date : 30-04-2026

Place : Godhra

(Vaibhav Vasant Mondhe)
5th Additional District Judge,
Panchmahals at Godhra.
GJ00852