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**IN THE COURT OF PRINCIPAL SENIOR CIVIL
JUDGE, PANCHMAHAL AT HALOL.**

REGULAR CIVIL SUIT No.38 OF 2019

Exh.67

<u>Plaintiff</u>
Bharatbhai Babubhai Vaishnav POA holder of Maltiben Bharatkumar Vaishnav Age : 54 Years, Occu. Housework. Resi. At : 61/ Shreejikrupa Society, Near Collage, Godhra Road, Halol, Ta. Halol, Dist. Panchmahal.

Versus

<u>Defendants</u>
Vijaykumar Vallabhdas Shah Resi. At : B/68, Shreejikrupa Society, Near Collage, Godhra Road, Halol, Ta. Halol, Dist. Panchmahal.

Subject	Suit of Rs.1,000/- for permanent declaration and establishment of rights.
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Appearance :

Mr. S. B. Parmar, Ld. Advocate for the plaintiff.
Mr. A. T. Sheth, Ld. Advocate for the defendant.

J U D G E M E N T

1. Subject matter in the suit

Plaintiff has filed the present suit for permanent declaration and establishment of rights.

Reliefs

2. The plaintiff has filed this suit for the following reliefs:-

(A)	For a declaration to the effect that the except the plaintiff no any one has right over the suit property and plaintiff has also prayed to grant permanent injunction against the defendant.
(B)	For a declaration to the effect that the defendant and his agents, servants and assignees have no right to enter into the suit property.
(C)	Pleased to declare that not to prevent the plaintiff in using suit property.
(D)	Recover the cost of suit from the plaintiff.
(E)	Any other relief as may be deemed fit and just in the interest of justice.

The case of the plaintiff

3. Brief facts of the plaintiff's case are as under :

The plaintiff is owner & possessor of Plot No.69, admeasuring 140 Sq. Mtr., situated at land of R. S. No. 125 paiki Halol, District Panchmahals, which was purchased by the plaintiff from Shah Anilkumar Natvarlal by registered sale deed No.1838/2005 dated 31.12.2005. The four boundaries of the said plot are as under:-

East : Plot No. 61 adjoining said property.

West : 10 foot common road.

North : adjoining open road.
South : Plot No.70 adjoining said property.

The said plot hereinafter referred as “suit property”. It is stated by the plaintiff that after executed sale deed, name of plaintiff has been entered into revenue records of suit property by transfer entry No.13081, dtd. 19.07.2005. At that time no one objected the same. Thereafter, the plaintiff is enjoying peaceful possession over the suit property. That the plaintiff is paying property tax in the Halol Municipality. That earlier land bearing R.S. No.125 paiki were divided into plots as per it's layout & plan, vide District Panchayat, Godhra Revenue Department, No.D.P./Land /N.A./S.R./32/, dtd. 04/07/83. Out of that land, Shah Anilkumar-erstwhile owner of the suit property has purchased the said suit property from Kiranbhai @ Rajendra Hirabhai Desai Power of Attorney ("**POA**" for short) Holder of Ketanbhai Ramanbhai Nayak vide registered sale deed No.846/1990 dated 13.07.1990 thereafter in the year 2005 the plaintiff has purchased the suit property from the Shah Anilkumar and since then name of the plaintiff was entered into the revenue record of the suit property. However, the defendant was tried to prepare false layout & plan and had tried to illegally grab the suit property. Hence, the defendant had filed litigations before the Executive Magistrate, Halol, Deputy Collector, Godhra, Collector, Godhra, Secretary, Revenue Department, Ahmedabad. That the defendant

has been tried to illegally grab the suit property. Hence, the plaintiff has instituted present suit against the defendant.

4. Upon issuance of the summons/notices to the defendant, defendant has appeared before the Court through his Ld. Advocate Mr. A. T. Sheth, whose Memo of Appearance is produced at Exh.8 and the defendant has filed his written reply at Exh.11.

Defence of the defendant

5. The defendant has filed written statement vide Exh.11 interalia denied the fact of the suit in Toto. It is contended that all the allegations made against the defendant by the plaintiff are illegal, false, fabricated and baseless. So, the plaintiff is not entitled to get relief as prayed for. The plaintiff has concealed the fact that regarding N.A. Permission, maps sanctioned by the Town Planing Authority and relied upon false facts filed present suit. Town planing authority has approved map of only 68 plots over the suit property and in permission details only 68 plots were mentioned and Nagarpalika permitted for construction as per Town Planing Committee and except it permission for construction of other plot is legally reject. In short, the plaintiff has filed present false suit by suppressing material facts with regard to N.A. permission, map approved by the Town Planning Authority, sale note which is canceled by appropriate revenue authorities

and his illegal purchase of the plot No.69 which is situated over the common plot and road of original Survey No.125. So, it appears that the plaintiff has not come before the Court with net and clean hands. As the plaintiff has purchased illegal plot No.69 over the land of common plot and open road of land of Survey No.125 so it is required to join other 68 plot co-owners in this suit but the plaintiff has not joined them so suit of the plaintiff is barred by non-joinder of necessary parties. Moreover, the plaintiff has also not joined developer as a party to the suit, thus, suit of the plaintiff is barred by non-joinder of necessary parties. As per provision of Order 7 Rule 14, at the time of institution of the suit plaintiff shall have to produce documentary evidence of the subject matter which shows his right over the suit property but the plaintiff has failed to produce the same, therefore, the present suit of the plaintiff is prima facie required to be reject. Plaintiff has filed the present suit to misguide the Court. Initially name of the present plaintiff was runs in to the revenue record of the suit property which is deleted vide mutation entry No.22801 so, the plaintiff has not produced any government evidence which shows that his name was runs as owner and possessor over the suit property. Suit of the plaintiff is prima facie not tenable because name of the plaintiff is deleted from the revenue record of R.S. No.125 Paiki 49 and instead of name of the plaintiff name of Anilkumar Natvarlal Shah is runs into the R.S. No.125 Paiki 77.

In fact, plaintiff has illegally create the suit property and encroach the joint right of road and common plot of original owners of plot Nos.1 to 68. Mostly, when agricultural land is converted into non-agricultural land, it is a legal rule to keep 40% of the land as common plot and road. Due to people like the plaintiff, the Government has started the practice of keeping the common plot and road area other than the plotted area in the name of the Municipal Corporation in the last few years to convert agricultural land into non-agricultural land and the main intention of the government is to provide social and necessary and mainly welfare activities to the legal plot holder in such a place, therefore no permission is given for plotting in such a place. It is contended that looking to the Letter of Deputy Secretary of Revenue Department, Gujarat dated 13.09.1993 with regard to provisions of plots and roads Hon'ble Court be comes to the conclusion that the plaintiff has doing injustice to the present defendant as well as other 67 co-owners of road and common plot. It is further contended that, as the plaintiff is not legally owner of plot No. 69 and his name is not running in Government Records, he is not entitled to relief as prayed for. That the entry of sale deed was rejected by the Deputy Collector, Halol, Collector, Panchmahals & also Secretary, Gujarat Government. The plaintiff has concealed the fact that he has illegally purchased No.69, which is situated in the land of common plot & road. The plaintiff has relied upon

transfer entry, which was rejected. Lastly, it is requested by the defendant to reject the present suit by awarding him heavy compensatory cost.

6. Considering the pleadings of both the parties and evidence produced on record as well as considering the submissions of both the sides, the following issues were framed by my learned Predecessor Judge for the suit at Exh.14 for adjudication and conclusion of the suit which are as under :

:: I S S U E S ::

1	Whether the plaintiff proves that suit property i.e. plot No.69 admeasuring 140 Sq.Mtr which is one of the plot of non agricultural land for residential purpose being R.S. No.125 paiki situated at Halol Kasba Ta.Halol, Dist.Panchmahal was purchased by him vide registered sale deed no.1838 dtd.31.12.2005 from its owner Shah Anilkumar Natvarlal and so he is the owner and possessor of said suit property ?
2	Whether the plaintiff proves that defendant has got false orders from Mamlatdar Halol, Deputy Collector and Collector Godhra and Secretary Revenue Department with respect to said R.S. No.125 paiki by making false submission ?
3	Whether the defendant proves that the plaintiff has suppressed facts related to revenue record and there only 68 plots in R.S. No.125 paiki whereas suit property i.e. plot

	No.69 is land of common plot and road ?
4	Whether the suit of plaintiff is barred by principle of non-joinder of necessary party ?
5	Whether the plaintiff is entitled for relief as is prayed in para 8 of plaint ?
6	What order and decree ?

-:: DECISIONS ::-

7. My decisions to the above issues for the main suit are as under:-

1.	In affirmative.
2.	In Negative.
3.	In affirmative.
4.	In Negative.
5.	In Negative.
6.	As per Final Order.

8. In order to prove their suit, the plaintiffs have submitted the following Oral as well as Documentary evidences in their support :

Sr. No.	Particulars	Exh.
<u>ORAL EVIDENCE</u>		
1.	Affidavit of Examination-In-Chief of Plaintiff – Bharatkumar Babubhai Vaishnav POA Holder of Maltiben Bharatkumar Vaishnav.	20
<u>DOCUMENTARY EVIDENCE</u>		
1	Copy of Aadhar Card of plaintiff.	23

2	Copy of Power of Attorney.	24
3	Copy of Registered Sale Deed No.1838/2005.	25
4	Copy of Village Form No.6 vide mutation entry No.13417.	26
5	Copy of Village Form No.8-A of R. S. No.125 Paiki 49.	27
6	Copy of Village Form No.7 of R. S. No.125. Paiki 49.	28
7	Copy of Village Form No.12 of R. S. No.125 Paiki 49.	29
8	Copy of Assessment Letter.	30
9	Copy of Receipt of Revenue Tax.	31
10	Copy of Receipt of Tax of Land.	32
11	Copy of Receipt of Tax of Land.	33
12	Copy of Lay Out Plan.	34

9. After giving sufficient opportunities, as the plaintiff has not adduced his further evidence, therefore, this Court has closed his right to produce adduce further evidence on date 30.04.2024.

10. In order to defend in the present suit, the defendant has submitted the following oral evidence as well as documentary evidences in his support:

Sr. No.	Particulars	Exh.
<u>ORAL EVIDENCE</u>		
1	Affidavit of Examination-In-Chief of Defendant-Vijaykumar Vallabhdas Shah.	52

2	Affidavit of Examination-In-Chief of Defendant Witness - Bharatkumar Manubhai Patel.	56
<u>DOCUMENTARY EVIDENCE</u>		
1	RTI Letter	42
2	RTI Letter	43
3	Copy of Judgment of RTS Appeal No.41/2014	44
4	Copy of Judgment of RTS Appeal No.109/2015	45
5	Copy of Judgment Revision Appeal No.61- 2017 of SSRD	46
6	Copy of order of N.A.	47
7	Copy of Village Form No.6 vide mutation entry No.22801	48
8	Map of Town Planner.	49
9	Copy of Village Form No.6 vide mutation entry No.11956.	58
10	Copy of Village Form No.6 vide mutation entry No.13417.	59
11	Copy of Village Form No.7 of R. S. No.125 Paiki 77.	60
12	Copy of Village Form No.12 of R. S. No.125 Paiki 77.	61
13	Copy of Village Form No.8-A of R. S. No.125 Paiki 77.	62
14	Copy of Aadhar Card of plaintiff.	63

Thereafter the defendant has submitted his closing pursis at Exh.64 whereby, he has declare that his evidence is over.

11. Arguments

- After giving sufficient opportunities as the plaintiff has not produced their arguments, therefore, this Court has closed his right of arguments by passing order below Exh.65.
- Heard the oral arguments of the Ld. Advocate for the defendant at length.

-:: APPRECIATION OF THE ISSUES ::-

- 12.** Before going into the merit of the suit and evidence lead by both the parties thereto it is highly imperative to gone through the Section 101 of Indian Evidence Act, 1872 which is reads as follows :

Section 101 : Burden of proof.

Who ever desires any Court to give judgment as to any legal right for liability depend on the existence of facts which he asserts, must prove that those facts exist.

When a person is bound to prove the existence of any facts, it is said that the burden of proof lies on that person.

Therefore, in light of provision made under Section 101 of the Evidence Act, 1872, it is clear that burden of

proof lies on the plaintiff has to prove that he has purchased suit property in accordance with law and there is no any deficiency is in existence in entire proceeding of purchasing suit property. On other hand the defendant is suppose to bound prove that the plaintiff not come up with clean hands and making suppression of material facts as well as suit of the plaintiff is based on false and fabricated facts.

13. As the Issue Nos.1 and 2 are inter-connected and inter-linked with each other it is highly imperative to discuss both these issues together and jointly for smooth understanding, for sake of brevity and to avoid unnecessary repetition of evidence and facts. Hence, I propose to address and discuss both these issues together.

14. **-::: Issue Nos.1 and 2 :::-**

ISSUE No.1: Whether the plaintiff proves that suit property i.e. plot No.69 admeasuring 140 Sq.Mtr which is one of the plot of non agricultural land for residential purpose being R.S. No.125 paiki situated at Halol Kasba Ta.Halol, Dist.Panchmahal was purchased by him vide registered sale deed no.1838 dtd.31.12.2005 from its owner Shah Anilkumar Natvarlal and so he is the owner and possessor of said suit property ?

ISSUE No.2 : Whether the plaintiff proves that defendant has got false orders from Mamlatdar Halol, Deputy Collector and Collector Godhra and Secretary

Revenue Department with respect to said R.S. No.125 paiki by making false submission ?

It is to say of the plaintiff that she has purchased plot No.69, admeasuring 140 Sqr.Mtrs from its erstwhile owner Anilikumar Natvarlal Shah vide registered sale deed No.1838 dated 31.12.2005. Since then the plaintiff is enjoying suit property as an owner and occupier. Further, the plaintiff has plead that her name also entered into revenue record vide transfer entry No.13081 dated 19.07.2005. In all, according to plaintiff she is lawful owner and occupier of the suit property in support of her plaint. The plaintiff has submitted ocular evidence by an affidavit of Examination-In-Chief of her POA holder and her husband Mr. Bhartkumar Babubhai Vaishnav vide Exh.20 as well as the plaintiff has submitted documentary evidence vide Exh.23 to Exh.34. However, considering contention raised by the defendant in his written statement at Exh.11 it appears that, there is no any dispute regarding execution of registered sale deed No.1838 made by Anilkumar Natvarlal Shah in favour of the plaintiff. So, by and large, it appears that, even the defendant admitted existence of registered sale deed No.1838 not only that but the defendant also admitted that the plaintiff has got occupation over the suit property.

15. Moreover, the plaintiff has submitted copy of registered

sale deed No.1838 at Exh.25. Upon plain reading of registered sale deed No.1838 it appears that, Anilkumar Natvarlal Shah of Halol has executed registered sale deed No.1838 on date 13.12.2005 for a sum of Rs.59,000/- of plot No.69 admeasuring 140 Sqr.Mtrs. belongs to R.S. No.125 Paiki of Halol. Further, it appears from abstract of Village Form No.6 at Exh.26 that based on registered sale deed No.1838 revenue entry No.13417 was posted into revenue record on date 13.02.2006. Thereafter, there are an abstract of Village Form Nos.7, 12 and 8-A vide Exh.27 to Exh.29 which indicates that name of the plaintiff is there as occupier of the property. Further, the plaintiff has submitted Assessment Sheet issued by Nagarpalika Halol in the year 2013-2014 at Exh.30, wherein, the plaintiff is shown as occupier of the suit property. While, the plaintiff has submitted true copies of receipts of Tax paid by her at Exh.31 to Exh.33. Lastly, the plaintiff has submitted copy of lay out plan at Exh.34.

- 16.** So, by adducing oral and documentary evidence the plaintiff is trying to prove that she is lawful owner and there is nothing wrong have been done in purchase of this suit property. In this regard, at this juncture, it is desirable to gone through cross-examination of the POA of the plaintiff at Exh.20. The plaintiff herself does not appear before this Court for a purpose of cross-examination but she has chose to grant Power of Attorney in favour of her husband. The plaintiff has

submitted copy of that Power of Attorney vide Exh.24. Upon careful perusal of copy of Power of Attorney it appears that, the plaintiff has not mentioned any reason as to why she is gives power of attorney in favour of her husband-Bharatbhai Babubhai Vaishnav. However, it is fact that the plaintiff is represented by her POA and husband namely Mr. Bharatbhai Babubhai Vaishnav. So, the defendant side has conducted cross-examination of POA of the plaintiff.

17. In his cross-examination at Exh.20 the POA for the plaintiff has stated that he is unaware about the fact that why is wife has instituted present suit. He has admitted that permission to convert land bearing R.S. No.125 Paiki into the non agricultural land is given by District Development Officer, Panchmahal ("**DDO**" for short). He has admitted that while granting permission for conversion of the land Town Planning Officer has approved map. He has expressed his ignorance as to how much plots into the map were sanctioned by the Town Planning Officer. He has also expressed his ignorance on which date and how much square meter land of survey No.125 Paiki was converted into non agricultural land. He has also expressed his ignorance that Nagarpalika should have to grant permission for construction as per map sanctioned by Town Planning Officer. So, prima facie it appears that the person who is husband of the plaintiff and appear before this Court as a POA holder of the plaintiff does not have any idea

as to how much plot were sanctioned through the map by the Town Planning Officer. Even he does not have any idea when DDO has granted permission to convert land bearing R.S. No.125 Paiki into non agriculture land. In this regard, it would be profitable to gone through judgment rendered by the Hon'ble Supreme Court in case of **Janki Vashdeo Bhojwani & Anr. Vs Indusind Bank Ltd. & Ors.**, wherein, it is held that -

12. *In the context of the directions given by this Court, shifting the burden of proving on the appellants that they have a share in the property, it was obligatory on the appellants to have entered the box and discharged the burden by themselves. The question whether the appellants have any independent source of income and have contributed towards the purchase of the property from their own independent income can be only answered by the appellants themselves and not by a mere holder of power of attorney from them. The power of attorney holder does not have the personal knowledge of the matter of the appellants and therefore he can neither depose on his personal knowledge nor can he be cross-examined on those facts which are to the personal knowledge of the principal.*
13. *Order III, Rules 1 and 2 CPC, empowers the holder of power of attorney to "act" on behalf of the principal. In our view the word "acts" employed in Order III, Rules 1 and 2 CPC,*

confines only in respect of "acts" done by the power of attorney holder in exercise of power granted by the instrument. The term "acts" would not include deposing in place and instead of the principal. In other words, if the power of attorney holder has rendered some "acts" in pursuance to power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for the acts done by the principal and not by him. Similarly, he cannot depose for the principal in respect of the matter which only the principal can have a personal knowledge and in respect of which the principal is entitled to be cross-examined.

14. *Having regard to the directions in the order of remand by which this Court placed the burden of proving on the appellants that they have a share in the property, it was obligatory on the part of the appellants to have entered the box and discharged the burden. Instead, they allowed Mr. Bhojwani to represent them and the Tribunal erred in allowing the power of attorney holder to enter the box and depose instead of the appellants. Thus, the appellants have failed to establish that they have any independent source of income and they had contributed for the purchase of the property from their own independent income. We accordingly hold that the Tribunal has erred in holding that they have a share and*

are co-owners of the property in question. The finding recorded by the Tribunal in this respect is set aside.

15. *Apart from what has been stated, this Court in the case of Vidhyadhar vs. Manikrao and Another, (1999) 3 SCC 573 observed at page 583 SCC that "where a party to the suit does not appear in the witness-box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct".*
16. *In civil dispute the conduct of the parties is material. The appellants have not approached the Court with clean hands. From the conduct of the parties it is apparent that it was a ploy to salvage the property from sale in the execution of Decree.*

18. So, from above cited judgment of the Hon'ble Supreme Court it appears that the Hon'ble Supreme Court has laid down that the defining law regarding the scope and limits of a POA holder's authority to give evidence (depose) in a Court of law on behalf of the principal. The Hon'ble Supreme Court has clarified that the word "Act" employed in Order 3, Rule 1 and 2 of CPC is confined only to procedural act done by the POA holder in exercise of the power granted by the instrument but the term "act" does not include deposing in place of the principal as a witness. The Hon'ble Supreme Court has also held that a POA holder cannot

substitute for the principal to give evidence on a matters that are within the exclusive personal knowledge of the principal. A POA holder can only depose about facts that are within his own personal knowledge and things done by him in pursuance of the power given to him. The POA holder cannot testify about acts done by the principal nor can he be cross-examined on matter that only the principal would realistically know. Further, it is also held that if a case shifts the burden of proof on to a party to establish facts entirely personal to them (such as their independent source of income, personal bonafide requirements or ready and willing intent) it is obligatory for that principal to enter the witness box. If the principal shies away from the witness box and send a POA holder who has no direct personal knowledge of those specific facts, the party fails to discharge its legal burden of proof. This can lead to an adverse presumption against the principal.

- 19.** However, the plaintiff does not appear before this Court and offer herself for cross-examination by other party. Even this Court has earlier in forgoing paragraphs it is observed that the plaintiff has not mentioned any reason into Power of Attorney Deed as to why she has granted power to her husband to appear and act on her behalf before this Court. It is not a case of the plaintiff that she is not able to move or suffering from any serious illness which enable herself to appear before this Court. Under

such circumstances, this Court is certainly of the view that the plaintiff ought to have appear before this Court. Moreover, from relevant portion of cross-examination of a POA holder for the plaintiff it appears that he does not have any basic and required knowledge regarding an order passed by the Town Planning Officer and map approved by the Town Planning Officer. While, this entire case is based only on map approved by the Town Planning Officer.

- 20.** So, it is admitted fact that the plaintiff had purchased plot No.69 belongs to land bearing R.S. No.125 Paiki. However, it is the main contention of the defendant that while passing an order to change tenure of the land bearing R.S. No.125 Paiki, the DDO has granted permission for 68 plots only. In this regard the defendant has submitted a copy of an order passed by the DDO on date 05.07.1983. Further, the defendant has submitted the copy of an order passed by Deputy Collector, Halol in RTS Appeal No.41/2014, whereby, the Deputy Collector, Halol has rejected transfer entry No.13081 dated 19.07.2005, transfer entry No.13417 dated 13.02.2006, transfer entry No.16822 dated 02.03.2010 and transfer entry No.20371 dated 21.03.2013 which was earlier got certified by the competent revenue authority. It is pertinent to note here that revenue entry No.13417 was posted into revenue record in favour of the plaintiff pursuant to registered sale deed No.1838 executed in favour of the plaintiff.

So it transpires that, the Deputy Collector, Halol has rejected revenue entry No.13417 in favour of the plaintiff into the revenue record. Further, the defendant has submitted copy of an abstract of Village Form No.6, wherein, mutation entry No.22801, dated 21.09.2015 posted which says that revenue entry No.13417 along with other three entries were being rejected by the Deputy Collector, Halol. Thereafter, the defendant has submitted a copy of an order passed by the Collector, Godhra at Panchmahal in RTS Appeal No.109/2015 which was preferred by the plaintiff at Exh.45. It appears from an order passed by the Collector, Panchmahal in RTS Appeal No.109/2015 that the Collector has upheld an order passed by the Deputy Collector, Halol and rejected a Revision Appeal preferred by the applicant. Lastly, the defendant has submitted copy of an order passed by Additional Secretary, Revenue Department (Dispute), Ahmedabad in Revision Application No.61/2017 at Exh.46, whereby, the Additional Secretary, Revenue Department (Dispute), Ahmedabad has upheld an order passed by the Deputy Collector, Halol and the Collector, Panchmahal rejecting revenue entry No.13417 along with three other revenue entries.

21. So, from above scenario it appears that, the plaintiff have purchased suit property i.e. plot No.69 belongs to land bearing R.S. No.125 Paiki from its erstwhile owner under registered sale deed No.1838 and got

possession of the suit property since then I answer **Issue No.1** as “**In Affirmative**”. But as it appears that, from Deputy Collector, Halol to Additional Secretary, Revenue Department (Dispute), Ahmedabad, all the revenue authorities have unanimously hold that Town Planning Officer has approved map for 16 plot only. So, there were no space for more 68 plots. However, the plaintiff has purchased plot No.69 which was not sanctioned by the competent authority. The plot which was purchased by the plaintiff was a plot with a land for a common plot. Therefore, all the revenue official have observed that Town Planning Officer, Vadodara has approved 68 plots in a land belongs to R.S. No.125 Paiki and rest of the land, other then plots in the map were left for the purpose of common plot. Therefore, all these revenue officials have also observed that sale of plot other then approved 68 plots was illegal. Under such circumstances, it appears that the plaintiff grossly fails to prove that all these orders passed by the Revenue Authorities are illegal, perverse and settled proposition of law. Hence, I answer **Issue No.2** as “**In Negative**”.

-::: Issue No.3 :::

ISSUE No.3 : Whether the defendant proves that the plaintiff has suppressed facts related to revenue record and there only 68 plots in R.S. No.125 paiki whereas suit property i.e. plot No.69 is land of common plot and road ?

22. Now, the plaintiff has pleaded in her plaint that she has purchased suit property from its erstwhile owner under registered sale deed No.1838 on date 13.12.2005 since then she is enjoying ownership and possession over the suit property. Further, the plaintiff has pleaded that on the basis of registered sale deed No.1838 her name was entered into revenue record vide transfer entry No.13417 dated 13.02.2006. Interestingly, thereafter the plaintiff has mentioned about order passed by the revenue authorities in ambiguous manner but the plaintiff has not mentioned anywhere in entire plaint that transfer entry No.13417 is rejected under order passed by the Deputy Collector, Halol and mutation entry No.22801 was posted into the revenue record to that effect. The plaintiff has very cleverly submitted abstract of Village Form Nos.7, 12 and 8-A as well as Assessment Sheet issued by the Nagarpalika, Halol and receipts of payment of various taxes vide Exh.27 to Exh.33 but all these documents are not believable. Because abstract of Village Form Nos.7, 12 and 8-A are of the year prior to 2015. Receipt of tax payment is only conclusive proof of who is responsible to pay tax to the Government or local body only. Such receipts cannot be said a valid and legal document to establish legal title of a person over any property. In short, such receipts cannot be a conclusive documentary proof to determine legality of any sale transaction. On the contrary, it appears from the evidence to this Court that the plaintiff has purchased so called plot No.69 which

was originally land for common plot and road. Therefore, it appears that by not mentioning about revenue entry No.22801 and not adducing latest abstract of village forms and not adducing true and correct map approved by Town Planning Officer, the plaintiff has trying to suppress the material fact thereby the plaintiff has trying to mislead this Court. This is very serious and considerable issue for the Court of law. Hence, I answer **Issue No.3** as “**In Affirmative**”.

-::: **Issue No.4** :::-

ISSUE No.4: Whether the suit of plaintiff is barred by principle of non-joinder of necessary party ?

23. The defendant has contended that, the plaintiff has not joined holder of 68 plots belongs to land bearing R.S. No.125 Paiki thereby, present suit is barred by non-joinder of necessary parties. But this Court is not in agreement with this contention. Because there is no any evidence available on record which may lead this Court to believe that it was a registered society. If it would a registered society and salt transaction was made by any of the office bearer of the society then certainly the plaintiff should have to join all the members or plot holders of the society because the plaintiff has purchased land of common plot of the society. But in a given case it is not a case of the defendant that the plaintiff has purchased plot on a land of common plot which was belongs to society. In all, in absence of

society I find no need to join rest of the plot holder as a party into the suit. Thus, I answer **Issue No.4** as “**In Negative**”.

ISSUE No.5 : Whether the plaintiff is entitled for relief as is prayed in para 8 of plaint ?

24. Therefore, upon evaluation and analysis of the evidence available on the record it appears that the plaintiff has claimed that she has purchased plot No.69 belongs to land bearing R.S. No.125 Paiki. While the defendant has contended that Town Planning Officer has approved map for 68 plots only. In support of his contention the defendant has submitted attested copy of map approved by Town Planning Officer vide Exh.49. On the contrary, the plaintiff has submitted true copy of lay out plan vide Exh.34. However, upon careful perusal of lay out plan submitted by the plaintiff vide Exh.34 it appears that it is no where mentioned that this lay out plan approved by which authority. In short, the plaintiff has trying to cheat this Court by submitting ambiguous lay out plan. Lay out plan at Exh.34 does not have any evidentiary value because plaintiff fails to prove that it is approved by competent authority. On the contrary the defendant has submitted true copy of map approved by Town Planning Officer. Upon careful perusal of such map at Exh.49 it is very ostensibly appears that Town Planning Officer has approved this map for 68 plots only. Meaning thereby, rest of all the

plots are illegal and without force of law. Further, it appears that during the proceeding the plaintiff has concealed fact that vide mutation entry No.22801 revenue entry No.13417 was rejected and the plaintiff has by adducing old abstract of Village Form Nos.7, 12 and 8-A trying to mislead this Court to believe that even as on today the name of the plaintiff is runs into the revenue record. Therefore, upon making analysis and evaluation of the evidence submitted by the plaintiff it appears that, it is nothing but childish attempt made by the plaintiff to misguide and mislead this Court. Ground reality is only that all the revenue authorities has unanimously held that the plaintiff has purchased plot No.69 is nothing but a land left for common plot and roads. Therefore, sale transaction made by the plaintiff with Anilbhai Shah is itself illegal. Hence, considering entire fact, circumstances and discussion made herein above this Court is of the view that plaintiff is not entitled to get any reliefs of claim. Hence, I answer **Issue No.5** as “**In Negative**” and for the Issue No.6 in the larger interest of justice I pass following final order ;

-::: FINAL ORDER :::

1. The present suit is hereby ordered to be rejected
2. The plaintiff shall bear cost of both the parties.

3. Decree be drawn accordingly.

Pronounced & signed in the open Court today on this
18st day of June, 2026.

Date : 18.06.2026.

Place : Halol.

V. T. Desai

[Rajeshkumar Batuklal Joshi]

Principal Senior Civil Judge,

Panchmahal at Halol.

Code : GJ00952