



GJSK020045962023 	Filed on	:	06.05.2023		
	Registered on	:	06.05.2023		
	Decided on	:	22.07.2026		
	Duration	:	03	02	16
			Years	Months	Days

**IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE
HIMMATNAGAR, DIST. SABARKANTHA.**

Presided Over by Ms. J.V.PARMAR

Regular Civil Suit No. 61 / 2023

Exh. : 42

Plaintiff : Kanubhai Shamalbhai Patel
Age : 37 years, Occupation : Agriculture,
Resi. Of : Ruvach, Ta. Idar, Dist. Sabarkantha.

// VERSUS //

Defendant : Narayanbhai Manibhai Patel
Age : adult, Occupation : Agriculture,
Resi. Of : Kanklol, Ta. Himmatnagar,
Dist. Sabarkantha.

:: Suit for recovery of Rs.20,00,000/- ::

=====

Appearance :

Mr. N. A. Balospura, learned advocate for the plaintiff.

Mr. A. I. Prajapati, learned advocate for the defendants.

=====

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

01. The plaintiff has filed the present suit to recover
Rs.20,00,000/- (Rupees Twenty Lakh Only) from the
defendant.

02. The brief facts of the suit are as under;

2.1 That, the defendant had possession an agricultural land bearing
account No. 1856, Survey No. 1635 its old survey No. 919/1
paiki 1 paiki 2, total admeasuring 1-01-21 H.A.Sq. Mtrs. as well
as account No. 1857, Survey No. 1636 its old survey No. 919/1
paiki 2, total admeasuring 1-17-28 H.A.Sq. Mtrs. and these
agricultural land was in joint name, and out of those lands half
of the western part of the agricultural land was in the
possession and enjoyment of the defendant and the remaining
land was in the share of the other account holder. Since there
was good relationship between the plaintiff and the defendant,
the plaintiff has asked to sell an agricultural land which is in
possession of the defendant i.e. Survey No. 1636 admeasuring

0-58-64 H.A.Sq. Mtrs. and Survey No. 1635 admeasuring 0-50-60 H.A.Sq. Mtrs., the defendant sold the 0-50-60 H.A.Sq. Mtrs. agricultural land mentioned in the Power of Attorney of his share of Survey No. 1635 for Rs.20,00,000/- and in this way the 0-58-64 H.A.Sq. Mtrs. agricultural land of Survey No. 1636 was sold for Rs.25,00,000/- and at that time, the plaintiff has asked to execute the sale deed, but instead of executing the sale deed, the defendant has issued a registered Power of Attorney vide bearing No. 4332/2020 for Survey No. 1636 on dated 31.07.2020 and similarly, a registered Power of Attorney vide bearing No. 4329/2020 was issued for Survey No. 1635 on dated 31.07.2020 to the plaintiff and by issuing the Power of Attorney, all the rights over the property were given to the plaintiff and he was exercising the powers as the Power of Attorney holder of the defendant. The plaintiff has paid the total amount of Rs.45,00,000/- in cash of both the agricultural land which were in possession and enjoyment of the defendant on 31/07/2020 and thereafter the defendant issued a Power of Attorney to the plaintiff with the above details.

2.2 As per the Power of Attorney No. 4332 and 4329 registered for the agricultural lands purchased by the plaintiff, as per the page No. 3 of both the Powers of Attorney, the share of the undivided property falling to the defendant, out of the total 1-17-28 H.A.Sq. Mtrs. of land of Survey No. 1636, 0-58-64 H.A.Sq. Mtrs. of land belonged to the defendant and similarly out of the total 1-01-21 H.A.Sq. Mtrs. of land of Survey No. 1635, 0-50-60 H.A.Sq. Mtrs. of land belonged to the defendant and for both the agricultural lands, defendant had executed the Power of Attorney on 31.07.2020 for the works mentioned in the Power of Attorney and in this way the defendant had given all the powers and had also given possession and enjoyment of both the agricultural lands as per his share by getting the consideration. As the revenue records of both the agricultural lands purchased by plaintiff, show the defendant's name jointly and plaintiff's name cannot be entered on the basis of the Power of Attorney, therefore, the plaintiff approached the defendant for the purpose of entering his name. But, the defendant stated that you can do the document in your name on the basis of the Power of Attorney, as you have the Power of Attorney. Therefore, plaintiff has purchased the land on

04.08.2020 vide sale deed bearing No. 4364/2020 to the defendant's share of 0-50-60 H.A.Sq. Mtrs. out of the total land of Survey No. 1635. In the said sale deed the plaintiff was as the seller being a Power of Attorney Holder of Patel Narayanbhai Manibhai and the plaintiff was also the transferee, were present in the relevant office and the document was registered in his name and the details of the payment of the consideration are mentioned on page No. 13 of the deed, as per which Rs. 20,00,000/-, was paid to Patel Narayanbhai Manibhai on 31.07.2020 by the transferee vide registered Power of Attorney deed No. 4329. In the same way, the plaintiff has purchased the land on 04.08.2020 vide sale deed bearing No. 4365/2020 to the defendant's share of 0-58-64 H.A.Sq. Mtrs. out of the total land of Survey No. 1636. In the said sale deed the plaintiff was as the seller being a Power of Attorney Holder of Patel Narayanbhai Manibhai and the plaintiff was also the transferee, were present in the relevant office and the deed was registered in his name and the details of the payment of the consideration are mentioned on page No. 13 of the deed, as per which Rs.25,00,000/-, was paid to Patel Narayanbhai Manibhai on 31.07.2020 by the transferee vide registered Power of

Attorney deed No. 4332. Thus, the plaintiff being ignorant and unaware of the law, at that time, the plaintiff has not made the sale entry in the revenue records of Survey No. 1635 and 1636 mentioned in the details of the sale deed, and thus, despite the fact that the plaintiff had purchased these lands, due to lack of sales entries, the name of the defendant continued in the revenue records of both the Survey numbers. Since there is a good relationship between the plaintiff and the defendant, the defendant has not raised any objection regarding the sell and possession. In the year 2022, the plaintiff was living in Ruwach (Bolundra) and both these agricultural lands were located in Kankalol. Since the plaintiff had having difficulty in farming, the plaintiff decided to sell both these lands back to the defendant and the defendant also agreed to keep the properties back for the same amount for which the plaintiff had purchased the property. Thus, on 23.06.2022, from Sale deed No. 6848, Account No. 1857, 0-58-64 H.A.Sq. Mtrs. agricultural land of new Survey No. 1636 was returned to the defendant for Rs.25,00,000/-. On 23.06.2022 the plaintiff and the defendant were remained present before the office of Sub-Registrar, Himmatnagar, and executed the cancellation deed bearing No.

6748 to cancel the sale deed bearing No. 4365 and as per the facts stated in the details of page No. 9 of the deed, the defendant has given two cheques bearing No. 03007 and 030008 of Rs.5,00,000/- each of the Sabarkantha District Central Cooperative Bank Ltd., Head Branch, Himmatnagar, to the plaintiff and at that time the defendant said that I will give you both the cheques as soon as the cancellation deed registered, therefore having faith and trust in the defendant, the plaintiff agreed to the cancellation of the sale deed No. 6748. According to the cancellation deed, the plaintiff was to receive a total of Rs.25,00,000/- but as per the details of page No. 9, as per serial No. 3, the plaintiff was paid Rs.15,00,000/- in installments on different dates in different financial years, but that amount has not been paid and the plaintiff does not have any documentary evidence on that ground and at present only the plaintiff has filed the present suit to recover the amount which was to be paid by cheque and the cheques which are mentioned on page No. 9 of the cancellation deed and in this way the plaintiff and the defendant were present at the Sub Registrar's Office, Himmatnagar on 23.06.2022 and made a cancellation deed bearing No. 6747 on the grounds of

cancellation of sale deed bearing No. 4364, the defendant has given two cheques bearing No. 030005 and 030006 of Rs.5,00,000/- each of the Sabarkantha District Central Cooperative Bank Ltd., Main Branch Himmatnagar and at that time the defendant said that I will give you both the cheques as soon as the cancellation deed registered, therefore, having faith and trust in the defendant, the plaintiff agreed to the cancellation sale deed bearing No. 6747. According to the cancellation deed, the plaintiff was due a total of Rs.20,00,000/-, but as per the details of page No. 9, as per Sr. No. 3, it has shown the fact that the defendant has paid Rs.10,00,000/- to the plaintiff in installments on different dates in different financial years. But that amount has not been paid either, but since the plaintiff do not have any documentary evidence for that reason, Therefore, the plaintiff has filed the present suit to recover the amount of Rs.20,00,000/- which the plaintiff had paid by cheque and the cheques which are mentioned on page No. 9 of both the cancellation deeds and prayed to grant the following reliefs;

- (a) To pass a decree in favour of plaintiff and against the defendant that the recoverable amount of Rs.20,00,000/-

can be recovered from the defendant along with interest @ 18% as per the details of the cheques mentioned in the two cancellation deeds mentioned in the details of para-7 of the plaint and if the plaintiff do not recover the said amount from the defendant, the plaintiff can recover the said amount along with interest and costs from all kind of property of the defendant.

(b) Any other relief which Hon'ble Court deems fit.

03. The summons of the plaint are duly served upon the defendant as per the provisions of Order V of the Code of Civil Procedure, 1908 (in short “**Code**”). Upon service of summons the defendant has appeared through his learned advocate Mr. A. I. Prajapati vide **Exh. 06** before the Court, however, the defendant has failed to file his written statement against the allegation raised by the plaintiff, therefore, the right to file written statement has been closed by this Court on **18.08.2023** by passing an order below Exh. 1.

04. In support of his case, the plaintiff has produced following oral as well as documentary evidence.

ORAL EVIDENCE :

Sr. No.	Name of evidence	Exhibit No.
01.	Deposition in form of affidavit of plaintiff – Kanubhai Shamalbhai Patel	17
02.	Deposition in form of affidavit of plaintiff's witness – Jigarkumar Bipinbhai Pandya	30

DOCUMENTARY EVIDENCE :

Sr. No.	Name of evidence	Exhibit No.
01.	Copy of cancellation deed No. 6747 /2022	19
02.	Copy of cancellation deed No. 6748 /2022	20
03.	Original Power of Attorney No. 4329/2017	21
04.	Original Power of Attorney No. 4332/2018	22
05.	Original registered sale deed No. 4364/2020	23
06.	Original registered sale deed No. 4365/2020	24
07.	Copy of cheque bearing No. 030005 dated 26.07.2023 of The Sabarkantha District Central Co-Op. Bank Ltd. Himmatnagar branch	31
08.	Copy of cheque bearing No. 030007 dated 23.09.2023 of The Sabarkantha District Central Co-Op. Bank Ltd. Himmatnagar branch	32
09.	Copy of cheque bearing No. 030008 dated 20.04.2024 of The Sabarkantha District Central Co-Op. Bank Ltd. Himmatnagar branch	33
10.	Copy of bank statement for the period of 01.03.2022 to 10.10.2024	34
11.	Certificate u/S. 65B of the Indian Evidence Act 1872	35

Thereafter, the learned advocate for the plaintiff has tendered the closing pursis vide **Exh.25** and **Exh. 37**.

05. *Per contra*, neither defendant nor his learned advocate has remained present before the Court to produce the evidence in support of his case, therefore, the learned advocate for the plaintiff has filed an application in regard to close the right to produce the evidence of the defendant at **Exh. 26**, therefore, the Hon'ble Court has passed an order therein on **10.06.2024** and closed the right of defendant to produced the evidence on record.
06. I have heard the argument of Ld. advocate Mr. N. A. Balospura on behalf of the plaintiff and have prayed for the grant of relief mentioned in the plaint at Exh. 1. Also have argued that, the defendant did not produced any kind of evidence and indirectly has accepted the claim of the plaintiff. Hence, the suit should be decreed.
07. From the available pleadings and the documents on record, for just decision of the case, my learned predecessor has framed the following issues in vernacular language vide **Exh. 08**.

:: I S S U E S ::

૦૧. શું વાદી પુરવાર કરે છે કે, તેઓ પ્રતિવાદી પાસેથી વીસ લાખની રકમ કાયદેસર રીતે લેણી નીકળે છે?

૦૨. શું વાદી વ્યાજ મેળવવા હકકદાર છે? જો હા તો કેટલા ટકા?
૦૩. શું હુકમ? શું હુકમનામું?

08. My answer of the above issues are as under :

01. In affirmative.
02. In affirmative, as per final order.
03. As per final order.

:: REASONS / DISCUSSIONS ::

Issue Nos. 1 and 2 :

09. Both the issues are inter linked and thus are discussed together in order to avoid repetition and ambiguity.

I have carefully gone through the entire evidence on record in the light of the submissions made by the learned advocate of plaintiff.

10. To prove the above issues, the plaintiff has produced his examination-in-chief in form of affidavit vide **Exh.17**, wherein he reiterated the facts of plaint, and fully supported to the plaint, hence, it is not required to repeat here.

On the other hand, ample opportunity has been provided to the defendant, however, neither defendant nor his learned advocate was remained present for cross-examination,

therefore, his right to cross-examine the plaintiff has been closed by the Court, by passing an order below **Exh. 17** on **02.05.2024**.

11. *Furthermore*, in support of his pleading, the plaintiff has examined a witness – **Jigarkumar Bipinbhai Pandya** at **Exh. 30**, wherein he has stated that he working as an Assistant Officer CTS in the main branch of The Sabarkantha Co-op Bank Ltd. Himmatnagar since 2006. The bank account of the defendant - Patel Narayanbhai Manibhai is in his branch vide account No. 115008439268, which is currently operational. His bank has given the cheque No. 030005 to 030008, mentioned vide Exh. 19 and 20 to the defendant. All the above cheques have been presented for passing in his bank, as per which cheque No. **030005** has been given to Patel Chandrakant Dahyabhai, which is produced on record vide Exh. 31 and the second cheque bearing No. **030007** is given to Sabarmati Gas, the said cheque was cleared, which is produced on record vide **Exh. 32**, and the amount has been transferred to the account bearing No. 115008512897 of Narayanbhai Manibhai Patel from the third check bearing No. **030008**. The cheque bearing

No. 030006 of the defendant was not presented in the bank till date. He has further stated that the cheques produced on record vide Exh. 31 to Exh. 33 are issued by his bank and the name of the payee in those cheques is not Patel Kanubhai Shamalbhai. Generally, as per banking regulations, the person whose name is the payee gets the money of the cheque.

On the other hand, neither defendant nor his learned advocate was remained present for cross-examination, therefore, his right to cross-examine the plaintiff has been closed by the Court on **16.10.2024**.

12. In support of his case, plaintiff has produced cancellation deed vide Exh. 19 and Exh. 20 respectively. Upon perusal of the Cancellation deed produced by the plaintiff at Exh. 19 and Exh. 20 respectively, both the deeds are registered and it clearly reveals that specific cheques were mentioned therein by the defendant to pay the consideration amount to the plaintiff as per the terms of the cancellation deed. Hence, it is proved beyond doubt through documentary evidence that the said cheques were to be given towards consideration for the cancellation deed.

13. As per the evidence on record, instead of handing over cheque No. 030005 and Cheque No. 030007 (as mentioned in the Cancellation Deed) to the plaintiff, the defendant issued and cleared them in the name of a third party. This act of the defendant demonstrates that he failed to pay the amount due under the Cancellation deed to the plaintiff. To corroborate this fact, the plaintiff has examined an authorized bank employee as a witness at **Exh. 30**. Based on the official bank records, the said witness clearly testified in his deposition that the cheque No. mentioned in Exh. 19 and Exh. 20 were cleared into the account of another person by the defendant instead of the plaintiff. The said witness has not been cross-examined by the defendant. Therefore, the plaintiff's case on this point remained unshakeable and to prove this facts this witness has produced the documentary evidence vide Exh. 31 to Exh. 33 respectively, which are a xerox copy of cheques bearing No. 030005, 030007 and 030008 and in three cheques no name of the plaintiff has been written in the column of pay.
14. Considering all the above oral and documentary evidence, this Court arrives at the finding that the defendant harbored an

intent to commit fraud and breach of trust against the plaintiff right from the beginning. The plaintiff has successfully proved beyond doubt that the defendant has not paid any consideration amount mentioned in the cancellation deed at Exh. 19 and Exh. 20 respectively to the plaintiff. In according with the settle legal principle that “*Fraud vitiates every solemn act*” this act of the defendant is held to be illegal and full of *mala fide* intent.

15. In the present matter, despite the due service of summons issued by this Court, the defendant has neither appeared before the Hon’ble Court nor filed any written statement. Furthermore, the defendant has failed to cross-examine either the plaintiff regarding his oral evidence or the plaintiff’s witness (the bank officer). The Cancellation Deed produced at Exh. 19 and Exh. 20 respectively, as well as the official documentary evidence produced by the bank witness, have remained completely unchallenged by the defendant. As per the well-settled principle of law, when a witness is not cross-examined or documents are not called into question, the veracity of the witness’s deposition and the authenticity of the documents are accepted as truthful by the Court.

Consequently, all oral and documentary evidence presented on behalf of the plaintiff remains unrebutted and unchallenged. By failing to appear before the Court and omitting to set up a defense, it is legally inferred that the defendant has impliedly admitted the facts of the suit and the allegations of fraud raised by the plaintiff.

16. In view of the totality of the circumstances, the unrebutted testimony of the bank witness, and the legal principle laid down by the Hon'ble Apex Court in *Vidhyadhar v. Manikrao*, this Court arrives at the considered conclusion that the plaintiff has successfully proved his case through cogent and unchallenged evidence. As the defendant remained *ex-parte*, no evidence to the contrary has been brought on record to disprove the plaintiff's case.
17. Further considering the issue of rate of interest claimed by the plaintiff at the rate of 18% on outstanding amount, it appears that on record there is no such particular agreement has been made between the parties regarding the interest rate. Hence, after carefully perusing the provision of Section-34 of The Code of Civil Procedure, 1908, it appears that the interest may conveniently be

divided in to three categories, first interest prior to institution of suit, second, interest from the date of institution of suit to the decision of the suit and third, interest from the date of the decree till it's realization. So far as to first category is concerned, Section-34 does not apply to interest prior to the institution of the suit and it can be awarded only when there is an agreement between the parties or mercantile usage having force of law or statutory right to interest. The matter of granting interest before institution of suit is a matter of substantive law and Section-34 shall have no application to such interest. In this case, the plaintiff has claimed interest on the amount due but there is no contract to pay interest between plaintiff and defendants. Therefore the plaintiff is not entitled to get interest as prayed for on the outstanding amount of Rs.5,00,000/-. However, the plaintiff is entitled to get interest under Section-3 of The Interest Act, 1978 and the rate of interest would be current rate of interest (now a days 6 percent interest on deposit in scheduled bank) per annum from the date of the institution of this suit to the date of the payment thereof. Therefore, in my view, the plaintiff is entitled to get decree of due amount of Rs.20,00,000/- with simple interest @ 6% p.a.

18. Hence, I answer the issue No. 1 and 2 in affirmative and for answer the issue No. 3, I pass the following final order in the interest of justice.

:: FINAL ORDER ::

01. The suit of the plaintiff is hereby partly allowed.
02. It is hereby ordered that the defendant shall pay **Rs.20,00,000/- (Rupees Twenty Lakhs Only)** with simple interest at the rate of **6% p.a.** from the date of filing of the suit i. e. **06.05.2023** till realisation.
03. The parties shall bear their own costs.
04. The suit stands dispose off accordingly.
05. Decree be drawn accordingly.

Signed & pronounced in the Open Court today on 22nd day of July, 2026.

Place : Himmatnagar
Date : 22.07.2026

(Ms. Jyotsna Vinubhai Parmar)
Principal Senior Civil Judge
S. K. @ Himmatnagar
Judge Code No. GJ01021

*PARLJITSINH