

Received on : 06/03/2023
Registered on : 06/03/2023
Decided on : 01/04/2026
Duration : Y. M. D.

In the Court of 8th Additional District Judge at Surat.

Regular Civil Appeal No-50 of 2023

Exhibit-25

Appellants: 1. Ghanshyambhai Abhimanbhai Mahajan
2. Parasmal Hiralal

V/s.

Respondents: 1. Hemantbhai Champakbhai Patel
2. Anandkumar Ramjanak Chudhari

=====

Learned Adv. for the Appellant :- Mr. J. N. Rana
Learned Adv. for the Respondent No. 2 :- Mr. K. N. Mshruwala

=====

Appeal under Section 96 read with Order 41 of CPC

JUDGMENT

1. This First Appeal under Section 96 read with Order 41 of the Code of Civil Procedure, 1908 is at the instance of the original plaintiff and is directed against the Judgment and Decree dated 04.01.2023 passed by the 7th Additional Senior Civil Judge, Surat in Regular Civil Suit No.211 of

2007 whereby the Ld. Trial Court has dismissed the suit filed by the appellant plaintiff.

- 1.1 The Appellants herein are the original plaintiffs and the Respondents herein are the original defendants. They are hereinafter referred to as their original position in the Suit.
- 1.2 The notices were issued to the respondents and the respondent no. 2 has appeared before the Court through his Ld. Advocate. The record and proceeding of the Ld. Trial Court has been called for.
2. The plaintiff has filed the suit for seeking declaration that the defendants have no right to prevent the plaintiff from making construction and dispossessing plaintiff from the suit property bearing plot no. 19 and 20 and defendants have no right to enter into such property and for the perpetual injunction restraining defendants from preventing plaintiff in making construction and dispossess the plaintiff from the suit property.
 - 2.1 The concise statement of the facts of the case of plaintiff's case is that the suit property bearing plot no. 19 and 20 belongs to plaintiffs and the plaintiffs is in possession of such plots. The original owner of such plot was Ms. Maniben Chhanabhai and Mr. Jagdish Omprakash Verma had purchased such plot on dated 09.07.1991 from her and the plaintiff had purchased such plot from Mr. Jagdish Omprakash Verma on dated 12.03.2007 and from that very date the plaintiff had in possession of such plots. The defendants are in collusion of each other created forged documents and trying to alienate such plots to third person.

The defendant is power of attorney of Ms. Maniben and he is threatening the plaintiff to hand over possession of plot to him. The cause of action giving rise to suit is that on 18.07.2007 the defendant has threatened the plaintiff to take his possession forcefully. Hence, the plaintiff instituted the suit.

3. The defendants no. 2 has contested the suit filed by the plaintiff by way of filing his written statement vide Ex. 19. It is averred in the written statement that the defendant no. 2 has instituted suit bearing RCS No. 221 of 2007 against the plaintiff on 05.05.2007 and the defendant no. 2 has made an application for being impleaded in the present suit on 16.07.2007. The defendant no. 2 is the owner of plot no. 19, 20 and 21. The plot no. 19, 20 and 21 were purchased by defendant no. 2 from Mr. Tarachand on 01.05.2007 who has purchased it on 25.09.1990 from power of attorney Mr. Champakbhai Dayabhai Patel of Ms. Maniben and thereby the name of the defendant no. 2 came to be entered into share certificate of the society. The defendant has been in possession of such plot since 1991. Hence, prayed for dismissal of present appeal.
4. On the basis of the pleadings of the parties, the Ld. Trial Court had framed issue vide Exh. 35. The plaintiff have submitted their affidavit as examination-in-chief under Order-18, Rule-4 of the Code of civil Procedure vide Exhibit-60 and 91 receptively. The plaintiff have produced documentary evidences vide exhibit-61, 62, 81, 82, 84, 121, 132, 199 to 202. The defendant No. 2 has submitted

his affidavit as examination-in-chief under Order-18, Rule-4 of the Code of civil Procedure vide Exhibit-135 and examined witnesses vide Exh. 208, 212 and 215. The defendant no. 2 has produced documentary evidences vide Exh.161 to 197 and 216 to 219, After appreciating the evidences by both parties, the Ld. Trial Court has dismissed the suit of the plaintiff vide impugned Judgment and Decree.

5. Being aggrieved and dissatisfied with the said Judgment and Decree of the Ld. Trial Court, the original defendant has preferred the present Appeal.

Submission on behalf of Appellant.

6. The Ld. Advocate for the appellant has submitted written argument vide Exh. 20 wherein it is submitted that, the plaintiff has proved his case to the satisfaction of the court by leading best evidence in support of his case in view of Section 101 of Evidence Act. He further submitted that the suit of the plaintiff may be decreed since there is nothing contrary has been shown or produced by the defendants. He further submitted that defendants have no right to interfere with peaceful possession of the plaintiff and they have no right to dispossess plaintiff from the suit property. He further submitted that considering the documentary evidences produced by the plaintiff, it clearly appears that the suit property belongs to the plaintiff. He further submitted that the plaintiff has been in possession of the suit property and the documentary evidences has been produced so show the possession of the plaintiff. He

further submitted that the suit bearing RCS no. 211 of 2007 filed by the defendant no. 2 has been dismissed and he has filed suit bearing RCS no. 248 of 2010. He further submitted that considering the cross-examination of the defendant no. 2, it clearly appears that the plaintiff has been in possession of the suit property. Hence prayed for allowing an appeal.

Submission on behalf of Respondents.

7. The Ld. Advocate for the respondent no. 2 has submitted his written argument vide Exh. 24 wherein it is submitted that the Ld. Trial Court has passed legal and correct judgment and decree after appreciating the evidence in its correct perspective. He further submitted that the respondent no. 2 instituted suit bearing RCS no. 221 of 2007 against the plaintiff wherein the local inspection of suit property by Court Commissioner was got to be conducted and the respondent no. 2 was found in possession of the suit property. Hence, prayed for dismissal of appeal.
8. Considering the materials on record and having heard the Ld. Advocates for both the parties, the following points arises for determination of this Appeal;

Sr. No.	POINTS
1.	Whether appellants plaintiffs prove that they are in possession of the suit properties bearing plot no. 19 and 20?

Sr. No.	POINTS
2.	Whether, in facts and circumstances of the case, the Ld. Trial Court has committed any error of law as well as facts in dismissing the suit of the appellant-plaintiff?
3.	What order ?

8.1 My decision upon such points are as under;

Issues	Findings
1.	Negative
2.	Negative
3.	As per Final order.

Reasons for the Decision

- 9.** Before determination of the points it would be useful to refer legal position first governing dispute between the parties. The Hon'ble Supreme Court in the case of Balkrishna Dattatraya Galande v. Balkrishna Rambharose Gupta, reported in (2020) 19 SCC 119 has held in para 8 that in a suit filed under Section 38 of the Specific Relief Act, permanent injunction can be granted only to a person who is in actual possession of the property. The burden of proof lies upon the first respondent-plaintiff to prove that he was in actual and physical possession of the property on the date of suit. It is further held in Para 17 as under:

17. As discussed earlier, in a suit filed under Section 38 of the Specific Relief Act, possession on the date of the suit is a must for grant of permanent injunction. When the first respondent-plaintiff has failed to prove that he was in actual possession of the property on the date of the suit, he is not entitled for the decree for permanent injunction.

10. The plaintiff no. 1 and 2 have submitted their affidavit as examination-in-chief vide Exh. 60 and 91 wherein they have reiterated the facts averred in the plaint and thereby fully supported his case. The defendant no. 2 has submitted his affidavit as examination-in-chief vide Exh. 135 wherein he has deposed as per his written statement. The witness examined vide Exh. 114 is a Commissioner of Court appointed in the present case who deposed that she proceeded to reach a plot no. 19 and 20 and the plaintiff was found present there and the defendant did not remain present and the panchnama was prepared on 04.05.2007. The report is produced vide Exh. 115. The case of the plaintiff is that he has purchased plot no. 19 and 20 from Mr. Jagdish Verma on 12.03.2007 and Mr. Jagdish Verma has purchased such plots on 09.07.1991 from Ms. Maniben who was original owner of such plots. Conversely, defendant no. 2 states that he has purchased plot no. 19 on 01.05.2007 from Mr. Tarachand Jain who has purchased such plot from power of attorney namely Mr. Champakbhai Dayabhai Patel of Ms. Maniben on 25.09.1990 and plot no. 20 was purchased on 01.05.2007 from Ms. Gauriben Tarachand Jain who has purchased such plot on 05.02.1991 from power of attorney namely

Mr. Champakbhai Dayabhai Patel of Ms. Maniben.

10.1 Looking to the document produced vide Exh. 81 it appears that plaintiff no. 2 has executed possession receipt dated 05.04.2007 in favour of plaintiff no. 1 with respect to plot no. 20. The original possession receipt produced vide mark 143/7. It also appears from document produced vide Exh. **82** that Mr. Champakbhai Dayabhai Patel, a power of attorney of Ms. Maniben, Mr. Babubhai, Mr. Dhansukhbhai and Mr. Sundarbhai has executed possession receipt on **09.07.1991** in favour of Mr. Jagdish Omprakash Verma with respect to plot no. 19. It also appears from document produced vide Exh. **84** that Mr. Champakbhai Dayabhai Patel, a power of attorney of Ms. Maniben, Mr. Babubhai, Mr. Dhansukhbhai and Mr. Sundarbhai has executed possession receipt on **09.07.1991** in favour of Mr. Jagdish Omprakash Verma with respect to plot no. 20. The original possession receipt has been produced vide mark 143/1 which is executed by Mr. Champakbhai power of attorney Ms. Maniben in favour of Mr. Jagdish Omprakash Verma with respect to plot no. 19 and 20 on **09.07.1991**.

10.2 Conversely looking to the document produced vide Exh. **187** it appears that Mr. Champakbhai Dayabhai Patel, a power of attorney of Ms. Maniben, Mr. Babubhai, Mr. Dhansukhbhai and Mr. Sundarbhai has executed possession receipt on **25.09.1990** in favour of Mr. Tarachand Meghraj Jain with respect to plot no. 19. It appears from document vide Exh. **188** that Mr. Tarachand

has executed possession receipt dated 01.05.2007 in favour of Mr. Anandkumar who is defendant no. 2 with respect to plot no. 19. It also appear from document produced vide Exh. **189** that Mr. Champakbhai Dayabhai Patel, a power of attorney of Ms. Maniben, Mr. Babubhai, Mr. Dhansukhbhai and Mr. Sundarbhai has executed possession receipt on 05.02.1991 in favour of Mr. Ms. Gauriben Tarachand Jain with respect to plot no. 20. It appears from document vide Exh. **190** that Ms. Gauriben Tarachand Jain has executed possession receipt dated 01.05.2007 in favour of Mr. Anandkumar who is defendant no. 2 with respect to plot no. 20.

11. So, the power of attorney of Ms. Maniben has executed possession receipt with respect to suit property in favour of Mr. Jagdish Omprakash Verma on **09.07.1991** whereas the power of attorney of Ms. Maniben has executed possession receipt with respect to suit property in favour of Mr. Tarachand Jain and Gauriben Tarachand on **25.09.1990 and 05.02.1991**. So, Mr. Tarachand Jain and Gauriben Tarachand Jain are first in time with respect to suit property bearing plot no. 19 and 20 and their right over such plot no 19 and 20 is prevail against Mr. Jagdish Omprakash Verma. It is well settled law that no seller can give better title than what he himself has. The Ld. Advocate for the appellant has relied on one of the pronouncement in support of his arguments which is Paul Rubber Industries Pvt Ltd. Vs. Amit Chandra Mitra reported in AIR 2023 SC 4658 where in it has been held

by Hon'ble Supreme Court that unregistered deed of lease may be used for collateral purpose for seeing nature and character of possession in view of proviso to Section 49 of the Registration Act. The plaintiff and defendants both are relying on possession receipt and there is no registered sale deed has been executed in favour of either of the parties. So, the possession receipt may be use to collateral purpose. However, the ratio of such authority does not helpful to the appellant.

12. The Ld. Trial Court has also observed that the plaintiff has failed to prove the possession over plot no. 19 and 20 considering the admission made by plaintiffs in his cross-examination. Perusing the judgment of the Ld. Trial Court it clearly appears that the Ld. Trial Court has appreciated the evidence and record in its correct perspective and come to the conclusion that the plaintiff has failed to prove his possession over suit property. After re-appreciating the evidence on record and as per above discussion, it transpires that the plaintiff has failed to prove that the possession receipt executed in their favour is first in time and they are in possession of suit property.
13. In view of the such facts, this Court does indeed agree with the finding of facts recorded by Ld. Trial Court since the view of the Ld. Trial Court has been taken on appreciating the evidences on record which is found to be reasonable, sound and based on evidence. The Hon'ble Supreme Court in "Laliteshwar Prasad Singh v. S.P. Srivastava" reported in (2017) 2 SCC 415 has held as under:

14. The points which arise for determination by a court of first appeal must cover all important questions involved in the case and they should not be general and vague. Even though the appellate court would be justified in taking a different view on question of fact that should be done after adverting to the reasons given by the trial Judge in arriving at the finding in question. When the appellate court agrees with the views of the trial court on evidence, it need not restate effect of evidence or reiterate reasons given by the trial court; expression of general agreement with reasons given by the trial court would ordinarily suffice. However, when the first appellate court reverses the findings of the trial court, it must record the findings in clear terms explaining how the reasonings of the trial court are erroneous.

14. So in view of the aforesaid discussion and reasons, this court is of the considered view that the Ld. Trial Court has not committed any error of law as well as fact in dismissing the suit of the appellant-plaintiff. Hence my finding upon points no-1 & 2 are in negative. Hence, I hereby pass the following final order on issue No-3 in the interest of justice.

-:: FINAL ORDER ::-

The present appeal is hereby ordered to be Dismissed.

The Judgment and Decree dated 04.01.2023 passed by the 7th Additional Senior Civil Judge, Surat in Regular Civil Suit No. 211 of 2007 is hereby confirmed.

The appellant has to pay the cost of this appeal to the respondents and has to bear the cost of his own.

Decree be drawn accordingly.

The record and proceeding be sent back forthwith to the Ld. Trial Court along with the certified copy of the present judgment..

Pronounced and signed in an open court on April 01st, 2026.

Date : 01.04.2026 [**Amitkumar Narendrabhai Dave**]

Place: Surat

8th Addl. District Judge, Surat

UIC No.GJ00807.