

GJSR010103472021



Received on : 23.09.2021

Registered on : 23.09.2021

Decided on : 13.05.2026

Duration :

YY MM DD

IN THE COURT OF PRINCIPAL DISTRICT JUDGE, SURAT.

REGULAR CIVIL APPEAL No. 131/2021

Exh. _____

**1) Subhashbhai Devrajbhai Vasava
Through his Power of Attorney
Dakshaben Vikeshbhai Vasava**

Aged : 37 years, Occupation : Household
Residing at : Nava Sutkhadka,
Tal. Umarpada, Dist. Surat.

...Appellant (Original defendant)

VERSUS

Legal heirs of deceased Surjibhai Asaniyabhai Gamit

1.1) Bhanuben Surjibhai Gamit

Residing at : Nava-Chakra,
Tal. Umarpada, Dist. Surat.

1.2) Kantubhai Surjibhai Gamit

Residing at : Nava-Chakra,
Tal. Umarpada, Dist. Surat.

1.3) Tarsingbhai Surjibhai Gamit

Residing at : Nava-Chakra,
Tal. Umarpada, Dist. Surat.

1.4) Pravinbhai Surjibhai Gamit

Residing at : Nava-Chakra,
Tal. Umarpada, Dist. Surat.

1.5) Dakshaben Surjibhai Gamit

Residing at : Nava-Chakra,
Tal. Umarpada, Dist. Surat.

1.6) Rekhaben Surjibhai Gamit

Residing at : Nava-Chakra,
Tal. Umarpada, Dist. Surat.

....Respondents (Original plaintiffs)

Appearance:

Ld. Advocate Mr. M. R. Pande for the Appellant

Ld. Advocate Mr. L. S. Salekar for the Respondent Nos. 1.2 to 1.6

**SUB: REGULAR CIVIL APPEAL UNDER SECTION 96
READ WITH ORDER 41 OF THE CODE OF
CIVIL PROCEDURE.**

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

[1] By the present appeal, the appellant - original defendant has assailed the **Order passed in Para - 3** of the Final Order passed in Judgment dated **03.10.2019** in **Regular Civil Suit No. 29/2013 (Old R.C.S. No. 34/2011)** by the Ld. Principal Civil Judge, Umarpada, Dist. Surat, whereby, appellant - defendant has been directed to pay compensation of **Rs.15,00,000/-** towards compensation to the respondents - plaintiffs and upon such payment being made, the plaintiffs shall handover the vacant possession of the suit property to the defendant.

[2] The notice of the appeal has been duly served upon the respondents - plaintiffs, who have caused their appearance through their lawyer. Ld. Advocate Mr. L. G. Salekar has appeared for the respondents. Ld. Advocate Mr. M. R. Pande is present for the appellant. The record and proceedings of **Regular Civil Suit No. 29/2013** have been brought on record. Heard Ld. Advocates appearing the parties. Perused the record.

:: F A C T U A L M A T R I X ::

[3] Filtering the prolix discussion, the necessary set of facts as are necessary for effective adjudication of this appeal,

are depicted below. (While discussing the factual aspects, the appellant and respondents are referred in their original characters in form of defendant and plaintiffs, respectively, in order to avoid overlapping.)

(A) INSTITUTION OF THE PLAINT:

:: PLEADINGS ::

PLAINT:

[4] The plaintiffs have filed the suit bearing **R.C.S. No. 29/2013** against the defendant praying, *inter alia*, the registration of sale-deed of the property being agricultural land of new tenure having Block No. 54, admeasuring 4 Hq - 64 RA - 96 Sq. mtr. (*Acre 11 - 20 guntha*) and aakar of Rs. 4 - 06 *paise*, situated at Moje - Chakra, Tal. - Umarpada, District - Surat, (hereinafter referred as the suit property) by the defendant, failing which, appointing the Court Commissioner to execute the sale-deed in favour of the plaintiffs. It is the say of the plaintiffs that the defendant had sold the said land to the plaintiff with possession by executing a registered agreement to sell (Banakhat) on **24.09.1979**. It is the say of the plaintiffs that towards the sale consideration of the said agricultural land, the plaintiffs have paid Rs. 5,000/- to the defendants in various installments during the period starting from 23.09.1979. The

defendants accepted the said amount of Rs. 5,000/- to settle their personal dues. Furthermore, on 24.09.1979, the plaintiffs paid an additional amount of Rs. 1,000/- and thus, a total amount of Rs. 6,000/- was received by the defendants towards the agreement to sell (Satakhat). It is further the case of the plaintiffs that regarding the remaining consideration amount of Rs. 10,251/-, it was decided between the parties that the plaintiffs would assume the responsibility of discharging the encumbrances on the suit land, specifically, a debt of Rs. 2,640/- due to the Bilvan Seva Sahkari Mandali and Rs. 3,400/- for the Gujarat State Land Development Bank, Mangrol Branch. It was agreed that after deducting these encumbrance amounts from Rs. 10,251/-, the plaintiffs would pay the balance to the defendants. Furthermore, it was decided in consultation with the Talati-cum-Mantri to clear entries of encumbrance from the revenue records, after which, the final registered sale-deed would be executed at the plaintiffs' expense and since the possession of the suit property was already with the plaintiffs, there was no question or issue regarding the handing over of possession of the suit property.

[5] It is the case of the plaintiffs that it was also agreed

that between the parties that in case the defendants fails to execute the registered sale-deed after the encumbrances were cleared, the plaintiffs would be at liberty to file a suit against the defendants, deposit the remaining consideration in Court, and would be entitled the sale-deed executed through the Court. It is contended that the said agreement to sell dated 24.09.1979 has been registered at the Sub-Registrar Office, Mangrol, in Book No. 1, Volume 117, pages 273 to 279, at serial number 294.

[6] It is contended that since the defendants had already received the amount of the sale consideration, they avoided and ignored the execution of the sale deed in favour of the plaintiff. Consequently, the plaintiff sent a legal notice through the Advocate via registered post, whereupon, the defendants, through their advocate, gave evasive reply to said notice, hence, the plaintiff was constrained to file the suit for specific performance of the contract.

(B) APPEARANCE OF DEFENDANTS & FILING OF WRITTEN STATEMENT:

[7] The summons of the suit was duly served upon the defendants, who have caused their appearance through their

Advocate and filed their written statement at **Exh. 12**. The defendants, apart from denying all the allegations and averments contained inter alia the plaint, contended that the suit of the plaintiff is barred by the law of limitation as the same has been filed after 32 years of allegedly execution of the agreement to sell in the year 1979 and therefore, the suit of the plaintiff is beyond the period of limitation i.e. three years. It is further contended that false and fabricated agreement to sell has been got up and produced by the plaintiffs and the plaintiffs have no legal and valid cause of action to file the impugned suit. It is further contended that in fact the suit property is in the possession of the defendants and the defendants have been cultivating the said land and paying the revenue taxes periodically. It is contended that the plaintiffs, with the ulterior motive to usurp the suit property have filed the impugned suit and thus, it is contended by the defendants that the suit of the plaintiffs needs to be dismissed.

[8] The defendants have also filed counter claim with the prayer of declaration that the suit property is in the exclusive possession of the defendants and also prayed for the direction restraining the plaintiffs from causing interference in

the peaceful possession of the defendants over the suit property.

(C) EVIDENCE:

➤ **EVIDENCE BY PLAINTIFFS:**

• **ORAL EVIDENCE:**

Sr. No.	Name of witness	Exh. No.
1	Plaintiff No. 1 - Surjibhai Asaniyabhai Gamit	60
2	Pravinbhai Surjibhai Gamit	139
3	Kantubhai Surjibhai Gamit	150
4	Naginbhai Bhagubhai Gamit	152
5	Punjibhai Ishwarbhai Gamit	154
6	Dhuriyabhai Surkabhai Gamit	156
7	Jashubhai Naranbhai Gamit	157

• **DOCUMENTARY EVIDENCE;**

[9] The plaintiffs have produced the following documentary evidence:

Sr. No.	Description	Exh. No.
1	Abstract of 8A	63
2	Abstract of 7/12	64
3	Agreement to sell	65
4	Certified copy of village Form No. 6 Hakkpatrak Nondh No. 279	66
5	Order of Executive Magistrate	67
6	Payment receipts	68 to 78

7	Copy of Abstracts of 7/12	79 to 83
8	Receipt for water dated 22.10.1994 and 28.11.1994	84
9	Receipts for the payment of loan to Bilvan Group Seva Sahakari Mandli Ltd.	85 to 88
10	Receipts for the payment of loan to Gujarat State Co.Op. Land Bank	89
11	Order of Deputy Collector	90
12	Certificate issued by Talati-cum-Mantri	91
13	Receipts for payment of revenue taxes and educational cess	92 to 117
14	Receipt dated 23.01.1981 acknowledging the last payment by the defendants	118
15	Death Certificate of Methaben Devrajbhai	119
16	Copy of abstract of Form No. 6 Nondh No. 312	120

➤ **EVIDENCE BY DEFENDANTS:**

• **ORAL EVIDENCE:**

Sr. No.	Name of witness	Exh. No.
1	Subhashbhai Devrajbhai Vasava	16

• **DOCUMENTARY EVIDENCE:**

[10] The plaintiffs have produced the following documentary evidence:

Sr. No.	Description	Exh. No.
1	Copy of reply given to the plaintiffs' notice	163
2	RPAD Receipt for sending the reply	164

3	RPAD acknowledgment for service of the reply to the notice	165
4	Abstract of 8A	166
5	Abstracts of 7/12	167 to 170
6	Order passed in RTS Revision No. 66/12 dated 28.02.2016	171
7	Abstracts of Nondh Nos. 314 and 335	172 & 173
8	Copy of letter dated 27.09.2006 for Taluka Panchayat	174
9	Copy of complaint filed to D.S.P. Surat	175
10	Receipts for payment of revenue taxes	176 & 177
11	Copy of Agreement made with The Surat District Co. Op. Bank Ltd., Umarpada	178
12	Letter for encumbrance	179
13	Copy of Nondh No. 247	180

(D) ISSUES AND FINDINGS OF LD. TRIAL COURT:

[11] Initially the Ld. Trial Court had issued following issues as Exh. 48.

૧. શું વાદી પુરવાર કરે છે કે, તેઓએ મોજે ચકરા, તા. ઉમરપાડા, જી. સુરત મુકામે આવેલ નવી શરતની ખેતીની જમીન જેનો બ્લોક નંબર ૫૪ છે તે જમીન તા. ૨૩.૦૯.૧૯૭૯ના રોજ એકશરતી રજીસ્ટર્ડ બાનાખતથી ખરીદેલ છે?
૨. શું વાદી પુરવાર કરે છે કે, તેઓએ દાવાવાળી જમીનની વેચાણ કિંમત પેટે તા. ૨૩.૦૩.૧૯૭૯ના રોજના દિવસો દરમ્યાનના ગાળામાં રૂ. ૫,૦૦૦/-

પ્રતિવાદીને ચુકવેલ તથા રૂ, ૧,૦૦૦/- તા. ૨૪.૦૯.૧૯૭૯ના રોજ ચુકવેલા તથા પ્રતિવાદીએ દાવાવાળી જમીન ઉપરના બોજા સ્વિકારવાની જવાબદારી લીધેલી?

૩. શું વાદી પુરવાર કરે છે કે, સદર દાવાવાળી જમીનનો મોટાભાગનો અવેજ મળી ગયેલ હોવાથી તેઓ સદર દાવાવાળી જમીનનો રજીસ્ટર્ડ વેચાણ દસ્તાવેજ કરી આપવા માટે કોઈ રસ દાખવતા ન હતાં અને વાદીની વારંવારની રજુઆતને ધ્યાને લેતાં ન હતાં?
૪. શું પ્રતિવાદી પુરવાર કરે છે કે, વાદીનો દાવો લો ઓફ લીમિટેશનની જોગવાઈઓ મુજબ મુદત બહારનો છે?
૫. શું પ્રતિવાદી પુરવાર કરે છે કે, સદર દાવાવાળી જમીન તેઓની માલિકી અને પ્રત્યક્ષ કબ્જા ભોગવટામાં આવેલ છે?
૬. શું વાદી તેમની દાવા અરજીના પેરા ૮માં માંગ્યા મુજબની દાદ મેળવવા હક્કદાર છે?
૭. શું પ્રતિવાદી તેમના પ્રતિદાવાના પેરા ૭માં માંગ્યા મુજબની દાદ મેળવવા હક્કદાર છે?
૮. શું હુકમ અને હુકમનામું?

(E) FINDINGS:

[12] The above issues had been answered by the Ld. Trial Court as under:

૧. નકારમાં.
૨. નકારમાં.
૩. નકારમાં.
૪. હકારમાં.
૫. નકારમાં.
૬. અંશત: હકારમાં.
૭. અંશત: હકારમાં.
૮. આખરી હુકમ મુજબ.

(F) IMPUGNED ORDER:

[13] Ld. Trial Court after considering the allegations and averments of the application submitted by the parties and also considering the submissions of the Ld. Advocates appearing for the parties, was pleased to pass the following Order:

આખરી હુકમ

૧. વાદીનો દાવો નામંજુર (રદ) કરુ છુ.
૨. પ્રતિવાદી દાવાવાળી મિલકતના માલિક છે તેવુ જાહેર કરવા હુકમ કરુ છુ.
૩. પ્રતિવાદીએ વાદીને રુ.૧૫,૦૦,૦૦૦- પંદર લાખ પુરા વળતરના ચુકવેથી વાદીએ દાવાવાળી મિલકતનો કબજો ખાલી કરી પ્રતિવાદીને સોપવા હુકમ કરુ છુ.

જ. દાવાનો ખર્ચ વાદીએ સહન કરવો.

પ. હુકમ મુજબ હુકમનામુ તૈયાર કરવુ.

[Translation]

1. The plaintiff's suit is hereby dismissed.
2. It is hereby declared that the defendant is the owner of the suit property.
3. Upon the defendant paying a sum of Rs. 15,00,000/- (Rupees Fifteen Lakhs Only) to the plaintiff as compensation, the plaintiff is ordered to handover the vacant possession of the suit property to the defendant.
4. The costs of the suit shall be borne by the plaintiff.
5. A decree be drawn in accordance with this order."

[14] Being aggrieved with the above Judgment and Decree, the appellants have been constrained to prefer the present appeal.

CONTENTIONS ON BEHALF OF THE APPELLANTS:

[15] Ld. Advocate Mr. Pande appearing for the appellant - defendant has submitted that in the present appeal, the appellant - defendant has restricted his challenge to the Order passed by the Ld. Trial Court in para - 3 of the Final

Order passed in Judgment dated 03.09.2019 in R.C.S. No. 29/2013 directing the appellant to pay the amount of compensation of Rs. 15,00,000/- to the respondents - plaintiffs inasmuch as the same is against the principles of law and needs to be quashed and set aside. It is contended on behalf of the appellant that Ld. Trial Judge has erred in making interpretation of legal principles and appreciation of documentary evidence and thereby, the impugned Order is bad, illegal, perverse and against the principles of law and natural justice and the impugned decree, to that extent, needs modification.

[15.1] It is contended by Ld. Advocate Mr. Pande that though the Ld. Trial Court, vide impugned Judgment, has declared that the defendants are the owners of the property, the erroneous Order for payment of Rs. 15,00,000/- by the defendants to the plaintiffs towards compensation has been passed, which needs to be set aside.

[15.2] It is contended on the part of the appellant - defendant that no specific relief seeking compensation / damage was prayed for on the part of the plaintiffs in the plaint nor any amendment to that effect was solicited by the plaintiffs by

preferring amendment application, in spite of that, the Ld. Trial Court passed the order granting compensation of **Rs.15,00,000/-**, which is barred by **Section 21 of the Specific Relief Act** and hence, the said order of granting compensation by the Ld. Trial Court needs to be quashed and set aside. Thus, it is prayed that the order of the Ld. Trial Court, more particularly, in para - 3 of the Final Order for compensation needs to be quashed and set aside by allowing the present appeal.

SUBMISSIONS ON BEHALF OF RESPONDENTS:

[16] *Per contra*, Ld. Advocate Mr. Salekar appearing for the respondents - plaintiffs has submitted that the present appeal preferred by the appellant needs to be dismissed inasmuch as the impugned Order granting compensation passed by the Ld. Trial Court is just and proper. It is further contended that the Ld. Trial Court has rightly believed the possession of the suit property of the respondents - plaintiffs. He has further submitted that though the agreement to sell was executed with the possession of the property and the sale consideration has been paid by the plaintiffs, the respondent - defendant has shown ignorance for execution of the sale deed in favour of the plaintiffs and therefore, the Ld. Trial Court has rightly passed

the order of granting compensation / damage to the respondents - plaintiffs. Thus, it is submitted that the Ld. Trial Court was justified in granting compensation of Rs. 15,00,000/- to be paid by the appellant - defendant to the respondents - plaintiffs and the said order being judicious does not warrant any modification and the present appeal needs to be dismissed.

:: ISSUES/ POINTS OF DETERMINATION::

[17] Considering the above discussions and the submissions made by the Ld. Advocates for the parties, the following Issues/points of determination arise for adjudication of the present Appeal.

1. Whether the respondents are entitled to compensation in view of non-grant of relief of specific performance?
2. Whether the Judgment and Decree dated **03.09.2019** passed by the **Ld. Principal Civil Judge, Umarpada**, in **R.C.S. No. 29/2013** needs any modification, intervention or reversal?
3. What Order?

:: FINDINGS ::

[18] My findings for the aforesaid issues are as under.

1. In negative
2. In affirmative.
3. As per final order.

:: REASONS ::**POINT OF DETERMINATION NOS. 1 & 2:**

[19] Since all the above points of determination and issues are interconnected and co-related, the discussion for the reasons for its findings, is done simultaneously.

[20] In the present case, careful perusal of the plaint filed by the respondents - plaintiffs at Exh. 1 transpires that in para - 8 of the plaint, the respondents - plaintiffs have prayed following relief:

"(૮)સબબ દાદ માંગવાની કે :

- (૧) મોજે ચકરા તા.ઉમરપાડા જી.સુરત ખાતે ખેતીની જમીન બ્લોક નંબર:૫૪ જેનું ક્ષેત્રફળ હે.આરે.ચોમી. અનુક્રમે ૦૪-૬૪-૯૬ છે.જેનો આકાર રૂપિયા ૪-૦૬ પૈસા છે. જે જમીન અમોએ તા.૨૪-૯-૭૯ ના રોજ રજી.બાનાખતથી વેચાણ રાખેલ

છે.સદરહું સાટાખતની શરત મુજબ બાકીની અવેજ સ્વીકારી આ કામના પ્રતિવાદી અમોને પાકો વેચાણ દસ્તાવેજ કરી આપે તેવો વાદીની તરફેણમાં પ્રતિવાદી વિરુદ્ધ સ્પેસિફિક પરફોરમન્સનો હુકમ કરી આપવામાં મહેરબાની કરશોજી અને સદરહું કામના પ્રતિવાદી પાકો રજી.વેચાણ કરી આપવા માટે આનાકાની કરે તો વિકલ્પે નામદાર કોર્ટ કમિશન નીમીને સદરહું જમીનનો પાકો રજી.વેચાણ દસ્તાવેજ કરી આપે એવો હુકમ પ્રતિવાદી વિરુદ્ધ ફરમાવશોજી.

(૨) સદરહું દાવાવાળી જમીનનો કબજો અમો વાદીને તા. ૨૪-૯-૭૯ અને તે પહેલાથી ચાલી આવેલ હોય, અમારા પ્રત્યક્ષ કબજાના આ કામના પ્રતિવાદી હસ્તે પર હસ્તે પ્રત્યક્ષ કબજો કરે કરાવે નહીં કે સદરહું જમીનને લાગતી કોઈપણ જાતની દખલગીરી, અડચણ, અટકાયત હરકત હેલો હસ્તે પર હસ્તે કરે કરાવે નહીં તેવો કાયમી નિર્ણય હુકમ પ્રતિવાદી વિરુદ્ધ ૧ ફરમાવશોજી.

(૩) દાવાવાળી મિલકત આ કામના પ્રતિવાદીઓના નામે રેવન્યુ દફતરે ચાલે છે. તેનો ગેરલાભ લઈ અમો વાદીનો મિલકતનો હક ડુબાડી અન્ય કોઈને કોઈપણ રીતે કરાર કે લેખ ધ્વારા તબદીલ કે હસ્તાંતર કરે કરાવે નહીં તેવો વાદીઓની તરફેણમાં પ્રતિવાદી વિરુદ્ધ કાયમી હુકમ ફરમાવશોજી.

- (૪) દાવાવાળી મિલકત આ કામના પ્રતિવાદી અમો વાદીઓ સિવાય અન્ય કોઈ ઈસમને કોઈપણ લેખ કે કરાર ધ્વારા તબદીલ કે હસ્તાંતર કરવા હકદાર નથી, તેવી જાહેરાત કરી આપશોજી.
- (૫) સદરહું દાવાઅરજીનો ખર્ચ પ્રતિવાદી કનેથી અપાવશોજી.
- (૬) ના. કોર્ટને યોગ્ય અને મુનાસિબ લાગે તેવી અન્ય દાદ અપાવશોજી."

[21] At no point of time, the respondents - plaintiffs have given application to amend the plaint praying the alternative relief in the form of compensation / damages. The relevant provisions in this regard in the **Specific Relief Act** are contained in **Section 21**, which are as under:

"21.Power to award compensation in certain cases.

(1) In a suit for specific performance of a contract, the plaintiff may also claim compensation for its breach, either in addition to, or in substitution of, such performance.

(2) If, in any such suit, the court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant, and that the plaintiff is entitled to compensation for that breach, it shall award him such compensation accordingly.

(3) If, in any such suit, the court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, and that some compensation for

breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly.

(4) In determining the amount of any compensation awarded under this section, the court shall be guided by the principles specified in section 73 of the Indian Contract Act, 1872 (9 of 1872).

(5) No compensation shall be awarded under this section unless the plaintiff has claimed such compensation in his plaint:

Provided that where the plaintiff has not claimed any such compensation in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just, for including a claim for such compensation."

[22] Perusal of the above provision transpires that the Court can grant alternate relief in the form of damages in view of the decree for specific relief only if the same is specifically prayed and pleaded by the respondents - plaintiffs. As stated above, in the present case, no such specific prayer has been made by the respondents - plaintiffs. In the said set of circumstances, when there is statutory bar that in absence of specific pleading, the prayer of compensation / damages cannot be granted, the Court is estopped from exercising judicial activism to grant compensation. It will be profitable at this juncture to refer the Judgment in case of **Universal Petro Chemicals Ltd. v. B.P. PLC & Others reported in (2022) 6**

SCC 157, wherein it is held that:

"16. The only point that arises for our consideration is whether the Appellant is entitled for damages for the period between 24.08.2005 and 31.12.2009. The relevance of 24.08.2005 is that the Supreme Court disposed of the SLP on that date vacating the interim order granted in favour of the Appellant. Since there was an interim order operating in favor of the Appellant, damages are sought only from 24.08.2005 till 31.12.2009. The Appellant admits that no relief for damages or compensation was claimed in the suit. Admittedly, such a relief was not sought for either before the Division Bench or before this Court. No steps were taken by the Appellant to amend the appeal even after the date of expiry of the Collaboration Agreement, i.e., 31.12.2009.

17. The Appellant is relying on Section 21 (5) of the Specific Relief Act to buttress his contention for awarding of damages in lieu of specific performance of the Collaboration Agreement. Section 21(5) reads as follows: -

"21. Power to award compensation in certain cases.

(1) In a suit for specific performance of a contract, the plaintiff may also claim compensation for its breach in addition to such performance.

(2) If, in any such suit, the court decided that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant, and that the plaintiff is entitled to compensation for that breach, it shall award him such compensation accordingly.

(3) If, in any such suit, the court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, and that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly.

(4) In determining the amount of any compensation awarded under this section, the court shall be guided by the principles specified in section 73 of the Indian Contract Act, 1872 (9 of 1872).

(5) No compensation shall be awarded under this section unless the plaintiff has claimed such compensation in his plaint:

Provided that where the plaintiff has not claimed any such compensation in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just, for including a claim for such compensation.

18. In order to overcome the limitation posed by SubSection (5), Mr. Dwivedi has relied upon certain judgments in support of his submission that even if a relief for damages has not been specifically sought for, this Court can still award damages to the Appellant. In *Jagdish Singh v. Natthu Singh (supra)*, the Respondents' suit for specific performance of an agreement for conveyance of certain properties was dismissed by the Civil Court and the judgment of the Civil Court was upheld in appeal. As the High Court reversed the findings of the First Appellate Court, the defendant led an appeal before this Court. The contention of the Appellant in that case was that the contract itself became incapable of specific performance as a proceeding for compulsory acquisition of suit properties was initiated during

the pendency of the second appeal. It was not clear as to whether compensation in lieu of specific performance was sought by the plaintiff in the suit. However, on a finding that there is no difficulty in assessing the quantum of compensation for the subject property which was ascertainable by determination of market value, this Court permitted amendment of relief to do complete justice.

19. In **Urmila Devi & Ors. v. Deity, Mandir Shree Chamunda Devi (supra)**, this Court was concerned with the modification of the decree of specific performance of an agreement to sell granted by the Courts below by the High Court into a decree directing the Respondents therein to pay a sum of Rs. 90,000/- with interest from the date of filing of the suit as the suit property was acquired. Referring to the judgment of this Court in **Jagdish Singh v. Natthu Singh (supra)**, this Court held that compensation can be awarded in lieu of specific performance under Section 21 of the Specific Relief Act when a contract has become impossible to be performed. In the facts of the said case the amount of compensation which already stood determined was distributed amongst the parties.

20. The contention of the Appellant in **Sukhbir v. Ajit Singh (supra)** that no compensation shall be awarded under Section 21, unless the plaintiff has claimed such compensation in his plaint was rejected by this Court by relying upon the judgment of this Court in **Jagdish Singh v. Natthu Singh (supra)** and **Urmila Devi & Ors. v. Deity, Mandir Shree Chamunda Devi (supra)** as the case was in relation to an agreement to sell and the amount of compensation was already determined by the parties therein. This Court held that a decree of compensation was passed as an alternate decree in lieu of the decree of specific performance.

21. The scope of Section 21 (4) and (5) was examined by

this Court in **Shamsu Suhara Beevi v. G. Alex and Another (supra)**. This Court referred to the Law Commission of India's recommendation that in no case the compensation should be decreed, unless it is claimed by a proper pleading. However, the Law Commission was of the opinion that it should be open to the plaintiff to seek an amendment to the plaint, at any stage of the proceedings in order to introduce a prayer for compensation, whether in lieu or in addition to specific performance. In the said case no claim for compensation for breach of agreement of sale was claimed either in addition to or in substitution of the performance of the agreement. Admittedly, there was no amendment to the plaint asking for compensation either in addition or in substitution of the performance of an agreement of sale. In such background, this Court held as follows.

"In our view, the High Court has clearly erred in granting the compensation under Section 21 in addition to the relief of specific performance in the absence of prayer made to that effect either in the plaint or by amending the same at any later stage of the proceedings to include the relief of compensation in addition to the relief of specific performance. Grant of such a relief is in the teeth of express provisions of the statute to the contrary is not permissible. On equitable consideration court cannot ignore or overlook the provisions of the statute. Equity must yield to law."

On a careful consideration of the judgments of this Court relied upon by learned Senior Counsel for the Appellant and the learned counsel for the Respondents, we are of the view that the Appellant is not entitled to claim damages for the period between 24.08.2005 and 31.12.2009."

[23] Considering above legal proposition and the

precedents of the Hon'ble Apex Court, in the present case, the Ld. Trial Court in the Judgment held that "પ્રતિવાદીએ વાદીને રૂ.૧૫,૦૦,૦૦૦- પંદર લાખ પુરા વળતરના ચુકવેથી વાદીએ દાવાવાળી મિલકતનો કબજો ખાલી કરી પ્રતિવાદીને સોંપવા હુકમ કરુ છુ." is against the principles of law and therefore, has to be set aside.

[24] Moreover, the present appeal on the part of the appellant - defendant is restricted to the Order of damages / compensation of Rs. 15,00,000/- and neither of the respondents - defendants have shown to this Court about filing of any independent appeal challenging the decree of specific performance of contract nor any cross-objection has been filed in the present case and in the said set of circumstances, when the compass of the present appeal is narrow that is to say in absence of specific prayer on the part of the respondents - plaintiffs, whether the Court can pass the order of compensation, which as mentioned above, is answered in negative in view of the Judgment of the Hon'ble Apex Court and considering the statutory bar under **Section 21 of the Specific Relief Act** and accordingly, I decide Issue Nos. 1 and 2 and following final order is passed.

:: ORDER ::

- 1) The present Regular Civil Appeal is hereby **allowed.**
- 2) The Order passed in **Para-3** of Final Order passed in Judgment dated **03.09.2019 in R.C.S. No. 29/2013** by the Ld. Principal Civil Judge, Umarpada, is hereby **quashed and set aside.**
- 3) Interim relief, if any, stands vacated forthwith.
- 4) Decree be drawn accordingly.
- 5) No order as to costs.

Pronounced in open Court today on this
13th day of May, 2026.

Date : 13.05.2026
Place : Surat.

(Rahul Arunkumar Trivedi)
Principal District Judge,
Surat.
Code No. **GJ01495.**

//Uttam//