

Instituted on	02-05-2017
Registered on	02-05-2017
Decided on	30-06-2026
Duration	9Y-1M-28D

**IN THE COURT OF 5th ADDITIONAL DISTRICT JUDGE
SURAT AT BARDOLI**

Regular Civil Appeal No.6/2017

Appellants :

Legal Heirs of deceased Hiralal Bhagwanji

(1.1) Bhagirathiben Hiralal

Age : Adult, Occupation : House-hold work,
Residing at : 2, Shivkutir Row House,
behind Gangeshwar Mahadev Temple,
Adajan, Surat.

(1.2) Bipinbhai Hiralal

Age : Adult, Occupation : business,
Residing at : 2, Shivkutir Row House,
behind Gangeshwar Mahadev Temple,
Adajan, Surat.

(1.3) Bhupendrabhai Hiralal

Age : Adult, Occupation : business,
Residing at : 2, Shivkutir Row House,
behind Gangeshwar Mahadev Temple,
Adajan, Surat.

(1.4) Kiritbhai Hiralal

Age : Adult, Occupation : business,
Residing at : 2, Shivkutir Row House,
behind Gangeshwar Mahadev Temple,
Adajan, Surat.

(1.5) Ashokbhai Hiralal

Age : Adult, Occupation : House-hold work,
Residing at : 2, Shivkutir Row House,
behind Gangeshwar Mahadev Temple,
Adajan, Surat.

(1.6) Jayshriben Hiralal W/o Surendrabhai Mistri

Age : Adult, Occupation : House-hold work,
Residing at : Lakkadpitha, behind Nyaya Mandir,
Vadodara.

Versus**Respondents :****Legal Heirs of deceased Nathubhai Keshavbhai****(1.1) Ishwarlal Nathubhai**

Age : Adult, Occupation : business,
Residing at : Moje-Umrao, Taluka : Bardoli,
District : Surat.

(1.2) Ratilal Nathubhai

Age : Adult, Occupation : business,
Residing at : As above

(1.3) Ranchhodbhai Nathubhai

Age : Adult, Occupation : business,
Residing at : As above.

:- APPEARANCES :-

Ld. Advocate Mr. N.N. Thaker for the Appellants

Ld. Advocate Mr. R.C. Shah for the Respondents

:- JUDGMENT :-

(1) The present appeal has been preferred by the original plaintiffs against the judgment and decree passed by the Ld. Principal Civil Judge, Palsana, District Surat, dated 03-04-2017 in Regular Civil Suit No. 3/2011.

(2) Upon presentment of appeal, notices were issued and were duly served upon the respondents-plaintiffs. For brevity, as the appellants of the present appeal were the plaintiffs and the respondents of the present appeal were the defendants and hence

they shall be referred to as per their original status of the suit, hereinafter.

(3) The factual matrix involved in the present case is as under :-

(3.1) Before proceeding further it is worthy to reproduce the pleadings of the plaintiffs, which in nutshell is that the plaintiff has instituted the suit for specific performance and alternatively for declaring him owner on count of adverse possession and permanent injunction with reference to the agricultural land, situated at village-Kadodara, Taluka - Palsana, District : Surat, bearing survey No. 136, Block No. 149, ad-measuring Hect-are-sq. mts. 01-25-05, Aakar 17.81 paisa. (for the sake of brevity hereinafter called as the suit property). The surroundings of the suit property is described as below;

1. East : Attached land.
2. West : Attached land.
3. North : Government land acquired from irrigation department.
4. South : Hospital and land of Maganbhai Thakorbhai.

(3.2) According to the plaintiff, on 28-05-1968 the defendant agreed to sale the suit property to the plaintiff for a consideration of Rs. 17,125/- and on the same day the agreement was made orally for sale of suit property between the plaintiff and the defendant and the plaintiff paid Rs. 501.00 cash as a earnest money to the defendant, the plaintiff further alleged that entire sale consideration was paid to the defendant in unequal installments as Rs. 5000/- paid on 07-10-1968, Rs. 2500/- paid on

15-10-1969 and Rs. 9125/- paid on 27-06-1970. It is submitted that the defendant handed over possession of the suit property to the plaintiff on 15-10-1968. Thereafter, when the plaintiff asked to complete requisite sale documents the defendant gave certain excuses. Since the defendant had failed to execute the requisite sale deed, a legal notice was issued on 01-09-1994, against which the defendant replied that they will execute the sale-deed within short time but as the defendant failed to execute the sale deed and he was not ready and willing to perform his part of oral agreement, the plaintiff instituted the RCS No. 3/2011 and prayed for the direction to the defendant to execute sale deed in favour of the plaintiff and if the defendant failed to do so then sale deed be ordered to be executed through Court commissioner so appointed by the Court. It has been further submitted that the plaintiff is ready and willing to pay the cost of the court commissioner. Also it has been prayed by the plaintiff for declaration to the effect that he has become owner of suit property by principle of adverse possession.

(4) In the suit, summons and notices issued and served upon the defendant, he caused his appearance before the Ld. Trial Court and filed his written statement vide Exh. 18 in which he has totally denied the say of oral agreement to sell, he has also denied the acceptance of advance amount or sale consideration as alleged by the plaintiff, the alleged handing over of the possession of the suit property as claimed by the plaintiff also was denied. The alleged agreement to sell (Sata Khat) dated 28-05-1968 also was denied. In the light of the contentions pleaded that the plaintiff is

not entitled to the relief of specific performance of agreement to sell. *Inter alia* the defendant has contested the suit and stated that, the statements of plaintiff are not true and the suit is bad on the ground of limitation, the plaintiff suit is based on fake brought up story and the plaintiff needs to prove his allegations. Hence, the defendant has prayed for rejection of the suit with heavy exemplary cost.

(5) Against the Written Statement of the Defendant, the plaintiff has filed counter affidavit vide Exh. 22 and thereby has denied the defence taken by the defendant and has reaffirmed the contentions taken by him in the plaint.

(6) The Ld. Trial Court thereafter, framed following issues vide Exh. 108 to decide the present suit.

Issues

1. Does the plaintiff prove that the defendant orally agreed on 28-05-1968 to sell the suit property for Rs.17,125/- and on that very day paid Rs. 501/- as a earnest money and other amount was paid on the date as mentioned in the plaint and thereby took the physical possession of the suit property on 15-10-1968 ? (This issues has been decided by the Ld. Trial Court in partly affirmative)
2. Does the plaintiff proves that he is in physical possession and enjoyment of the suit property ? (This issues has been decided by the Ld. Trial Court in affirmative)
3. Does the plaintiff proves that he was and is always willing and ready to comply with the terms of the agreement ?

(This issues has been decided by the Ld. Trial Court in negative)

4. Does the plaintiff proves that he has been in possession of the suit property for more than the last twelve years with the knowledge and consent of the defendant and thus, the plaintiff has become the owner by virtue of principle of adverse possession of the suit property ? (This issues has been decided by the Ld. Trial Court in negative)
5. Does the plaintiff proves that he is entitled to the injunction as prayed for ? (This issues has been decided by the Ld. Trial Court in negative)
6. Is the plaintiff entitled to the reliefs as prayed for ? (This issues has been decided by the Ld. Trial Court in negative)
7. What is the order and decree ? (As per final order-Suit was dismissed)

(7) During the pendency of suit, the plaintiff died and thereafter, the matter has been proceeded further by the legal representatives of the plaintiff. To prove and to discharge the burden of proof with regard to the issued framed by the Ld. Trial Court the plaintiff has adduced following oral as well as documentary evidence before the ld. Trial Court.

(8) Plaintiff's Oral Evidence before the Learned Trial Court.

1. Deposition of Hiralal Bhagwanji, the plaintiff - Exhibit 118.
2. Deposition of Bhupendra Hiralal, (Plaintiff No. 1.3)
Exhibit 177
3. Deposition of Bipin Hiralal, (Plaintiff No. 1.2)

-Exhibit 212

(9) Plaintiff's Documentary Evidence before the Learned Trial Court.

1. Original Receipt of Possession dated 28-05-1968- Exhibit 181
2. Original written contract dated 27-05-1970. Exhibit 182
3. Original record of district keeper. Exhibit 183
4. Village form No. 7/12. Exhibit 184
5. Original Tax (Mahesul) receipts. Exhibit 185
6. Office copy of legal notice dated 01-09-1994. Exhibit 186
7. original registered post A.D. slip. Exhibit 187
8. Reply of the plaintiff of notice. Exhibit 188
9. Original cover of reply of notice. Exhibit 189
10. Original bill of Kakrapar Irrigation department dated 16.01.1978. Exhibit 190
11. Original Application to irrigation department to provide water for the suit property along with other filed Survey No. 137. Exhibit 191
12. Original Application to irrigation department to provide water for the suit property along with other field Block no. 153 dtd. 24/03/1971. Exhibit 192
13. Original Receipt towards payment of Rs. 5000/- dtd. 07/10/1968. Exhibit 193
14. Original Receipt towards payment of Rs. 2500/- dtd. 15/10/1968. Exhibit 194
15. Certified copy of purchase of other land Block No. 153, dtd. 04/06/1969. Exhibit 195
16. Original Receipt No. 237 of account of Chalthan Sugar

Factory, for the year of 1973-1974. Exhibit 196

17. Copy of Application to Taluka Development Officer, dtd. 16/03/2000. Exhibit 197
18. Original Letter written by G.E.B to Plaintiff, dtd. 14/11/1972. Exhibit 198
19. Original Letter written by Plaintiff to G.E.B., Dtd. 22/02/1972. Exhibit 199
20. Original Letter written by Plaintiff to Chalthan Sugar factory dated 24/07/1989. Exhibit 200
21. Original Copy of Water Pass. Exhibit 201
22. Original pay receipts of Taxes, dtd. 14/06/1995. Exhibit 202
23. Original pay receipts of Taxes, dtd. 14/06/1985. Exhibit 203
24. Certified Copy of Entry No. 534 from Village Form No.6. Exhibit 204
25. Type Copy of sale deed on stamp paper to register. Exhibit 205
26. Copy of Revision Application filed by the plaintiff. Exhibit 223
27. Copy of Letter written by assistant collector to plaintiff. Exhibit 224

The plaintiffs have submitted closing pursis Vide Exh. 227.

(10) Defendant's Oral Evidence before the Learned Trial Court.

1. Deposition of Ishwarbhai Nathubhai (Defendant No. 1.1).

The defendant has submitted closing pursis Vide Exh. 230.

In view of the evidence adduced by the parties, the Ld. Trial Court has decided the suit by considering following legal as well as factual aspect.

(11) Reasons given by the Learned Trial Court for its findings

(11.1) It is required to be noted that though the plaintiff produced Affidavit in chief-examination of Hiralal Bhagwanji vide Exh.118, he could not be cross-examined owing to his old age hence, his evidence was not taken into consideration and same was discarded.

(11.2) It is on record that the plaintiff himself has not stepped into the witness box but his power of attorney holder and son namely Bhupendra Hiralal Gajjar has entered into witness box and deposed on behalf of the plaintiff. The Learned Trial Court has held that the deposition of evidence is required to be given by the witness himself having knowledge of facts, in certain circumstances, the law allows deposition of evidence by the witness through person authorized in this regard. This however is not a general rule. But a rule of exception, wherein power of attorney holder can be allowed to depose before a Court in proceeding required to be attended by the witness. In the present suit due to his old age the plaintiff was unable to present before the court hence being son and power of attorney holder of the plaintiff has given deposition on behalf of plaintiff, in his evidence he has deposed that he has personal knowledge of the said transaction. But, there is nothing which shows that the said power

of attorney holder was present while the said agreement was finalized and he was having personal knowledge of the said transaction. Therefore, in the present suit, the said power of attorney holder cannot depose on behalf of the principal in respect of the matter on which, principal can have the personal knowledge and also in respect of acts done by the principal and not by him.

(11.3) It has been pleaded by the plaintiff at the trial that the defendant agreed to sell the suit property to the plaintiff for a consideration of Rs.17,125/- and on the same day the agreement was made for sale of the suit property between the plaintiff and the defendant and the plaintiff paid Rs.501.00 cash as a earnest money to the defendant Nathubhai Keshavbhai which was accepted by him, the plaintiff further alleged that entire sale consideration was paid to the defendant and as the plaintiff paid remaining consideration amount in unequal installments as Rs. 5000/- paid on 07-10-1968 and the defendant Nathubhai Keshavbhai executed a receipt thereof, also Rs. 2500/- was paid on 15-10-1969 and Rs. 9125/- was paid on 27-06-1970. In nutshell it is on the record that the plaintiff was in possession of the suit property and he paid certain amount to the defendant that the said contentions are being proved by the Plaintiff.

(11.4) It transpires that the Learned Trial Court properly appreciated the contention of the plaintiff qua his payment and handing over of possession of suit property on 15/10/1968, it is also appreciated that the defendant gave actual and physical possession of the suit property to the plaintiff by giving possession letter, the defendant himself has executed a possession letter on stamp paper and he has signed the said document before the

plaintiff and witnesses namely Bhulabhai Ichharam Patel and Prabhudas Keshavlal Patel. The contents of the Exh-194 are not believed to be proved. The plaintiff has produced original possession letter vide Exh. 194, perusing the said letter it shows that the said document is on stamp paper and there are signatures Nathubhai Keshavbhai (The Defendant) and two witnesses and description of the suit property is clearly mentioned and a clause of handing over of physical possession also is in it, but the said document is not registered and the witnesses also are not called for examination by the plaintiff, therefore, contents of the said document are not duly proved by the plaintiff. Further there is nothing in the said document which shows that the plaintiff has paid Rs. 8000/- to the defendant, it also clear from the said document that one agreement to sell also is executed between the plaintiff and the defendant on 28-05-1968, the said date is overwritten and original date can be ascertain in it and that is 22-03-68, but the original agreement to sell dated 28-05-1968 is not produced by the plaintiff. Thus, the Learned Trial Court has properly appreciated and interpreted the evidence on record.

(11.5) It was the case of the plaintiff that remaining amount Rs. 9125/- also was paid on 27/06/1970 and the defendant himself has given it in writing on stamp paper, which is produced vide Exh.182, perusing the said Exhibit 182 it transpires that it is on stamp papers, payment details also is written in it as per the case of the plaintiff and description of the suit property also is clearly mentioned, it is written also in the first clause of the said document that one agreement to sale is executed between the plaintiff and the defendant on 28/05/1968, the said document is

not registered but to prove contentions of this document the plaintiff has examine a witness Bipin Hiralal Gajjar vide Exh. 212 who is son of the plaintiff, he has deposed that he is fully acquainted with the transaction and present matter and his father at the age of 93 years unable to come before the Court. He has deposed that the defendant Nathubhai has signed on the Exh. 182 and he has signed on the document as a witness, but in his cross examination he has admitted that Nathubhai has not signed the document in his presence. Therefore, the plaintiff is failed to prove the said document produced vide Exh. 182.

(11.6) Further, as per deposition of defendant witness namely Ishwarbhai Nathubhai Patel examined vide Exh. 229, who is legal representative of Nathubhai Keshavbhai. The plaintiff alleged that defendants have admitted the claim of the plaintiff. As per section 21 of the Evidence Act provides that admission are relevant and may be proved as against the person who makes them, or his representative in interest. However, admissions can not be proved by on behalf of the person who makes them or by his representative in interest. Before an admission is held to be admissible in evidence, it must be the one made by the persons mentioned in section 18, 19 and 20 of The Evidence Act. As to the maker of the admission, section 18 of The Evidence Act provides that statement made by a party to the proceedings, or by an agent to any such party, whom the court regards, under circumstances of the case, as expressly or impliedly authorized by him to make them, are admissions. Admission is only a piece of evidence and not conclusive proof of fact. Admission helps in waiving or dispensing with leading of evidence. Section-31 of The Evidence

Act postulates that admissions are not conclusive proof of the matters admitted, but they may operate as estoppels under the provisions therein after contained in the act. It means the maker of statement containing admission is at liberty to lead evidence in rebuttal unless the same amounts to an estoppel under section 115 of the Evidence Act. Estoppel is a rule of evidence which precludes the person from denying existence of a state of things which he earlier asserted to exist.

(11.7) It has been held by the Learned Trial Court that in the present case, the defendant himself has admitted the above mentioned fact in his cross examination and there is nothing on record which suggest that the defendant has given any type of evidence to rebut the said admission. Thus, it is clear and the plaintiff has proved that the plaintiff is in actual and psychical possession of the suit property and he has paid Rs. 5000/- and 2500/- but the plaintiff is failed to prove the sale consideration amount, payment of Earnest Money Rs. 501/-, Rs. 8000/- and Rs. 9125/-.

(11.8) The plaintiff has brought present case on the footing of oral agreement but the witness Bipin Hiralal Gajjar in his cross examination vide Exh. 212 has admitted that "આ જમીન લખાણ કરીને લેવામાં આવેલી જેનું સાટાખત અમારી પાસે નથી" which means that there must be pre-existing written agreement to sell between the parties, but the Plaintiff has failed to produce such original agreement in the present matter. Above fact is also supported by Exhibit 181 and 182 in wherein it has been stated that the suit property agreed to sold and an agreement to that effect has been made on 28/5/68. The factum of entering into an agreement also

found place in the notice as issued by the Plaintiff and copy of the same has been produced in the evidence by the plaintiff himself. It is noteworthy that there is nothing in the said notice about oral agreement. Thus, it is clear that though it has been stated in the plaint that there was oral agreement but in fact there was a written agreement to sell between the parties, which is not produced in the evidence.

(11.9) Further there are not enough material, facts and circumstances surrounding, which demonstrates that defendant did enter into an oral agreement to sell with the plaintiff as narrated in the plaint, the onus to prove the oral agreement was very high upon the plaintiff and mere bare averments the oral without any substance does not prove the oral agreement.

(11.10) It is therefore clear that the plaintiff has miserably failed to allege and prove the essential facts / ingredients required to establish an alleged oral agreement for the sell of the suit property and also for not producing agreement to sell, an adverse inference needs to be drawn against the plaintiff to the fact that there is something in that agreement which he does not want to disclose before the court.

(11.11) It is clear by perusing pleadings and evidence on record that there are no specific contention about negotiation in respect purchase of the property in question. Further the analysis and examination of plaintiff witnesses and their cross examination makes it evident that the plaintiff has failed to prove the basic essentials of alleged oral agreement because nothing is alleged in the plaint about the negotiation, if any, had taken place for an agreement to sale or what were the term and condition of the

alleged agreement or who was to perform what duty or who was to pay the registration fees or who was to seek the necessary permission from the authorities for alleged sale, if any? The averments in the plaint regarding oral agreement to sell are mere bald averments and without any substance or cogent evidence. On the contrary it is came on record that there was an written agreement to sell and an adverse inference is to be drawn against the plaintiff for deliberately withholding the said written agreement. The plaintiff has thus failed to prove that the parties to the alleged oral agreement were at ad-idem in respect of the sell of the suit property the plaintiff by the defendant, therefore, it cannot be said that there has been an oral agreement which requires specific performance.

(11.12) With regard to the readiness and willingness of plaintiff and with regard to the performance of his part of contract, the plaintiff has produced a draft of sale deed vide Exh. 205, date is not mentioned in the said draft but year is written that is 1992 and stamp papers are purchased on 21st March 1992, therefore it is clear that the plaintiff has prepared this draft in the year of 1992. Further, as per say of plaintiff he has paid total consideration amount Rs. 17,125-00/- till 27/06/1970, thereafter when the plaintiff asked complete requisite sale documents the defendant gave certain excuses. Since the defendant had failed to execute the requisite sale deed, the plaintiff issued to a legal notice on 01/09/1994, the office copy of the said notice and its registered post A.D. receipt is produced vide Exh. 186 and 187 respectively, against which the defendant replied that they will execute the sale deed very soon, the said reply and its cover is produced vide Exh.

188 and 189 respectively. Perusing the office copy of the said notice it is clear that the plaintiff has issued notice on 01/09/1994, which means that after 27/06/1970 the plaintiff has purchased stamp papers on 21st March 1992 and made a draft of deed somewhere in the year of 1992 and issued notice on 01/09/1994, between 27/06/1970 and 21st March 1992 the plaintiff has done nothing, and to explain the delay of about 22 years the plaintiff has merely said that the defendant was making excuses of residing foreign countries, the explanation is not enough to explain 22 years delay and the plaintiff has not produced agreement to sale and from the record it is clear that there is no pleading about time, instead of it is not pleaded and proved that whether the time was essence of the said oral agreement, then also if we suppose that there was no close of time in the oral or written agreement, the delay of about 22 years is not reasonable and it is not only delay but it is laches on the part of the plaintiff and the delay and laches confirms that the plaintiff was not ready and willing to complete his part of agreement, hence, plaintiff has failed to prove readiness and willingness, and as discussed above, answer to the Issues No. 1 is decided in partly Affirmative, issue No. 2 is decided in Affirmative and issue No. 3 is decided in Negative.

(11.13) The plaintiff has instituted suit for specific performance and he has prayed in alternative declaration of title by adverse possession, it is clear from the discussion of issue No. 2 that the plaintiff, after his death his legal heirs, are in possession of the suit property from the year of 1968. Further, the plaintiff himself has contended that the defendant gave possession of the suit property to the plaintiff by through possession letter dated

15/10/1968, which is produced vide Exh. 194, therefore it is clear that the defendant himself has given possession of the suit property to the plaintiff. It is required to be noted that the plaintiff is possession holder under an agreement but has not a purchase the suit property through registered sale-deed and hence in my view the plaintiff does not have legal right, title and interest since the plaintiff had not obtained legal and valid registered sale deed executed in his favour. In my view mere possession of the suit property under an agreement does not necessarily mean that it is adverse to the true owner. I am of the view that when the possession of the purchaser is under executory contract of sale, his possession cannot be said to be adverse. When the commencement and continuance of possession is legal and proper, referable to a contract, cannot be adverse. In my view if a person had obtained the possession of the suit property under an agreement to sell, he cannot ask for declaration of his title even on the ground that he had remained in possession of the property for more than 12 years period by contending that his possession is adverse to the defendant who is the real owner. Hence, the relief of adverse possession is not maintainable in the present matter and on this count I agree with the view taken by the Learned Trial Court; and therefore held that the issue No. 4 is rightly decided against the plaintiff in negative.

(11.14) The plaintiff has produced a order written by assistant collector to the plaintiff, vide Exh. 224, in which the assistant collector of Choryasi Prant at Surat has denied permission on the ground of section 4(i) read with clause (2) of

sec. 6 of the City vacant lands in Urban areas (Prohibition of Alienation) Act 1972, against which the plaintiff has filed revision application, a copy of application is produced vide Exh.223, but the plaintiff has not produced the order of the said revision application and other and further orders, further it is admitted that the permission to transfer the suit property was rejected by the Dy. Collector. Also as per the document produced vide Ex. 182 that "વેચાણ પરવાનગી મળે નહીં યા સદરહુ મીલકતના મારા ટાઇટલ ચોખ્ખા અને માર્કેટેબલ ન હોવાનું માલુમ પડે તો મારે તમોને સદરહુ રકમ એટલે રૂ.૧૭,૧૨૫) દર માસે, દર સેકન્ડે એક ટકાના વ્યાજ યા વ્યાજની નુકશાની સહિત તાત્કાલીક પરત ચુકવી આપવાના છે, અને તે સંજોગોમાં તે રકમ મારી કનેથી વસુલ લેવા હુકમદાર છો"

(11.15) Therefore, it is clear from the above discussion that in case of alleged non performance by the defendants, the Plaintiff should have been vigilant about his right of permission or demanding back the money so far paid by him but he remained silent for the considerable long time. So the Learned Trial Court held that the plaintiff failed to prove contention mentioned in the plaint through oral as well as documentary evidences and thus the plaintiff was found not entitled to the relief as prayed for. Thus the issue number 5 and 6 were decided in Negative and qua issue No. 7 finding of dismissal of suit was given. I concur with the findings given by the Learned Trial Court.

CONCLUSION OF THE APPEAL

(12) In my view even though holding of a suit property with the defendant's consent is proved; at the most it can be said that the possession of the plaintiff is "permissive," and therefore in such circumstances, the principle of adverse possession does not

apply. The plaintiff can't claim legal title via adverse possession, as the defendant retained the legal right over suit property on the count of absence of hostility on his part,

(13) In the present case the plaintiff could not bring any documentary evidence on record about the legal and valid transfer of title of the suit property in his favour so in absence of any such title document even his long peaceful possession is proved, which of course is the permissive one, then also at the most the plaintiff can protect his possession against the whole world but except against the true owner defendant. Otherway round even if, for the sake of argument, it is believed any valid agreement qua sell of suit property was executed by and between the plaintiff and the defendant (as alleged by the plaintiff), then also there is nothing on record to suggest that the plaintiff ever tried to perform or was even ready and willing to perform his part of contract ever since from the date of his possession of the suit property. I am of the view that the evidence of the plaintiff could not prove that **there is legal valid and effective transfer of title of the suit property in his favour**. Hence, as the plaintiff could not justify entitlement of his possession in absence of valid transfer and hence, appeal is not tenable. I am in conformity with the findings given by the learned trial court qua the issue nos 1 to 7 and found no reason to interfere with the impugned order. Therefore as the plaintiff has failed to prove his valid title as well as legality of the possession qua suit property, I agree with the findings of the learned trial court qua issue nos 1 to 7. In my view the Ld. trial court has rightly gone through the pleading and properly appreciated the evidence on

record and has rightly decided the suit of the plaintiff.

(14) Further, having considered the impugned judgment, it clearly emerges that the learned trial Judge has, in fact, considered and properly interpreted the provisions of the Contract Act and the provisions of the Registration Act and has properly appreciated the evidence qua dispute and has legally and properly given finding in favour of the defendants and against the plaintiff. The impugned judgment, in my opinion, do not warrant any interference. The Appellant has failed to make out a valid and sustainable case for Appeal, and I do not find any material which is pointed out to me from the record which would make me come to a conclusion that the Learned Trial Judge has erred in rejecting the suit of the plaintiff. In the circumstances, I find that the impugned Judgment and decree do not deserve to be interfered with. Therefore, I refrain myself from the same and upheld the findings arrived at by the Trial Court. Therefore, the impugned Judgment and decree passed by the learned Trial Court against the present Appellant/plaintiff cannot be said to be erroneous, capricious and perverse. Hence, my answers to point no. 1 in the negative.

POINT NO.2 :-

(15) In view of the above discussions, re-appreciation, findings arrived, reasons recorded and observations made, the present Appeal deserves to be dismissed and hence, following order is passed.

In view of the above discussions, and on re-appreciation of evidence, findings arrived, reasons recorded and observations

made by the Learned Trial Court did not require any interference and same are therefore upheld. The present Appeal deserves to be dismissed and hence, following order is passed.

-: O R D E R :-

1. Regular Civil Appeal No.6/2017 is hereby dismissed. Interim reliefs, if any prevailing will stand immediately vacated. Interim applications, if any undecided, shall stand disposed in consonance with this decision.
2. The Judgment and decree dtd. 03-04-2017 passed by the Principal Civil Judge, Palsana in R.C.S. No.3/2011 is hereby upheld and confirmed.
3. Looking to the facts and circumstances, parties are directed to bear their own cost.
4. Decree be drawn accordingly.
5. Record and Proceedings of R.C.S. No.3/2011 with copy of this Judgment be sent to learned trial court.

Pronounced in the open court today on 30th day of June 2026, Surat at Bardoli.

Date : 30/06/2026
Place: Bardoli

Nareshkumar R. Jain
5th Additional District Judge, Surat
at Bardoli
Code No.**GJ00582**