



**IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE,
AT:- SAVLI.**

Special Civil Suit N0.22 of 2018
(Old Special Civil Suit No.45 of 2011)

ORDER BELOW EXHIBIT-249

1. The present application is filed by the plaintiff seeking discovery of documents on oath and production of documents under Order 11 of CPC. It is say and submission of the plaintiff that during course of proceedings, the defendant nos. 1, 4, 5, 6, 7 and 10 have filed Counter Suit vide Exhibit- 21 and 114 along with Injunction Application against the plaintiff. Along with this particular Counter Suit and Injunction Application, certain documents are also produced by the said defendants. Rejoinder of Affidavit vide Exhibit 219 and Documents vice list vide Exhibit 220 and 224 are also filed.
2. It is also submitted that after demise of defendant no.2, his legal heirs have also filed reply vide Exhibit-123. Thenafter, one tabular

form is produced by the plaintiff. Same is reproduced as under to the best possible translation.

અનુક્રમ	વિગત	તારીખ
૧	પ્રતિવાદી નં. ૧ તથા પ્રતિવાદી નં.૨ નાએ વાદીઓ પાસેથી દાવાવાળી મિલકતો અંગે મેળવેલ વેચાણ અવેજના નાણા સ્વીકારેલ અને દાવાવાળી જમીન વાદીને વેચાણ આપેલ વિગેરે બાબતની કબુલાત કરતા લખાણ વાળી ડાયરી.	૧૦/૦૪/૨૦૧૧
૨	નારાયણભાઈ ભાઈલાલભાઈ પટેલના એ ભગીરથીબેન નાને કરી આપેલ વીલ.	૨૮/૦૪/૨૦૦૦
૩	લોપાબેન પંકજ દવેનાએ ભગીરથીબેન નારાયણભાઈ પટેલ તેમજ રમણભાઈ ભાઈલાલાભાઈ પટેલનાને આપેલ પાવર ઓફ એટર્ની.	૨૮/૧૨/૨૦૦૫

Hence, the plaintiff prays for production of the above mentioned documents, as all these documents are verymuch essential for

just decision of the suit and hence, the defendants may be produced, these documents on oath.

3. Reply of this application came to be filed vide Exhibit-258. In this reply, most of the facts of the plaintiff's suit is denied. With regard to filing of Affidavit on oath and for production of documents, it is stated that all the necessary documents which are within the possession of the defendants are produced. With regard to the other documents, it is stated that considering the judgement produced along with this submission, the present application may be rejected.

4. **Submission of the Ld. Advocates:**

The Ld. Advocate for the plaintiff submitted that all the documents mentioned in this application are very much relevant for just decision of the case and hence, this application may be allow.

5. Per contra, the Ld. Advocate for the defendant Mr. R.R.Patel who is filed reply qua Exhibit 258 has submitted that his reply may be considered and necessary order rejecting the present application may be passed.

6. **Discussion:**

- 6.1. Having heard the Ld. Advocate for the either sides. This

Court has gone through the records and proceedings of the suit. Be it noted that in this suit, order below Exhibit - 5, 112, 113 & 114 came to be passed on 30.01.2024. Thenafter, order was challenged upto the Hon'ble Supreme Court and the Hon'ble Supreme Court has directed for expeditious disposal of this suit within one year from the date of receiving the order. This Court has received the order in the month of July 2024. Since 2024, till today, there is no progress. So far as suit proceedings are concerned, the plaintiff has repeatedly sought adjournments and with of regret this Court mentions herein that the cost was also imposed upon the plaintiff. It is also apt to note that in between certain amicable settlement talks were also going on and hence, the matter was adjourned upon joint request of the parties.

6.2. In this suit, Issues are framed vide Exhibit-237 on 30.01.2024. Since 2024, till today, almost one year has been passed, the plaintiff has not produced evidence. It cannot be ignored that the present suit is filed for specific performance of oral agreement. When the plaintiff himself approached up to the Hon'ble Supreme Court and when direction for expeditious disposal of the suit by the Hon'ble Supreme Court, parties as

well as their Ld. Advocates are expected to co-operate the Court in disposal of the suit in time bound manner as ordered by the Hon'ble Supreme Court, which is not followed in the present suit.

6.3. So far, claim of the plaintiff with regard to production of the documents are concerned, the plaintiff in his entire plaint has nowhere stated that fact as to payment of consideration and earnest money is paid by the defendant. *To put it otherwise, it can be said that by filing the present application, first time this plea has been raised by the plaintiff.* Thus, this court believes that there is no ground to allow this application.

6.4. So far production of will is concerned, when plaintiff has filed the suit for specific performance of oral contract, plaintiff cannot be challenged the title and ownership of the defendants and hence, so far as right of the plaintiff is concerned, it is only to the extent of seeking specific performance of oral contract and. Hence, will which is sought to be produced by the plaintiff is made subject matter of the present suit and hence, it cannot be produced by the defendants. So far as Power of Attorney is concerned, it already produced and even otherwise the Ld. Advocate who is representing the Lopaben submitted that he is

ready to submit Power of Attorney.

6.5. It is apt to note that, in this suit, plaintiff cannot force the defendant to produce evidence his case. It is for the plaintiff to prove his constant readiness and willingness to get decree in his favour. Plaintiff is free to produce copies of the document, if he states that, he is having copies. It is also worthy to note that, in this suit, plaintiff wants to produce the document mentioned at serial no.1 which is originally as per say of the plaintiff is diary, which proves that defendants have agreed to sell out suit properties to the plaintiffs. This course is not available to the plaintiff. Even, after framing of issues and after re-casting issued, present application came to be filed stating all together new facts, which are not earlier pleading of the plaintiff. So far pleading and defence of the defendants are concerned, it for the defendant to prove the same. Plaintiff cannot force the defendants to adopt particular course for their defence.

7. Conclusion.

7.1. Hence, this Court believes that this application requires to be rejected and following order is passed.

-:: ORDER ::-

1. The present application is hereby **rejected**.

2. No order as to cost.

Pronounced and signed in the open Court today on 5th day of March,
2025 at Savli.

Place :- Savli.

Date :- 05/03/2025

(Vikram Karsanbhai Solanki)

Principal Senior Civil Judge,
Savli.

Judge Code No.:-GJ-01099

/ R. J. Chauhan /