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IN THE COURT OF 3rd ADDITIONAL SENIOR CIVIL JUDGE,
ANJAR-KACHCHH, AT ANJAR.

SPECIAL CIVIL SUIT NO.3 OF 2010

EX. -

RAJENDRA TARACHAND JAIN,
Age abot 47 years, Occupation business,
At present residing at Plot No.404,
Ward 12-C, Lilashah Nagar, Gandhidham-Kachchh.

PLAINTIFF

V/s.

1. Smt. Meenakshiben Wd/o. Late Kishorkumar
Chhaganlal Shah, Occupation : house hold work
At present residing at B-5 Tirupati Apartments,
Hospital Road, Bhuj-Kachchh.

2. Pankaj S/o. Late Kishorekumar Chhaganlal shah,
Adult, occupation business
At present residing at B-5, Tirupati Apartments,
Hospital Road, Bhuj-Kachch.

3. Pravin S/o. Late Kishorekumar Chhaganlal shah,
Adult, occupation business at present residing at B-5,
Tirupati Apartments, Hospital Road, Bhuj-Kachch.

4. Anil S/o. Late Kishorekumar Chhaganlal shah,
Adult, occupation business at present residing at B-5,
Tirupati Apartments, Hospital Road, Bhuj-Kachch.

5. Meghraisinh Narbhesinh Zala,
Adult, age about 45 years, Occupation Agriculturist,
At present residing at Darbargadh,
Bhachau, Kachchh.

DEFENDANTS :

.....

Subject: Suit for specific performance of contract in respect
of the agreement to sell 97 plots of N.A. land bearing Survey
No. 158, Village Varsana, Taluka Anjar, sub-Registration Dist.
Anjar, Kachchh.

.....

Appearances:

- Ld. Advocate Mr. B. D. Chhaya for the plaintiff.
- Ld. Advocate Mr. Y. D. Bhandarkar for the defendant No.1 to 4.
- Ld. Advocate Mr. V. V. Chavda for the defendant No.5.

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

1] The present suit has been filed by the plaintiff for specific performance of contract in respect of the agreement to sell 97 plots of N.A. land bearing Survey No. 158, situated within the revenue limits of Village Varsana, Taluka Anjar, sub-Registration Dist. Anjar, Kachchh. *The brief facts of plaintiff's case are as under.*

2] **Brief facts :-**

- (1). The plaintiff submits that all the defendants no. 1 to 4 the legal heirs and legal representatives of Late Kishorekumar Chhaganlal Shah.
- (2). The plaintiff submits that Late Kishorekumar chhaganlal shah when he was alive, he had entered into an

agreement and had agreed to sell total 97 plots bearing No. 13, 54 to 63, 64, 65, 66 to 75, 80 to 86, 117, 118 to 128, 129, 130, 131 to 141, 142, 143, 144 to 154, 155, 156, 157, 158 to 169, 170, 171, 172 to 182, and 183, Total 97 plots, Total Admeasuring about 19,523.20 sq. yards, of N.A. land bearing Survey No. 158, situated within the revenue limits of village Varsana, Taluka Anjar, Sub- Registration Dist. Anjar, Kachchh [hereinafter referred to as the "said Plots" for the sake of brevity] at the rate of Rs. 513-00 per Sq. Yard to the plaintiff i.e. for a total consideration of Rs. 1,00,15,401-00 [Rupees one Crore fifteen Thousand Four Hundred one only] and said Late Kishorekumar had executed and signed the Agreement to sell Dated 21-01-2007. The copy of the same is submitted herewith.

The plaintiff submits that the plaintiff has paid a sum of Rs. 11,00,000-00 [Eleven Lacs only] to Late Kishorekumar Chhaganlal Shah against the amount of total consideration as above said and he had acknowledged and admitted the receipt of the same in the said agreement. That the plaintiff has paid a sum of Rs. 2,00,000-00 to the plaintiff thereafter.

The plaintiff submits that as per the terms and

condition of the said Agreement further sum of Rs. 10,00,000-00 was to be paid after the measurement of each and every plot was taken and determined and also after putting the boundary stones and making fencing around the said plots and also after obtaining the Title Clearance Certificate from any senior Advocate.

The plaintiff submits that said Kishorkumar while he was alive he could not fulfill the said terms and conditions on account of sum dispute between him and the previous owner of the ag. Land and some cases were pending in the court filed by him.

- (3). The plaintiff submits that said Late Kishorekumar had taken a loan of Rs. 30, 00, 000-00 [Rupees Thirty Lacs] from Bhuj Commercial co-operative Bank Ltd., and the said bank had a charge on the said plots and said Late Kishorekumar was to clear the dues and for that purpose the plaintiff had agreed to advance further sum of Rs. 20, 00, 000-00 [Twenty lacs only] subject to the conditions that actual and vacant and peaceful possession of the said plots were to be handed over to the plaintiff. Said Kishorekumar could not fulfill the said condition as some legal proceedings were pending

in respect of the entire land and he was not able to handover the vacant possession of the said plot to the plaintiff.

The plaintiff submits that as per the terms and conditions of the said agreement the balance amount of Rs. 59,15,401-00 was to be paid by the plaintiff at the time of execution of final sale deed and get the same registered.

- (4). The plaintiff submits that said kishorekumar while he was alive he could not fulfill the terms and conditions enumerated in the said agreement and he did not perform his part of contract.

The plaintiff submits that he was and is ready and willing to perform his part of contract and to make the payments of the amounts as above said subject to the fulfillment of the terms and conditions by said Kishorekumar shah and inspite of repeated reminders he did not perform his part of contract.

- (5). The plaintiff submits that after his death the plaintiff learnt that the defendants No. 1 to 4 were trying to sell and dispose of the said plots and in view of the same the plaintiff got published a public notice dated 15-10-2008 in daily "Kutch Mitra" through the Advocate Shri

V. R. Bheda and Jayesh Bheda etc.

The plaintiff submits that the defendants No. 1 to 4 are the legal heirs and legal representatives of said Kishorekumar Chhaganlal Shah and they have inherited all the properties of late Kishorekumar and also the above said suit plots and as such the above said agreement and terms and conditions of the said agreement are also binding on the defendants No. 1 to 4 and the defendants No. 1 to 4 are bound to perform the said agreement and in view of the same the plaintiff sent a notice dated 16-10-2009 to the defendants No. 1 to 4 through his advocate Shri V. R. Bheda by registered post a.d. and the defendants No. 1 to 4 were called upon to perform their part of contract as per the terms and conditions of the said Agreement by carrying and determining the measurements of all the plots, putting the boundary stones and fencing and furnishing the title clearance certificate from a Senior Advocate and also to put the Plaintiff in possession of the said plots and to execute the Sale Deed and get the same registered. It was further informed to the defendants No. 1 to 4 that the plaintiff is ready to make the payment of the balance amount of

consideration of the said agreement. The defendants No. 1 to 4 did receive the notice and original A.D. coupons are submitted herewith. The defendants No. 1 to 4 have not replied the said notice and they have committed the breach of the contract and as such the plaintiff files the present suit for specific performance of the contract.

The plaintiff submits that deceased Kishorekumar chhaganlal shah with dishonest intention and with the intention to defeat the rights of the plaintiff acquired by the plaintiff under the above said agreement to sell and to deceive the plaintiff and to deprive the plaintiff from the benefits and fruits of the said sale agreement and in collusion with the defendant No. 5 sold 78 plots of the said land bearing plot No.13, 45, 47, 86, 129 to 132, 136 to 149, 54 to 75, 80 to 85, 117 to 128, 153 to 155 and 171 to 183 totally admeasuring 16486.28 Sq. Meters 19717.60 Sq. yards of the N.A. land situated within the Revenue Jurisdiction of Village Varsana, Dist. Kachchh to one Meghrajsinh Narbhesinh Zala, the defendant No. 5 vide sale deed dated 29-03-2008 duly registered with the office of the sub-Registrar, Gandhidham at Reg. No. 4245 on Date 09-05-2008 after deceased Kishorekumar executed the above said sale

agreement in favour of the Plaintiff. Thus Late Kishorekumar chhaganlal shah committed breach of the agreement/contract entered into with the plaintiff of sale of said plots.

The plaintiff submits that said Meghrajsinh Narbhesinh Zala, the defendant No. 5, had full knowledge and notice of the agreement to sell dated 21-01-2007 executed by deceased Kishorekumar chhaganlal shah in favour of the plaintiff in respect of agreement to sell 97 of the plots of the above said N.A. land and inspite of the same he has purchased 78 plots of the said N.A. land. That the defendant No. 5 has not purchased the said plots in good faith and he is not a bonafied purchaser of the said plots. It is submitted that the plaintiff has agreed to pay to said Kishorekumar chhaganlal shah the price of the said plots at the rate of Rs. 513-00 per sq. yards whereas the plots sold to the defendant No. 5 by said deceased Kishorekumar is at the rate of Rs. 41-00 per Sq. Yard. it is submitted that the said fact is sufficient to prove the dishonest intention and not good faith on the part of the defendant No. 5 and in fact the defendant no.5 has not paid any consideration to said Kishorekumar chhaganlal

and the said sale deed is sham and bogus and has been created and executed by said Kishorekumar chhaganlal shah in collusion with the defendant no. 5 with the sole intention to defeat the rights of the plaintiff as above said.

The plaintiff submits that as above said the defendant No. 5 has full knowledge of the above said sale agreement and having notice of the said sale agreement/contract has purchased the said 78 plots and further he is not bonafied purchaser of the same and he has not purchased the said 78 plots in good faith and the said document is thus sham and bogus and without consideration and the plaintiff is entitled to obtain the decree for specific performance of the said 78 plots against the defendant No. 5 also. Thus the plaintiff files the suit for specific performance in respect of the above said 78 plots of the said land against the defendant No.5 and/or in alternative to declare the said sale deed as sham and bogus and without consideration and to cancel the said agreement as if the said sale deed is not cancelled and adjudged as void and if the same is left outstanding the same may cause serious injuries to the plaintiff.

The plaintiff submits that he is entitled to claim compensation from all the defendants in addition to the specific performance of the contract or in substitution of the specific performance of the contract including the refund of the paid to the deceased Kishorekumar chhaganlal shah by the plaintiff as the defendants are likely to delay the disposal of the suit.

- (6). That the cause of action has arisen on date 21-01-2007 when Late Kishorekumar agreed to sell the suit plots to the plaintiff and thereafter when said person failed to perform his part of contract and thereafter on date 16-10-2009 when the notice as above said was served on the defendants No. 1 to 4 and when the defendants No. 1 to 4 failed to perform their part of contract and as such the suit has been filed within time.

The plaintiff prays in para 17 for the judgment and decree ordering the defendants.

- a) to perform the above said agreement to sell i.e. contract by executing the Sale Deed in respect of the plots bearing no. 13, 54 to 63, 64, 65, 66 to 75, 80 to 86, 117, 118 to 128, 129, 130, 131 to 141, 142, 143, 144 to 154, 155, 156, 157, 158

to 169, 170, 171, 172 to 182, and 183, Total 97 plots, Total Admeasuring about 19,523.20 sq. yards, of N.A. land bearing Survey No. 158, situated within the revenue limits of village Varsana, Taluka Anjar, Sub-Registration Dist. Anjar, Kachchh in favour of the plaintiff.

- b) to put the plaintiff in possession of all the above said plots after getting the same measured i.e. the measurement of each and every plot be taken and determined and also after putting the boundary stoned and making fencing around the said plots.
- c) to do all necessary acts and deeds to complete the title of the plaintiff.
- C1) to enforce the specific performance of the above said agreement to sell i.e. contract against the defendant No. 5 ordering him to execute the sale Deed in respect of the Plots bearing No. 13, 45, 47, 86, 129 to 132, 136 to 149, 54 to 75, 80 to 85, 117 to 128, 153 to 155 and 171 to 183 totally admeasuring 16486.28 Sq. Meters =

19717.60 Sq. yards of the N.A. land bearing Survey No. 158, situated within the Revenue limits of Village Varsana, Sub- Registration Dist. Gandhidham, Kachchh in favour of the plaintiff.

C2) ordering the defendant No. 5 to put the plaintiff in possession of the all the above said plots bearing Plots Nos. 13, 45, 47, 86, 129 to 132, 136 to 149, 54 to 75, 80 to 85, 117 to 128, 153 to 155 and 171 to 183 totally admeasuring 16486.28 Sq. Meters = 19717.60 Sq. yards of the N.A. land bearing Survey No. 158, situated within the Revenue limits of Village Varsana, Sub-Registration Dist. Gandhidham, Kachchh.

C3) to do all necessary acts and deeds to complete the title of the plaintiff in respect of the plots Nos. 13, 45, 47, 86, 129 to 132, 136 to 149, 54 to 75, 80 to 85, 117 to 128, 153 to 155 and 171 to 183 totally admeasuring 16486.28 Sq. Meters = 19717.60 Sq. yards of the N.A. land bearing Survey No. 158, situated within the Revenue limits of Village Varsana, Sub-Registration Dist.

Gandhidham, Kachchh

- C4) the defendants be ordered to pay a sum of Rs. 30,00,000-00 [Rupees Thirty Lakhs] either in additions to the specific performance of the contract or in substitution of specification performance of the contract along with interest at the rate of 18% p.a. from the date of filing the suit till entire amount is realized.
- C5) that the defendants No. 1 to 4 may kindly be ordered to pay a sum of Rs. 13,00,000-00 [Rupees Thirteen Lakhs] to the plaintiff alongwith interest at the rate of 18% p.a. from the date of filing the suit till entire amount is realized.
- C6) to declare the sale deed executed by Kishorekumar chhaganlal shah in favour of the defendant No. 1 in respect of sale of 78 Plots of the said land bearing Plots Nos. No.13, 45, 47, 86, 129 to 132, 136 to 149, 54 to 75, 80 to 85, 117 to 128, 153 to 155 and 171 to 183 totally admeasuring 16486.28 Sq. Meters = 19717.60 Sq.

yards of the N.A. land situated within the Revenue Jurisdiction of Village Varsana, Dist. deed dated 29-03-2008 duly registered with the office of the Kachchh being the sale deed dated 29/03/2008 duly registered with the office of the sub-Registrar, Gandhidham at Reg. No. 4245 on Date 09-05-2008 and to order to cancel the said sale deed and ordering the defendant No. 5 to deliver the said sale deed to the plaintiff and to send the copy of the Judgment to note on the copy of the said sale deed/instrument contained in his books of the fact of cancellation of the said sale deed.

- d) to pay to the plaintiff all the costs of the suit.
- e) to grant such other relief as the Hon'ble court may think fit and proper looking to the facts and circumstances of the case.

3] **Appearance and Written-Statements of Defendants :-**

After registration of the plaint, the defendants were served the summons /notice to appeared before the Court and defendant No.1 to 4 appeared through his advocate Mr.Y. D. Bhandarkar and filed reply at Ex.41 wherein he denied all the averments of the plaint and has raised objection stating that, suit is liable for the rejection for want of cause of action and as per the para-2 of the plaint the sale agreement is of dated 21/01/2007 hence, plaintiff's suit is beyond the limitation. Moreover, the agreement-to-sale between plaintiff and Late Kishorebhai Shah and he has sold the disputed land in his lifetime on dated 09/05/2008 hence, the possession as well as ownership of land is not lying with the defendant. Hence, plaintiff cannot seek any relief against defendants. Moreover, their father Late Kishorebhai Shah had instituted Special Civil Suit No.8/2007 in Anjar Court regarding disputed land and he sold out disputed land at that time and plaintiff was aware about the all these facts because, on dated 28/02/2007 and then after public notice was published in news paper regarding disputed land so, it is not accepted that, plaintiff has paid Rs.11 Lacs to

Late Kishorebhai as well as plaintiff was ready to pay Rs.20 Lacs at the time of possession. Further, Late Kishorebhai has completed transaction during his lifetime. They are not knowing about the personal loan and plaintiff has not done anything during the lifetime of Kishorebhai and filed the present suit without cause of action. They further submits that, disputed land has never in the ownership and possession of the defendants and they have not done any agreement with the plaintiff and they do not have any civil right regarding disputed plot suit. Hence, plaintiff cannot claim any civil right against them.

Defendant No.5 has joined as a party in the suit vide Ex. 50 and appeared through his Ld. Advocate and filed written objection / W.S. vide Ex.79 in which he submits that, plaintiff has not valid cause of action hence, this suit is liable to be rejected. Plaintiff has done one sale agreement with Late Kishorebhai Chhaganlal Shah on registered agreement-to-sale of Rs.100/- dated 21/01/2007. Hence, because of unregistered sale agreement and bar of limitation, present suit is liable to be rejected and plaintiff cannot file such suit for specific performance against

defendant No.5 because plaintiff has not done any agreement-to-sale with defendant No.5. Moreover, father /husband of defendant No.1 to 4 Late Kishorebhai Chhaganlal Shah has sold this disputed plots during his lifetime on dated 09/05/2008 and it is in the knowledge of plaintiff and despite of they have knowledge about the suit No.8/2007 filed in the Anjar Court, they have not joint defendant No.5 as a party in the suit. Thus, plaintiff has not completed any transaction or agreement with defendant no.5 hence, they have not any right to claim against the defendant No.5 and defendant No.5 is a bonafide purchased having a registered sale-deed dated 29/03/2008 which was challeged by the plaintiff in August 2015. Hence, looking to the bar of Limitation Act, plaint is liable to be rejected. Moreover, as per the Section 17(1)(b) of Registration Act 1908, agreement regarding immovable property having value of more than Rs.100/- is compulsarily registrable and as per the Transfer of Property Act also, it is compulsarily registrable hence, plaintiff suit is liable to be rejected.

- 4] In support of claim and defence both the parties has produced the evidence as under :

[a] By Plaintiff:**(i) Oral Evidence:**

Sr.No.	Particulars	Exh.
1.	Deposition on oath by Plaintiff: Rajendra Tarachand Jain	88
2.	Deposition on oath by P.W. 2: Bhupendrabhai Amrutlal Pandya	104
3.	Deposition on oath by P.W. 3 : Ms. Seema Saraogi D/o. Shri Rajkumar Saraogi	147

(ii) Documentary Evidence :

S.N.	Particulars	Exh.
1.	Original sale agreement by and between Shri K. C. Shah in favour of the plaintiff in respect of suit plots	92
2.	Original hand written receipt of Rs.2 Lacs by K.C. Shah in favour of plaintiff in respect of suit property	101
3.	Original letter by K. C. Shah address to the plaintiff	102
4.	Mortgage deed dated 19/03/1996	113 to 115
5.	Letter of guarantee made by K.C. Shah in favour of bank	116

6.	Demand promissory note dated 19/03/1996	117
7.	Copy of Nivda order in Lavad Case No.31/96	118
8.	Village Form No.8-A	129
9.	Village Form No.6	130
10.	Village Form No.6 Entry No.10 and 11 of R.S. No.158, vill : Varsana, Tal : Anjar- Kachchh.	131
11.	Village Form No.6 Entry No.12 of R.S. No.158, vill : Varsana, Tal : Anjar-Kachchh.	132
12.	Village Form No.6 Entry No.14 of R.S. No.158, vill : Varsana, Tal : Anjar-Kachchh.	133
13.	Village Form No.6 Entry No.225 of R.S. No.158, vill : Varsana, Tal : Anjar-Kachchh.	134
14.	Copy of Balance Sheet of M/s. Sunshine Buildarch Pvt. Ltd. of year 2018-19	150
15.	Copy of Balance Sheet of M/s. Sunshine Buildspace Pvt. Ltd. of year 2018-19	151
16.	Copy of Balance Sheet of M/s. Sunshine Malls Pvt. Ltd. of year 2018-19	152
17.	Closing pursis	155

[b] By Defendants

(i) Oral Evidence:

Sr.no.	Particular	Exh.
1.	Deposition on oath by Defendant NO.3	140

	Smt. Minaxiben Kishorekumar Shah	
2.	Deposition on oath by Defendant NO.5 Shri Meghraj @ Meghubha Narbhebha Zala	184

Documentary Evidence :

Sr.no.	Particular	Exh.
1.	NIL	

Defendant No.1 to 4 has produced the closing pursis vide Ex.183 and defendant No.5 has produced closing pursis vide Ex.187.

[5] Ld. Advocate Mr.N.D.Chhaya for the plaintiff argued at length, and submitted written argument vide Ex.190.Ld. Advocate Mr. Y.D.Bhandarkar for the defendant No. 1 to 4 has given written arguments vide Ex.193 and Ld. Advocate Mr. V.V.Chavda for the defendant No. 5 has given written argument vide Ex.192. To avoid the unnecessary repetition, I have discussed the entire arguments with reasons as below.

[6] My Ld. predecessor after considering the facts on record and pleadings along with the documents produced before the Court, has framed the points of dispute in the form of issues at Ex.87 as under:

:ISSUES :

- [1] Whether plaintiff proves that he entered into an agreement-to-sale in respect of the suit properties with Late Kishorekumbhar Chhaganlal Shah on 21-01-2007 ?
- [2] Whether plaintiff proves that he has paid Rs.11,00,000/- (Lakh) to Late Kishor Kumar Chhaganlal Shah as an amount of part consideration ?
- [3] Whether plaintiff proves that, he is always ready and willing to perform his part of the agreement-to-sale, dated 21-01-2007 ?
- [4] Whether suit of the plaintiff is barred by the limitation ?
- [5] Whether defendant No.1 to 4 prove that, they are not liable to perform to agreement-to-sale, dated 21-01-2007 as Late Kishorekumar Chhaganlal Shah sold out the suit properties in his lifetime ?
- [6] Whether defendant No.5 proves that, he is a bonafide purchaser ?
- [7] Whether plaintiff is entitled to get the reliefs as prayed for ?

[8] What order and decree?

My findings on the above issues are as under.

1] In the Affirmative.

2] In the Affirmative.

3] In the Negative.

4] In the Negative.

5] In the Affirmative.

6] In the Affirmative.

7] In the Partly Affirmative.

8] As per Final Order.

Reasons for above referred findings are as under :

: : R E A S O N S : :

[7].. As all these Issue required to be decided by this Court, which are inter-connected with each other and which requires appreciation of same set of evidences, same allows this Court to decide all these issues together.

Considering the pleadings of the parties it appears that plaintiff has filed present suit against the defendants

for the act of the illegal sale transactions of defendants. Whereas through the W.S. defendants have categorically denied the claim put forward by the plaintiff. It is therefore, before discussing the evidence available on record it is necessary to see the Provisions of Sec.101 of Indian Evidence Act, for the effective determination of all the issues which is produced here.

Section 101.

Burden of proof :

Whosoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Illustrations

(a) A desires a Court to give judgment that B shall be punished for a crime which A says B has committed.

A must prove that B has committed the crime.

(b) A desires a Court to give judgment that he is entitled to certain land in the possession of B, by reason of facts which he asserts, and which B denies, to be true. A must prove the existence of those facts.

In view of the aforesaid provision first part of the section says that the onus is on the plaintiff to positively establish his case on the basis of material available and it cannot rely on the weakness or absence of defense to discharge onus. So the burden lies on the present plaintiff to prove that inspite of holding identity card he was declined to give proper treatment by the defendants. Keeping in mind aforesaid provisions, the burden heavily lies on the plaintiff to prove the facts which he has asserted in the plaint, the court can not grant any relief until such burden is discharged by the plaintiff. Moreover, the court has to examine as to whether the person upon whom burden lies has been able to discharge his burden.

ISSUE No.1 :

Considering the pleadings of the plaintiff and defendants, undisputed facts are as below :

[a] Originally the owner of the suit properties was Late Kishorekumar Chhaganlal Shah and defendant No.1 to 4 are legal heirs of Late Kishorekumar Chhaganlal Shah.

[b] Plaintiff had entered into an agreement-to-sale of total 97 plots mentioned in para-2 of the plaint with Late

Kishorekumar Chhaganlal Shah which agreement-to-sale produced herein vide Ex.92 by plaintiff.

[c] Late Kishorekumar Chhaganlal Shah sold out the total 78 plots of the said land mentioned in para-11 of the plaint to Defendant No.5 Meghrajsinh Narbhesinh Zala during his life time.

Now, So far as issue No.1 is concerned, in the written statement filed by the defendant no.1 to 4 vide Ex.41, they have stated that, they are not aware about the agreement-to-sale done between the plaintiff and their father Late Kishorkumar Chhaganlal Shah on dated 21/01/2007 but, there is no specific denial of this agreement-to-sale.

Now, taking into consideration the rival contention of both the parties, plaintiffs have produced the original agreement-to-sale vide Ex.92 herein, which transpires the terms and conditions decided between the present plaintiff and Late Kishorkumar Chhaganlal Shah i.e. father/husband of defendant No.1 to 4. In which both plaintiff and Late Kishorkumar Chhaganlal Shah has signed this document and two witnesses out of which first witness Bhupendralal Amrutlal Pandya was examined vide Ex.104 from plaintiff side as plaintiff's witness. In his deposition, this witness has admitted the facts of this

agreement-to-sale and his signature and execution of this agreement-to-sale dated 21/01/2007, submitted herein vide Ex.92.

Moreover, on careful reading of cross -examination of this witness, it transpires that, he was the mediator and the broker of this sale-agreement. Now, coming to the second witness of this agreement-to-sale produced herein vide Ex.92, it transpires as the illegible signature of P. K. Shah, B/5 Tirupati Apartment, Hospital Road, Bhuj-Kachchh and as per the arguments of Ld. Advocate for the plaintiff, this is the sign of defendant no.3 Pravin S/o. Late Kishorkumar Chhaganlal Shah who is examined herein vide Ex.140 from the defendant side who is not admitting his signature in Exh.92 because in his chief examination he admits that, "આ કામે વાદીએ સાટાકરાર સ્વ. કીશોરભાઈ શાહ મારા પિતાશ્રી સાથે કરેલો હતો. " Moreover he admits in crossexamination that, " એ વાત ખરી છેકે,મારા પીતાજીએ કરાર નથી કરી આપેલો તેવું અમારું કોઈ કથન નથી.આંક- ૯૨ વાળા દાવાવાળા કરારમાં વેચનાર તરીકે મારા પીતાશ્રીની સહી છે. આંક-૯૨ વાળા કરારમાં સાક્ષી નં.૧ ઉપર કાં પી.કે.શાહ છે કાં આર.કે.શાહ છે. તેની નીચે સરનામું જે લખ્યું છે તે મારું છે. એ વાત ખરી છે કે, હોસ્પિટલ રોડ, તીરુપતી એપાર્ટમેન્ટ, બ્લોક નં.૫ ,પ્રવિણ કે. શાહ નામની બીજી કોઈ વ્યક્તિ હોઈ શકે નહીં.

Thus I am of the full agreement of the arguments of plaintiff

that, in lack of specific denial the agreement-to-sale dated 21/01/2007 submitted herein vide Ex.92. Plaintiff has successfully proved this agreement-to-sale produced herein at Ex.92.

Hence, I am agree with the arguments advanced by the Id. Advocate for the plaintiff that, plaintiff proves that, he entered into the agreement-to-sale in respect of the suit properties with Late Kishorkumar Chhaganlal Shah on dated 21/01/2007 hence, Plaintiff has successfully proved the issue No.1 and answered this issue accordingly in Affirmative.

[8] ISSUE No.2 :-

On plain reading of the agreement-to-sale produced herein at Ex.92, it transpires in para No.2 that, Rs.11 Lakhs has been paid and the vendor i.e. Late Kishorkumar Chhaganlal Shah accepted this amount and this document itself a receipt by signing of this agreement. Hence, as discussed earlier, plaintiff has successfully proved the disputed agreement-to-sale produced herein at Ex.92, plaintiff proves that, he has paid Rs.11 Lakhs to Late Kishorkumar Chhaganlal Shah as an amount of part consideration of this agreement. Hence, I fully agree with the Id. Advocate for the plaintiff that, he has successfully proved the issue No.2 hence, I answered the Issue No.2 in Affirmative.

[9] ISSUE No.3 :-

Now, coming to the main and foremost important issue No.3 that, whether plaintiff has succesfully proved his ready and willing to perform his part of agreement-to-sale dated 21/ 01/ 2007 or not ?

Before discussing this issue, it is necessary to refer the relevant para No.3 to 5 of the agreement-to-sale proudced herein vide Ex.92 which refers as under.

(૩) આ સોદાની બાકી રહેતી રકમ પેટે વેંચનાર જ્યારે આ તમામ ૯૭ પ્લોટોની માપણી કરાવી ખુંટા ખોડાવી ફેન્સીંગ કરી તથા વ્યવસ્થિત સીનીયર વકીલશ્રી મારફતે ટાઈટલ ક્લીયરન્સ સર્ટીફિકેટ મેળવી આપશે ત્યારે ખરીદનારે રૂ. ૧૦,૦૦,૦૦૦/- (અંકે દસ લાખ પુરા ચુકવવાના રહેશે.

(૪) વેંચનારે આ જમીન ઉપર ભુજ કોમર્શિયલ કો-ઓપરેટીવ બેન્ક લીમીટેડ પાસેથી રૂ. ૩૦.૦૦ લાખની લોન લીધેલ છે. તે લોનની રકમ ભરવામાં ખરીદનાર તેની સગવડે તા. ૨૧/૦૪/૨૦૦૭ સુધી વેંચનારને રૂ. ૨૦,૦૦,૦૦૦/- (અંકે રૂપિયા વીસ લાખ પુરા) ચુકવી આપશે અને તે વખતે વેંચનારે ખરીદનારને આ તમામ ૯૭ પ્લોટોનો સંપુર્ણપણે પ્રત્યક્ષ શાંત અને ખાલી કબજો સોંપી આપશે.

(૫) વેંચનારે ઉપરોક્ત નંબરો વાળા તમામ ૯૭ પ્લોટો ખરીદનારને વેંચાણ દસ્તાવેજ બનાવડાવી રજીસ્ટર કરાવી આપવાનો રહેશે અને તેમાંથી જો કોઈપણ પ્લોટનો દસ્તાવેજ વેંચનાર નહીં બનાવી શકે અથવા બનાવી આપવા અસમર્થ થશે તો ખરીદનાર પોતાના તરફથી આ સોદો રદ્દબાતલ કરી શકશે અને તે ચુકવેલ પુરેપુરી રકમ પરત મેળવવા હક્કદાર રહેશે.

Now. Ld. Advocate for the plaintiff in his written argument vehemently submitted that, as per the condition No.3 of this agreement-to-sale produced herein vide Ex.92, with measurement of plots and putting the boundary stones and making fencing around the said plots and after obtaining the title clearance certificate from any senior advocate, plaintiff has to pay Rs.10 Lakhs to the vendor i.e. Late Kishorkumar Chhaganlal Shah and the work of putting stones of boundary and making fencing and completing measurement of plots and obtaining title clearance certificate from advocate was not completed by the seller i.e. Late Kishorkumar Chhaganlal Shah hence, plaintiff has not paid Rs.10 Lakhs. Thus, plaintiff was not at fault. Moreover, he has vehemently argued that, Late Kishorkumar Chhaganlal Shah has not completed this work as per the condition No.3 of this sale-agreement. Moreover, plaintiff has categorically stated in para 9 of the plaint that, he was ready and willing to perform his part of the contract. Hence, Ld. Advocate of the plaintiff submits that plaintiff has successfully proved the issue No.3.

Now, coming to the conclusion of this issue, By the catana of the judgments of the Hon'ble Supreme Court and it is settled principle regarding suit of the specific performance of the contract it is most important that, **plaintiff has to prove his**

constant readiness and willingness. In other words, plaintiff is bound to prove that, since execution of the sell-agreement till disposal of the suit, he was ready and willing to perform his part. Section 16 is mandatory and imperative provision, because it reads that specific performance of a contract cannot be enforced in favour of a person who fails to aver and prove as laid down by it. The word 'aver' and the word 'prove' are entirely two different things. The word 'aver' means that it should be asserted or mentioned in the plaint.

Moreover, The word 'prove' indicates that the said averment which is pleaded in the plaint must be proved by leading evidence, in the course of trial. In view of the requirements of para 3 of the Form No. 47 of Appendix "A" of the First Schedule of the Code of Civil Procedure and in view of the mandate of Section 16 (c) of the Specific Relief Act, it has become obligatory for the plaintiff not only to aver in the plaint, but also to prove by evidence that the plaintiff has always been ready and willing to perform his part of the contract. The first requirement is that he must aver in the plaint. Indeed, the question of evidence of proving a particular fact would come only when there is an allegation in the plaint to that effect. The compliance of requirements of Section 16 (c) of the Specific Relief Act is mandatory and in absence of the necessary averment in the

plaint and in the absence of proof of the same that the plaintiff had been ready and willing to perform his part of the contract, the suit cannot succeed. Though the defendants had not raised any plea to that effect in the written statement nor was there any issue, the mandate of the statute required that the plaintiff must aver in the plaint and must give proof of the fact that he was and has been ready and willing to perform his part of the contract.

Now, coming to the arguments of the Ld. Advocate for the plaintiff that, the vendor of the property i.e. Late Kishorkumar Chhaganlal Shah has never told to the plaintiff that, he has completed the work of putting the boundary stones and making fencing and obtaining title clearance certificate from the advocate and was going to paid Rs.30 Lacs to the Bhuj Commercial Bank for getting clear dues and ready and willing to give the possession of the plots and ready for the registration of the sale-deed of the disputed plots.

Now, taking into consideration the legal principles of ready and willingness of plaintiff in the suit of Specific Performance of Contract, If I agree with the contention of the plaintiff that he has pleaded in para 9 of the plaint about his ready and willingness then also it is necessary for plaintiff to prove his ready and willingness about his capacity for the payment of

remaining amount of the contract. Now, it is necessary to refer the condition No.6 of the said agreement-to-sale produced herein at Ex.92 which refers as under.

(ક) ઉપરોક્ત વિગતે બાકી રહેતી પુરેપુરી રકમ રૂ. ૫૯,૧૫૪૪૦૧/- (અંકે રૂપિયા ઓગણસાઈઠ લાખ પંદર હજાર ચારસો એક પુરા) ખરીદનારે વેચનારને તા. ૨૧/૪/૨૦૦૭ સુધીમાં ચૂકવી આપવાની રહેશે. આમ કુલ ત્રણ માસના સમયમાં ખરીદનાર બાકીની રકમ ચૂકવી આપશે ત્યારે આ વેચનાર આ ખરીદનારના નામે અથવા તેઓ કહેશે તેમના નામે સંબંધિત સબ-રજીસ્ટ્રારશ્રીની કચેરીમાં અઘાટ વેચાણના દસ્તાવેજની નોંધણી કરાવી આપશે.

Now, on careful reading of the above mentioned para 6, it is crystal clear that, out of the total consideration of Rs.1,00,15,401/- (In Words Rs. One Crore Fifteen Thousands Four Hundred One Only) after payment of Rs.11 Lacs, remaining amount of consideration of Rs.59,15,401/- (In Words Fifty Nine Lacs Fifteen Thousands Four Hundred One Only) has to be paid to the vendor i.e. Late Kishorkumar Chhaganlal Shah within specific date 21/04/2007 by the plaintiff and then after, seller has to complete the remaining procedure of registration of the sale-deed of disputed plots.

Now, coming to the above mentioned situation, after expiry of this specific date 21/04/2007 which was fixed and decided by both the parties as per condition No.6 of the said agreement-to-sale plaintiff has never notice to the original seller

i.e. Late Kishorkumar Chhaganlal Shah for the completion of this procedure decided as per the agreement-to-sale. Now, the oral evidence is also necessary to refer which is as under. If we refer the cross-examination of the plaintiff produced herein at Ex.88

" મેં આંકઃ ૯૨ થી રજુ થયેલ સાટા કરાર મે વાંચેલ છે. એ વાત ખરી છે કે, સાટા કરાર મુજબ વેચનારને તારીખ ૨૧/૦૪/૨૦૦૭ માં પુરેપુરી વેચાણ કિંમત ચુકવી આપવાની હતી. મેં સાટાકરારમાં જણાવેલ મુદત માં મે કોઈ લેખીત નોટીશ વેચનારને આપેલ નથી. "

Now, it is crystal clear from the above referred cross-examination that, after the expiry of the above mentioned specific date 21/04/2007, plaintiff has not approached the seller i.e. Late Kishorkumar Chhaganlal Shah or never informed him and demanded from him in writing about completion of the tasks agreed upon both the parties as per agreement-to-sale.

Further, the witness of this agreement-to-sale Bhupendrabhai Amrutlal Pandya who is examined by the plaintiff as their witness vide Ex.104. He admits in cross-examination that, કિશોરભાઈના અવસાન ની જાણ મને બે કે ત્રણ દિવસમાં થયેલી. મે કિશોરભાઈના અવસાનની જાણ વાદી ને તે જ દિવસે કરેલી.

Thus, taking into consideration the above cross-examination, it is clear that, the incident of death of Vendor Kishor bhai was known to this witness within two three days

and he has informed the plaintiff about the death of Kishorebhai on very same day then also present plaintiff has not taken any action against present defendant No.1 to 4.

Now, taking into the financial capacity and plaintiff's ability to pay the above mentioned remaining amount. On careful reading of the cross-examination, plaintiff admits that, " મેં આકારણી વર્ષ ૨૦૦૬-૦૭ તથા ૨૦૦૭-૦૮ ના ઈન્કમેટેક્સ રીટર્ન ભરેલ છે. મેં મારા હાથ ઉપર રૂ. ૧ કરોડ થી વધુ હતી તેવું મેં રીટર્નમાં જણાવેલ છે કે કેમ તેવું હું હાલ કહી શકું નહીં. હું વર્ષ ૨૦૦૬-૦૭ તથા ૨૦૦૭-૦૮ ના મારા ઈન્કમેટેક્સના ખાતા રજુ કરવા તૈયાર છું.

Thus, plaintiff admits that, he has filed the income tax return of assessment year 2006-07 and 2007-08, but he is unable to say that, whether in this return he has shown the Rs.1 Crore on hand or not. Further, plaintiff has produced receipt of Rs.2 Lacs vide Ex.101. But, it is not duly stamped and this document is not supported by any witness. It is a simple paper -receipt in which signautre is not proved hence, this document which is as per say of the plaintiff is a receipt of Rs.2 lacs given by the plaintiff to Late Kishorekumar Chhaganlal Shah is not proved.

Further, Ld. Advocate for the plaintiff is relying upon the deposition of P.W. No.3 Ms. Seema Saraogi who is examined vide Ex.147 and documents produced vide Ex.150, 151, 152 and

argued that, plaintiff was having financial capacity to pay the remaining amount of the agreement-to-sale.

Moreover, this witness Ms. Seema also admits in her cross-examination that, " એ વાત ખરી છેકે, આ કામે રજુ કરેલ આંક ૧૫૦ થી ૧૫૨ વાળી બેલેન્સશીટ ૨૦૧૮-૨૦૧૯ ની છે.

Hence, taking into consideration the above mentioned facts, I am of the considered opinion that, this document produced herein vide Ex.150 to 152 are of the year 2018-19 whereas, in the cross-examination of the plaintiff, Ld. Advocate for the defendant No. 1 to 4 has asked the income tax return of the year 2006-07 and 2007-08 to show the financial capacity of the plaintiff to pay the remaining amount as per agreement-to-sale produced herein vide Ex.92.

NOW, Ld.Advocate of the plaintiff has relied upon the judgement of **Hon. SUPREME COURT OF INDIA ,1966 (0) GLHEL-SC-9641**

Gomathinayagam Pillai Versus Palaniswami Nadar stating that, in this judgment Hon'ble Supreme Court has ruled that, time was not essence and that delay did not disentitled for the decree.

I have gone through the entire judgment. But, fact of that case was different to the present suit and in that case, it was clearly established that," the materials on the record clearly indicats that the respondent was at all material times ready and

willing to perform the contract." Hence, decree passed in favour of the plaintiff. But, here in the case on hand, it is proved that, as per the condition of agreement-to-sale dated:21-01-2007 after expiry of the last date 21/04/2007, plaintiff has not paid the remaining consideration amount after 21/04/2007 and never sent a legal notice to Kishorekumar Chhaganlal Shah for the performance of his part of contract during vendor's lifetime. On the contrary, plaintiff's own witness who is a broker of this contract, has deposited that, after the demise of Late Kishorekumar Chhaganlal Shah within a two three days, he has informed about the death of Kishorekumar Chhaganlal Shah to the plaintiff. But, this suit is filed in the year 2010. Before that, plaintiff has notice to the legal heir of Late Kishorekumar Chhaganlal Shah i.e. defendant No.1 to 4 and that notice produced herein at Ex.125 which shows the date: 16/10/2009, meaning thereby plaintiff has sent a notice almost after 33 months of this agreement-to-sale dated:21-01-2007.

Moreover, income tax returns though asked in the cross-examination from the plaintiff, the present plaintiff has not shown any proved before this Court that, in the year 2007-08 plaintiff was having the remaining consideration amount on his hand and he was ready to perform his part of the contract. Hence, from the above discussion, having a different facts, this authority is not helpful to the plaintiff.

Moreover, Ld. Advocate for the plaintiff has placed reliance on the judgment of HON'BLE SUPREME COURT OF INDIA, 2023 (0) **ALJEL-SC 70810, Gaddipati Divija Versus Pathuri Samrajyam**

In which Ld. Advocate for the plaintiff has categorically stated that, in these judgment also defendant failed to perform their obligation with regard to demarcation of the property while plaintiff has established, she was always willing and ready to perform her part of contract, hence present plaintiff is entitled to get relief prayed in this suit.

I have gone through the entire judgment and facts. On careful reading of the para No.3 to 5, it transpires that, upon expiry of the three months of the agreement-to-sale, plaintiff had issued a notice demanding the balance consideration failing which the sale agreement would stand cancelled and the advance amount would be confiscated and respondent No.1 has replied the notice, denied the allegations of non payment of balance amount despite repeated demands while in here in case on hand, it is crystal clear that, from the date of the agreement i.e. from 21/01/2007 to before filing of the suit dated 12/01/2010, plaintiff has never noticed to Late Kishorekumar Chhaganlal Shah (Vendor) during his lifetime to perform his part stating that, he is always ready and willing to pay the remaining sale consideration after expiry of the date

fixed i.e. 21/04/2007 as per agreement-to-sale produced herein Ex.92 and very later on date: 16/10/2009 notice sent to legal heirs of Kishorbhai .Hence, the facts of this authority are different to the present case on hand hence, this authority is also not helpful to the plaintiff.

Ld. Advocate of the defendant placed reliance upon the judgement of **HON'BLE SUPREME COURT OF INDIA 2025 (0) ALJEL-SC 75226, K.R.Suresh Versus R.Poornima And Others.**

In which upon discussion of provision of (a) Specific Relief Act, 1963-S.16(c), S. 22(2) - Hon'ble Court held that, time was the essence of the contract and plaintiff failed to pay the balance consideration within stipulated period - Absence of evidence proving readiness and willingness to perform the contract led to dismissal of suit

Ld. Advocate for the defendant has categorically argued relying upon this judgment that, as per Section 22 (2) of this Act, plaintiff is not entitled to get the refund due ot lack of specific prayer as discussed in this judgment but, this Court is considered opinion that, along with prayer of specific performace of contract, plaintiff has demanded the sum of Rs.30 Lacs in addition to the specific performace and Rs.13 Lacs along with the interest in suit prayer para C-4 and C-5.

Ld. Advocate for the defendant has placed reliance on the judgment of Hon'ble **GUJARAT HIGH COURT, 2025 (0) ALJEL-HC 251537, Natubhai Dhirubhai Naik Civil Application (For Direction) Versus Alkeshbhai Kashiram Patel.**

I have gone through the entire judgment. In which the trial court's decree was based on unregistered documents. In their judgment Hon'ble High Court has ruled that, plaintiff failed to prove readiness and willingness as mandated by Section 16(c) of Specific Relief Act. Hence, impugned judgment and decree was quashed.

But, here in this case on hand, plaintiff has successfully proved the agreement-to-sale produced herein vide Ex.92 as per law. Hence, I am not inclined to the argument of the Ld. Advocate for the defendant No.1 to 4 that, upon unregistered agreement-to-sale, plaintiff's suit is liable to be rejected. Because, when plaintiff has successfully proved this agreement-to-sale, though it is unregistered it can be looked into for the collateral purpose.

Therefore, as discussed above, I am fully agree with the argument of the Ld. Advocate for the defendants that, plaintiff is unable to prove his constant ready and willingness to perform his part of the agreement-to-sale dated 21/01/2007. **Hence, I answered the Issue No.3 in Negative.**

[10] ISSUE No.4 :

On plain reading of the agreement-to-sale produced herein vide Ex.92, it was runs between the parties on dated 21/01/2007 and plaintiff has to pay the remaining amount up to the date 21/04/2007 and plaintiff has filed this suit on dated 12/01/2010. Hence, according to Article 54 of the Indian Limitation Act, plaintiff has filed the present suit within three years. Hence, I am of the complete agreement of the arguments advanced by the ld. Advocate for the plaintiff that, present suit of the plaintiff is not barred by limitation. Hence, this Court answers issue no.4 in Negative.

[11] Issue No.5 :

Burden of proving the issue No.5 is casted upon the defendant No.1 to 4. I am of the complete agreement with the argments advanced by the ld. Advocate for the plaintiff that as per the Section 37 of the Indian Contract Act and as per Hindu Law, when plaintiff has successfully proved the agreement-to-sale produced herein vide Ex.92 with Late Kishorkumar Chhaganlal Shah then legal heirs i.e. defendant no.1 to 4 who are the successors of the Late Kishorkumar Chhaganlal Shah are laible to perform agreement-to-sale dated 21/01/2007 though Late Kishorkumar Chhaganlal Shah sold out this property during

his lifetime. Hence, I answer the issue No.5 in Negative.

[12] ISSUE No.6 :-

The burden of proving the issue No.6 is casted upon the defendant No.5. Ld. Advocate for the plaintiff has argued that, originally the father/husband of defendant No.1 to 4 Kishore kumar Chhaganlal Shah has agreed to sell the disputed plots for total consideration of Rs.1,00,15,401/- (In words Rs. One Crore Fifteen Thousands Four Hundred One Only) as per agreement-to-sale produced herein vide Ex.92. Whereas, Late Kishorekumar Chhaganlal Shah has sold this plot to defendant No.5 for the very less amount of consideration. So, it is sham and bogus sale transaction. But, as per the above discussion, plaintiff could not prove that, defendant No.5 i.e. the latest purchaser of the disputed plots was aware about the agreement-to-sale between the plaintiff and Late Kishorekumar Chhaganlal Shah. Hence, defendant NO.5 is seems as a bonafide purchaser. Hence, I answered the issue No.6 in Affirmative.

[13] ISSUE NO.7 and 8 :-

Now coming to the final part of this judgement. About passing order and decree. Considering the pleadings, evidence and discussion made herein above, plaintiff has proved issue nos.1 and 2 in his favour But, plaintiff failed to prove issue no.3 of

ready and willingness, per contra, defendant No.5 have successfully proved to be bonafide purchaser. Hence, plaintiff is unable to get the relief of specific performance of contract and declaration and injunction against the present defendants. Moreover, plaintiff has successfully proved that he has paid Rs.11 Lacs to Late Kishorekumar Chhaganlal Shah i.e. father/husband of defendant No.1 to 4. So, for the decision of awarding compensation or refund of earnest money **in this regard this court has taken into consideration the judgement of Hon. SUPREME COURT OF INDIA.2019 (0) ALJEL-SC 64599 , Madhukar Nivrutti Jagtap Versus Pramilabai Chandulal Parandekar** in which hon. Supreme court has referred the provisions of Sections 21 and 22 of the specific relief Act 1963 and held in PARA 17 as below

17.In view of the above, on the point as to whether the decree passed by the High Court is justified or any other form of relief shall meet the ends of justice, we are of the view that instead of specific performance, awarding of monetary compensation to the respondent No. 2 shall meet the ends of justice.

Hence, referring the above mentioned judgement and facts of this case on hand, this Court believes that, plaintiff is not entitled to get the relief of specific performance of contract and order

and decree partly allowing suit of the plaintiff for the recovery of his paid money i.e.Rs.11,00,000/- (In Words Rs. Eleven Lacs Only) from the defendant No.1 to 4 with interest rate of 6% per annum requires to be passed. Hence, I answered in Issue No.7 in Partly affirmative and in consonation of issue no.8 I pass following final order.

O R D E R

- [1] The present suit is hereby partly allowed.
- [2] It is hereby declared that, the plaintiff is entitled to get the Rs.11,00,000/- (In Words Rs. Eleven Lacs Only) from the defendant No.1 to 4 jointly and severally with interest rate of 6% per annum from the filing of this suit till the realization of this amount , payable within two months from today .
- [3] Rest of the reliefs are rejected.
- [4] All the parties has to bear their own cost.
- [5] Decree shall be drawn accordingly.

Signed and Pronounced by me in open Court today as on
29th of NOVEMBER ,2025

Date:29.11.2025

Anjar-Kachchh.

G.J. Vaishnav//

(S.D. TRIPATHI)
3rd Additional Senior Civil Judge
Anjar-Kachchh.
Code No. GJ01402