

IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE
AT GANDHINAGAR

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Special Civil Suit No.30 of 2021

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Order below Exh.5, Exh.9 & Exh.20

1. After filing of this suit process is served to defendants and defendant no.2 has filed application exh.9 and defendant no.1 has filed application exh.20 as per provisions of Order - 7 Rule - 11 of the Code of Civil Procedure. After that defendant no.1 has filed and application exh.25 to decide the application of Order - 7 Rule - 11 of Code of Civil Procedure before deciding an application exh.5 adduced by plaintiff for granting interim injunction pendente-lite the suit. My predecessor has decided this application and in this application he has ordered " પ્રતિવાદીની હાલની અરજી નામંજૂર કરવામાં આવે છે. પ્રતિવાદી નંબર-૧ તથા પ્રતિવાદી નંબર-૨ ની C.P.C. Order-7, Rule-11 ની અરજીને વાદી તરફે રજુ વચગાળાના મનાઈ હુકમની અરજી સાથે સંયુક્ત રીતે સુનવણી કરવાનો આથી હુકમ કરવામાં આવે છે." So I have decided all the three applications exh.5, exh.9 and exh.20 all together, then plaintiff has filed an application exh.12.
2. Plaintiff has filed this suit for cancellation of sale deed no.16221, dated 02.07.2019 executed in favour of defendant no.1 for the land admeasuring 1432 Sq.Mtr. The case of plaintiff is that land bearing block/survey no.120 had old survey no.117 and this land was admeasuring 1-40-32. It is further stated that out of this land admeasuring 0-28-64 was deducted for road and remaining land

admeasuring 1-11-68 was given T. P. Scheme No.6 and final plot no.53 was given to it admeasuring 7257 Sq.Mtr. situated in Village: Kudasan, Gandhinagar. Plaintiff has prayed that as this land is in ownership and possession of plaintiff defendants have no right to sale the above said land to any third party by defendant himself or his agent, power of attorney or by legal heirs nor to transfer or assign the said land to any third party.

3. After institution of this suit defendants are duly served and defendant no.1 has filed his written statement and objection to application exh.5 vide exh.15, and an application for rejection of the plaint as per provisions of Order -7 Rule - 11 (d) of the Code of Civil Procedure vide exh.9.
4. In this application exh.9, it is stated that the above said land is part of block no.120 (old survey no.117) area admeasuring 1-40-32 H.are/Sq.Mtr. and from this after acquisition of land admeasuring 2864 Sq.Mtr for road remaining land admeasuring 11168 Sq.Mtr was remained. It is further stated that after that in town planning scheme this land was given T.P. Scheme No.6 and final plot no.53 area admeasuring 7257 Sq.Mtr. It is further stated that out of this land, land admeasuring 4560 Sq.Mtr. out of 7257 Sq.Mtr. is owned by defendant no.2. It is further stated that defendant no.2 has purchased this land from defendant no.1 by registered sale deed no.16221 on 02.07.2019. It is further stated that plaintiff has filed this suit for cancellation of the sale deed executed in favour of defendant no.1 for the land admeasuring 930 Sq.Mtr. (as per

revenue record area admeasuring 1432 Sq.Mtr). In this regard plaintiff has prayed for cancellation of sale deed no.16221 and permanent injunction. On behalf of defendants it is stated that plaintiff has no right or authority to file this suit. Plaintiff has intentionally suppressed many important facts, if those facts are read along with the present facts, there will be no reason to plaintiff to file this suit. The suit of plaintiff is barred by limitation also. Hence the suit of plaintiff is liable to be rejected under C.P.C. Order - 7 Rule - 11.

5. It is stated that from the total land area admeasuring 1-40-32 H.are of block no.120 (old survey no.117) situated in Kudasan, Gandhinagar 7016 Sq.Mtr. land of North side was owned by Kacharabhai Mulabhai Chamar and after his death it is in ownership and possession of the heirs of the Kacharabhai Mulabhai Chamar i.e. Manharbhai Kacharabhai and others. It is further stated that after death of Kacharabhai Mulabhai revenue records were mutated and entry no.1756 was made regarding entering name of the heirs of the deceased, after mutation of the entry, heirs of the deceased has sold land to Pravinbhai Sakabhai Desai on 30.08.2003 by registered sale deed no.4626 and mutation entry no.3350 is made by revenue authorities for sale of the land on date 04.09.2003. After that Pravinbhai Sakabhai Desai had sold the said land to Champaben Virambhai Desai by registered sale deed no.8191 for which mutation entry no.3743 dated 11/11/2005 is made. After that Champaben Virambha Desai had sold the said land to Ghanshyambhai Dahyabhai Patel on

01.10.2006 by registered sale deed no.10725 for which mutation entry no.4063 dated 17.11.2006 was made. After that Ghanshyambhai Dahyabhai Patel had sold the said land on 01.04.2008 by registered sale deed no.6709 to Narendrabhai Maganbhai Patel i.e. defendant no.2 of this suit for which mutation entry no.4888 is made on 28.05.2008. After that said block No.120 has been included in T.P. Scheme No.6 Final and final plot no.53 is given to that land and defendant no.2 Narendrabhai Maganbhai Patel is owner and possessor of the said land admeasuring 4560 Sq.Mtr. It is further stated that after purchase of the said land Narendrabhai Maganbhai Patel made an application to convert the said agricultural land to Non-Agricultural land to Collector, Gandhinagar, which was granted by Collector, Gandhinagar on 29.11.2011. It is further stated that the said land admeasuring 4560 Sq.Mtr. of final plot no.53 sold to defendant no.1 by registered sale deed no.16221 on 02.07.2019 since then defendant no.1 has become legal owner and possessor of the said land. It is further stated that plaintiff is knowing all these facts but plaintiff has not stated material facts in his plaint and has kept the material facts in vail and by keeping the material facts in dark has filed this suit which requires to be dismissed for not declaring the material facts.

6. It is further stated that Jethawala Chamar was owning land admeasuring 1-40-32 H.are Sq.Mtr. bearing block no.120 (old revenue survey no.117). After his death his heirs Narsinhbhai Jethabhai and others got interest as heirs of deceased in that land.

Mutation entries as heirs of the deceased was mutated vide mutation entry no.1081. It is further stated that after that land admeasuring 2864 Sq.Mtr. was acquired by Government for road i.e. Por - Kudasan Road for which mutation entry no.1647 dated 24.02.1982 is made in revenue records. It is further stated that after that Narsinhbhai Jethabhai and others have sold land admeasuring 7016 Sq.Mtr. of the Southern side on date 04.07.1985 by registered sale deed to Shankarbhai Babubhai Patel for which mutation entry no.1768 dated 26.11.1985 is mutated. After that as Shankarbhai Babubhai Patel died his heirs named Sarmisthaben Shankarbhai Patel and others names are mutated in revenue record and these Sarmisthaben Shankarbhai Patel and others have sold the said land to plaintiff Khimjibhai Hirabhai Baraiya vide registered sale deed no.3836. Then plaintiff's name is mutated in revenue record as per the sale deed no.3836.

7. Before plaintiff purchased the land bearing block no.120 (old survey no.117) District Surveyor, Gandhinagar had made a survey and measurement of the block no.120 and had prepared plan of the land situated on the southern side admeasuring 7016 Sq.Mtr. It is further stated that in this plan prepared by District Surveyor, Gandhinagar land admeasuring 2864 Sq.Mtr. is shown as land acquired for the purpose of Por - Kudasan Road and said land admeasuring 2864 Sq.Mtr. was deducted from the land which was in ownership of Sarmisthaben Shankarbhai and others and after deduction of that 2864 Sq.Mtr. land from land bearing block no.120 remaining land was 4152 Sq.Mtr. It is further stated that

plaintiff has purchased this land vide registered sale deed no.3836 dated 04.08.1995.

8. It is further stated that during the year 2010 plaintiff had tried to grab the disputed land by making an application to Mamlatdar, Gandhinagar. In response to that application made to Gandhinagar, Mamlatdar, Gandhinagar conveyed reply to plaintiff dated 07.03.2013 in which it is stated that block no.120 which was admeasuring 11168 Sq.Mtr. out of that northern side land admeasuring 7064 Sq.Mtr. was in name of Ghanshyambhai Dahyabhai Patel and land admeasuring 2864 Sq.Mtr. was deducted from this land and 4152 Sq.Mtr. land is remained is after acquisition of land for Por - Kudasan Road. This land is in name of predecessor of the plaintiff i.e Mukeshbhai Narsinhbhai and others.
9. It is further stated that plaintiff had applied for converting his land to non agricultural land in the year 2014 but as the measurement of the land was not matching with the measurements in revenue records application for converting agricultural land to non agricultural land was filed by Collector, Gandhinagar. In that application area of the land was shown 2697 Sq.Mtr. It is further stated that for this plaintiff had filed affidavits and given statements before Revenue Authorities in which measurement of the land is shown as 2697 Sq.Mtr. and Talati cum Mantri had prepared a panchnama, in that panchnama also the possession land is shown 2697 Sq.Mtr. Collector,

Gandhinagar has granted permission to convert this land to non agricultural land on date 30.08.2014. It is further stated that plaintiff has sold entire land 4152 Sq.Mtr. by registered sale deed no.5639 to Shelatbhai D. Patel which was in his ownership and possession. In this sale deed it is specifically mentioned that he has executed this sale deed as per rights derived to him by registered sale deed dated 04.08.1995. In this sale deed it is specifically mentioned that seller has given right to the purchaser of the said sale deed to get all the benefits of the land admeasuring 2864 Sq.Mtrs. which is acquired for the purpose road. Plaintiff has suppressed this material facts in his plaint and therefore suit of the plaintiff is barred by provisions of Order - 7 Rule - 11 and requires to be dismissed. It is further stated that plaintiff has given confirmation regarding sale of his land before the various authorities and as per plaintiffs confirmation and statements before various authorities land bearing survey no.120 of the Sourthern side admeasuring 4152 Sq.Mtr. and land admeasuring 2679 Sq.Mtr. as per final plot was in ownership and possession of the plaintiff. It is further stated that since the year 2014 plaintiff is not ownership and possession of the disputed land hence plaintiff have no any prima facie case and therefore suit of the plaintiff is required to be rejected as per the provisions of the Order - 7 Rule - 11. It is further stated that plaintiff has prayed for relief of cancellation of the sale deed. When relief of cancellation of the sale deed is prayed by plaintiff, limitation for filing of the suit is three years from the date of execution of the first sale deed.

Here in this case considering this provision limitation for filing of the suit has expired on date 30.08.2003 as limitation of three years is expired on said date. Considering all these facts also suit of the plaintiff is required to be rejected with cost.

10. Defendants had adduced documentary evidence vide exh.10, exh.27.

Sr. No.	Exh./ Mark	Particular
1	10/1	Xerox copy of Village Form No.7/12, Village Form No.8-A of the year 2005 to 2019.
2	10/2 & 27/1	Xerox copy of measurement (DILR), dated 03.07.1995.
3	10/3	Xerox copy of registered sale deed no.3836, dated 04.08.1995.
4	10/4	Xerox copy of registered sale deed no.4626, dated 30.08.2003.
5	10/5	Xerox copy of application for permission of Non - Agricultural land filed before Collector, Gandhinagar, dated 02.07.2014.
6	10/6	Xerox copy of order passed by Collector, Gandhinagar regarding Non - Agricultural land, dated 30.08.2014.
7	10/7	Xerox copy of order passed by Mamlatdar for the land block no.120 situated at Kudasan, Gandhinagar, dated 07.03.2013.
8	10/8	Xerox copy of registered sale deed no.5639, dated 06.05.2014.

Defendant had adduced documentary evidence vide exh.35.

Sr. No.	Exh./ Mark	Particular
1	35/1	Copy of enlarged measurement sheet dated 31.07.1995 alongwith map of Kudasan Village.
2	35/2	Copy of public notice dated 07.06.2013 published in "Sandesh" newspaper.
3	35/3	Copy of public notice dated 21.0.2006 published in "Sandesh" newspaper.
4	35/4	Copy of measurement conducted by District Surveyor; Gandhinagar dated 27.06.2006.

5	35/5	Copy of orders dated 15.10.2019 and 30.09.2019 passed by Collector, Gandhinagar.
6	35/6	Copy of advertisements published by defendant no.1
7	35/7	Copy of RERA registration for "Suyash Solitaire" obtained by defendant no.1
8	35/8	Copy of development permission dated 12.12.2019 obtained from Gujarat Urban Development Authority.
9	35/9	Copy of list of all agreement to sale executed.

11. Defendant no.2 also has given an application as per Order - 7 Rule - 11 of the Code of Civil Procedure. In this application he has reiterated all the facts of the application exh.9 and he has also relied upon the arguments made by Ld. Advocate for defendant no.1. So for the sake of convenience and to avoid repetition of the same facts as I have narrated in Para - 4, I have not reproduced all those things once more here.
12. Plaintiff has filed his objections against an application exh.9 and exh.20 vide exh.14 and exh.22. In these objections he has stated that plaintiff has good and prima facie case against the defendants. It is stated that defendant has given this application relying upon false things. It is stated that in this proceedings both the defendants have filed their written statements which is on record vide exh.15 and 19. It is stated that when defendants files their written statement their right to file application as per provisions of Order - 7 Rule - 11 is extinguished hence, application exh.9 and exh.20 are required to be rejected with cost. Plaintiff is owner and possessor of the disputed land all the facts stated in these applications are false plaintiff has tried to mislead the case

stating that land situated on northern side is belonging to defendant and land situated on southern side was belonging to plaintiffs. It is further stated that disputed land was bearing survey no.117. When land was acquired for road land admeasuring 2864 Sq.Mtr. was acquired for road. Effect of this acquisition of land is given in mutation entry no.1647. Considering this land admeasuring 5584 Sq.Mtr. was remained with Kachara Mula and land admeasuring 5584 Sq.Mtr. was remained with heirs of the Jethawala. This was the clear position, though defendants are trying to mislead the court by stating false things which are not on record. It is further stated that defendants have accepted the execution of the sale deed of land admeasuring 7016 Sq.Mtr. which means that plaintiff was owner and possessor of the 7016 Sq.Mtr. land. It is further stated that allegation made against the plaintiff in both these applications are false and baseless. Plaintiff had converted his agricultural land to non agricultural land admeasuring 4152 Sq.Mtr., which does not mean that plaintiff was not owner of the total land admeasuring 5584 Sq.Mtr. It is further stated that remaining land had remained in ownership and possession of the plaintiff and as the remaining land was not converted to non agricultural land and due to only that reason defendants are not getting any rights for the land belonging to plaintiff. It is further stated that plaintiff has not sold any land belonging to defendants. On considering revenue records as per mutation entries land admeasuring 1432 Sq.Mtr. and as per final plot land admeasuring 930 Sq.Mtr. is in ownership and possession

of the plaintiff. Due to this reason plaintiff has sufficient cause of action to file this suit as defendant no.1 has executed illegal sale deed in favour of defendant no.2 regarding block no.120. It is further stated that plaintiff has challenged cancellation of the sale deed executed by defendant no.1 in favour of defendant no.2. It is further stated that plaintiff has not challenged sale deeds of the predecessors of the defendants hence the suit of the plaintiff is not barred by any provisions of law and therefore the plaintiff has strong prima facie case. In this condition whether the suit of the plaintiff is barred by provisions of Order - 7 Rule - 11 of the CPC can be decided only after evaluation of the evidences of the parties before the court. In this situation applications advanced by both the defendants requires to be rejected with cost.

13. Citation produced by **plaintiff** vide exh.38 for O-7, R-11.

1. In the case of R. K. Roja V/s. U. S. Rayudu & Anr reported in 2016 AIAR (Civil) 702.
2. In the case of Ibrahim V/s. Sharifan reported in AIR 1980 Punjab and Haryana 25.08.2022.
3. In the case of Balasaria Construction (P) Ltd. V/s. Hanuman Seva Trust and Others in (2006) 5 Supreme Court Cases 658.
4. In the case of Arjan Singh and Ors V/s. Union of India reported in AIR 1987 Delhi 165.

5. In the case of Sri Biswanath Banik & Anr V/s. Smt. Sulanga Bose & Ors. reported in 2022 Live Law (SC) 280.

I have gone through all the authorities cited by Ld. Advocate for defendants. Considering the principles established in all these authorities supra I am of the opinion that it is applicable to the case on hand as I have discussed below. I am of the opinion that as principle established by Hon'ble Apex Courts when defendant is able to show that the suit of the plaintiff is filed without showing proper cause of action and suit of the plaintiff is barred by the law of limitation it is not necessary to adduce evidences and consider all evidences of all the parties when the suit of the plaintiff is barred by provisions of Order - 7 Rule - 11 (a) and Order - 7 Rule - 11 (d) of the Code of Civil Procedure.

14. Citation produced by **defendants** vide exh.40 for O-7, R-11.
 1. In case of Dahiben V/s. Arvindbhai Kalyanji Bhanusali & Ors reported in (2020) 7 SCC 366.
 2. In case of Church of Christ Charitable Trust & Educational Charitable Society V/s. Ponniamman Educational Turst reported in (2012) 8 SCC 706.
 3. In the case of T. Arivandandam V/s. T. V. Satyapal & Ano. reported in (1977) 4 SCC 467.
 4. In case of I. T. C. Ltd. V/s. Debts Recovery Appellate Tribunal & Anr. reported in (1998) 2 SCC 70.

5. In case of Bhagirath Prasad Singh V/s. Ram Narayan Rai & Ano. reported in 2010 SCC Online Pat 737.
6. In case of Becharbhai Zaverbhai Patel & Ors V/s. Jashbhai Shivabhai Patel & Ors. reported in (2013) 1 GLR 398.
7. In case of Poonambhai Shanabhai Valand-Decd. & 4 Ors. V/s. Hasmukhbhai Bachubhai Parsana & 1 Ors reported in 2017 (3) GLR 2511.
8. In the case of Rameshchandra Chimanlal Shah V/s. Maheshbhai Manubhai Patel in First Appeal No.1329 of 2019 before Hon'ble High Court of Gujarat.
9. In the case of Mayar (H. K.) Ltd. & Ors. V/s. Owners & Parties, Vessel M. V. Fortune Express & Ors reported in (2006) 3 SCC 100.

I have gone through all the authorities cited by Ld. Advocate for defendants. Considering the principles established in all these authorities supra I am of the opinion that it is not applicable to the case on hand as in all above authorities prime principle discussed by Hon'ble Apex Courts is regarding adducing the evidences by both the parties and decide the matter on merits.

15. I have heard Ld. Advocate Mr. Unmesh Shukla for defendant no.2. Ld. Advocate Mr. Rushab Shah for defendant no.1 has adopted all the arguments of Ld. Advocate Mr. Unmesh Shukla.
16. Ld. Advocate Mr. Unmesh Shukla has argued that plaintiff has instituted this suit for the 930 Sq.Mtr. land. He has further argued that plaintiff has purchased disputed land by the sale deed which is executed in the year 1995. He has further argued that name of the plaintiff is mutated in revenue records vide order of the Hon'ble High Court. He has further argued that as per plaintiff's say plaintiff had sold 5584 Sq. Mtr. of land and possession of land admeasuring 4152 Sq. Mtr. was given to the purchaser of the land and 1432 Sq. Mtr. land was remained in possession of the plaintiff. He has further argued that defendant no.2 has wrongly sold 1432 Sq. Mtr. land and the sale deed executed by defendant no.2 is bogus and brought up. He has further argued that, plaintiff's claim is against the record and proceedings of the case. He has further argued that plaintiff has deliberately not produced documents which he had executed. He has first of all preferred to document marked 10/8 and he has argued that in this index description of the property bears the land admeasuring 4152 Sq.Mtr. This sale deed is executed by plaintiff himself in favour of Mr. Shelatbhai D. Patel and others. This document is not put on record by plaintiff as it shows the real picture of the case. He has further argued that plaintiff is well aware regarding measurement of disputed land. He has further argued that now considering the document marked 10/8 which is sale deed executed by plaintiff and others in favour

of Shelatbhai D. Patel and others, in this document on page no.73 it is specifically stated that plaintiff is owner of 4152 Sq.Mtr. land. Further, reading this document on page no.6 it is specifically stated that block no.120 admeasuring 14032 Sq.Mtr. land. Out of this 14032 Sq.Mtr. land 7016 Sq.Mtr. land is sold and on the remaining land admeasuring 7016 Sq.Mtr. land admeasuring 2864 Sq.Mtr. was acquired for the purpose of road and 4152 Sq.Mtr. land is remaining. Thus plaintiff was the owner of only 4152 Sq.Mtr. land. He has further argued that plaintiff has tried to put on record that land admeasuring 2864 Sq.Mtr. was deducted from total land admeasuring 14032 Sq.Mtr. which is not true. In fact land admeasuring 2864 Sq.Mtr. is deducted from the land admeasuring 7016 Sq.Mtr. which was in ownership and possessor of the plaintiff. He has further stated that plaintiff had applied for converting his farming land to non agricultural land, in his application for converting agricultural land to non agricultural land, plaintiff had shown measurement of the land 4152 Sq.Mtr. and in statement before the Executive Magistrate, plaintiff has stated that land is admeasuring 4152 Sq. Mtr. Now considering the letter written by Executive Magistrate, Gandhinagar, in this letter land admeasuring 4152 Sq.Mtr. is shown in the name of Mukeshbhai Narsinhbhai and land admeasuring 7016 Sq.Mtr. is shown in the name of Ghanshyambhai Dahyabhai. These two documents were in custody of the plaintiff but as those documents were showing real picture, plaintiff has deliberately suppressed these two documents and has not produced those documents in

support of his claim. Moreover, he has argued that public notice was given by plaintiff in "Sandesh Newspaper" in that also measurement of the land is shown 4152 Sq.Mtr. He has further argued that land admeasuring 4152 Sq.Mtr. is shown in revenue records. He has further argued that suit of the plaintiff is bared by limitation as plaintiff has not filed this suit within the limitation of three years. He has argued that plaintiff has sold land admeasuring 4152 Sq.Mtr. by sale deed executed in the year 1995. Considering these limitation for dispute regarding this is three years and plaintiff was oblige to file the suit within the three years of execution of the document i.e. before the year 1999. Plaintiff has filed this suit in the year 2021. Considering all these aspects suit of the plaintiff is time barred and then the suit of the plaintiff is not maintainable as per the provision of Order - 7 Rule - 11 (a) and Order - 7 Rule - 11 (d) of the Code of Civil Procedure.

17. Ld. Advocate Mr. A. J. Patel has argued that plaintiff has tried this suit for the cancellation of the sale deed executed in favour of defendant no.1 and for restoring possession of the disputed land to the plaintiff. Considering this reliefs claimed by plaintiff cause of action is arisen to file this suit to plaintiff on the date of the execution of the disputed document and on the date of taking possession of the disputed land by the defendant. He has submitted a tabular representation in support of his argument which shows that land bearing block no.120 was earlier bearing survey no. 117 admeasuring 3 acre and 19 gunthas (14032 Sq.Mtr.). This 14032 Sq.Mtr. land was partitioned between

Jethawala and Kachara Mula and each partners got 7016 Sq.Mtr. land. In this tabular representation he has further shown that from the land admeasuring 14032 Sq.Mtr. land admeasuring 2864 Sq.Mtr. was acquired for the purpose of road and land admeasuring 11168 Sq.Mtr. was remained in co-ownership of Jethawala and Kachara Mula. From this 11168 Sq.Mtr. land to partitions were made and land admeasuring 5584 Sq.Mtr. had come in part of the each sharers.

18. In this tabular representation below the name of Jethawala and Kachara Mula land admeasuring 7016 Sq. Mtr. is shown as 1/2 share of the each one. Below this it is narrated heirs of the Jethawala sold this land to Shankerbhai Babubhai and heirs of the Shankarbhai Babubhai sold land to Khimjibhai i.e. plaintiff. Below this writing it is stated that as per the revenue records 4152 Sq.Mtr. land is sold by plaintiff and remaining 1432 Sq.Mtr. land was in possession of the plaintiff and plaintiff had constructed Surya Gaushala at that place. Thus the disputed land 1432 Sq.Mtr. was in possession of the plaintiff but as the defendant no.2 wanted to pass his plans for constructions of the building he was in need of this 1432 Sq.Mtr. land plaintiff had handed over possession of this 1432 Sq.Mtr. land to defendants to show the required land to pass the plans for constructions to be made by defendants. He has further argued that thus the defendants are having possession of 1432 Sq.Mtr. land as permissive possession. He has further argued that defendants were never in possession of this disputed land but as plaintiff has given permissive possession

to the defendant for the purpose of granting permission of the construction by the competent authorities, plaintiff has taken undue advantage of giving this permissive possession of the disputed land and now plaintiffs are denying to restore the permissive possession hence plaintiff is constrained to file this suit. He has further argued and stated in his tabular representation that heirs of the Kachara Mula had sold their land admeasuring 7016 Sq.Mtr. to Pravinbhai and Pravinbhai has sold land to Champaben Virambhai and Champaben Virambhai had sold it to Ghanshyambhai Dahyabhai and Ghanshyambhai Dahyabhai has sold it to Narendrabhai i.e. defendant no.1. In this tabular representation land sold by all these persons is 7016 Sq.Mtr. He has further argued all arguments which is made by the Ld. Advocate Mr. Unmesh Shukla regarding revenue entries and cancellation of the sale deed by Collector due to infringement of fragmentation law and regarding proceedings before the Hon'ble High Court of Gujarat against the order of Collector, Gandhinagar in respect to cancellation of the sale deed due to infringement of fragmentation law. He has further argued that as plaintiff has tried this suit after completion of this proceedings suit of the plaintiff is not time barred. He has further argued that considering the dispute between the parties, dispute is regarding measurement of the land. He has argued that land admeasuring 2864 Sq.Mtr. which is acquired for the purpose of road is deducted from the total land admeasuring 14032 Sq.Mtr. or from the 5584 Sq.Mtr. is to be decided by this court. In his argument he has

argued that on behalf of defendants no any documentary evidences is put on record by which defendants are able to show that the land admeasuring 2864 Sq.Mtr. was deducted from the portion of the plaintiff's land. He has referred to document mark 3/15 i.e. form - F and has argued that in this form separate portions of the Kachara Mula and Jethawala is shown and in this form in column - 8 land admeasuring 7257 Sq.Mtr. is shown which is half portion of the total land. He has further argued that the land acquired for the purpose of Por - Kudasan road is deducted from the total land belonging to the parties. He has further argued that all these questions which cannot be decided by mere reading of the documents produced on record and the contention of the parties. He has further argued that for arriving at conclusion that the land which is acquired for the purpose of road was deducted from the total land or from the portion of the land which had come in share of the plaintiff's predecessor can be decided after adducing evidences by the both the parties. Considering all these aspects applications adduced by defendants are required to be rejected with cost.

19. Regarding application exh.5 Ld. Advocate for the plaintiff Mr. A. J. Patel has argued that for deciding this application exh.5 all above arguments may pleased be considered as part of his arguments for granting injunction at interim level. In support of this application exh.5 he has further argued that plaintiff has good prima-facie case as defendants have unduly encroached upon the land belonging to the plaintiff and balance of convenience is also in

favour of plaintiff. He has further argued that I have put on record regarding construction of the building upon disputed premises by the defendant. If in this circumstances defendants are not restrained from making further construction the purpose of filing this suit by the plaintiff will be frustrated and plaintiff may be compelled to file another proceedings if defendants succeeds to complete the construction during the pendency of this suit. In this circumstances if defendants carries out more construction upon the disputed land plaintiff will suffer an irreparable loss which cannot be compensated in terms of money therefore, defendants are required to restrained to carry out further construction and to grant relief as prayed by plaintiff in application exh.5.

20. In support of his argument Ld. Advocate for plaintiff has relied upon the following authorities.

Citation produced by **plaintiff** vide exh.37 for exh.5.

1. In the case of Adani Exports Ltd. V/s. Hindustan Organic Chemical Ltd. reported in 2000 (3) GLR 2759.

21. On behalf of defendant no.1 has filed written statement and objections of applications exh.5 vide exh.15. In this written statements and objections of exh.5, he has reiterated all the averments mentioned in application exh.9 i.e. application as per order 7 rule 11 of the Code of Civil Procedure. In the same way on behalf of defendant no.2 has filed written statement and objections of applications exh.5 vide exh.19. In this written statements and objections of exh.5, he too has reiterated all the averments

mentioned in application exh.20 i.e. application as per order 7 rule 11 of the Code of Civil Procedure.

22. Ld. Advocate Mr. Unmesh Shukla has argued that plaintiff has not come with clean hands before the court. He has argued that plaintiff has suppressed material things and documents which were in his custody and has tried to keep the court in dark. He has further argued that his arguments for application exh.9 and exh.20 may please be considered as part of this arguments. He has further argued that for granting interim injunction by the court has to consider three prime para meters as narrated in the act, i.e. preliminary case of the plaintiff, balance of convenience in favour of plaintiff and irreparable loss that cannot be compensated. He has further argued that here in the case on hand as I have argued plaintiff is not able to prove the ownership and possession of the disputed land. He has further argued that on behalf of plaintiff Ld. Advocate has argued that defendants are making construction upon the disputed land, this itself is in favour of defendant. He has further argued that it is true that defendant is carrying out construction upon the disputed land, but that construction is started before plaintiff filed this suit. He has further argued that plaintiff is not able to show his prima-facie case as to ownership and possession of the disputed land. He has further argued that from the documents put on record defendant is able to show that the disputed land is in ownership and possession of the defendant and defendant no.2 is carrying on construction and by referring the photographs produced on record he has argued that in fact

defendant is owner and possessor of the disputed land. In that circumstances defendant has good prima-facie case and balance of convenience is also in favour of defendant. He has further argued that as construction is going on upon the disputed land and defendant no.2 has invested handsome money for the construction, in that circumstances if any order is passed against the defendant, defendant will suffer an irreparable loss which cannot be compensated in terms of money. By this Ld. Advocate has prayed to dismiss the application exh.5 adduced by the plaintiff.

23. In support of his argument Ld. Advocate for defendant has relied upon the following authorities.

Citation produced by **defendants** vide exh.39 for Exh.5.

1. In case of Simax Construction Pvt. Ltd. V/s. State Bank of India reported in 1992 AIR (Del) 197.
2. In case of Gujarat Bottling Co. Ltd. V/s. Coca Cola Company reported in 1995 5 SCC 545.
3. In case of Unjha Formulations Limited V/s. Unjha Pharmacy reported in 1996 (2) GLH 511.
4. In case of Madali Ranganna and ors V/s. T. Ramchandra reported in (2008) 11 SCC 1.
5. In case of ECE Industries Ltd. (2) V/s. S. P. Real Estate Developers Pvt. Ltd. & ors. reported in (2009) 12 SCC 776.

6. In case of Charanjit Thukral and Anr. V/s. Deepak Thukral and Anr. reported in 2010 Law Suit (Del) 3062.
7. In case of M. Gurudas & Ors. V/s. Rasaranjan & Ors. reported in (2006) 8 SCC 367.
8. In case of S. P. Chengalvaraya Naidu (Dead) by Lrs. V/s. Jagannath (Dead) by Lrs. & Ors. reported in (1194) 1 Supreme Court Cases 1.
24. At this stage I most humbly and respectfully submit that as my predecessor has ordered to decide application exh.5, exh.9 and exh.20 together, for the sake of convenience and avoid repetition of the same things I have discussed all the facts relating to all these three applications together.
25. I have heard Ld. Advocates for all the parties and I have gone through the record and proceedings of this case and authorities relied upon by all the parties.
26. At this juncture it is necessary to read the bare provision of order 7 rule 11 (a) and order 7 rule 11 (d) of the Code of Civil Procedure for deciding these applications exh.9 and exh.20.
27. The plaint shall be rejected in the following cases :-
 - (a) where it does not disclose a cause of action;
 - (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

- (c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so ;
- (d) where the suit appears from the statement in the plaint to be barred by any law:
- (e) where it is not filed in duplicate ;
- (f) where the plaintiff fails to comply sub-rule (2) of rule 9;

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature for correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.

28. Now considering the rival contentions of the parties it comes out that initially total land was 14032 Sq.Mtr. out of this land admeasuring 2864 Sq.Mtr. is deducted from this 14032 Sq.Mtr. or from the land admeasuring 5584 Sq.Mtr. is decided by bare reading of the plaint and the documents on record is to be decided by this court.

29. Considering the record and proceeding of the case it is on record that Kachara Mula and Jethawala were co-sharers of the land bearing survey no.117. It comes out on considering the revenue record put on record by both the parties that this old survey no.117 is renumbered as block no.120. It also comes out that at the time of partition two portions are made and northern side portion was given to Jethawala and Southern side portion was remained with Kachara Mula. On part of the plaintiff Ld. Advocate Mr. Patel has cleverly tried to put on record that out of this 14032 Sq. Mtr. land 2864 Sq.Mtr. land was deducted as the result of acquisition of the land for the purpose of road and land admeasuring 5584 Sq.Mtr. - 5584 Sq.Mtr. was remained with both the co-sharers. Now at this juncture if once more we consider the facts of the execution of the documents of the same by the parties, it is on record that legal heirs of the Kachara Mula and all the successor of the title holder of the land have sold land admeasuring 7016 Sq.Mtr. Defendant no.1 has purchased land admeasuring 7016 Sq.Mtr. from the Ghanshyambhai Narendrabhai.
30. Now considering the portion of the land which is sold by the heirs of the Jethawala to the Khimjibhai Hirabhai Baraiya i.e. plaintiff it is 4152 Sq.Mtr. land it is on record vide document mark 10/8 i.e. index no.2 and sale deed executed by plaintiff in favour of Shelatbhai D. Patel. In this document mark 10/8 i.e. sale deed executed it is specifically stated by the seller of the land i.e. plaintiff himself that land bearing block no.120 was admeasuring 14032 Sq.Mtr. land out of this 14032 Sq.Mtr. land sale deed of

7016 Sq.Mtr. land is executed and from the remaining 7016 Sq.Mtr. land admeasuring 2864 Sq.Mtr. is deducted due to acquisition for the purpose of road and land admeasuring 4152 Sq.Mtr. is remained with the executor of the sale deed. Considering this fact executor (i.e. plaintiff) of the sale deed no.5639 / 2014 has executed sale deed of land admeasuring 4152 Sq.Mtr. Now further reading contents of this document mark 10/8 in para 29 and 30 it is specifically stated that land admeasuring 2864 Sq.Mtr. is deducted from the block no.120 and remaining land admeasuring 4152 Sq.Mtr. is given T.P. Scheme no.06 and final plot no.53.

31. Considering this when the land admeasuring 2864 Sq.Mtr. is acquired for the purpose of road it is deducted from the land admeasuring 7016 Sq.Mtr. and therefore plaintiff has executed sale deed of remaining land of 4152 Sq.Mtr. in favour of Shelatbhai D. Patel and others. Considering the document mark 3/2 it is revenue record village from no.7 and mutation entry no.35 and 781 referred in this village form no.7 which shows land admeasuring 4152 Sq.Mtr. in possession of plaintiff and land admeasuring 7016 Sq.Mtr. in possession of Narendrabhai i.e. predecessor title holder of the defendants. Considering these together it comes out that disputed land was acquired for the purpose of Por - Kudasan road from the land of plaintiff. Considering the document mark 3/7 it is mutation entry no.1521/42 dated 15.06.1979 which shows that survey no.117, block no.120 is admeasuring 14032 Sq.Mtr. Below this mutation

entry no.1647 dated 24.02.1982 shows that from this 2864 Sq.Mtr. land is deducted and 11168 Sq.Mtr. land is remained. Considering this it comes out that 2864 Sq.Mtr. land is deducted from the southern side of the land bearing survey no.117 and block no.120.

32. Considering all this the version advanced by plaintiff stating that the land acquired for Por - Kudasan road was deducted from the land admeasuring 14032 Sq.Mtr. comes on record but the deduction of the land admeasuring 2864 Sq.Mtr. was deducted from the southern side of the land survey no.117 and block no.120 and that deduction was made after the partition of the land between Jethawala and Kachara Mula. That means deduction of land admeasuring 2864 Sq.Mtr. of the southern side was deducted from the land admeasuring 7016 Sq.Mtr. of survey no.117 block no.120 and therefore land admeasuring 4152 Sq.Mtr. was remained with predecessors in title of the plaintiff.

33. Now considering the version of the plaintiff regarding permissive possession of the disputed land by defendant, it is required to read the Para - 8 & 9 of the plaint. "૮- અમો વાદી અમારી ૧૪૩૨ ચો.મીટર જમીનમાં સુર્યા ગૌશાળા કરી કામકાજ કરતા હતા તે અરસામાં અને અમો વાદી અમારી ૧૪૩૨ ચો.મીટર જમીન પરત્વે અમારુ નામ માલીક, કબજેદાર તરીકે રેવન્યુ રેકર્ડ માં દાખલ કરવા સારૂ જરૂરી કાર્યવાહી કરવાના હતા તે દરમ્યાન આ કામના પ્રતિવાદી નં. ૧ નાને સ્કીમ અંગેના પ્લાન મંજૂર કરાવવાના હોવાથી અમોને અમારી ૧૪૩૨ ચો.મીટર જમીનમાં આવેલ અમારા ગૌશાળા ને હંગામી ધોરણે ખસેડવા સારૂ આશરે દોઢ (૧.૫) વર્ષ અગાઉ રજુઆત કરતા અને તેમના પ્લાન મંજૂર થયેથી અમો વાદી અમારી ૧૪૩૨ ચો.મીટર જમીનમાં અમારો યથાવત ગૌશાળા ચાલુ કરીએ તેમાં

પ્રતિવાદી નં. ૧ ને કોઈ જ વાંધો કે તકરાર નથી તેવો પ્રતિવાદી નં. ૧ તરફથી અમોને વિશ્વાસ અને ભરોસો આપતા અમોએ અમારી ૧૪૩૨ ચો.મીટર જમીનમાંથી અમારી ગૌશાળાને હંગામી ધોરણે ખસેડેલ ત્યારબાદ પ્રતિવાદી નં. ૧ નો સ્કીમ લાયક પ્લાન મંજૂર થતા અમો વાદીએ અમારી ગૌશાળા ફરીથી શરૂ કરવા સારૂ પ્રતિવાદી નં. ૧ નાને આશરે ૨ માસ પછી રજુઆત કરતા પ્રતિવાદી નં. ૧ નાએ અમોને સ્પષ્ટપણે ના પાડી જણાવેલ કે "તમારી કોઈ જ જમીન આવેલી નથી. અને તમોને હવે પછી આ જમીનમાં ક્યારેય પ્રવેશ કરવા દઈસુ નહીં અને જો પ્રવેશ કરશો તો તેનું પરીણામ સારૂ નહીં આવે" પ્રતિવાદી નં. ૧ તરફથી અમોને આપવામાં આવેલ ધમકીને ધ્યાને લેતા પ્રતિવાદી નં. ૧ નાએ અમોને આપેલ વિશ્વાસ અને ભરોસા વિરૂદ્ધ અમારી સાથે વિશ્વાસઘાત કરેલ હોવાનું અને અમારી સાથે છેતરપીંડી કરી અમારી ૧૪૩૨ ચો.મીટર જમીનનો કબજો પડાવી લીધેલાનું અમોને સ્પષ્ટ થયેલ પરંતુ અમો વાદી પ્રતિવાદી નં. ૧ ની સાથે સમજાવટથી ૧૪૩૨ ચો.મીટર જમીનના કબજા અંગેની પતાવટ થઈ જશે તેમ સમજી વારંવાર પ્રતિવાદી નં. ૧ ની સાથે મુલાકાત કરતા હતા છેવટે પ્રતિવાદી નં. ૧ તે અમો વાદી ને અમારી ૧૪૩૨ ચો.મીટર જમીનનો કબજો પરત નહીં સોંપતા તેઓએ સદર જમીનમાં ખોટી અને ગેરકાયદેસર રીતે બાંધકામ કરવાનું શરૂ કરતા અને તે સમય દરમિયાન સમગ્ર દેશમાં કોરોના મહામારી ફેલાયેલ હોઈ નામદાર કોર્ટમાં જરૂરી કાયદેસરની કાર્યવાહી કરી શકેલ નહીં પરંતુ હાલમાં કોરોના મહામારીની અસર ઓછી થતા અમો વાદીને નાછુટકે અમારા કાયદેસરના પોસાતા હક્ક, હિત, હિસ્સાની ૧૪૩૨ ચો.મીટર જમીન પરત્વે મજબૂર દાવો કરવાની ફરજ પડેલ છે.

૯ - આ કામના પ્રતિવાદી નં. ૧ નાએ અમો વાદીની ૧૪૩૨ ચો.મીટર જમીનનો ખોટી અને ગેરકાયદેસર રીતે કબજો કરી અમારી સદર જમીનમાં તેઓ ગેરકાયદેસર રીતે બાંધકામ કરતા હોઈ અને જો પ્રતિવાદી નં. ૧ નાને અમો વાદીની સદર જમીનમાં બાંધકામ કરતા અટકાવવામાં ન આવે તો અમો વાદીને ઘણુંજ પારાવાર નુકશાન થાય તેમ છે તથા અમો વાદીની કાયદેસરની ૧૪૩૨ ચો.મીટર

જમીન પરત્વે પોસાતા અમારા કાયદેસરના હક્ક, હિત, હિસ્સાને ખુબજ મોટુ નુકશાન થાય તેમ છે. તેમજ પ્રતિવાદીઓએ એકબીજાના મેળાપીપણામાં અને પ્રિ-પ્લાનીંગ કરી અમો વાદીની ૧૪૩૨ ચો.મીટર જમીન ખોટી અને ગેરકાયદેસર રીતે હડપ કરેલ છે. જે હકીકત રેવન્યુ રેકર્ડ જોતા તથા અમારા કબજા ભોગવટાની પરિસ્થિતી જોતા સ્પષ્ટપણે પુરવાર થાય છે. જેથી અમો વાદીને અમારી ૧૪૩૨ ચો.મીટર જમીનનો કબજો પ્રતિવાદી પાસેથી પરત મેળવવા અમારે મજકુર દાવો કરવાની ફરજ પડેલ છે."

34. Regarding this plaintiff has not put any documentary evidence to show that plaintiff was in possession of this land and he was running Surya Gaushala at that place. To show it plaintiff has not put any documentary evidence on record by which plaintiff can show that Surya Gaushala was on the disputed land and defendant no.2 has wrongly shown that land in his ownership and possession.
35. Considering all these facts I am of the opinion that plaintiff does not seems to have the ownership or any title upon the disputed land and plaintiff has not filed the suit within the prescribed time limit. Hence, I am of the opinion that the suit of the plaintiff is barred by provisions of Order - 7 Rule - 11 (a) & Order - 7 Rule - 11 (d) of the Code of Civil Procedure.
36. Considering all these pleadings as well as documentary evidences put on record by rival parties as I have discussed supra I am of the opinion that as the plaintiff is not having prima-facie case against the defendants balance of convenience cannot be considered in

favour of the plaintiff and for the same reason it can be said that plaintiff will not suffer any irreparable loss if the injunction as prayed by plaintiff is not granted. In fact if the injunction as prayed by plaintiff is granted at this stage defendant no.2 will have more hardships and may have irreparable loss which cannot be compensated in terms of money. Hence, I pass the following order.

ORDER

1. Application exh.5 filed by plaintiff is rejected.
2. Application filed by defendant no.1 and 2 vide exh.9 and exh.20 are allowed and suit of the plaintiff is rejected as per provisions of Order - 7 Rule - 11 (a) & Order - 7 Rule - 11 (d) of the Code of Civil Procedure.
3. Decree to be drawn accordingly.
4. Parties to bear their cost themselves.
5. Copy of this order is to be kept below application exh.5, exh.9 and exh.20 all the three applications.

Order signed and pronounced in the open court today on this
17th Day of September 2022.

Place: Gandhinagar
Date : 17.09.2022

[**Kamal R. Pandya**]
Principal Senior Civil Judge
Gandhinagar (GJ00739)