

Filed On	15	05	1999
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Decided On	01	01	2020
Duration	y	mm	dd

IN THE COURT OF 09TH ADDL SR. CIVIL JUDGE, SURAT
SPECIAL CIVIL SUIT No. 181 of 1999

Exh.

<u>Plaintiffs</u>	1.M/s. Shree Narayan Corporation a Partnership Firm Aged About : Years, Occupation: Business/Orza. : Address:Nanpura Gurisadan, Adagra Street, Surat. Dist-Surat. 2. Arvindlal Champaklal Gandhi HUF Aged About : Adult Years, Occupation: Business, Address: Nanpura Gurisadanadagra Street ,surat
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Versus

<u>Defendants</u>	[1]. Late Vishnuprasad Kevalram(Deceased) : Aged About : 66 Years, Occupation: Retired, Address: Brhaman Mahollo Adajan,Surat Dist-Surat. (died during pendency of the suit) 1/a Vijaykumar Vishnuprasad Aged About : 47 Years, Occupation: Agri., Address: Brhaman Mahollo Adajan,Surat Dist-Surat. 1/b Bhavanaben Vishnuprasad Aged About : Adult Years, Occupation: Household, Address: Brhaman Mahollo Adajan,Surat Dist-Surat. [2] Chandulal Chunilal Patel Aged About : 60 Years, Occupation: Agri., Animal Husbandary, Builder. Address: Popat Maholloadajan,Surat [3] Vijaykumar Vishnuprasad
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	Aged About : 47 Years, Occupation: Agri., Address: brhaman mahollo adajan,SURAT Dist-Surat. . [4] Bhavanaben Vishnuprasad Aged About : Adult Years, Occupation: Household, Address: Brhaman Mahollo Adajan,Surat Dist-Surat. [5] Narmadaben Vishnuprasad Aged About : 70 Years, Occupation: Agri., Address: Brhaman Mahollo Adajan,Surat Dist-Surat. [6]Paliben Kevalram (deleted) Aged About : 69 Years, Occupation: Agriculture. Address: brhaman mahollo adajan,SURAT Dist-Surat. [7]Bipinchandra Chotalal Aged About : 49 Years, Occupation: Agri., Address: Brhaman Mahollo Adajan,Surat Dist-Surat. [8] Snatshri Asharamji Co .fa.soc Proposeed President Maheshbhai Sankar Rawal Aged About : Adult Years, Occupation: Organizer, Address: rushi park appt. bhulkabhavan adajan road,SURAT
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Appearances:-

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Ld. Advocate **Mr. N A JARIWALA** for the plaintiff.

Ld. Advocate **Mr. Gemal Singh Thakor** for heirs the defendant No.1.

Ld. Advocate **Mr. A I Gandhi** for the defendnat No. 2.

Ld. Advocate **Mr. S U VAKILWALA** for the defendatn Nos. 3 to 7.

Ld. Advocate **Mr. M S Choudhary** for the defendant No. 8.

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SUB: SUIT FOR SPECIFIC PERFORMANCE OF THE CONTRACT**::: J U D G M E N T :::**

The brief facts of present plaint in nutshell maybe stated as under :-

[1] Present suit filed by the plaintiff with the contention that suit property is to be situated at Adajan Village Survey No. 142, 143 and 145 ad-measuring 3 bighas 13 gunthas and which was agreed to be sold at the rate of Rs. 46,000/- per bigha and plaintiff-firm registered under Partnership Act and defendant No. 2 is the partner of plaintiff-firm and because defendant No. 2 is an agriculturist agreement before sale is to be executed regarding suit property in his favour and original agreement before sale remain in the custody of defendant No. 2 and another agreement is to be executed by defendant No. 2 in favour of plaintiff-firm on 08.02.1982 and the agreement before sale which was executed in favour of defendant NO. 2 is also executed on behalf of plaintiff-firm but only the defendant No. 2 is the agriculturist so it was executed in his name but the amount of the consideration is to be paid by the plaintiff-firm and amount of the consideration is going to around Rs. 1,64,000/- and Rs. 2000/- at the time of execution of agreement before sale in cash and receipt also given of it but another receipt not given till today and out of total amount Rs. 1,64,000/- from which 10% is to be kept pending and Rs. 1,62,000/- is to be paid by the firm and time limit of the agreement

is to be fixed for a period of two and a half months and after making a payment of Rs. 1,46,000/- agreement before sale is to be executed first installment of Rs. 15,000/- is required to be paid on 11.03.1982 and then after at the time of every six months RS. 32,750/- is required to be paid and it is also agreed that after making a payment of 90% amount i.e. Rs. 1,48,000/- possession is required to be given to the plaintiff and remaining Rs. 16,000/- is required to be paid after getting all the necessary permission regarding the execution of the sale deed and it is also agreed that suit land is to be kept for developing a society for the lower class persons so its name is to be given as Shri Narayan Cor. Co. Ho. Society or any other name and necessary permission u/s. 20(1) is required to be taken and in which the defendants is required to be given a cooperation for it and it is also agreed that in the suit land there is a different plot is to be made and a sale deed is to be executed by the second party of the agreement and it is also agreed that second party as and when required to make a sign it is to be made and a necessary permission under Bombay Tenancy Act, Ceiling Act are required to be taken then it is to be taken by the first party of the agreement and it is also agreed that the first party put a board in the name of society on suit land and second having no right remain in the suit land only having right to get an amount of the consideration and at the time of agreement necessary

document from the revenue record it is given by second party to the first party and assuring that title of the suit property is to be cleared at present suit property running in the name of second party and it is also agreed between the parties that if the second party getting a necessary permission then bound to execute a sale deed in favour of the first party and if not comply as per the condition then first party entitled for the specific performance of the contract. It is also contended that it is came in the knowledge of plaintiff that defendant No. 1 executed a POI in favour of defendant No. 1 and there is the good relations between plaintiff and defendant and defendant No. 1 contending that he is the POI and defendant NO. 2 so he is joined as a party full amount of the consideration is to be paid to the defendant NO. 1 so possession of the suit land is to be handed over on behalf of plaintiff-firm and in this way part performance of the contract is to be completed. It is also contended that at present Ceiling Act is to be canceled and the proceeding regrading the Ceiling Act is to be dropped and the suit land covered under the TP Scheme as residential Zone and also covered in Surat city and in this way provision of Tenancy Act is not became applicable.

Plaintiff ready and willing to perform his part of contract and defendant bound to perform the condition of the agreement and as a part

performance a possession of the suit land is to be handed over to the plaintiff and so defendant bound to perform their part of contract. Defendant NO. 1 executed a POA in favour of defendant No. 2 but at present their intention is become mala fide and they getting sanctioned a plan and making a construction in the name of Ashram Complex Apt. and so plaintiff compel to file present suit immediately and for it defendant having no right for it.

It is also contended that defendant NO. 1 and 2 are in the collusion with each other and executed a sale deed on 25.06.1989 in favour of defendant No. 8 and defendant No. 3 to 7 making a signature in this sale deed and defendant No. 2 making a signature in the sale deed as a POA who earlier executed a POA in favour of plaintiff-firm also. And in this way plaintiff for execution of sale deed regarding a suit property in favour of plaintiff firm and defendants are bound to execute a sale deed as per the condition of agreement before sale and plaintiff also prayed for specific performance of the contract and another prayer as prayed in the plaint.

[2]. On behalf of plaintiff interim injunction application along with th suit filed and also filed an application as Ex. 26 and on the merits interim injunction application vide Ex. 5 is to be allowed and order passed below Ex. 26 on 05.08.1999 is to be modified and confirmed and all defendants are

directed to maintain a status quo regarding the suit property till the final disposal of the suit and this order is to be passed on 28.10.2005.

Going through the record a court commission also took place regarding suit property and commission report is to be kept in record vide Ex. 363.

[3] On behalf of defendant No. 8 written statement vide Ex. 137 and in which denied all the contention of the plaint and mainly contended that defendant No. 1 and member of his branch sold out a suit property by defendant No. 2 in favour of him by a registered on 22.09.1999 and which was in the knowledge all the persons and then after suit property given final plot NO. 14 and by SMC given a construction permission on 02.12.1999 and by the office of TDO sanctioning a plan vide plan NO. 142 and as per it two apartments are to be constructed in the suit property and total 34 flats and 6 shops is to be constructed and defendant No. 1 is the registered housing society and its registration No. G-18910 dated 03.06.1999 and members is also registered and society allotted a flat as well as shops to its members and in the revenue record name of the society is to be entered as owner vide entry NO. 2594 dated 29.10.1999 and which was certified and District Collector also given a permission to convert a suit land for non-agricultural purpose and on 12.07.1999 and in this way plaintiff having no right to pray any relief against him.

[4] On behalf of defendant No. 2 filed written statement vide Ex. 32 and in which denied all the contention of the plaint and mainly contended that a suit property is originally owned by defendant No. 1 and defendant No. 2 agreed to pay this suit property Rs. 46000/- per vigha and on 03.07.1981 agreement before sale is to be executed in favour of defendant No. 2 and amount of the consideration is to be fixed Rs. 1,64,000/- and possession is to be handed over to defendant NO. 2 and in this way defendant NO. 2 became an owner of the suit property and only formality for execution of the sale deed is to be remained and during this time Arvindhbai Champaklal Gandhi trying to create a right for which creating a document admittedly during the act of the plaintiff and due to defendants are illiterate agriculturists and plaintiff and Arvindhbai Champaklal getting an undue advantage of it an trying to grab a suit land admittedly defendant No. 1 executed an agreement before sale in favour of defended No. 2 and plaintiff firm having no right in the suit land and so suit of the plaintiff itself not maintainable and it is required to be rejected.

[5] On behalf of defendant No. 01 filed written statement vide Ex. 30 and in which denied all the contention of the plaint and mainly contended that there is no any document is to be executed between him and defendant No. 2 and there is no any relation between him and defendant NO. 2 regarding the

selling or purchasing of a suit property and contended that he filed a suit against defendant no. 2 vide RCS No. 227/1998 and which was pending so suit of the plaintiff barred by principle of res judicata and also contended that he published a public notice on 01.07.1998 and on 19.03.1999 and by that notice it is declared that neither he nor any member of his family executed any POA in favour of defendant no. 2 and not making any transaction with defendant no. 2 regarding suit property and he and his family member regarding suit property in favour of Ashokbhai Vithalbhai (Jeerawala) and Chandubhai Shamubhak Patel executed satakhata and possession receipt and also irrevocable POA on the date respectively i.e. 24.01.1996, 02.06.1997, 30.07.1998 and 31.07.1998 and in which he making a signature as an owner of the property and by this document Ashokbhai Veerjibhai and Chandubhai Shambubhai make an owner and also executed a binding deed on 10.04.1999 and in this way it is also declared that no any document is to be executed in favour of defendant No. 2 or any other person and in this way suit of the plaintiff and it is required to be rejected. It is also contended that a suit filed by him against defendant No. 2 vide RCS NO. 227/1999 in which all the documents is to be produced and unless and until their suit is to be decided present suit having barred by principle of res judicata and he entitled

to dispose of his property as per his wishes and so plaintiff not entitled to any relief as prayed in the plaint.

[6] On behalf of plaintiff given below documentary as well as well oral evidence produced before this Court, details of which are as under:-

1. Vide Ex. 179 & 337 Chief Examination of plaintiff Arvindbhai Champaklal Gandhi.
2. Vide Ex. 362 witness of plaintiff Ashvinbhai Bhanabhai.

Plaintiff's Documentary Evidence:

Sr. NO.	Description	Ex.
1	Original agreement	182
2	Public notice	183
3	POA	184
4	Form NO. 7/12 of survey NO. 143	185
5	Form no. 4/12 of survey no. 142/1 and 145	186
6	Revenue receipts	340 to 350
7	Receipt of SMC	351
8	POA given by defendant NO. 1(a) to plaintiff and Rameshbhai Becharbhai	352
9	POA given by defendant NO. 1(b) to plaintiff and Rameshbhai Becharbhai	353

10	POA given by defendant NO. 5 to plaintiff and Rameshbhai Becharbhai	354
11	POA given by defendant NO. 6 to plaintiff and Rameshbhai Becharbhai	355
12	POA given by defendant NO. 7 to plaintiff and Rameshbhai Becharbhai	356
13	Copy of plan and objection application	357
14	Copy of application	358
15	Copy of application given by plaintiff against defendant NO. 8	359
16	List of sale deed executed by plaintiff on the basis of POA	360
17	Photographs	365 to 374
18	Bill of photographs	375
19	Photographs	376 to 381
20	Bill of photographs	382
21	Copy of satakhat	386
22	Commission report	362

Then after plaintiff produced closing pursis vide Ex. 383.

[7] On behalf of defendant given below documentary as well as well oral evidence produced before this Court, details of which are as under:-

1. Vide Ex. 385 Chief Examination of **Chandulal Chunnilal Patel**.

defendant's Documentary Evidence:

Sr. NO.	Description	Ex.
1	Copy of order of CRMA NO. 2239/2000	Mark 384/1

Then after defendant NO. 2 produced closing pursis vide Ex. .

Going through record on behalf of defendant No. 3 to 5 and 7 and 8 while defendant NO. 6 is to be deleted neither cross-examined to the plaintiff and his witness and also not produced any evidence on their behalf so right of defendant NO. 3 to 5, 7 and 8 is to be closed by this court and which was remain same till today.

[8] On behalf of plaintiff Id. Advocate filed written argument vide Ex. 389 and considering it there is a repetition of the fact of the plaint and contended that on behalf of plaintiff-firm in favour of defendant No. 2 agreement before sale is to be executed by the owner of the suit land i.e. Late Vishnu Prashad Kevalram on 3.07.1981 and original agreement before sale remain with defendant No. 2 and copy is to be given by him to the plaintiff which was produced in present case vide Ex. 386 and defendant NO. 2 also executed on agreement in favour of plaintiff firm on 08.02.1982 and in which it is clearly mentioned that the amount of the consideration is to be given by the firm and agreement is to be produced vide ex. 182 and in which defendant NO. 2 signed in personal capacity as well as as a partner of Narayan Cor.

But at the relevant time defendant NO. 2 is an agriculturist so his name is to be entered in the agreement but agreement before sale is to be executed on behalf of plaintiff firm and amount of the consideration is to be paid by plaintiff firm and plaintiff prayed for specific performance of the contract and as an optional relief also entitled to get back Rs. 1,64,000/- from the defendant and also prayed Rs. 16 lacs as a damages and going through the commission report vide Ex. 29 in which it is also found that defendant changed the situation of the property and construction is to be made and for that on behalf of plaintiff vide Ex. 70 contempt application is to be filed on behalf of plaintiff. And vide Ex. 362 Chief examination of commissioner i.e. Ashvinbhai Balabhai is to be produced and contention of the commissioner report is to be proved and on behalf of defendant No. 1 though sufficient opportunity were given to lead an evidence he not produced any evidence or remain present before the court so right of defendant No. 1 is to be closed for evidence and vide Ex. 385 chief examination of defendant No. 2 is to be produced and considering his cross examination he admits the signature on Ex. 386 and also signature in Ex. 182 and in Ex. 182 page No. 6 his signature is to be identified as in personal capacity as well as in the capacity of partner as Narayan corporation and considering page No. 3 of Ex. 182 in which it is specifically mentioned that defendant NO. 2 is an agriculturist so it is agreed

that property is to be purchased in the name of defendant NO. 2 and in this circumstances the property not purchased by defendant No. 2 in his personal capacity but it is purchased on behalf of plaintiff firm but only the name of defendant NO. 2 is to be mentioned in the agreement before sale furthermore, considering Ex. 352 to 356 which was a POA given by the original owner of the land to the partners of plaintiff firm and in which defendant No. 2 identified the signature of land owners. And defendant No. 1 intentionally remain absence to escape from his liability and in these circumstances plaintiff succeed to prove his case so suit of the plaintiff is required to be allowed and decree is to be drawn in favour of plaintiff.

Going through the record admittedly on behalf of defendant N. 1, 3 to 5, 7 and 8 not remain present before this court and not cross examined the plaintiff and not produced any evidence on their behalf and in the same way no one remain present on their behalf regarding the argument before this court while defendant No. 6 is to be deleted.

On behalf of defendant NO. 2 Ld. Advocate argued that considering the case of the plaintiff that agreement before sale is to be executed in favour of defendant NO. 2 by defendant NO. 1 and this agreement though it was executed in favour of defendant No. 2 but it was executed on behalf of plaintiff and the agreement before sale is to be executed on 03.07.1981 while

the heirs of defendant NO. 1 i.e. original land owners executed a sale deed in favour of Asharam Society i.e. defendant No. 8 and that sale deed not challenged in the present suit by plaintiff-firm furthermore at present possession of the suit land with defendant NO. 8 and there is a time limit is to be fixed in agreement before sale and the so called agreement executed on 08.02.1982 which was produced vide Ex. 182 in which there is only a six partners and other partners not as a party and this agreement is to be executed between defendant No. 12 and Narayan Corporation while present suit filed by plaintiff on the basis of Ex. 182 admittedly this documents not executed in favour of plaintiff firm and considering Ex. 182 all the partner not a party in present suit and agreement before sale which was executed in favour of defendant NO. 2 plaintiff not entitled to get a specific performance of the contract because it was not executed in favour of plaintiff and in these circumstances suit of the plaintiff itself not maintainable and it is required to be rejected.

[8] This Court has framed following issues below Exh. 38 Dt. 05/03/2018.

ISSUES

૧. શુ વાદી સાબિત કરે છે કે, દાવાવાળી જમીન તેઓએ પ્રતિવાદીનં-૧ પાસેથી વિધાના રુ. ૪૬,૦૦૦/- લેખે વેચાણ રાખવાનુ નક્કી કરેલ ?

૨. શુ વાદી સાબિત કરે છે કે, દાવવાળી જમીનનુ સાટાખત વાદી પેઢીના ભાગીદાર તરીકે પ્રતિવાદીનં ૨ ના નામનુ કરવામાં આવેલ ?
૩. શુ વાદી સાબિત કરે છે કે, વાદગ્રસ્ત મિલકતના અવેજના નાણા વાદી પેઢીએ ચુકવી આપેલ છે?
૪. શુ પ્રતિવાદી નં -૨ સાબિત કરે છે કે, તેઓએ દાવાવાળી મિલકત પ્રતિવાદીનં-૧ પાસેથી પોતાની અંગત હેસીયતથી વેચાણ રાખવાનુ નક્કી કરેલ છે ?
૫. શુ પ્રતિવાદીનં-૧ ,સાબિત કરે છે કે, વાદીના દાવાને રેસજયુડીકેટાનો બાધ નડે છે?
૬. શુ દાવામાં માંગ્યા મુજબની દાદ મેળવવા હક્કદાર છે?
- ૬ -અ.શુ વાદી પુરવાર કરે છે કે, આ કામના પ્રતિવાદીઓએ એકબીજાના મેળાપીપણામાં વાદગ્રસ્ત મિલકતની પરિસ્થિતી માં બાંધકામ કરી નામદાર કોર્ટના હુકમનો અનાદર કરેલ છે. અને પ્રતિવાદીઓ વિરુદ્ધ શિક્ષાત્મક પગલા ભરવાની આવશ્યકતા છે? જો હા તો શુપગલા?
૭. શુ હુકમ અને હુકમનામુ ?

I have passed the following decision of issues as under

1. In Negative.
2. In Negative.
3. In Negative.
4. In Partly Affirmative.
5. In Negative.

6. In Negative.

6 A. In Negative.

7. As per final order.

:: REASONS ::

Issue No. 1 to 3

૧. શુ વાદી સાબિત કરે છે કે, દાવાવાળી જમીન તેઓએ પ્રતિવાદીનં-૧ પાસેથી વિધાના

રુ. ૪૬,૦૦૦/- લેખે વેચાણ રાખવાનુ નકકી કરેલ ?

૨. શુ વાદી સાબિત કરે છે કે, દાવાવાળી જમીનનુ સાટાખત વાદી પેઢીના ભાગીદાર તરીકે

પ્રતિવાદીનં ૨ ના નામનુ કરવામાં આવેલ ?

૩. શુ વાદી સાબિત કરે છે કે, વાદગ્રસ્ત મિલકતના અવેજના નાણા વાદી પેઢીએ ચુકવી

આપેલ છે?

All these issues are to be inter-connected with each other considering the contention the issue it is framed as per the contention of the pleading of the plaintiffs so burden of proof lies on the plaintiffs to prove all these issues so avoid the multiplicity of the discussion of the same facts both issues discussed together.

Now, considering the contention of the plaint that suit property is to be situated at Adajan Village Survey No. 142, 143 and 145 ad-measuring 3 bighas 13 gunthas and which was agreed to be sold at the rate of Rs.

46,000/- per bigha and plaintiff-firm registered under Partnership Act and defendant No. 2 is the partner of plaintiff-firm and because defendant No. 2 is an agriculturist agreement before sale is to be executed regarding suit property in his favour and original agreement before sale remain in the custody of defendant No. 2 and another agreement is to be executed by defendant No. 2 in favour of plaintiff-firm on 08.02.1982 and the agreement before sale which was executed in favour of defendant NO. 2 is also executed on behalf of plaintiff-firm but only the defendant No. 2 is the agriculturist so it was executed in his name but the amount of the consideration is to be paid by the plaintiff-firm and amount of the consideration is going to around Rs. 1,64,000/- and Rs. 2000/- at the time of execution of agreement before sale in cash and receipt also given of it but another receipt not given till today and out of total amount Rs. 1,64,000/- from which 10% is to be kept pending and Rs. 1,62,000/- is to be paid by the firm and time limit of the agreement is to be fixed for a period of two and a half months and after making a payment of Rs. 1,46,000/- agreement before sale is to be executed first installment of Rs. 15,000/- is required to be paid on 11.03.1982 and then after at the time of every six months RS. 32,750/- is required to be paid and it is also agreed that after making a payment of 90% amount i.e. Rs. 1,48,000/- possession is required to be given to the plaintiff and remaining

Rs. 16,000/- is required to be paid after getting all the necessary permission regarding the execution of the sale deed and it is also agreed that suit land is to be kept for developing a society for the lower class persons so its name is to be given as Shri Narayan Cor. Co. Ho. Society or any other name and necessary permission u/s. 20(1) is required to be taken and in which the defendants is required to be given a cooperation for it and it is also agreed that in the suit land there is a different plot is to be made and a sale deed is to be executed by the second party of the agreement and it is also agreed that second party as and when required to make a sign it is to be made and a necessary permission under Bombay Tenancy Act, Ceiling Act are required to be taken then it is to be taken by the first party of the agreement and it is also agreed that the first party put a board in the name of society on suit land and second party having no right remain in the suit land only having right to get an amount of the consideration and at the time of agreement necessary document from the revenue record it is given by second party to the first party and assuring that title of the suit property is to be cleared at present suit property running in the name of second party and it is also agreed between the parties that if the second party getting a necessary permission then bound to execute a sale deed in favour of the first party and if not comply as per the condition then first party entitled for the specific

performance of the contract. It is also contended that it is came in the knowledge of plaintiff that defendant No. 1 executed a POI in favour of defendant No. 1 and there is the good relations between plaintiff and defendant and defendant No. 1 contending that he is the POI and defendant NO. 2 so he is joined as a party full amount of the consideration is to be paid to the defendant NO. 1 so possession of the suit land is to be handed over on behalf of plaintiff-firm and in this way part performance of the contract is to be completed. It is also contended that at present Ceiling Act is to be canceled and the proceeding regrading the Ceiling Act is to be dropped and the suit land covered under the TP Scheme as residential Zone and also covered in Surat city and in this way provision of Tenancy Act is not became applicable.

Plaintiff ready and willing to perform his part of contract and defendant bound to perform the condition of the agreement and as a part performance a possession of the suit land is to be handed over to the plaintiff and so defendant bound to perform their part of contract. Defendant NO. 1 executed a POA in favour of defendant No. 2 but at present their intention is become mala fide and they getting sanctioned a plan and making a construction in the name of Ashram Complex Apt. and so plaintiff compel to file present suit immediately and for it defendant having no right for it.

It is also contended that defendant NO. 1 and 2 are in the collusion with each other and executed a sale deed on 25.06.1989 in favour of defendant No. 8 and defendant No. 3 to 7 making a signature in this sale deed and defendant No. 2 making a signature in the sale deed as a POA who earlier executed a POA in favour of plaintiff-firm also. And in this way plaintiff for execution of sale deed regarding a suit property in favour of plaintiff firm and defendants are bound to execute a sale deed as per the condition of agreement before sale and plaintiff also prayed for specific performance of the contract and another prayer as prayed in the plaint.

Now, going through the written statement defendant No. 8 written statement vide Ex. 137 and in which denied all the contention of the plaint and mainly contended that defendant No. 1 and member of his branch sold out a suit property by defendant No. 2 in favour of him by a registered on 22.09.1999 and which was in the knowledge all the persons and then after suit property given final plot NO. 14 and by SMC given a construction permission on 02.12.1999 and by the office of TDO sanctioning a plan vide plan NO. 142 and as per it two apartments are to be constructed in the suit property and total 34 flats and 6 shops is to be constructed and defendant No. 1 is the registered housing society and its registration No. G-18910 dated 03.06.1999 and members is also registered and society allotted a flat as well

as shops to its members and in the revenue record name of the society is to be entered as owner vide entry NO. 2594 dated 29.10.1999 and which was certified and District Collector also given a permission to convert a suit land for non-agricultural purpose and on 12.07.1999 and in this way plaintiff having no right to pray any relief against him.

[4] On behalf of defendant No. 2 filed written statement vide Ex. 32 and in which denied all the contention of the plaint and mainly contended that a suit property is originally owned by defendant No. 1 and defendant No. 2 agreed to pay this suit property Rs. 46000/- per vigha and on 03.07.1981 agreement before sale is to be executed in favour of defendant No. 2 and amount of the consideration is to be fixed Rs. 1,64,000/- and possession is to be handed over to defendant NO. 2 and in this way defendant NO. 2 became an owner of the suit property and only formality for execution of the sale deed is to be remained and during this time Arvindbhai Champaklal Gandhi trying to create a right for which creating a document admittedly during the act of the plaintiff and due to defendants are illiterate agriculturists and plaintiff and Arvindbhai Champaklal getting an undue advantage of it an trying to grab a suit land admittedly defendant No. 1 executed an agreement before sale in favour of defended No. 2 and plaintiff firm having no right in

the suit land and so suit of the plaintiff itself not maintainable and it is required to be rejected.

[5] On behalf of defendant No. 01 filed written statement vide Ex. 30 and in which denied all the contention of the plaint and mainly contended that there is no any document is to be executed between him and defendant No. 2 and there is no any relation between him and defendant NO. 2 regarding the selling or purchasing of a suit property and contended that he filed a suit against defendant no. 2 vide RCS No. 227/1998 and which was pending so suit of the plaintiff bared by principle of res judicata and also contended that he published a pubic notice on 01.07.1998 and on 19.03.1999 and by that notice it is declared that neither he nor any member of his family executed any POA in favour of defend no. 2 and not making any transaction with defendant no. 2 regarding suit property and he and his family member regarding suit property in favour of Ashokbhai Vithalbhai (Jeerawala) and Chandubhai Shamubhak Patel executed satakhat and possession receipt and also irrevocable POA on the date respectively i.e. 24.01.1996, 02.06.1997, 30.07.1998 and 31.07.1998 and in which he making a signature as an owner of the property and by this document Ashokbhai Veerjibhai and Chandubhai Shambubhai make an owner and also executed a binding deed on 10.04.1999 and in this way it is also declared that no any document is to be

executed in favour of defendant No. 2 or any other person and in this way suit of the plaintiff and it is required to be rejected. It is also contended that a suit filed by him against defendant No. 2 vide RCS NO. 227/1999 in which all the documents is to be produced and unless and until their suit is to be decided present suit having barred by principle of res judicata and he entitled to dispose of his property as per his wishes and so plaintiff not entitled to any relief as prayed in the plaint.

Now, on behalf of plaintiff chief examination on behalf of plaintiff is to be produced vide Ex. 179 and 337 and considering which it is the repetition of the facts of the plaint and documents produced on his behalf. He was cross examined on behalf of defendant No. 2 and in which he admitted that in plaintiff firm at the time of filing of the suit total 7 partners are to be remain present and they all not joined as a party and not POA is to be produced that other partners given him an authority to file present suit. He also admitted that he not produced accounts book of 1981-82 of the firm and no document is to be produced by which it is proved that amount is to be paid by the firm. He also admitted that he having no evidence that defendant No. 2 transferred a property in favour of third party. He having no knowledge that land owner executed a sale deed directly to defendant NO. 8. He also admitted that at the time of filing of the suit court commissioner is to be appointed and at that

time construction is to be going on by defendant No. 8. he admitted that there is a possession of flat holder in the suit property and no one joined as a party in a present suit and he contended that he filed an application to join them as a party which was rejected and that order not challenged by him but contended that he wants to challenge it. He also admitted that an agreement before sale which was executed in favour of defendant No. 2 it is not mentioned in it that it is executed on behalf of plaintiff firm. He also admitted that he not produced any evidence that an agreement before sale executed in favour of defendant NO. 2 amount of the consideration is to be paid by the firm but he contended that agreement is to be executed by defendant NO. 2 in favour of plaintiff firm. He also admitted that an amount which was shown in the agreement is not shown in Income Tax Return of the firm. He also admitted that at the relevant time he was owing agricultural land at Bhata Village and his name is to be running in form NO. 7/12. He also admitted that in his chief examination no detailed is to be mentioned that how many plots is to be sold out and how many remain not sold. He also admitted that he not produced any evidence that amount is to be paid in SMC by the firm. He also admitted that an agreement executed between defendant No. 2 and plaintiff firm no any land is to be sold out in favour of

plaintiff firm. another question asked to this witness replied given by him in denial and trying to support his case.

On behalf of other defendants as discussed earlier not cross examined the plaintiff.

On behalf of plaintiff witness examined vide ex. 362 and who is the witness of court commission and considering his chief examination he trying to support the case of the plaintiff. He also cross examined on behalf of defendant No. 2 only and in which he admitted that plaintiff asked him to remain present as a panch and at the time of commission Asharam Society making a construction in it and another panch of the commission report is also called out by plaintiff another question asked to this witness replied given by him in denial and trying to support the case of the plaintiff.

On behalf of defendant chief examination of defendant No. 2 is to be produced vide Ex. 385 and who was cross examined on behalf of plaintiff and he admitted that a documents produced vide mark 178/1 is a so called satakhat and it was executed by Vishnu Prashad Kevalram in his favour and it was given an Ex. 386. He admitted that ex. 182 in which stamp is to be purchased in his name and in this agreement at page No. 6 and Sr. No. 7 his signature is to be a partner of plaintiff firm and in his personal capacity. He not remembered that written statement filed on his behalf in which it is

mentioned that he having arrangement for the amount so remaining amount of the consideration is not to be paid. He admitted that if it is mentioned in written statement that full amount to the consideration is to be paid and possession is to be given to him that fact wrongly mentioned. He also admitted that in Ex. 352 a signature of Vijay Kumar Vishnu Prashad is to be identified by him who is given a POA and in the same way in Ex. 353 Bhavna been given a POA and her signature identified by him in the same way in Ex. 354 Narmdaben given a POA and signature identified by him. In Ex. 355 POA given by Paliben Kevalram and her signature identified by him, in Ex. 356 POA given by Bipin Chandra Chotala and his signature identified by him. He also admitted that in Ex. 184 POA given by Vishunu Prashad and whose signature is to be identified by him and by this POA power is to be given to Arvind Champak Gandhi and Rameshbhai Becharbhai Mewawala regarding suit property. He also admitted that Ex. 352 to 356 is a POA regarding suit property and it was given to Arvind Champak Gandhi and Rameshbhai Becharbhai Mewawala. He admitted that he not canceled agreement before sale executed in his favour. He also admitted that the amount is to be paid by him not try to get back this amount. Another question asked to this witness

reply of which given by him in denial and trying to support the defence taken by him.

Now, here in the case on hand it is an admitted fact that present suit filed on behalf of plaintiff for the specific performance of the contract in which plaintiff pray agreement before sale is to be executed in favour of defendant No. 2 by the land owner and that document is to be executed on 03.07.1981 and it is the contention of the plaintiff at the relevant time only defendant NO. 2 is an agriculturist in plaintiff firm so agreement before sale executed in favour of defendant No. 2 but the amount of the consideration is to be paid by the firm and then after defendant No. 2 executed an agreement on 08.02.1982 in favour of the plaintiff firm and in which it is mentioned that a property of which agreement before sale is to be executed in favour of defendant NO. 2 amount of consideration is to be paid by firm.

Now, vide Ex. 386 copy of so called agreement sale dated 03.07.1981 is to be produced on behalf of plaintiff and admittedly it was executed in favour of defendant NO. 2 by Vishnu Pranshad Kevalram i.e. Defendant No. 1 who is afterwards during the pendency of the suit is died. Now, it is the contention of the plaintiff that original agreement with defendant No. 2 and admittedly going through the document the signature of defendant NO. 1 is to be found on it. Now, it is the contention of plaintiff that amount of the

consideration is to be paid on behalf of plaintiff. Admittedly, the original vide Ex. 182 on which plaintiff put reliance that this agreement is to be executed by defendant No. 2 in favour of plaintiff firm on 08.02.1982. now, going through this document in which a first party is a partner of plaintiff firm i.e. Narayan Corporation and second party i.e. defendant No. 2 and in this document defendant NO. 2 signed in personal capacity as well as, as a partner of plaintiff firm and at page NO. 5 of Ex. 182 there is a suit property is to be mentioned required to be purchased by plaintiff firm and at page No. 3 of this document it is mentioned that defendant No. 2 is an agriculturist and so property is to be purchased in the name of him but the amount of the consideration is to be given by the plaintiff firm.

Now, it is an admitted fact that considering Ex. 386 plaintiff firm having total 7 partner at the relevant time including defendant No. 2 and here the present suit filed by the plaintiff and in which it is mentioned his capacity as HUF but the question arise before this court that in Narayan Corporation not only a present plaintiff is the partner and it is not a partnership firm made by HUF and the other partners are the different persons not found from the same family. Admittedly going through the cross examination of the plaintiff though it is contention of the plaintiff that amount of consideration regarding a suit property is to be paid on behalf of

firm but in his cross examination he admitted the fact that he not produced any evidence by which this court came to the conclusion that amount of consideration is to be paid by the firm. He admitted during his cross examination that he not produced account book of firm as well as no income tax returned is to be paid.

Now, going through Ex. 386 it is an admitted fact that the document is to be executed in favour of defendant NO. 2 not as a partner but in his personal capacity. Now the dispute raised by plaintiff that at the relevant time only defendant no. 2 is an agriculturist so agreement before sale is to be executed in favour of him but this dispute raised by plaintiff but in support this dispute no evidence is to be lead though plaintiff put reliance on Ex. 182 which was agreement executed by defendant NO. 2 in favour of plaintiff firm but at the same time in plaintiff firm there is total 7 partners including defendant NO. 2 also and defendant No. 2 joined in present suit as defendant and plaintiff filed present suit on behalf of plaintiff firm but here no any POA produced on behalf of plaintiff that other partner given him an authority to file present suit. Though it is an allegation of the plaintiff that amount of the consideration is to be paid by plaintiff firm then admittedly all the partners having equal interest in it and when firm doing a business then maintaining an account and if the amount of the consideration is paid from the firm then

it was found in accounts books in income tax return but no such documents is to be produced on behalf of plaintiff. And in these circumstances considering Ex. 386 a document executed in favour of defendant NO. 2 not in the capacity of partner of plaintiff firm if the allegation of the plaintiff that only at ht relevant time defendant No. 2 is an agriculturist so it is executed in his name bu this allegation not sustainable because in Ex. 386 it is required to be mentioned that a document executed in favour of defendant NO. 2 not in his personal capacity but as a partner of plaintiff firm but no such facts is to be found in Ex. 386 now considering the cross examination of the plaintiff that he purchased an agriculturist at Bhata Village but he replied that he not remembered that when this land is to be purchased. Now the allegation of the plaintiff that at the relevant time only defendant NO. 2 is an agriculturist for which not document is to be produced and when plaintiff also purchased an agriculturist land at Bhata village of which no document is to be produced on behalf of plaintiff which shows that plaintiff hide some material fact before this court. Furthermore, plaintiff himself admitted during his cross examination that he not produced any evidence in present case by which it is proved that plaintiff firm making a payment of amount of consideration regarding suit property, but he replied that an agreement which was executed by defendant NO. 2 in favour of plaintiff firm but going through the

whole documents discussion of which made by this court earlier there is not only a suit property is to be agreed to purchase by plaintiff firm but another 16 land is to be agreed to purchase by plaintiff firm Now, present suit filed only regarding a suit property but what is about another property mentioned in Ex. 182 and minutely going through the document it is not an agreement according to the provision of the contract act because there is no attestation of witnesses found in it. And furthermore the remaining partner of the firm not joined in present suit as well as not examined on behalf of plaintiff firm for proving a contention of the documents while from very beginning defendant NO. 2 denied it and specifically taken a defence that a suit property purchased by him an amount is to be paid by him and not by firm in these circumstances the burden lies on plaintiff to prove the contention as well as execution of Ex. 182 and for which plaintiff not produced any evidence.

Now, going through the wording of issue NO. 1 it was contented that whether plaintiff prove that he agreed to purchase a suit property firm defendant NO. 1 Rs. 46,000/- per vigah but admittedly in Ex. 182 no such price is to be fixed or mentioned and only a plaintiff not in whose favour this agreement is to be executed but including defendant NO. 2 total 7 partners in plaintiff firm and out of which plaintiff, defendant O. 2 only the party before

this court and remaining 5 partners not joined as a party in these circumstances the so called agreement not executed in favour of plaintiff only but ex. 182 is to be executed by defendant NO. 2 in favour of plaintiff firm and its partners. Now, here the contention the issue that plaintiff agreed to purchase a suit land but it is not so but going through Ex. 182 the firm and its partners agreed to purchase a land mentioned at page No. 5 of Ex. 182 and in these circumstances only plaintiff not agreed to purchase a suit property in these circumstances considering all above discussion plaintiff to prove the fact that he agreed to purchase a suit property at the rate of Rs. 46000/- per vigah but if it is considered then also a firm agreed to purchase not only a suit property but another agricultural land also and in which defendant No. 2 also as a partner. In these circumstances considering all above discussion plaintiff failed to prove issue no. 1 and 2 so answer of issue no. 1 is given as **negative**.

Now, considering the contention of the issue NO. 2 it is the contention of the plaintiff that amount of the consideration is to be paid by plaintiff firm but considering the discussion regarding issue NO. 1 made by this court and considering this cross examination of the plaintiff himself when he admitted that no document is to be produced in present case by which this court came to the conclusion that amount of consideration is to be paid by plaintiff firm .

It is also the contention of the plaintiff that agreement before sale executed in favour of defendant No. 2 as a partner of plaintiff firm. Now, going through ex. 386 for which this court made earlier details discussion and at the cost of repetition it is clear that in Ex. 386 it was only executed in favour of defendant No. 2 not in the capacity of partner of plaintiff firm and also going through the cross examination when plaintiff himself owning an agricultural land at Bhata village then the allegation of the plaintiff that at the relevant time only the defendant No. 2 in an agriculturist is not sustainable because it is the burden lies on the plaintiff to prove the fact that so called agreement before sale executed in favour of defendant NO. 2 not in his personal capacity but as a partner of plaintiff firm and for which plaintiff failed to prove his fact and plaintiff also failed to prove the fact that an amount of the consideration is to be paid by plaintiff firm and in these circumstance plaintiff failed to prove issue NO. 2 and 3 so answer of issue No. 2 and 3 given as **Negative**.

ISSUE NO. 4.

જ. શુ પ્રતિવાદી નં -૨ સાબિત કરે છે કે, તેઓએ દાવાવાળી મિલકત પ્રતિવાદીનં-૧ પાસેથી પોતાની અંગત હેસીયતથી વેચાણ રાખવાનું નક્કી કરેલ છે ?

Now, considering the discussion of issue NO. 4 which was framed as per the pleading of the defendant NO. 2. Now, though defendant No. 2 is to be contended that it is agreed that suit property is to be purchased by him

from defendant No. 1 in his personal capacity but considering the discussion made by this court at the of appreciation of the evidence answering issue No. 1 to 3 admittedly going through Ex. 182 an agreement which was executed by defendant No. 2 in favour of plaintiff firm and its partner admittedly in Ex. 182 a present defendant No. 2 also shown as first party at Sr. No. 7 while he also executor of the document as a second party and defendant No. 2 also identified his signature in this document and his signature made in this document in the capacity of partner of plaintiff firm as well as in his personal capacity and in this document at page No. 5 it is mentioned that plaintiff firm agreed to purchase a suit property and with suit property another property is also to be agreed to purchase by a plaintiff firm and in these circumstances the contention of the defendant No. 2 that he agreed to purchase a suit property from defendant No.1 in his personal capacity but at the same time considering Ex. 386 which was an agreement before sale executed in favour of defendant No. 2 and it was not executed in the capacity of partner of plaintiff firm but it is executed in his personal name and here in the case on hand though it is contention of the plaintiff that amount of consideration is to be paid by the plaintiff firm but in his chief examination plaintiff himself admitted that no document produced in present case by which this court came to the conclusion that amount of the consideration is to be paid by

plaintiff firm and an agreement before sale is to be executed in favour of defendant No. 2 on behalf of plaintiff firm considering this evidence it is became admitted an agreement before sale i.e. Ex. 386 is to be executed in favour of defendant NO. 2 not as on behalf of plaintiff firm and it is executed in his personal capacity but at the same time considering Ex. 182 regarding to agree to purchase suit land then considering Ex. 182 the contention of defendant No. 2 not sustainable and in these circumstances, defendant No. 2 partly succeed to prove issue no. 4 so answer of issue no. 4 is given as **Partly Affirmative.**

ISSUE NO. 5

પ. શુ પ્રતિવાદીનં-૧ ,સાબિત કરે છે કે, વાદીના દાવાને રેસજ્યુડીકેટાનો બાધ નડે છે?

This issue framed as per the pleading on behalf of defendant NO. 1 and on the basis of written statement filed on his behalf vide Ex. 30 and in which defendant No. 1 contended that he filed RCS No. 227/1998 against defendant No. 2 and which was pending and going through the record during the course of regarding an evidence neither defendant No. 1 nor his advocate cross examine plaintiff, his witness and also not produced any evidence on behalf of him and in these circumstances considering the legal settled position that mere pleading not became a proof of the fact and the person who making a pleading required to prove it. Here in the case on hand in

absence of evidence on behalf of defendant NO. 1 regarding pendency of RCS No. 227/1998 defendant No. 1 failed to prove issue no. 5 so answer of issue no. 5 is given as **negative**

ISSUE NO. 6

૬ -અ- શુ વાદી પુરવાર કરે છે કે, આ કામના પ્રતિવાદીઓએ એકબીજાના મેળાપીપણામાં વાદગ્રસ્ત મિલકતની પરિસ્થિતી માં બાંધકામ કરી નામદાર કોર્ટના હુકમનો અનાદર કરેલ છે. અને પ્રતિવાદીઓ વિરુદ્ધ શિક્ષાત્મક પગલા ભરવાની આવશ્યકતા છે? જો હા તો શુપગલા ?

Now, present issue also framed on the basis of allegation made by the plaintiff against the defendants. Now, plaintiff failed to show this court that how defendant NO. 1 to 8 are in the collusion with each other. It is an admitted fact that an agreement before sale is to be executed in favour of defendant No. 2 and though it is an allegation of the plaintiff that amount to the consideration of this agreement paid on behalf of plaintiff firm but that fact not to be proved in the same way a sale deed is to be executed by original owner in favour of defendant No. 8 and going through the order below interim injunction application on behalf of plaintiff vide Ex. 5 and in which the fact came on record that a sale deed is to be executed in favour of defendant No. 28 on 25.06.1998 and they are joined in present suit on

23.09.1999 admittedly present suit filed on behalf of plaintiff on 15.05.1999 and considering the order below Ex. 5 a sale deed is to be executed in favour of defendant No. 8 is to be executed on 25.06.1998 i.e. before filing present suit and defendant NO. 8 is to be joined afterwards and as per the contention below ex. 5 i.e. on 23.09.1999 admittedly along with the plaintiff filed an application for court commission which was granted and commission report is to be prepared. Here the plaintiff failed to show this court that after passing an order below Ex. 5 i.e. 28.10.2005 on which date the court pass an order to maintain status quo and going through the cross examination of plaintiff himself the fact came on record that a sale deed executed in favour of defendant NO. 8 on 22.09.1999 and it is admitted by the plaintiff that at the time of commission defendant No. 8 society making a construction in the suit property. Now, on behalf of plaintiff given an application vide Ex. 70 on 02.02.2015 and which was disposed of along with the suit and in which plaintiff contended that though vide Ex. 39 an application is to be given on behalf of plaintiff to join a party defendants are in the collusion with each other construction is to be continued and by this way defendants making a contempt of this court passed by this court so a proceeding is to be required to be done.

Now, considering the cross examination of the plaintiff he admit the fact that at the time of commission report construction is to be going on and an application for the commission given on the same day by the plaintiff and which was allowed and at that time also defendant No. 8 making a construction on the basis of sale deed executed in his favour before filing the suit. Now, considering Ex. 70 regarding taking an action against defendant for breach of order and for contempt but this application given on 21.01.2000 and which was disposed of in 2015. Now, admittedly order below Ex. 5 passed on 28.10.2005 while before deciding this application plaintiff given an application for contempt vide Ex. 70 but plaintiff failed to show this court that passing an order below Ex. 5 on the merits after hearing both parties any further construction is to be made and the allegation which was made in Ex. 70 regrading the contempt of order by the court which was admittedly considering at the time of deciding Ex. 5 and when at the time of commission the construction is to be going on by defendant NO. 8 and at the time of filing the suit he was not joined as a party and in these circumstances, in absence of evidence that after passing an order by the court defendant NO. 8 intentionally making a breach of an order of the court and in these circumstances considering all above discussion plaintiff failed to prove issue

no. 6-A and an application on behalf of plaintiff vide Ex. 70 also not sustainable so answer of issue no. 6-A is given as negative.

ક.શુ દાવામાં માંગ્યા મુજબની દાદ મેળવવા હકકદાર છે?

Plaintiff in para 20(1) prayed that decree is to be drawn in favour of plaintiff regarding a suit property and directed to defendants to execute a sale deed in favour of plaintiff on the basis of agreement before sale executed on 03.07.1981 but when the plaintiff not succeed to prove the fact that a so called agreement before sale executed in favour of plaintiff firm and when the agreement before sale is to be executed between defendant NO. 2 and 1 i.e. land owner and then after the original land owner executed a sale deed in favour of defendant No. 8 society and in these circumstances when plaintiff himself not a party in agreement then such type of relief for which plaintiff not became entitled and as an option relief plaintiff pray Rs. 16 lacs with @2% per annum is to be granted from the defendants but when plaintiff not succeed to prove his case and in these circumstances plaintiff not entitled to get this relief.

Plaintiff in para 20(2) prayed that to declare that defendants having no right to do any action by which defeat a right of the plaintiff regarding agreement before sale but when agreement before sale not executed in favour of plaintiff firm then plaintiff not entitled to get such type of relief in

the same way in para 20 (3) plaintiff prayed to restrain defendants from making a construction in the suit property but admittedly before filing a suit sale deed is to be executed in favour of defendant NO. 8 and construction is to be continued at the time of commission and plaintiff failed to show his right before this court so plaintiff not entitled to get such type of relief.

In these circumstances considering all above discussion plaintiff failed to prove issue no. 6 so answer of issue no. 6 is given as **negative**.

In these circumstances, Plaintiff failed to prove issue No. 1 to 3 and 6 and 6-A so answer of issue No. 1 to 3 and 6 and 6-A given as negative and defendant No. 2 partly succeed to prove issue no. 4 so answer of issue no. 4 is given as **Partly Affirmative** and defendant No. 1 failed to prove issue no. 5 so answer of issue no. 5 is given as **negative**, so, given below order passed regarding issue no. 7.

ORDER

1. The Suit of the plaintiff is hereby dismissed.
2. Order passed below interim injunction application on 28.10.2005 vide Ex. 5 is to be vacated.
3. An application given on behalf of plaintiff vide Ex. 70 which was kept decide on merit is hereby rejected according to this order.

4. Parties bears their own costs.

5. Decree to be drawn accordingly.

Pronounced in the open Court on **1st Day of January, 2020.**

Date: 01/01/2020

(D. L. Thakor)

**9th Addl. Sr. Civil Judge & ACJM,
Surat.(UID : GJ00893)**