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**IN THE COURT OF THE HON'BLE
PRINCIPAL SENIOR CIVIL JUDGE, NAKHATRANA-
CAMP AT NALIYA.**



**SPECIAL CIVIL SUIT NO.20 OF 2018
(Old SPCS No. 68/2010)**

EXHIBIT:136

PLAINTIFF(S):

- 1. DHARMESH RAMNIKLAL MEHTA**
Aged about 35 years, Occupation: Agriculturist and
Businessman,
Address-First Floor, Adjacent to Dr. Mahadev
Patel, Hospital Road, Bhuj, District Kachchh.
- 2. HETALBEN VASANTLAL SANGHVI**
Through POA Holder Dharmesh Ramniklal Mehta
Aged about 32 years, Occupation: Agriculturist and
House-maker,
Address- Dhamini Khadki, Near, Gandhivaas,
Radhanpur, Banaskantha.

V/s .

DEFENDANT(S) :

LEGAL HEIRS OF DECEASED JAGDISHBHARTI DUNGARBHARTI GUSAI (Defendant number 1 to 6)

1. **JYOTSANABEN JAGDISHBHARTI GUSAI**
Aged about 61 years, Occupation: Agriculturist
and Home-maker,

2. **MANISHABEN JAGDISHBHARTI GUSAI**
Aged about 32 years, Occupation: Student,

3. **JIGYABEN JAGDISHBHARTI GUSAI**
Aged about 31 years, Occupation: Student,

4. **SANDEEP JAGDISHBHARTI GUSAI**
Aged about 29 years, Occupation: Student,

5. **HEENABEN JAGDISHBHARTI GUSAI**
Aged about 27 years, Occupation: Student,

6. **JANAKBHAI JAGDISHBHARTI GUSAI**
Aged about 27 years, Occupation: Student,

Defendant number 1 to 6 residing at Village Tera,
Taluka Abdasa, District Kachchh.

7. **MAMLATDAR SHRI, ABDASA,**
Rendering service at Office of Mamlatdar,
Naliya, Taluka Abdasa, Kachchh.

8. **TALATI CUM MANTRI,**
Rendering service at *Lakahniya* Gram Panchayat,
Lakahniya Village, Taluka Abdasa, Kachchh.

9. **SUB-REGISTRAR,**
Rendering service at Office of Sub-Registrar,
Nakhatrana, Taluka Nakhatrana, Kachchh.

**Re:- SUIT FOR SPECIFIC PERFORMANCE OF AGREEMENT TO
SELL, DECLARATION AND PERMANENT INJUNCTION.**

APPEARANCE:

➤ Ld. Advocate Mr. V. A. Ashar, B. N. Hothi for
plaintiffs.

➤ Ld. Advocate Mr. A. H. Lodhra for defendant number
1 to 6

➤ Ld. AGP Mr. S. A. Maheshwari for defendant number
7 to 9.

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

1. The present suit is filed by the plaintiffs against the defendants for specific performance of agreement to sell, declaration and permanent injunction. It is the say of the plaintiffs that they had entered into agreement to sell the property bearing Revenue Survey No. 119/1 of Lakhaniya Village, Taluka Abdasa, Kachchh ad-measuring 4-08 *Guntha*, Revenue Survey No. 123 of Lakhaniya Village, Taluka Abdasa, Kachchh ad-measuring 10-10 *Guntha*, Revenue Survey No. 121 of Lakhaniya Village, Taluka Abdasa, Kachchh ad-measuring 9-23 *Guntha*, Revenue Survey No. 125 of Lakhaniya Village, Taluka Abdasa, Kachchh ad-

measuring 8-04 *Guntha* 391.45 Sq. Meter (hereinafter as 'suit properties') with deceased Jagdishbharti Dungarbharti Gusai on 30/08/2007. It is the say of the plaintiffs that deceased Jagdishbharti Dungarbharti Gusai had given Power of Attorney to the plaintiff number 1 dated 31/08/2007 and possession was handed over to the plaintiffs. It is stated by the plaintiffs that as the suit properties were not in the name of deceased Jagdishbharti Dungarbharti Gusai, and therefore, registered document was not executed between them. It is further stated by the plaintiffs that the defendant number 1 to 6 had asked the plaintiff number 1 to get the stamp paper for execution of document. Accordingly, plaintiff number 1 had purchased stamps worth Rs.24,900/- and Rs.20,100/- on 10/12/2008 but the defendants had not executed the document in favour of plaintiffs. Afterwards, the plaintiffs had given legal notice to defendant number 1 to 6 on 25/07/2009 and 04/02/2010 followed by public notice in *Kachchh Mitra* newspaper on 11/02/2010. The said notices were also sent to defendant

number 7 to 9. It is stated that the defendant number 1 to 6 had denied the execution of the sale-deed and present suit is filed by the plaintiffs with the prayer that the defendant number 1 to 6 be directed to executed register sale-deed of suit properties in favour of the plaintiffs and that the plaintiffs are entitled to get the said sale-deed in their favour and had also prayed for permanent injunction that the defendants be restrained from transferring, alienating and creating any charge, right of title and interest of any third party on the suit properties.

2. Notices were issued to the defendants wherein defendant number 1 to 6 had appeared before this Court and had filed written reply vide Exhibit 19 wherein the defendants had negated the contention of plaintiffs plaint. It is submitted that no such document was executed between their late father and plaintiffs and no consideration amount was received by the deceased father of defendant number 1 to 6. It is also submitted that no Power

of Attorney (POA) was executed by their late father in favour of plaintiff number 1. It is submitted that deceased Jagdishbharti Dungarbharti Gusai had died on 20/01/2008 and bogus documents are made by the plaintiffs and had prayed for rejection of the suit. The defendants had further stated that the possession of the suit properties lies with them. It is pertinent to note that learned AGP had appeared on behalf of defendant number 7 to 9 but had failed to bring written statement on record and thus the rights were accordingly closed for them.

3. From the pleadings of both the parties, this Court had framed issues vide Exhibit 51 in Vernacular language in which are reproduced in English language as below::-

::ISSUES::

- (1) Whether the plaintiffs prove that the consideration amount of suit properties was paid by them to deceased Jagdishbharti Dungarbharti Gusai on 30/08/2007 and the same was acknowledged on stamp paper worth Rs.20/-?

- (2) Whether the plaintiffs proves that deceased Jagdishbharti Dungarbharti Gusai had handed over the possession of suit properties to them?
- (3) Whether the plaintiffs proves that deceased Jagdishbharti Dungarbharti Gusai had handed over original documents of suit properties to them?
- (4) Whether the plaintiffs prove that the legal heirs of plaintiffs proves that deceased Jagdishbharti Dungarbharti Gusai i.e. defendant number 1 to 6 are bound to execute registered sale-deed in their favour?
- (5) Whether the defendant number 1 to 6 proves that the plaintiffs have no right to get the document executed in their name?
- (6) Whether the defendant number 1 to 6 proves that the suit of the plaintiff is barred by law of limitation?
- (7) Whether the defendant number 1 to 6 proves that the present suit
- (8) Whether the plaintiffs prove that they are entitled to get reliefs as prayed for?
- (9) What order and decree ?

4. The findings of this Court upon the said issues are as follows:-

- (1) In Negative.
- (2) In Negative.
- (3) In Negative.
- (4) In Negative.
- (5) In Affirmative.
- (6) In Negative.
- (7) In Negative.
- (8) In Negative.
- (9) As per final order

5. To prove the contention of the present suit, the plaintiffs have produced following oral as well as documentary evidence:-

(1) Oral and Documentary evidences produced by plaintiffs:-

Sr.No	Particulars	Exhibit
1.	Deposition of plaintiff Dharmesh Ramniklal Mehta	55
2.	Deposition of witness Aamad Abdulla Odeja	111
3.	Deposition of witness Harji Virji Maheshwari	112
4.	Deposition of witness Uthaar Abha Vesal	113

DOCUMENTARY EVIDENCE: -

Sr.No	Particulars	Exhibit
1.	Original acknowledgment <i>cum</i> agreement to sell.	68
2.	Original POA of deceased Jagdishbharti.	69
3.	Original draft of sale-deed.	70
4.	Original draft of sale-deed.	71
5.	Refund order of stamps.	72
6.	Notice to defendants with RPAD acknowledgment and receipt dated 25/07/2009.	73
7.	Notice to defendants with RPAD acknowledgment and receipt dated 04/02/2010.	74
8.	Original newspaper <i>kachchh Mitra</i> publication dated 11/02/2010.	75
9.	Notice to defendants dated 11/02/2010.	76
10.	RPAD receipts.	77
11.	RPAD acknowledgment.	78
12.	RPAD acknowledgment.	79
13.	Cover with Notice.	80
14.	Cover with Notice.	81
15.	Cover with Notice.	82
16.	Copy of POA of plaintiff no. 2 in name of plaintiff no. 1 dated 13/06/2009.	83
17.	Copy of registered sale-deed of revenue survey number 123, 119/1 of Lakhaniya village in name of deceased Jagdishbharthi.	84
18.	Copy of 7/12 revenue entry of revenue survey number 123 of Lakhaniya village.	85
19.	Copy of 7/12 revenue entry of revenue survey number 119/1 of	86

	Lakhaniya village.	
20.	Copy of 7/12 revenue entry of revenue survey number 121 of Lakhaniya village.	87
21.	Copy of 7/12 revenue entry of revenue survey number 125 of Lakhaniya village.	88
22.	Letter to Advocate of plaintiffs by defendant number 9.	89
23.	Copy of 7/12 revenue entry of revenue survey number 119/1 of Lakhaniya village.	90
24.	Copy of 7/12 revenue entry of revenue survey number 133 of Lakhaniya village.	91
25.	Copy of 8-A revenue entry of revenue survey number 133 of Lakhaniya village.	92
26.	Original memorandum of understanding between plaintiff number 1 and Uthar Abha Vesal.	93
27.	Original memorandum of understanding between plaintiff number 1 and Uthar Abha Vesal.	94
28.	Original memorandum of understanding between plaintiff number 1 and Maheshwari Harji Virji.	95
29.	Original memorandum of understanding between plaintiff number 1 and Maheshwari Harji Virji.	96
30.	Photograph.	97
31.	Photograph.	98
32.	Photograph.	99
33.	Copy of registered sale-deed of revenue survey number 54, 55 of Village Paat, Taluka Abdasa, Kachchh.	100
34.	Copy of POA of defendant number 1 in favour of plaintiff number 1 for	101

	sale-deed of revenue survey number 54, 55 of Village Paat, Taluka Abdasa, Kachchh.	
35.	Copy of acknowledgment of consideration amount.	102
36.	Copy of mutation entry number 273 dated 13/05/2008 in schedule 6 of mutation register.	103
37.	Original memorandum of understanding between plaintiff number 1 and Uthar Abha Vesal.	104
38.	Certificate by <i>Sarpanch</i> , Lakhaniya village regarding possession of suit properties.	105

6. Closing *pursis* was brought on record vide Exhibit 14 and afterwards the matter was kept for evidence of the defendant wherein the defendant number 1 to 6 had produced oral and documentary evidence on record. It is pertinent to note that the defendant number 1 to 6 had produced one application to exhibit the documents vide exhibit 119, but the said application was left un-heard and the defendant number 1 to 6 had produced their closing *pursis* vide exhibit 120. Afterwards, the said application was heard and the documents were exhibited accordingly. The defendant number 1 to 6 had produced following oral and documentary evidence on record:-

ORAL EVIDENCE :-

Sr.No	Particulars	Exhibit
1.	Deposition of defendant number 4 Sandeepbharthi Jagdishbharthi Gusai.	115

DOCUMENTARY EVIDENCE :-

Sr.No	Particulars	Exhibit
1.	Copy of registered sale-deed number 2035 dated 02/04/2007.	124
2.	Copy of registered sale-deed number 2036 dated 02/04/2007.	125
3.	Copy of registered sale-deed number 2037 dated 02/04/2007.	126
4.	Copy of 7/12 revenue entry of revenue survey number 121 of Lakhaniya village.	127
5.	Copy of 7/12 revenue entry of revenue survey number 125 of Lakhaniya village.	128
6.	Copy of 7/12 revenue entry of revenue survey number 119/1 of Lakhaniya village.	129
7.	Copy of 7/12 revenue entry of revenue survey number 123 of Lakhaniya village.	130
8.	Copy of mutation entry number 472 dated 24/04/2008 in schedule 6 of mutation register.	131
9.	Copy of mutation entry number 583 dated 08/10/2009 in schedule 6 of mutation register.	132
10.	Copy of mutation entry number 665 dated 29/09/2011 in schedule 6 of mutation register.	133
11.	Copy of mutation entry number 473 dated 24/04/2007 in schedule 6 of mutation register.	134

12.	Original POA in favour of defendant number 4 by defendant 1 to 3 and 5, 6.	135
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7. After the evidence of defendant number 1 to 6, the matter was kept for evidence of defendant number 7 to 9 wherein the defendant number 7 to 9 had failed to produced on record due to absence of pleader and party. Therefore, the right of was accordingly closed and the matter was taken on argument wherein this Court has duly heard the learned Advocates of plaintiff of defendant number 1 to 6 on record at length.

::REASONS & FINDINGS::

ISSUE NO.1:-

8. The present issue deals with the execution of alleged agreement to sell. It is pertinent to note at this juncture that the plaintiffs have not stated that the said document is agreement to sell, but they had stated that the said document is an acknowledgment of sale. Now, the said document is produced on record vide exhibit 68 on

record. Perusing it, it is clear that the said document is type of acknowledgment mentioning that the suit properties were sold by deceased Jagdishbharthi to plaintiffs and possession is handed over to plaintiffs. It is mentioned that the consideration amount is duly paid to deceased Jagdishbharthi by the plaintiffs. As per the say of the plaintiffs, this is sale and thus the defendant number 1 to 6 are bound to execute registered sale-deed in favour of plaintiffs. Taking the issue into account, it appears to this court that as the registered sale-deed was allegedly not executed by deceased Jagdishbharthi in favour of plaintiffs, this document can be taken into account as agreement to sell as the plaintiffs have asked for specific performance of the same. Therefore, the plaintiffs have to prove that the document was executed by deceased Jagdishbharthi in favour of plaintiffs. The plaintiff number 1 had deposed vide exhibit 55 wherein he had stated that the document vide exhibit 68 was executed by deceased Jagdishbharthi in favour of plaintiffs. It is

evident from the record that the plaintiffs have not examined any witness of the document to bring on record that deceased Jagdishbharthi had executed the document in front of them. Merely the said fact is narrated by the plaintiff number 1 vide exhibit 55. Perusing the cross-examination of the said witness, it appears that there is no mention of consideration amount in exhibit 68. It is also affirmed that the said stamp paper was not purchased by deceased Jagdishbharthi. It is further affirmed that the name of purchaser of stamp is not mentioned in exhibit 68. It is also affirmed that the signature of deceased Jagdishbharthi on exhibit 68 and 69 are different. Nothing is produced on record by the plaintiff to show as to how much consideration amount was agreed between plaintiffs and deceased Jagdishbharthi and how the said amount was paid to deceased Jagdishbharthi. Therefore, it is important to decide that whether document vide exhibit 68 can be termed as agreement to sell or not and what whether specific performance can be granted or not. Section 4(3) in the Sale of Goods

Act, 1930 defines Agreement to sell as, "where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell." An agreement to sell is an important legal document that evidence ownership of goods and property in the future. A proportion of risk reduces by clearly mentoring the terms of a particular agreement and getting it signed by both parties, i.e. the buyer and the seller. If one party violates it, then the other can seek redressal by filing a suit for specific performance. The sale agreement is not a title document. One of the important ingredients of agreement to sell is **Lawful Consideration**. Lawful consideration is nothing but the value of goods and services at may be transferred in exchange for something else of value. Thus there must be mutual consideration between both parties. Perusing exhibit 68, it is clear that there is no mention of any consideration amount. It is also evident that no such amount is been stated by the plaintiff in

the plaint. It is also to be noted that the plaintiffs have not stated the consideration amount in examination-in-chief and nothing is produced on record to prove that the said consideration amount was paid by them to deceased Jagdishbharthi. Thus, this court is of the considered view that the plaintiffs have failed to show that any consideration amount was paid to deceased Jagdishbharthi and thus the alleged agreement to sell is *void* in eyes of law and no specific performance can be granted. Therefore, this court answers issue number 1 in negative.

ISSUE NO.2 and 3:-

9. As issues number 2 and 3 are interconnected with each other and for the sake of avoiding repetition of the facts in the evidence, it seems justified to this court to deal with issues number 2 and 3 together.

10. To prove the contentions of the present issues, the plaintiffs have to show that the possession of suit properties were handed over to them by deceased Jagdishbharthi and that the documents were handed over to them. To prove the said fact, the plaintiff number 1 had deposed vide exhibit 55 and brought documents on record vide exhibit 68 to 105. The plaintiffs have also examined witnesses vide exhibit 111 to 113 to prove that the possession of the suit properties is with them. Now, at the outset, it is pertinent to note that the suit properties are agricultural land and plaintiffs are allegedly taking yield from suit properties. It is evident from the record that the plaintiffs have not produced single evidence to show that they had harvested crops on suit properties which were sold by them to AMC or any other person. It is also evident that nothing is brought on record to show that the plaintiffs possess agricultural equipments. The plaintiffs have produced memorandum of understanding vide exhibit 93 to 96 and photographs vide exhibit 97 to 99 to show that

the possession of the suit properties are with them. Taking the deposition of plaintiff vide exhibit 55, it appears that the plaintiffs have claimed that the possession of suit property was given by deceased Jagdishbharthi on alleged date of acknowledgment. Perusing the cross-examination, it appears that the witness is not aware of the fact that defendant number 1 to 6 are paying taxes for suit properties or not. No tax receipt is produced on record to show that the taxes are been paid by plaintiffs. Also, it is well settled principle of law that tax receipts do not confer any title of the suit properties. Moving ahead, the plaintiffs have produced a certificate vide exhibit 105 which is issued by *sarpanch* of Lakahniya village. Perusing the said certificate, it appears that it contains that the possession of the suit properties are with plaintiffs. The said person is not examined as witness and it is also well settled principle of law that such document cannot be taken into account to decide that whether the possession is with plaintiffs or not.

11. The plaintiffs have examined Aamad Abdulla Odeja as witness vide exhibit 111 to show that the possession of the suit properties is with them. Perusing the deposition, the witness had affirmed the fact of possession with plaintiffs. Looking to his cross-examination, it appears that his father was *sarpanch* of Lakahniya village who had issues certificate vide exhibit 105. It is affirmed by the witness that the suit properties are not in the name of plaintiffs and that exhibit 105 do not bears any seal of his fathers' office. It is also affirmed that no agreement was executed between him and plaintiff number 1 since 2011. It is also affirmed that he do not take yield on any of the agricultural land of suit properties. Likewise, Harji Virji Maheshwari is examined as witness vide exhibit 112 and Uthar Abha Vesal is examined vide exhibit 113 wherein the said witnesses had also stated that the possession of suit properties is with plaintiffs. Though said witnesses have stated the fact of execution of memorandum of understanding with

plaintiff no. 1, but at the same time, they had affirmed that the suit properties were not in the name of plaintiff number 1. The said witnesses are not aware of any fact as to whose name is mutated in the revenue records. It is affirmed that the said witnesses that they do not possess any knowledge as to the possession of the suit properties. Also, the witness had affirmed that they do not possess any knowledge as to any alleged agreement between plaintiff number 1 and deceased Jagdishbharthi. Also, the photographs are produced but as they are not produced as per law, the said photographs cannot be taken into account. Perusing the entire evidences and taking the discussion made above, it appears that the plaintiffs have failed to show that the possession of the suit properties are with them. Moreover, it is stated by the plaintiffs that as the suit properties were not mutated in the name of deceased Jagdishbharthi, registered sale-deeds were not executed in name of plaintiffs. It is stated that deceased Jagdishbharthi had handed over all documents of ownership to them. It is

evident that the suit properties were purchased by deceased Jagdishbharthi in the year 2007 and no registered sale-deed executed in favour of deceased Jagdishbharthi are produced on record by the plaintiffs except exhibit 84 which is compared copy of original registered sale-deed of revenue survey number 123 and 119/1 of Lakhaniya village. The plaintiffs have to specifically show that how the original document came into their possession. No evidence is brought on record to show that when the said document was handed over by deceased Jagdishbharthi to them. The plaintiffs have merely produced revenue records which are not documents of ownership and therefore, it appears to this court that the plaintiffs have also failed to show that all original documents of ownership of suit properties were handed over by deceased Jagdishbharthi to them and thus answers issue number 2 and 3 in negative.

ISSUE NO. 4 to 9:-

12. As issues number 4 to 9 are interconnected with each other and for the sake of avoiding repetition of the facts in the evidence, it seems justified to this court to deal with issues number 4 to 9 together.

13. As per the discussion made above, it is clear that the plaintiffs have failed to show that any agreement was executed between them deceased Jagdishbharthi and that the possession was handed over to them by deceased Jagdishbharthi. It is also discussed that the the alleged agreement to sell or acknowledgment cannot be enforced. Now, moving ahead, the plaintiffs have relied upon exhibit 68 and have stated that the said document was executed with POA by deceased Jagdishbharthi in favour of plaintiffs. Perusing the cross-examination of plaintiff number 1 vide exhibit 55, the said witness had affirmed the fact that the POA vide exhibit 69 was not executed on 30/08/2007 and it was allegedly executed

afterwards. Perusing exhibit 68, it appears that it contains the wording of POA been executed by deceased Jagdishbharthi in favour of plaintiffs. Nothing is produced on record to show that why such statement was executed when no POA was in existence. Moreover, it is affirmed by the witness that the present suit is filed after 2 years of death of deceased Jagdishbharthi. Nothing is produced on record to show that why no proceedings were initiated on the basis of alleged POA to mutate the suit properties in the name of deceased Jagdishbharthi during his lifetime. As far as readiness and willingness is concerned, it appears that no notice was issued by the plaintiffs to deceased Jagdishbharthi for execution of registered sale-deed. Moreover, it is affirmed by the plaintiff number 1 in his cross-examination that he had not given any notice to defendant number 1 to 6. It is also pertinent to note that the execution of exhibit 68 is not in accordance with law. It is also important to mention that the defendant number 4 had deposed before this court vide exhibit 115

and have produced documentary evidence vide exhibit 124 to 135 to prove issue number 5 to 7. Now, perusing the cross-examination of said witness, it appears that the learned Advocate for plaintiffs have relied upon the documents executed by plaintiff number 1 with POA of defendant number 1. The questionnaire of cross-examination is that of documents which are not relevant to the present situation. Though the plaintiffs have brought on record that earlier transactions were done by plaintiff, but at the same time, it cannot be basis for specific performance in this present suit. It is also pertinent to note that the defendants had not produced any evidence to prove issue number 6 and 7.

14. Taking the discussion into account, this court is of the view that the plaintiffs have failed to prove the contentions of their suit and thus this court answers issue number 4 and 8 in negative. At the same time, as the plaintiffs have failed to prove their contentions, it can be said that

defendant number 1 to 6 have proved issue number 5. Thus, this court answers issue number 5 in affirmative and issue number 6 and 7 in negative. Issue No. 9 shall follow the final order:-

: ORDER :

- The suit of the plaintiff is hereby rejected.
- Parties to bear their own cost.
- Decree be drawn accordingly.

Signed and Pronounced in this open court on this
07th day of **July** month of the year **2023**.

07/07/2023
Naliya

(Romit Anilkumar Agrawal)
Principal Senior Civil Judge
Nakhatrana-camp at Naliya.
Judge Code: GJ00933