

Received on	10-07-2018
Registered on	10-07-2018
Decided on	19-12-2022
Duration	Y.04M.05D.09

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Before The Honorable Court of 2nd Additional Senior Civil Judge, At
Mahesana

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Special Civil Suit No. 20 of 2018
Exhibit : 36

Plaintiffs: **(1) PATHAN IBRAHIMKHAN IMAMKHAN,**
Age : 46, Occupation : Agriculture and Husbandary,
Resi. at Post Tundali, Ta. Dist. Mahesana.

(2) QURESHI YUSUFBHAI ISMAILBHAI,
Age : 41, Occupation : Agriculture and Husbandary,
Resi. at Post Mandali, Ta. Dist. Mahesana.

VERSUS

Defendants: **(1) BABALDAS MOHANLAL PATEL**
Age : 81, Occupation : Agriculture

(2) VIJAYBHAI AMRATBHAI PATEL
Age : 40, Occupation : Agriculture
Both Resi at Post Tundali, Ta. Dist. Mahesana.

Subject : Suit for Cancellation the Sale Deed and Specific Performance of
Agreement to Sale.

Appearance:

Ld. Advocate Mr. S. B. Belim for the plaintiff.

Ex-parte for the defendants.

JUDGMENT

1. The brief facts of the present suit can be stated as under;

That the defendant No. 1 of the present suit has executed agreement to sale in favor of the plaintiff as an independent owner for the irrigated land bearing Regular Survey No. (Old Survey No.133) admeasuring 1 Hectar, 25 Sq. Mtr., 41-R and assessed as 5.77/- and its khata No. 751 (hereinafter referred as "the said land" or "the disputed land" or "the land in question" or " the suit land") for Rs.11,00,000/- before the Notary on date 01-11-2010. Thereafter, additional Rs.1,50,000/- was also paid towards the payment for agreement to sale therefore the plaintiff has paid Rs.12,50,000/- at the time of agreement against the total amount of land of Rs. 46,69,264/-. As per the condition of agreement to sale, the plaintiff has to pay remaining amount of land i.e. Rs. 34,19,264/- within 5 months for agreement to sale at the time of executing registered sale deed of the said land and the defendant No.1 has to get title clear certificate of the suit land and also execute the registered sale deed in favor of the plaintiff after receiving the remaining amount of the suit land. However, the defendant No.1 has not made sale deed after intimating many times. As the defendant No.1 and the plaintiff are belong to same village and knowing each other from their

childhood, therefore plaintiff has put complete trust upon the defendant No.1. Whenever the plaintiff asks for sale deed, the defendant No.1 was ignoring his demand. The defendant No.1 has not execute the sale deed in favor of the plaintiff so far.

The defendant No.1 has execute the registered sale deed in favor of the witness of agreement to sale deed and who is the defendant No. 2 in the present suit on date 07-07-2017 to avoid the execution of sale deed in favor of the plaintiff. Therefore the defendant No. 1 and 2 have suppressed the right of the plaintiffs and defendant No.1 has kept the earnest money of the plaintiff illegally. The registered sale deed Index No. 6528/17 regarding suit land was executed on date 07-07-2017 executed by Defendant no. 1 in favor of the defendant No. 2 is illegally, unconstitutional and illegitimate which deserves to be dismissed and the said sale deed is not bound to the plaintiff.

The plaintiff has issued notices to the defendant No.1 periodically to implement the agreement to sale deed . The last notice has been served upon the defendant No. 1 on date 12-09-2015 for the implementation of agreement to sale deed, however the defendant no. 1 has neither replied of same notice nor he has proceeded for the implementation of agreement to sale deed. The plaintiff has filed complaint at

Langnaj Police Station on date 07-09-2017 regarding forgery and misappropriation of property against the defendant No.1. However, the defendant No.1 has made sale deed in favor of Defendant No. 2 and suppressed my legal rights over the suit land.

As per the agreement to sale deed, the defendant No. 1 has to clear the title of the suit land but he has failed to do so and therefore, the sale deed could not be executed. Due to this, the plaintiff has issued the notice to the defendant No. 1 on date 12-09-2015 which was served upon the defendant No. 1, however he has not executed registered sale deed in favour of Plaintiff as per agreement to sale deed. The plaintiff came to know about the sale deed in favor of the registrar office and thereafter he has obtained the copy of the said sale deed from registrar office and filed the present suit to dismiss the sale deed No. 6528/17 and implement the agreement to sale deed in favor of the plaintiff.

2. The notices were sent to the defendants through registered post but they have not refused to accept the cover as per Exhs. 6 to 9 and the defendants have not chosen to appear before the court nor sent their legal representative. The plaintiff has filed an application vide Exh. 10 to proceed this suit as ex-parte and

the Court was pleased to pass the order to proceed the said suit as ex-parte against the Defendants.

3. The plaintiff has filed an interim injunction application vide Exh. 5 under Order 39, Rule 1, 2 and Section 151 of Code of Civil Procedures. The said injunction application came to be rejected on merits as per order dated 17/09/2019.
4. The plaintiff has filed following oral and documentary evidence in support of his case vide Exh. 4.

Sr. No.	Description	Exh. No.
1	Examination of chief of Plaintiff	27
2	Agreement to Sale Deed dated 1/11/2010	23
3	True Copy of complaint filed at Langnaji Police Station	24
4	True Copy of notice given to the defendants dated 12/09/2015	25
5	True Copy of sale deed index no. 6528/17 dated 07/07/2017	26

5. After perusing the contention of the plaintiff my Hon'ble Predecessor has framed the issue for determination of this suit vide Exh. 13.

Issues

1. Whether the Plaintiff proves that Defendant no. 1 has executed agreement to sale without possession on 01/11/2010 regarding suit land Rev. Survey no. 125 admeasuring H RA 1-

25-41 Sq. M. for total consideration of Rs. 46,69,264/- in favour of Plaintiff ?

2 Whether Plaintiff proves that he has paid Rs. 12,50,000/- to Defendant no. 1 earnest money ?

3 Whether Plaintiff proves that Defendant no.1 has sold the suit property by registered sale deed index no. 6528/2017 to Defendant no. 2 and same is illegal and void?

4. Whether the Plaintiff proves that he has given notice for specific performance of agreement to sale on 12/09/2015 to Defendant nos. 1 ?

5 Whether the Plaintiff proves that he was ready and willing to perform his part of contract ?

6 Whether the suit is filled within time limit ?

7 Whether the plaintiff is entitle for relief sought ?

8 What order and decree ?

6. My findings on the above issues are as under;

1. In the negative.
2. In the negative.
3. In the negative.
4. In the negative.
5. In the negative.
6. In the negative.

7. In the negative.
8. As per final order.

-:: REASONS ::-

7. Issue Nos. 1,2,5 :-

So far as these issues are concerned the Plaintiff has to prove that Defendant no. 1 has executed agreement to sale without possession on 01/11/2010 regarding suit land Rev. Survey no. 125 admeasuring H RA 1-25-41 Sq. M. for total consideration of Rs. 46,69,264/- in favour of Plaintiff and he has paid Rs. 12,50,000/- to Defendant no. 1 earnest money and he was ready and willing to perform his part of contract. Now looking to the evidence produced by the Plaintiff, he has mainly relied on examination in chief on affidavit produced vide Exh. 27 and agreement to sale deed produced vide Exh. 23 and notice issued for performance of agreement to sale and Defendants have not appears and have not challenged the same. Now first of all looking to the agreement to sale produced vide Exh. 23 is concerned the same is notarized one dated 01/11/2010 and it is stated that total sale consideration for suit land is fixed of Rs. 46,69,264/- and out of which Rs. 11,00,000/- was paid by Plaintiff to Defendant no. 1 in cash and remaining amount is required to be paid within 5 months from the date of agreement

at the time of execution of sale deed and on need of money Plaintiff has given further Rs. 1,50,000/- to Defendant no. 1 on and endorsement in agreement to sale was made on date 18/11/2010 to that effect but the Defendant has not signed for receiving the same amount.

Now looking to the agreement Exh. 23 the same typed and the name and address of the Plaintiff no. 2 is subsequently written by pen and there is no signature of the Plaintiffs in the entire typed and notarized agreement and Signature of Plaintiff no. 1 is done after hand writing regarding payment of Rs. 1,50,000/- in cash on 18/11/2010 and when the time limit of 5 months from the date of agreement is fixed for execution of sale deed then the Plaintiffs have to show their ready and willingness to pay the remaining consideration and ask to Defendant to execute registered sale deed of suit land in their favour but the same is not done in present case. And to succeed in a suit for specific performance, the plaintiffs have first of all to prove that a valid agreement of sale was entered by the defendant in their favour and the terms thereof but in the present case the Plaintiffs are not clear regarding terms of agreement (consideration). Hence, the Plaintiff has failed to show that he was ready and willing to pay remaining

consideration within the 5 month period from the date of execution of agreement to sale and payment of sale consideration to Defendant no. 1 and hence, they have failed to prove that the agreement to sale is duly executed as per law and hence, these issues are answered in Negative.

8. Issue No.3 :-

So far as this issue is concerned the Plaintiff has to prove that Defendant no.1 has sold the suit property by registered sale deed index no. 6528/2017 to Defendant no. 2 and same is illegal and void. Now looking to the discussion done in the above mentioned issue when this Court has not believed that the agreement is legally enforceable and when the Plaintiff has failed to prove facts regarding consideration and when the Plaintiff has not joined the purchaser of the suit property who is necessary party to the proceeding and looking to the sale deed Executed by Defendant no.1 produced vide Exh. 26 the sale is duly executed before competent authority and hence, the plaintiff has failed to prove that the sale deed is illegal and void. Hence, I answer this issue in negative.

9. Issue No. 4 :-

So far as this issue is concerned the Plaintiff has to prove that he has given notice for specific performance of agreement to

sale on 12/09/2015 to Defendant nos. 1. Now looking to the evidence produced by the Plaintiff, he has not produced any evidence to show that the notice is served to the Defendant and hence, this issue is answered in negative.

10. Issue no. 6:-

So far as this issue that suit is filled within time limit is concerned and looking to the provision of Article 54 of Limitation Act which governs the suits regarding specific performance. The period of limitation is 3 years and the starting point is the date fixed for the performance and in cases where no such date is fixed, when the plaintiff has noticed that performance is refused. And in the present case the date for executing sale deed was fixed (within 5 months) from the date of agreement. Hence, after expiry of the 5 months i.e. 1/4/2011 limitation of 3 years will begin and he has relied on notice issued dated 12/09/2015 which is also beyond period of three years from 5 months from the date of agreement i.e. 1/4/2011 and the suit is filed on 16/07/2018 and suit is also barred by limitation as prescribed under S. 54 of the limitation Act. Hence, this issue is answered in the negative.

11. Issue no. 7:-

So far the relief prayed in the suit is concerned the Plaintiffs have

failed to prove the due execution of the agreement to sale produced vide Exh. 23 and when the Defendant no.1 has sold the suit land by registered sale deed produced vide Exh. 26 and the same is duly execution as per law and when the suit is filled after three years of limitation period as prescribed under S. 54 of the Limitation Act and hence, in view of the above said discussion, reasons recorded, finding arrived, observations made when the Plaintiffs have failed to prove that the agreement to sale deed produced vide Exh. 23 is duly executed and and hence when Plaintiffs have failed to prove their case, they are not entitle for the relief sought in the suit and therefore, this issue is answered in negative and in the interest of justice, I pass final order as under.

- : FINAL ORDER :-

- 1) The suit of the plaintiffs is hereby rejected.
- 2) The plaintiffs shall bear whole cost of the suit.
- 3) Decree to be drawn accordingly.

Pronounced in the open Court on this 19th December-2022.

Date :-19-12-2022.

Place :-Mahesana.

(Kutbuddin Noormohmeed Sarvaiya)

2nd Addl. Sr. Civil Judge, Mahesana.

GJ00966