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Exh.61

In the Court of Principal Sr. Civil Judge, Bardoli

Special Civil Suit No.10/2016

- Plaintiffs : (1) **Babubhai Jivanbhai - Administrator of undivided family of Jivanbhai - Kanjibhai Patel,**
aged about 60 years, Occup.Agriculture,
Resi. of B-48, Navdurga Society, Bardoli,
Tal.Bardoli, Dist.Surat.
- (2) **Manishkumar Viththalbhai - Administrator of undivided family of Viththalbha Kanjibhai Patel,**
aged about 60 years, Occup.Agriculture,
Resi. of B-77, Navdurga Society, Bardoli,
Tal.Bardoli, Dist.Surat.
- (3) **Bhikhubhai Ghelabhai - Administrator of undivided family of Ghelabhai Kanjibhai Patel,**
aged about 54 years, Occup.Agriculture,
Resi. of B-47, Navdurga Society, Bardoli,
Tal.Bardoli, Dist.Surat.

Vs.

- Defendants : (1) **Shri Lakhubhai Dahyabhai Bhandari,**
Minister of Navdurga Sahkari Ghar Mandli,
aged about major,
Resi. of B-36, Baladevi, Bardoli,
Tal.Bardoli, Dist.Surat.

(2) **Trustee of Navdurga Kedavni Mandal Trust,**

2/1 **Hemantbhai Ramanbhai Patel**
aged about major, Occup.Agriculture,
Resi. of Part-A, Navdurga Society, Bardoli,
Tal.Bardoli, Dist.Surat.

2/2 **Bharatbhai Jekishanbhai Patel**
aged about major, Occup.Business,
Resi. of Luhar Faliya, Bardoli,
Tal.Bardoli, Dist.Surat.

2/3 **Babubhai Mangubhai Patel**
aged about major, Occup.Retired,
Resi. Bajrangwadi, Near Hudko Society,
Bardoli, Tal.Bardoli, Dist.Surat.

2/4 **Nileshbhai Prahladbhai Patel**
aged about major, Occup.Business,
Resi. of Part-A, Navdurga Society, Bardoli,
Tal.Bardoli, Dist.Surat.

Mr. R.C. Shah, Ld. Advocate for the plaintiffs.

Mr. G.U. Vyas, Ld. Advocate for the defendants.

**:: Suit for Sec.34 and 38 of Specific Relief Act and
Permanent Injunction ::**

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

1. By way of filing the present suit, the plaintiffs have made prayer for declaration and Injunction that they are owner and in possession of the 15 Gunthas out of land property bearing revenue survey no.302 paiki, here in after referred as the "disputed suit property" which has been sold to the the defendant no.1 as mentioned in para-6 as well as

restrained the defendants or as the case may be from disturbing their actual possession by trespassing to the said property as well as also made prayer that gift-deed executed by defendant no.1 in favour of defendant no.2 on 7-4-1988, which is not binding to them, as they are not the executors.

2. The brief facts of the present suit are that father of the plaintiff and uncle - Zaverbhai Kanjibhai having the property bearing revenue survey no.302, admeasuring A.4-8 gunthas, Akar Rs.46-44 of village Bardoli, Tal.Bardoli as tenants. It is the case of the plaintiff that his uncle Zaverbhai Kanjibhai and aunty Vajiyaben were expired and left no issue , hence, they are the sole heir of the said property. It is the case of the plaintiffs that the property bearing revenue survey number 302 had been vested to the ancestral of the plaintiff and after paying the actual price of Rs. 7249/ on 01-04-1957 under the Bombay Tenancy Agricultural Land Act they became owner of the said property. It is the case of the plaintiffs that they have house over the said property of which the entry no 24/99 had been made at the Bardoli Nagar-palika in which prior their deceased Uncle Zaverbhai and Vijyaben living, hence they have been in possession and owner of the said house in which there is one Tube well at the Southern Side. It is the case of the plaintiffs that the Defendant no.2 is a Trust constituted under the Trust Act, which is registered by entry no.F/335 at Surat and defendants nos.2(1) to 2 (5) are trustees of the Trust. So, they have been joined as parties which has been constituted

under the Co-Operative (SAHKARI) Law. It is the case of the plaintiffs that being well known and very prestigious person, the defendant number 1 and defendant number 2, had wished to purchase the said ancestral property from the plaintiff's forefathers and they decided to sell the said property for Rs. 1000/ per guntha. So, they have executed sale deeds of Total Rs.1,60,000/- as the said property was of total 160 gunthas and the sale deed price has been paid them as mentioned at page number 5 of the plaint. It is the case of the plaintiffs that, as per the sale deeds, it seems that, only 153 Gunthas had been sold, out of the total Survey number of 302, however, 15 Gunthas had been unsold which is considered as "GHARCHHOD" (left portion) in which the plaintiffs have their house and Tube well. Thus, only 153 Gunthas had been sold by their forefathers, however, the rest of the property remain unsold and in possession and ownership of them. It is the case of the plaintiffs that as per permission of N.A. the said portion of the property also shown as reserved, admeasuring 4 Acre and 8 Gunthas. It is the case of the plaintiffs that their forefathers had never sold the total 160 Gunthas of the Revenue Survey Number 302, hence, they are absolute owner of the left 15 Gunthas. Thus, they have challenged the registered sale deeds executed in favour of the defendants by stating breach of trust made by the defendants. It is the case of the plaintiffs that after executing the registered sale deeds, the defendant number 1 had executed one gift-deed on 7-4-1988 in favour of the

defendant number 2, including the plaintiff's unsold part of 15 Gunthas and made effort to raise construction at the Southern Side of Plaintiff's house no.727/2 which is entered at Bardoli Nagar Panchyat which was resulted in filing the RCS No.29/1990 against the defendant no.2, in which, it is also mentioned that plaintiff's land of 15 gunthas of survey no.302 was not sold. Thus, the plaintiffs have filed the present suit for declaration that the defendant number 1 has no any right to execute gift deed which is registered on 7-4-1988, in favour of the defendant number 2 which is liable to be cancelled and illegal. The plaintiffs also made averments that due to transfer of the senior division, they are unaware of the proceedings of the prior regular civil suit, however, the gift deed executed by the defendant number 1 which has no essential elements of Gift and therefore, the cause of action arise right from knowledge of the said gift deed, they have filed the present suit. It is also averred by the plaintiffs that on 08-02-2016, the defendants have made effort to raise construction over the said property on which they have an ownership and possession, they have filed the present suit and made prayer to allow the present suit and relief as mentioned in Para (15) of the present suit against the defendants.

3. On service of summons of the present suit, notices have been duly served to the defendants and the defendants have appeared through their Learned Advocate and filed written statement at

Exh.18 to the plaint to the suit proceedings, by contesting the claim of the plaintiff, wherein, inter-alia denied the facts of the plaint. The defendants have taken objections such as the suit is not maintainable in its present form as suit of plaintiff is illegal, suppressed material facts, barred by law of limitation and barred by non-joinder and mis-joinder of parties and also barred by O.2, R.2 of CPC and they have not served notice u/s.80 of CPC. and so it is not maintainable and deny most of the averments made by the plaintiff, hence concealed true, correct and material facts to this Hon'ble Court, the suit is liable to be rejected. The defendants have further stated that plaintiff has suppressed material facts in view of the RCS No.29/1990 or Special Civil Suit No.94/1996. The defendants have contended that the plaintiffs have not made any such relief in the former suits of which they have filed the present suit, therefore, it is deemed that, they have waived such relief. The defendants have contended that the plaintiffs, with malafide intention have not shown the actual position of the revenue records in view of the ownership and possession over the said property as well as concealed the facts of verdict of the former suit, hence, they have not come with clean hands. The defendants have contended that after executing the registered sale deeds, they became owner and in possession of the entire property bearing revenue survey number 302 and registered gift deed, the defendant number 2 has constructed the school in which more than 2000 student are studying, having facilities of sport ground,

compound-wall, canteen for the well fare of the students. Thus, by denying all the averments of the plaintiffs and the suit is without cause of action and based on fabricated facts of the plaintiffs and made prayer to reject the present suit with special cost from the plaintiffs.

4. In pursuance of the Written Statement filed by the defendants, the plaintiff has filed counter affidavit vide Exh.19, wherein they have denied the contentions raised and allegation made by the defendants. The plaintiffs have denied the facts of the written statement such as mis-joinder and necessary parties, barred by Law of limitation, statutory notice, jurisdiction, suppression of any material facts and possession and ownership of the defendants over the disputed suit property. The plaintiffs have reiterated the facts of the suit and made prayer to allow the present suit.

5. On the basis of the pleadings of the parties, this Court has framed the following Issues for adjudication on 14-6-2017 vide Exh.31 to the suit proceedings.

ISSUES

[1] Whether plaintiffs prove that their predecessors became owner of the survey no.302 by virtue of Tenancy Law on 1-4-1957 ?

[2] Whether plaintiffs prove that they are in the possession and ownership of 15 guntha as stated in para 6 of the plaint ?

[3] Whether plaintiffs prove that gift-deed of 7-4-1988 is illegal and not binding to him ?

[4] Whether plaintiffs prove that defendants are illegally disturbing his possession in the suit property ?

[5] Whether present suit is barred by principle of Res-Judicata ?

[6] Whether plaintiff's suit is barred by non-joinder of necessary parties ?

[7] Whether defendants prove that present suit is barred by law?

[8] Whether defendants prove that plaintiffs have suppressed material facts?

[9] Whether Plaintiffs prove that they are entitled for the reliefs of declaration and injunction and compensation as asked in para 15 of the plaint?

[10] What order and decree?

6. After hearing the defendant as well as materials on records and evidence, my findings in view of above Issues are as under:

[1] In Negative.

[2] In Negative.

[3] In Negative.

[4] In Negative.

[5] In positive.

[6] In positive.

[7] In positive.

[8] In positive.

[9] In negative.

[10] As Per Final Order.

7. The plaintiffs have adduced the following oral as well as documentary evidence in support of his case.

ORAL EVIDENCE :-

[1] Exh.37 - deposition of the plaintiff no.1.

[2] Exh.47 - deposition of witness Sunilbhai Maheshbhai Patel.

DOCUMENTARY EVIDENCE :-

[1] Exh.39 - certified copy of document registered by sr.no.2450.

[2] Exh.40 - certified copy of document registered by sr.no.2428.

[3] Exh.41 - certified copy of document registered by sr.no.2447.

[4] Exh.42 - certified copy of document registered by sr.no.2446.

[5] Exh.43 - true copy of measurement done through Land Revenue.

[6] Exh.55 - copy of order of RCS No.92/1996.

[7] Exh.56 - commission report.

[8] Exh.57 - map of suit property by Court commissioner.

[9] Exh.48 - closing pursis.

8. The plaintiffs have been given ample opportunities for the arguments, however, on failure of it, the right of argument has been closed. The Ld. Advocate of the defendants has made arguments that after registered sale deed, the plaintiffs have lost ownership and possession over the suit property and the Gift deed also made after the registered sale deed and the documents are registered, thus, there is no reason to

disbelieve them. He has also made argument that the the present suit is barred by Law of limitation, mis-joinder and non-joinder of necessary parties, jurisdiction, res-judicata and without any cause of action which is required to be rejected with special cost. After hearing the argument and all relevant materials, evidence, in view of the above mentioned Issues, my reasons are as under:

:: R E A S O N S ::

9. **Issue No.1 :-**

The plaintiffs have filed the present suit on footing that their father and uncle - Zaverbhai Kanjibhai were jointly owners of the suit property as tenants. It is the case of the plaintiff that his uncle - Zaverbhai had no issue, therefore, the plaintiffs became the sole owner and in possession of the disputed suit property, which had been governed under the Bombay Tenancy and Agricultural Land Act of which, the price of Rs.7249/- had been paid as per the said Act on 1-4-1957. In this way, they are owner and in possession of the disputed suit property. In support of the present suit, the plaintiff has filed the deposition vide Exh.37, in which, he has repeated the same facts as per the plaint. Thus, no need to discuss the repeated facts for the sake of brevity. Looking to the written statement by the defendants, they have not taken any stand in view of ownership over the disputed suit property under tenancy law of the plaintiffs. The plaintiffs have not submitted any documentary evidence, by

which, it is proved that the disputed suit property had been governed under the tenancy law and the predecessor were tenants. However, the documentary evidences vide Exh- 39 to Exh- 42, the registered sale deed executed in favour of the defendants, show that the suit property prior governed under the Tenancy Law, however, after due process of Law, the property has been sold by registered sale deed. Thus, nothing to discuss any more on this aspect, as the dispute among the parties is not in view of the disputed suit property whether it is governed by the tenancy law or not. However, in absence of any evidence on record, the answer of this issue is given in negative accordingly.

10. **Issue No.2 :-**

The plaintiffs have filed the present suit on footing that they are owner and in possession of 15 guntha land, referred as disputed suit property. The plaintiffs have made averment that the whole ancestral property bearing revenue survey no.302 had been sold to the defendants by registered sale deed, out of which, 15 guntha had been left as unsold. The plaintiff also made averments that the land bearing survey no.302, out of which, 153 guntha had been sold to the defendants by registered sale-deed and thus, they are owner and in possession of the 15 guntha land, which had been unsold by their forefathers. The plaintiff in support of present suit, has filed the deposition vide Exh.37, in which, he has affirmed the facts stated in the plaint, therefore, they are not

repeated for the sake of brevity. Now let us see, what he has stated in his cross examination in view of this issue;

WHILE CROSS EXAMINATION, THE PLAINTIFF HAS STATED THE FOLLOWING FACTS :

- He has admitted that the land bearing survey no.302, which has been renumbered as 2958 admeasuring 4 acre, 8 guntha, which was equally distributed among grand son and four uncle. He has also admitted that he is of 15 years at that time and denies the fact of distribution of disputed suit property among his grand-father and uncle.
- He has also admitted that the facts of documentary evidence vide Exh.39 - the registered sale-deed, executed by his uncle Viththalbhai Kanjibhai in favour of defendant no.1 and also affirmed the four direction of the property.
- He has also admitted that the facts of documentary evidence vide Exh.40 - the registered sale-deed, executed by his father Jivanbhai Kanjibhai in favour of defendant no.1 and also affirmed the four direction of the property.
- He has also admitted that the facts of documentary evidence vide Exh.41 - the registered sale-deed, executed by his aunt Vajiyaben - wd/o of Zaverbhai Kanjibhai in favour of defendant no.1 and also affirmed the four direction of the property.

- He has also admitted that the facts of documentary evidence vide Exh.42 - the registered sale-deed, executed by his uncle Ghelabhai Kanjibhai in favour of defendant no.1 and also affirmed the four direction of the property.
- He has also admitted that no proceedings to cancel the documentary evidence vide Exhs.39 to Exh.42 has been done by him so far at the competent Court as well as no suit has been filed to cancel the said documentary evidences. He has also admitted that the defendant no.1 has done process to convert the suit property into N.A., after executing the registered sale-deed which has been unchallenged by him as well as his legal heir so far.
- He has also admitted that the disputed suit property has not used for agricultural purpose.
- He has also admitted that after N.A. permission by the defendants, they have made school and also made plots of the entire property.
- He has admitted that he has not submitted any documentary evidence to cancel the Gift deed as well as submitted any evidence of proceedings to cancel the same.
- He has admitted that no evidence of city survey property card, revenue records to show their names has been submitted by him to the suit proceedings.

11. The plaintiffs have submitted the documentary evidence vide Exh.39 to Exh.42, which are the copies of registered sale-deed executed in favour of the defendant no.1. Thus, there is no reason to disbelieve that the defendant no.1 had been vested the ownership as well as possession of the land bearing survey no.302. The plaintiff also failed to produce any documentary evidence in view of possession and ownership of the 15 gunthas. Thus, the facts admitted by the plaintiff, this Court is of the view that after executing the registered sale deed of land bearing survey no.302, the plaintiffs have lost ownership and possession over 15 gunthas. The plaintiff also admitted that no process for canceling the registered sale-deed has been made by him or his heir so far. The documentary evidence vide Exh.39 to Exh.42 are registered sale-deed. Hence, there is no reason to disbelieve them. The plaintiff also admitted the facts of the four boundaries in view of the registered sale deeds also. Looking to the admitted facts and materials on records, it transpires that after executing the registered sale deeds, the defendants have made process of N.A. permission and raised construction over the entire land property bearing revenue bearing survey number 302. The documentary evidence vide Exh- 39 to Exh- 42 show the facts that the disputed suit property of 15 Gunthas had been vested to the purchaser after removing the encroachment as well as the term GHARCHHOD is used including 168 Gunthas had been sold to the defendants. The plaintiffs have come before

this court on footing that they are owner and in possession of the disputed suit property than burden of proof lie to them to prove that they are owner and in possession of the said property. The plaintiff has admitted that no documentary evidence in view of ownership and possession have been adduced by them to the suit proceedings, thus, in absence of any cogent evidence the plaintiffs are failed to establish their claim over the disputed suit property on the other hand, he has admitted the facts of running of the school and compound wall surrounding the disputed suit property, this court is of the view that the defendants have possession and ownership over the suit property by registered sale deeds. Thus, this Court is of the view that after executing the registered sale deed of land bearing survey no.302, the plaintiffs have lost ownership and possession over the entire survey no.302. Thus, the answer of this issue has been given "in negative" accordingly.

12. **Issue No.3 :-**

The plaintiff has filed the present suit on footing that their forefathers had executed the registered sale deed in favour of the defendants of 160 Gunthas, however, the suit land bearing revenue survey number 302 of which, only 153 Gunthas had been sold out to the defendants. Thus, 15 Gunthas had been left to the plaintiff and which had been unsold out of the total Gunthas of 160. The plaintiff further also made averments that after executing the registered sale deed of the 153

Gunthas, the defendant number 1 has made Gift deed on 07-04-1988 of which the entry no. 2958 was mutated at the City Survey of Bardoli, in favour of the defendant number 2. The plaintiff in his cross examination has admitted that no documentary evidence to cancel the said gift deed has been submitted by him to the suit proceedings. He has also admitted that no documentary evidence has been submitted by him in view of any proceedings against the defendants. Now the important question is that the plaintiff has not made any process of cancelling the so called Gift deed which was made on 07-04-1988. The plaintiff has not submitted any cogent evidence to prove that the said gift deed is liable to cancelled and not binding on him. The plaintiff is failed to make any effort to place on records the said Gift deed. Thus, in absence of the documentary evidence, oral evidence has no importance. Another aspect is that, looking to the materials on records it transpires that after executing the registered sale deed, the Gift deed has been executed by the defendant trust, Thus, nothing more to discuss in a detail when the plaintiffs have lost their ownership and possession over the disputed suit property, they failed to prove this Issue. Thus, the answer of this issue has been given " In Negative" accordingly.

13. **Issue No.4 :-**

The plaintiff has filed the present suit that the defendants are disturbing their possession in the suit property. In view of

Issue Number 1 and 2, this court has already discussed that the plaintiffs have lost their ownership and possession over the suit land property bearing survey number 302, after executing the registered sale deed. Thus, nothing to discuss more on this Issue, as the plaintiff is failed to prove ownership and possession over the said property. Thus, the answer of this issue given been given " In Negative" accordingly.

14. **Issue No.5 :-**

So far as concern the rule of *res judicata* is concerned, it is based on the maxim *nemo debet bis vexari pro una et eadem causa*, i.e. no one ought to be trouble twice for one and the same cause and *interest reipublicae ut sit finis litium* i.e. it is in the interest of the state that there should be an end of law suit. The rule of *res judicata* as laid down in section 11 of the C.P.C as follows:

"No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court."

The defendants have taken stand that the present suit is barred by principle of res-judicata. The plaintiff in his counter affidavit vide Exh- 19

states that the Regular Civil Suit No. 29/1990 and Regular Civil Suit No. 92/1996 are different. The plaintiff has taken stand that the suits were filed when the defendants had not started construction of the Compound wall, however, the plaintiff has stated that the defendants have started the construction of the compound wall without sanction of the Bardoli Nagar Palika. The plaintiff in his cross examination has admitted the fact that he has filed the Regular Civil Suit No. 29/1990 on footing that the defendant number 2 was trying to construct the Compound wall in the year 1990 which has been dismissed by the Court and denies knowing the facts of its appeal. He has also admitted that the said compound wall has been in the premise of the defendant's school. He has also admitted the facts that the said compound wall has been in the premise of the defendants and used by the Students of the school which has been run by the defendants. The documentary evidence vide Exh- 55- is the copy of the judgment of the Regular Civil Suit No.92/1996 of Old Regular Civil Suit No. 29/1996. The said suit has been rejected by this court of which the parties of the present suit are the same and the suit property bearing revenue survey number 302. Looking to the said judgment, it seems that that the plaintiff has lied that suit on footing that after "Ghar Chood" in suit property bearing revenue survey number 302 paiki, 15 gunthas was in absolute possession and independent ownership of the plaintiff. The plaintiffs also filed that suit on footing that the defendants are restrained to construct the

compound wall over the property bearing city survey number 2958, however, on failure to adduce any evidence in view of the possession and ownership over the suit property, this court has rejected the plaintiff's suit. Now, the important aspect is that when the plaintiff is failed and declared that he is not owner and in possession over the property which is one of the portion of the entire suit property bearing survey number 302. Thus, this court is of the view that the prior suit or issue in which the matter directly and substantially between the same parties and which has already been decided by this court which has not been challenged by the plaintiff as well as the plaintiff has not placed any record to prove that it has been under an appeal. Thus, in view of the documentary evidence vide Exh- 55, when the plaintiff is failed to prove ownership and possession over the entire suit property, he has filed the present suit which has been barred by the rule of *res judicata*. Thus, the answer of this issue given been given "In Positive" accordingly.

15. **Issue No.6 :-**

The defendants have taken stand that the present suit is barred by mis-joinder and necessary parties as the plaintiff has not joined his brothers and uncle who are the executors of the entire Suit property bearing survey number 302 as well as the members of the Navdurga Co-Operative Society to the suit proceedings. The plaintiff, in cross examination has admitted that Kanjibhai Parshottambhai is his grand

father who left behind him four Son and all are died. He has admitted that he has not joined his five brothers and three sisters as well as his paternal brothers to the suit proceedings. He has also admitted that no members of the co-operative have been added to the suit proceedings or any trust authority. Looking to the documentary evidence vide Exh- 39 to Exh-42, it transpires that brothers and uncle of the plaintiff's are the executors of the registered sale deed.

In UDIT NARAIN SINGH V. BOARD OF REVENUE AIR

1995 SC 24, the Hon'ble Supreme court while pointing out the distinction between the two observed that a necessary party is one in whose absence no order can be made effectively; a proper party is one in whose absence an order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceedings. Thus, this court is of

the view that the present suit is barred by non-joinder of necessary parties. The plaintiff has not joined his brothers and uncle who are the executors of the entire suit land property bearing survey number 302 to the suit proceedings. The plaintiffs have come before this court on ground that the 15 Gunthas had been unsold and they are in possession and owner of the said property which had been ancestral property, than the plaintiffs have to add necessary and proper parties to the suit proceedings.

Thus, the answer of this issue has been given " In Positive" accordingly.

16. **Issue No.7 :-**

The defendants have taken stand that the present suit is barred by Law as no statutory notice has been served to the defendants, as registered Co-operative Society as well as the present suit is barred by Law of Limitation. The defendant by taking stand of Limitation states that the plaintiff has filed the present suit in the year 2016 by challenging the registered sale deeds which are executed in the year 1977, thus, the present suit is barred by Law of limitation as the plaintiff has to file the present suit within three years. The plaintiff has filed the present suit by seeking relief of restraining the defendants from possession and ownership over the unsold 15 gunthas out of suit property bearing revenue survey number 302 as well as challenged the Gift deed made on 07-04-1988 in favour of the defendant number 2 by the defendant number 1. Now, the important aspect is that the registered sale deed had been executed in the year 1977 and the Gift deed also made in the year 1988. The plaintiff in his plaint states that the prior regular civil suit has been decided at the Surat Senior Division and not transferred at the Bardoli Senior Civil Court. The plaintiff also states that he is unaware of the said suit proceedings. However, looking to the documentary evidence vide Exh- 55 it transpires that the prior regular civil suit has been decided by this court and the copy of the said judgment has been submitted by the plaintiff to the suit

proceedings. Thus, the reasons given by the plaintiff in view of filing the present suit within limitation are not sufficient and reasonable. The plaintiff has challenged the legality and validity of the registered sale deeds and the Gift deed which had been made in the year 1977 and 1988 and filed the present suit in the year 2016. Thus, this court is of the view that the plaintiff has not filed the present suit within three years. Thus, the present suit is barred by law of limitation. Thus, the answer of this issue has been given " In Positive" accordingly.

17. **Issue No.8 :-**

The defendants have taken stand that the plaintiff has intentionally concealed the facts of the prior civil suit which has been decided by this Hon'ble Court and make illusory cause of action just to make the present suit within the limitation. The defendants have taken stand that the material facts of the prior suit has been concealed by the plaintiff and the plaintiffs have not come with clean hands. The defendants also contended that the plaintiffs with malafide intention have suppressed several material facts such as the present condition at the revenue records and city Survey, permission of N.A. The plaintiff in his cross examination has admitted the facts of N.A. permission, rejection of the regular civil suit number 29/1990, construction of the compound wall by the defendants, construction of the houses over the disputed suit property after N.A. permission. Thus, looking to the suit proceedings, the

plaintiffs have concealed several material facts, especially, the facts of regular civil suit number 29/1990 and its order passed by this court. Thus, this court is of the view that the plaintiffs have suppressed several material material facts and not come with clean hands. Thus, the answer of this issue has been given " In Positive" accordingly.

18. **Issue No.9 :-**

Looking to the materials on records, this court is of the view that after executing the registered sale deeds, the defendants have constructed the compound wall and the sold the houses after such permission. Looking to the documentary evidences vide Exh.39 to Exh.42, it has been stated that after vacating the encroachment of the 15 Gunthas, the purchaser would be considered as the owner of the said property of 15 Gunthas. Looking to the materials on records, it transpires that after executing the registered sale deeds, the plaintiffs have lost their ownership and possession over the disputed suit property. The plaintiff has himself admitted the facts of construction of the houses over the suit property and running the school by the defendants. The documentary evidences vide Exh.39 to Exh.42 are the registered sale deeds and there is no reason to disbelieve them. Looking to the entire proceedings and materials on records, it seems that the plaintiffs have lost ownership and possession over the disputed suit property as well as after registered sale deeds, the gift deed had been executed by the defendant. Thus, there is no reason to

disbelieve the registered sale deeds as well as no question of illegality and cancelling the said documents arise. Thus, the answer of this issue has been given "In Negative" accordingly. In view of the above discussion, following final order is passed in reference of Issue No.10 of the present suit;

:: O R D E R ::

- (1) Present suit is hereby rejected.
- (2) The parties shall bear their own cost.
- (3) Decree to be drawn accordingly.

Pronounced in the Open Court today on this 28th day of December, 2018.

Bardoli.
Date: 28-12-2018

(Dharmesh Chandrakant Jani)
Principal Senior Civil Judge,
Civil Court, Bardoli
U.I.Code-GJ01022