

Registered on : 01/01/2011  
 Decided On : 08/05/2019  
 Duration Yr. Months Days  
 Ex.

**IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE  
 AT GONDAL – RAJKOT DISTRICT**

**SPECIAL CIVIL SUIT NO.1 OF 2011**

**Plaintiff:-**

- 1. KANJIBHAI RAIYABHAI RATHOD,**  
 Hindu, Adult, Agriculture,  
 L-2/54, Municipal Hudko Quarter,  
 Opp. Marketing Yard,  
 Rajkot.

**VERSUS**

**Defendants :**

- 1. SAVJIBHAI MANGABHAI HARIJAN,**  
 Hindu, Adult, Agriculture,  
 Pardi, Tal.Lodhika.
- 2. RAMABEN KANJIBHAI RATHOD,**  
 Hindu, Adult, House Work,  
 L-2/54, Municipal Hudko Quarter,  
 Opp. Marketing Yard,  
 Rajkot.
- 3. TUSHARBHAI MOHANBHAI KHUNT,**  
 Hindu, Adult, Agriculture,  
 Khokhad-Dad, Tal-Dist.Rajkot.
- 4. DHIRUBHAI GHELABHAI RANGANI,**  
 Hindu, Adult, Agriculture,  
 Khokhad-Dad, Tal-Dist.Rajkot.

**APPEARENCE:-**

**I.M.ZAKARIYA,** Learned Advocate for plaintiff.  
**M.C.SAYANI,** Learned advocate for defendants No.1  
**L.C.BAGDA,** The learned Advocate for defendant No.2.  
**H.J.LALAKIYA,** Learned Advocate for defendant No.3 & 4.

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

1. The plaintiff has filed the present suit for declaration and permanent injunction and to cancel registered sale deed No.18240 executed by the defendant No.1 in favour of defendants No.3 and 4 and to cancel revenue entry No.1632 posted in favour of defendants No.3 & 4. They have further prayed to restrain defendants permanently from transferring, selling etc. the suit land.

2. The short facts of the plaintiff's case are that defendant No.1 is holding agricultural land bearing revenue S.No.161 paiki 42 admeasuring A.2-20G. vide revenue entry No.176 in village form No.6. It is averred that defendant No.1 has entered into an agreement to sell the suit land to plaintiff in consideration of Rs.1,75,000/- on dated 01/02/2000. Thereafter, the plaintiff has paid entire amount of consideration to the defendant No.1 and defendant No.1 has also acknowledged the receipt of the payment and handed over the possession of suit land to the plaintiff. The defendant No.1 has executed power of attorney in favour of defendant No.2 on 21/06/2000 to administer the suit property. Thereafter, the plaintiff has converted the suit land from new tenure to old tenure at his own costs. Thereafter, the defendant No.2 being the power of attorney of

defendant No.1 has executed registered sale deed No.1876 dated 29/03/2005 (New No.3212/2010 dated 05/03/2010) in favour of plaintiff. Thereafter, plaintiff has applied before Mamlatdar, Lodhika to enter his name in revenue record and Mamlatdar, Lodhika has replied vide letter dated 18/12/2010 that the suit land has not been standing in the name of seller Savji Manga but it has been standing in the name of other, vide entry No.1632. Thereafter, the plaintiff has come to know the fact that even though th defendant No.1 through defendant No.2 has sold the suit land to plaintiff and even after receiving full consideration, has sold the suit land to defendants No.3 & 4 vide registered sale deed No.18240 dated 13/10/2010. So, the defendants No.1 and 2 have played fraud and committed breach of trust. In spite of the fact that they have sold the suit land to the plaintiff and already received full consideration, even though with a view to get more money, they have sold the suit land to defendants No.3 & 4. Hence, the plaintiff compelled to file the present suit and prayed to grant relief as prayed for.

3. The defendants are duly served with the summons of the suit. But the defendant No.2 has not filed her written statement. The defendant No.1 has filed written statement at Ex.23 and contended that suit is not legal, bonafide and requires to be

dismissed; it is contended that the plaintiff is not in possession of the suit land and hence, he cannot file the suit; it is contended that plaintiff has purchased suit land on the basis of fraudulent power of attorney and therefore, suit is required to be dismissed; it is contended that the sale deed on which the plaintiff is relying is false, bogus and hence, suit is required to be dismissed; it is contended that he is the owner and possessor of suit land and hence, he has sold the suit land to defendants No.3 & 4 vide registered sale deed No.18240 dated 13/10/2010 and handed over the possession of suit land to defendants No.3 & 4. It is contended that defendant No.1 was never intended to sell the suit land to the plaintiff. It is contended that with a view to borrow money from plaintiff, the agreement to sell was executed for the purpose of security and not to sell the suit land to the plaintiff. It is admitted that he has received Rs.1,75,000/- from the plaintiff, but it was not obtained towards sale transaction of suit land. It is further contended that for the purpose of security the defendant No.1 has executed writing of suit land in favour of plaintiff, but it was not sale transaction. It is denied that the defendant No.1 has handed over the possession of the suit land to plaintiff. It is contended that, no where mentioned in the sale deed No.1876 dated 29/03/2005 executed by

defendant No.1 POA of defendant No.1 in favour of plaintiff that consideration has been received and possession has been handed over to th plaintiff. It is contended that the defendant No.1 has sold the suit land to the defendants No.3 & 4 vide registered sale deed No.18240 dated 13/10/2010 and also handed over the possession. In short, the defendant No.1 has denied all the averments made in the plaint and prayed to dismiss the suit with costs.

4. The defendant No.3 & 4 have filed his written statement against the present suit at Ex.17. It is contended that the suit is not legal, proper and bonafide and liable to be dismissed; it is contended that inspite of the fact that the plaintiff is not in ownership and possession of the suit land, he has filed false suit; it is denied that the defendant No.1 has entered into an agreement to sell the suit land to plaintiff; it is also denied that, defendant No.2 on behalf of POA of defendant No.1 has sold the suit land to plaintiff and received full consideration. It is contended that the defendant No.1 has carried out the procedure to change the suit land from new tenure to old tenure. The defendants No.3 and 4 have contended that they are bonafide purchasers as they have purchased the suit land from the defendant No.1 after paying full consideration and hence, the plaintiff has no right to pray for

cancellation of registered sale deed and revenue entry. Moreover, the plaintiff has no right to restrain defendants No.3 and 4 from doing the administration of their own land. In short, they have denied all the averments made in the plaint and prayed to dismiss the suit with costs.

5. In view of above pleadings, following issues have framed by my learned predecessor at Ex.45.

// I S S U E S //

1. Whether plaintiff proves that defendant No.1 has agreed to sale suit land for Rs.1,75,000/-?
2. Whether plaintiff proves that he has made full and final payment of Rs.1,75,000/- of defendant No.1?
3. Whether plaintiff proves that defendant No.2 as power of attorney holder of defendant No.1 has legally executed registered sale deed in respect of suit land on 29/03/2005 in his favour?
4. Whether plaintiff proves that he is in actual and physical possession of suit land?
5. Whether plaintiff proves that registered sale deed dated 13/10/2010 in respect of suit land executed by defendant No.1 in favour of defendants No.3 & 4 is illegal?
6. Whether defendants No.3 & 4 prove that they are bonafide purchasers of suit land for consideration without notice?
7. Whether defendant No.1 prove that plaintiff has got executed writings in respect of suit land for

safety of amount of Rs.1,75,000/- borrowed by him from plaintiff?

8. Whether plaintiff is entitled to relief as prayed for?

9. Whether defendant No.1 is entitled to relief as prayed for by him in counter claim?

10. What order and decree?

6. My reply to the above issues are given as under.

**-:R E P L Y:-**

1. In negative.
2. In negative.
3. In negative.
4. In negative.
5. In negative.
6. In affirmative.
7. In affirmative.
8. In negative.
9. In affirmative.
10. As per final order.

**// E V I D E N C E //**

7. In support of his case, the plaintiff has produced following documentary and oral evidences.

| Sr. No. | Particular of evidences                                                                           | Ex. No. |
|---------|---------------------------------------------------------------------------------------------------|---------|
| 1.      | Affidavit of examination in chief of plaintiff filed under the provision of O.XVIII R.4 of C.P.C. | 57      |
| 2.      | Copy of order of deputy Collector                                                                 | 58      |
| 3.      | Copy of agreement to sell dated 01/02/2000                                                        | 59      |
| 4.      | Copy of sale deed dated 21/06/2000                                                                | 60      |

|     |                                                                              |    |
|-----|------------------------------------------------------------------------------|----|
| 5.  | Copy of order of Deputy collector for converting land from new to old tenure | 61 |
| 6.  | village form No.6 entry No.1418                                              | 62 |
| 7.  | Copy of registered sale deed No.1876`                                        | 63 |
| 8.  | Copy of power of attorney deed                                               | 64 |
| 9.  | Copy of registered sale deed No.18240 dated 13/10/2010                       | 65 |
| 10. | Copy of Akila newspaper                                                      | 66 |
| 11. | Copy of letter of Mamlatdar                                                  | 67 |
| 12. | Copy of village form No.6 entry No.1632                                      | 68 |
| 13. | Deposition of Nareshbhai Karambhai, Sub-Registrar, Gondal                    | 81 |

8. The plaintiff has filed evidence closing pursis at Ex.82. Thereafter, the matter was kept for producing evidences by the defendants. the defendants have filed following evidences.

| Sr. No. | Particular of evidences                                                                                | Ex. No. |
|---------|--------------------------------------------------------------------------------------------------------|---------|
| 1.      | Affidavit of examination in chief of defendant No.1 filed under the provision of O.XVIII R.4 of C.P.C. | 84      |
| 2.      | Copy of FIR filed against the plaintiff by defendant                                                   | 87      |
| 3.      | Copy of letter regarding complaint filed by defendant                                                  | 88      |
| 4.      | Affidavit of examination in chief of defendant No.4 filed under the provision of O.XVIII R.4 of C.P.C. | 89      |
| 5.      | Copy of order giving land in Santhni                                                                   | 93      |
| 6.      | Copy of entry No.176 in village form No.6                                                              | 94      |
| 7.      | Copy of order of Mamlatdar converting                                                                  | 95      |



|     |                                                                 |            |
|-----|-----------------------------------------------------------------|------------|
|     | land from new to old tenure                                     |            |
| 8.  | Copy of order of deputy collector confirming order of Mamlatdar | 96         |
| 9.  | Copy of revenue entry No1418 in village form No.6               | 97         |
| 10. | Copy of no due certificate issued by Talati about               | 98 & 99    |
| 11. | Copy of registered sale deed No.18240                           | 100        |
| 12. | Copy of revenue entry No.1632 in village form No.6              | 101        |
| 13. | Copy of village form No.8-A and 7/12                            | 102 to 104 |

9. Thereafter, defendant No.1 has filed his evidence closing pursis at Ex.106 and defendants No.3 & 4 have filed their evidence closing pursis at Ex.107. Thereafter, I have gone through the written arguments filed by learned advocate for plaintiff at Ex.109 and 110. The learned advocate for the defendant No.1 has filed written arguments at Ex.111 and learned advocate for the defendants No.3 & 4 has filed written arguments at Ex.112. The relevant arguments were taken into consideration along with reasons. Defendants have produced following judgments in support of their arguments.

**(1) Vidhyadar Vs. Mankirao reported in 1999 (0) GLHEL – SC – 34099.**

**(2) Gopal Krishnaji Ketkar Vs. Mohamed Haji Latif reported in 1968 (0) GLHEL – SC – 9677.**

**(3) Rajkumar Shethi Vs. Janki Devi RFA No.339-2000 order of Delhi High Court dated 24<sup>th</sup> October, 2017.**

**(4) Bhutkani Nath Vs. Mt. Kamaleshwari Nath 1971 (0)  
AIJ – AN – 9200175.**

**ISSUE NO. 1 TO 9:-**

All the issues are interconnected with each other and therefore, to avoid the repetition of arguments and discussion of evidence and for the sake of convenience and brevity all the issues are discussed conjointly.

I have gone through the submission made by both the sides in written arguments. Let us start the discussion of evidence in tune with arguments advanced by both the sides.

It is required to be mentioned here that, plaintiff is the husband of defendant no.2. By virtue of power of attorney by his wife (defendant no.2), plaintiff has executed registered sell deed dated 29-03-2005 in his favor for Rs.1,00,000/-. The very surprising fact is, that the agreement to sell of suit property in favor of plaintiff dated 01-02-2000 which is prior to five years was for Rs.1,75,000/-. The subsequent registered sell deed which is after five years of agreement to sell for same piece of land is having lesser amount of consideration and sell deed is executed by none other than wife (defendant no.2) in favor of her husband (plaintiff). It is also admitted by plaintiff that, during that transaction defendant no.1 was not present.

Plaintiff in his cross examination has admitted

that, he has not produced any document showing that he is an agriculturist. In spite of challenging the locus of plaintiff as an agriculturist, he has not produced any document which dis-entitles plaintiff to have agricultural old tenure land. Plaintiff has also admitted that, he has lent Rs.1,75,000/- to defendant no.1 and against security of that amount he has executed agreement to sell, possession note and power of attorney. Plaintiff has also admitted in his cross examination that, at present possession of suit property is with defendants no. 3 & 4. He has also admitted that, their names have also been entered in revenue record. It is also admitted by plaintiff that, when the agreement to sell was executed it was new tenure land. The plaintiff has admitted that, on 29-03-2005 the possession was with defendant no.1. Thus, admittedly as per cross examination of plaintiff, when the registered sell deed was executed by wife in favor of her husband, they are not holding the possession and today also possession is with defendant no.3 & 4. Another surprising fact is the registered sell deed in favor of plaintiff by his wife dated 29-03-2005 is for Rs.1,00,000/- and the registered sell deed in favor of defendants no. 3 & 4 is for Rs. 20,24,000/- dt. 13-10-10. Thus, in span of five years the price rises to Rs.20 times. While the price quoted in agreement to sell of plaintiff decrees after five years from Rs.1,75,000/- to

1,00,000/- which is totally unbelievable and seems to be unrealistic as well.

When plaintiff has not produced any evidence of agriculturist, he cannot retain the agricultural land without showing his proof as an agriculturist more particularly when it is specifically questioned by defendant in the cross examination of plaintiff.

As per **Sec.63 under Bombay Tenancy and Agricultural Lands Act, 1948** transfer in favor of non-agriculturist of agricultural land is totally barred. Here, defendant no.2 who has executed the register sell deed in favor of plaintiff has not entered into the witness box. Defendant no.1 who is agriculturist and owner and occupier of suit property has not executed the registered sell deed in favor of plaintiff. After registered sell deed in the year 2005, plaintiff has never tried to enter his name in revenue record. The cross examination of plaintiff clearly speaks that for the security of his amount which is lent, he has executed the agreement to sell, possession receipt and power of attorney. Plaintiff failed to prove that, registered sell deed executed by his wife in his favor is with consideration and with possession. On the contrary from the cross examination of plaintiff, it is proved by defendants that, the registered sell deed of plaintiff is without handling actual physical possession. The plaintiff has also admitted in his cross examination

that, possession is with defendant no.1 and defendant no.1 was cultivating the land even after his sell deed and it is also admitted by him that, at present possession is with defendants no. 3 & 4. The judgments produced by defendants helps the case of defendants. In these circumstances, plaintiff failed to prove that defendant No.1 has agreed to sale suit land for Rs.1,75,000/-. Plaintiff also failed to prove that, he has made full and final payment of Rs.1,75,000/- of defendant No.1 & also failed to prove that, defendant No.2 as power of attorney holder of defendant No.1 has legally executed registered sale deed in respect of suit land on 29/03/2005 in his favour. It is also unproved by plaintiff that, he is in actual and physical possession of suit land. It is also not proved by plaintiff that, registered sale deed dated 13/10/2010 in respect of suit land executed by defendant No.1 in favour of defendants No.3 & 4 is illegal. On the contrary it is proved by defendants No.3 & 4 that they are bonafide purchasers of suit land for consideration without notice. Defendant no.1 succeeds to prove that, plaintiff has got executed writings in respect of suit land for safety of amount of Rs.1,75,000/- borrowed by him from plaintiff. Plaintiff has not asked any relief with respect to refund of his money given to defendant no.1 and therefore, this court is not in position to pass any

order with that regard. Thus, plaintiff is not entitled to get any relief as prayed for and defendant No.1 is entitled to relief as prayed for by him in counter claim. Thus, reply of all the issues are given accordingly. To decide issue no.10 and suit, following final order is passed in the interest of justice.

**F I N A L     O R D E R**

- The suit is hereby dismiss with no order as to cost.
- The counter claim of defendant no.1 is hereby allowed.
- It is hereby declared that, the registered sell deed of land bearing S.No.161 paiki 42 of Taluka Lodhika village Pardi, executed in favor of plaintiff by his wife defendant no.2 as being a power of attorney holder of defendant no.1 dated 29-03-2005 at Sr.no.1876 and new no.3212/10 dated 05-03-2010 stands cancelled and no right is accrued as per that registered sell deed.
- Both the side have to bear their own cost.
- Necessary decree be drawn accordingly.

Signed and pronounced in the open court to day on this **8<sup>th</sup> DAY OF MAY, 2019** at Gondal

**Date :- 08/05/2019**

**(PRASHANT NARENDRAKUMAR RAVAL)**

Principal Senior Civil Judge

**Place:- GONDAL**

**G O N D A L.**

**JUDGE CODE-GJ-00-708**