GJSR01-001476-2014

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IN THE COURT OF 2ND ADDITIONAL DISTRICT JUDGE, SURAT

REGULAR CIVIL APPEAL NO. 94 OF 2014

CHANDULAL MANILAL PANCHAL

on behalf of and representing Manilal & Sons, a Partnership Firm, through its Partner,

Age: Adult, Occupation: Business,

Address: Plot Nos. 17 to 19, Uday Industrial Estate, Opp. Police Station, Near Adinath Nagar, Odhav, Ahmedabad.

APPELLANT

VERSUS

1 **FINE BUILD CORPORATION, A PARTNERSHIP FIRM, THROUGH ITS PARTNERS**

Age: Adult, Occupation: Business,

Resident of: 8, Prabhunagar Society-2, Ved Road, Surat.

2 **PRAVINBHAI NAGJIBHAI PATEL**

Age: Adult, Occupation: Business,

Resident of: 8, Prabhunagar Society-2, Ved Road, Surat.

3 **PADAMSHIBHAI GORDHANBHAI MORDIYA**

Age: Adult, Occupation: Business,

RESPONDENTS

	Resident of: Flat Nos. 101-102, Panchratna Apartment, Tapinagar Society, Katargam, Surat.
4	**ARVINDBHAI NAGJIBHAI PATEL** Age: Adult, Occupation: Business, Resident of: 18, Mangal Group Society, Ved Darwaja, Surat.
5	**HITESHBHAI GORDHANBHAI PATEL,** Age: Adult, Occupation: Business, Resident of: 30, Suryakiran Society, Varachha Road, Surat.
6	**ISHWARBHAI BABUBHAI,** Age: Adult, Occupation: Business, Resident of: 75, Prabhunagar Society, Ved Darwaja, Surat.
7	**NILESHBHAI KARSHANBHAI MORDIYA,** Age: Adult, Occupation: Business, Resident of: 14, Sarita Society, Bhavnagar.
8	**BATUKBHAI GORDHANBHAI MORDIYA,** Age: Adult, Occupation: Business, Resident of: As stated above.
9	**VIPULBHAI KARSHANBHAI MORDIYA,** Age: Adult, Occupation: Business, Resident of: As stated above.
10	**NARANBHAI HARJIBHAI MIYANI,**

	Age: Adult, Occupation: Business, Resident of: 19-B, Mangal Group Society, Ved Darwaja, Surat.
11	**JAGDISHBHAI NARANBHAI MIYANI,** Age: Adult, Occupation: Business, Resident of: As stated above.
12	**VALLABHBHAI HARJIBHAI MIYANI,** Age: Adult, Occupation: Business, Resident of: 72, Vijaynagar, Bhavnagar.
13	**SURESHBHAI NARANBHAI,** Age: Adult, Occupation: Business, Resident of: 19-B, Mangal Group Society, Ved Darwaja, Surat.
14	**JAYESHBHAI GORDHANBHAI KAKADIYA,** Age: Adult, Occupation: Business, Resident of: Flat No. 304, Manmandir Complex, Katargam-Singanpore Road, Katargam, Surat.
15	**RAJESHBHAI BHAGWANBHAI KAKADIYA,** Age: Adult, Occupation: Business, Resident of: 22, Mangal Group Society, Ved Darwaja, Surat.
16	**NARESHBHAI BHAGWANBHAI PATEL,** Age: Adult, Occupation: Business, Resident of: Flat No. 304, Manmandir

	Complex, Katargam-Singanpore Road, Katargam, Surat.
17	**BHARATBHAI RAVJIBHAI PATEL,** Age: Adult, Occupation: Business, Resident of: 41-42, Tapinagar Society, Katargam Darwaja, Surat.
18	**NAGJIBHAI NARSHINHBHAI PATEL,** Age: Adult, Occupation: Business, Resident of: Moti Dharai, Taluka Vallabhipur, District Bhavnagar.
19	**GORDHANBHAI ZAVERBHAI,** Age: Adult, Occupation: Business, Resident of: 13, Sarita Society, Bhavnagar.
20	**NARSHINHBHAI JAYRAJBHAI PATEL,** Age: Adult, Occupation: Business, Resident of: Flat No. 101, Trinidhi Apartment, Ankur Society, Varachha Road, Surat.
21	**CENTRAL PROJECTS AND DEVELOPMENT ORGANIZATION, THROUGH ITS AUTHORIZED SIGNATORY, AMIT HASMUKHLAL DOSHI,** Age: Adult, Occupation: Business, Address: Office Nos. 7 to 10, Office Floor, Ramsa Tower, Pramukh Swami Marg, Adajan Patiya, Surat.
22	**AMIT HASMUKHLAL DOSHI,** Age: Adult, Occupation: Business,

Address: Office Nos. 7 to 10, Office Floor, Ramsa Tower, Pramukh Swami Marg, Adajan Patiya, Surat.

APPEAL UNDER SECTION 96 READ WITH ORDER XLI OF THE CODE OF CIVIL PROCEDURE

AGAINST THE ORDER DATED 30.08.2014 PASSED BY THE COURT OF LD. 9TH ADDIONAL SENIOR CIVIL JUDGE, SURAT,

IN REGULAR CIVIL SUIT NO. 290 OF 2001

APPEARANCES:

1. ***H. R. MODI*** Ld Advocate for the Appellants.
2. ***K. S. BANATWALA*** Ld. Advocate for the Respondents.

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

PRESENT APPEAL PREFERRED AGAINST

(1) The Appellants/Original Defendants have preferred the present Appeal under Section-96, R/W Order-41, of The Code of Civil Procedure, *inter alia* challenging the impugned order dated 30.08.2014 passed by the Court of Ld. 9th Additional Senior Civil Judge, Surat ("**Here-in-after referred as Trial Court**"), in Regular Civil Suit No. 290 of 2001 ("**Suit**"), whereby the Ld. Trial Court was pleased to partly allowed the suit of original plaintiff.

ORIGINAL STATUS OF THE PARTIES

(2) In the Suit, the present Appellants were the original Defendants whereas the Respondents herein were the original Plaintiffs. For the sake of convenience, the parties are hereinafter referred to in their original capacity and status as well as before the Trial Court.

FACTUAL MATRIX OF THE CASE

(3) The brief facts giving rise to the present Appeal can be succinctly stated as under :-

(A) The present respondents (original plaintiffs) instituted Regular Civil Suit No. 290 of 2001 contending that Plaintiff No.1 is a duly registered partnership firm in the name and style of **Fine Build Corporation** and Plaintiffs No.2 to 20 are its registered partners. Defendant No.1, namely Central Projects & Development Organization (CPDO), through its authorized representative Defendant No.2, Shri Amitbhai H. Doshi, launched a residential project known as **"CPDO Residence Colony"** on Revenue Survey No.945 situated at Village Ichhapore-Kavas, District Surat. The plaintiff firm submitted its tender for construction of the said project, which was accepted by the defendants. Pursuant thereto, the plaintiffs paid a total amount of Rs.1,10,94,108/- towards Security Deposit and Earnest Money Deposit (E.M.D.) through separate cheques and further paid Rs.15,524/- towards tender fees. The defendants acknowledged receipt of the said amounts by issuing official receipts and cheque counterfoils. Subsequently, due to disputes regarding the title of the land between the defendants and the original landowners, the defendants cancelled the entire project. After cancellation, the defendants admitted in writing their liability to refund the amount received from the plaintiffs and issued five post-dated cheques drawn on The Surat Peoples Co-operative Bank Ltd. towards repayment. However, the defendants deliberately instructed their banker to stop payment of all the said cheques, resulting in their dishonour and failure to discharge their admitted liability. Thereafter, both parties mutually agreed to settle the outstanding dues, and in part satisfaction of the said liability, the defendants executed notarized sale agreements and issued Delivery Challans Nos.114/2000-01 and 117/2000-01 in favour of the plaintiffs. Under the said settlement, the defendants transferred and delivered possession of industrial air compressor machines valued at Rs.34,84,682/- and Rs.22,33,813/- respectively, along with three commercial offices situated in **Ramsha Tower**, Adajan Patiya, Surat, valued at Rs.1,50,00,000/-. The value of the said movable and immovable properties was mutually adjusted and appropriated towards the outstanding amount payable by the defendants to the plaintiffs.

(B) The plaintiffs further pleaded that, pursuant to the settlement, they obtained actual and physical possession of the industrial machinery as well as the three commercial offices. The machinery was shifted to the plaintiffs' rented godown situated at Swaminarayan Estate, Tatithaiya, Palsana, and the plaintiffs also took possession of the commercial offices. The possession of the suit properties was duly verified through the report of the Court Commissioner. Since the year 2000, the plaintiffs have been continuously maintaining possession by paying godown rent, executing leave and licence agreements, and incurring expenses towards watchmen and security for preservation of the machinery and other properties.

(C) The plaintiffs further averred that despite having voluntarily transferred possession of the suit properties in discharge of their lawful liability, the defendants subsequently attempted to dispossess the plaintiffs illegally by using force and through third parties. Apprehending unlawful interference with their peaceful possession, the plaintiffs were constrained to institute Regular Civil Suit No.290 of 2001 seeking a declaration of their rights in respect of the suit properties and a decree of permanent injunction restraining the defendants from interfering with or disturbing their lawful possession.

(D) The plaintiffs prayed before the Ld. Trial Court to declare that the settlement entered into between the parties was valid and binding, to recognize the plaintiffs' lawful possession over the suit properties delivered under the settlement, and to permanently restrain the defendants, their agents, servants, or any person claiming through them from forcibly taking back possession of the industrial machinery and other properties or otherwise interfering with the plaintiffs' peaceful possession and enjoyment thereof, along with costs and such other reliefs as deemed fit by the Court.

(E) After institution of the suit, the Ld. Trial Court issued summons to the defendants. The defendants appeared through their Ld. advocate, filed their written statement, contested the suit, and both parties adduced oral as well as documentary evidence in support of their respective cases. The matter was thereafter heard on merits.

(F) Upon appreciation of the oral and documentary evidence produced by both sides and after hearing the Ld. advocates appearing for the respective parties, the Ld. Trial Court allowed the suit and granted a decree of permanent injunction in favour of the plaintiffs, restraining the present appellants (original defendants) from disturbing or taking possession of the industrial machinery and other suit properties from the present respondents (original plaintiffs).

(G) Being aggrieved and dissatisfied with the judgment and decree passed by the Ld. Trial Court, the present appellants (original defendants) have preferred the present

Regular Civil Appeal under Section 96 read with Order XLI of the Code of Civil Procedure, 1908 before this Hon'ble Court.

(4) The plaintiffs have produced the following documentary evidence.

(A) **ORAL EVIDENCE**

SR. NO.	DESCRIPTION	EXH.
1	Plaintiff No.2 Mr. Pravinbhai Nagjibhai Patel, Being a partner of Plaintiff No.1 partnership firm has tendered his evidence on oath.	100
2	Deposition of Mr. Padamshibhai Gordhanbhai moradiya.	369
3	Deposition of plaintiff's witness No.1, Mr. Rameshbhai Savjibhai Patel.	358

(B) **DOCUMENTARY EVIDENCE**

SR. NO.	DESCRIPTION OF DOCUMENTS	EXH.
1	Original Agreement for Sale of Machinery executed between the Plaintiff Firm and the Defendants.	107
2	Original Agreement executed towards recovery/adjustment of the outstanding amount due in respect of the machinery.	108
3	Original Deed of Sale executed by the Defendants in favour of the Plaintiff Firm in respect of Office Nos. 11 to 13 situated in Ramsha Tower, together with the possession receipt.	109
4	Original cheques bearing Nos. 131273,	110,112,

	131272, 131271, 131270 and 131269, respectively, drawn on The Surat People's Co-operative Bank Ltd., issued by the Defendants in favour of the Plaintiff Firm.	114, 116 & 118
5	Original bank return memos evidencing the dishonour/return of the aforesaid cheques.	111,113, 115,117 & 119
6	Original receipts executed by the Defendants acknowledging receipt of money from the Plaintiff Firm.	120 to 124
7	Original deposit slips of Akhand Anand Co-operative Bank Ltd.	125 to 129
8	Original correspondence/letters addressed by the Defendants to the Plaintiff Firm.	130 to 141
9	Original correspondence/letters addressed by the Plaintiff Firm to the Defendants.	142 to 149
10	Original Partnership Deed of the Plaintiff Partnership Firm.	150
11	Original Delivery Challans bearing Nos. 114 and 115/2000-01, issued by the Defendants to the Plaintiff Firm.	151 & 152
12	Computer-generated copies of the tender plans supplied by the Defendants to the Plaintiff Firm.	153 & 154
13	Certified copy of the order passed in connection with the application relating to the muddamal (case property) in Criminal Case No. 322/02 pending before the Court of the learned Chief Metropolitan Magistrate, Ahmedabad.	155
14	Original receipts evidencing payment of rent by the Plaintiffs for the godown hired for storing the suit machinery.	156 to 278 & 317 to 324

15	Original receipts evidencing payment of tractor hire charges and labour charges incurred by the Plaintiffs for shifting the suit machinery to the godown.	279 to 296
16	Original salary/payment receipts issued to the watchman engaged for providing security at the said godown.	297 to 316
17	Original Leave and Licence Agreements executed by Bhaktiben Jayeshbhai Thakkar and Jayeshbhai Ishwarlal Thakkar, respectively, in favour of Mr. Padamshibhai G. Patel and others, in respect of letting out the godown on licence.	325 & 326

(5) The defendants have produced below mentioned oral as well as documentary evidence to defend the suit:

(A) **ORAL EVIDENCE**

SR. NO.	DESCRIPTION	EXH.
1	Deposition of defendant no.3 Chandulal Manilal Panchal	391
2	Deposition of Witness of Defendant No.3 - Mr. Firozkhan Sharifkhan Pathan.	526

(B) **DOCUMENTARY EVIDENCE**

SR. NO.	DESCRIPTION OF DOCUMENTS	EXH.
1	Letter regarding acceptance of the tender of Defendant No. 3 by Defendant No. 1.	395
2	Original bills Nos. 1 to 17 for the	396,

	machinery purchased by Defendant No. 1 from Defendant No. 3.	399, 402, 405, 408, 411, 414, 417, 420, 423, 426, 427, 429, 432, 435, 438, 441 & 444
3	Delivery slips Nos. 1 to 17.	397, 400, 403, 406, 409, 412, 415, 418, 421, 424, 427, 430, 433, 436, 439, 442 & 445
4	Original transport receipts.	398, 401, 404, 407, 410, 413, 416, 419,

		422, 425, 428, 431, 434, 437, 440, 443 & 446
5	Bills Nos. 1 to 4 and delivery slips Nos. 1 to 4 issued by Defendant No. 3 to Defendant No. 1.	447, 448, 450, 451, 453, 454, 456 & 457
6	Original transport receipts relating to delivery of goods to Defendant No. 1.	449, 452, 455 & 458
7	Original Dena Bank cheques bearing Nos. 659969, 663702, 659971, 659974, 659973 and 659972 issued by Defendant No. 1 to Defendant No. 3, for different amounts.	459, 462, 465, 468, 471 & 474
8	Memoranda issued by Dena Bank, Surat Branch and Ahmedabad Branch regarding the said cheques being returned unpaid due to non-acceptance.	460, 461, 463, 464, 466, 467, 469, 470, 472, 473, 475 & 476
9	Certified copies of criminal cases filed by Defendant No. 3 against Defendants Nos. 1 and 2 before the Hon'ble Chief Metropolitan Magistrate, Ahmedabad, being Criminal Case Nos. 1719/2001	477, 479, 481 & 483

	to 1723/2001 respectively.	
10	Copies of the daily proceedings (Rojkam) of the said cases.	478, 480, 482 & 484
11	List of outstanding debtors maintained in the books of Defendant No. 3 for the years 2001 to 2003.	485 to 487
12	Account statements of Defendant No. 1 maintained in the books of Defendant No. 3 for the period from the year 1999-2000 to 2002-2003.	488 to 491
13	Certified copies of FIR No. 7/01 registered by CID Crime, Gandhinagar against Defendant No. 3, as well as the certified copy of the complaint filed by Defendant No. 2 against Padmashibhai Gordhanbhai.	492 & 493

(6) The Ld. Trial Court vide Exh.99 has framed below mentioned issues:

(1) શું વાદીઓ સાબિત કરે છે કે, વાદી નં.૧ ભાગીદારી પેઢી ભાગીદારી કાયદાની કલમ ૬૯ મુજબ નોંધાયેલી છે અને વાદી નં. ૨ થી ૨૦ ના તેના કાયદેસરના ભાગીદારો છે ?

(2) શું વાદીઓ સાબિત કરે છે કે, તેઓએ પ્રતિવાદી નં.૧, ૨ નાને દાવા અરજીના પેરા-૩ માં જણાવ્યા મુજબના વ્યવહારો અંગે રૂા. ૧,૧૦,૯૪, ૧૦૮/- તથા ટેન્ડર ફી પેટે રૂા.૧૫,૫૨૪/- પુરા જુદા જુદા ચેકથી ચુકવી આપેલા છે?

(3) શું વાદીઓ સાબિત કરે છે કે, પ્રતિવાદી નં.૧, ૨

નાએ પોતાનો પ્રોજેક્ટ રદ કરેલ હોવાથી વાદીઓએ ચુકવેલ રકમ પરત આપવાનું નકકી કરી, પ્રતિવાદી નં.૧, ૨ નાએ દાવા અરજીના પેરા–૩ માં જણાવેલા પાંચ ચેકો જુદી જુદી રકમના વાદીઓને આપ્યા હતા?

(4) શું વાદીઓ સાબિત કરે છે કે, પ્રતિવાદી નં.૧, ૨ નાએ તેઓને તા. ૧૪–૯–૨૦૦૦ તથા ૧૫–૧૨–૨૦૦૦ ના બે વેચાણ કરારો લખી આપ્યા હતા ?

(5) શું વાદીઓ સાબિત કરે છે કે, આ કરારોથી પ્રતિવાદી નં.૧, ૨ નાએ મશીનરીઓનો માલિકી હકક પ્રત્યક્ષ કબજો ભોગવટો વાદીઓને સુપ્રત કરી દીધેલો છે ?

(6) શું પ્રતિવાદી નં. ૨ ના સાબિત કરે છે કે, પ્રતિવાદી નં.૧ સંસ્થા મુંબઈ સાર્વજનિક ટ્રસ્ટ હેઠળ નોંધાયેલ ટ્રસ્ટ છે ?

(7) શું પ્રતિવાદી નં. ૩ ના સાબિત કરે છે કે, દાવાવાળી તકરારી મશીનરીના તેઓ કાયદેસરના માલિક છે ?

(8) શું પ્રતિવાદી નં. ૩ ના સાબિત કરે છે કે, વાદીઓ તથા પ્રતિ. નં.૧, ૨ નાએ મેળાપીપણામાં મશીનરી વેચાણ કરારો તા. ૧૪–૯–૦૦ તથા ૧૫–૧૨–૦૦ વાળા પ્રતિ. નં.૩ ને આર્થિક નુકશાન પહોંચાડવા ઉપજાવી કાઢેલા છે ?

(9) શું વાદીઓ દાવામાં માંગ્યા મુજબની દાદો પ્રતિ. નં.૧, ૨ વિરૂધ્ધ મેળવવા હકકદાર છે ?

(10) શું હુકમ અને શું હુકમનામુ ?

(7) Ld. Trial Court has answered the said issues as under:

(1) હકારમાં

(2) હકારમાં

(3) હકારમાં

(4) હકારમાં

(5) હકારમાં

(6) નકારમાં

(7) નકારમાં

(8) નકારમાં

(9) હકારમાં

(10) આખરી હુકમ મુજબ.

(8) The appellant has mainly contended in this appeal which can be succinctly stated as under :-

(A) It is submitted that the respondents/original plaintiffs instituted Regular Civil Suit No.290 of 2001 claiming that Plaintiff No.1 is a registered partnership firm and Plaintiffs Nos.2 to 20 are its partners. The suit was based on an alleged tender awarded by Defendant Nos.1 and 2 for construction of "CPDO Residence Colony" and on the subsequent cancellation of the project. The plaintiffs further alleged that, in lieu of the amount allegedly payable to them, Defendant

Nos.1 and 2 executed notarized sale agreements in respect of industrial air compressor machinery and three commercial offices and delivered possession thereof to the plaintiffs. On the basis of such alleged transactions, the plaintiffs sought declaration and permanent injunction restraining the defendants from interfering with their possession. The Ld. Trial Court decreed the suit and granted permanent injunction in favour of the plaintiffs. The appellants submit that the judgment and decree dated 30.08.2014 passed in Regular Civil Suit No.290 of 2001 are contrary to law, contrary to the evidence on record, and therefore liable to be set aside.

(B) It is submitted that the Ld. Trial Court committed a serious error in holding that Plaintiff No.1 is a duly registered partnership firm under Section 69 of the Indian Partnership Act, 1932. The plaintiffs failed to produce and prove the certified copy of the registration certificate issued by the Registrar of Firms. The xerox copy produced on record was never exhibited or proved in accordance with law, and the original registration certificate was merely placed on record at the stage of judgment without obtaining permission of the Court or proving the document through admissible evidence. In absence of proof of registration, the suit itself was not maintainable under Section 69 of the Partnership Act. The learned Trial Court failed to appreciate the statutory bar and the binding legal authorities cited by the appellants and wrongly decided Issue No.1 in favour of the plaintiffs.

(C) It is submitted that the respondents/plaintiffs failed to establish payment of the alleged Security Deposit, Earnest Money Deposit and other amounts. Though certain receipts were produced, the plaintiffs failed to prove that the amounts covered by the alleged cheques were actually credited to or received by Defendant No.1. The plaintiffs deliberately failed to produce their books of account, bank statements, income tax records or any other primary documentary evidence to establish payment. The witness examined by the plaintiffs admitted during cross-examination that the receipts were neither prepared nor signed in his presence and that he had no personal knowledge regarding the transactions. The persons who allegedly prepared the receipts were also not examined. Therefore, the receipts were not legally proved and mere exhibition of the documents did not amount to proof of their contents. Consequently, the findings recorded by the learned Trial Court on Issues Nos.2 and 3 are contrary to the evidence on record.

(D) It is submitted that the learned Trial Court failed to appreciate that the plaintiffs had not produced the original tender documents, tender conditions, acceptance letter, cancellation documents or any admissible evidence to establish that any construction contract was awarded in their favour or that the project was subsequently cancelled. The plaintiffs' witness admitted in cross-examination that he was unaware of the survey number of the project land, had never visited the site and had no personal knowledge of the tender conditions. In absence of any reliable evidence proving the tender transaction, cancellation of the project or issuance of post-dated cheques, the entire foundation of the plaintiffs' claim remained unproved. Nevertheless, the learned Trial Court erroneously held Issue No.3 in favour of the plaintiffs.

(E) It is submitted that the alleged settlement agreements dated 14.09.2000 and

15.12.2000, as well as the alleged delivery challans relied upon by the plaintiffs, were not executed on proper stamp papers and were not proved in accordance with law. Neither the attesting witnesses nor the concerned Notary Public before whom the documents were allegedly notarized were examined. The plaintiffs also failed to establish the execution and authenticity of the said agreements. The evidence further disclosed that the business of Plaintiff No.1 was construction activity and not trading in industrial air compressor machinery. The plaintiffs admitted that they had never purchased or dealt with such machinery earlier. These circumstances clearly indicate that the alleged agreements were subsequently created to support a false claim. The learned Trial Court committed a serious error in relying upon such inadmissible and unproved documents while deciding Issues Nos.4 and 5 in favour of the plaintiffs.

(F) It is submitted that the learned Trial Court failed to appreciate that the industrial air compressor machinery belonged exclusively to Appellant/Original Defendant No.3. Defendant Nos.1 and 2 never disputed the ownership of Appellant No.3 over the machinery. Even the plaintiffs' own witness admitted in cross-examination that Defendant Nos.1 and 2 had originally purchased the machinery from Appellant No.3. The appellants produced purchase bills, invoices, transport receipts and books of account proving their ownership. The machinery was also the subject matter of criminal proceedings instituted by Appellant No.3 before the CID Crime Branch, Gandhinagar, in FIR No.7 of 2001 registered for offences under Sections 406, 419, 420, 467, 468, 120-B and 34 of the Indian Penal Code. The charge-sheet was filed before the learned Chief Metropolitan Magistrate, Ahmedabad, and the machinery was ordered to be seized as muddamal. Being case property in pending criminal proceedings, the machinery could not have been legally transferred or sold. The learned Trial Court ignored these undisputed facts and wrongly rejected the defence of Appellant No.3.

(G) It is submitted that the learned Trial Court failed to consider several material admissions and documentary evidence produced by the appellants. The plaintiffs admitted that they had already recovered substantial amounts from Defendant Nos.1

and 2, including cash payment of approximately Rs.54,00,000/-, possession of Vrindavan Bungalow, a Maruti Zen motor car, National Savings Certificates, Kisan Vikas Patra and three commercial offices. Despite recovering substantial assets, the plaintiffs wrongfully retained possession of machinery belonging to Appellant No.3. The learned Trial Court further ignored the complaint made by Defendant No.2 to the Hon'ble Chief Justice of the Gujarat High Court alleging that the plaintiffs had forcibly taken possession of the machinery. The statements made by the plaintiffs before the police also disclosed that the machinery had initially been taken only as security and not under any sale transaction, thereby rendering the alleged sale agreements highly doubtful. The suit was therefore devoid of any valid cause of action and was liable to be dismissed.

(H) Hence, the appellants/original defendants, being aggrieved and dissatisfied with the judgment and decree dated 30.08.2014 passed by the learned 9th Additional Senior Civil Judge, Surat, in Regular Civil Suit No.290 of 2001, have preferred the present First Appeal. The appellants respectfully pray that the impugned judgment and decree granting declaration and permanent injunction in favour of the respondents/original plaintiffs be quashed and set aside, the suit be dismissed with costs, the entire record and proceedings of Regular Civil Suit No.290 of 2001 be called for, and such other and further reliefs as this Hon'ble Court may deem fit in the interest of justice be granted in favour of the appellants.

(9) Pursuant to the filing of the present Appeal, notice was issued upon the Respondents/Plaintiffs of the present suit, pursuant to which the Respondents appeared before this Court. This Court has also called for Record and Proceedings from the Ld. Trial Court.

SUBMISSIONS OF THE APPELLANTS / DEFENDANTS

(10) Ld. Advocate for the Plaintiff has vehemently argued the matter at length and has also submitted his written arguments vide Exh.150, on following points which are as under :

(A) It is respectfully submitted that the Learned Trial Court has committed a serious error in deciding Issue No.1 in favour of the respondents/plaintiffs. The burden of proving that respondent No.1 is a duly registered partnership firm under Section 69 of the Indian Partnership Act, 1932 and that respondent Nos.2 to 20 are its lawful partners was entirely upon the respondents/plaintiffs. However, no Registration Certificate issued by the Registrar of Firms was duly exhibited or proved in accordance with law. The Trial Court merely recorded the production of the document without granting permission to exhibit the same, and no exhibit number was assigned. Therefore, such document could not legally have been relied upon while deciding the suit.

(B) It is submitted that the Learned Trial Court failed to appreciate that mere production of the partnership deed at Exh.150 cannot establish that the partnership firm was duly registered under the Partnership Act. Existence of a partnership deed and registration of the partnership are two distinct legal requirements. In absence of proof of registration, the suit itself was barred under Section 69 of the Indian Partnership Act, 1932, as the relief claimed arises out of contractual rights.

(C) It is submitted that the respondents/plaintiffs instituted the suit seeking declaration and permanent injunction solely on the basis of alleged Sale Agreements dated 14.09.2000 and 15.12.2000 (Exh.107 and Exh.108). Since the suit seeks enforcement of contractual rights, registration of the partnership firm was a mandatory pre-condition. Therefore, the suit itself was not maintainable in law and ought to have been dismissed without entering into the merits of the dispute.

(D) It is submitted that the Learned Trial Court has wrongly decided Issue Nos.2 and 3 in favour of the respondents/plaintiffs. The respondents alleged payment of Rs.1,10,94,108/- and tender fees through various cheques to original defendant Nos.1 and 2. However, no bank statements, books of accounts, ledger entries, or documentary evidence proving encashment of the said cheques were produced before the Trial Court. Mere production of receipts (Exh.120 to Exh.124) does not establish actual payment.

(E) It is submitted that the Learned Trial Court failed to appreciate the settled principle of law that mere exhibition of a document does not amount to proof of its contents. The respondents neither proved execution of the receipts nor examined the material witnesses connected with the alleged transactions. Consequently, the Trial Court ought to have drawn an adverse inference against the respondents for withholding the best evidence.

(F) It is submitted that respondent witness Shri Pravinbhai Nagjibhai Patel, in his cross-examination, admitted that the receipts at Exh.120 to Exh.124 were not executed in his presence. He further admitted that one Naranbhai was present during execution of the receipts, yet the respondents deliberately failed to examine the said material witness. The respondents also failed to produce books of accounts, Income Tax Returns, bank statements or any corroborative documentary evidence. The Trial Court ignored these material deficiencies.

(G) It is submitted that the respondents also failed to prove that any tender had in fact been awarded by original defendant No.1. No tender documents, acceptance letters or contractual records were produced. The witness admitted ignorance regarding the survey number, location and conditions of the alleged project. Thus, Issue No.3 was not proved.

(H) It is submitted that the Learned Trial Court has erred in deciding Issue No.4 in favour of the respondents. The alleged Sale Agreements dated 14.09.2000 and 15.12.2000 were fabricated documents created subsequently in collusion with original defendant No.2 to defeat the rights of the present appellant. The appellant consistently pleaded that original defendant No.2 had been illegally detained, assaulted and compelled to execute such documents.

(I) It is submitted that original defendant No.2 had already lodged a complaint before the Police Commissioner, Surat on 30.11.2000 against the respondents. Therefore, it is wholly improbable that within fifteen days thereafter he would voluntarily execute another sale agreement in favour of the very persons against whom he had lodged criminal complaints. The Trial Court failed to consider this important circumstance.

(J) It is submitted that the appellant had also lodged a criminal complaint against original defendant No.2 on 14.06.2001 alleging offences of cheating and fraud regarding Air Compressors No.188. A criminal case came to be registered by CID Crime Branch, Gujarat and charge-sheet was filed before the

Chief Metropolitan Magistrate, Ahmedabad. During investigation, the learned Magistrate directed seizure of the disputed air compressors as muddamal. These facts establish the appellant's ownership and possession over the machinery, yet the Trial Court ignored the same.

(K) It is submitted that the respondents intentionally did not implead the present appellant as a party at the initial stage despite full knowledge of the appellant's claim and the pending criminal proceedings. The appellant was subsequently joined as defendant No.3 only after filing an application under Order I Rule 10 CPC. Such conduct demonstrates suppression of material facts and lack of bona fides.

(L) It is submitted that the Learned Trial Court failed to appreciate that the appellant had produced documentary evidence showing purchase of the disputed Air Compressors from original defendant Nos.1 and 2 and had also produced evidence of pending criminal proceedings wherein the competent criminal court recognized the appellant's ownership sufficiently to direct seizure of the machinery. Therefore, Issue No.7 ought to have been decided in favour of the appellant.

(M) It is submitted that the respondents failed to examine the concerned Notary Public before whom the alleged Sale Agreements were notarized. Had the Notary been examined, the register maintained by him would have disclosed the true facts regarding execution and date of notarization. Non-examination of this crucial witness warranted an adverse inference against the respondents.

(N) It is submitted that the respondents are builders engaged in construction business. Air compressors are not ordinarily required in their line of business. The alleged purchase of as many as 188 air compressors at an abnormally low consideration is inherently improbable and unbelievable. The Trial Court failed to consider this material circumstance.

(O) It is submitted that even assuming, without admitting, that original defendant Nos.1 and 2 had transferred the machinery, they had no valid title to convey. Since the machinery was the subject matter of criminal proceedings involving allegations of cheating and misappropriation, no valid title could pass to the respondents. The settled principle of law is that no person can transfer a better title than he himself possesses.

(P) It is submitted that the respondents themselves made contradictory statements regarding possession of the machinery. Before the police, respondent Padmashibhai Gordhanbhai Mordiya admitted that the machinery had been taken only as "deposit", whereas before the Civil Court he claimed absolute ownership through the alleged sale agreements. Such inconsistent stands materially affect the credibility of the respondents' entire case.

(Q) It is submitted that statements made by the respondents before the police during investigation were legally admissible for the purpose of contradiction in civil proceedings. The Trial Court failed to appreciate these admissions while evaluating the evidence.

(R) It is submitted that the Learned Trial Court has wrongly decided Issue No.5 in favour of the respondents. Since execution and validity of the alleged Sale Agreements themselves were not proved, the respondents failed to establish lawful possession or delivery of the disputed machinery. Consequently, no declaration or injunction could have been granted in their favour.

(S) It is submitted that the Learned Trial Court has also erred in deciding Issue No.8 against the appellant. The appellant successfully established that the alleged Sale Agreements were fabricated and created in collusion between the respondents and original defendant Nos.1 and 2 to defeat the appellant's proprietary rights over the machinery and to avoid the consequences of the pending criminal proceedings.

(T) It is submitted that the Learned Trial Court ignored the documentary evidence, admissions, criminal proceedings, and settled principles of evidence and partnership law while recording findings on the issues. The findings recorded by the Trial Court are contrary to the evidence on record and settled legal principles, and therefore suffer from serious errors of law and fact.

(U) It is submitted that the judgment and decree passed by the Learned Trial Court are illegal, perverse, contrary to the evidence on record, and opposed to the provisions of the Indian Partnership Act, the Indian Evidence Act, the Code of Civil Procedure, and settled judicial precedents. The impugned judgment and decree therefore deserve to be quashed and set aside.

(V) Hence, the appellant/defendant, being aggrieved and dissatisfied with the Judgment and Decree passed by the Learned Trial Court dated 30.08.2014, has preferred the present appeal praying that the impugned judgment and decree be set aside, the suit filed by the respondents/plaintiffs be dismissed with costs, and such other and further reliefs as this Hon'ble Court deems fit in the interest of justice be granted.

(11) Ld. Advocate for the Plaintiff has following Authorities which are as under :

SR. NO.	AUTHORITY
1	1993(1) G.L.H. 767
2	AIR 2009 CALCUTTA 164
3	AIR 2017 SC (CIVIL) 2014 (FROM: AIR 2014 KAR 21)*:: AIR 2017 SC 2945: 2017 AIJEL_SC 60509
4	2009 (2) G.L.H. 11
5	AIR 2016 PUNJAB AND HARYANA 187
6	AIR 1989 ALLAHABAD 130
7	1999 (2) G. L. H. 564
8	2016 (4) GLR 3204
9	2013 LawSuit(Guj) 600:: 2013 (0) AIJEL-HC 229647.
10	AIR 2007 SUPREME COURT 2025 = 2007 AIR SCW 3060
11	AIR 2013 (NOC) (SUPP) 34 (RAJ.)
12	AIR 2009 (NOC) 548 (H.P.)
13	AIR 1968 SUPREME COURT 1413
14	1988(2) GLR 925
15	AIR 1964 AP 198 : 1963 ANDHWR-2-485 :

	1964 (TLS) 404005
16	AIR 1981 SC 1068

SUBMISSIONS OF THE RESPONDENTS / PLAINTIFFS

(12) Ld. Advocate for the Respondent Nos. 1 to 9, 11 to 17, 19 and 20 has vehemently argued the matter at length and has also submitted his written arguments vide Exh.159, on following points which are as under :

(A) Ld. Advocate has vehemently opposed the present Appeal and submitted that the Appeal is wholly misconceived, untenable both in law and on facts, and deserves to be dismissed with costs.

(B) It is submitted that the original Special Civil Suit was instituted by Respondent Nos. 1 to 20 only against Original Defendant Nos. 1 and 2 (present Respondent Nos. 21 and 22), and no relief whatsoever was claimed against the present Appellant. The Appellant was subsequently impleaded as Defendant No. 3 only pursuant to an application under Order I Rule 10 of the Code of Civil Procedure. The Appellant neither filed any independent suit nor preferred any counterclaim against the plaintiffs or against Defendant Nos. 1 and 2.

Therefore, the Appellant has no legal right or *locus standi* to challenge the decree passed by the Trial Court.

(C) It is further submitted that Respondent Nos. 1 to 20 had deposited an aggregate amount of Rs.1,10,94,108/- towards security deposit and earnest money, besides tender fees, with Defendant Nos. 1 and 2 pursuant to the proposed C.P.D.O. Residency Colony project at Village Ichhapore-Kavas, Surat. After cancellation of the said project by Defendant Nos. 1 and 2, they acknowledged their liability to refund the amount and issued five cheques in favour of the plaintiffs. However, payment of all the cheques was stopped by the drawers, compelling the plaintiffs to institute the suit.

(D) It is submitted that Defendant Nos. 1 and 2 thereafter executed two written agreements dated 14.09.2000 and 15.12.2000 in favour of the plaintiffs and, in consideration of the outstanding liability, transferred ownership and delivered possession of 166 Air Compressor Machines together with certain movable and immovable properties to the plaintiffs. The original agreements, receipts, delivery challans, dishonoured cheques and bank return memos were duly produced and proved before the Trial Court. Consequently, the plaintiffs became lawful owners and possessors of the machinery.

(E) It is further submitted that the Appellant had independently sold the said machinery to Defendant Nos. 1 and 2 and had voluntarily handed over possession thereof. Any dispute regarding unpaid sale consideration is exclusively between the Appellant and Defendant Nos. 1 and 2. There exists no privity of contract whatsoever between the Appellant and the plaintiffs. The Appellant never instituted any civil proceedings for recovery of the alleged balance sale consideration against Defendant Nos. 1 and 2 within the period of limitation and, therefore, cannot now assert any title or claim over the machinery in the hands of the plaintiffs.

(F) It is submitted that a Court Commissioner was appointed under Order XXVI Rule 9 of the Code of Civil Procedure, who inspected the site, verified the physical possession of the machinery and submitted a detailed report confirming that the machinery was in the lawful possession of the plaintiffs. The documentary as well as oral evidence led by the plaintiffs conclusively established their ownership and possession over the suit machinery.

(G) It is further submitted that although Defendant Nos. 1 and 2 filed their written statement, they failed to enter the witness box, failed to subject themselves to cross-examination and failed to substantiate the allegations made in their defence. Consequently, an adverse inference was rightly drawn against them. On the contrary, the plaintiffs examined their witnesses, proved all documentary evidence including the agreements, receipts, delivery challans, bank documents and partnership records, and successfully established every material issue framed by the Trial Court.

(H) It is submitted that the Appellant also failed to prove its defence. The oral evidence of the Appellant's witness and the documentary evidence produced by the Appellant do not establish any subsisting ownership over the machinery. The Appellant merely attempted to rely upon alleged unpaid consideration and criminal proceedings initiated against Defendant Nos. 1 and 2, which cannot confer any proprietary right over the machinery already sold and delivered.

(I) It is further submitted that the contention raised by the Appellant regarding nonregistration of the plaintiffs' partnership firm is wholly misconceived. The partnership firm of the plaintiffs was duly registered under the Indian Partnership Act prior to institution of the suit, and the Registration Certificate was produced on record. The Trial Court rightly considered the said evidence while deciding Issue No. 1 in favour of the plaintiffs. Hence, the objection under Section 69 of the Partnership Act is devoid of merit.

(J) It is also submitted that the various judicial precedents relied upon by the Appellant are distinguishable on facts and are not applicable to the present case. On the contrary, the authorities relied upon by the respondents fully support the findings recorded by the Trial Court, particularly regarding admissibility and appreciation of evidence, adverse inference against parties who abstain from entering the witness box, maintainability of suits by registered partnership firms, absence of *locus standi*, and transfer of ownership under the Sale of Goods Act, 1930.

(K) It is further submitted that under Sections 19, 20 and 55 of the Sale of Goods Act, 1930, once the goods were sold and possession was delivered by the Appellant to Defendant Nos.

1 and 2, and thereafter lawfully transferred to the plaintiffs under valid agreements accompanied by delivery, the plaintiffs acquired valid ownership over the machinery. If any sale consideration remained unpaid, the Appellant's remedy was only to institute appropriate proceedings against Defendant Nos. 1 and 2 for recovery of money and not to claim ownership or possession of the machinery from the plaintiffs.

(L) It is therefore submitted that the learned Trial Court has passed a detailed, well-reasoned and speaking judgment after appreciating the entire oral and documentary evidence on record, correctly deciding all the issues in favour of the plaintiffs. The findings recorded by the Trial Court are legal, proper and based on cogent evidence and do not suffer from any perversity, arbitrariness or illegality warranting interference by this Hon'ble Court.

(M) Hence, upon all such grounds, it is respectfully prayed that the present Appeal be dismissed with exemplary costs and that the judgment and decree passed by the Ld. Trial Court be confirmed.

(13) Ld. Advocate for the Respondents have following Authorities which are as under :

SR. NO.	AUTHORITY
1	A.I.R. 1971 S.C. (H.N.- A & B)
2	A.I.R. 1978 NOC 100 (All.) (H.N.-B)
3	2002 (1) G.L.H. (Head Note A)
4	1992 (2) G.C.D. S.C.(Head Note A)
5	2010 (3) G.L.R. (Head Note B)
6	2010 (4) S.B.R.
7	A.I.R. 1978 Delhi (H.N. A & B)
8	A.I.R. 2018 Jharkhand
9	The sale of Goods Act.

(14) I have heard the Ld. Advocate for the parties, perused the entire record and proceedings of the Ld. Trial Court and the impugned order passed by the Ld. Trial Court. Upon perusal of the same the following issues arises for my consideration :

(1) Whether the Respondents (original plaintiffs) point out that they proved before the trial court that Plaintiff No. 1 is a legally registered partnership firm under Section 69 of the Indian Partnership Act, 1932, and that Plaintiffs No. 2 to 20 are its lawful, registered partners?

(2) Whether the Respondents (original plaintiffs) point out that they proved bere the trial court that they paid a total amount of Rs.1,10,94,108/- towards security deposits for the real estate project, and Rs.15,524/- towards tender fees, to

Defendants No. 1 and 2 through various bank cheques?

(3) Whether the Respondents (original plaintiffs) point out that that they proved before trail court that after cancelling the "CPDO Residence Colony" project, Defendants No. 1 and 2 agreed to refund the advanced money and issued five refund cheques, which were subsequently dishonored due to bad-faith "Stop Payment" instructions?

(4) Whether the Respondents (original plaintiffs) point out that that they proved before trial court that, in order to clear the outstanding debt, Defendants No. 1 and 2 willingly and validly executed two notarized sale agreements in their favor on 14-09-2000 and 15-12-2000?

(5) Whether the Respondents (original plaintiffs) point out that that ,they proved valid transfer of ownership of machinery before trial court by virtue of these notarized sale agreements and delivery challans, Defendants No. 1 and 2 legally transferred the ownership rights and handed over actual, physical possession of the disputed machinery and commercial offices to the plaintiffs?

(6) Whether Apellent point out that their institution is a registered public trust, and therefore, the present civil suit filed against them is legally barred or not maintainable?

(7) Whether the Appellant (Original

Defendant No. 3) point out that they proves that he remains the absolute and lawful owner of the disputed compressor machinery, despite having already delivered them to Defendants No. 1 and 2?

(8) Whether the Appellant (Original Defendant No. 3) successfully point out that he proves that the plaintiffs and Defendants No. 1 and 2 colluded together to forge and fabricate the machinery sale agreements (dated 14-09-2000 and 15-12-2000) to cause him financial loss?

(9) Whether the judgment and decree passed by the Ld. Trial Court suffers from any legal error, perversity, or incorrect appreciation of evidence that requires interference by this Appellate Court, and what final order or decree should be passed?

(15) My findings on the aforesaid issues are as under:-

(1) In Affirmative

(2) In Affirmative

(3) In Affirmative

(4) In Affirmative

(5) In Affirmative

(6) In Negative

(7) In Negative

(8) In Negative

(9) As per final order.

FINDINGS AND ANALYSIS

(16) **Issue No1.:** The appellants have contended that the Ld. Trial Court erred in holding that Plaintiff No. 1 is a duly registered partnership firm and in relying upon the certified copy of the Registration Certificate (Form-G), as the said document was not assigned an exhibit number. Upon careful consideration of the submissions advanced by the Ld. advocates for both the parties and on re-appreciation of the entire oral and documentary evidence on record, this Court finds no merit in the said contention. It is well settled that Section 69(2) of the Indian Partnership Act, 1932, creates a mandatory bar against an unregistered partnership firm instituting a suit to enforce a right arising out of a contract against a third party, and therefore the burden was upon the plaintiffs to establish that Plaintiff No. 1, namely "Fine Build Corporation", is a duly registered partnership firm. The record of the Trial Court reveals that the plaintiffs produced the original Partnership Deed commencing from Mark-151 onwards and also placed on record, by way of a pursis, a certified copy of the Registration Certificate (Form-G) issued by the office of the Registrar of Firms bearing the official seal and certification of the

competent authority. Under the provisions of the Indian Evidence Act, a certified copy of a public document is admissible in evidence to prove the contents of the original public record without requiring production of the original, and therefore the certified copy of the Registration Certificate was legally admissible in evidence. Merely because the Ld. Trial Court omitted to assign a formal exhibit number to the said document does not render it inadmissible or deprive it of its evidentiary value, as such omission is only a procedural irregularity and cannot override the substantive provisions governing admissibility of evidence. Once the certified copy had been brought on record and its authenticity was never disputed or rebutted by the defendants, the learned Trial Court was fully justified in placing reliance upon the same. The documentary evidence is further fortified by the oral testimony of Plaintiff No. 2, Shri Pravinbhai Nagjibhai Patel, vide Exh.-100, who categorically deposed that the Partnership Deed was executed by partners Nos. 1 to 19 in the presence of their advocate, Shri C. P. Shah, and that the partnership firm was duly registered before the Registrar of Firms. His testimony is duly corroborated by the evidence of independent witness Shri Rameshbhai Savjibhai Patel, vide Exh.-358, as well as partner Shri Padamsinh Gordhanbhai Mordiya, vide Exh.-359, both of whom supported the plaintiffs' case regarding the execution of the Partnership Deed and registration of the firm. It is further significant that despite an extensive cross-examination of Plaintiff No.2 extending from pages 25 to 61 of his deposition, the defendants failed to elicit any material contradiction, omission or admission capable of discrediting his testimony. No oral or documentary evidence whatsoever has been adduced by the defendants to establish that Plaintiff No. 1 was not a registered partnership firm or that the Registration Certificate produced by the plaintiffs was fabricated, invalid or otherwise not genuine. Thus, the oral and documentary evidence led by the plaintiffs has remained unshaken and conclusively establishes that Plaintiff No.1 is a duly registered partnership firm carrying on business under the name and style of "Fine Build Corporation". The learned Trial Court has, therefore, rightly appreciated the evidence in its proper perspective and correctly held that the suit is not barred by Section 69(2) of the Indian Partnership Act, 1932. This Court finds no illegality, perversity or infirmity in the finding recorded by the learned Trial Court on Issue No. 1, and the same deserves to be affirmed. Accordingly, Issue No. 1 is answered in the **Affirmative**.

(17) **Issue No2.:**The respondents (original plaintiffs) have successfully established, by leading cogent oral as well as documentary evidence, that they paid a sum of Rs.1,10,94,108/- towards the security deposit in respect of the real estate project and a further sum of Rs.15,524/- towards tender fees to Defendant Nos. 1 and 2. Plaintiff No. 2, Shri Pravinbhai Nagjibhai Patel, in his deposition vide Exhibit-100, categorically deposed on oath regarding the payment of the aforesaid amounts and stated that the security deposit and tender fees were paid pursuant to the tender floated by the defendants. His oral testimony is duly corroborated by the documentary evidence produced vide Exhibits-120 to 124, comprising the receipts issued by the defendants acknowledging receipt of the security deposit and tender fees from the plaintiffs. The plaintiffs have further produced the correspondence exchanged between the parties vide Exhibits-130 to 141, which unequivocally establishes that Defendant Nos. 1 and 2 had received an amount of Rs.1,10,94,108/- from the plaintiffs towards the security deposit in relation to the tender issued for execution of the construction project. The said correspondence clearly corroborates the plaintiffs' case that the aforesaid amount was received by the defendants as a security deposit pursuant to the tender process. The evidence on record further reveals that the aforesaid amounts of Rs.1,10,94,108/- towards the security deposit and Rs.15,524/- towards tender fees were paid by the plaintiffs to Defendant Nos. 1 and 2 through various bank cheques. Although Plaintiff No. 2 was subjected to extensive cross-examination by the appellants, nothing material could be elicited to discredit his testimony or to cast any doubt upon the genuineness of the documentary evidence produced by the plaintiffs. The appellants have also failed to adduce any rebuttal evidence to dispute either the payment or the receipt of the aforesaid amounts. Consequently, this Court is of the considered opinion that the Ld. Trial Court has rightly appreciated the oral and documentary evidence and correctly held that the plaintiffs had proved payment of Rs.1,10,94,108/- towards the security deposit and Rs.15,524/- towards tender fees to Defendant Nos. 1 and 2. Accordingly, Issue No. 2 is answered in the **Affirmative**.

(18) **Issue No3.:**The respondents (original plaintiffs) have further established their case through cogent documentary evidence. The agreements executed between the plaintiffs and the defendants have been produced on record vide Exhibits-107 and 108, which stand duly proved and exhibited. The plaintiffs have also produced the correspondence exchanged between the parties vide Exhibits-130 to 141, which clearly reveals that the defendants had received an amount of Rs.1,10,94,108/- from the plaintiffs towards the security deposit in respect of the project and, upon cancellation/non-execution of the contract, acknowledged their liability to refund the said amount. The said correspondence unequivocally establishes not only the receipt of the security deposit by the defendants but also their agreement and undertaking to repay the same to the plaintiffs. The appellants have contended that the transfer of the movable property was not legally valid. However, as discussed hereinabove while deciding Issue No. 4, the plaintiffs have satisfactorily established that the transfer of the movable property was lawful and valid. The agreements relating to the movable property were duly executed by the parties and duly notarised. The defendants have failed to prove that their signatures on the said agreements were obtained by force, coercion, fraud or undue influence. Mere bald allegations of coercion or fraud, unsupported by cogent, reliable and convincing evidence, cannot invalidate an otherwise validly executed agreement. In the absence of any satisfactory evidence establishing that the agreements were executed under coercion, fraud or undue influence, their validity and enforceability cannot be questioned. The plaintiffs have further produced on record the cheques vide Exhibits-110, 112, 114, 116 and 118, which conclusively corroborate that the defendants had issued the said cheques towards refund of the security deposit received from the plaintiffs in relation to the project contract. Upon an overall appreciation of the oral as well as documentary evidence available on record, this Court is satisfied that the plaintiffs have duly proved that, after the cancellation/non-execution of the project contract, the defendants acknowledged their liability to refund the security deposit and tender amount and, in discharge of the said liability, issued five cheques in favour of the plaintiffs. The Ld. Trial Court has rightly appreciated the evidence on record in arriving at the said conclusion, and no infirmity or perversity is found in the finding so recorded. Accordingly, Issue No.3 is answered in the **Affirmative**.

(19) **Issue No4.:**The appellants have vehemently contended that the transfer of the movable property in favour of the plaintiffs is not legally valid. This contention has been carefully considered and found to be devoid of merit. Upon examining the provisions of the Sale of Goods Act, 1930, this Court is of the opinion that the transfer of movable property, such as machinery, equipment and other movable assets, is not subject to the compulsory registration contemplated under Section 17 of the Registration Act, 1908, which applies to documents relating to immovable property. The transfer of movable property is governed by the provisions of the Sale of Goods Act, 1930.

Section 5 of the said Act provides that a contract of sale may be made in writing, orally or may be implied from the conduct of the parties, and registration of such contract is not a statutory requirement. Further, Sections 19 and 20 of the Sale of Goods Act provide that, in the case of specific or ascertained goods, the property in the goods passes to the buyer at such time as the parties intend it to pass, and such intention is to be gathered from the terms of the contract, the conduct of the parties and the surrounding circumstances. Mere postponement of payment or delivery does not, by itself, postpone the transfer of ownership where the parties have intended otherwise. Section 33 of the Act further recognises that delivery of goods may be actual, symbolic or constructive, and once such delivery is effected in accordance with the intention of the parties, the sale stands duly completed. It is also settled that notarisation of an agreement relating to the sale of movable property is not a statutory requirement for its validity but merely lends authenticity to its execution. The validity and enforceability of such an agreement are required to be tested on the touchstone of the provisions of the Indian Contract Act, 1872. A contract is legally enforceable if it is entered into by parties competent to contract, supported by lawful consideration, made with their free consent and not vitiated by coercion, undue influence, fraud or misrepresentation. In the present case, the agreements executed between the parties satisfy the essential requirements of the Indian Contract Act, 1872, and there is no cogent or reliable evidence on record to establish that the same were executed under coercion, fraud, undue influence or threat. Consequently, read in conjunction with the provisions of the Sale of Goods Act, 1930, and the Indian Evidence Act, the agreements constitute valid and legally enforceable contracts transferring ownership of the movable property in favour of the plaintiffs. The contention of the appellants that the transfer of the movable property is invalid is, therefore, rejected. Accordingly, Issue No. 4 is answered in the **Affirmative**.

(20) **Issue No5.:**The appellants have contended that the transfer of the movable property in favour of the plaintiffs was not legally valid. However, as discussed hereinabove while deciding Issue No. 4, the plaintiffs have successfully established the legality and validity of the said transfer. The agreements pertaining to the movable properties were duly executed between the parties and were notarised. The defendants have failed to produce any cogent, convincing or reliable evidence to establish that their signatures on the said agreements were obtained by exercising force, coercion, fraud or undue influence. It is well settled that a mere allegation of coercion, fraud or undue influence, without any supporting evidence, cannot invalidate an otherwise validly executed agreement. In the present case, except making bald allegations, the defendants have failed to discharge the burden of proving that the agreements were vitiated by any such circumstances. Therefore, in the absence of any satisfactory evidence demonstrating that the agreements were executed under force, coercion, fraud or undue influence, the validity and enforceability of the said agreements cannot be discarded merely on the basis of unsubstantiated allegations. Accordingly, the contention raised by the appellants regarding invalidity of the transfer of movable property deserves to be rejected. Accordingly, Issue No. 5 is answered in the **Affirmative**.

(21) **Issue No.6.:** The defendants No. 1 and 2, in their written statements, have taken a specific plea that they are a registered public trust and, therefore, the present civil suit instituted against them is not maintainable. However, once such a specific defence was raised by the defendants, the burden of proving the said fact squarely rested upon them. In view of the provisions contained in Sections 101 to 104 of the Indian Evidence Act, the party who asserts the existence of a particular fact is required to establish the same by leading appropriate evidence. In the present case, although the defendants claimed the status of a registered public trust, they failed to produce any cogent oral or documentary evidence in support thereof. The defendants neither entered the witness box nor examined any authorised person to prove their alleged status, nor did they produce any statutory document, such as a certified extract from the Trust Register or any registration certificate issued by the competent authority, to establish that they were, in fact, a registered public trust. It is a settled principle of law that pleadings do not constitute evidence and any fact pleaded by a party must be proved by leading admissible evidence. In the absence of any evidence to substantiate the plea regarding their status as a public trust, the said defence raised in the written statement remains a mere assertion without any legal consequence. The failure of the defendants to enter the witness box and to produce the best available evidence in their possession attracts the principle of adverse inference under Section 114(g) of the Indian Evidence Act, 1872, that if evidence which could have been produced by a party is withheld, the Court may presume that such evidence, if produced, would have been unfavourable to that party. Therefore, the Ld. Trial Court was justified in drawing an adverse inference against the defendants and in holding that the defendants failed to establish their alleged status as a registered public trust. Consequently, the objection regarding maintainability of the civil suit on the said ground is without any substance, and the suit instituted against Defendant Nos.1 & 2 is maintainable in accordance with law. Accordingly, Issue No. 6 is answered in the **Negative**.

(22) **Issues Nos. 7 and 8 involve common questions of fact and law and, therefore, are taken up and answered together as:** Defendant No. 3 has contended that he continued to remain the owner

of the machinery on the ground that Defendant Nos. 1 and 2, who had purchased the said machinery from him, failed to pay the entire sale consideration. The said contention, however, cannot be accepted. Under the provisions of the Sale of Goods Act, 1930, the passing of ownership in the goods depends upon the intention of the parties, and in the case of specific or ascertained goods, the property therein may pass to the buyer upon delivery in accordance with the terms of the contract, even though the whole of the sale consideration has not been paid. In the present case, Defendant No.3 himself has produced the delivery receipts on record, which clearly establish that he had voluntarily delivered possession of the machinery to Defendant Nos.1 & 2. Once the seller has parted with possession of the goods and the goods have thereafter been transferred to subsequent purchasers acting upon such delivery, the original seller cannot claim ownership over the goods merely on the ground of non-payment of the remaining sale consideration by the original purchaser. The remedy available to an unpaid seller is to recover the outstanding sale consideration from the purchaser and not to claim ownership over the goods after having voluntarily transferred possession thereof. Therefore, Defendant No.3 cannot assert continued ownership of the machinery merely because Defendant Nos.1 & 2 failed to discharge their payment obligations. Defendant No.3 has further alleged that the sale agreements executed in favour of the plaintiffs were fabricated and were the result of a conspiracy between the plaintiffs and Defendant Nos.1 & 2. However, such serious allegations have remained wholly unsubstantiated by any cogent, reliable or convincing evidence. The evidence of the police witness examined by Defendant No.3 does not establish any connection between the plaintiffs and the alleged acts of fraud, fabrication or misappropriation. Furthermore, the criminal proceedings initiated in relation to the said machinery did not culminate in any finding establishing the alleged conspiracy or fabrication, and the dispute was essentially found to be civil in nature relating to outstanding monetary liabilities. The sale agreements relied upon by the plaintiffs were duly notarised and bear the signatures of the concerned parties. Defendant No.3 has failed to produce any handwriting expert's opinion or any other satisfactory evidence to dispute the genuineness of the signatures appearing on the said documents. Mere allegations of fabrication or forgery, without substantive proof, cannot discredit a duly executed document. The contention raised regarding discrepancies in the books of account of the plaintiff firm also does not assist Defendant No.3, as any alleged accounting omission or internal bookkeeping irregularity cannot, by itself, invalidate a written agreement whose execution and authenticity have otherwise been established through oral and documentary evidence. Upon an overall appreciation of the evidence available on record, this Court is of the considered opinion that Defendant No.3 voluntarily delivered possession of the machinery, failed to establish any subsisting right of ownership therein, and also failed to prove the allegations of fraud, conspiracy, fabrication or forgery levelled against the plaintiffs. Consequently, the defence raised by Defendant No.3 is devoid of merit and cannot be accepted. Accordingly, Issues Nos. 7 and 8 are answered in favour of the plaintiffs and against the defendants. Accordingly, Issue No. 7

& 8 are answered in the **Negative**.

(23) **Issue No. : 9,** Upon careful consideration of the entire evidence available on record and the submissions advanced by the Ld. advocates for the respective parties, this Appellate Court finds that the judgment and decree passed by the Ld. Trial Court in Regular Civil Suit No.290 of 2001 do not suffer from any illegality, perversity or error either on facts or in law warranting interference. The plaintiffs have successfully established their legal status as a duly registered partnership firm and have proved, through cogent oral and documentary evidence, that they had paid a substantial amount towards security deposit in connection with the real estate project undertaken by Defendant Nos.1 & 2, which project was subsequently not executed/cancelled. The plaintiffs have further established that, towards discharge of the liability arising from the said transaction, Defendant Nos.1 & 2 executed duly notarised agreements and delivery documents in favour of the plaintiffs, thereby transferring the ownership and possession of the concerned movable properties, including compressor machines and other assets, as well as the agreed commercial premises. The contention

of Defendant No.3 regarding subsisting ownership over the machinery is also without substance, as Defendant No.3 himself admitted and established through the delivery documents that he had voluntarily parted with possession of the machinery in favour of Defendant Nos.1 & 2. Under the provisions of the Sale of Goods Act, 1930, once possession of the goods is voluntarily delivered in accordance with the intention of the parties, the rights of ownership pass to the purchaser, and an unpaid seller cannot claim recovery of the goods from subsequent bona fide purchasers merely on the ground of non-payment of the sale consideration by the original purchaser. The remedy of an unpaid seller lies in recovery of the outstanding consideration from the purchaser and not in claiming continued ownership over the goods after delivery. Defendant No.3 has also failed to establish his allegations of forgery, fabrication, coercion or conspiracy by producing any cogent, reliable or legally admissible evidence. No handwriting expert's opinion, documentary proof or other convincing material has been brought on record to disprove the execution of the agreements or the signatures appearing thereon. Mere allegations, unsupported by substantive evidence, cannot invalidate duly executed documents or defeat the rights created thereunder. The plaintiffs have established their bona fide title, lawful possession and continuous enjoyment of the properties on the basis of an unbroken chain of documentary and oral evidence, which has remained unimpeached during the course of trial. The Ld. Trial Court has, therefore, rightly appreciated the evidence on record and granted the relief of declaration and permanent injunction in favour of the plaintiffs. This Court finds no reason to take a different view from the findings recorded by the Ld. Trial Court. Accordingly, the present appeal, being devoid of merit both on facts and in law, deserves to be dismissed, and the judgment and decree passed by the Ld. Trial Court are hereby confirmed.

(24) Under the facts and circumstances of the case I pass the following orders below issue No.9 : -

:: O R D E R ::

(1) The present Regular Civil Appeal No. 94 of 2014 preferred by the Appellant (Original Defendant No. 3) is hereby **dismissed** for being devoid of any legal or factual merits.

(2) The impugned Judgment and Decree dated 30/08/2014 passed by the Ld. Trial Court in Regular Civil Suit No. 290 of 2001 is hereby **confirmed and upheld** in its entirety.

(3) The temporary injunction or status-quo order, if any, granted during the pendency of this appeal stands vacated immediately.

(4) The Appellant is directed to bear the costs of this appeal and pay the same to the Respondents (Original Plaintiffs).

(5) The Appellate Decree be drawn up accordingly.

(6) *R & P* of the Ld. Trial Court be returned immediately along with a certified copy of this appellate judgment and decree.

SIGNED AND PRONOUNCED IN OPEN COURT TODAY ON 14TH DAY OF AUGUST, 2026.

Date : 14.08.2026

Place : Surat

(J. M. Brahmbhatt)
2nd Additional District Judge
District & Sessions Court, Surat
(Unique ID Code: GJ00622)