



SPCS NO. 04/2023

GJTP020029412023



FILED ON

02-08-2023

REGISTERED ON

02-08-2023

DECIDED ON

31-07-2026

DURATION

YRS -MTHS-DS

- - -

IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE,
TAPI AT VYARA

Sp.C.S. NO. : 04 OF 2023**Exhibit :****PLAINTIFF:****Bhagubhai Dahyabhai Patel;**

Age : 70, Occupation : Retired teacher

Residing at : Vyara, Market Yard, opposite Citymall,
Tal.-Vyara, Dist.-Tapi.

V/S

DEFENDANTS:**[1] Prakashbhai Dhirubhai Patel;**

Age : 51, Occupation : Business (sand selling)

Residing at: Vyara, Unai Naka, Adjoining Kapura
Panchal, Tal.-Vyara, Dist.-Tapi.**[2] Rajendra Bhimsinghbhai Chitte;**

Age : 47, Occupation : Advocacy;

Residing at: Kanpura, Ratnamani Society,
Tal.-Vyara, Dist.-Tapi.**[3] Sanjaybhai Vajirbhai Patel;**

Age : 51, Occupation : Unknown;

Residing at: Vyara, Junu Dhodiyavad,
Patel Faliyu, Tal.-Vyara, Dist.-Tapi.**[4] Rameshchandra Bhoi;**

Age : 50, Occupation : Unknown;

Residing at: Vyara, Dadrifaliyu,
Tal.-Vyara, Dist.-Tapi.

[5] Manishbhai Lallubhai Chaudhari;

Age : 47, Occupation : Labourer;

Residing at: Vyara, Navu Faliyu, Behind Petrol
Pump, Tal.-Vyara, Dist.-Tapi.

[6] Mahmadali Moganali Shamad;

Age : 52, Occupation : Labourer;

Residing at: Station Road, Vyara, Tal.-Vyara,
Dist.-Tapi.

[7] Manojbhai Rustambhai Chaudhari;

Age : 49, Occupation : Mechanical

Residing at: Kanpura, Navivasahat,
Tal.-Vyara, Dist.-Tapi.

**Subject:- Suit for Declaration of Permanent Injunction
under Section 34 & 38 of the Specific Relief Act,
Valued at Rs. 8,14,800/-**

Appearance :-

Ld. Advocate for the plaintiff	Mr. C. D. Khaire
Ld. Advocate for the defendants	Mr. S. C. Solanki

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

The Brief facts of the plaintiff's case are as under:

- [1]** It is important to mention that, at the outset, this suit was filed by the plaintiff as Regular Civil Suit No.19/2021, thereafter, my Ld. predecessor has passed the order below Exhibit 01 and gave the fresh number of this suit as Special Civil Suit No.04/2023 on the ground that this suit is more than the value of Five Lakh. Hence present suit is filed by the plaintiff for declaration of permanent injunction with respect to the Property situated at Vyara, **Vyara Nagarpalika Ward No.3, Taluka Vyara, District Tapi**

bearing City Survey No. 3637, Paiki 90 Sq. Meter of land (B/3 Kinds of land) (hereinafter referred as Suit land/property).

[2] It is the case of the plaintiff that plaintiff is living at Vyara, Market Yard, opposite Citymall, Tal.-Vyara, Dist.-Tapi and he is a retired teacher and on account of not having the home as well as land, had moved the application before Collector, Surat on 25.02.2023 for seeking the government land for residing the government employee without any auction. In this wake, Collector Surat furnished the land on 30/09/2004 bearing City Survey No. 3637, Paiki 90 Sq. Meter (B/3 Kinds of land) situated at Vyara, Vyara Nagarpalika Ward No.3, Taluka Vyara, District Tapi for residential purpose with conditions which is mentioned in the plaint.

[2.1] Plaintiff has also averred that according to law and procedure with the approval of the Nagarpalika, the Pakka R.C.C. construction came be executed in the ground floor of the suit land, wherein this house is entered as New Tenament No. 1003725 (from old Tenament No.725) in the Vyara Nagarpalika Ward No.3, and plaintiff has also paid the Taxes of house as well as has also paid the expense amount of electricity Bill and legally possessed and used the land. Plaintiff has also averred that the entry of the suit land was legally certified on 25.10.2004 after done all the proceeding and plaintiff was started to live with family in the suit land and plaintiff having legal possession and right over the suit land.

[2.2] Plaintiff also averred that plaintiff was studying with

the defendant no.1, so in this account, he was familiar with the defendant no.1, therefore, plaintiff had assigned the contract to defendant no.1 for construction of the house in the suit land as being defendant's profession of selling bricks, stone, sand etc. After completion of construction of home in the suit land, plaintiff had paid all the amount to defendant no.1 of construction work and nothing is rest. Plaintiff has also averred that defendant no.1 is the corporator of Nagarpalika and on being rich person and plaintiff being the retired old teacher (person), defendant no. 1 is wanted to usurp the land and also make harassed and gave threaten to plaintiff. On 15.10.2017, defendant no.1 was hurled abuse to the plaintiff and gave threaten for dire consequence, in this respect, plaintiff has filed police complaint before Vyara Police Station vide C.R. No. 62/2017 wherein case is pending before the Chief Judicial Magistrate First Class, Vyara for the offence of under Section 323, 504 of IPC.

[2.3] Plaintiff also averred that the suit land cannot be sale according to condition of collector on 30/09/2004, but despite this, defendant no.1, with the help of his friend defendant no.2 (whose profession is an advocacy) and also with the help of other defendant nos. 3 to 7, by committing fraud, cheating make bogus, illegal, impersonated created power of attorney on 19.12.2012 and without permission of collector, illegally entered the entry vide Sr. No. 2727/2017. Plaintiff also averred that he did not assign any power of attorney for selling to defendant, and despite this, with the intention to usurp the land, done all the illegal activity.

[2.4] Plaintiff also averred the cause of suit that on 10/04/2021 at 11.00 O'clock, defendant no.1 and 2 came with the suit land of plaintiff and they told that the suit land have been sold and sale deed has been executed and defendant no.1 is the owner of the suit land therefore plaintiff evacuate the suit land and leave the possession from the suit land otherwise will be killed. Plaintiff also averred in respect of the suit land that defendant no.2 is created the special power of attorney on 19.12.2012 wherein it is registered as Serial No. 2727/2017 by Notary advocate C.J.Vasave. It is also averred by the plaintiff that defendant no.2 sold the suit land to defendant no.1 with the help of alleged power of attorney entered the entry vide Sr. No. 1246/2014 before Vyara Sub-Registrar Kutchery on 21/08/2014 and true copy of the sale is in custody of the defendant no.2. It is also averred by the plaintiff the notice came to be issued to defendants to put the original copy of sale deed before the court.

[2.5] Plaintiff further averred that plaintiff has filed the suit for seeking permanent injunction respect of the alleged suit land which value Rs.8,14,500/-. In the aforesaid facts, cause of action to file the present suit arose in favour of the plaintiff.

[2.6] Plaintiff has claimed following reliefs in the suit.

- (i)** That plaintiffs' suit be allowed as plaintiff having legally possession, usage, right, title in the suit land i.e. situated at Vyara, Vyara Nagarpalika, Ward No. 3 Opposite City Mall bearing City Survey No. 3637 Paiki 90 Sq. Meter in which, construction came be executed

and entered as New Tenament No. 1003725(Old Tenament No.725) and in respect of suit land, defendant no.2 without permission of the collector, executed the special power of attorney in favour of defendant no.1 dated 19/12/2012 by creating false and bogus and fabricated entered before Notary Advocate C.J. Vasave Vide Serial No. 2727/2017, which is illegal and same is liable to be quashed and set aside.

- (ii) Plaintiff has also prayed for seeking the permanent injunction in respect of the suit land against the defendants for not interfering, and not make hindrance in the suit land.
- (iii) Plaintiff has also prayed before the Hon'ble Court in respect of the suit land that Hon'ble Court grant the permanent injunction in favour of plaintiff against illegal sale deed, and not to transfer, alienate, and make gift to third party.
- (iv) That the Hon'ble Court may also pass the order according to facts and circumstances of the case in favour of the plaintiffs.

[3] The summons of the present suit was duly served upon the defendants who appeared through their Ld. Advocate and filed their written statement vide **exhibit 29**. In the written statement, the defendants have categorically denied all the material facts and averments made by the plaintiffs and have prayed to reject the suit of the plaintiffs with costs.

[3.1] It is also the say of the defendants that plaintiff did not come in the clean hands, therefore, permanent injunction cannot be sustained. It is also the say of the

defendant that the present special civil suit is based on illusory cause of action, hence liable to be quashed and set aside. It is also the say of the defendant that there is no any grave contention regarding the land bearing Old City Survey No. 2042 and new City Survey No. 3637, Paiki 90 Sq. Meter (kind B/3) situated at Vyara opposite City Mall, Ward No. 3. It is also the say of the defendants that as plaintiff have told that defendant no.1 was staying with him is not true, the fact is that plaintiff was originally belongs to Taluka Mahuva, District-Surat and plaintiff have a lot of agricultural land as well as large pakka house and plaintiff was used to come at Vyara for serving his government duty, in this context, being homogeneous caste, defendant gave support to the plaintiff.

[3.2] It is also the say of the defendant that the Collector had furnished the land of 90 Sq. meter in the name of plaintiff, in this context, defendant No.1 have paid the amount of Rs. 1,50,000/- to the plaintiff in respect of the alleged plot. It is further averred that defendants had taken the approval for construction of the RCC House from the Nagar Palika and also paid the premium of the land as well for seeking electricity connection, defendant No.1's signature is also there and in lieu of the right to possession of the land, amount Rs. 60750/- dated 26/08/2004 wherein stamp duty of Rs. 5103/- dated 08/09/2004 is paid by the defendant no.1 with signature and original receipt is also with the defendants.

[3.3] It is also the say of the defendants that plaintiff has assigned the power in respect of the suit property to the

defendant no.1 on 28.06.2006 by saying that our relation is good but in future, if my legal heirs be involve in the court case for the suit land, for this, you have (defendant) to make all the legal proceedings in your favour. Despite this, upon taking the trust over the plaintiff, the suit property did not enter in his name. Further on 21/08/2014, the sale deed has assigned to the defendant no.1 in respect of the suit land by saying that plaintiff along with his wife will be live in the suit land until they he became superannuated, if you having no any objection. Therefore, by keeping the trust over the plaintiff, I (defendant no.1) had given the suit property to the plaintiff for residing purpose.

[3.4] It is also the say of the defendant that when the RCC Construction had completed at that time on 28/08/2014, notary was executed with the contractor, its original copy is also with the defendants. It is also the say of the defendant that plaintiff has assigned the power of attorney in the presence of other defendants and the written affidavit of defendant Manishbhai Lallubhai Chaudhari dated 1/09/2014 stated that the amount of the construction was given by the Prakashbhai Dhirubhai Patel and in this respect, plaintiff himself has given the power of attorney to Rajendrabhai Chitte and plaintiff himself signed in the notary. Due to increase the price of time according to time, plaintiff raised the false and fabricated documents to take illegal benefit and filed impersonated suit which is liable to be rejected. With the intention to usurp the defendant no.1's land, plaintiff can be go beyond any scope. It is also the say of the defendants that defendant no.1 have tried to his level

best at the initial stage for seeking the land and for construction, also borne the expenses by the defendant no.1 and due to relation with the plaintiff, assigned the suit land property without any rent, therefore plaintiff has not right, title or interest in the suit land and prima facie defendant's case is true. Therefore, the suit of the plaintiffs should be rejected by imposing the cost of plaintiff.

- [4] Along with the suit, the plaintiff has filed an application under order 39, Rule 1 and 2 for interim injunction and sought prayer that till the final order of the suit, the defendants are restrain to disturb the possession of property and not make any transaction in respect of the property. That application has been rejected by my Ld. Predecessor on 02.05.2022 against the order passed below Exh.05. The plaintiff has preferred an appeal before the District Court of Vyara under order 43 Rule 1 (R)of CPC vide Civil Misc. Appeal No. 05/2022. The Hon'ble Addl. District Judge of Vyara has allowed the appeal.

Herein plaintiff has filed the application at Exhibit 46 as per Order 11 Rule 14 of CPC, wherein same came to be allowed by my Ld. Predecessor on 11/07.

- [5] The plaintiff has produced following oral and documentary evidences to prove their case.

ORAL EVIDENCE :-

Sr. No.	Particulars	Exhibit
1.	Affidavit in the form of examination-in-chief of plaintiff namely Bhagubhai.	82
2.	Deposition of Court Commissioner.	89

DOCUMENTARY EVIDENCE :-

Sr. No.	Particulars	Exhibit
1.	Original copy of the Yadi of Akar No. 762/1 of Vyara Nagarpalika.	68
2.	Certified copy of Property Card of City Survey No. 3637 of City Survey Vyara.	69
3.	Original Copy of notice of Form -G-1 of House No. 762/1 of Vyara Nagarpalika.	70
4.	Original Copy of the regular order of Vyara Nagarpalika.	71
5.	Certified copy of Map of City Survey No. 3637.	72
6.	Original general receipt of Vyara Nagarpalika.	73
7.	True copy of expense electricity bill of Property No.1003725 of Vyara Nagarpalika.	74
8.	True copy of expense of Property No.1003725 of Vyara Nagarpalika.	75
9.	True copy of the receipt in respect of paid tax of property No. 1003725 of Vyara Nagarpalika.	76
10.	True copy of the order of Collector Tapi (H.K.Vadhvaniya-IAS) bearing Case Sr. No.CTS/Saratbhang/KaseNo.1/2021.	77
11.	True copy of Property Card of City Survey No. 3637.	78
12.	Certified Copy of the order of City Survey Superintendent Vyara vide Sr. No. A/CTS/Vashi. 1467/04.	79
13.	True copy of the light bill of dakshin Gujarat Electricity.	80
14.	True copy of the permission of Vyara Nagarpalika, signature of Chief officer of Vyara Nagarpalika.	81
15.	Certified Copy of Property Card bearing	108

	City Survey No. 3637.	
16.	Certified Copy of Tenament No. 1003725	109

Thereafter plaintiff filed closing pursis vide exhibit-110 declaring that they do not wish to lead any further evidence.

- [6] The Defendants have produced following oral and documentary evidences to prove their case.

ORAL EVIDENCE :-

Sr. No.	Particulars	Exhibit
1.	Affidavit in the form of examination in chief of defendant no.1-Prakash Dhirubhai Patel .	195
2.	Affidavit in the form of examination in chief of defendant no.5-Manishbhai Lallubhai Chaudhari .	199
3.	Affidavit in the form of examination in chief of defendant no.6-Mohammad Ali Moganali Saiyad.	201

DOCUMENTARY EVIDENCE :-

Sr. No.	Particulars	Exhibit
1.	True copy of the order of District Collector, Tapi in CTS-Saratbhang-Case No. 01/2021.	117
2.	True copy of paid expense of House No. 763/1 in the year 2006-07 by the defendant no.1	118
3.	True copy of paid expense of House No. 763/1 in the year 2008-09 by the defendant no.1	119
4.	True copy of application for electricity connection to suit property.	120
5.	True copy of the receipt of paid amount	121

	of Rs.40/- in respect of the electricity connection of suit property.	
6.	True copy of expense receipt (Vera Pawati) paid by the defendant no.1 in respect of suit property in the year 2009-10.	122
7.	True copy of expense receipt (Vera Pawati) paid by the defendant no.1 in respect of suit property in the year 2010-2011.	123
8.	True copy of expense receipt (Vera Pawati) paid by the defendant no.1 in respect of suit property in the year 2011-12.	124
9.	True copy of expense receipt (Vera Pawati) paid by the defendant no.1 in respect of suit property in the year 2012-13.	125
10.	True copy of expense receipt (Vera Pawati) paid by the defendant no.1 in respect of suit property in the year 2013-14.	126
11.	True copy of expense receipt (Vera Pawati) paid by the defendant no.1 in respect of suit property in the year 2013-14.	127
12.	True copy of expense receipt (Vera Pawati) paid by the defendant no.1 in respect of suit property in the year 2014-15.	128
13.	True copy of expense receipt (Vera Pawati) paid by the defendant no.1 in respect of suit property in the year 2014-15.	129
14.	True copy of paid land revenue (jamin Mahsul) by the respondent no.1 in respect of suit property through Talati cum mantri.	130
15.	True copy of paid land revenue (jamin Mahsul) by the respondent no.1 in	131

	respect of suit property through Talati cum mantri.	
16.	True copy of paid land revenue (jamin Mahsul) by the respondent no.1 in respect of suit property through Talati cum mantri.	132
17.	True copy of paid Sikshan Upkar by the respondent no.1 in respect of suit property through Talati cum mantri.	133
18.	True copy of paid Sikshan Upkar by the respondent no.1 in respect of suit property through Talati cum mantri.	134
19.	True copy of paid Sikshan Upkar by the respondent no.1 in respect of suit property through Talati cum mantri.	135
20.	True copy of paid cost price in the Nagarpalika by the defendant no.1 in respect of the construction of the suit property in the year 2005-06.	136
21.	True copy of paid cost price in the Nagarpalika by the defendant no.1 in respect of the construction of the suit property in the year 2005-06.	137
22.	True copy of paid amount(Lokfado) in the Nagarpalika by the defendant no.1 in respect of the suit property in the year 2005-06.	138
23.	True copy of the application led by the defendant no.1 to Nagarpalika for regular construction of suit property.	139
24.	True copy of the application of defendant no.1 before Nagarpalika in respect of the suit property.	140
25.	Xerox copy of notice issued by the plaintiff to the defendants on account of flauting the condition of collector vide Serial No. CTS Vyara Sarat Bhang vasi-2021 in respect of City Survey No. 3637 situated at Vyara, District -Tapi.	141

26.	Original copy of the Sandesh Newspaper in respect of furnishing the suit land by the government to the defendant no.1	142
27.	Original copy of paid amount for possession of the suit property bearing City Survey No. 2042(old) and New No. 3637 by the defendant no.1 on behalf of plaintiff.	143
28.	Original copy of paid amount for possession of the suit property bearing City Survey No. 2042(old) and New No. 3637 by the defendant no.1 on behalf of plaintiff.	144
29.	Original copy of power of attorney which plaintiff himself assigned to the defendant no.1 as per notary dated 28.06.2006.	145
30 to 43	Original copy of receipt of paid revenue of disputed property bearing Khata No. 1695 by the defendant no.1.	146 to 159
44 to 58	Original copy of the receipt of amount of Sikshan Upkar in respect of suit land bearing Khata No. 1695 by defendant no.1.	160 to 174
59.	Original copy of contract between defendant no.1 and contractor regarding construction of house over the suit land.	175
60.	Original copy of contract between defendant no.1 and contractor regarding construction of house over the suit land(after completion of the work)	176
61	Original copy of sanctioned plan and permission.	177
62	Original copy of opinion and permission	178
63	original copy of expense receipt of Nagarpalika.	179
64	original copy of expense receipt of	180

	Nagarpalika.	
65	original copy of expense receipt of Nagarpalika.	181
66	original copy of expense receipt of Nagarpalika.	182
67	original copy of expense receipt of Nagarpalika.	183
68	original copy of expense receipt of Nagarpalika.	184
69	original copy of expense receipt of Nagarpalika.	185
70	original copy of expense receipt of Nagarpalika.	186
71	Original receipt of paid Electricity bill in GEB.	187
72	Original receipt of paid Electricity bill in GEB.	188
73	Original receipt of paid Electricity bill in GEB.	189
74	Original receipt of paid Electricity bill in GEB.	190
75	Original receipt of paid Electricity bill in GEB.	191
76	Original copy of quotation for taking electric connection.	192
77	Original copy of quotation for taking electric connection.	193
78	Original certificate of paid amount to contractor respect of construction.	194

Thereafter, Exh.58/Copy of special power dated 19.12.2012 through self notary and Exh. 59/Copy of sale deed of City Survey No. 3667 dated 21.08.2014 is produced on record. Thereafter, list of documents at Exh. 210 is adduced implicit the documentary evidence from

Exh. 212 to Exh. 216 which are as under:

Exh.212- Certified copy of collector & District Magistrate city survey and Chief Officer;

Exh.213-Certified copy of collector & District Magistrate and Addl. District Judge.

Exh. 214- Certified copy of report of Vyara Nagarpalika and Hon'ble Addl. District Judge

Exh.215- Certified copy of report of City Survey superintendent and Addl. Mamlatdar and Hon'ble Addl. District Judge.

Exh.216- Certified Copy of report of Police Inspector Kutchery Tapi ACB and Hon'ble Addl. District Judge.

Defendant filed closing pursis vide Exh.-217 declaring that they do not wish to lead any further evidence.

[7] Based on pleadings and documentary evidence of both the parties, following issues were framed vide **Exh. 60**.

1. Whether plaintiff proves that he is owner of the suit property?
2. Whether plaintiff proves that, he has not executed any power of attorney deed in favour of defendant no.1 in respect of suit property?
3. Whether plaintiff proves that, he is in actual and physical possession of the suit property?
4. Whether plaintiff proves that defendants in collusion with each others have got executed registered sale deed dated 21.08.2014 in respect of suit property?
5. Whether plaintiff proves that, sale deed dated 21.08.2014 in respect of suit property is in breach and contravention of condition imposed by District Collector, Vyara while allotting land ?
6. Whether defendant no.1 proves that he has paid Rs. 1,50,000/- towards consideration amount of land allotted to plaintiff?

7. Whether plaintiff is entitled to relief as prayed for ?
8. What order and decree ?

[8] My findings for the above issues are as under.

Issue No.1	Negative
Issue No.2	Negative
Issue No. 3	Negative
Issue No. 4	Negative
Issue No.5	Partly Affirmative
Issue No.6	Negative
Issue No.7	Negative
Issue No.8	As per final order

Arguments of learned advocate for the parties

[9] Learned advocate for the plaintiff has submitted his final written argument at **exhibit 220** along with the following authority/citations.

1. *N. Umapathy vs. Muniyappa in Civil Appeal No. 2535 of 1997 dated 25.03.1997 (Hon'ble Supreme Court)*
2. *Nabekishore Sahu and another vs. East India Arms Co. in Civil Revision No. 246 of 1995 dated 21.01.1998. (Hon'ble Orissa High Court)*
3. *Suk Dutt Ratra & Anr. vs. State of Himachal Pradesh reported in 2022 (0) AIJEL-SC 68623.(Hon'ble Supreme Court)*
4. *Krishna Ram Mahale (Dead), By his Lrs. Vs. Shobha Venkat Rao reported in 1989 (0) GLHEL-SC 14946. (Hon'ble Supreme Court)*
5. *Pradyumna Mukund Kokil Vs. State of Maharashtra reported in 2015 (0) AIJEL-SC 56666. (Hon'ble Supreme Court of India)*
6. *Samir Sobhan Sanyal vs. Tracks Trade Private Limited reported in 1996 (0) GLHEL-SC- 25108. (Hon'ble Supreme Court of India)*
7. *Lallu Yeshwant Singh (dead) by his legal representative vs. Rao Jagdish Singh, reported in 1967 (0) GLHEL-SC 15430.*

Ld. advocate for the plaintiff has contended the facts from page no.1 to 17, only important facts is required to put

here, as that the City Survey No. 3637 Paiki 90 sq. meter was furnished by the government dated 30/09/2004 with the conditions. Prior approval by the Nagarpalika, the construction of RCC was executed in the ground floor and **House of Vyara Nagarpalika ward no.3 old tenanment No. 725 registered as New Tenament No. 1003725.** Plaintiff was being paid all the electric bills in respect of the suit property and **Electric Consumer No. 40201/40693 was in the name of plaintiff.** Defendant no.1 is the corporator and political person and with the intention to usurp the land, was used to harass the old aged plaintiff, and on 15/10/2017, defendant no.1 had given threaten to the plaintiff for dire consequence, hence plaintiff filed the police complaint before Vyara Police Station and FIR is registered vide C.R. No. 62/2017 for the offence under Section 323, 504(2) of IPC. It is further argued that, defendant by cheating and fraud created fabricated, illegal, special power of attorney dated 19.12.2012 and without permission from the collector, illegal entry vide Sr. No. 2727/2017 came to be entered through notary advocate C.J. Vasave. Rest of facts, this court perused.

- [10] Whereas the Ld advocate on behalf of defendants have filed their final written argument at **exhibit 224** from page no. 1 to 13 and this court has perused the same.

Reasons & Analysis

Issue No.1 to 7

- [11] As such the above issues are inter-connected in order to avoid repetition of facts and evidence on record, all the issues are discussed together.

[12] It is cardinal principle of law that the plaintiff is required to prove his case *"according to law, burden of proof is upon the plaintiffs to prove his case. In the latest Judgment of the Hon'ble Supreme Court in case of Debbarma (Dead) Through Legal Representative v. Prabha Ranjan Debbarma and Others, 2023 SCC OnLine SC 9, the Hon'ble Supreme Court underscored the importance of Section 101 and Section 102 of the Indian Evidence Act, 1872, that deal with Burden of Proof.*

In view of above Judgment and Section-101 of the Indian Evidence Act provides that whoever desires the Court to give any Judgment regarding any right or liabilities i.e. "dependent on the existence of facts which he asserts, must prove that those facts exist."

Moreover, in the case of Jan Mohammad V/s. Mohammad Deen, The Hon'ble High Court of Himachal Pradesh has held that "The plaintiff is required to prove their case through clear, cogent and convincing evidence. They cannot rely on the defendant's failure to present a defense or evidence to succeed in their claim".

[13] First of all, so far as ownership is concerned, the plaintiff was retired teacher. After retirement as he has no any house to live, he applied to collector of Surat on 25.02.2003 for allotment of government land only for the purpose of residence. Thenafter, the government has allotted him the land of village Vyara Ward No.03 opposite City Mall the land City Survey No. 3637 Paiki 90 Sq.meter land, thenafter, the plaintiff constructed the house on the land which old Tenament Number was 725 and New Tenament

Number is 1003725, thenafter, name of the plaintiff was entered in property card which is on the record at **Exh. 108**, **thenafter**, the plaintiff started to pay the house tax etc. Thus, the plaintiff has produced document from **Exh. 68 to 78** to show that the land was allotted to him by the government and he has constructed upon the land a house and he was regularly paying taxes etc. also.

- [14] Now, according to defendant, he has purchased the suit land from the plaintiff after paying consideration amount. The plaintiff has produced his affidavit of examination in chief vide **Exh. 82** in which he has reiterated the averment of the plaint. He has been thoroughly examined by Id. Advocate by other side. But, the plaintiff has denied the question of the other side in toto.
- [15] Thenafter, the defendant no.1 namely Prakashbhai Dhirubhai Patel has produced his affidavit of examination-in-chief vide **Exh.195** in which his main contention is that he has purchased the land from the plaintiff and constructed house over the land. He has paid all revenue tax etc. He has produced documentary evidence vide **Exh.141 to 194** to show that all taxes are being paid by the plaintiff no.1 he has produced original special power of attorney vide **Exh.145**, this power of attorney is registered one on perusal of receipt of taxes, it appears that they are in the name of plaintiff. Construction permission was also in the name of plaintiff vide **Exh. 177**, the land was allotted to the plaintiff by allotment letter in the name of plaintiff is produced vide **Exh.78**. The defendant no.1 was thoroughly examined by Id. Advocate of the other side, he has admitted that he was

elected MLA. In nutshell the defendant no.1 has admitted that the land was allotted to the plaintiff. Moreover, he has admitted that original owner of the land is government. Therefore, prior permission of the competent authority, no kind of transaction like selling, transferring, assigning or creating any mortgage over the land. Thus, it transpires that the defendant no.1 is well aware of settled position, the defendant no.1 has admitted that he has not initiated any litigation to declare him either possessor or owner of the suit land. It is not worthy that the defendant no.1 himself as admitted the settled position of law. Therefore, for the sake of argument, it is believed that the plaintiff has given any power of attorney to the defendant no.2 and on the basis of the so-called of power of attorney, the defendant no.2 has sold out this land to defendant no.1, then in that case also the transaction is ***ab initio null and void***.

- [16] Thenafter, the defendant no.5 has produced his affidavit of examination-in-chief vide **Exh.199** in which he has stated that the plaintiff no.1 has purchased this land from plaintiff by way of registered sale deed. Thenafter, defendant no.1 approached to me for construction work. Contract of construction was also carried out between me and defendant no.1 the so-called agreement of construction is produced by the defendant at **Exh.175**. Thus, the defendant no.5's says that the defendant no.1 is an owner of the suit property, he has made agreement of construction with me and according to agreement, I have constructed the house. The cost of construction also beard by the defendant no.1. It transpires from his cross-examination that, he has not seen

any document like property card etc. He did not make sure about who is owner of the property. It also transpires that he is mere a meson/labourer. Except this, he has no any role in regard the suit property.

- [17] Thenafter, the defendant no.6 has produced his affidavit of examination-in-chief under Order 18 Rule 4 of the CPC vide **Exh. 201** in which he has stated that defendant no.1 is my friend. He has purchased the disputed land from the plaintiff. Further, he has stated that after purchasing the land, the defendant no.1 has constructed there house, the plaintiff has sold this land to the defendant no.1 for the consideration of Rs.1,50,000/-. Further, he has stated that the plaintiff and his wife being elder person, the defendant no.1 has allowed him to stay in the home till their retirement.

He has been thoroughly examined by Ld. Advocate for the other side, it reveals from his cross-examination that he also aware that the disputed land was of such a nature that no transaction regarding this land can be done without prior permission of the competent authority.

- [18] Thenafter, the plaintiff has examined one witness namely Ashoksinh Bhawansinh Chauhan vide **Exh.89**, who was appointed as a court commissioner by the Court to prepare a panchnama and rough sketch of the suit land. So far as role of court commissioner is that he prepared a panchnama and rough sketch only. The court commissioner cannot decide the ownership of the property. He has nothing to do about right, title of the property. His only work is to see present condition of the disputed property.

- [19] Now question involved in this case is that, the transaction regarding this property is valid or not in eye of law. All parties have admitted that this kind of land cannot be sell, transfer etc. without prior permission of the competent authority. The plaintiff has produced a copy of show-cause notice issued by Collector of District Tapi-Vyara for breach of condition against the plaintiff and defendant no.1 and 2, that is on record vide **Exh.141**. Thenafter, the Collector of District Tapi at Vyara initiated proceeding against the plaintiff and defendant no.2 and 3 as breach of condition Case No.1/2021. Certified copy of the order passed by collector is on the record vide **Exh.77**. **The collector of Tapi at Vyara came to the conclusion that as the breach of condition no.4, the land given to the plaintiff i.e. village Vyara City Survey No. 3637 Paiki 90.00 Sq.Meter is confiscated with construction thereon without any compensation to the plaintiff. Revenue entry in this regard was mutated in property card by Collector on dated 12.10.2021 vide Entry No.8089. Thus, again the suit land/suit property was confiscated by government and the government has become owner of the property. Therefore, it appears that now neither plaintiff nor a defendant no.1 is owner of the suit property.**
- [20] On appreciation of all evidences produced by the parties, it is found that now no longer the plaintiff is owner of the suit property. All transaction in regard this property is **ab initio null and void**. Therefore, the plaintiff is failed to prove that he is in possession of the suit property. Now, in this settled provision of law, when Collector of Tapi at Vyara had

issued a show-cause notice to the plaintiff and defendant no.1 and 2 about breach of condition no.4. Thenafter, the case of breach of condition was also initiated against the plaintiff and defendant no.1 and 2 and finally emerged the land into government. Thus, the power of attorney or sale deed themselves are illegal, either the plaintiff has willingly or made by misrepresentation is illegal.

- [21] The plaintiff has stated in his plaint that he has not given any power of attorney to defendant no.2. Further, he has stated that power of attorney is false, fabricated and got up one. Original power of attorney is on the record vide **Exh.68**. This power of attorney is special power of attorney. Power of attorney is notarized according to law. The plaintiff is not an illiterate person. He is a teacher (retired) . On perusal of special power of attorney, it appears that it is legally notarized, signature of plaintiff and defendant as well as witnesses are therein power of attorney. Photograph of the plaintiff is also on the power of attorney. Three person have made signature in the power of attorney. But the plaintiff has not examined any witness of power of attorney. Thus, the power of attorney itself is under the shadow of cloud. The plaintiff is failed to prove that the power of attorney is false, frivolous and fabricated. Because, collector of tapi at Vyara had issue a show-cause notice to the plaintiff also. Thenafter, case of breach of condition was initiated and collector of tapi at vyara came to the conclusion that the plaintiff has made breach of condition and finally order of confiscation was passed and revenue entry in this regard was mutated in property card

also. Though, whatever it may be but as aforesaid discussion. This Court has come to the conclusion that entire transaction is ab initio null and void. In this circumstances, when the entire transaction is under the shadow of doubt, though the plaintiff cannot prove issue no.5 in his favour but it is automatically reveals that sale deed dated 21.08.2014 in respect of the suit property is in breach of contravention of condition imposed by collector of Tapi at Vyara while allotting the land. But as I have already discussed above, in spite of it, the plaintiff is not entitled for any relief as prayed for. Therefore, I reply to **Issue No.1 to 4 are in Negative, and Issue No.5 is in Partly Affirmative, and Issue No.6 & 7 are in Negative,** and following order is passed in the interest of justice.

ORDER

- [1] The present suit is hereby dismissed.
- [2] Parties are left to bare their own costs.
- [3] Interim relief is hereby vacated, if any granted.
- [4] Decree be drawn accordingly.

Order pronounced in the open Court on the 31st July, 2026.

Date : 31/07/2026
Place : Tapi at Vyara

[D.C. Pandey]

(Manish Dilipbhai Nandani)
Principal Senior Civil Judge,
Tapi at Vyara
Code : GJ00847