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Duration	13	01	03

**IN THE COURT OF THE HON'BLE
13TH ADDITIONAL SENIOR CIVIL JUDGE
AT SURAT.**



सत्यमेव जयते

**SPECIAL CIVIL SUIT NO.368 OF 2011
(ORIGINAL SUIT NO. RCS 1006 OF 2005)**

EXHIBIT: - 97

PLAINTIFF:

Legal heirs of Dr. Babubhai Motichand Shah:-

- Smt. Kumudben Babulal Shah**
Aged about 62 years, Occupation:Household work
Residing at 33, Ishita Park, Adajan, Surat.
- Shri Ripalkumar Babulal Shah**
Aged about 33 years, Occupation: Doctor,
Residing at As above.
- Smt. Sejalben Urveshkumar Shah**
d/o deceased Dr. Babulal Shah

Aged about 31 years, Occupation: Household work
Residing at 71, Ishita Park, Adajan, Surat.

DEFENDANT(S):

1. **Commissioner**
Surat Municipal Corporation
Head Office: Muglisara, Surt.
2. **Zonal Officer (East Zone)**
Surat Municipal Corporation
Sardar Chowk, Nr. Bhat Ni Wadi, Varachha road,
Surat.

**Re:- SUIT FOR SPECIFIC PERFORMANCE, DECLARATION &
DAMAGES.**

APPEARANCE:

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➤ Ld. Advocate Mr. P.K. Gajjar for plaintiff.

➤ Ld. Advocate Mr. J.N. Mevavala for defendant.

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

1. The present suit was filed by the original plaintiff Dr. Babulal Motichand Shah against the defendants for declaration and permanent injunction. Later on, certain amendments were carried out and thus the plaintiff prayed for

declaration, permanent injunction and damages against the defendants.

2. The gist of the suit is as follows that the deceased Dr. Babulal Motichand Shah had filed the suit alleging that he had purchased one *Gamtal* land ad-measuring 15Ftx30Ft at *Nana Varachha* from the Nana Varachha Gram Panchayat in 1985 with total land of 450 Sq.Ft. of Nana Varachha area, Taluka- Choriyasi, District- Surat (hereinafter referred as '**Suit property**'). It is alleged by the plaintiff that he constructed one dispensary at the suit property and was practicing as doctor since 1986. Afterwards, Nana Varachha merged into Surat Municipal Corporation in the year 1987 and Surat Municipal Corporation had made new assessment of the suit property and alleged it municipal tenement No. 20A-01-2251-0-001 to the plaintiff and since then the plaintiff was paying the regular taxes to Surat Municipal Corporation. It is further alleged that on 19.12.2005, the defendant No. 2 came to the suit property and had threatened the plaintiff for

demolition of the suit property and therefore, the suit was filed for declaration and permanent injunction restraining the defendants from demolishing the suit property. It is on record that *pendentelite* the suit property was demolished by the defendants. Therefore, the plaintiff had filed the present suit amending the prayer for declaration, permanent injunction and for damages of Rs.20,00,000/- (Rupees Twenty Lac only) with Rs.5,00,000/- as loss of the income. The plaintiff had thus prayed for declaration as to the ownership of the suit property and for the declaration that the act of demolishing the suit property was illegal, arbitrary and *ultra vires* and was without statutory notice to the plaintiff. The plaintiff had also prayed for restoration of suit property.

3. Notice was duly served to the defendants. Defendants appeared through their learned Advocate and had filed their reply vide Exhibit 11 wherein they had negated by the allegation made by the plaintiff in his plaint and had

further stated that the construction of plaintiff's dispensary was illegal. It is further stated that the plaintiff is the owner of the suit property and dispensary is absolutely on the land of drainage and the plaintiff has no right to made such construction on the suit property. It is further stated that the resolution of Gram Panchayat is not genuine one and drainage is necessary for the health of people at large and not for private, vested and illegal interest act over-rule before right, therefore, the defendants had strongly objected and prayed for rejection of the suit.

4. Earlier preliminary issues were framed vide Exhibit 15. Taking into consideration the said issue, this court had ordered for rejection of the suit. Regular Civil Appeal No. 47/2008 was then filed against the order of this Court dated 26.09.2008. In the said civil appeal, the matter was remanded back to this Court and new issues were framed by this Court vide Exhibit 15 which are reproduced below :-

1. Whether the plaintiff proves that he is the absolute owner, occupier and in possession of the suit land?
 2. Whether the plaintiff proves that he had made construction with the Gram Panchayat according to layout plan?
 3. Whether the plaintiff proves that defendants act to demolish the dispensary of plaintiff without statutory notice and the act of defendants are illegal, arbitrary and *ultra vires*?
 4. Whether the suit is barred by statutory notice under Section 487 of BPMC Act?
 5. Whether the plaintiff is entitled to get relief pray for?
 6. What order and decree?
5. The findings of this Court upon the said issues are as follows:-
1. In Negative.
 2. In Affirmative.
 3. In Negative.
 4. In Negative.

5. In Negative.

6. As per final order.

6. To substantiate and to prove the contentions by the suit plaintiffs had produced oral as well as documentary evidence has below :-

ORAL EVIDENCE :-

Sr. No	Particulars	Exhibit
1.	Deposition of plaintiff No. 2 Riplekumar Babulal Shah	53
2.	Deposition of Ishwarbhai Jairambhai Patel	85
3.	Deposition of Rameshbhai	86

DOCUMENTARY EVIDENCE :-

Sr. No.	Particulars	Exhibit
1.	Copy of resolution No. 115 of Gram Panchayat	59
2.	Resolution No. 122 of Gram Panchayat, Nana Varachha dated 12.03.1986	60
3.	Certificate of permission of construction of Sarpanch Shri, Gram Panchayat, Nana Varachha.	61
4.	Copy of layout plan.	62
5.	Notice of Surat Municipal Corporation dated 01.04.2008.	63
6.	Bill of Surat Mahanagar Seva Sadan dated 01.04.2007.	64
7.	Bill of Surat Mahanagarpalika	65

8.	Bill of Gujarat Electricity Board dated 19.02.2003	66
9.	Bill of Gujarat Electricity Board dated 12.10.2002	67
10.	Sketch of Suit property.	75
11.	Letter of Executive Engineer East Zone, Varachha, Surat Mahanagarpalika.	76
12.	Photo of Suit property.	77
13.	Photo of Suit property.	78
14.	Photo of Suit property.	79
15.	Photo of Suit property.	80

7. Defendants had preferred not to file any documentary evidence or oral evidence in support of their say and therefore, closing Purshis was brought on record by plaintiff vide Exhibit 87 whereas defendant had filed their closing Purshis at Exhibit 92. The plaintiff had filed his written argument vide Exhibit 96. Oral arguments of both the Ld. Advocates were duly taken into consideration by this Court.

- : REASONS & FINDINGS :-

ISSUE No. 1 to 6:

8. As all issues are interconnected with each other and therefore for the sake of avoiding repetition of the facts and the evidence, it seems justified

to this court to deal with all above issues together.

9. It is to be noted that originally the suit was filed by Late Dr. Babulal Motichand Shah but after his demise as the evidence was not recorded at that time, evidence was recorded later when his legal heirs were joined on record as party to the suit. To substantiate the say of deceased plaintiff, his son Ripalkumar Babulal Shah has deposed vide Exhibit 53 before this Court wherein he had affirmed to the facts and circumstances of the said case. It is an admitted position that Late Dr. Babulal Motichand Shah was having a dispensary in Nana Varachha area since 1987 which was later on demolished by the defendants on 18.04.2006. It is also an admitted position that in the present suit that pendent-lite the property was demolished by the defendants therefore, to establish his say the plaintiff has to prove that the suit property was of his ownership and he was having lawful possession of the suit property. To substantiate his say the

plaintiff has produced documentary evidences on record vide Exhibit 59 to 67 and 75 to 80 on record. In his deposition, the plaintiff No. 2 had deposed before this Court that the suit property was purchased by Late Dr. Babulal Motichand Shah and it was of his ownership, moreover he had produced certain documents that the said property was given to Late Dr. Babulal Motichand Shah with the resolution of Gram Panchayat. The said resolutions are perused on record by the plaintiff vide Exhibit 59, 60, 61 & 62. The plaintiff had deposed that the said suit property was of the ownership of Late Dr. Babulal Motichand Shah but perusing the cross-examination he had specifically produced on record that no documents pertaining the title of the ownership of the suit property is produced on record. The said plaintiff had also affirmed to the fact that he is not aware of the fact that such document of ownership exceeds or not. He had also affirmed to the fact that the plaintiff had not produced any evidence on record to stated that how much damage has been incurred to him by the act of

defendants. Moreover, it is also affirmed that the said property was demolished and drainage was made on the said place and that the said suit property was converted into passage of public. It is also affirmed that he is not aware of the fact as to the deceased Late Dr. Babulal Motichand Shah has received notice of illegal construction by the defendants, he had also affirmed to the fact that on the suit property there was drainage which existed before the construction of the suit property.

10. Likewise, one witness has been examined by the plaintiff vide Exhibit 85 who had affirmed to the fact of ownership of suit property in the name of Late Dr. Babulal Motichand Shah, but perusing his cross-examination he had also affirmed to the fact that the suit property was constructed on drainage land and there was a passage below the suit property for passing of the water. He had also affirmed to the fact that he is not aware of the fact as to any ownership was conferred upon the deceased plaintiff by the defendants. It is

pertinent to note that no sale-deed has been produced on record that the said property was purchased by the deceased Dr. Babulal Motichand Shah. Moreover, the document which has been produced by the plaintiff to substantiate his say are not sufficient to prove the ownership as resolution of Gram Panchayat cannot infer title to any person because no such right has been given to the Gram Panchayat to confer title of the property to someone with the property in the name of the Government. Therefore, perusing the evidence laid down by plaintiff No. 2 and the present witness. It appears to this Court that no evidence has been brought on record to prove that the said property was of the ownership of deceased Babulal Motichand Shah. Likewise, one other witness has been examined who has also affirmed to the fact of the suit, perusing his cross-examination, no fruitful evidence brought on record to substantiate that the suit property was of the ownership of Late Babulal Motichand Shah. It is also to be noted that perusing the entire evidence it is not come on record that

whether the suit property was giving on lease to the plaintiff or it was given as gift for the honorary service of the plaintiff has he was running a dispensary over there. It is also to be noted that though the plaintiff had produced the Sanction letter of Gram panchayat and layout plan on record, but at the same time, it is well settled that when the ownership is not there, any construction with or without the permission is absolutely illegal in nature and cannot be defended merely on the grounds that such sanction was given Gram Panchayat. It is pertinent to note that no such powers are also conferred upon the panchayat to sanction the layout plan. Therefore, though Municipal revenue bills and electricity bills are produced on record by the plaintiff with the layout plan, but that does not show that he was the owner of the suit property and therefore, if this Court is of the view that the plaintiff had failed to prove his suit claim.

11. As far as Issue No. 4 is concerned this Court is of the view that the defendant had not taken

any objection of suit being appeared under Section 487 of BPMC Act. Also, perusing the entire record though it appears that the Gram Panchayat had permitted to plaintiff to construct upon the suit property, but at the same time it appears to this Court that when the ownership is not proved by the plaintiff he is not entitled for any other relief, and therefore, this Court answers Issue No. 1 in Negative, Issue No. 2 in Affirmative, Issue No. 3 in Negative, Issue No. 4 in Negative, Issue No. 5 in Negative and Issue No. 6 shall follow the final order:-

:ORDER:

- The suit of the plaintiff is hereby rejected.
- No order as to costs.
- Decree be drawn accordingly.

Signed and Pronounced in this open court on this **23rd** day of **January** month of the year **2019**.

23/01/2019
Surat

(Romit Anilkumar Agrawal)
13th Add. Senior Civil Judge
Surat.
Judge Code: GJ00933