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Duration	:	Years	Months	Days
		20	01	11
Exhibit	:			

IN THE CITY CIVIL & SESSIONS COURT AT AHMEDABAD, (COURT NO.21)

CIVIL SUIT NO. 1148/2006

Plaintiff :

Parekh Uday Duleray

Age : Adult, R/o. 46, Mithila Society, Nr. Shreyas Crossing, Manekbaug, Ahmedabad,

having office at 1005, Silicon Tower, 10th floor,

B/h. Samartheshwar Temple, Ellis Bridge, Ahmedabad.

Versus

Defendants:

1) Bank of Baroda,
   Panch Kuva Branch, Relief Road, Ahmedabad.
2) Mr. Mansukh V Pethani,
   Chairman of Smarth Krupa,
   Co-operative Housing Society Ltd.,
   10th Floor, B/h. Samartheshwar Temple, Ellis Bridge, Ahmedabad.
3) Mr. Deepak Kantilal Shah,
   F-1, Suprabhat Apartment, Nr. Gulab Tower,
   Opp. Someshwar Tower, Sola Road, Ahmedabad.

APPEARANCE:

Mr. G.J. Dave, Ld. Advocate for the plaintiff.

Ms. Nalini Lodha, Ld. Advocate for the defendant no. 1 – Bank.

None has appeared on behalf of the defendant nos. 2 and 3.

::JUDGMENT::

INTRODUCTION

1. The present suit has been filed by the plaintiff seeking a declaration against the defendants so as to restrain the defendants permanently from in any way disturbing, obstructing, causing hindrance to the peaceful possession and all the officers, servants and agents of the defendants from taking possession of or in any way dealing with the premises of the plaintiff i.e. **Office No. 1005, Silicon Tower, Ellis Bridge, Ahmedabad.** The plaintiff further seeks a relief that to declare that the defendant no. 3 have been created right of the defendant no. 1 Bank in whatsoever manner by entering into Guarantee Deed/Mortgage Deed/Personal Guarantee Agreement etc. or by any other means in favour of the defendant no. 1 bank is void ab-initio, illegal, unlawful and fraudulent and is no way binding to the plaintiff. The plaintiff further seeks further relief against that the defendant No. 1 Bank and/or its officers, servants etc. have no right of any nature whatsoever to exercise any right pursuant to such document i.e. Guarantee Deed/Mortgage Deed/Personal Guarantee Agreement etc. or any other documents given by the defendant No. 3 in favour of the defendant No. 1 and/or to disturb the ownership and/or the possession of the said property so far as the plaintiff is concerned. The plaintiff be declared the

owner of the premises specifically stated in Schedule which is annexed with the plaint. Accordingly, the plaintiff has prayed to pass decree and order against the defendants.

BRIEF FACTS OF THE PLAINTIFF'S CASE

2. It is the case of the plaintiff that he is carrying on business of manufacturing of chemicals at his manufacturing unit situated at Chhatral and is having his office at the address mentioned above and the said office is the suit property.

3. The defendant no. 1 is a Banking Company registered under the Banking Companies (Acquisition and Transfer of Undertakings Act, 1970) and dealing in banking activities. The defendant No. 2 is the Chairman of the **Samarthkrupa Co-operative Housing Society Ltd.** Which is a society registered under the Co-operative Societies bearing registration No. 2697 dated 02.09.1967. The plaintiff humbly submits that the plaintiff was in search of a premise for his office and the defendant No. 2 had floated a scheme namely **Silicon Tower** b/h Samartheshwar Mahadev, Ellisbridge, Ahmedabad. The plaintiff had approached the defendant no. 2 in the year April – 1996 when the said building known as Silicon Tower was under construction. The plaintiff had entered into various meeting and after negotiations with the defendant no. 2, the plaintiff shown willingness **to purchase an office premise on the 5th floor of the said building.** The plaintiff further submits that plaintiff made the down payment of the entire amount of sale consideration to the defendant no. 2 who had accepted the said payment and issued various receipts against the respective payments. The defendant

no. 2 had also issued provisional allotment letter and the sahre certificate for the said office premises. The defendant no. 2 had assured that plaintiff that the said premise is free from all the encumbrances and the title of the said office/premise is clear and marketable.

4. The plaintiff further submits that when the **said building was completely constructed around the year 2002,** the petitioner approached the defendant no. 2 for getting actual and peaceful possession of his office for which he had already paid the consideration. But, the defendant no. 2 delayed for handing over the possession of the office premise to the plaintiff. Thereafter, after making several efforts by the plaintiff for taking the possession, the defendant no. 2 requested the plaintiff to opt for any other office in the said premise other then the office allotted to the plaintiff earlier on 5th floor. He also assure plaintiff to provide for all the necessary documents of the new office which the plaintiff choose.

5. It is pertinent to note here that the defendant no. 2, however, refused to make refund of the amount paid by the plaintiff for the office at 5th floor. Thus, there is no option left with the plaintiff lastly consider to accept the possession of the office on 10th floor of the tower being Office No. 1005. The defendant no. 2 had issued the plaintiff the allotment letter dated 19.04.1996 for office no. 1005 in as much as the NOC for the said office. The defendant had also given a letter to the plaintiff wherein he had assured that the said office no. 1005 as well as the said building namely Silicon Tower and the land appurtenant

thereto are not subject to any encumbrances, charges or rights of any kind or of anybody whatsoever, and the title of the entire property is clear and marketable.

6. The plaintiff further submits that at the time when the defendant no. 2 had handed over the said documents to the plaintiff for the said premise i.e. Office No. 1005, Silicon Tower, the flooring work of the said office was not done. After taking the possession of said office, **the plaintiff had taken the possession in the end of year 2003** and after taking possession of the said office, plaintiff had done the flooring work and other miscellaneous work in the said premises. The plaintiff applied for electric connection and telephone connection from the respective authorities and also made necessary correspondences to the Sales-Tax Dept. intimating them that the said premise is also being used by the plaintiff as an additional registered office of his firm.

7. The plaintiff submits that at the end of year 2003, the plaintiff had also paid maintenance charges to the association i.e. Silicon Tower Officer Owners Association, as a member including his share of necessary expenditure incurred for installing the fire safety equipments. After taking possession of the said premise, it was found out that certain portion of the said premise was constructed unauthorized by the defendant no. 2 and therefore, plaintiff had to approach the AMC for getting such construction regularize. The plaintiff had to make payment of Rs.15,000/- to the AMC on account of impact fees.

8. It is pertinent to note here that one of the members of the said Silicon Tower Association Mr. Bharat Shah had got conducted a title search report from Shri Janak R. Shah Advocate for all the office of the entire building i.e. Silicon Tower and the land on which the said tower is constructed i.e. Final Plot No. 423, Hissa No. 8, TPS No. 3 in village Changispur, Ahmedabad(3). **The said advocate under the title clearance certificate dated 29.09.2005,** after making due search of the record of the said property, opined that except for Office No. 903 and 905, no other offices of the said tower were under any charge or encumbrance of any Bank and any other institutions or individuals and that excluding the said two offices, the title of the rest of offices are clear and marketable and without any charge or encumbrances. Such facts has also been found in 7/12 Abstract dated 27.05.2005 of the land on which the said tower has been constructed.

9. It is further submitted that before giving any title clearance certificate, Advocate Janak Shah had also published one public notice dated 27.07.2005 for the property i.e. Silicon Tower and had sought objections, if any, from the general public or bank or institution for grant of the Title Certificate. It is submitted that pursuant to the said public notice, said Advocate Shri Janak R. Shah had received objections for only two offices bearing No. 401 and 503. It is pointed out here that the defendant no. 1 Bank had neither lodged any claim before the sub-registrar nor it raised any objections to the said Advocate Mr. Shah for granting title clearance certificate for the office of the plaintiff.

10. Thus, it becomes clear that plaintiff is the owner, occupier and possessor of the said premise i.e. property bearing No. 1005 of Silicon Tower by virtue of the necessary documents related to the title and possession of the said property given by the society through the **defendant no. 2 to the plaintiff back dated to April, 1996.** It is submitted that on 21.01.2006 when the plaintiff went to his office in the morning hours the plaintiff found that a notice dated 19.08.2005 issued by the defendant no. 1 Bank and addressed in the name of defendant no. 3 was affixed on the door of the premises of the plaintiff i.e. office no. 1005. The plaintiff was shocked and surprised to learn from the notice that the said office no. 1005 was owned by defendant no. 3 that the defendant no. 3 had stood as guarantor for the credit facility granted by defendant no. 1 bank to one M/s. Plastic Hollowers and Containers. It was averred in the said notice that the said guarantee was executed in September, 2003 and that as the original borrower had not repaid the credit facility, the defendant no. 3 as a guarantor was liable to pay the said amount and on default of his in making payment the defendant would take action under the provisions of the Securitization Act more particularly under sub-section 4 and 13 of Section 13 of the said Act by taking possession of the property of the plaintiff. It is humbly submitted that the plaintiff does not know the defendant no. 3 nor is in any way connected with the said firm i.e. M/s. Plastic Hollowers and Containers. The plaintiff also does not know the address of the said firm and/or the business activity undertaken by the said firm.

11. Further, it is submitted that in respect to the contentions of the impugned notice the plaintiff rushed to the defendant no. 1 to inquire about the validity and legality of the said notice. During the meeting with the defendant no. 1, the plaintiff came to know that the defendant no. 3 had stood as guarantor of the said original borrower i.e. M/s. Plastic Hollowers and Containers and as a security of repayment of the credit facility, the defendant no. 3 in collusion with the defendant no. 2 may have submitted document related to the office of the plaintiff somewherein the year 2003.

12. Thus, the defendant no. 2 had committed a clear case of fraud, forgery and cheating and fabrication and manipulation of the documents and had issued certain documents related to the property of the plaintiff in the year 2003. On the basis of document related to the title of the office of plaintiff, the defendant no. 3 had executed alleged guarantee deed in favour of the defendant no. 1 in the year 2003. It is further submitted that all the transactions entered into by and between the defendant no. 2 and 3 and the defendant no. 3 with the defendant no. 1, are void ab initio because of the fact that the plaintiff has become the owner of the premises even since April, 1996. Therefore, the plaintiff found that he was cheated by the defendants in collusion with each other.

13. It further states that the defendant no. 1 is also a party to the said fraud and because of the fact that while accepting the alleged documents from the defendant no. 3 related to the property of plaintiff, the defendant no. 1 has not cared to obtain

title clearance report of the said property. The defendant no. 1 has also not cared to take search of the document related to the ownership and title of the said property from the office of the Sub-registrar. The defendant no. 1 has deliberately not got its lodged in the Registry with the Sub-registrar and has deliberately not raised objection to Advocate Shri Janak R. Shah in granting title clearance certificate for the entire building which undoubtedly comprise the office No. 1005 of the plaintiff. The plaintiff is the bonafide purchaser of the said office and owner since the year 1996 which is clear from the documents which were issued by the defendant no. 2 at the relevant point of time and the plaintiff is in actual possession of the said premises since end of the year 2003. Therefore, the defendant no. 3 is not at all a lawful owner and/or occupier of the said premises on account of any document that may have been fabricated by the defendant no. 2 in the name of the defendant no. 3 in collusion with each other and/or in collusion with the defendant no. 1. Therefore, property of the plaintiff is not subject to any alleged mortgage or charge of the defendant no. 1 as per the facts narrated as above. Therefore, the defendant no. 1 is not entitled to take any action against the present plaintiff in so far as the property bearing Office No. 1005 is concerned pursuant to the impugned notice dated 19.08.2005.

14. It is further submitted that the plaintiff had made several requests to the defendant No. 1 Bank, the Bank otherwise are setting tight over their demand and are threatening to the plaintiff that the Bank shall take over the possession of the property by putting a seal and then to sale the said premises in order to

recover the outstanding amount due from the original owner. The plaintiff had therefore to serve a notice dated 02.02.2006 to the defendant no. 1 by registered post A.D. which was received by defendant no. 1 on 06.02.2006. The defendant no. 1 instead of replying and/or complying with the said notice serve a communication dated 10.02.2006 addressed to the office of the plaintiff reiterating contentions of the impugned notice had called the plaintiff personally with all original documents and papers in his possession who substantiate his contentions.

15. It is further submitted that in the meantime the plaintiff has also filed Criminal Complaint against the defendant no. 2 before the Police Inspector, Ellis Bride Police Station, Ahmedabad under Section 134 of the Criminal Procedure Code for the offence committed by the defendant no. 2 under Section 406 in the alternative 402, 467, 468 and 471 (a) of the Indian Penal Code. The present plaintiff has preferred SCA before the Hon'ble Gujarat High Court claiming the same reliefs and the Hon'ble High Court of Gujarat has passed order directing the plaintiff to file the said claims before the appropriate Court.

16. Pursuant to the said communication dated 10.02.2006, the plaintiff visited the defendant no. 1 bank on 16.02.2006 along with all the original documents pertaining to the title and possession of the said premises bearing office no. 1005 of Silicon Tower and handed over photo copy of all the documents by showing the originals. The said documents were received by the defendant no. 1 at the same time. It is further submitted that even after satisfying the defendant no. 1 by all means, the defendant

no. 1 is still making illegal, arbitrary and undue demands from the plaintiff either to make payment of the amount as stated in the impugned notice and in the alternative to handed over peaceful possession of the premises of the plaintiff to defendant no. 1., the plaintiff is threatened by the defendant no. 1 that if the plaintiff fails in doing so the defendant no. 1 may take possession of the premises of the plaintiff and sale proceed further in the direction of taking action under the provisions of Securitization Act against the present suit.

17. It is also pertinent to note here that the plaintiff when visited the defendant no. 1 bank along with all the original documents as stated earlier on 16.02.2006 had asked the defendant no. 1 bank to show the documents which may have been submitted by the defendant no. 3 depending upon which the bank is claiming title of the said premise in question which is there in possession and ownership of the present plaintiff but the defendant no. 1 bank had refused to show any such document to the plaintiff. Thus the defendants are inter se hiding the facts as well as the documents which might have been submitted by the defendant no. 3 with defendant no. 1 bank depending upon which the defendant no. 1 bank is claiming the ownership and possession of the property in question and is threatening the plaintiff to take the said premises by issuing notice under the Securitization Act as stated earlier.

18. The plaintiff humbly submits that in view of the above facts and circumstances of this case the main idea of the defendant no. 1 is illegal, arbitrary and against the principle of natural justice inasmuch as the subsequent action of the

defendant no. 1 in threatening the plaintiff to hand over peaceful possession of his property is also illegal and against the principle of natural justice and hence this suit. The plaintiff further submits that the defendant no. 1 bank had no right to evict the plaintiff who is the owner of the said premises and is also having/enjoying the peaceful and vacant possession of the said premises physically since 2003, with right, title and interest to use the same in as much as since the defendant no.1 bank did not have any right in respect of the said suit premises. The plaintiff submits that the plaintiff has got good prima facie case and balance of convenience is also in favour of the plaintiff. If the injunction is not granted as prayed for, irreparable loss will be caused to the plaintiff. If the injunction as prayed for is granted, no loss or injury will be caused to the defendants.

19. The cause of action to file the suit has arisen within the territorial jurisdiction of this Hon'ble Court on different dates and more particularly on the date of which the notice was affixed by the defendant no. 1 at the plaintiff's premises i.e. the impugned notice dated 19-8-2005 of which the plaintiff came to know on 21-1-2006 for the first time. When the defendant no. 1 had asked the plaintiff to repay the amount of loan which was guaranteed by the plaintiff and in alternative of the same may hand over the possession of the premises of the plaintiff bearing office no. 1005.

20. Thus, the plaintiff has filed this suit against the defendants for getting the reliefs as mentioned in para no. (22) of the plaint and accordingly, prayed to pass decree and order in favour of the plaintiff.

APPEARANCE OF DEFENDANTS

21. Defendant nos. 2 and 3 remained unserved at first attempt. Then after, they were served by affixing the summons upon door of the property of the def. no. 2 and 3. But, the defendant no. 1 has appeared and filed reply against this plaint vide Exh. 20 whereas the The defendant no. 1 has submitted that the record produced by the plaintiff are totally contrary to the reliefs as sought for in the plaint. The plaintiff in collusion with the defendant no. 2 has filed the suit having mala fide intention to restrain the defendant no. 1 from exercising its power under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

22. With reference to para 1 of the plaint, it is submitted that the defendant no.1 bank is not aware of the business activity and the place of manufacturing of the plaintiff and is unable to offer comments thereon and the plaintiff be put to strict proof thereof. It is categorically denied that the building known as Silicon Tower was under construction in April 1996 as alleged in para 4 of the plaint. **It is pertinent to note that the Ahmedabad Municipal Corporation has granted permission for commencement of construction vide Raja Chithi bearing No.83 only on 14.03.1997.** The contents of para 5 of the plaint insofar as the same pertain to the meetings and negotiation between the plaintiff and the defendant no.2 is concerned, are not within the knowledge of the defendant no.1 bank and are hence not admitted and the plaintiff be put to strict proof thereof. The so-called story made out in para 6 of the plaint about what transpired between the plaintiff and the defendant no.2 with

regard to the possession of the office fifth floor and allotment of office premises no.1005 in lieu thereof in the back date speaks volumes about the so-called claim of the plaintiff to the property on in the question. It is pertinent to note that the necessary title documents pertaining to the office premises No.1005 were issued to the guarantor and mortgagor, the defendant no.3 herein way back in 2001 and hence, alleged claim of the plaintiff on the basis of the alleged ante-dated documents in respect of office premises no. 1005 is false, baseless and untenable. It is submitted that the alleged documents sought relied upon plaintiff to establish his alleged claim property is untenable in law and on facts. Contents of are absolutely para 7 and 8 of the plaint false and are categorically denied. It is surprising that the plaintiff has conveniently avoided to mention certain averments which were made in the petition before the Hon'ble High Court of Gujarat as the same clearly proves the falsity of the claim of the plaintiff to the plaintiff suit property.

23. It is not out of place to mention here that the plaintiff in the said para is claiming to have taken possession of the office somewhere in the end of 2003 and further are dated claimed to have started using the suit premises since end of 2003 but in the petition before the Hon'ble High Court produced the alleged bills / receipts of having carried out the flooring work and electrification which 15.03,2005, 17.03.2005, 19.03.2005 20.03.2005. The same are not produced by the plaintiff and before this Hon'ble Court.

24. With reference to para 9 of the plaint, it is submitted the alleged documentary evidence produced by plaintiff in support of his case is irrelevant insofar as the suit the right of the defendant no.1 bank as mortgagee to the property is concerned. The contents of para 9 that are the the however not admitted. It is pertinent to note plaintiff who claimed to have started using the said office from the end of 2003 in the petition before Hon'ble High Court is conspicuously silent about the said aspect before this Hon'ble Court. It is pertinent to note that the defendant no.1 bank has obtained valuation report Shri Bharat N. Pandya, Government approved Registered Valuer in respect of the property in question prior obtaining mortgage of the office no.1005 which clearly states the possession of the suit premises of mortgagor /owner as on 19.08.2003.

25. With reference to para 10 of the plaint, it is submitted that it is difficult to understand as to how the public clearance the title notice dated 27.07.2005 and the title clearance certificate dated 29.09.2005 issued by advocate Janak R. Shah, can be relied upon by the plaintiff to establish his case against the defendant no.1 bank and how the plaintiff favour on could draw an adverse inference in his favour on the ground that the defendant no.1 bank has not lodged claim before the said advocate Janak R.Shah. The alleged reliance sought to be placed by the plaintiff on the title clearance certificate issued by said Janak R. Shah Advocate is mis-conceived and mis-placed and in no way establish the claim of the plaintiff to the property in question. The defendant no.1 bank is unable to understand as to

what the plaintiff wants to drive at by saying that no claim has been lodged by the defendant no.1 bank with the Sub-Registrar.

26. With reference to para 11 of the plaint, it is submitted that the claim of the plaintiff that the documents relating to the title and possession of the property given by the society through the defendant no.2 to the plaintiff dated back to April 1996 is false, baseless and untenable. It is submitted that no rights in the property can be said basis of the to have accrued to the plaintiff on the alleged set of documents which are false and fabricated and hence, the alleged claim of the plaintiff that the said premises being office no. 1005 of Silicon Tower is wholly owned, occupied and possessed by the plaintiff as a valid owner, occupier and possessor of the said premises is not only false but wholly untenable.

27. With that reference to para 12 of the plaint, it is submitted the defendant no.1 bank is entitled to enforce its security interest by invoking the provisions of Securitisation Act and has rightly done so since the office premises No.1005 have been mortgaged by defendant no. 3 to the defendant no.1 bank and hence there is no question of shock and surprise on the part of the plaintiff as alleged.

28. With reference to para 13 of the plaint, it is submitted it is really astonishing that the plaintiff is raising a contention that the documents executed by the defendant no.3 in favour of the defendant no.1 bank are void ab-initio on the ground that he became the owner the premises ever since 1996 when as per his

own say, plaintiff had booked the office premises no.5/C and Office No. 1005. All allegations made with regard documents pertaining to the Office No.1005 and issued by the defendant no.2 to defendant no.3 are false and are vehemently denied. There is no question of fraud played upon by the defendant no.1 as alleged. In fact, it is plaintiff who in collusion with the defendant no.2 has made out false case to prevent the defendant net bank from enforcing the security interest for realization of Its dues. It is, however submitted that the defendant no.1 bank has obtained title clearance certificate from its penal advocate prior to obtaining mortgage of the said property. It is denied that the plaintiff the bonafide first purchaser of the said property and the plaintiff is the owner of the said premises from the year, 1996 as alleged. It is submitted that the plaintiff has no title to the property in question as his alleged claim is based on the false and fabricated documents. All contentions raised by the plaintiff with respect to the same are false, baseless and untenable and are hence denied and there is no question of defendant no.1 bank not entitled to take any action against the said property as alleged. It is submitted that the defendant no.1 bank as a mortgagee is entitled to enforce its security interest for realisation of its dues. The so-called collusion on the part of the defendant no.1 bank with the defendant no.2 and 3 is false, baseless and unfounded.

29. With reference to para 16 of the plaint, it is submitted that the defendant no.1 bank has given its reply dated 10.02.2006 in response to the reply received from the plaintiff on 06.02.2006

wherein the defendant no.1 bank expressed its surprise that the plaintiff in his personal capacity has replied to the notice under the title 'Reply to Notice-cum-Notice' on the letter head of the advocates. The defendant no.1 bank sticks to the reply dated 10.02.2006 and denies all that is contrary thereto. With reference to para 17 of the plaint, it is submitted that the criminal complaint dated 14.02.2006 lodged by the plaintiff against the defendant no.2 before the Police Inspector, Ellisbridge, Ahmedabad, indicates that the plaintiff is claiming his title on the basis of forged and submitted fabricated documents which cannot disprove or supersede the rightful and bonafide claim of the defendant no.1 bank as mortgagee to the security interest. It is not known as to which SCA and order of which date of the Hon'ble High Court, the plaintiff is referring to in the later portion of para 17 of the plaint as the said particulars are not stated but if the plaintiff is referring to the SCA No.3954 of 2006 and the order dated 13.04.2006 of the Hon'ble High Court, it is absolutely on the part of the plaintiff to say that direction was given to file the claim before the appropriate Court. It is submitted that the order dated 13.04.2006 reads under:

> **"Shri Nanavati Chokshi, learned advocate appearing Associates appearing on behalf of for the plaintiff under the instructions from his client seeks permission to withdraw the present Special Civil Application with a view to avail other remedy available before the appropriate forum. Permission is accordingly granted. Petition is dismissed as withdrawn. Notice is discharged. Ad-interim relief granted earlier stands vacated forthwith."**

30. It is denied that the plaintiff has satisfied the defendant no.1 bank about his title to the property in question by showing the original and handing over photocopy thereof as contended in

para 18 of the plaint. It is submitted and reiterated that the so-called claim of the plaintiff to the property in question based on false and fabricated documents is bogus insofar as the rights of the defendant no.1 bank as mortgagee is concerned and the question of satisfaction on the part of the defendant no.1 bank about the claim of the plaintiff does not arise at all. It is categorically denied that the defendant no.1 bank has ever demanded the payment of the amount stated in the impugned notice from the plaintiff as alleged. It submitted to that the defendant no.1 bank is within its rights take possession of the property in question under the provisions of Securitisation Act on the facts and in the circumstances of the present case. It is not out of place to mention here that the of as defendant no.1 bank has produced the complete set of the mortgage documents along with title deeds before Hon'ble High Court of Gujarat along with the Affidavit-in-Reply, copy whereof was also served upon the plaintiff's advocate.

31. It is categorically denied that plaintiff is the owner of the said premises and is having/enjoying peaceful possession of the said premises since, 2003. It is denied that the defendant no.1 bank did not have any right in respect of the suit premises as alleged. Thus, in view of the above objections, the defendant no. 1 has prayed to reject the suit of the plaintiff with costs.

ISSUES

32. My learned predecessor has framed the issues vide Exh.43 same are as under :

1. Whether the plaintiff proves that he is bonafide purchaser and owner of the suit premises bearing office no. 1005 of Silicon Tower since 1996 on the basis of documents issued by defendant no. 3 and he has not mortgaged his property with defendant no. 1 Bank ?

2. Whether plaintiff proves that all the defendants in connivance with one another committed fraud, cheating, forgery with plaintiff as defendant no. 3 stood as guarantor of M/s. Plastic Hollowers and Containers who obtained loan from defendant no. 1 Bank and defendant no. 2 provided the documents of suit property of plaintiff to defendant no. 1 and 3 ?

3. Whether the defendant no. 1 Bank proves that the suit premises is mortgaged with them and plaintiff in collusion with defendant no. 2 has filed the present suit to restrain the defendant no. 1 bank from exercising its power under the provisions of Secularization Act for recovery its due of Rs.29,81,765/- in pursuance of notice dated 19.08.2005 ?

4. Whether the plaintiff proves that plaintiff is entitled for the relief as prayed for in para 22 of the plaint ?

5. What Order and Decree ?

REPLY OF ISSUES

33. My reply of the above issues are as under.

(1) Partly in affirmative.

(2) In negative.

(3) In negative.

(4) Partly in affirmative.

(5) As per final order.

34. The plaintiff has produced the following oral evidence in support of the suit :

ORAL EVIDENCE OF PLAINTIFF:-

S.No.	Description	Exh.
1.	Examination-in-chief of plaintiff	52

DOCUMENTARY EVIDENCE

S.No.	Description	Exh.
1	Original Receipt issued by the Defendant No. 2 regarding the payment of the suit property	54
2	Original Share Certificate issued by the Defendant No. 2	55
3	Original Allotment Letter	56
4	Original Possession Letter	57
5	Original No Objection Certificate issued by Defendant No. 2	58
6	Original Copy of Telephone Bill	59
7	Original Copy of Electricity Bills	60
8	Original Correspondence as made by the plaintiff with the Sales Tax Department	61
9	Original of maintenance receipts	62
10	Original Copy of the receipt showing that the fire safety equipment was paid by the plaintiff	63
11	Original Copy of the municipal tax bill	64
12	Original Copy of municipal tax payment receipt	65
13	Original Letter of Society issued to plaintiff	66

14	Original R.P.A.D. Slip	72
15	Track Report of India Post	73
16	Original/Certified abstruct of Village Form No. VII-XII	74
17	Copy of Title Search Report issued by Advocate Mr. J.R. Shah	102
18	Copy of the Public Notice given by Advocate Mr. J.R. Shah	103
19	Notice to produce original documents with enclosure	104
20	Notice to produce original documents with enclosures office copy	105
21	DRT Paper	Mark 95/1
22	Court Commissioner Report	141

The Ld. Advocate for the plaintiff has passed closing pursis at Exh. 116.

35. The defendant no. 1 has produced the following oral as well as documentary evidence in support of the defence :

ORAL EVIDENCE

S.No.	Particulars	Exh.
1	Examination-in-chief of the defendant no. 1; Assistant General Manager	129

DOCUMENTARY EVIDENCE

S.No.	Particulars	Exh.
1	Xerox Copy of Letter addressed by the Society to the Bank confirming the charge of the bank on Office No. 1005 being taken on record of the society	134

2	Xerox Copy of the Valuation Report	135
3	Xerox Copy of the Power of Attorney “B” Type	140

The Ld. Advocate for the defendant no. 1 has passed closing pursis vide Exh. 136.

36. The plaintiff has submitted oral arguments in support of his plaint and in support of arguments, he has produced the following citations :

(1) Judgment passed in the case of Thakur Ajay Singh vs. Medishetty Ravindra Kumar & Ors. In Civil Revision Petition No. 1053/2024 by the Hon’ble High Court of Telangana.

(2) Judgment passed in the case of Imtiaz Ahmed Khan vs. Simpson and Co. & Ors. In Civil Revision Petition No. 1395/2024 by the Hon’ble High Court of Telangana.

(3) Judgment passed in the case of Meenakshi Oberg vs. Karun Dube & Ors. In RFA (Comm) 136/2024 by the Hon’ble High Court of Delhi.

(4) Judgment passed in the case of Mikkilineni Venkateshwara Rao & Ors. vs. Thummala Rambabu in Appeal Suit No. 124/2010 by the Hon’ble Andra Pradesh High Court at Amaravati.

37. The defendant no. 1 has orally argued as per the objections submitted before this Court.

::REASONS::

ISSUE NO. 1

38. As per the plaintiff's submission, he is the owner and possessor of the suit property i.e. bearing Office No. 1005 which is situated at Silicon Tower since the year 1996. Plaintiff has submitted in his plaint at para no. 4 that he had entered into various meetings and after negotiations with the defendant no. 2, plaintiff ultimately shown willingness to purchase an office premises on the 5^{th} floor of the Silicon Tower. Plaintiff has also submitted that plaintiff had made a down payment for the said property which is situated at 5^{th} floor. It is undisputed that plaintiff had made a payment in respect to the office situated at 5^{th} floor bearing No. 5-C. Considering various receipts submitted by the plaintiff vide Exh. 54, it is found that plaintiff had made a payment of Rs. 7,35,000/- in respect to the office bearing No. 5-C situated in Silicon Tower. Therefore, it is not disputed that the plaintiff has made a payment of Rs.7,35,000/- in respect to office No. 5-C and that payment was not challenged by the defendant no. 1 that plaintiff has not made a payment in respect to the Office No. 5-C.

39. Plaintiff further submits in his plaint that the said building was completely constructed at the end of the year 2002 and plaintiff went to the defendant no. 2 for getting the possession of the office situated at 5^{th} floor but the defendant no. 2 for one or other reason, not handed over the possession of the office No. 5-C to the plaintiff. Therefore, long passage of time and after strenuous efforts of the plaintiff for taking possession of the premises from the defendant no. 2, at that time, defendant no. 2 requested to the

plaintiff that for some personal reason, he had to allot the office No. 5 -C to some other person and defendant no. 2 requested to the plaintiff that to opt for any other office in the suit premises other than the office No. 5 – C. Then after, plaintiff had chosen the office situated at the 10th floor being office No. 1005 (disputed office). At that time, defendant no. 2 had issued the possession letter, allotment letter and NOC in respect to the office bearing No. 1005 in favour of the plaintiff with back date. Plaintiff has also submitted that he had taken the possession of office No. 1005 at the end of year 2003. It is required to discuss here that plaintiff has not mentioned any specific date on which day, he had obtained the possession of the suit property. Plaintiff has submitted in general that he had taken the possession at the end of year 2003.

40. As per the plaintiff's case, he opted for office No. 1005 at the request of defendant no. 2 in the year 2002-03 but plaintiff has submitted the allotment letter and possession letter and NOC of the suit property vide Exhs. 56 to 58 which is an original letter issued by the defendant no. 2 but the date of these letters is 29.04.1996. As per the defendant no.1' submission that the builder had taken a development permission from the Ahmedabad Municipal Corporation in respect to the Silicon Tower on 14.03.1997 which is reflected from the documents submitted by the plaintiff vide Exh. 102 at para no. 5. Considering this submission, it is clear that the development permission issued by the corporation in respect to the Silicon Tower was on 14.03.1997. Therefore, when there is no existence of any building on 19.04.1996 even though the defendant no. 2

had issued the possession letter of the disputed office No. 1005. While as per the submission of the plaintiff, the office No. 1005 was allotted to the plaintiff by the defendant no. 2 in the year 2002-03. Even though, the defendant no. 2 had issued the allotment letter, possession letter and NOC on 19.09.1996. It means all these three document issued prior to the suit property came into existence. Therefore, there is some doubt that why defendant no. 2 had issued all three documents prior to the existence of the suit property. Therefore, it is the duty of the plaintiff to prove that why the defendant no. 2 had issued all these three documents with back date and such fact can be explained only by the defendant no. 2 but plaintiff has not examined the defendant no. 2 or his successive office bearer of the Samarthkrupa Co-operative Housing Society Ltd.

41. Other side, the defendant no. 1 has submitted the **creation of charge letter** issued by the Samarthkrupa Co-operative Housing Society Ltd. in favour of the defendant no. 1 vide tentative Exh. 134. It is also required to discuss here that the tentative Exh. 134 was taken on record by referring the condition that if the defendant no. 1 succeed to prove the fact of this letter by examination of the author of this letter then it will be considered as an evidence. But, defendant no. 1 has also failed to examine author of this letter or the office bearer of the Samarthkrupa Co-operative Housing Society Ltd. Therefore, this Court cannot read the tentative Exh. 134 against the plaintiff and in favour of the defendant no. 1 because mere exhibiting of the document, the facts of said document does not prove automatically. But, considering the pursis vide mark 95/1 which is certified copy of

petition which is produced before the DRT. Considering the page no. 55 of mark 95/1 wherein it is mentioned that the disputed office No. 1005 was mortgaged by the defendant no. 3 in favour of the defendant no. 1 dated 06.09.2003. It means in the month of September – 2003, the office No. 1005 was allotted to the defendant no. 3 by the defendant no. 2. It means defendant no. 2 had issued the allotment letter and possession letter in favour of the defendant no. 3 as well as the plaintiff. Therefore, it is duty of both the parties; plaintiff and the defendant no. 1 to examine the defendant no. 2 or the existing office bearer of Smarthkrupa Co-operative Housing Society Ltd. And to prove his case that firstly, in which favour the disputed allotment letter and possession letter issued by the defendant no. 2. But, both the parties have failed to do so.

42. It is required to consider here that the plaintiff has come before this Court with his case, therefore, first burden of proof is lying upon the plaintiff and when plaintiff proves that allotment letter and possession letter of the suit property issued by the defendant no. 2 in his favour before it was issued in favour of the defendant no. 3 then the onus of proof will shift upon the defendant no. 1 and it is required to prove that the allotment letter and possession letter were issued in favour of the defendant no. 3, were issued prior to the plaintiff's allotment letter and possession letter. Therefore, first responsibility lies upon the plaintiff and he has to prove his case that possession letter and allotment letter of disputed property issued in his favour prior, then after, the defendant no. 2 also issued the possession letter and allotment letter in favour of the defendant no. 3.

43. In this case, two sets of allotment letter and possession letter issued by the defendant no. 2. One is in favor of plaintiff and other is in favour of the defendant no. 3. The allotment letter and possession letter are issued in favour of the plaintiff is produced vide Exh. 56 and 57 while the possession letter and allotment letter issued in favour of the defendant no. 3, is produced vide mark 133/7 and 133/8 but are not exhibited because defendant no. 1 did not try to exhibit these documents either by the way of filing separate application or through his deposition which is submitted vide Exh. 129.

44. It is required to refer here that the deposition of defendant no. 1 vide Exh. 129 in which he has referred the document S.Nos. 1 to 5 and 10 produced in the documentary list vide Exh. 133 but defendant no. 1 has not referred the allotment letter and possession letter issued in favour of the defendant no. 3 by the defendant no. 2 which is mentioned in the S.No. 7 and 8 of D.E. List vide Exh. 133. It means defendant no. 1 has not tried to exhibit; mark 133/7 and 133/8. It is also required to discuss here that mere exhibiting of the document, does not prove the contents of the said document and such a principle is established by the Hon'ble Supreme Court of India in the case of Narbada Devi Gupta vs Birendra Kumar Jaiswal And Anr in Appeal (Civil) No. 315/1998 wherein it is held that -

> Reliance is heavily placed on behalf of the appellant on the case of Ramji Dayawala & Sons (P) Ltd., (supra), The legal position is not in dispute that **mere production and marking of a document as exhibit by the court cannot be held to be a due proof of its contents.** Its execution has to be proved by admissible evidence that is by the 'evidence of those persons who can vouchsafe for the truth of the facts in issue'.

45. Considering the above mentioned ratio laid down by the Hon'ble Supreme Court of India and exhibiting the allotment letter and possession letter issued in favour of the plaintiff, plaintiff has not proved the contents of these documents through the examination of author of such documents or successive officer bearer of the Samarthkrupa Co-operative Housing Society Ltd. Therefore, mere exhibiting of possession letter and allotment letter in favour of the plaintiff, does not prove the contents of said documents without the examination of the said person who issued the same.

46. Moreover, the possession letter and allotment letter issued in favour of the plaintiff, is suspicious because both these issued in the year 1996, at the relevant point of time, the suit property was not in existence, as permission for its construction was obtained from the Ahmedabad Municipal Corporation on 14.03.1997, pursuant to which it was decided to construct the said property in the year 1997 which is mentioned in the document vide Exh. 104 at para no. 5 which is submitted by the plaintiff himself while the possession letter and allotment letter issued in the favour of plaintiff in the year 1996 at that time, the suit was not even in existence. Therefore, both the parties; plaintiff and defendant no. 1 have submitted the allotment letter and the possession letter issued by the defendant no. 2 but both are found to be contradictory with each other because it is not possible that one property sold out to two different persons as per the allotment letter and possession letter issued in favour of the plaintiff and in favour of the defendant no. 3. It can be inferred that either one set of documents is genuine and the other is false. To ascertain the

truth of this fact, the author of the said documents was required to be examined, as the genuineness of the documents could have been proved through such testimony. However, neither the plaintiff nor defendant No. 1 examined the author of the said documents. Therefore, neither party has succeeded in proving the allotment letter and possession letter allegedly issued in their respective favour.

47. In short, the plaintiff has submitted the allotment letter and the possession letter of suit property but he has not examined the author of this documents, therefore, plaintiff has failed to prove the contents of these letters, therefore, it cannot be believed that it is proved that the plaintiff is the bona fide purchase and through the allotment and possession letter issued in the year 1996, he became the lawful owner of suit property. No doubt, the plaintiff holds the possession of the suit property, it is undisputed fact because when the Court Commissioner visited the suit property for the purpose of preparing his report, only the plaintiff was present there. Defendant Nos. 1 and 2 were aware that the Court Commissioner had visited the suit property for the preparation of the report; however, they remained absent during the preparation of such report by the Court Commissioner.

48. Considering this report of the Court Commissioner, it is found that disputed office was opened by the plaintiff through his key remained with him. The said report is part and partial of this suit but it is not exhibited, therefore, it is required to exhibit the said report and taken on record vide **Exh. 141**. Therefore, it is established that the plaintiff is the possessor of the suit property till today. <u>But, plaintiff has failed to prove his ownership through</u>

<u>the examination of the seller of such suit property. Therefore, I answer for the Issue No. 1 partly in affirmative that plaintiff is the possessor of the suit property</u> and not the bona fide purchaser of the suit property. It is also an undisputed fact that plaintiff has not mortgaged the suit property in favour of the defendant no. 1 because such suit property mortgaged by the defendant no. 3 in favour of the defendant no. 1. Therefore, such a fact is also undisputed that plaintiff has not mortgaged the suit property with the defendant no. 1 – Bank. Hence, I answer for the Issue No. 1 partly in affirmative.

ISSUE NO. 2

49. As per the plaintiff's case, all the defendants are in connivance with each other, committed a fraud, cheating, forgery with the plaintiff as defendant no. 3 stood as a guarantor of M/s. Plastic Hallowers and Containers, who obtained the loan from the defendant no. 1 – Bank and defendant no. 2 provided the document of suit property of plaintiff to the defendant nos. 1 and 3. It is undisputed that the allotment letter and possession letter were issued in favour of the plaintiff as well as in favour of the defendant no. 3, all were issued by the defendant no. 2 who is the Chairman of Samarthkrupa Co-operative Housing Society Ltd. For the sake of argument, if it believes that defendant no. 2 as a Chairman of the Samarthkrupa Co-operative Housing Society Ltd. Had made a fraud with the plaintiff and issued the allotment letter and possession letter of the suit property in favour of the defendant no. 3. To prove this fact, it is the duty of the plaintiff to examine any office bearer of the Samarthkrupa Co-operative Housing Society Ltd. But plaintiff has not examined any office

bearer of said society, therefore, it is difficult to say that defendant no. 2 has made a fraud with the plaintiff because the submission of plaintiff made in his oral and documentary evidence, are contradictory with each other because as per the plaintiff's submission in his plaint that he had taken the possession of the suit property at the end of year – 2003 while the date of possession letter is of the year 1996, therefore, if defendant no. 2 had made a fraud or cheating with the plaintiff, with the help of other defendant, then, such a fact can be proved by examination of existing office bearer of Samarthkrupa Co-operative Housing Society Ltd. The possession letter and allotment letter issued in the favour of defendant no. 3, are of the year 2001 while plaintiff opted to take possession of suit property in the year 2003. Prior to this, plaintiff took a possession of the suit property, the possession letter of the suit property issued in favour of defendant no.3 in the year 2001. At that time, suit property was not mortgaged with the defendant no. 1 – Bank, therefore, it is difficult to say that defendant no. 1 – Bank had made collusion with defendant no. 3 and wrongly created a mortgage charge upon the suit property because the suit property was mortgaged in the year September – 2003 while the allotment letter issued in favour of defendant no. 3 in the year 2001. Therefore, there is no connivance found in respect to the defendant no. 1 – Bank in this disputed transaction. Therefore, I answer for the Issue No. 2 in negative.

ISSUE NO. 3

50. It is the defence of the defendant no.1 – Bank that suit premises is mortgaged with them by the plaintiff and defendant no. 2 in

collusion with each other. It is also duty of the defendant no. 1 – Bank to prove the collusion of plaintiff and defendant no. 2 by examining the office bearer of the Samarthkrupa Co-operative Housing Society Ltd. It is also undisputed that defendant no. 3 became the surety in respect to the mortgage loan issued by the defendant no. 1 – Bank in favour of the M/s. Plastic Hallowers and Containers Ltd. Therefore, defendant no. 1 – Bank has a right to recover its outstanding from the borrower or guarantor of the mortgage loan. It is the separate issue and it will be decided by the DRT, therefore, the Civil Court cannot interfere with the jurisdiction of the DRT. But, it is unbelievable that the plaintiff in collusion with defendant no. 2 had tried to restrain the defendant no. 1- Bank from exercising its power under the SARFAESI Act because this Court cannot entertain any dispute covered under the SARFAESI Act. The proceedings of Civil Suit and SARFAESI proceedings are separate with each other, it cannot come in the way of each other. Therefore, it cannot be said that the plaintiff had tried to restrain the defendant no. 1 – Bank from exercising its power under the SARFAESI Act. Therefore, I answer for the Issue No. 3 in negative.

ISSUE NO. 4

51. Plaintiff has succeeded to prove Issue No. 1 partly in affirmative in the respect that he is the possessor of the suit property but he has failed to prove that he is the bona fide purchaser of the suit property, therefore, the plaintiff is not entitled to get relief to declare that he is the owner of suit property but it is also undisputed that plaintiff is the possessor of suit property, therefore, as per the settled law, defendant no. 1 cannot

dispossess the plaintiff without following due process of law. Therefore, plaintiff is entitled to protect his possession subject to till following the due process of law under SARFAESI Act. Therefore, plaintiff is entitled to get injunction against the defendants that they will not dispossess the plaintiff without following due process of law. Therefore, I answer for the Issue No. 4 partly in affirmative.

ISSUE NO. 5

52. Therefore, I pass the following final order in the interest of justice :

::ORDER::

(1) Plaintiff's suit is hereby partly allowed.

(2) **It is hereby declared that plaintiff is the possessor of the suit property. The defendants are hereby restrained from dispossessing the plaintiff from the suit property except by following the due process of law.**

(3) Parties shall bear their costs.

(4) Decree be drawn accordingly.

Signed and Pronounced in the open Court today on 03rd day of July – 2026.

Date :03/07/2026
Place :Ahmedabad

Vanrajsinh A. Dhadhal
City Civil Judge,
Court No.21,
City Civil & Sessions Court,
Ahmedabad
(Code No.GJ00891).

#DDC