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IN THE COURT OF 7TH ADDITIONAL DISTRICT JUDGE

VADODARA AT - KARJAN

Regular Civil Appeal No. 26/2020
(Old Regular Civil Appeal No. 93/2019
Exh.: 14

Appellant : **Original plaintiff**
 Arunkumar Jayantilal Soni1.
 Aged: Adult, Occupation: Farming
 Residing at : Fatepur, Tal. Karjan, Dist. Vadodara

Versus

Respondents: **Original defendants**
 Heirs of the deceased Bhailalbhai Motibhai
 1. Patel Manjulaben Bhailalbhai
 2. Patel Hiteshbhai Bhailalbhai
 3. Patel Divyeshbhai Bhailalbhai
 4. Patel Narendrabhai Bhailalbhai
 5. Patel Renukjaben Bhailalbhai
 All are Aged: Adult, Occupation : Farming
 Residing at :Kona, Karjan, Dist. Vadodara

Appearance:

Ld. advocate Mr. C.P. Parekh for the Appellant

Ld. advocate Mr. R.P. Mistry for the Respondents

Subject : An appeal under Section 96, read with O-41, Rule-1 and 2 of C.P.C against the judgment delivered by Ld. Addl. Civil Court, Karjan in connection of R.C.S No. 34 of 2011

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

1. This appeal is filed by the original plaintiff of Regular Civil Suit No. 34 of 2011, being aggrieved and dissatisfied by the judgment and decree passed by the learned Additional Civil Court, Karjan, District Vadodara, in the said matter below Exh. 89 dated 31.12.2018, whereby the learned trial Court dismissed the suit filed by the present appellant–original plaintiff seeking specific performance of the unregistered agreement to sell, as well as permanent injunction and declaration.
2. The appellant is the original plaintiff, whereas the respondents in the present appeal are the original defendants in the suit. Therefore, for the sake of convenience and brevity, the parties are hereinafter referred to according to their original status.

Brief facts of the appeal :-

3. This appeal has been filed by the original plaintiff on various grounds. It is stated in the memorandum of appeal that the learned Civil Court committed a grave error in passing the impugned judgment, as the same is contrary to the evidence on record. It is submitted that the learned Civil Court wrongly held that, since the Agreement to Sell was unregistered, the same could not be read in evidence in view of Section 17 of the Registration Act. It is further stated that the learned Civil Court wrongly interpreted Section 54 of the Limitation Act and held that the suit was

barred by the law of limitation. It is also stated that the learned Civil Court failed to properly appreciate the evidence on record as well as the revenue records. It is further contended that the learned Civil Court committed errors of law and fact in denying the relief sought by the plaintiff, namely, part performance.

Details of objections filed by defendant :-

4. The original defendants filed written objections in this appeal at Exh. 7, wherein it is pleaded that the judgment passed by the learned Civil Court is according to law. It is contended that this appeal deserves to be dismissed. The learned Civil Court rightly interpreted the provisions of Section 17 of the Registration Act and the provisions relating to the Limitation Act. It is also stated that the plaintiff produced a got-up, forged and fabricated Banakhat. The plaintiff failed to prove his readiness and willingness and, therefore, he is not entitled to the decree sought. It is further submitted that the learned Civil Court properly appreciated the provisions of Section 20(2) of the Specific Relief Act. It is also submitted that the impugned judgment is well-reasoned and in accordance with law. Therefore, this appeal deserves to be dismissed.

Brief facts of the plaintiff's suit :-

5. The brief facts of the plaintiff's suit may be summarized as follows. The plaintiff has filed the suit for specific performance of contract, permanent injunction, and declaratory relief. It is stated in the suit that late Bhailalbai

Motibhai Patel was the owner of the agricultural land situated at village Fatepur, Sub-District Karjan, District Vadodara, bearing Block No. 49, admeasuring 1 Hectare 38 Are 60 Sq. Mtrs. The said land was agreed to be purchased by the present plaintiff from late Bhailalbhair Motibhai Patel for a consideration of Rs. 6,551/- per vigha. The total sale consideration was fixed at Rs. 38,000/-. The Banakhat, i.e. the Agreement to Sell, was executed between the plaintiff and late Bhailalbhair Motibhai Patel on 21.02.1994. The said Banakhat was unregistered. It is further stated that the entire consideration of Rs. 38,000/- had been paid, out of which Rs. 17,000/- was received earlier by deceased Bhailalbhair Motibhai Patel from the plaintiff and the remaining Rs. 21,000/- was paid in cash on the date of the Banakhat.

6. It is further the case of the plaintiff that he was cultivating the land even prior to the said Banakhat. However, full and final possession was handed over to and vested in the plaintiff after the execution of the Banakhat by late Bhailalbhair Motibhai Patel. An entry regarding such part performance was also made in the revenue record. Since then, the plaintiff has been in possession of the suit land. It is further the case of the plaintiff that the defendants are the legal heirs of late Bhailalbhair Motibhai Patel, the erstwhile owner of the suit land. The heirs initially avoided executing the sale deed. Therefore, the plaintiff served a notice. The said notice was replied to by the legal heirs of deceased

Bhailalbbhai Motibhai Patel. Therefore, the plaintiff was constrained to file the present suit.

7. The plaintiff sought specific performance of the unregistered Banakhat and also prayed for a permanent injunction restraining the defendants from disturbing their possession over the suit land. They further sought an injunction restraining the defendants from executing any document, including a sale deed, in favour of any third party with respect to the suit property.

Brief facts of the defendant's written statement :-

8. The defendants filed their written statement in the suit. The defendants appeared before the Civil Court and filed their written statement at Exh. 15, wherein they denied that late Bhailalbbhai Motibhai Patel, who was the husband and father of the respective defendants, had handed over possession of the suit property under the Banakhat after receiving the full sale consideration. It is also denied that the plaintiff had been in possession of the suit property long prior to the Banakhat and that the defendants had refused to execute the final sale deed. It is further denied that late Bhailalbbhai Motibhai Patel had agreed to sell the suit land for Rs. 38,000/- and had executed a Banakhat, i.e. an Agreement to Sell, on 21.02.1994. It is the case of the defendants that they are in possession of the land and are the owners thereof, being the heirs of deceased Bhailalbbhai Motibhai Patel. In sum and substance, the defendants have denied all the averments made by the plaintiff.

Details of evidences laid by plaintiff :-

9. The plaintiff had produced following oral and documentary evidences in support of their case before Ld. Trial Court.

Sr. No	Oral Evidence of plaintiff	Exh
1	Soni Jayantilal Khushalbai P.O.A of Arunkumar Jayantilal Soni evidence by affidavit	44
2	Ambubhai Hirabhai Patel evidence by affidavit	74
	Description of the documents	
1	Certified copy of the POA	50
2	Village Form No. 7 and 12 for the year 1989-99	51
3	Village Form No. 7 and 12 for the year 1999-05	52
4	Banakhat (Agreement to sell) (Tentative Exhibit)	53
5	135-D notice	54
6	Application given by the plaintiff to the Talati	55
7	Panchkyas prepared by Talati	56
8	Mutation Entry No. 917	57
9	Copy of notice issued through plaintiff advocate	58
10	Closing Pursis	88

10. Details of evidences laid by defendant :-

The defendants had produced following oral and documentary evidences before Ld. Trial Court.

Sr.No.	Oral Evidence of Defendant	Exh
1	Hiteshbhai Bhailalbai - evidence	82
	Description of the documents	
1	Reply of the notice given by the defendants	68
2	Postal acknowledgment dated 25/03/2011	69
3	Postal acknowledgment	70
4	Village form No. 8-A of Account No. 58	85

5	Village form No. 7 of Survey No. 49	86
6	Order of Deputy Collector	87
7	Closing Pursis	88

Details of interim order passed by Ld. Civil Court :-

11. The plaintiff filed an application for interim injunction before the learned Civil Court, and the same was rejected on merits after hearing both sides.

Issues framed by Ld. Civil Court :-

12. Ld. Civil Court framed the following issues at Exh.27 to determine the subject matter. The issues are in Gujarati. Said issues are translated in to English. It is as under.

- 1) Whether the plaintiff proves, that he had purchased the suit property from deceased Bhailalbhai Motibhai after payment of valid consideration?
- 2) Whether the plaintiff proves, that deceased Bhailalbhai Motibhai executed a Banakhat (Agreement to Sell) dated 21.02.1994 in favour of the plaintiff in respect of the suit property and handed over possession thereof to the plaintiff?
- 3) Whether the plaintiff proves, that the defendants failed to comply with the conditions of the Banakhat and committed default in executing the sale deed in favour of the plaintiff?
- 4) Whether the defendants proves, that deceased Bhailalbhai Motibhai had not executed any Banakhat regarding the suit property and that the plaintiff has filed the present suit with mala fide intentions despite the suit property being in the possession and enjoyment of the defendants?

- 5) Whether the plaintiff is entitled to the reliefs as prayed for in the plaint?
- 6) What order and decree should be passed?

Reply given by Ld. Civil Court of above issues :-

13. Ld. Civil Court gave following answers of the above issues,
 1. In the negative
 2. In the negative
 3. In the affirmative
 4. Partly in the affirmative
 5. In the Negative
 6. As per final order

Argument of Ld. advocate of plaintiff :-

14. The learned advocate for the plaintiff filed written arguments in this appeal at Exh. 10, wherein the brief facts of the plaintiff's case and the contentions of the defendants are stated. It is pleaded that the plaintiff has produced the oral evidence of the attesting witness to the Banakhat. It is further pleaded that the Banakhat was executed by deceased Bhailalbhai Motibhai Patel and the same stands duly proved. The sale consideration of the land had already been paid to late Bhailalbhai Motibhai Patel. The Banakhat produced at Exh. 53 is also duly proved. However, the learned Civil Court wrongly dismissed the suit. It is further contended that the learned Civil Court wrongly interpreted the provisions of Section 20(2)(b) of the Specific Relief Act. It is also argued that Learned Civil Court wrongly interpreted the Section 49 of the Registration Act and also committed grave error to decide the issue of hardship.

Therefore, it is pleaded that the impugned judgment and decree deserve to be set aside.

Argument of Ld. advocate of defendants :-

15. The learned advocate for the defendants appeared before this Court on 11.07.2015. At that time, it was mainly submitted that his arguments may be considered as per the written objections. However, thereafter, the matter was adjourned from time to time, but the defendants failed to submit their arguments. On 24.09.2025, the defendants' side filed an adjournment application for filing arguments. Thereafter, the matter was adjourned for arguments on 04.10.2025. On that date, the advocate for the defendants, Mr. S.M. Patel, was present and submitted that he may be treated as heard as per the written objections. Therefore, the written objections filed by the defendants were treated as the final arguments on behalf of the defendants, and the matter proceeded further. In the written objections at Exh. 7, it is mainly submitted that the learned Civil Court properly appreciated the evidence and rightly considered the provisions of Sections 16 and 20(2) of the Specific Relief Act and Sections 17 and 49 of the Registration Act. It is also submitted that the learned Civil Court rightly considered the provisions relating to the Limitation Act.

Points of determinations :-

16. Having heard the arguments of Ld. Advocates of both the parties, I have perused the records and proceedings. Therefore, to adjudicate this appeal, following points are

arose before me.

- 1) Whether the plaintiff succeeded in proving that late Bhailalbhai Motibhai Patel, the erstwhile owner of the suit land, had received the full sale consideration of Rs. 38,000/- from the plaintiff and had agreed to sell the suit property by executing an unregistered Banakhat on 21.02.1994?
- 2) Whether the learned Civil Court committed a grave error in holding that the suit filed by the plaintiff is barred by the law of limitation?
- 3) Whether the learned Civil Court committed any error of law in taking into consideration Section 17 of the Registration Act and Section 20(2) of the Specific Relief Act?
- 4) Whether the judgment and decree passed by the learned Civil Court vide Exh. 89 dated 31.12.2018 in Civil Suit No. 34 of 2011 suffer from grave errors of law and fact?
- 5) What order and decree should be passed?

Reply of above Points of determinations :-

17. My reply of the above points are as under,

1. In the negative
2. In the negative
3. In the negative
4. In the negative.
5. As per final order

REASONS

Power, Scope and duty of the first appellant court :-

18. Having heard the arguments advanced on behalf of both sides, I have perused the record and proceedings of the present matter, along with the submissions canvassed by the learned advocates for the respective parties and the

pleadings of the appeal. Before advertng in detail to the facts and merits of the case, I would like to note that the Hon'ble Supreme Court, in the case of *Somakka (Dead) By Lrs. vs K.P. Basavaraj (D) By Lrs. on 13 June, 2022, 2022 (8) SCC 261 and 2022 LIVELAW (SC) 550*, decided that what would be the scope, power and duty of the First Appellate Court in deciding an appeal under Section 96 CPC read with Order XLI Rule 31 CPC. The relevant para of said pronouncements are as under,

26. Section 96 of the CPC provides for filing an appeal from original decree. Further Order XLI Rule 31 of the CPC provides for the contents of the judgment of the First Appellate Court. According to it, the judgement of the Appellate Court shall be in writing and would include the points for determination, the decision thereon, the reasons for the decision and where the decree is reversed or varied, the relief to which the appellant is entitled. Section 96 and Order XLI Rule 31 of the CPC are reproduced below:

"Section 96" Appeal from original decree.

(1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorized to hear appeals from the decisions of such Court.

(2) An appeal may lie from an original decree passed ex-parte.

(3) No appeal shall lie from a decree passed by the Court with the consent of parties.

(4) No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognizable by Courts of Small Causes, when the amount or value of the subject -

matter of the original suit does not exceed 2 [ten thousand rupees.]” Order XLI Rule 31 “Contents, date and signature of Judgment”

The Judgment of the Appellate Court shall be in writing and shall state- (a) the points for determination; (b) the decision thereon; (c) the reasons for the decision; and (d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled, and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein.”

27. It has been a matter of debate in a catena of decisions as to what would be the scope, power and duty of the First Appellate Court in deciding an appeal under Section 96 CPC read with Order XLI Rule 31 CPC. We briefly deal with the law on the point.

28. Learned Judge V.R. Krishna Iyer, J., [as he then was a Judge of the Kerala High Court] in 1969, while deciding the case between Kurian Chacko vs. Varkey Ouseph 3, dealing with a similar judgment of the First Appellate Court which had been disposed of by a brief order, observed as follows:

“...2. An appellate court is the final court of fact ordinarily and therefore a litigant is entitled to a full and fair and independent consideration of the evidence at the appellate stage. Anything less than this is unjust to him and I have no doubt that in the present case the learned Subordinate Judge has fallen far short of what is expected of him as an appellate court.”

29. Further following the above, there have been a series of judgments by this Court;

29.1 In Santosh Hazari vs. Purushottam Tiwari⁴ (relevant portion of para 15) is reproduced below:

3 AIR 1969 Ker 316 4 (2001) 3 SCC 179 para 15

“15...The appellate court has jurisdiction to reverse or affirm the findings of the Trial Court. First appeal is a

valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate court. ... while reversing a finding of fact the appellate court must come into close quarters with the reasoning assigned by the Trial Court and then assign its own reasons for arriving at a different finding. This would satisfy the court hearing a further appeal that the first appellate court had discharged the duty expected of it.”

29.2 In *H.K.N. Swami vs. Irshad Basith*⁵, this Court again reiterated the same principle in paragraph 3 of the judgment:

“3. The first appeal has to be decided on facts as well as on law. In the first appeal parties have the right to be heard both on questions of law all issues and decide the case by giving reasons. Unfortunately, the High Court, in the present case has not recorded any finding either on facts or on law. Sitting as the first appellate court it was the duty of the High Court to deal with all the issues and the evidence led by the parties before recording the finding regarding title.” 5 (2005) 10 SCC 243 29.3 In 2015, this Court again in *Vinod Kumar vs. Gangadhar* considering the previous judgment recorded its view in paras 18 and 19 which are reproduced hereunder:

“18. In our considered opinion, the High Court did not deal with any of the submissions urged by the appellant and/or the respondent nor it took note of the grounds taken by the appellant in grounds of appeal nor made any attempt to appreciate the evidence adduced by the parties in the light of the settled legal principles and decided case law applicable to the issues arising in the case with a view to find out as to whether the judgment of the Trial Court can

be sustained or not and if so, how, and if not, why.

19. Being the first appellate court, it was the duty of the High Court to have decided the first appeal keeping in view the scope and powers conferred on it under Section 96 read with Order 41 Rule 31 CPC mentioned above. It was unfortunately not done, thereby, resulting in causing prejudice to the appellant whose valuable right to prosecute in the first appeal on facts and law was adversely affected which, in turn, deprived him of a hearing in the appeal in accordance with law. It is for this reason, we unable to uphold the impugned judgement of the High Court.” 29.4 Very recently, this Court in 2022 (to which one of us, Brother Abdul Nazeer, J. was a 6 (2015) 1 SCC 391 member) in *Manjua and others vs. Shyamsundar and Others*⁷, reiterated the same view in para 8 thereof, which is reproduced hereunder:

“8. Section 96 of the Code of Civil Procedure, 1908 (for short, ‘CPC) provides for filing of an appeal from the decree passed by a court of original jurisdiction. Order 41 Rule 31 of the CPC provides the guidelines to the appellate court for deciding the appeal. This rule mandates that the judgment of the appellate court shall state

- (a) points for determination;*
- (b) the decision thereon;*
- (c) the reasons for the decision; and*
- (d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.*

Thus, the appellate court has the jurisdiction to reverse or affirm the findings of the Trial Court. It is settled law that an appeal is a continuation of the original proceedings. The appellate court’s jurisdiction involves a rehearing of appeal on questions of law as well as fact. The first appeal is a valuable right, and, at that stage, all questions of fact and law decided by the Trial Court are open for reconsideration. The judgment of the appellate court must,

therefore, reflect conscious application of mind and must record the court's findings, supported by reasons for its decision in respect of all the issues, along with the contentions put forth and pressed by the parties. Needless to say, the first appellate court is required to comply with the requirements of Order 41 Rule 31 CPC and non-observance of these requirements lead to infirmity in the judgment." 7 (2022) 3 SCC 90

30. From the above settled legal principles on the duty, scope and powers of the First Appellate Court, we are of the firm view and fully convinced that the High Court committed a serious error in neither forming the points for determination nor considering the evidence on record, in particular which had been relied upon by the Trial Court. The impugned judgment of the High Court is thus unsustainable in law and liable to be set aside.

Point no. 1:-

19. It is the case of the plaintiff that late Bhailalbhai Motibhai Patel, whose legal heirs are the present defendants, had agreed to sell the suit land and had executed a Banakhat in the presence of plaintiff's witness Nos. 2 and 3. The said Banakhat at Exh. 53 is unregistered. It is further the case of the plaintiff that, prior Banakhat, he was cultivating the said land and that, after the execution of the Banakhat, late Bhailalbhai Motibhai Patel relinquished possession thereof in his favour. Since then, the plaintiff has remained in possession of the suit land. This fact is, however, seriously disputed by the defendants. The learned Civil Court held that the plaintiff had failed to prove the execution of the Banakhat after appreciating the oral and documentary evidence produced by the plaintiff.

20. Learned Civil Court has given detailed reasons in paragraph 9 of the judgment about non accepting the case of plaintiff for execution of Banakhat, which runs from page Nos. 12 to 16. The Learned Civil Court, after considering the provisions of Sections 17 and 49 of the Registration Act, held that although the Banakhat is unregistered and is tentatively exhibited at Exh. 53, the same can be considered in a suit for specific performance in view of Section 49 of the Registration Act. Therefore, the Learned Civil Court rightly held that the present unregistered Banakhat is admissible in evidence in the present suit. Furthermore, the Learned Civil Court evaluated the evidence of the plaintiff's father, namely Jayantilal Soni, who deposed on affidavit as the power-of-attorney holder of his son, i.e. the original plaintiff. He was examined at Exh. 44 in support of the plaintiff's case, and his evidence has been duly considered by the Learned Civil Court. In cross-examination, Jayantibhai admitted that he had no knowledge as to who brought the stamp paper for Banakhat, on which date it was purchased, and at which place it was prepared. He further admitted that he did not know in whose handwriting the Banakhat was prepared, what its conditions were, and who the witnesses to the said Banakhat were. I have independently examined the oral testimony of Jayantibhai and have satisfied myself that the Learned Civil Court rightly considered these material admissions made by him in his cross-examination at page

9, paragraph 1. This clearly shows that Jayantibhai, though examined as the power-of-attorney holder in support of the plaintiff's suit, had no personal knowledge about the execution of the Banakhat, that the same was not executed in his presence. This position is made abundantly clear from the answers given by Jayantibhai in his cross-examination.

21. Furthermore, the Learned Civil Court considered the evidence of the attesting witness to the Banakhat, namely Ambubhai Hirabhai Patel, examined at Exh. 77. He is one of the attesting witnesses to the Banakhat at Exh. 54. The Learned Civil Court took into consideration the fact that, in his cross-examination, this witness stated that the Banakhat was in the handwriting of Jayantibhai Khushalbhai Soni. However, Jayantibhai himself stated in his cross-examination that he did not know, who had written the Banakhat. On the basis of this evidence, the Learned Civil Court held that the plaintiff failed to prove the execution of the Banakhat.
22. I have thoroughly examined the oral evidence of Jayantibhai as well as that of Ambubhai, the attesting witness to the Banakhat, and have also independently evaluated the evidence of both these witnesses. On that basis, this Court is also of the opinion that it would be too risky to accept the plaintiff's case solely on the evidence of these two witnesses. Therefore, the finding of the Learned Civil Court regarding not proving the execution of the

Banakhat is in accordance with law. Means, the Learned Civil Court has not committed any error to arrive on above conclusion. On the contrary, the finding recorded by the Learned Civil Court is based on cogent reasons and proper appreciation of the evidence on record. Therefore, the contention of the Learned Advocate for the appellant that the Learned Civil Court had not appreciated the evidence properly is contrary to the facts on record.

23. In addition, it is pertinent to note that Exh. 53, namely the Banakhat, has been tentatively exhibited. The Learned Civil Court has not placed much emphasis on the glaring fact that the plaintiff failed to produce the original Banakhat before the Court and also failed to follow the proper procedure for production of secondary evidence, which is obligatory on the party concerned. The legal position on this issue is very clear. Section 61 of the Evidence Act provides that the contents of documents may be proved either by primary or by secondary evidence. Section 62 defines primary evidence. Primary evidence means the document itself produced for the inspection of the Court. Section 65 of the Evidence Act lays down the cases in which secondary evidence relating to documents may be given. In the present case, the original Banakhat was not produced before the Court. What the plaintiff produced was a certified copy certified by the Talati-cum-Mantri. The Talati-cum-Mantri is a Class-III employee of the Revenue Department. The plaintiff has not offered any explanation

for non-production of the original Banakhat. Section 65 further provides that secondary evidence may be adduced only when the conditions specified therein exist. Where the document is in the power or possession of the other party or some other authority, the concerned party is required to take appropriate steps for production of the said document from the custody of such person or authority. In the present case, the plaintiff did not adopt any such procedure. Therefore, the plaintiff's case is also not made out, and the Banakhat at Exh. 53 cannot be considered to be a proved document. In view of the above, Point No. 1 is decided in the negative.

Point No.2

24. The Learned Civil Court decided Issue No. 4 by assigning reasons on the aspect of limitation. Though no separate issue specifically regarding limitation appears to have been framed, the Learned Civil Court has considered the said aspect in detail. In paragraph 16 of the judgment, the Learned Civil Court, upon considering the provisions of Article 54 of the Limitation Act, held that the Banakhat was executed in the year 1994. The executor of the Banakhat, namely late Bhailalbai Motibhai Patel, died on 25.03.2003. The suit for specific performance of the said Banakhat came to be filed against the heirs of the executor in the year 2011. Thus, the Learned Civil Court held that the suit was not filed within the prescribed period of three years and was, therefore, barred by the law of limitation.

The finding recorded by the Learned Civil Court on this aspect is in consonance with the material and evidence on record. According to the plaintiff's own case, the Banakhat was executed in the year 1994. The plaintiff has not specifically pleaded any sufficient cause, material particulars, or valid grounds explaining such an inordinate delay in filing the suit. Instead, by making general and vague pleadings, the plaintiff merely stated that the suit was within limitation. However, the Learned Civil Court rightly and properly appreciated the material on record and held that the suit was barred by limitation. This Court is also of the opinion, upon examination of the evidence on record, that the present suit is barred by the law of limitation, as the plaintiff failed to file the suit within three years either from the date of execution of the Banakhat or, at the very least, within three years from the date of death of the executor, namely late Bhailalbhai Motibhai Patel. Hence, Point No. 2 is decided in the negative.

Point Nos. 3 and 4

25. The Learned Civil Court considered the provisions of Section 20 of the Specific Relief Act and assigned reasons for holding that, if a decree for specific performance of contract were granted in the present case, it would cause comparative hardship to the defendants. In that context, the Learned Civil Court took into consideration the fact that the defendants possess only the suit land. If a decree for specific performance were granted, the defendants would

lose their sole parcel of land and, ultimately, their status as agriculturists. This aspect has been rightly considered by the Learned Civil Court.

26. It is also pertinent to note that the plaintiff had failed to prove the execution of the so-called Banakhat. Therefore, the plaintiff is not entitled to a decree for specific performance of contract. Apart from the failure to prove the execution of the Banakhat, the plaintiff's case is also not acceptable even on the ground of limitation. Thus, even assuming that the plaintiff had succeeded on both these issues, the present case was still not a fit case in which a decree for specific performance ought to be granted, having regard to the question of hardship. The Learned Civil Court has, therefore, rightly considered this aspect.
27. It should not be forgotten that the grant of a decree for specific performance of a contract lies within the discretionary jurisdiction of the Civil Court. Of course, such judicial discretion must be exercised judiciously and on sound principles. On this touchstone also, the judgment rendered by the Learned Civil Court deserves to be confirmed.
28. Further, the Learned Civil Court considered the provisions of Sections 17 and 49 of the Registration Act and rightly held that the unregistered Banakhat is admissible in a suit for specific performance of contract. Therefore, the Learned Civil Court has not committed any error in applying the said provisions to the facts of the present case.

Hence, the argument advanced by the Learned Advocate for the plaintiff on this point is hereby rejected.

29. In view of the above, the judgment rendered by the Learned Civil Court is in accordance with law and the evidence on record. Even upon independent examination of the entire evidence on record, this Court is of the opinion that the plaintiff has failed to make out a case for grant of a decree for specific performance of contract, and that the suit has been filed after an inordinate delay. The Banakhat is an unregistered document alleged to have been executed in the year 1994, whereas the suit came to be filed only in the year 2011, i.e. after about eight years from the death of the executor of the Banakhat. In view of the above, the plaintiff's suit is also barred by the principle of delay and laches.
30. Further, it is the case of the plaintiff that he is having the possession of the suit land prior execution of the Banakhat. The case of possession produced by plaintiff is also not accepted by Learned Civil Court by giving detailed reasons at page No. 16 of the judgement. Learned Civil Court evaluated the evidence regarding entry made in the Revenue Record supporting the plaintiff's case of possession. It is observed that notice under Section 135(d) was served on very same day of preparation of panchnama. Learned Civil Court held that circumstances under which entry in revenue record was entered is very suspicious. This conclusion is also supporting the facts on record. It is also

observed by Learned Civil Court that there is no evidence for the payment of earnest money or any other further consideration under the Banakhat. Same is also appeared correct and according to evidence on record. On the basis of detailed reasons, observation of Learned Civil Court that plaintiff is not able to that since 1990-91, the suit property is in his possession. This finding is maintainable and correct and as per evidence on record.

31. This Court is also taken into consideration that Banakhat was executed in the year of 1994 on the stamp paper which was purchased prior twelve days of the date of execution. Late Bhailalbhai Motibhai Patel has three son. All were seems, major at the time of execution of the Banakhat. Though, they all are residing at village Kohna and executor late Bhailalbhai Motibhai Patel was also residing at Kohna. Though, why plaintiff had not confirmed the consent of the major son of deceased for undertaking the transaction. This aspect is very material in present case as plaintiff came with specific pleading that he had good relation with the deceased and deceased received Rs. 17,000/- prior Banakhat for routine expenses and which was considered as a part payment i.e earnest money under the Banakhat. This fact make the plaintiff's case very suspicious and boarded heavy burden upon the plaintiff to prove the genuineness of the Banakhat. However, it is lacking in this case. Therefore, final conclusion of Learned Civil Court is appeared according to law.

32. Thus, in view of the above all, the argument of Learned Advocate of the appellate is hereby rejected. Hence, Point Nos. 3 and 4 are decided in the negative, and the following final order is passed in answer to Issue No. 5.

- : FINAL ORDER : -

1. The Regular Civil Appeal No.26 of 2020 filed by plaintiff Arunkumar Jayantilal Soni against Legal heirs of Late Bhailalbai Motibhai is hereby rejected.
2. The judgment and decree passed by Ld. Additional Civil Court, Karjan in Regular Civil Suit No. 34 of 2011 on 31.12.2018 at Exh. 89 is hereby confirmed.
3. It is hereby ordered that present appellant shall pay Rs.10,000/- to defendants for costs of appeal within 30 days from the date of this order.
4. Decree shall be drawn accordingly.
5. Original record of the suit shall be sent back to the concerned court with copy of judgment and decree.

Pronounced in open court on 7th March, 2026.

Date: 07.03.2026
Place: Vadodara

(Manoj Bhailalbai Kotak)
7th Additional District Judge,
Vadodara At - Karjan.
U.I.CODE NO.GJ00718

AMS