
Order below Exh.5
in Special Civil Suit No. 55 of 2019
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- [1] The plaintiff has filed this suit in the year 2019 for the prayer as cited in para-13 for declaration holding that the land bearing Survey No.416 admeasuring 1-43-65 Sq. Mtrs. situated at village Shela, Taluka Sanand, District Ahmedabad (hereinafter referred to as "*the suit land*" in this order) as their land of the ownership & occupation being their ancestor land. The plaintiff in the prayer further prayed for cancellation of two sale deed bearing Regis. No.47 & 48 dated 11-01-1991 and third relief of prayer claimed for the permanent injunction against the defendants restraining them by way of permanent injunction from further transferring and dealing with the suit land.
- [2] The plaintiff at the time of filing of this suit has filed this application for the relief of injunction during the pendency and adjudication of this suit restraining the defendants from further transferring the suit land in favour of any third party.
- [3] The plaintiff in the pleadings of the suit and injunction application has mainly based his suit on the ground that, the aforesaid two sale deeds bearing no.47 & 48 dated 11-01-1991 was the void sale deed created by the defendants by way of

forgery. The main and foremost contention raised by the plaintiffs that, the husband of the plaintiff no.1 & father of the plaintiff no.2 namely, Raghunath Gandabhai Desai (Rabari) had already expired on 15-04-1985 but the aforesaid two sale deeds *qua* the suit land were executed and affirmed on 11-04-1991. Therefore, the contention of the plaintiff that, both the sale deeds are got-up and created since they are created after the death of Raghunath Gandabhai Desai (Rabari). Further, when out of two vendors - namely, Raghunath Gandabhai & Kalubhai Raghunath, one of the vendor was since dead and the dead person had executed the sale deed, the same is nullity. Accordingly, both these sale deeds are *ab-initio-void* and nullity and therefore, both the sale deeds need to be cancelled by this Court. Apart from the aforesaid main contention, the other grounds for the challenge in the suit for the relief of cancellation of sale deeds, the Ld. Advocate for the plaintiff has raised and contended the following points for consideration;-

- It is contended that, the second vendor of the sale deed is stated to be as the "*Kalubhai Raghunath Rabari*" but the submission on behalf of the plaintiff that there is no family person named as "*Kalubhai Raghunath Rabari*" in the family of Raghunath Gandabhai Rabari and therefore,

when the first vendor Raghunath Gandabhai Rabari who already expired on 15-04-1985 and there is no person existing in the name of Kalubhai Raghunath Rabari, both the vendors were not in existence at the time of execution of the sale deeds and therefore, both the sale deeds under challenge were nullity and *void* and hence, deserves to be cancelled.

- It is further contended on behalf of the plaintiff that, wife of Raghunath Gandabhai Rabari had on the very same date i.e. 11-01-1991 had relinquished by registered deed her share in the suit property of her husband in favour of his husband Raghunath Gandabhai Rabari and secondly, as Kalubhai Raghunath Rabari, is also nullity since she had not died during lifetime of her husband and there was no question to execute the deed.
- It is further contended that, all three registered deeds were claimed to be executed on 11-01-1991 and for all three documents, the purchaser of stamp was i.e. I.K. Patel. According to the submission of plaintiff side, normally, the stamp is purchased by the seller or purchaser but here the person is I.K. Patel who is neither relative nor any known person to the plaintiff.

- It is further contended that, the plaintiffs were not aware about the converting the suit land into non-agriculture land. Because that was also done by the person belonged to Patel community resident of Ellisbridge, Ahmedabad. Thus, the allegations and the pleadings in the plaint and injunction application that since the sale deeds were created and got-up out of the knowledge of the plaintiffs, that was the reason that despite the plaintiff no.1- Samuben was not having any expressed right during the lifetime of her husband - Raghunath Gandabhai Rabari, the relinquishment deed by her was created in favour of her husband Raghunath Gandabhai and second vendor Kalubhai Rabari. These are the grounds to presume & believe that, both the sale deeds were created and got-up out of the knowledge of the plaintiff.
- To press the aforesaid points of non-existence of the vendors, Ld. Advocate for the plaintiff has relied upon the copy of the death certificate produced at mark 3/1. Perusal of the death certificate shows that, it is the death certificate issued by the department of Health and Family Welfare, Government of Gujarat through the Chief Officer Nagarpalika for the death of Raghunath Gandabhai Rabari on 15-04-1985.

- It is further contended that, the title clearance certificate obtained by the defendants was of the year 1992, whereas both the sale deeds under challenge are of the year 1991, therefore, according to the plaintiff, though the defendants claimed to be a bonafide purchaser for value, it is not so because, had the defendants were the bonafide purchaser, they ought have issued the public notice and the title clearance certificate process before execution of the sale deeds but no such public notice was issued prior to the execution of the so-called sale deed under challenge bearing No.47 & 48. Therefore, on this ground, the plaintiffs claim that, the sale deed under challenge were nullity since had been executed after the death of Raghunath Gandabhai Rabari and further that no person of the name of Kalubhai Raghunath Rabari – vendor no.2 of the sale deed.
- So far as the point of delay is concerned, it is tried to explain in para-12 of the plaint that in the year 2017, when the plaintiff required the copy of revenue record of Village Form No.7/12, approached the revenue authority and at that time, they came to know about the fraudulent sale deeds and relinquish deed and therefore, the suit is

filed in the year 2019 after obtaining necessary copies from the office concerned.

- It is further contention on behalf of the plaintiff that, the plaintiff more particularly, the plaintiff no.2 filed the criminal complaint before Bopal LCB Police Station vide First Crime Regis. No.11192011200947/2020 and the investigation is taken place. However, at the end of the investigation, as per the knowledge of the plaintiff that, police has recently, filed the summary exonerating/ discharging the defendant no.2 and other co-accused without arraigning them as the accused for the allegations leveled in the FIR filed by the plaintiff. So far as the summary report is concerned, according to the plaintiff, the summary report submitted by the police under Section 173(2) of the Cr.PC, it is merely an opinion of the police and that has no evidential value until the same ultimately accepted by the Court into a final decision.
- It is also further contention on behalf of the plaintiff that, the death certificate produced by the plaintiff at mark 3/1 is never challenged by anyone before any higher authority and therefore, it is presumed that, the death certificate of Raghunath Gandabhai Rabari was true and

correct and accordingly, Raghunath Gandabhai has to be believed to have had expired on 15-04-1985.

Thus, in sum and substance, it is the case of the plaintiff that both the sale deeds under challenge are fraudulent and got-up documents of the precious lands of the plaintiff, the suit of the plaintiff needs to be tried on merit and therefore, during the pendency of the civil suit, it is prayed that, the injunction be granted restraining the defendants from dealing & alienating the suit land to the third party to prevent the multiplicity of the proceedings to avoid joining unnecessary parties in the suit proceedings.

- [4] The defendants having been served with the process, have entered into their appearance and also filed their written statement and the list of documents. The defendants have opposed the suit vehemently and also opposed grant of injunction as prayed by the plaintiff raising many points for consideration claiming that the suit of the plaintiff is absolutely an unwanted litigation as a result to explore it as abuse of process of the Court. While pointing-out the factual aspects from the plaint and their defence, it is contended on behalf of the defendants that, the suit is clear misuse and abuse of process of the Court. While contending that, the defendant no.1

& 2 are the bonafide purchasers of the suit land because the stand of the plaintiff that Raghunath Gandabhai had expired on 15-04-1985 is absolutely incorrect but according to the defendants, Raghunath Gandabhai was alive till 2008. According to the defendants, Raghunath Gandabhai had expired on 19-10-2008. It is further contention on behalf of the defendants that, son of Raghunath Gandabhai i.e. Kalubhai Rabari was known as "Khodabhai" and they both personally remained present before the office of the Sub-Registrar at Sanand and had executed both the sale deeds No.47 & 48 on 11-01-1991. The sale consideration was paid to the defendants by way of the cheque in favour of the vendors. Not only that, thereafter the revenue entries for giving effect to the sale deeds was also given effect by issuing the notice under Section 135(D) of the Land Revenue Code. Thus, the claim of the defendants that, they are bonafide purchasers for the suit land for value from the year 1991 and the suit is filed after almost more than about 30 years and therefore, this is not a genuine suit but clear abuse of process of the Court and hence, the same need not been entertained.

While pointing-out from the documentary evidence produced by the defendants, the defendants have tried to establish *prima-facie* that Raghunath Gandabhai was very well alive on the day of execution of the sale deeds and had also

received the sale consideration amount and had also handed-over possession of the suit land and therefore, this is not a suit which requires to be entertained by this Court and no injunction can be granted in favour of the plaintiff.

The defendants also claim that, they had before purchase of the suit land, being bonafide purchasers, best efforts were made to inquire about the ownership and title of the suit land and, according to the defendants, having lawfully purchased the land tried to develop the same being society and also made the plots allotment to the respective members of the society and at present, they are existence plotting of the respective members of the society on the suit land.

The defendants have also tried to establish a payment of the cheque having been encashed in favour of the vendors. The defendants have also produced on record vide mark 30/5 is the Besana - notice of late Raghunath Gandabhai Rabari (Shelawala) on 19-10-2008. The defendants have also produced on record the photographs of the place of the suit land. It is claimed signature of Khodabhai gets matched with the handwriting existing on the sale deeds under challenge. The defendants also during the proceedings placed on record another list of document in support of their claim that Raghunath Gandabhai was alive on the date of the execution of the sale deed. The original newspaper of the

Besana vide mark 61/1 of Raghunath Gandabhai of the date 20-10-2008 is also produced on record. Not only that the defendants vide mark 61/2 had produced the marriage invitation card of relative family where-from to show that Raghunath Gandabhai was alive on 28-05-2001 and he was shown as one of the invitees for the marriage of their relative. According to the defendants, they have challenged the death certificate of Raghunath Gandabhai produced at mark 3/1 by challenging the record and reply received by the defendants from Ahmedabad Municipal Corporation which is produced vide mark 61/4 wherefrom it is clearly stated that death register of Bopal-Ghuma Gram Panchayat in the year 1995 is absolutely torn conditions at the time of merger of Gram Panchayat and therefore, the certificate produced by the plaintiff side is to be under umbrella of suspicious and doubt. That when the certificate itself was in absolutely torn pieces condition, how such death certificate produced by the plaintiff could be issued by the Nagar Palika. It is further contended by the defendants that, Samuben in the whole pleading has not challenged passing off her share in favour of her husband Raghunath Gandabhai. According to the defendants when Raghunath Gandabhai was not alive on 11-01-1991, how Samuben could had passed of her share in favour of her husband Raghunath Gandabhai and Kalubhai Raghunath. The defendants have also produced on record vide mark 61/6 is the private

handwriting expert opinion which opines that the signature was of “*Kalubhai Raghunath*” and “*Khodabhai*” get matched with the handwriting existence on the sale deed under challenge. The defendants have tried to establish their possession by producing the document vide Exh.59 where-from it is claimed that they being the registered Co-operative Housing Society had already made the plotting and the respective plots are allotted in favour of the members of the society. Therefore, according to the claim of the defendants, they are bonafide purchasers and the lands after having been purchased in the year 1991 from the predecessor of the plaintiff, already parted into the plotting and further equity of the plot-holders is also created. Therefore, the contention that, the present suit is absolutely an afterthought process and absolutely having been filed almost about 30 years from the date of sale, the plaintiffs are not the genuine and the justice seeking litigants claim any just prayer before the Court and therefore, has prayed for rejection of the relief in the injunction application.

- [5] It is settled proposition of law that parties seeking injunction has to establish his *prima-facie* case, the balance of convenience and the likely irreparable loss by the parties.
- [6] To decide the aforesaid point, now considering the case of the plaintiff, the whole basis for the plaintiff's case is forgery of the

sale deeds under challenge contending that Raghunath Gandabhai was though expired, according to the plaintiff, on 15-04-1985, both the sale deeds were executed on 11-01-1991. The second contention that second vendor Kalubhai Rabari was not the family member and therefore, could not have executed sale deed and therefore, the sale deed itself was nullity null and void. In support of the aforesaid claim as discussed in the foregoing paragraphs, the plaintiff have to prove *prima-facie* case, placed sole reliance on the death certificate of Raghunath Gandabhai produced at mark 3/1. Comparing the case of the plaintiff vise-a-versa the defendants, case of the defendants that Raghunath Gandabhai was alive till 2008 and had having accepted the sale consideration had executed the sale deed. According to the defendants, the Khodabhai is the originally Kalubhai in both the sale deeds. To ascertain the bone of contention, this Court had taken pain to call-upon an official from the office of Ahmedabad Municipal Corporation with the original record of the birth and death certificate maintained by Bopal-Ghuma Nagar Palika. Pursuant to the notice issued from this Court, the official from Ahmedabad Municipal Corporation has remained personally present before the Court on date 01-12-2023 along with the original record and placed before the Court for perusal. The description of the record of the original death certificate is in detailed taken note of by this Court in the Roznama and the same

is re-produced as under;-

"૦૧/૧૨/૨૩ કામ રજુ, આજરોજ અત્રેની અદાલતે એ.એમ.સી ના જન્મ મરણ વિભાગના સંબંધીત અધિકારી શ્રીને વર્ષ-૧૯૮૫ ના અસલ રજીસ્ટર સાથે હાજર રહેવા નોટીસ કરેલ જે સંદર્ભે સુનિતાબેન નિનામા, જન્મ મરણ વિભાગ જોધપુર વોર્ડ, મો.નં.૯૭૨૫૬૬૦૦૪૧૦ નાઓ અસલ રજીસ્ટર સાથે હાજર છે અને તેઓ તર્ફે અત્રેની કોર્ટ ને સંબોધીને રેકર્ડ જીર્ણ અવસ્થામાં છે તે મતલબનો પત્ર તથા તેવુ જીર્ણ રેકર્ડ તેઓના તાબામાં તા.૨૦/૦૬/૨૦૨૦ ના રોજથી એ.એમ.સી માં બોપલ-ધુમા નગરપાલીકા, તા.દસ્કોઈ જી.અમદાવાદનાઓએ આપેલ અને તે અગાઉ ધુમા ગ્રામ પંચાયતને તેવુ રેકર્ડ તા./૨/૨૦૧૫ ના જાહેરનામા અનુસાર તા. ૨/૧/૨૦૧૬ ના રોજ સોંપેલ છે તે બંને પત્રોની યાદી રિસિપ્ટ પત્ર સાથે રજુ કરેલ છે જેને રેકર્ડમાં આંક.૭૭ થી ૭૯ આપવામાં આવે છે જયારે ૨૦૧૬માં ધુમા ગામનો રેકર્ડ બોપલ ધુમા નગરપાલીકાને સોંપવામાં આવેલ તે દિવસે પણ ૧૯૭૭ થી ૧૯૮૫ સુધીનો મરણ રજીસ્ટરનું અસલ રેકર્ડ એકસાથે સંયુક્ત રજીસ્ટરમાં જ છે અને તે વખતે પણ સદર રજીસ્ટર ટુકડા વાળા કાગળોનું છે. સદર રજીસ્ટરનું વિડીયોગ્રાફી આજરોજ કોર્ટમાં મારી રૂબરૂ માં બેનશ્રી નિનામા તથા વાદી વિ.વ.શ્રી શેખનાઓની હાજરીમાં કરેલ અને તેઓને પણ ટુકડાવાળા રજીસ્ટરમાંથી મરનાર રઘુનાથ

ગાંડાભાઈનો ૧૯૮૫ ના વર્ષની નોંધ નં.૧૦ શોધી આપવા તથા તેમ કરવામાં તેઓની મદદ લેવા જણાવેલ પરંતુ રેકર્ડની પરીસ્થિતીને અનુસાર કોઈપણ વ્યક્તિ તેવી નોંધ રજીસ્ટરમાંથી શોધી શકવાની પરીસ્થિતી નથી. જેથી નગર પાલીકા, બોપલ-ધુમા તરફથી ૨૦૧૭ ના તા.૨૨/૧૨/૨૦૧૭ ના રોજ અસલ રેકર્ડમાંથી નોંધણીક્રમાંક ૧૦ના આધારે જે મરણ સર્ટીફિકેટ તૈયાર કરી વાદીને આપેલ છે તેવી નોંધ નં.૧૦ વર્ષ-૧૯૮૫ વાળુ રજીસ્ટર અસલ રેકર્ડમાંથી કોર્ટ રૂબરૂ ઈન્સ્પેક્શનમાં સમર્થન મળત હોઈ જણાતુ નથી.કરેલ વિડીયોગ્રાફી સુપ્રિટેન્ડેન્ટ શ્રી ઠાકોરના મોબાઈલમાં સીડી બનાવી રેકર્ડ સાથે રેકર્ડના ભાગ રૂપે રાખી નાઝરશ્રીની કસ્ટડીમાં જમા રાખવા આદેશ કરવામાં આવે છે.

૭૬- અ.મ્યુ.કો, જન્મ મરણ ખાતાને બજેલ નોટીસ

૭૭- જન્મ મરણ વિભાગ, જોધપુર વોર્ડના જવાબદાર કર્મચારી સનીતાબેન. એ. નિનામાનો સ્પે.૫૫/૧૯ ના જવાબ બાબતનો પત્ર

૭૮- બોપલ-ધુમા નગર પાલીકાના જન્મ મરણ અને મૃત રજીસ્ટરના ચાર્જ આપનાર ચાર્જ લેનાર રિસિપ્ટ(ઝેરોક્ષ) તા.૨૦/૦૬/૨૦૨૦.

૭૯- ધુમા ગ્રામ પંચાયતના હસ્તક નિચેના જન્મ-મરણ રજીસ્ટરો, બોપલ-ધુમા ન.પાલીકા ખાતે ચાર્જ આપ્યાની યાદી તા.૨/૦૧/૨૦૧૬ ના રોજની

Therefore, on seeing the original register of the year 1985, the official of the Corporation herself was not in a position to

produce before the Court the register. She has ascertained that, this was the position of record at the time of accepting the original record from Bopal Ghuma Gram Panchayat in Nagarpalika with the office of Ahmedabad Municipal Corporation of merger. Perusal of the death certificate vide mark 3/1, in column no.11, the death of issue is 22-12-2017. Thus, according to the claim of plaintiff, the chief officer and clerk concerned of Bopal Ghuma Nagar Palika having examined the original register issued on 22-12-2017 had issued very fresh death certificate of Raghunath Gandabhai Desai declaring his date of death as 15-04-1985. But this certificate itself does not tally with the original record produced before the Court by the official of Ahmedabad Municipal Corporation. The record produced by the corporation is merely a thousand of small small pieces of papers and not even in the whole pages itself. When the original record was such, it is unbelievable that on 22-12-2017, the chief officer and clerk in Bopal Ghuma Nagarpalika could have verified the data of the death of Raghunath Gandabhai Desai as on 15-04-1985. This Court in no sense could take cognizance of the veracity of death certificate produced by the plaintiff along with the original record maintained by Ahmedabad Municipal Corporation. Therefore, the certificate itself is absolutely under the umbrella of doubt and suspicious.

The matter does not end here but on the basis of the claim so made by the plaintiff in the present suit, for which the same grievance on the criminal side was ventilated and lodged before the Bopal Police Station by filing an FIR vide CR No. 1119201120 0947/2020. The Bopal Police has made a thorough investigation and having made investigation has filed B-summary in the FIR lodged by the plaintiff no.2 herein as complainant. The final report vide mark 83/1 submitted by the police after thorough investigation reads as under:-

“આ કામે હકીકત એવી છે કે, આ કામના આરોપીઓએ અભણ અને ગરીબ ખેડૂતની જમીન પચાવી પાડવા ગુન્હાહીત પુર્વ આયોજીત કાવતરૂ રચેલ તેના ભાગરૂપે મોજે શેલા ગામની સીમ સર્વે નંબર-૪૧૬ વાળી જમીનના મુળ ખેડૂત ખાતેદાર તા.૧૫/૦૪/૧૯૮૫ના વર્ષમાં મરણ ગયેલ હોવા છતા મુળ ખેડૂત ખાતેદાર તથા ફરીયાદીના નામથી બીજા ખોટા અને બનાવટી માણસો ઉભા કરી તેઓને સાણંદ સબ રજીસ્ટ્રાર કચેરીમાં હાજર રાખી, ખોટા અને બનાવટી દસ્તાવેજમાં ઉપયોગ કરવા આઈ.કે.પટેલ નામથી સ્ટમ્પ મેળવી, પોતાની શ્રીનાથ કોર્પોરેશનના ભાગીદારોની શ્રીનાથ કો.ઓ. બેંક. લીના ચેક. નં.૮૨૮૪૫ રકમ રૂ.૧,૮૯,૪૭૫/- તથા ચેક નં.૮૨૮૪૬ રકમ ૧,૮૯,૪૭૫/- વેચાણ દસ્તાવેજ માં જમીન ના અવેજ પેટે દર્શાવી ખેડૂતોને અવેજની રકમ નહી ચૂકવી રજીસ્ટ્રાર વેચાણ દસ્તાવેજ નંબર.૪૭/૧૯૯૧ તથા વેચાણ દસ્તાવેજ નં.૪૮/૧૯૯૧ થી આરોપી નં.૭,૮,૯ નાઓએ પોતાની ભાગીદારી પેઢીના ચેરમેન આરોપી નં.૧ દિનેશભાઈ રામભાઈ પટેલનાઓના નામે કરાવી લઈ તથા તે વેચાણ દસ્તાવેજમાં આરોપી નં.૨,૩ નાઓએ ખોટા અને બનાવટી ખેડૂતોની સાચા ખેડૂતો તરીકે ઓળખાણ આપી વેચાણ દસ્તાવેજમાં સાક્ષી તરીકે પોતાની સહીઓ કરી તથા આરોપી નં.૪ જમીન દલાલ નાઓએ મુળ ખેડૂતોની જગ્યાએ ખોટા અને બનાવટી ખેડૂતો

(આરોપી નં.૫ તથા આરોપી નં.૬નાઓને) સબ રજીસ્ટ્રાર કચેરી સાણંદ ખાતે હાજર રાખી તથા આરોપી નં.૫ તથા ૬ નાઓ મોજે શેલા ગામની સીમ સર્વે નં.૪૧૬ વાળી જમીનના પોતે મુળ ખેડુત ખાતેદારો ન હોવાનું જાણવા છતાં સબ રજીસ્ટ્રારની કચેરી સાણંદ ખાતે હાજર રહી વેચાણ દસ્તાવેજમાં ફરીયાદી તથા ફરીયાદીના પિતા અને સને.૧૯૮૫ ની સાલમાં મરણ ગયેલ હોવા છતાં તેઓના નામની ખોટી તથા બનાવટી સહીઓ/અંગુઠા ના નિશાનો કરી આરોપી નં.૧ નાઓને રજીસ્ટર વેચાણ દસ્તાવેજ નંબર.૪૭/૧૯૯૧ તથા વેચાણ દસ્તાવેજ નં.૪૮/૧૯૯૧ ના કરી આપી તે વેચાણ દસ્તાવેજો ખોટો અને બનાવટી હોવાનું જાણવા છતાં પોતાના કબજામાં રાખી આરોપી નં.૭,૮,૯ નાઓએ રેવન્યુ રેકર્ડ નોંધ નં.૧૫૭૯ તા.૧૬/૦૪/૧૯૯૧ થી વ્રજ શ્યામ ગોકુલ કો.હા.સો નું નામ દાખલ કરાવી ગુન્હો કર્યા વિગેરે બાબત...

આ ગુન્હાની તપાસ દરમ્યાન મરણ ગયેલ રઘુનાથભાઈ ગાંડાભાઈ દેસાઈનાઓ તા.૧૫/૦૪/૮૫ ના રોજ મરણ ગયેલ નહીં હોવા બાબતે સાહેદોના નિવેદનો તથા બારોટના ચોપડે લખેલ અને-૧૯૮૪,૧૯૮૬,૧૯૮૭ ની નોંધો તથા તા.૨૯/૦૫/૨૦૦૧ ના રોજની લગ્નની કંકોત્રી માં સ્નેહાદિન તરીકે લખેલ નામ તથા સને.૧૯૯૭ ના જયેશભાઈ ગોવિંદભાઈ દેસાઈ (રબારી) ના લગ્નની ફોટોગ્રાફી તથા વિડીયોગ્રાફી માં હાજરી તથા તા.૨૦/૧૦/૨૦૦૮ ના રોજ સંદેશ સમાચાર પત્ર બેસણા ઉપરથી પ્રસ્થાપિત થયા જેથી આ કામના ફરીયાદી શ્રી ખોડાભાઈ રઘુનાથભાઈ દેસાઈ(રબારી)નાઓએ પોતાના અંગત આર્થિક ફાયદા સાડ બોપલ નગરપાલિકા ચીફ ઓફીસર સમક્ષ ધુમા ગામ પંચાયતના રાઉન્ડ શીલ વાળો ખોટો અને બનાવટી મરણનો દાખલો રજુ કરી તે આધારે પોતાના પીતાજી રઘુનાથભાઈ ગાંડાભાઈ દેસાઈનાઓ તા. ૧૫/૦૪/૮૫ ના રોજ મરણ ગયા બાબતેનું તા.૨૨/૧૨/૧૭ ના રોજનું બોપલ નગર પાલિકા તરફથી ખોટું મરણ પ્રમાણપત્ર મેળવી આ ખોટી ફરીયાદ દાખલ કરાવેલી હોવાનું જણાઈ આવે છે. જેથી આ કામે વર્ગ-બી પડત સમરી ભરવામાં આવેલ છે, જે મંજૂર કરવા વિનંતી છે.”

The police has after thorough investigation not only came to the conclusion that, the complainant of the plaintiff no.2 herein is found to be bogus. On the contrary, the police has concluded that the legal action needs to be initiated against the chief officer and concerned staff of Nagar Palika.

Not only that the documentary evidence so far produced on record by the defendants by way of original newspaper Besana press note and the marriage invitation card of the relatives of the plaintiff, also clearly suggest that, Raghunath Gandabhai was alive upto 2008. Therefore, *prima-facie* the sole basis upon which the plaintiffs have raised that foundation for filing of this suit and criminal complaint that Raghunath Gandabhai was not alive on the day of execution of the sale deeds under challenge is not well founded therefore, on this ground, the plaintiffs under the aforesaid suspicious circumstances, plaintiff not able to demonstrate his *prima-facie* case, therefore, on this count, the plaintiff in the humble opinion of this Court fail and not satisfied the Court.

So far as rest of the two grounds that the balance of convenience and irreparable loss, absolutely unignorable facts to be considered by this Court that when the sale deeds were of the year 1991 and the suit is filed in the year 2019 almost about 30 years absolutely appears to be time barred. It is relevant at this

stage to refer to the order and proceedings on this point of limitation, whereby the application for the defendants under Order 7 Rule 11 was rejected by this Court on the ground of triable issue /allegations of forgery and that order was challenged before Hon'ble High Court of Gujarat and the Hon'ble High Court of Gujarat has also not allowed that proceedings challenged by the defendants on ground of limitation. But that apart, the proceedings under Order 7 Rule 11 of CPC and grant of injunction stand absolutely on different footing. No matter if once considered at this stage Order 7 Rule 11 can be said to be *prima-facie* observation, but consideration of the grant of injunction is a different matter standing on different footing. Here *prima-facie* as discussed in foregoing paragraphs, when the plaintiff *prima-facie* clearly failed to establish his *prima-facie* case and on the other hand, when after purchasing the land by the defendants in the year 1991 and thereafter, dealing it with further to its members by allotment, the further equity is already created. The plaintiff has also not joined the plot holders, who have purchased the plots. Obviously, when the plaintiff though claimed to be residing at the same place in the village and not aware of the development or the sale deeds for 30 years and though claimed that after 1991 in the year 2017, they have when required the Village Form No.7 and 12 abstract of revenue record, came to know about the transfer of land is unbelievable theory. Therefore,

on the count of balance of convenience and irreparable loss after 30 years of the sale, cannot be believed in favour of the plaintiff. Therefore, the plaintiff fails on all three counts, this Court is of the humble opinion that, no injunction as claimed by the plaintiff deserves to be granted in favour of the plaintiffs and hence, the following order;-

:: FINAL ORDER ::

- The injunction application filed by the plaintiffs at Exh.5 is hereby **rejected**.
- No order as to cost.

Dictated & pronounced in the open Court today on this 25th day of April, 2024.

Date: 25-04-2024

Place: Sanand.

Navnit

(K.P. Pachode)

Additional Sr. Civil Judge & ACJM,
Sanand, Ahmedabad (Rural)
Judge Code No.GJ00930.