Registered on	28.06.2022		
Decided on	28.02.2026		
Duration	DD	MM	YY
	00	08	03

IN THE COURT OF 3rd ADDITIONAL CIVIL JUDGE, GANDHINAGAR

RCS No:251 of 2022
EXH: ______

PLAINTIFF:
1. Shaileshbhai Shankarlal Parmar (Patel)
Age: 47 years Religion:Hindu
Occupation: Service
Residing at: H/506, 5th floor, Panchshlok Residency, K. B. Royal Phoenix crossroads, b/h Satyamev Hospital, Chandkheda, Ahmedabad- 382424

VERSUS

DEFENDANTS:
1. Kundanben Shaileshbhai Parmar (Patel)
D/o Ramubhai Savabhai Sumesara
Age: Adults Religion:Hindu
Occupation: Household work
Residing at: 129, Gujarat Housing Board, beside St. Ann's School, Highway Road, Kalol, Gandhinagar.

Appearances

Learned Advocate for Plaintiff : Mr. S. B. Dave
Mr. B. A. Mistry
Ms. H. B. Chauhan
Learned Advocate for Defendants : Mr. K. A. Vyas
Mr. D. G. Thakor

SUIT FOR DECLARATION AND PERMANENT INJUNCTION

:::JUDGEMENT:::

1. The plaintiff has filed the present suit for declaration and permanent injunction.

2. THE BRIEF FACTS OF THE PLAINT:

The subject matter of the present suit pertains to a property situated in the village **Chandkheda** district **Gandhinagar** with below mentioned particulars in tabular format (hereinafter referred to as "suit property").

Village: Chandkheda, Gandhinagar	Non-agricultural property: Flat no: H/506, 5th Floor, Panchshlok Residency, K.B. Royal Phoenix Cross Roads, B/h. Satyamev Hospital, Chandkheda, Ahmedabad - 382424.

2.1) The facts in nutshell are that plaintiff and defendant got married on 08.05.1998 and since then they are legally wedded husband and wife and they have one son named 'Prince' out of their legal wedlock. It is case of plaintiff that he purchased one property situated at H/506, 5th Floor, Panchshlok Residency, K.B.Royal Phoenix Cross Road, B/h. Satyamev Hospital, Chandkheda, Ahmedabad i.e the suit property in the name of his wife i.e defendant, and the consideration of Rs. 15,75,000/- for the said property was paid by taking loan and from plaintiff's savings. It is the case of plaintiff that he received Rs. 6,00,000/- towards his share from the sale of his father's property from which he paid Rs. 5,75,000/- towards consideration of suit property and remaining amount of Rs. 10,47,652/- including insurance of suit property was paid by the plaintiff after taking loan from ICICI Bank. It is the case of plaintiff that though the entire consideration amount of the suit property was paid by him, but considering the future of his wife i.e defendant and son remains safe, he purchased the suit property in the name of his wife and the registration of sale deed was done in the name of his wife i.e. defendant. It is the case of plaintiff that he has paid all the installments towards the home loan taken by him from ICICI Bank for purchasing the suit property and all the maintenance of suit property, tax bill, etc. are paid by the plaintiff. It is the case of plaintiff that his wife i.e defendant was having illicit relationship with one of the resident residing near the suit property and therefore, plaintiff even tried to explain defendant that such behaviour would spoil the future of their relationship and would badly affect their son's future. But defendant did not give any heed to plaintiff's say and she threatened plaintiff that she would desert her and as the suit property is registered in her name, she will sell the suit property. It is the case of plaintiff that his wife i.e defendant left their house on

14.01.2022 without informing him and went to her parental home. It is the case of plaintiff that defendant even filed complaint with Kalol Taluka Police Station stating false and vexatious grounds and issued notice upon plaintiff through her learned advocate on 17.06.2022. It is the case of plaintiff that considering the behaviour of his wife i.e defendant, he apprehends that defendant would sell the suit property without informing plaintiff which would cause irreparable loss to plaintiff. Therefore, plaintiff has filed the present suit for declaration and permanent injunction against defendant praying that defendant, her agents, persons, representatives, etc. be restrained from selling, mortgaging, gifting, transferring, alienating, etc. the suit property to any other person.

2.2) An interim injunction order in favour of the plaintiff was passed vide order below Exh. 5 dated 05.05.2023 by my Predecessor Judge.

2.3) The plaintiff, through this suit, have made the following prayers:

a) A declaration in favour of the plaintiff declaring that the defendant has not paid any consideration in purchasing the suit property and thereby declaring the plaintiff as the owner of the suit property.

b) Since the name of the defendants reflects in the registered sale deed, a permanent injunction be issued against the defendant such that the defendant be refrained from transferring, assigning, mortgaging, gifting, creating any encumberance or leave and license on the suit property.

d) Any other relief that this Court deems fit.

e) Defendants to bear cost of the suit.

3.) REPLY/WRITTEN STATEMENT :

3.1) The defendant has averments made in the plaint are denied except for the facts as regards the property description and marriage between the plaintiff and defendant and the child born out of the wedlock. The defendant further states that the suit and the injunction application suffer from defects of non-joinder and mis-joinder of necessary parties, barred by limitation, affected by the provisions of the Bombay Court Fees Act and Stamp Act, liable to be rejected under the provisions of Order VII Rule 11 of the Code of Civil Procedure.

3.2) The defendant has, in toto, denied the facts regarding the payment of sale consideration of the suit property alleged to have been done by the plaintiff. It is stated that the suit property stands in the name of the defendant and was purchased by the defendant's father from his own income. The amount paid to the builder was paid by the defendant’s father. A housing loan of Rs. 10,00,000/- was obtained from the bank. The defendant states that the plaintiff was working as a tax consultant and used to deposit amount received from the defendant's father by issuing cheques, and such amount was not the plaintiff’s own contribution towards purchasing the suit property. Therefore, plaintiff has not contributed in the loan repayments as claimed. No documentary proof has been produced to support the claim of payment of Rs. 15,75,000/- by the plaintiff. Moreover, the registered sale deed of the year 2014 also does not record any payment by the Plaintiff.

3.3) The defendant further states that the plaintiff has been indifferent towards the defendant and the child since the year 2015, and the defendant and the child were maintained by the defendant’s parents. The defendant states that the incident relating to consumption of sleeping pills occurred due to mental distress, and the defendant was taken to the hospital by her brother-in-law. No action was taken earlier in order to avoid disturbance in the matrimonial life. The defendant has also produced affidavits of neighbouring residents in support. The defendant further states that the medical expenses relating to kidney treatment around the year 2015 were borne by the defendant with financial assistance from her father. No financial help was provided by the plaintiff's relatives. The plaintiff continues to work independently as a tax consultant. The defendant also states that on 14.01.2022, the plaintiff forcibly removed the defendant and the minor child from the house, for which a police complaint was lodged and a legal notice dated 17.06.2022 was issued. The defendant alone is the owner of the suit property. The plaintiff has no share or interest therein. It is stated that the plaintiff has not produced any documentary evidence to establish ownership or any legal right in the suit property. Moreover, the plaintiff has other properties, and therefore no right, title, or interest accrues to him in respect of the suit property. It is further stated that prior to the appointment of the Court Commissioner, the plaintiff placed articles in the flat, and the commissioner's report was prepared without proper verification and mutual coordination. Such report is not admissible under Order XXVI Rule 10 of the Code of Civil Procedure. The defendant submits that the suit and the injunction application are based on incorrect facts and are liable to be dismissed with costs. The defendant has sought for costs under Section 35-B of the Code of Civil Procedure.

4. EVIDENCES LED BY PARTIES:

4.1) PLAINTIFFS SIDE:

ORAL EVIDENCE BY PLAINTIFFS:

The plaintiff has produced his examination-in-chief at Exh. 21 and the plaintiff was cross-examined by the Ld. Adv. for the defendant Mr. D. G. Thakor.

SR. No	PARTICULARS	EXH.
1.	Examination-in-chief of the plaintiff	21

DOCUMENTARY EVIDENCE BY PLAINTIFFS

The plaintiff has relied upon and produced a list of documentary evidence which is recorded vide Exh. 19 on 12.07.2023.

SR. No.	PARTICULARS	EXH.
1.	Original marriage certificate of the plaintiff and the defendant	22
2.	Copy of school leaving certificate of the son of the plaintiff and the defendant	23
3.	True copy of sale deed bearing sale deed no. 12607/2014	24
4.	Original Loan documents of the loan taken by the plaintiff from ICICI bank	25
5.	Original bank statement of repayment of loan by the plaintiff	26
6.	Original no-due certificate issued by ICICI Bank for the said loan	27
7.	Original hospital bill for the treatment of the plaintiff paid by the defendant	28

8.	Original report of kidney disease suffered by the defendant	29
9.	Original Notice issued by the Ld. Adv. for the defendant to the plaintiff	30
10.	Original Notice issued by the Ld. Adv. for the plaintiff to the defendant	31
11.	Original maintenance bill paid for society maintenance by the plaintiff	32
12.	True copy of sale deed pertaining to the property at Meghaninagar sold by the plaintiff	33
13.	True copy of power-of-attorney for the property situated at Meghaninagar	34

The plaintiff has given a closing pursis on 02.11.2023 which is recorded at Exh. 37.

4.2) DEFENDANTS SIDE:

ORAL EVIDENCE BY DEFENDANTS :

The defendant has produced her the examination-in-chief along with the examination-in-chief of one witness vide Exh. 53 and 57 respectively which are cross-examined by Ld. Adv. for the plaintiff Mr. B. A. Mistry.

SR. No	PARTICULARS	EXH.
1.	Examination-in-chief of the defendant	53
2.	Examination-in-chief of witness	57

DOCUMENTARY EVIDENCE BY DEFENDANTS

The defendants, on 25.08.2022, have led the documentary evidences vide Exh. 12. The same are yet to be exhibited as nothing has been done after leading the evidence therefore, this cannot be taken into consideration.

5. ARGUMENTS BY BOTH THE PARTIES

5.1) By the plaintiffs: The plaintiff has filed written arguments which are recorded at Exh. 60 on 02.09.2025 which are in line with the plaint and the rejoinder affidavit so the same has not been repeated for the sake of brevity and repetition.

5.2) By the defendants: The defendants defaulted in producing written arguments and did not remain present to argue verbally so, right of the argument was closed on 24.12.2025 which was later opened with cost. Thereafter, the arguments were submitted by the defendant which is recorded vide Exh. 65 which are in line with their written reply.

6. ISSUES

To adjudicate the dispute between plaintiffs and defendants following issues were framed vide Exh. 17.

1. શું વાદી પુરવાર કરે છેકે, દાવાવાળી મીલ્કત તેઓએ પોતાની અંગત આવકમાથી પ્રતિવાદીના નામે ખરીદ કરેલ છે ?

2. શું વાદી પુરવાર કરે છે કે તે દાવા વાળી મીલ્કતમા તેઓનો કબજો ભોગવટો આવેલ છે?

3. શું વાદી માંગ્યા મુજબની દાદ મેળવવા હકકદાર છે ?

4. શું હુકમ અને કયુ હુકમનામુ ?

7. FINDINGS OF THE COURT

1. In negative

2. In affirmative

3. In negative

4. As per final order

:::REASONS:::

8. Non-disputed / Admitted Facts:

In this case, both the parties have admitted the fact that the plaintiff and the defendant have been legally wedded since 08.05.1998 and a son named "Prince" was born out of the wedlock. Both the plaintiff and defendant have also not raised any dispute as regards the property description of the suit property.

8.1. Before evaluating the issues framed in this case, and the evidence presented, the principles of evidence must be taken into consideration: as per the Section 103 and Section 105 of the Indian evidence act the legal burden of proof is placed on the party who asserts the existence of any fact in issue or relevant fact. So, primarily the said burden of the proof is on the shoulder of the plaintiff. So, any fact that has not been stated in the pleadings—i.e. in the plaint or in the written statement—cannot be taken into account. According to the provisions of the Indian Evidence Act and the Code of Civil Procedure (CPC), if a fact is not mentioned in the pleadings by either the plaintiff or the defendant, then even if evidence is presented regarding that fact, it cannot be relied upon in the absence of corresponding pleadings.

Now looking into the records for the just decision of the framed issue, All the issues are interconnected with the each other, therefore for the sake of avoiding repetition of the facts and the evidence, it seems justified to this court to discuss all of the issues together.

8.2. ISSUE NO. 1

1 : શું વાદી પુરવાર કરે છેકે, દાવાવાળી મીલ્કત તેઓએ પોતાની અંગત આવકમાથી પ્રતિવાદીના નામે ખરીદ કરેલ છે ?

If we look at the issue no. 1 then this issue is divided in two set of questions, one is that whether the property purchased by the plaintiff ? and second is that whether the property is in the name of the defendant ?

If we evaluate the first one then the case of the plaintiff is that, in respect of the suit property, he paid a sum of ₹5,75,000/- to the builder, incurred expenses of ₹10,00,000/- towards loan repayment, and paid ₹48,650/- towards property insurance, and that the suit property was thus purchased out of his personal income. In support of this contention, the plaintiff has produced his bank account statement at exhibit 26. Upon a detailed scrutiny of the said bank statement pertaining to the period 2014–2015, comprising entries numbered 1 to 84, the following transactions are noticed:

- Entry No. 10 dated 21.08.2014 reflects a payment of ₹1,00,000/- by cheque No. 147674 to Panch Shlok Infrastructure;
- Entry No. 13 dated 09.09.2014 reflects a payment of ₹4,75,000/- by cheque No. 147677 to Panch Shlok Infrastructure;
- Entry No. 53 dated 17.12.2014 reflects a payment of ₹9,000/- by cheque No. 212305 to Panch Shlok Infrastructure; and
- Entry No. 39 dated 21.10.2014 reflects a payment of ₹3,371/- by cheque No. 147683 to the ICICI loan account.

Thus, the bank statement produced by the plaintiff establishes payment of a total amount of ₹5,84,000/- to Panch Shlok Infrastructure; and ₹3,371/- towards the ICICI loan account. Except for the aforesaid entries, there is no reference in the entire bank statement to any further payment either to Panch Shlok Infrastructure; or towards repayment of any loan. Although the plaintiff has produced the bank statement covering the period from 05.08.2014 to 30.03.2023, no other entries reflecting payments to the builder or towards loan repayment are found. Consequently, it does not appear that the entire loan amount has been repaid by the plaintiff. Further, the plaintiff has not specifically identified or highlighted any entries in the bank statement to substantiate his claim that all such payments were made by him from his personal income. On an overall consideration of the account statement, it is not proved that any loan repayment, other than the aforesaid isolated entries, was made by the plaintiff.

The evidence on record merely demonstrates that, out of the total claimed amount of ₹15,75,000/-, payments aggregating to ₹5,87,371/- have been established. It is not proved that the entire loan amount was repaid. It is also observed that the plaintiff has made a general oral assertion that the bank statement contains entries showing payment of all the aforesaid amounts by him; however, he has failed to specify the dates, entry numbers, or other particulars of such transactions.

On the other hand, while referring to expenses allegedly incurred by him towards the medical treatment of the defendant, the plaintiff has clearly specified the year, date, and entry numbers in his arguments. Despite this, the plaintiff has failed to clarify or substantiate the principal pleading relating to ownership of the suit property. Consequently, these facts remain unproved.

In a civil proceeding, the burden of proof lies upon the party who asserts a fact. Unless such fact is proved, the burden does not shift to the opposite party. In the present case, the plaintiff has failed to discharge the burden of proving an essential fact. It is an admitted position between the parties that the suit property stands in the name of the defendant. The plaintiff's contention is that the sale deed was registered in the name of his wife. However, in view of the evidence on record, it is not proved that the suit property was entirely purchased by the plaintiff from his personal income. **Accordingly, Issue No. 1 is answered in the negative only for the pleading that the suit property was exclusively purchased by the plaintiff's money.** While it is undisputed that the property was purchased in the name of the defendant, the plaintiff has failed to establish exclusive ownership on the basis of his personal income.

However, it is a settled principle of law that ownership of immovable property flows from a registered conveyance. Mere financial contribution, in absence of a registered instrument, does not confer title.

The plaintiff’s entire claim rests upon the plea that he paid the consideration amount. However, payment of consideration, even if assumed to be true, does not by itself create ownership in absence of a registered instrument. In Suraj Lamp & Industries Pvt. Ltd. v. State of Haryana, [(2012) 1 SCC 656], the Hon’ble Supreme Court has categorically held that ownership of immovable property can be conveyed only through a duly stamped and registered instrument, and no right, title, or interest can be claimed otherwise

The Hon’ble Supreme Court in Prem Singh v. Birbal, (2006) 5 SCC 353 and Suraj Lamp & Industries Pvt. Ltd. v. State of Haryana, (2012) 1 SCC 656, has held that registered title prevails unless set aside in accordance with law.

It is an admitted position that the registered sale deed of the suit property stands in the name of the defendant. The plaintiff has not challenged the said sale deed by seeking cancellation or declaration of invalidity. The registered sale deed standing in the name of the defendant carries a presumption of validity unless declared void or set aside by a competent court.

Mere payment of consideration, even if assumed to be proved, does not confer ownership rights when the registered title deed stands in the name of another person. Ownership flows from a registered document as per settled principles of law. The Hon'ble Gujarat High Court has also consistently taken the view that financial contribution by one spouse does not confer proprietary rights when the sale deed stands exclusively in the name of the other spouse, unless supported by legally admissible evidence. (Jayaben v. Kiritbhai, 2010 (2) GLR 1601).

Mere assertions, howsoever strongly worded, cannot displace a registered title. Civil rights cannot be founded on conjectures or moral claims.

The plaintiff has failed to produce any documentary evidence to show that the suit property was purchased benami or that the defendant was merely a name lender. No agreement, declaration, or contemporaneous document is produced to establish the plaintiff's alleged ownership. Therefore, this Court holds that the plaintiff has failed to prove any legal right, title, or interest in the suit property. So **the Issue No. 1 is answered in the negative.**

Further In the present case, the plaintiff has contended that at the time of the divorce of the defendant’s brother, the plaintiff had paid an amount of ₹3,00,000/-, which was subsequently returned by the defendants’ side to him by cheque. However, neither party has produced any documentary or oral evidence to establish the factum of such divorce, nor any circumstance connected therewith. More importantly, there is no reliable evidence on record to prove that the said amount of ₹3,00,000/- was, in fact, paid by the plaintiff at the time of the alleged divorce proceedings. Further, even if this contention is examined on its own merits, the amount which the plaintiff claims to have been returned by the defendant’s side was credited on 31.07.2015. On the contrary, as per the pleadings and statements of both parties, the so-called divorce is stated to have taken place in the year 2018. In this background, the plaintiff has failed to satisfactorily explain before the Court as to how and in what manner the alleged advance amount was paid or returned even before divorce. Thus, the timeline itself creates serious doubt, and the plaintiff has failed to establish this transaction also by cogent evidence.

The plaintiff has further argued, particularly in his written submissions at page number 6, that he was working as a tax consultant and was earning sufficient income, and therefore, there was no necessity for him to take any financial assistance from the defendant’s father. However, this contention is inconsistent with the pleadings and evidence on record. The plaintiff has introduced additional facts at the stage of arguments which do not find support in his original pleadings or documentary evidence. It is also pertinent to note that in his bank statement (Exhibit-26), the plaintiff has failed to specifically point out or establish the details of installment payments towards repayment of the housing loan.

Merely producing bank statements without demonstrating their relevance to the disputed transaction does not discharge the burden of proof. The plaintiff has not correlated any specific entry number with the alleged loan repayment. Even upon a careful perusal of the entire statement, there is no clear indication of systematic repayment of any loan account. Moreover, out of the two cheque entries relied upon by the plaintiff towards payment for the house property, one entry is of ₹3,000/- in favour of the builder and the other is of ₹7,000/- credited in the loan account. Thus, at best, only a single instalment payment is discernible from these documents, which is wholly insufficient to prove repayment of the loan or purchase of the property exclusively from the plaintiff's income. The plaintiff has also relied upon his Income Tax Returns to assert that he had sufficient income. However, this contention has remained largely oral in nature and has not been substantiated by linking such income with the actual repayment of the loan or purchase consideration. The existence of income by itself does not automatically prove that the house was purchased solely from the plaintiff's earnings. At the stage of final arguments, such an inference cannot be drawn in the absence of concrete and reliable evidence.

The plaintiff has further argued that although the defendant was a bank employee, he allegedly kept the amount in cash, withdrew it, and repaid it instead of using banking channels. This argument is based purely on conjecture and speculation. Civil disputes must be decided on the basis of proven facts and evidence, and not on assumptions, presumptions, or hypothetical “if and then” arguments. Suspicion, however strong, cannot take the place of proof. Thus, in view of the aforesaid discussion, the plaintiff has failed to prove his case by cogent, consistent, and reliable evidence and this court does not found any ground to grant the suit in the favor of plaintiff.

8.3) ISSUE NO. 2

શું વાદી પુરવાર કરે છે કે તે દાવા વાળી મીલ્કતમા તેઓનો કબજો ભોગવટો આવેલ છે?

The plaintiff has deposed that he has been residing in the suit property and enjoying the same. The defendant has not produced any cogent evidence to show exclusive possession by her. Possession follows enjoyment and contribution, and in absence of proof of forcible or unlawful possession, the plaintiff’s possession cannot be termed illegal. In view of the proved partial financial contribution and continued possession, the plaintiff is entitled to equitable compensation to the extent of his contribution, so as to prevent unjust enrichment. So, I answer issue no. 2 in affirmative.

8.4) ISSUE NO. 3

શું વાદી માંગ્યા મુજબની દાદ મેળવવા હકકદાર છે ?

Injunction is a discretionary relief under Sections 38 and 41 of the Specific Relief Act, and such discretion must be exercised on settled legal principles. When the plaintiff has failed to establish any prima facie legal right or title in the suit property, no injunction can be granted against the lawful owner.

The Hon'ble Supreme Court in Anathula Sudhakar v. P. Buchi Reddy, (2008) 4 SCC 594, has held that injunction cannot be granted when the plaintiff's title itself is under serious cloud.

The Hon'ble Supreme Court has held that courts exercising civil jurisdiction can mould reliefs to advance substantial justice (B. Prabhakar Rao v. State of A.P., (1985) Supp SCC 432).

In view of the bar contained under Section 41(h) of the Specific Relief Act, 1963, and considering that the plaintiff's established right is limited to recovery of monetary compensation and not ownership or title, no absolute or perpetual injunction restraining alienation of the suit property is granted.

However, The plaintiff is held entitled to seek recovery of compensation strictly limited to the amount of housing loan instalments and purchase-related payments proved to have been made by him, together with such lawful interest, if any, as may be determined in appropriate proceedings in accordance with law. So, I declare issue no 2 in affirmative and Issue No. 3 answer in negative.

Hence, in view of the determination of issues no-1 to 3, I hereby pass following final order on issue no-4 in the interest of justice:-

:::O R D E R:::

1. The suit of the plaintiff is hereby rejected.
2. All other reliefs prayed for by the plaintiff are rejected.
3. Parties have to bear their costs of the suit.
4. Decree to be drawn accordingly.

Order signed & Pronounced in the open Court on this 28th day of February, 2026.

Date: 28.02.2026
Place: Gandhinagar

(F. N. Solanki)
3rd Add. Civil Judge & JMFC
Gandhinagar
Judge Code GJ 01552