

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 19227 of 2023**

THAKORE USHABEN D/O KAMUBEN BHIKHAJI PUNJAJI W/O MAHESHJI
JIVAJI THAKORE

Versus

THAKORE RAMESHBHAI BHIKHAJI

Appearance:

BHOOMI M THAKORE(6237) for the Petitioner(s) No. 1

MR. HARSH K THAKAR(7172) for the Petitioner(s) No. 1

for the Respondent(s) No.

1,10,11,12,13,14,15,16,2,2.1,2.2,2.3,2.4,2.5,3,3.1,3.2,4,5,6,7,8,9

CORAM: HONOURABLE MS. JUSTICE GITA GOPI

Date : 10/11/2023

ORAL ORDER

1. Heard learned Advocate for the petitioner Ms. Bhoomi M. Thakore, who submits that the petitioner is the daughter of the Kamuben Bhikhaji Punjaji and the maternal grandfather – Thakore Bhikhaji Punjaji's property was agreed to be sold by the heirs by way of Agreement of Sale executed before the Sub-Registrar and the said agreement was only for a period of one year as during that period, conditions were required to be fulfilled. It is further submitted that Agreement of Sale was without any possession. The consideration amount was decided as Rs.4,50,000/- but only Rs.3,00,000/- came to be paid.

2. It is further submitted that it was in the year 2007, the petitioner came to know about the misdeeds of the other side while approaching the revenue authorities for mutation, after death of the uncle, a bogus Power of Attorney (POA) which has not been produced anywhere; not before the Sub-Registrar nor even before the Court and inspite of asking for a copy, the other side has failed to provide so. On the basis of such POA, Sale Deed came to be executed on 28.03.1995 in favour of Brijratan Jethamlal Rathi – the defendant No.4. The Agreement of Sale on which reliance has been placed cannot be believed when no possession has been handed over. Thus, there could not be an irrevocable POA for the defendant No.4 to have received any power.

3. It is further submitted that thereafter, too and without any powers, Brijratan Jethamlal Rathi had executed a Sale Deed in favour of the respondents No.5 and 6 respectively – Haribhai Valjibhai Chaudhary and Prabhudas Veljibhai Chaudhary. The mutation entry was certified on 20.03.2000 and Haribhai Valjibhai Chaudhary relinquished his share in the said property in favour of his brother and for

that, entry has been effected. It is also submitted that necessary 135D Notice as per the Revenue Act has not been served.

4. Further, due to the change of mutation entry, Prabhudas Veljibhai Chaudhary sold the land to respondents No.7 to 10 by a Registered Sale Deed dated 12.07.2012, and the mutation entry was entered on 12.07.2012. It is submitted that the revenue proceedings were also undertaken.
5. While referring to the Agreement of Sale, it is submitted by learned Advocate for the petitioner Ms. Bhoomi M. Thakore that without verifying the original POA, the Court could not come to a prima-facie decision as it was the irrevocable POA and where as per the original Agreement of Sale, the possession of the property was not entrusted to the parties, which was for a period of one year; nor has the total consideration been paid.
6. It is further submitted that the maternal uncle – Dhulaji, Sureshji Dhulaji and the children had join in the suit with the application. Later on a compromise

was executed with the other side but had failed and therefore, again they made an application to join them as party which came to be rejected and the order of the rejection has been challenged. It is also submitted that whole act of the respondent/s is illegal, i.e. without any POA to verify the fact that all the heirs of Thakore Bhikhaji Punjaji had authorized Brijratan Jethamlal Rathi to execute any document and under the settlement, had withdrawn the Suit. Learned Advocate Ms. Bhoomi M. Thakore submitted that later in Appeal, a copy of Power of Attorney was produced without any verification of original. It is further submitted that petitioner and other heirs as grandchildren would have a share in the Suit property.

7. Heard the submissions canvassed, perused the records of the case. It appears that the learned trial Court, Ahmedabad (Rural) vide its order dated 08.12.2020 has entered in to the observations that no notice has been given for the cancellation of the irrevocable POA and no complaint has been given of any POA being illegal and forged and on that ground, the application Exhibit 5 came to be rejected.

8. The learned Appellate Judge had entered into the dealing of sale transaction though there has been a specific allegation from the side of the plaintiff that the POA is forged. The learned Judge has observed that the POA was notarized and it is an irrevocable POA.

9. In view of the above, **RULE** returnable on **DECEMBER 20, 2023**. Further, the Suit property is required to be protected till a final decision. Hence, status-quo of the Suit property be maintained till further orders. Direct Service is permitted.

Sd/-

(GITA GOPI, J)

CAROLINE