

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SECOND APPEAL NO. 497 of 2023**

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LEGAL HEIR OF DECEASED MAKWANA PUNJAJI MALUJI
Versus
TAILI TULSIRAM RUPLAL

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Appearance:

MR JV JAPEE(358) for the Appellant(s) No. 1,1.1,2,2.1,2.2,2.3,2.4,3,4
for the Respondent(s) No. 1,2

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CORAM:HONOURABLE MS. JUSTICE GITA GOPI

Date : 06/11/2023

ORAL ORDER

1. By way of this appeal, the appellants have challenged the order dated 23.2.2023 passed by the learned Principal District Judge, Sabarkantha at Himmatnagar in Regular Civil Appeal no.17 of 2021 confirming the judgment and order dated 26.2.2021 passed by the learned 3rd Additional Civil Judge, Sabarkantha at Himmatnagar in Regular Civil Suit no.11 of 2013.
2. The case of the plaintiff is that the deceased Taili Ruplal Ramkishan had purchased the suit property from defendant no.1 by registered sale deed no.1260 on 22.8.1973 by paying the consideration of Rs.4,500/-. On the same day, possession of the disputed land was handed over to the deceased Taili Ruplal Ramkishan and as the suit property was an old house with tiles and constructed of mud, the deceased

made pakka construction on the land as per the agreement entered into with Mistry Mubarakji Kaluji on 4.10.1975 and the name of Taili Ruplal Ramkishan was entered in the city survey record, Himmatnagar Nagarpalika office.

3. Learned advocate Mr. Japee for the appellant states that the sale deed was executed, but no possession has been handed over. Tax and electricity consumption bills were paid by the plaintiff which were in the name of Taili Ruplal Ramkishan and the electricity bills were paid from 1975 to 2010 and Taili Ruplal Ramkishan died on 25.2.2005.
4. It requires to be noted that the predecessor in title of the defendant-Punjaji Makwana had filed Regular Civil Suit no.27 of 2012 for declaration and permanent injunction and for cancellation of the sale deed before the learned Principal Senior Civil Judge, Himmatnagar on 26.3.2012, but as per the order passed below Exh.1 on 19.8.2016, the suit of the plaintiff was dismissed for default. Mr. Japee submitted that the said fact itself proves the possession of the defendants and the commission report of Regular Civil Suit no.27 of 2012 shows the possession of the defendants.

5. The suit of the plaintiffs is allowed and the defendants were directed to hand over the peaceful possession of the suit property to the plaintiff and were restrained from interfering with the possession of the suit property.
6. Aggrieved by the said judgment, Regular Civil Appeal no.17 of 2021 was filed by the legal heirs of the deceased. The First Appellate Court after appreciating the evidence on record and the deposition of the witness dismissed Regular Civil Appeal on 23.2.2023. Aggrieved by the same, the appellant is before this Court.
7. Since the sale deed had been registered on 22.8.1973 with registration no.1260 and due consideration was paid and thereafter, Taili Ruplal Ramkishan had constructed a house on the land, this Court does not find any substantial question of law to be raised. Hence, the present Second Appeal stands dismissed.

Maulik

(GITA GOPI,J)