



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

Civil Appeal No. of 2023
(@ Special Leave Petition (C) No. 6536 of 2022)

Kanaiyalal Mafatlal Patel

... Appellant

Versus

The State of Gujarat and others.

... Respondents

J U D G M E N T

SANJAY KUMAR, J

1. Leave granted.
2. The appellant was unsuccessful before the Gujarat High Court in his challenge to the orders passed by the authorities holding that the sale transaction in his favour was in breach of the provisions of the Gujarat Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (for brevity, 'the Act of 1947'), and directing his summary eviction from the land in question. Hence, this appeal.

3. While ordering notice on 13.04.2022, this Court required the parties to maintain *status quo* with regard to possession of the subject land.

4. Ancestral agricultural land admeasuring 4755 square metres, bearing Block No. 521 (New Block Survey No. 805), situated in Village Ambapur, Taluka and District Gandhinagar, Gujarat, was inherited by one Shankarbhai Dungardas. He died in the year 1952 leaving behind three sons - Becharbhai, Prabhudasbhai and Lalbhai. Becharbhai died on 24.04.1993, leaving behind his widow, Surajben (Respondent No. 14) and progeny - Shardaben (Respondent No. 10), Mafatbhai (Respondent No. 11), Kokilaben (Respondent No. 12), Manjulaben (Respondent No. 13) and Sakarben (Respondent No. 15). Prabhudasbhai died on 21.01.2007, leaving behind his widow, Dahiben (Respondent No. 8), along with two sons and a daughter - Jayantibhai (Respondent No. 6), Keshavlal (Respondent No. 7) and Belaben (Respondent No. 9). Lalbhai died on 04.08.1996, leaving behind his widow, Gangaben (Respondent No. 19), two sons and a daughter - Ghanshyambhai (Respondent No. 16), Rajubhai (Respondent No. 17) and Vinaben (Respondent No. 18).

5. It is the case of the appellant that the larger extent of 4755 square metres, owned by Shankarbhai, was partitioned amongst the families of his three sons, whereby 2377.50 square metres fell to the share

of Prabhudasbhai and Respondent Nos. 6 to 9 while the remaining extent of 2377.50 square metres was allotted to the other two branches, comprising Respondent Nos. 10 to 19. The appellant further claims that Respondent Nos. 10 to 19 executed Agreement of Sale dated 29.09.2006 in his favour proposing to sell their share of land, viz., 2377.50 square metres, to him for a sale consideration of ₹17,51,000/- and Prabhudasbhai, the husband/father of Respondent Nos. 6 to 9, who was still alive at that time, signed this agreement as a confirming party, certifying that he had a half-share in the larger extent of land, which he had not sold, and confirmed that he had not received any amount from the sale consideration. Thereafter, Respondent Nos. 10 to 19 executed a Registered Sale Deed in favour of the appellant on 12.07.2007, alienating their share of the land in his favour. Notably, the Agreement of Sale dated 29.09.2006 recorded that Respondent Nos. 10 to 19 had received the entire sale consideration of ₹17,51,000/- in cash and through cheques gradually, whereas the Sale Deed dated 12.07.2007 noted the sale consideration as ₹1,07,000/- only. Pursuant thereto, Entry No. 6129 was made on 25.07.2007 in the revenue records carrying out mutation in his favour. The names of Respondent Nos. 6 to 9 were also mutated, *vide* Entry No. 6167 dated 26.12.2007, after the death of Prabhudasbhai on 21.01.2007.

6. Respondent Nos. 6 to 9 then filed Case No. PO/Fragmentation/SR/02/2010 in March, 2010, before the Prant Officer, Gandhinagar, challenging the sale transaction of the year 2007 in favour of the appellant, alleging that it was in violation of the provisions of the Act of 1947. By order dated 17.05.2012, the Prant Officer held the sale transaction to be illegal on the ground that it was in breach of Section 31(1) (b) of the Act of 1947. In consequence, he ordered cancellation of the appellant's sale deed and payment of a fine of ₹250/- by him. He also directed initiation of proceedings to remove the appellant from the land.

7. A revision under Section 35 of the Act of 1947 was thereupon filed in the name of the appellant before the Gujarat Government, assailing the aforesaid order dated 17.05.2012. Significantly, the appellant claims that he never filed this revision. In any event, the same was taken on file as Case No. MVV/Con/Ten/3/2013 by the Additional Secretary, Revenue Department (Appeals), Government of Gujarat, and it was dismissed, *vide* order dated 10.07.2015. The appellant claims that he came to know of the order dated 17.05.2012 only in May, 2018, and filed a revision in Case No. MVV/Con/Ten/4/2018 before the Gujarat Government. This revision was dismissed by the Additional Secretary, Revenue Department (Appeals), Government of Gujarat, *vide* order dated 06.09.2018.

8. Therein, apart from holding that the impugned order dated 17.05.2012 was proper and lawful, the revisional authority held that the principle of *res judicata* would be applicable as the issue already stood decided by the order dated 10.07.2015 in Case No. MVV/Con/Ten/3/2013. Aggrieved, the appellant approached the Gujarat High Court under Article 226 of the Constitution, *vide* Special Civil Application No. 2709 of 2020. By judgment dated 24.12.2021, a learned Judge of the Gujarat High Court dismissed the said writ petition.

9. Assailing this judgment, the appellant preferred Letters Patent Appeal No. 14 of 2022 before a Division Bench of the Gujarat High Court, but only to meet with the same fate as the said appeal was dismissed by order dated 12.01.2022. Therein, the Division Bench stressed on the delay on the part of the appellant in preferring a revision in the year 2018 against the order dated 17.05.2012. Reference was made to the observations in the judgment under appeal in the context of the address of the appellant *vis-à-vis* his claim that he was never served with notice and that he never preferred the first revision. Further, the Division Bench held that Respondent Nos. 6 to 9 had the *locus* to challenge the sale as the land remained joint and there was no partition, whereby there could be demarcation thereof and sale of a specific portion to the appellant.

Referring to Section 31(1)(b) of the Act of 1947, the Division Bench affirmed that transfer of the land in favour of the appellant without the prior permission of the Collector was in breach thereof, and that the authorities as well as the learned Judge had committed no error in deciding the case. It is against this order that the appellant filed this appeal.

10. Perusal of the material on record reflects that the order dated 17.05.2012 passed by the Prant Officer, Gandhinagar, in the case filed by Respondent Nos. 6 to 9, noted the address of the appellant as under:

‘Res: B/51, Sanskar Society, Shahibaug, Ahmedabad - 380004’.

The first revision filed in the name of the appellant against this order also reflected the very same address. Surprisingly, though the appellant claimed that he did not reside at the aforesaid address, his revision filed in the year 2018 again reflected the same address. He, however, filed a criminal complaint on 18.12.2019 alleging that some person had impersonated him and filed the first revision. It appears that no action was taken thereon due to the pendency of this litigation. The appellant claims that his actual address is ‘B/9, Sadbhav Bungalow, opposite Om Tower, Shahibaug, Ahmedabad – 380004’. It is stated that the address reflected in the order dated 17.05.2012 was repeated in the revision filed in the year 2018 as the cause title of the revision necessarily

had to tally with the cause title in the impugned order. However, in the revision, he did not raise the issue of his correct address while contending that he was not served with any notice.

11. Section 31 of the Act of 1947, to the extent relevant, reads thus:

“[(1)] Notwithstanding anything contained in any law for the time being in force, no holding allotted under this Act, nor any part thereof, shall be-

(a)

(b) sub-divided (including sub-division by a decree or order of a Civil Court or any other competent authority) except with the permission in writing of the [Collector]

(2) Nothing in sub-section (1) -

(a) shall apply to a transfer of a holding allotted under this Act where the transfer is of the entire holding, not involving any sub-division thereof, or to a sub-division of a holding allotted under this Act where such sub-division is made to provide for the shares of persons entitled thereto on the death of the owner, and does not create any fragment; or.....”

12. In the context of Section 31(2) of the Act of 1947, a ‘fragment’, as defined under Section 2(4) thereof, means a plot of land of less extent than the appropriate standard area determined under the Act of 1947. In terms of such determination in so far as irrigated land is concerned, a ‘fragment’ would mean an extent less than Ac 0.20 Guntas. As he was sold an extent of Ac 0.23 Guntas, the appellant contends that it is not a fragment and Section 31(1)(b) of the Act of 1947 would have no application to the sale transaction in his favour. He also contends that, though the Division

Bench recorded a finding that there was no demarcation of the larger extent of land pursuant to a partition, it is a matter of record that Respondent Nos. 6 to 9 executed a sale agreement, titled 'Earnest Deed without possession', on 11.11.2014 proposing to sell their share of land, quantified as 0-23-77.5, to a third party. He would argue that this act on their part foreclosed any argument that there was no partition or demarcation of the larger extent, whereby Respondent Nos. 10 to 19 could have sold him their half-share of land which tallies with the half-share claimed by Respondent Nos. 6 to 9 in the sale agreement.

13. Reference is also made by the appellant to the entries in the revenue records in relation to the subject land, showing that dry crops were grown in 2 acres while rice was cultivated in an extent of Ac 0.20 Guntas and an extent of Ac 0.20 Guntas was a garden. These entries are relied upon to show that the land was irrigated. On the other hand, Respondent Nos. 6 to 9 place reliance on Village Form No. 12, relating to the years 2006-2007 and 2007-2008, wherein it is stated that there was no source of irrigation for the larger extent of 0-47-55. Countering this, the appellant would point out that the earlier entries, from the year 1951 onwards upto the year 1964, show that paddy, cotton, millets and aniseed were grown in the land, indicating that it had a source of irrigation.

14. Given the aforesaid sequence of events, it is manifest that the appellant did not take adequate care to establish his case. However, the fact also remains that he was never given a proper hearing on merits by the authorities before holding against him. The initial order dated 17.05.2012 merely stated that notice was served upon the parties and, admittedly, no opportunity of hearing was afforded to the appellant. The controversy as to the correct address of the appellant need not trouble this Court, despite his filing a revision with the same address as was shown in the first revision. The irrefutable fact is that he was not given a full hearing on merits either by the original authority or by the revisional authority.

15. The findings recorded by the High Court that there was no partition and that the land was never demarcated, whereby a portion thereof could have been sold to the appellant, do not take into account the fact that Respondent Nos. 6 to 9 themselves executed a sale agreement in the year 2014 and the contents thereof support the appellant's claim that Respondent Nos. 10 to 19 were entitled to sell him their half-share. The issue as to whether the land sold to the appellant would constitute a 'fragment' in terms of Section 31(1)(b) read with Section 2(4) of the Act of 1947 and more so, in the context of whether the said land is irrigated land or dry land, has also not been examined extensively or in depth.

16. Reduction of the sale consideration in the appellant's documents from ₹17,51,000/- to ₹1,07,000/- would have to be examined in the light of the appellant's claim that his vendors wanted him to show a reduced sale consideration in the sale deed for the purpose of registration charges. The issue as to whether Respondent Nos. 6 to 9 were entitled to reopen the sale transaction of 2007 in the year 2010, despite the appellant's claim that Prabhudasbhai knew of and approved the sale transaction, would also have to be examined as it is claimed by Respondent Nos. 6 to 9 that the sale agreement in which Prabhudasbhai was shown as a confirming party never saw the light of day earlier. All these aspects would require verification and adjudication upon evaluation of evidence. The parties would be in a position to adduce proper evidence in support of their respective cases only if they are given opportunity to do so before the original authority, viz., the Prant Officer, Gandhinagar.

17. Further, having purchased the land in the year 2007 after parting with valuable consideration, the appellant cannot be condemned without providing him a full opportunity to put forth his case with supporting evidence. Accordingly, we allow this appeal and set aside the orders passed by the Gujarat High Court as well as the orders passed by the authorities and remand the matter for consideration afresh on facts and

law. Case No. PO/Fragmentation/SR/02/2010 filed by Respondent Nos. 6 to 9 before the Prant Officer, Gandhinagar, State of Gujarat, shall stand restored to the file. The Prant Officer shall give due notice to both parties fixing an appropriate date for taking up the case; allow them full opportunity to adduce evidence, oral and documentary; and thereafter take a reasoned decision in the matter in accordance with law. This exercise shall be completed expeditiously and preferably within six months from the date of receipt of a copy of this order.

Pending miscellaneous applications shall stand disposed of.

In the circumstances, parties shall bear their own costs.

.....,J
(C.T. RAVIKUMAR)

.....,J
(SANJAY KUMAR)

December 6, 2023.
New Delhi.