



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SECOND APPEAL NO. 394 of 2026

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE MAULIK J.SHELAT

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Approved for Reporting	Yes	No
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RAJPUT NEELABEN D/O BHEMABHAI MEGHABHAI

Versus

RAJPUT ABHABHAI HARSENGBHAI

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Appearance:

MR HARI BRAHMBHATT FOR MR DHAVAL M BAROT(2723) for the
Appellant(s) No. 1

MR. NISHIT P GANDHI(6946) for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE MAULIK J.SHELAT

Date : 01/09/2026

JUDGMENT

1. This Second Appeal reflects a growing tendency in society: once the original owner has sold immovable property, they challenge the sale after an efflux of time due to the rise in the value of the property, thereby dragging the buyer before the Civil Court.

2. The present second appeal is filed under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC") against the judgment and decree dated 03/05/2025 passed by the 3rd Additional District Judge, Banaskantha in Regular Civil Appeal No.10 of 2019, whereby it has confirmed the judgment and decree dated 26/04/2019 passed by the Principal Civil Judge, Vav in Civil Suit No.5 of 2013.



2.1 The appellant herein is the original plaintiff and the respondent herein is the original defendant. For the sake of convenience, the parties will herein after be referred to as per their original positions in the suit.

SHORT FACTS OF THE CASE :

3. The short facts of the case appear to be that immovable property bearing Survey No.1401 paiki 1, admeasuring hectare-aare-sq.mtrs. 1-41-49, situated at Vav Taluka, District Banaskantha, (herein after referred as "***the suit land***") was sold by the appellant herein along with her mother in favour of the respondent/defendant by way of a registered sale deed dated 09/04/1999 and such sale deed came to be challenged by filing Regular Civil Suit No.5 of 2013 on 18/03/2013, whereby sought the cancellation of the aforesaid sale deed on the ground that it was obtained by fraud and it is a fabricated sale deed.

3.1 It was the case of the plaintiff that the revenue entry upon execution of the aforesaid sale deed came to be mutated by the Revenue Authority only in the year 2012 and having noticed that fact, she filed the aforesaid suit. It is also pleaded that the suit land was mortgaged by her father and there was a redemption of the mortgage by the plaintiff in the year 2012. Thus, it is the case of the plaintiff that she and her mother never sold the suit land in favor of the respondent / defendant.



3.2 Whereas, the respondent/defendant appeared in the suit and filed his written statement, whereby he refuted all the allegations. The parties led oral and documentary evidence to prove their respective case. The trial Court appears to have framed the following issues and answered them accordingly:

"ISSUES :

- 1. Whether the plaintiff proves that registered sale deed No.296/99, dated 4/9/1999 is forged and fabricated ?*
- 2. Whether the defendant proves that the suit land was purchased by him by paying consideration of Rs.30000/- vide registered sale deed No.296/99 dated 9/4/1999?*
- 3. Whether the defendant proves that he became owner of suit land by adverse possession ?*
- 4. Whether the defendant proves that suit is barred by limitation ?*
- 5. What Order and decree ?*

ANSWERS :

- Issue No.1 - In the negative*
Issue No.2 - In the affirmative
Issue No.3 - In the negative
Issue No.4 - In the affirmative
Issue No.5 - As per final order."

(emphasis supplied)

3.3 Since the suit itself is hopelessly time-barred, inasmuch as the execution of the sale deed was in the year 1999 and the suit came to be filed in the year 2013, the trial court found that such suit ought to have been filed within three years from the date of execution/registration of the sale deed and accordingly, the suit came to be dismissed. Apart from the



above, it was not believed by the trial court that the execution and registration of the sale deed in question was fraudulent.

3.4 Feeling dissatisfied with the judgment and decree passed by the trial court, the original plaintiff preferred a first appeal being Regular Civil Appeal No.10 of 2019 before the Appellate Court concerned, wherein after hearing the parties, the Appellate Court vide its judgment and decree dated 03/05/2025 dismissed the aforesaid appeal, which is impugned in the present Second Appeal.

SUBMISSIONS OF THE APPELLANT :

4. Mr.Hari Brahmbhatt, learned advocate for the appellant, would submit that the Courts below have committed a serious error in law by dismissing the suit and appeal filed by the appellant and as such, the suit ought to have been allowed by the trial Court. It is submitted that even after execution and registration of the sale deed in favour of the respondent by the appellant, being the co-signatory to the sale deed with her mother, the mutation entry in favour of the defendant came to be mutated by the Revenue Authority in the year 2012 and as such, the suit was filed within three years from such period.

4.1 Mr.Brahmbhatt, learned advocate would further submit that there was a mortgage created by the father of the plaintiff prior to the execution of the sale deed and the same was redeemed by the plaintiff in the year 2012 by way of a registered Redemption Deed and the mutation entry in this



regard was mutated in the revenue record.

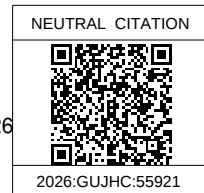
4.2 Thus, according to Mr.Brahmbhatt, learned advocate for the appellant, the suit was not time-barred and as such, it ought to have been allowed by the trial court as there was, in fact, no execution of the sale deed in favor of the defendant by the plaintiff.

4.3 Making the above submissions, Mr.Brahmbhatt, learned advocate for the appellant would request this Court to admit this Second Appeal for consideration of the substantial question of law framed in Para 2 of the memo of the appeal.

SUBMISSIONS OF THE RESPONDENT :

5. *Per contra*, Mr. Nishit Gandhi, learned advocate for the respondent would submit that this Court should not entertain the Second Appeal which is filed against the concurrent findings of fact recorded by the Courts below. It is submitted that the Courts below have concurrently held that the suit is time-barred and the plaintiff failed to prove that the execution of the sale deed was by playing any fraud.

5.1 It is further submitted that as per the condition of the sale deed, as such there was no mortgage at the time of its execution but even if it is found, it was the burden upon the seller, i.e., the plaintiff, to redeem such mortgage and thereby no cause of action arose in favor of the plaintiff. It is also submitted that the mutation entry in favour of the defendant in the revenue record in the year 2012 would not give rise any right in favour of the plaintiff to file this suit in the year 2013



to challenge the sale deed of the year 1999.

5.2 Mr.Gandhi, learned advocate, would submit that the institution of the suit by the appellant challenging the sale deed, having once sold the suit land in favor of the respondent / defendant, is nothing but an abuse of the process of law and despite being defeated before the trial court as well as the Appellate Court, still the appellant has dragged the matter up to this Court by way of a Second Appeal.

5.3 To buttress his arguments, Mr.Gandhi, learned advocate for the respondent has relied upon the following judgment :

(i) Russi Fisheries (P) Ltd. v. Bhavna Seth-2026 SCC OnLine SC 555.

5.4 Making the above submissions, Mr.Gandhi, learned advocate for the respondent would request this Court to dismiss the present second appeal with costs.

6. No other and further submissions being made by the learned advocates appearing for the respective parties.

7. Heard Mr.Hari Brahmhatt, learned advocate for Mr.Dhaval Barot, learned advocate for the appellant and Mr.Nishit Gandhi, learned advocate for the respondent at length.

ANALYSIS AND REASONS :

8. Having heard the learned advocates for the respective parties and upon perusal of the impugned judgment and



decree passed by the Courts below, it appears that this appeal is filed against the concurrent findings of fact recorded by the Courts below against the appellant who happens to be the plaintiff in the suit in question. It is an undisputed fact that the plaintiff was a signatory to the sale deed which was executed in the year 1999 along with her mother, whereby they sold the suit land in favour of the defendant. The suit in question came to be filed in the year 2013 challenging the sale deed of the year 1999.

9. It was the case of the plaintiff that the registered sale deed in question is a forged and fabricated document and thus requested the Civil Court to set aside such sale deed. To prove the factum of a fraudulent transaction, the plaintiff has failed to lead any evidence except to examine one witness to the sale deed. It is very easy for the plaintiff to make allegations of fraud but in the absence of any evidence on record, a registered document cannot be declared as a fraudulent document unless such fraud has been established on record by the plaintiff. Rather, it is the settled position of law that there is a presumption as regards the genuineness of a registered document. When such would be the factual scenario, once both the Courts below concurrently held that the plaintiff has failed to prove that the defendant obtained the sale deed by fraud, and such finding of fact is neither perverse nor grossly erroneous one, in the second appeal, this Court cannot not interfere with such finding



10. So far as the contention raised by Mr.Brahmbhatt, learned advocate for the appellant, that when the mutation entry came in the revenue record in favour of the defendant in the year 2012 and there was a redemption of the mortgage by the plaintiff, that too in the year 2012, it gave rise to a cause of action to the plaintiff to file the suit, it is nothing but a fallacious submission and it requires outright rejection. The cause of action accrued to the plaintiff to challenge the sale deed when it was executed, i.e., in the year 1999, as she was a signatory to the sale deed. The mere mutation entry in favour of the defendant in the year 2012 would not give rise to the right to file a suit, as it is the settled position of law that a mutation entry does not confer a right, title, or interest in favour of the person concerned. It cannot be gainsaid that the suit was hopelessly time-barred.

11. So far as the redemption of the mortgage is concerned, except that redemption deed on record, there is nothing to suggest that there was actually any mortgage at the time of execution of the sale deed. This aspect has been dealt with by the Appellate Court; thereby, I would not like to add anything more, rather I am in agreement with the finding of fact recorded by the Court below in this regard. Apart from the aforesaid aspect, it has been clearly stated in the sale deed in question that in a case where any mortgage would find, it was a duty of the plaintiff to redeem such mortgage and get the suit land free from any encumbrance.



12. It is a well-settled position of law that unless the findings of fact recorded by the Courts are perverse or grossly erroneous and/or contrary to law, this Court should not interfere with the findings of fact by re-appreciating the evidence while exercising its power under Section 100 of the CPC.

12.1 It would be apt to refer to and rely upon the recent decision of the Hon'ble Apex Court with regard to scope and ambit of power of this Court while adjudicating any second appeal filed under Section 100 of CPC. In the case of **Russi Fisheries (P) Ltd. v. Bhavna Seth-2026 SCC OnLine SC 555**, it has been categorically held by the Hon'ble Apex Court that this Court should not interfere with findings of fact recorded by the Courts below unless it is so perverse or grossly erroneous, and / or contrary to a settled principle of law. The relevant observations of the said decision read thus:

"31. It is settled in law that the findings of fact howsoever erroneous, cannot be reopened and disturbed in second appeal which is required to be adjudicated only upon the substantial question of law, if any, arising therein. Thus, the argument that the High Court in second appeal ought to have examined the evidence to ensure the correctness of the findings of the First Appellate Court has no legs to stand and fails.

*32. Long back in 1981, three judges of this Court in the case of **Bholaram vs. Ameerchand** had ruled that even if findings of facts by courts below are wrong or grossly inexcusable that by itself would not entitle the High Court to interfere under Section 100 CPC in the absence of clear error of law. A similar view was reiterated in **Madhavan Nair v. Bhaskar Pillai (Dead) by Lrs.**, wherein it has been laid down that even if the First Appellate Court commits an error in recording a finding of fact, that itself*



will not be a ground for the High Court to upset the same.

33. In **Kashibai w/o Lachiram v. Parwatibai w/o Lachiram**, a similar proposition of law was laid down by this Court and it was held that the High Court cannot re-appreciate the evidence and interfere with the findings of facts unless a substantial question of law or a question of law duly formulated is to be decided. The second appeal does not lie on the ground of erroneous findings of facts based on appreciation of the relevant evidence.

35. Again, in **Kulwant Kaur v. Gurdial Singh Mann (Dead) by Lrs**, it was emphasized that the fact remains that in a second appeal, a finding of fact, even if erroneous, will not be disturbed unless it is found that it stands vitiated for want of perversity. No such case for interference has been made out in the present case."

(Emphasis supplied)

12.2 It is also profitable to refer and rely upon the decision of the Hon'ble Apex Court in the case of **Jaichand (Dead) through Lrs and Others v. Sahnulal and Another - 2024 SCC OnLine SC 3864**, whereby, the Hon'ble Apex Court held as under:

"25. In **Kshitish Chandra Purkait v. Santhosh Kumar Purkait reported in (1997) 5 S.C.C. 438**, this Court held that in the Second Appeal, the High Court should be satisfied that the case involves a substantial question of law and not mere question of law.

27. This Court in **Kondira Dagadu Kadam v. Savitribai Sopan Gujar reported in AIR 1999 S.C. 2213** held:-

"The High Court cannot substitute its opinion for the opinion of the first appellate Court unless it is found that the conclusions drawn by the lower appellate Court were erroneous being contrary to the mandatory provisions of law applicable or its settled



position on the basis of pronouncements made by the Apex Court, or was based upon inadmissible evidence or arrived at without evidence."

28. It is thus clear that under Section 100, C.P.C., the High Court cannot interfere with the findings of fact arrived at by the first Appellate Court which is the final Court of facts except in such cases where such findings were erroneous being contrary to the mandatory provisions of law, or its settled position on the basis of the pronouncement made by the Apex Court or based upon inadmissible evidence or without evidence."

(Emphasis supplied)

13. Thus, in view of the aforesaid peculiar facts and circumstances of the case and applying the ratio of the decisions supra to the case on hand, I am of the considered view that no substantial questions of law is made out though framed by the appellant in Para-2 of the memo of the Second Appeal, inasmuch as the questions which are framed can hardly be considered as question of law; rather, I am of the considered view that the institution of the suit by the plaintiff in the year 2013, having once sold the suit land by way of a registered sale deed to the defendant in the year 1999 and challenging it after about 14 years, is nothing but an abuse of the process of law. Such type of litigant is required to be discouraged by the Court by imposing heavy and exemplary costs.

14. At this stage, Mr.Brahmbhatt, learned advocate for the appellant, would request that this Court may not impose exemplary and heavy costs and considering the fact that the



appellant is a lady, *bona fide* pursuing her right before the Civil Court, some leniency may be shown to the appellant.

15. Taking note of the request of Mr.Brahmbhatt, learned advocate for the appellant, and overall facts and circumstances of the present case, instead of imposing exemplary and heavy costs, I would like to impose costs of Rs.10,000/- to be paid by the appellant to the respondent and Rs.10,000/- shall be deposited by the appellant with the DLSA, Banaskantha, which shall be paid/deposited within one month from today.

16. In view of the foregoing discussion and reasons, I do not find any merit in the Second Appeal. Accordingly, it is dismissed with costs. All pending application(s), if any, also stands disposed of. Decree shall be drawn accordingly.

GAURAV J THAKER

(MAULIK J. SHELAT, J)