



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SECOND APPEAL NO. 443 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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JOSARFAL VALA BHIMA (JOSARFAL VALA KHIMA)

Versus

LEGAL HEIRS OF LATE SHRI RAMESH MOTIRAM JESWANI & ORS.

Appearance:

MR AJAY L PANDAV(3660) for the Appellant(s) No. 1

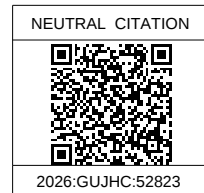
CORAM:HONOURABLE MR. JUSTICE MAULIK J.SHELAT

Date : 18/08/2026

JUDGMENT

1. Heard Mr. Ajay L. Pandav, learned advocate for the appellant at length.

2. This Second Appeal is filed under Section 100 of Civil Procedure Code (CPC), challenging the judgment and decree dated 07.05.2026 passed by 2nd Additional District Judge, Kachchh at Bhachau in Regular Civil Appeal No.19 of 2025, whereby it has confirmed the judgment and decree dated 18.06.2024 passed by the Principal Senior Civil Judge, Bhachau-Kachchh in Special Civil Suit No. 10 of 2017 (Old No.7/2011).



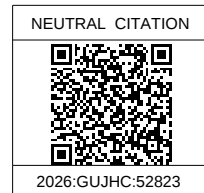
3. For the sake of brevity, parties will be referred to as per their original position in the suit. The appellant herein is the original defendant and the respondents herein is the original plaintiffs.

SHORT FACTS:-

4. The Special Civil Suit in question appears to have been filed by the respondents-plaintiffs seeking specific performance of an Agreement to Sell (hereinafter referred to as "**ATS**") executed by the defendant on 15.03.2010 in relation to the suit property. A total sale consideration was agreed between the parties was Rs.13,78,000/- and as a part performance, the plaintiffs paid Rs.2,15,000/- at the time of execution of the ATS and as per the case of the plaintiffs, the balance consideration of Rs.11,28,000/- was also paid.

4.1 Since the entire sale consideration was paid to the defendant, the plaintiffs sought execution of the sale deed and the same appears to have been denied, which resulted into the filing of the suit. The defendant appeared in the suit and filed his written statement, but did not submit any oral and documentary evidence to prove his defense.

4.2 The Trial Court framed necessary issues, including the issue as to whether the plaintiffs proved that they have paid entire sale consideration to the defendant, and so also as to whether the defendant proved that he has not received the balance sale consideration from the plaintiffs. The plaintiff No.1 examined himself and also examined three other witnesses to prove the

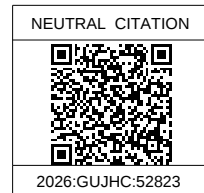


execution of the ATS and the payment of the entire sale consideration to the defendant. The judgment of the Trial Court would show that the learned advocate engaged by the defendant did not cross-examine the plaintiff No.1 and his witnesses. As recorded above, the defendant did not step into the witness box to prove his defense.

4.3 After considering the oral and documentary evidence on record, the Trial Court has decreed the suit in favour of the plaintiffs by arriving at a conclusion that the entire sale consideration has been paid by the plaintiffs to the defendant, and that the plaintiffs are entitled to get specific performance as prayed in the suit, thereby directed the defendant to execute the sale deed in relation to the suit property.

4.4 Feeling aggrieved and dissatisfied with the judgment and decree passed by the Trial Court, the defendant appears to have filed the aforesaid Appeal. After hearing the parties, vide its impugned judgment and decree dated 07.05.2026, the Appellate Court has dismissed the appeal, whereby it has confirmed decree of specific performance passed by the Trial Court. Hence, the present second appeal.

5. Mr. Pandav, learned advocate would submit that the Courts below have committed a serious error in law by granting a decree for specific performance in favour of the plaintiffs, even though it is not proved on record that the entire sale consideration is received by the defendant. It is submitted that one opportunity ought to have been granted to the defendant to lead his evidence



whereby the truth could have come on record.

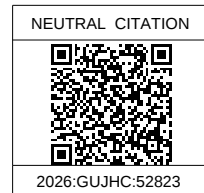
5.1 It is further submitted that the plaintiffs have miserably failed to prove on record that they were ready and willing to perform their part of the contract, inasmuch as they were ready to pay and /or paid the balance sale consideration. It is also submitted that the execution of the ATS itself was not proved on record, and in light of such factual scenario emerged from the record, the Courts below ought to have dismissed the suit.

5.2 Mr. Pandav, learned advocate would request this court to admit this appeal on the substantial questions of law, which are framed in paragraph-10 of the memo of appeal.

6. Having heard Mr. Pandav, learned advocate for the appellant at length and upon perusal of the judgment and decree passed by the Trial Court as well as the Appellate Court, *prima facie*, it appears that this second appeal is filed against the concurrent findings of fact recorded by the Courts below against the appellant-defendant.

6.1 The suit in question was filed seeking specific performance of the ATS executed by the defendant in favour of the plaintiffs. As per the case of the plaintiffs, the entire sale consideration was received by the defendant, but the defendant did not come forward to execute the sale deed in favour of the plaintiffs in relation to the suit property, then they had to file suit in question.

6.2 It is an undisputed fact that, except filing a written



statement, the defendant did not lead any oral and documentary evidence, whereas the plaintiffs not only examined themselves, but examined three other witnesses who have categorically deposed in favour of the plaintiffs about the execution of the ATS as well as the payment of the entire sale consideration in favour of the defendant. It is not in dispute that the entire oral evidence of the plaintiffs went uncontroverted at the hands of the defendant, inasmuch as neither the plaintiff No.1 nor his witnesses were cross-examined. Accordingly, the Trial Court has decreed the suit in favour of the plaintiffs.

6.3 The Appellate Court, upon re-appreciation of the evidence on record, did not find any error in the judgement delivered by the Trial Court; rather, it observed the conduct of the defendant and also arrived at the same conclusion which was drawn by the Trial Court. Even though for all practical purposes, the suit went *ex parte*, still the Appellate Court discussed the evidence in detail, and ultimately, it did not find any substance in the case of the defendant, who failed to lead any evidence.

7. It is a well-settled position of law that pleadings are no substitute for proof. A party to a suit proceeding is required to lead evidence to prove his case. The Appellate Court has correctly observed and placed reliance upon the decision of the Hon'ble Apex Court in the case of **Vidhyadhar V. Manikrao** reported in **AIR 1999 SC 1441**, while dismissing the appeal.

7.1 The pertinent observations made by the Hon'ble Apex Court in the case of **Vidhyadhar (supra)** read thus: -

“17. Where a party to the suit does not appear in the witness-box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct as has been held in a series of decisions passed by various High Courts and the Privy Council beginning from the decision in *Sardar Gurbakhsh Singh v. Gurdial Singh* [AIR 1927 PC 230 : 32 CWN 119] . This was followed by the Lahore High Court in *Kirpa Singh v. Ajaipal Singh* [AIR 1930 Lah 1 : ILR 11 Lah 142] and the Bombay High Court in *Martand Pandharinath Chaudhari v. Radhabai Krishnarao Deshmukh* [AIR 1931 Bom 97 : 32 Bom LR 924] . The Madhya Pradesh High Court in *Gulla Kharagjit Carpenter v. Narsingh Nandkishore Rawat* [AIR 1970 MP 225 : 1970 MPLJ 586] also followed the Privy Council decision in *Sardar Gurbakhsh Singh* case [AIR 1927 PC 230 : 32 CWN 119] . The Allahabad High Court in *Arjun Singh v. Virendra Nath* [AIR 1971 All 29] held that if a party abstains from entering the witness-box, it would give rise to an adverse inference against him. Similarly, a Division Bench of the Punjab and Haryana High Court in *Bhagwan Dass v. Bhishan Chand* [AIR 1974 P&H 7] drew a presumption under Section 114 of the Evidence Act, 1872 against a party who did not enter the witness-box.”

(Emphasis supplied)

8. Thus, having considered the aforesaid facts and circumstances, and having not found the impugned judgment and decree passed by the Courts below either perverse or grossly

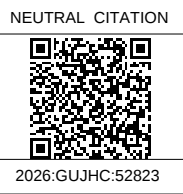
erroneous, this Court, while exercising its powers under Section 100 of the CPC, would not like to entertain this second appeal.

9. At this juncture, I would like to refer to and rely upon the recent decision of the Hon'ble Apex Court in the case of **Russi Fisheries (P) Ltd. v. Bhavna Seth**, reported in **2026 SCC OnLine SC 555**, wherein it has been categorically held that this Court should not interfere with finding of fact recorded by the Courts below unless it is so perverse or grossly erroneous, and / or contrary to a settled principles 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 v. 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 reappreciate 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)

10. In view of the foregoing discussion and reasons, I am of the considered view that there is no questions of law much less any substantial question of law involved in this appeal, although set out in paragraph-10 of the memo of appeal but in light of the aforesaid, the same cannot be considered as substantial questions of law.

11. The present second appeal is found meritless and accordingly, it is hereby dismissed. As a sequel, the Civil Application, if any pending, the same is also rejected. There shall be no order as to costs. The decree shall be drawn accordingly.

(MAULIK J.SHELAT,J)

Lalji Desai