

Reserved On : 07/01/2026
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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SECOND APPEAL NO. 78 of 2004****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE J. C. DOSHI**

Approved for Reporting	Yes	No
	Yes	

RAMBHAI MADHUBHAI RAJPUT SINCE DECD. THRO HIS HEIRS & ORS.
Versus
STATE OF GUJARAT & ORS.

Appearance:
MR MB PARIKH(576) for the Appellant(s) No. 1.1,1.2,1.3,1.4,1.5,1.6,1.7,1.8
MS NIDHI VYAS, AGP for the Respondent(s) No. 1,2,3

CORAM:HONOURABLE MR. JUSTICE J. C. DOSHI**CAV JUDGMENT**

1. Being aggrieved and dissatisfied by the concurrent findings arrived by learned Courts below, in Regular Civil Appeal No.36 of 2002, whereby, learned Extra Assistant Judge, Veraval dismissed the appeal confirming the judgment and decree drawn in Regular Civil Suit No.224 of 1989 by learned Civil Judge, Veraval, by which suit of the plaintiff was dismissed, the plaintiff has filed present Second Appeal under section 100 of Code of Civil Procedure, 1908 (for short '**CPC**').

2. In the body of this judgment for sake of brevity, the parties are referred to their original status i.e. plaintiff and defendant.

3. Facts essential to decide this Second Appeal are as under :-

3.1. Late – Ram Devath received land of survey No.21 Acre 22 – 20 Guntas of Jasadhar range of Gir Reserve Forest under settlement. The plaintiff claims that after death of Ram Devath, he has obtained agreement to sell on 30.03.1965 from heirs of deceased – Ram Devath viz. Daya Rama, Bhagvan Rama and Laxmibhi Naran by paying sale consideration. Agreement to sell was registered on 30.05.1965 with concerned Sub Registrar Office. Pursuant to execution of agreement to sell, plaintiff – Ramabhai Rajput obtained possession of land of survey No.21 Acre 22 – 20 Guntas (for short “**disputed land**”) along with construction and Vada on the said land and since then, he is in possession of disputed property along with construction thereon. It is further case of the plaintiff that parcel of land received under sale consideration is prohibited by Forest Act, yet State Government and Forest Department are taking up applications from occupants transferring occupancy rights of settlement land

in favour of buyer. It is further case of the plaintiff that in such a way occupants of disputed land preferred application before Forest Authority permitting them to transfer occupancy rights of disputed land, which was pending for decision at the time of filing of suit. The plaintiff apprehended that officers of Forest Department may resume possession without following due process of law. Therefore, plaintiff filed suit for permanent injunction that State Government or Forest Department may not dispossess plaintiff without due process of law. Later on, plaint was amended under Order 6 Rule 17 of CPC and order dated 28.09.1985 passed by Forest Department produced at Mark 15/6 was challenged to declare it as null and void and not binding to plaintiff.

3.2. Suit was hotly contested by State Government and Forest Department. Ultimately, suit was dismissed by judgment and decree dated 30.08.2002 by learned Senior Civil Court, Veraval. Plaintiff being aggrieved filed First Appeal under section 96 of CPC being Regular Civil Appeal No.36 of 2002 before the Appellate Court, Veraval, which was dismissed by judgment and decree dated 22.07.2004.

3.3. Being further aggrieved, the plaintiff has preferred this Second Appeal inter-alia on the grounds mentioned in appeal memo.

4. Co-ordinate Bench of this Court on 06.03.2006 admitted Second Appeal, formulating following substantial question of law :-

“1)The lands in question were transferred by a written document on March 30, 1965 and the appellant was put in possession and since then, the appellant is tilling the lands in question. Can the appellant be evicted without following due process of law and without giving him an opportunity of being heard?.

(2) Whether the condition of prior permission would render the transfer in favour of the appellant void in the wake of the admitted position that the heirs of the original occupants had applied for it and the application was pending ?

(3) In the event that the permission is already applied for and the same is pending for consideration, the transfer in favour of the appellant would voidable and not void?

(4) Whether the transfer of land which is part of settlement land would create any hindrance or would be against the

notification at exh .7.?

(5) Whether in view of the provision that, on land being transferred without prior permission, the same can be permitted to be transferred by payment of penalty, and if so, whether the alleged transfer would be void or voidable?

(6) Whether the transfer of settlement land being survey No. 21 can be regularised under the provisions of the Forests Act, and the circulars of the Government or not ?

(7) Whether the provisions of section 24 of the Indian Forests Act, 1927 would render the document exh 63 void or voidable?"

5. Learned advocate Mr.Parikh for the appellant – plaintiff fly at the concurrent findings recorded by Courts below, mainly argued that learned Courts below have materially erred in not noticing that plaintiff is in possession of disputed land since the year 1965 under legal and valid documents which is registered under the Registration Act. It is further submitted that deceased Ram Devath received disputed land as settler and his heirs executed agreement to sell in favour of plaintiff and one Sindhi Ismail and handed over possession after obtaining sale

consideration and put the plaintiff into possession of disputed land along with construction made thereon with one vada. Thus, possession of plaintiff over disputed land is pursuant to execution of agreement to sell; hence, possession obtained under doctrine of part performance defined under section 53A of the Transfer of Property Act is protected, as such cannot be disturbed, otherwise than following process of law.

5.1. Learned advocate Mr.Parikh referred to condition no.3(a) at Exh.142 and submitted that though section 23 of the Forest Act restricts to transfer land received under settlement, if any immovable property being personal of settler attached with land under settlement, it can be transferred by way of Will or any instrument such as agreement to sell or sale deed. Learned advocate Mr.Parikh submitted that therefore, transfer of land along with construction, vada attached with land received in settlement cannot be recorded as illegal act. It is submitted that even if settler has no right, title and interest over disputed land without permission of Forest Department, the fact remains that plaintiff is in possession of disputed land since the year 1965 and thus, he has possessory title over disputed land, as such, he may not be dispossessed without due process of law. It is

submitted that State Government and Forest Department were having knowledge that under agreement executed in the year 1965, the plaintiff is in possession of disputed land, yet Forest Department issued order at Exh.71 and pictured that possession of disputed land has been taken from Bhodha Ram, who claims to be heir of deceased Ram Davath; it was eye wash and therefore, order / letter at Exh.71 is not binding to the plaintiff. According to learned advocate Mr.Parikh this issue has not been appreciated properly by the Courts below and therefore, it is submitted to allow the Second Appeal on the aforesaid questions of law and to quash and set aside impugned judgment.

6. Per contra, learned AGP Ms. Nidhi Vyas for respondent State supporting concurrent findings arrived by Courts below referred to sections 23,24 and 27 of the Indian Forest Act and submitted that person who has received land under settlement has no right to alienate, sale, transfer or mortgage said parcel of land without sanction of the State Government. It is submitted that present case, at no point of time, any sanction was given to Ram Devadh or his heirs to transfer disputed land which is received under settlement; in absence thereof, no right accrues in favour of the plaintiff to file suit seeking relief that he may not

be dispossessed without due procedure of law. It is submitted that if plaintiff takes shelter of documents which are not recognized by law, possession under such documents is *ipso facto* illegal.

6.1. It is further submitted by learned AGP that Jasadhar range under Gir Forest has been declared as reserved forest by the State Government under the provisions of Forest Act and later on under the provisions of Wild Life (Protection) Act, 1972, said area has been declared as sanctuary. It is submitted that in that circumstances, since disputed land is given to deceased Ram Devadh under Settlement, it is always under ownership of State Government and cannot be alienated or transferred without sanction of State Government.

6.2. Taking this Court through facts of the case, learned AGP submitted that original settler deceased Ram Devadh left possession of disputed land long back as he was not interested to cultivate land for the purpose for which disputed land was granted, State Government initiated proceedings to resume disputed land. Meanwhile, Ram Devadh – original settler expired and therefore, land has been resumed to State Government as

per order Exh.71. Bhodha Ram lineal descendant of deceased Ram Devath handed over possession to State Government as per Exh.71, not only that he has filed affidavit to that effect which suggest and say that plaintiff has no whatsoever right, title over the disputed land. It is argued by learned AGP Ms.Vyas that plaintiff claims that he has purchased land from Daya Rama, Bhagwan Rama and Laxmibai Naran by executing agreement to sell at Exh.63, however, during suit proceedings, said three persons failed to prove that they are legal heirs of deceased Ram Devath. It is further submitted that in written statement, State Government has specifically challenged the locus of three persons who executed agreement to sell in favour of the plaintiff. Therefore, it is submitted that until it is proved on record that three persons viz. Daya Rama, Bhagwan Rama and Laxmibai Naran are legal heirs of deceased Ram Devadh, document at Exh.63 even if it is genuine and has value in eye of law, does not establish any right in favour of the plaintiff.

6.3. Mainly on above submissions, learned AGP submitted that learned Trial Court and learned Appellate Court have comprehensively discussed the issue and rejected claim of the plaintiff. There is no question exist, which can be treated as

substantial question of law in this matter and as such Second Appeal since deserves no consideration, be dismissed.

7. Having heard learned advocates for the parties, at the outset let me note some undisputed facts emerging on record.

- (i) Jasdhara range has been declared as reserve forest under Forest Act by the State Government and later on declared as sanctuary under Wild Life Act, 1972.
- (ii) Disputed land fall within reserve forest as well as wildlife sanctuary.
- (iii) Land of land of survey No.21 Acre 22 – 20 Guntas being disputed land was given to deceased - Ram Davath under settlement carried out by Settlement Officer on the terms and conditions being leasehold land. Terms and conditions of settlement does not provide for transfer of leasehold right.
- (iv) Exh.63 is not executed by deceased Ram Devath.
- (v) Three persons who have executed agreement to sell at exh.63 viz. Daya Rama, Bhagwan Rama and Laxmibai Naran though claimed as legal heirs of deceased Ram Devath, however, failed to be established as legal heirs of

deceased Ram Devath.

(vi) As per Exh.71, State Government has resumed possession of disputed land from Bhodha Ram son of deceased Ram Devadh. He has executed no objection in favour of State Government, in addition thereto has also filed affidavit before State Government to that effect.

(v) Bhodha Ram is not party to the suit.

8. In the background of the aforesaid undisputed facts, the evidence on record is required to be examined to determine whether the plaintiff has proved his case or not. Mark - 15/3, being the pro forma agreement proposed to be executed after the land was to be allotted pursuant to the settlement carried out by the Forest Department, has been produced on record. The said document undisputably stipulates a condition prohibiting the persons – settler to whom the lease is granted from transferring the leasehold rights.

9. Exh.63 is base document upon which plaintiff claims to be in possession of disputed land. Perusal of Exh.63 state that disputed land was standing in the name of Ram Devath at the time of execution of documents. Three persons who have

executed Exh.63 viz. Daya Rama, Bhagwan Rama and Laxmibai Naran did not mutate their names in the revenue record. Document is executed claiming that they are heirs of deceased Ram Devath. No evidence on record is produced by plaintiff to establish that said three persons are legal heirs of deceased Ram Devadh. No pedigree prepared by revenue officer is produced. No other documentary evidence are produced to establish that these three persons are heirs of deceased Ram Devath. In this premises, even *prima facie* Exh.63 document claimed to be agreement to sell fails to create legal value in the eye of law.

10. Exh.63 document in unequivocal term state that disputed land is forest settlement land. It further state that as disputed land falls without boundaries of reserve forest, without permission of State Government disputed land cannot be sold. Surprisingly, it is agreement to sell for which no specific performance was ever asked by plaintiff. The plaintiff entered into witness box as PW-1 at Exh.57. He admitted in cross examination that disputed land is owned by Government. He has further admitted that deceased Ram Devath received land under settlement. He has further admitted that Exh.63 agreement to sell is not binding to Forest Department. It is further admitted

that he cannot purchase land, until State Government grants him permission.

11. Exh.68 is notification issued by State Government to declare reserve forest and Exh.69 is notification issued by State Government to declare area as wild life sanctuary. Exh.71 is order from Deputy Conservative Officer of Forest stating that disputed land having been given to settler – Ram Devath, since is not cultivating, left possession of disputed land, possession thereof is taken from his legal heir Bhodha Ram.

12. Exh.146 is Kabulatnama given by Bhodha Ram stating that he has not given disputed land to plaintiff and has no objection if forest department resumes disputed land. Exh.147 is affidavit of Bhodha Ram declaring same fact.

13. In background of aforesaid evidence, if we examine case of plaintiff which is based on document at Exh.63, it is no more than agreement to sell. Even if it is believed to be true, it does not create any right, title or interest in favour of plaintiff. In view of section 54 of Transfer of Property Act, a contract for sale of immovable property does not, of itself create any interest in or

charge on such property. In the case of **Meghmala v/s. G. Narasimha Reddy [(2010) 8 SCC 383]**, the Hon'ble Apex Court in unequivocal terms held that an agreement to sell does not create any right or title in favour of intending buyers. Thus, there is no gain say that plaintiff has no right, title or interest on disputed land on the basis of Exh.63 agreement to sell.

14. One of argument canvassed by learned advocate Mr.Parikh that plaintiff is put into possession by Exh.63, therefore, he cannot be dispossessed without following due process of law, indirectly pleading application of doctrine of part performance defined in section 53(A) of the Transfer of Property Act. Apt to note that provision of section 53(A) of the Transfer of Property Act recognizes a right of a transferee, where a transfer has given and the transferee has taken possession of the property or any part thereof. Even this provision does not create title of the transferee in the property in question but gives him a very limited right, that too subject to satisfaction of the conditions as stated in section 53(A) of the Transfer of Property Act itself. (see : **Raheja Univeral Ltd. v/s. NRC Limited – AIR 2012 SC 1440**).

It can be noticed that plaintiff who claimed to apply doctrine of part performance, did not plead any fulfillment of condition of

section 53(A) of Transfer of Property Act.

15. The view expressed by this Court can be fortified from judgment of Hon'ble Apex Court in the case of **Rambhau Namdeo Gajre v/s. Narayan Bapuji Dhotra [(2004) 8 SCC 614]**, wherein, Hon'ble Apex Court held that protection provided under section 53A of the Transfer of Property Act to the proposed transferee is a shield only against the transferor. It disentitles the transferor from disturbing the possession of the proposed transferee who is put in possession in pursuance of such an agreement. It has nothing to do with the ownership of the proposed transferor who remains full owner of the property till it is legally conveyed by executing a registered sale deed in favour of the transferee. Such a right to protect possession against the proposed vendor cannot be pressed into service against a third party.

16. Secondly, agreement to sell at Exh.63 and recital thereof clearly state that agreement to sell was conditional and subject to sanction received from State Government. State Government has never given sanction to seller or buyer to alienate the disputed land. Therefore, Exh.63 does not survive to base the

relief claimed in the suit much less to establish possessory title or legal possession over disputed land. More over doctrine of part performance can be applied by transferee against transferor or person who is stepping into shoes of transferor but not against third party who has independent right and title. In the case on hand, admittedly, State Government is owner of disputed land and by settlement, Ram Devath was merely given right to cultivate land.

17. In aforesaid circumstances, argument of learned advocate Mr.Parekh to apply doctrine of part performance to protect his possession is not acceptable.

18. The term 'Due process of law' has been explained by Hon'ble Apex Court in **Maria Margardia Sequeria Fernandes v/s. Erasmo Jack De Sequeria (dead) through LR [2012 (5) SCC 370]**. Para 79 and 80 reads as under :-

79. Due process of law means nobody ought to be condemned unheard. The due process of law means a person in settled possession will not be dispossessed except by due process of law. Due process means an opportunity for the defendant to file pleadings including written statement and documents before the Court of law. It does not mean the whole trial. Due process of law is satisfied the moment rights of the parties are adjudicated by a competent Court.

80. The High Court of Delhi in a case *Thomas Cook (India) Limited v. Hotel Imperial* 2006 (88) DRJ 545 held as under:

"28. The expressions 'due process of law', 'due course of law' and 'recourse to law' have been interchangeably used in the decisions referred to above which say that the settled possession of even a person in unlawful possession cannot be disturbed 'forcibly' by the true owner taking law in his own hands. All these expressions, however, mean the same thing -- ejectment from settled possession can only be had by recourse to a court of law. Clearly, 'due process of law' or 'due course of law', here, simply mean that a person in settled possession cannot be ejected without a court of law having adjudicated upon his rights qua the true owner.

Now, this 'due process' or 'due course' condition is satisfied the moment the rights of the parties are adjudicated upon by a court of competent jurisdiction. It does not matter who brought the action to court. It could be the owner in an action for enforcement of his right to eject the person in unlawful possession. It could be the person who is sought to be ejected, in an action preventing the owner from ejecting him. Whether the action is for enforcement of a right (recovery of possession) or protection of a right (injunction against dispossession), is not of much consequence. What is important is that in either event it is an action before the court and the court adjudicates upon it. If that is done then, the 'bare minimum' requirement of 'due process' or 'due course' of law would stand satisfied as recourse to law would have been taken. In this context, when a party approaches a court seeking a protective remedy such as an injunction and it fails in setting up a good case, can it then say that the other party must now institute an action in a court of law for enforcing his rights i.e., for taking back something from the first party who holds it unlawfully, and, till such time, the court hearing the injunction action must grant an injunction anyway? I would think not. In any event, the 'recourse to law' stipulation stands satisfied when a judicial determination is made with regard to the first party's protective action. Thus, in the present

case, the plaintiff's failure to make out a case for an injunction does not mean that its consequent cessation of user of the said two rooms would have been brought about without recourse to law."

We approve the findings of the High Court of Delhi on this issue in the aforesaid case."

19. Possession is important when there is no title documents and other records, but once the document and records of title lying with the party, it is the title which has to be looked at first and due weight-age be given to it. Possession cannot be considered in vacuum. In an action for recovery of possession of immovable property or for protecting possession thereof, upon the legal title to the property being established, the possession or occupation of the property by a person other than the holder of the legal title will be presumed to have been under and in subordination to the legal title and it will be for the person resisting a claim for recovery of possession or claiming a right to continue in possession, to establish that he has such right. In other words, if person is seeking protection to his possession under subordination of title lying with third party has to establish that he has right to continue possession. In present case, plaintiff failed to establish this aspects.

20. At this juncture, examination of provisions of the Indian Forest Act, 1927 the Van (Sanrakshan Eevam Samvardhan) Adhiniyam, 1980 formerly known as The Forest [(Conservation) Act, 1980 and provisions of Wild Life (Protection) Act, 1972 are necessary.

21. Section 20 of the Indian Forest Act permits State Government to declare area as forest reserve. In view of section 20(1)(c) of the Forest Act, all lands to be included in the proposed forest, which the Forest Settlement Officer has acquired under the Land Acquisition Act have become vested in the State Government and shall be deemed to be reserved forest as per section 20(2) of the Forest Act. Section 5 of the Forest Act bars accrual of forest rights, once notification under section 4 of the Forest Act is published to notify reserved forest. At this stage, let refer section 23 and 24 of the Forest Act, which reads as under :-

“23. No right acquired over reserved forest, except as here provided. - No right of any description shall be acquired in or over a reserved forest except by succession or under a grant or contract in writing made by or on behalf of the [Government] or some person in whom such right was vested when the notification under section 20 was issued.

24. Rights not to be alienated without sanction. (1) Notwithstanding anything contained in section 23, no right continued under clause (c) of sub-section (2) of section 15 shall be alienated by way of grant, sale, lease, mortgage or otherwise, without the sanction of the State Government : Provided that, when any such right is appended to any land or house, it may be sold or otherwise alienated with such land or house.

(2) No timber or other forest-produce obtained in exercise of any such right shall be sold or bartered except to such extent as may have been admitted in the order recorded under section 14.”

22. Thus, no right except right of succession or under grant or contract in writing made by or on behalf of Government acquire over reserved forest and right shall not be alienated without sanction of the State Government.

23. Section 2 of the Van (Sanrakshan Eevam Samvardhan) Adhiniya, 1980 restricts even State Government on the de-reservation of forests or use of forest land for non forest purpose.

24. In the case of **Centre for Environmental Law WWF-I v/s. Union of India [2000 SCC Online SC 119]**, the Hon'ble Apex Court has categorically held that de-reservation of forest or sanctuaries or national parks cannot be made without permission of Hon'ble Apex Court. Relevant extract is quoted below :-

“2. Pending further, no de-reservation of forest / sanctuaries / national parks shall be effected.”

25. Recently, Hon'ble Apex Court in the case of **State of Karnataka v/s. Gandhi Jeevan Collective Farming Co-operative Society Ltd. [2025 INSC 1461]** reiterated the same.

26. Section 20 of the Wild Life (Protection) Act, 1972 also bars accrual of right except by succession, testamentary or intestate. Section 20 of the said Act reads as under :-

*“20. Bar of accrual of rights. -
After the issue of a notification under section 18, no right shall be acquired in, on or over the land comprised within the limits of the area specified in such notification, except by succession, testamentary or intestate.”*

27. In view of above, claim made by the plaintiff that he may not be dispossessed without due process of law is totally meritless, baseless and groundless when no right has been accrued in favour of plaintiff to continue possession pursuant to Exh.63 which is not legal in the eye of law.

28. This is Second Appeal whereby concurrent findings arrived at by Courts below is assailed. In the aforesaid circumstances, respondent successfully establish non existence of any substantial question of law. Rather it is found to be 'third trial' on facts and 'one more dice in the gamble', as held by the Apex Court in the case of ***Gurdev Kaur & Ors. v. Kaki & Ors.***, reported in **(2007) 1 SCC 546** of the Supreme Court, wherein it is observed that:-

"The legislative intention was very clear that legislature never wanted second appeal to become 'third trial on facts' or 'one more dice in the gamble'."

29. Considering the law laid down by the Hon'ble Apex Court and the factual evidence discussed herein-above, substantial question of law No.1 is answered by holding that the plaintiff has no right to be heard, as he has no right, title, or interest in the

disputed land. Substantial question of law No.2 is answered by holding that the State Government never accorded any sanction for transfer of occupancy rights. The answer to substantial question of law No.2 also governs answer to substantial question of law No.3. Since transfer of settlement land is impermissible under the provisions of the Forest Act, substantial question of law No.4 is answered accordingly. With respect to substantial question of law No.5, it is held that penalty cannot regularize alienation of settlement land. The same reasoning applies to substantial question of law No.6. Substantial question of law No.7 is answered by holding that Exhibit 63 has no legal value in the eyes of law.

30. For the reasons stated herein-above, Second Appeal sans merits and accordingly, it is dismissed. Interim relief granted earlier, if any, stands discontinued. Record and Proceedings, if any, be send back to learned Trial court concerned.

SATISH

(J. C. DOSHI,J)