(2017) 01 GUJ CK 0167

In the Gujarat High Court

Case No : 2025 of 2016

MOHANBHAI CHHIMUBHAI PATEL — APPELLANT

Vs

BHANABHAI NARISNHBHAI PATEL & ORS — RESPONDENT

Date of Decision : 20-01-2017

Acts Referred:

Code of Civil Procedure, 1908, Order 41 -
Evidence Act, 1872, Section 90 - Presumption as to documents thirty years old

Citation : (2017) 01 GUJ CK 0167

Hon'ble Judges : M.R. Shah, A.S. Supehia

Bench : Division Bench

Advocate : SP MAJMUDAR, VIMAL A PUROHIT, S S IYER, MIHIR JOSHI, MEGHA JANI

Judgement

1. Feeling aggrieved and dissatisfied with the impugned judgment and decree dated 08.08.2016 passed by the learned 8th Additional Senior Civil Judge, Surat (hereinafter referred to as "trial Court") in Special Civil Suit No.26/2014 (hereinafter referred to as "said suit") by which the learned trial Court has dismissed / rejected the said suit preferred by the original plaintiff, the original plaintiffs have preferred the present First Appeal.

2. Facts leading to the present First Appeal in nutshell are as under: 2.1 That the original plaintiff instituted the said suit in the learned trial Court for a declaration to declare the registered sale deed No.7209 dated 26.04.2012 and registered sale deed No.7126 dated 25.04.2012 in favour of the original defendant No.4 with respect to the suit land bearing Survey No.44/2 - Block No.77 and Survey No.47 - Block No.83 situated at village Bamroli, Taluka Surat City (Choriyasi) as illegal, null and void, without consideration and also for a further declaration that the original defendant Nos.1 to 4 have no right, title or interest in the said properties. The original plaintiff also prayed for permanent injunction restraining the defendants from transferring, alienating in any manner whatsoever the suit

properties and also for a declaration that the defendants have no right to transfer the said properties. The original plaintiff also prayed for a permanent injunction restraining the defendants from disturbing the possession of the plaintiff.

2.2 It was the case on behalf of the original plaintiff that the suit property was under the sole ownership and possession of his great grandfather Mithabhai. That after the death of Mithabhai, the suit property was mutated in the name of Keshabhai Mithabhai and others since 1930. That the said Keshabhai expired on 19.12.1929 and therefore, as per the succession, name of his legal heirs i.e. Suka Kesha, Chhana Kesha, Ganda Kesha and other''s name were mutated in the revenue record vide mutation entry No.94 dated 08.01.1930. That after the death of Chhana Kesha, as per succession rights, name of his legal heirs were mutated and after the death of Suka Kesha, name of his legal heirs i.e. Lakhiben widow of Suka Kesha, Budhiyabhai, Kanchanbhai, Shantaben, Babarbhai were mutated. That after the death of Babarbhai Sukabhai, name of his widow Manjulaben Babarbhai, Dilipbhai Babarbhai, Jayeshbhai Babarbhai, Rajnikant Babarbhai, Lalitaben Babarbhai, Nirmalaben Babarbhai and Chhimmubhai Sukhabhai were mutated. That after the death of Chhimubhai Sukhabhai, name of his legal heirs i.e. Kantibhai Chhimubhai, Dhirajbhai Chhimubhai, Mohanbhai Chhimubhai (Plaintiff) and Parvatiben Chhimubhai was mutated and thereby the original plaintiff become the coowner and cooccupier of the suit properties by succession rights.

2.3 It was the case on behalf of the plaintiff that, since 1930, name of Dullabbhai was no where mentioned, entered or mutated in the revenue record and despite the same, after almost 71 years, the mother of the defendant Nos.1 to 3, Maniben D/o. Dulabhbhai initiated the proceedings before the Deputy Collector, Choriyasi by filing RTS Appeal No. 68 of 2001 contending inter alia that, as per the order of ''Taluka'' dated 26.04.1930, mutation entry No.97 was made in the Pani Patrak but effect of that change was not given in the ''Khed Hakk. It was further the case on behalf of the original plaintiff that the Deputy Collector has without considering the provisions of the Land Revenue Code and also without asking for order of the disputed mutation entry No.97, arbitrarily and illegally held that Maniben D/o. Dulabhbhai is also having 1/2 share in the suit property of Survey No.44/2, new Block No.77 and Survey No.77 having Block No.86 and ordered to enter the name of Maniben D/o. Dulabhbhai being legal heir of Dulabhbhai Mithabhai dated 30.04.2003. According to the plaintiff, the said order was against the provisions of the Bombay Land Revenue Code. It was also the case on behalf of the plaintiff that the said order of Deputy Collector was initially challenged before the Collector, Surat by filing RTS Appeal No.45/2003, which was rejected by the Collector, Surat, which was further challenged before the State Secretary, Revenue Department by way of Revision Application No.123/2003, which also came to be rejected. It was the case on behalf of the original plaintiff that though the Revenue Authorities have no right and/or authority to decide the rights and title of the parties and though only the Civil Court has jurisdiction, the Revenue Authorities passed an illegal order without jurisdiction. It was also the case on behalf of the original plaintiff that since 1930, Keshabhai Mithabhai was only shown as owner and occupier of the suit properties and nobody had objected the name of Dulabhbhai Mithabhai not being on record, not even Dulabhbhai Mithabhai during his lifetime.

2.4 It was the case on behalf of the original plaintiff that, on mutation of the name of Maniben as heir of Dulabhbhai, the defendant Nos.1 to 3 in collusion with defendant No.4 illegally executed a registered sale deed for 1/2 share of the disputed land, in favour of the original defendant No.4 on 25.04.2012 and 26.04.2012 respectively. It was contended that mutation entry No.97 itself was forged and fabricated and no such order of 1930 was in existence. It was submitted that mutation entry No.97 was wrongly added afterwards, signature of Talati Mayashanker Manchharam was also different from the other entries - disputed mutation entry No.97 and a page showing disputed entry No.97 was intentionally added in between the record. Therefore, it was the case on behalf of the original plaintiff that aforesaid all were done by fraud. That the criminal complaints against the defendants was also filed. It was asserted by the original plaintiff that the plaintiff is coowner and coPage occupier of the suit properties and the defendants are required to be restrained from further transfer.

2.5 Having been served with the summonses of the suit, defendant Nos.1 to 3 appeared. They opposed the suit by filing Written Statement at Exh.15. They denied the facts in general. They contended that the plaintiff have challenged the entry no. 97 after almost 85 years and therefore suit of the plaintiff is clearly barred by law of limitation. The defendant Nos.1 to 3 also contended that, they have no dispute regarding factual aspect that the suit properties were originally belonging to Mithabhai but have denied the fact that name of Dulabhbhai Mithabhai was not there in the revenue record. They produced pedigree of Mithabhai and also contended that being elder son of the deceased Mithabhai, name of Keshabhai was only mutated in the Pani Patrak as Keshabhai Mithabhai and others. The defendant Nos.1 to 3 also submitted that as the name of their elder Dulabhbhai Mithabhai was not mutated, RTS Appeal No.26 was filed and on 26.04.1930, name of Dulabhbhai Mithabhai was ordered to be mutated on the record. The effect of the same was initially given in Village Form No. 6 vide entry No.97 on 29.04.1930 and the same was certified accordingly. According to original defendant Nos.1 to 3, by virtue of the said entry, Dulabhbhai Mithabhai become the owner of the 1/2 share of the suit properties. It is further contended that, after the entry, very soon Dulabhbhai expired and therefore, Maniben, mother of the defendant Nos.1 to 3 and Gandiyabhai were legal heir of the Dulabhbhai. Gandiya Dulabhbhai died unmarried and therefore Maniben Dulabhbhai, mother of defendant Nos.1 to 3 only remained as legal heir of the deceased Dulabhbhai Mithabhai. According to the defendant Nos.1 to 3, as the name of Maniben D/o. Dulabhbhai was not mutated as an occupier in the revenue record, Maniben initiated the RTS proceedings wherein she succeeded and her name was mutated in the revenue record. According to the original defendant Nos.1 to 3, name of their mother Maniben was rightly mutated and after her death, being the heirs the defendant Nos.1 to 3 rightly sold their part of properties to the defendant No.4 on consideration. Therefore, it was the case on behalf of the defendant Nos.1 to 3 that there is no illegality in the transfer and transaction and therefore, it was prayed to dismiss the suit.

2.6 The suit was resisted by defendant No.4 by filing written statement at Exh.28. He mainly contended that he has purchased the suit properties from his legal owner on full consideration. According to him, as per revenue proceedings, name of Maniben Dulabhbhai was mutated for her 1/2 share in the suit properties. That Maniben died in the year 2008 and therefore defendant Nos.1 to 3 being legal heirs of the deceased, their names were mutated. It was contended on behalf of the defendant No.4 that, he is the bonafide purchaser and there is no illegality in the transaction between defendant Nos.1 to 3 and defendant No.4. The defendant Nos.5 to 40 who were added subsequently during the proceedings, out of them defendant Nos.5 to 25 filed the written statement at Exh.54. Defendant Nos.26 and others filed the written statement at Exh.57, wherein, they have mainly supported the plaintiff''s claim and contended that, the defendant Nos.1 to 3 have no right in the suit properties and therefore, disputed selldeeds are required to be canceled.

2.7 The learned trial Court framed the following issues

"(1) Whether the plaintiff proves that the suit land having block no. 77 of survey no. 44/2 and block no. 86 of survey no.47 was under the sole ownership and possession of his greatgrandfather Mithabhai?

(2) Whether the plaintiff proves that he became the owner and possessor of the suit property by virtue of successive rights?

(3) Whether the plaintiff proves that the defendant no. 1 to 3 have no right, share and interest over the suit properties? (4) Whether the plaintiff proves that the defendant no. 1 to 3

have in collusion of each other, illegally entered the name of Dulabh Mitha in the revenue record?

(5) Whether the plaintiff proves that he is entitled to get a decree for the declaration that disputed registered sell deeds executed by defendant no. 1 to 3 in favour of the defendant no. 4 are void?

(6) Whether the defendant no. 1 to 3 proves that the name of their great grand father Dulabhbhai was entered in the revenue record on the basis of RTS 26/1930 and order dated 2641930?

(7) Whether the defendant no. 1 to 3 proves that they are having ½ successive rights and share in the suit properties and have legally sold their part to the defendant no. 4?

(8) Whether the suit is bad for nonjoinder of necessary parties?

(9) Whether the suit is barred by Law of limitation?

(10) Whether plaintiff is entitled to get relief as prayed for?

(11) What order and decree?" That both the parties led oral as well as documentary evidences as under:

ORAL EVIDENCE OF PLAINTIFF

Exh.No. Particulars

60 PlaintiffMohanbhai Chhimubhai Patel

PlaintiffMohanbhai Chhimubhai Patel Deputy Mamlatdar Mr. Harish Jinjala

123 TalatiCumMantri Mr. Dahyabhai Chhaganbhai

131 Mr. Mahesh Jeram Patel

DOCUMENTARY EVIDENCE OF DEFENDANTS

Sr. No. Particulars Exh.N o.

1 True Copy of Village Form No.6Record of Rights 114

2 True Copy of Village Abstract Form No. 7/12 of Survey no.44/2, Block no.77, Bamroli, Surat 115 to 126

3 True Copy of Village Abstract of 7/12 of Survey no.47, Block no.86, Bamroli, Surat 127 to 137

4 Abstract of 7/12 of Survey no.47, Block no.86, Bamroli, Surat 137

5 Certified Copy of Order of Dy. Collector in R.T.S. No.68/01 dated 30.4.2003 170

6 Certified Copy of Order of Collector, Surat in R.T.S./ Appeal No. 45/03 dated 28.8.2003 171

7 No Record letter of Mamlatdar Office 172

8 Letter of Town Planing Department 173

9 Title clear report 174

10 Entry no.826, dtd.19052003 175

11 Death Certificate of Maniben Narsinhbhai 176

12 Pedigree of Maniben D/o. Dullabh Mitha 177

13 Entry no.195 in Village Form No. 6 dtd.05112008 178

14 Certificate issued by Urban Development Department 179

15 True copy of T.P Scheme no.72 of SMC 180

16 Attested Copy of Order passed in R.T.S Appeal No.45/03 181

17 Certified Copy of Order dated 19.07.2013 of SSRD 182

18 Receipt of Revenue Tax Paid by Ganda Dullabh 183

19 Permission under Sec. 63 of Tenancy Act, Dtd.30082011 184

20 Certified copy of R.T.S. no.114/13 190

21 Certified copy of R.T.S no.115/13 191

22 Attested Copy of Index IIBamroli 204

23 Mutation Entry no.895 in Village Form No. 6 Record of Rights 205

24 Mutation Entry no.896 in Village Form No. 6 Record of Rights 206

25 Mutation Entry no.678 in Village Form No. 6 Record of Rights 209

26 Mutation Entry no. 1063 in Village Form No. 6 Record of Rights dtd.25052007 210

27 Mutation Entry no. 90 in Village Form No. 6 Record of Rights dtd.25052007 211

28 Village Form no.8A of Block no.77 212

29 Village Form no.8A of Block no.86, A/c no.657 213

30 Registered Selldeed dated 21.9.2013 214

31 Birth Certificate of Mankiben Dulabhbhai 226

32 Death Certificate of Dulabhbhai Mithabhai 227

That on appreciation of evidence and after giving fullest opportunity to the parties to the suit, the learned trial Court has held issue Nos.1, 6, 7 and 8 in affirmative, issue Nos.2 partly in affirmative and issue Nos.3, 4, 5, 9 and 10 in negative and consequently has dismissed the suit, by impugned judgment and decree. 2.8 Feeling aggrieved and dissatisfied with the impugned judgment and decree passed by the learned trial Court dismissing the suit, the original plaintiff has preferred the present First Appeal.

3. Shri S.P. Majmudar, learned Advocate has appeared on behalf of the appellant herein - original plaintiff and Shri Mihir Joshi, learned Senior Advocate has appeared with Ms. Megha Jani, learned Advocate appearing on behalf of the respondent No.4 herein - original defendant No.4 and Shri S.S. Iyer, learned Advocate has appeared on behalf of the respondent Nos.1 to 3 herein - original defendant Nos.1 to 3.

4. Shri Majmudar, learned Advocate appearing on behalf of the original plaintiff has vehemently submitted that in the facts and circumstances of the case the learned trial Court has materially erred in dismissing the suit. 4.1 It is submitted by Shri Majmudar, learned Advocate appearing on behalf of the original plaintiff

that the impugned judgment and decree passed by the learned trial Court dismissing the suit is contrary to the evidence on record. It is submitted that the learned trial Court has not properly appreciated the evidence on record and it has resulted into miscarriage of justice.

4.2 It is further submitted by Shri Majmudar, learned Advocate appearing on behalf of the original plaintiff that by passing the impugned judgment and decree the learned trial Court has considered only the revenue entries and the revenue record for the purpose of coming to conclusion that the original defendant Nos.1 to 3 have right, title and interest over the suit land in question. It is submitted that except the socalled entry No.97 mutated on 25.04.1930, there is no evidence on record to prove the title of the original defendant Nos.1 to 3 towards the suit land in question. It is further submitted that even the said socalled entry No.97 does not say that Dulabhbhai was the owner of the 50% of the suit land in question. It is submitted that the said socalled entry is mutated showing that name of Dulabhbhai is entered as partner of the suit lands. It is submitted that therefore, the said entry as such does not confer any title upon Dulabhbhai i.e. ancestor of the original defendant Nos.1 to 3. It is submitted that therefore, solely on the basis of the socalled Entry No.97, the original defendant Nos.1 to 3 cannot be termed as the owner of the suit land in question.

4.3 It is further submitted by Shri Majmudar, learned Advocate appearing on behalf of the original plaintiff that even otherwise no reliance could have been placed upon mutation Entry No.97 as the same was surreptitious and fishy as the said entry was never reflected in 7/12 extract for a period of almost 71 years i.e. till 2001. It is submitted that for the first time in the year 2001, Maniben claiming to be the daughter of Dulabhbhai preferred RTS Appeal No.68/2001 before the Deputy Collector for giving effect of the socalled Entry No.97. It is submitted that the order passed by the Deputy Collector giving effect to the socalled Entry No.97 was challenged upto this Court by way of Special Civil Application No.2383/2014 and vide order dated 22.01.2014 this Court clearly observed that the suit should be decided without considering the observations made by the revenue authorities independently. It is submitted that despite such observations the learned trial Court has decided the suit solely on the basis of the revenue entry, which is in clear violation of the directions issued by this Court in Special Civil Application No.2383/2014.

4.4 It is further submitted by Shri Majmudar, learned Advocate appearing on behalf of the original plaintiff that even otherwise the socalled Entry No.97 could not have been relied upon as the same was extremely suspicious and appears to be a fabricated entry because the said entry is mutated on 25.04.1930 with respect to an order, which is delivered on 26.04.1930. It is submitted that even the order of RTS Appeal No.26/30 dated 26.04.1930 is not forthcoming and it is not produced on record by the defendants. It is submitted that such an order is not available. It is submitted that moreover, Keshabhai expired on 19.12.1929 and, therefore, the socalled order dated 26.04.1930 could not have been passed against Keshabhai in appeal of Dulabhbhai in Appeal No.26/30 as contended by defendant Nos.1 to 3.

4.5 It is further submitted by Shri Majmudar, learned Advocate appearing on behalf of the original plaintiff that in RTS proceedings undertaken by defendant Nos.1 to 4 they have never joined all the coowners of the land in question, a fact which is admitted by them in their crossexamination. It is submitted that even in the crossexamination of defendant No.4, he has further admitted that description of property is not mentioned in his sale deed. It is submitted that in the crossexamination the defendant Nos.1 to 3 have admitted that the sale deed dated 25.04.2012 with regard to 50% of land of Block No.86 was executed in favour of defendant No.4 informing him that the land is disputed. It is submitted that therefore defendant No.4 cannot be said to be a bonafide purchaser of value without notice.

4.6 It is further submitted that even the land was sold by defendant Nos.1 to 3 during the pendency of the proceedings before SSRD, which also shows that defendant No.4 has purchased a disputed property and therefore, cannot be said to be a bonafide purchaser. It is further submitted that even the plaintiff has also filed criminal complaint before Surat Police Station, with regard to tampering of revenue records by defendant No.1 to 3.

4.7 It is further submitted by Shri Majmudar, learned Advocate appearing on behalf of the original plaintiff that the learned trial Court has materially erred in considering the birth and death certificates produced on record that of Maniben and Dulabhbhai. It is submitted that in the birth and death certificates, name of Maniben and Dulabhbhai are not mentioned and name of "Manikaben" instead of Maniben and "Dulabhbhai" instead of Dulabhbhai has been mentioned. It is submitted that despite the above the learned trial Court considered the said birth and death certificates as that of Maniben and Dulabhbhai respectively by holding that people are normally known by their pet names in olden days. It is submitted that such finding of the learned trial Court is absolutely perverse and not substantiated by any law.

4.8 It is further submitted that even the said certificates were not produced by defendant Nos.1 to 4 before any revenue authorities. It is submitted that even defendant Nos.1 to 3 never produced them and they were produced by defendant No.4 only in the recall application, after the evidence was over. It is submitted that thus defendant No.1 to 3 have not been able to prove that Dulabhbhai was the son of Mithabhai and that Maniben was the daughter of Dulabhbhai. It is submitted that in fact Mithabhai had only one son i.e. Keshabhai and Dulabhbhai is stranger to Mithabhai. It is submitted that despite the said fact, after 70 years surreptitiously the socalled Entry No.97 mutated in the year 1930 is reflected in the revenue record stating that Dulabhbhai is also partner in the said land. It is submitted that on the basis of such reflection only, 50% of land at Block No.86 is sold away by defendant Nos.1 to 3 without any title.

4.9 It is further submitted by Shri Majmudar, learned Advocate that even otherwise the finding recorded by the learned trial Court that Dulabhbhai was the son of Mithabhai is based on no evidence. It is submitted that the original defendant No.1 in his crossexamination had admitted that he has no document to show that Dulabhbhai is the son of Mithabhai. He also admitted that except the revenue record there is nothing to show that Dulabhbhai has any right in the land in question. It is submitted that the onus is upon the defendant Nos.1 to 3 to prove that Dulabhbhai was the son of Mithabhai and/or the said Dulabhbhai had any right or interest in the suit properties. It is submitted that thus the defendant Nos.1 to 3 have not discharged their onus. It is submitted that therefore, the learned trial Court has materially erred in deciding the issue No.7.

4.1 Shri Majmudar, learned Advocate appearing on behalf of the original plaintiff has further submitted that the learned trial Court has materially erred in raising the presumption against the plaintiff under Section 90 of the Evidence Act. It is submitted that such presumption is not available in the present case and the learned trial Court has wrongly applied the same. It is submitted that assuming that such presumption is available even then the contents of the document do not automatically stand proved just because of the presumption under Section 90 of the Evidence Act. In support of his above submissions, Shri Majmudar, learned Advocate appearing on behalf of the original plaintiff has heavily relied upon the decisions of the Hon''ble Supreme Court in the case of Union of India vs. Ibrahim Uddin reported in (2012)8 SCC 148 and State of Bihar Versus Radha Krishna Singh reported in (1983)3 SCC 118.

4.11 It is further submitted by Shri Majmudar, learned Advocate appearing on behalf of the original plaintiff that the learned trial Court has materially erred in observing that the suit is barred by nonjoinder of necessary parties on the ground that all the heirs of defendant No.9 were not joined. It is submitted that the learned trial Court ought to have appreciated that in the suit the plaintiff had challenged the sale deed in favour of defendant No.4 and sought declaration that defendant Nos.1 to 4 have no right, title or interest over the suit land in question. It is submitted that therefore the learned trial Court has committed gross error of law in holding that by not joining other heirs of defendant No.9, who is not the contesting defendant, the entire suit is bad for nonjoinder of necessary parties.

4.12 It is further submitted that even otherwise the learned trial Court has materially erred in giving the finding that Entry No.97 is genuine and not fabricated, despite the fact that extract of the revenue entries produced at page 517 of the paperbook does not contain Entry No.97. Even the said entry is not found in the Khedut Pothi produced by the plaintiff.

4.13 It is further submitted by Shri Majmudar, learned Advocate appearing on behalf of the original plaintiff that the learned trial Court has materially erred in giving much weightage. The conduct of the Advocate of the plaintiff before the learned trial Court i.e. he had carried out certain amendment in the plaint which was not granted by the learned trial Court. It is submitted that the learned trial Court has been unnecessarily prejudiced by such a fact. It is submitted that such amendment was carried out inadvertently and by mistake by advocate of the plaintiff before the learned trial Court, and, therefore, the plaintiff cannot be made responsible for the same since he has not carried out such an amendment. Secondly, it was accepted by the Advocate of the plaintiff that due to inadvertence and mistake and under a wrong belief that the amendment is granted the same was inadvertently carried out. It is submitted that at the time of submissions it was made clear that the plaintiff would not be relying on such amendment, which was inadvertently carried out. It is submitted that instead of condoning the inadvertent error of the lawyer of the plaintiff before the learned trial Court, the learned trial Court has wrongly held the same against the plaintiff and has been heavily influenced by the said fact that the amendment was wrongly carried out. It is submitted that even in the amendment it is nowhere mentioned that the defendant has acquired the suit properties from his own income.

4.14 It is submitted by Shri Majmudar, learned Advocate appearing on behalf of the original plaintiff that the learned trial Court has materially erred in normally considering the fact that in the sale deed dated 21.09.2013 executed by the plaintiff the plaintiff has made recital that Dulabhbhai is the son of Jethabhai and is entitled to 50% share in the suit property i.e. Block No.86. It is submitted that firstly, the said recital in the sale deed dated 21.09.2013 was based on the position of the revenue record that was prevailing as on 21.09.2013. It is submitted that the learned trial Court ought to have appreciated that the said aspect has been recited in the sale deed and the same is wrongly been considered as an admission of the plaintiff that Dulabhbhai had 50% share in the suit property. It is submitted that the said recital in the sale deed cannot be said to be an admission of the plaintiff that Dulabhbhai had 50% share in the suit property. It is submitted that moreover, in the oral evidence the plaintiff has further clarified that the averment made in the plaint that he has not sold his share to anybody is with respect to not selling his share to defendant Nos.1 to 3. It is submitted that thus, as such there was no correct averment made in the plaint. It is submitted that the registered amended / correct deed dated 25.02.2016 executed in favour of the purchaser of the plaintiff clearly clarifies the position that the recital in the original sale deed dated 21.09.2013 that the plaintiff has 50% share in the suit property would not imply that for balance 50% of the suit property, Dulabhbhai is the owner. It is submitted that the said subsequent corrected registered sale deed is also produced on record. It is submitted that the said corrected deed has not been challenged by the defendant Nos.1 to 4 despite the fact that the same is registered document.

4.15 It is further submitted by Shri Majmudar, learned Advocate appearing on behalf of the original plaintiff that the learned trial Court has also not appreciated the fact that in the registered amendment deed dated 25.02.2016 certain additional area land of Block No.86 is conveyed to purchaser of the plaintiff and the said land is not covered under reservation, as held by the learned trial Court. It is submitted that the learned trial Court has materially erred in not properly appreciating the fact that the possession of the entire suit land is with the plaintiff.

4.16 It is further submitted by Shri Majmudar, learned Advocate appearing on behalf of the original plaintiff that even otherwise the learned trial Court has materially erred in dismissing the suit and holding that Dulabhbhai had 50% share in the suit lands, solely relying upon the socalled mutation entry made by the Revenue entries. It is submitted that as held by the Hon''ble Supreme Court in catena of decisions name in the revenue record is not an evidence of title at all. In support of his above submissions, he has heavily relied upon the decision of the Hon''ble Supreme Court in the case of Navalshankar Ishwarlal Dave Vs. State of Gujarat reported in AIR 1994 SC 1496 as well as in the case of Sawarni vs. Inder Kaur reported in (1996)6 SCC 223.

4.17 It is further submitted by Shri Majmudar, learned Advocate appearing on behalf of the original plaintiff that even assuming what is stated by defendant Nos.1 to 3 is completely true, even then, Dulabhbhai, being the son of Mithabhai, passed away on 15.09.1935. It is submitted that Dulabhbhai was survived by two children Gandiyabhai and Maniben, as per say of defendant Nos.1 to 3. It is further submitted that succession of Dulabhbhai would open on 15.09.1935 and, therefore, since the properties in question, as per the defendants'' case, belong to Mithabhai and are not selfacquired properties of Dulabhbhai, Maniben would not get any right over such properties, as the amendment in Section 6 of the Hindu Succession Act, was not available at that point of time. In support of his above submission, Shri Majmudar, learned Advocate has relied upon the decision of the Hon''ble Supreme Court in the case of Prakash and Others vs. Phulvati and Others reported in (2016)2 SCC 36. It is submitted that this being a pure question of law, the plaintiff may be permitted to raise the same before this Court for the first time. It is submitted that even otherwise this Court under the provisions of Order 41 of the CPC, has power to frame additional issues.

4.18 It is further submitted by Shri Majmudar, learned Advocate appearing on behalf of the original plaintiff that even otherwise the learned trial Court ought to have appreciated the fact that one of the suit land being Block No.77 was not sold by the plaintiff and no sale deed was executed qua the said land by the plaintiff and, therefore, the recital with regard to the sale of part of the land of Block No.86 by the plaintiff in sale deed dated 21.09.2013 can even otherwise not come against the plaintiff with respect to land at Block No.86 with possession as mentioned by them in their sale deed to the defendant No.4 more particularly in absence of any partition of the Block No.86 between the plaintiff and other family members from the branch of Keshabhai and defendant Nos.1 to 3. Making above submissions and relying upon above decisions, it is requested to admit / allow the present First Appeal.

5. Present First Appeal is vehemently opposed by Shri Mihir Joshi, learned Senior

Advocate appearing with Ms. Megha Jani, learned Advocate appearing on behalf of the original defendant No.4 and Shri Iyer, learned Advocate appearing on behalf of the original defendant No.1 to 3. 5.1 It is vehemently submitted by Shri Joshi, learned Counsel appearing on behalf of the original defendant No.4 that no error has been committed by the learned trial Court in dismissing the suit. It is submitted that the finding recorded by the learned trial Court are on appreciation of evidence on record, both oral as well as documentary and the same cannot be said to be perverse and/or contrary to the evidence on record.

5.2 It is vehemently submitted by Shri Joshi, learned Senior Advocate appearing on behalf of the original defendant No.4 that in the facts and circumstances of the case the learned trial Court has not committed any error in considering and/or relying upon mutation entry No.97. It is submitted that mutation entry No.97 cannot be said to be fabricated as sought to be contended on behalf of the plaintiff.

5.3 It is submitted that mutation entry No.97 (Exh.110) was made in the year 1930 on the basis of Taluka Hukam dated 26.04.1930. It is submitted that mutation entry No.97 was reflected in Form No.7/12 for the suit land. It is submitted that so far as survey No.44/2 is concerned, the entry is mentioned in Form No.7/12 for the year 192838, 193849, 194859, 195769, 197081, 198394 and 199403. It is submitted that aforesaid is reflected from the documentary evidences produced on record. It is submitted that so far as the land bearing survey No.47 is concerned, it is reflected in Form No.7/12 for the years 192839, 193849, 194858 and 197081. it is submitted that the aforesaid is also reflected from the records produced on record. 5.4 It is submitted that apart from the above, name of son of Dulabhbhai viz. Gandiyabhai is mentioned in the column of Khedut Hakk for the land bearing survey No.47 in Form No.7 for the year 194748, 194849 and for the year 194849 to 195859.

It is submitted that thus entry No.97 has remained on record. It is submitted that undisputedly such entry has not been challenged. It is submitted that order passed by the Deputy Collector dated 30.04.2003 was to the effect that the name of Maniben be entered as coowner of the suit land on the basis of the mutation entry No.97 and the same has been confirmed upto this Court. It is submitted that the entry No.97 is in favour of Dulabhbhai undisputedly one of the legal heirs of Mithabhai and hence, is rightly held to be entitled to 1/2 share of the land owned by Mithabhai. It is further submitted by Shri Joshi, learned Senior Advocate appearing on behalf of the original defendant No.4 that the contention on behalf of the plaintiff that the defendants are not the heirs of Mithabhai at all or in the alternative that they are not persons they claim to be is not tenable as first of all such contention is not raised in the plaint or in the revenue proceedings. There is expressed admission of relationship in the plaint. The Pedhinama of Maniben is proved in evidence. No objection was raised at any stage to mutation entry No.97 or reflection of Gandiabhai Dulabhai in Form No.7/12.

5.5 It is further submitted by Shri Joshi, learned Senior Advocate appearing on behalf of the original defendant No.4 that even otherwise the evidence tendered by the plaintiff to the effect that the suit land was self acquired property of Kesha Mitha or the parties are not genuine cannot be taken on record considering that there is no pleading to that effect and that no issue has been framed on the point. It is submitted that no party can be permitted to travel beyond its pleading and where the evidence is not in line of the pleadings, such evidence cannot be looked into or relied upon. In support of his above submissions he has relied upon the decision of the Hon''ble Supreme Court in the case of Ibrahim Uddin (Supra). It is further submitted that as rightly held by the learned trial Court, the defendant No.4 is a bonafide purchaser with value. It is submitted that name of Maniben was ordered to be shown as coowner vide order dated 30.04.2003. That the defendant No.4 purchased the suit land after about 9 years on 25.04.2012 and 26.04.2012. It is submitted that during the entire period of 9 years the orders of the Deputy Collector was not stayed and there was no challenge to the claim of the Maniben as coowner. It is submitted that the defendant No.4 purchased the land after seeking necessary permission under Section 63 of the Bombay Tenancy Act vide order dated 30.08.2011 which came to be mutated on 12.09.2011 by mutation entry No.678, certified on 25.01.2012. It is submitted that such order remains unchallenged. It is further submitted that even otherwise the suit is barred by law of limitation. It is submitted that cause of action to file the suit arose with passing of the order of the Deputy Collector dated 30.04.2003 directing the reflection of Maniben''s name as coowner as legal heir of Dulabhbhai Mitha in the revenue record. It is submitted that suit for declaration was therefore required to be filed within 3 years from the date of such order. It is submitted that thus the suit is barred under Article 58 of the Limitation Act.

5.6 It is further submitted by Shri Joshi, learned Senior Advocate appearing on behalf of the original defendant No.4 that the plaintiff asserted in the plaint that the suit land was ancestral property and belonged to his great grandfather, Mithabhai. It is submitted that such stand was sought to be completely altered by tampering the record by interpolation of words in the plaint so as to state that the land belonged to Kesha Mitha. It is submitted that such tampering was made with malafide intention to put full stop to the second branch of Mithabhai as is rightly recorded by the learned trial Court in the impugned judgment.

5.7 It is submitted that the plaintiff made unequivocal admission that about 1/2 share of Maniben in the suit land in the sale deed dated 21.09.2013 (Exh.214). It is submitted that an effort was made to come out of such admission by execution of a Rectification Deed (Exh.158) on 25.02.2016, after recording of the evidence of the plaintiff. It is submitted that under the guise of such rectification deed, the plaintiff and others also sold the land under reservation without any consideration. It is submitted that in view of dishonest and malafide conduct of the plaintiff, the learned trial Court is justified in dismissing the suit.

5.8 It is further submitted that even looking to the conduct of the plaintiff, the plaintiff is not entitled to any relief. It is submitted that the plaintiff is not entitled to any relief considering the fact that he has not come to the Court with clean hands, pleaded incorrect facts and tampered with record of the Court. It is submitted that while submitting amended plaint, the plaintiff made substantial corrections in para 1 of the amended plaint thereby trying to materially change his case, pleadings and bring his case in conformity with the oral evidence. It is submitted that such tampering of record by interpolation of words is an unauthorized act amounting to contempt of court disentitling the plaintiff to any relief. It is submitted that the plaint was presented on 10.01.2014. It is submitted that before the plaintiff had conveyed his share by executing a Deed of Conveyance dated 21.09.2013. It is submitted that the plaintiff not only withheld the fact of execution of such conveyance but went to the extent of making a false statement in para 3 of the plaint to the effect that the plaintiff had not ever released or executed his share in favour of anyone. It is submitted that thereafter the effort was made to wriggle out of para 3 of the plaint by making corrections in hand in the otherwise typed copy of the affidavit in lieu of examination in chief of the plaintiff.

5.9 It is submitted that sale of 25.04.2012 and 26.04.2012 by the defendant Nos.1 to 3 in favour of defendant No.4 was not disclosed in the sale deed executed by the plaintiff on 21.09.2013. It is submitted that therefore because of the aforesaid conduct on the part of the plaintiff, the plaintiff is not entitled to any relief as prayed in the suit.

5.1 It is further submitted by Shri Joshi, learned Senior Advocate appearing on behalf of the original defendant No.4 that the plaintiff claims 1/2 share in the suit property as other 1/2 share is undisputedly his which he and other coowners have conveyed. It is submitted that share of the plaintiff in the remaining 1/2 belonging to the land of Dulabhbhai comes to 0.69%. It is submitted that nobody else has lodged any claim with respect to the right, title and interest of legal heirs of Dulabhbhai Mithabhai over the suit land. It is submitted that considering the miniscule nature of the share of the plaintiff and absence of claim by other coowners, no relief can be granted in favour of the plaintiff. It is submitted that even otherwise the impugned judgment and decree is a well reasoned and on appreciation of evidence both oral as well as documentary and therefore, the same is not required to be interfered with by this Court in exercise of appellate jurisdiction. Making above submissions it is requested to dismiss the present First Appeal.

6. Heard the learned Advocates appearing for respective parties at length. We have reappreciated the entire evidence on record from the Record & Proceedings received from the learned trial Court as well as from the paper book supplied. We have also considered the findings recorded by the learned trial Court which are on appreciation of evidence on record both oral as well as documentary. 6.1 Considering the case pleaded on behalf of the plaintiff it appears that the plaintiff

came out with a case that the original defendant Nos.1 to 3 and their ancestor have no right, share in the suit property. It was also contended that the suit properties are under his ownership and occupancy since long and in the revenue record also the name of Keshabhai and Mithabhai and his successors were mutated periodically and nowhere, name of Dulabhbhai Mithabhai was mutated and they have no concern with the plaintiff''s ancestral properties. It is the case on behalf of the plaintiff that merely on the basis of mutation entry No.97 which according to the plaintiff is forged, the learned trial Court has held Dulabhbhai Mithabhai as having 1/2 share in the suit properties. Therefore, it is the case on behalf of the plaintiff that merely on the basis of the mutation entry No.97, the learned trial Court is not justified in dismissing the suit by holding that Maniben D/o. Dulabhbhai was having 1/2 share in the suit properties. However, on considering the findings recorded by the learned trial Court it cannot be said that the finding recorded by the learned trial Court are solely based upon mutation entry No.97. It is required to be noted that the plaintiff has even gone to the extent challenging the relationship of the defendant Nos.1 to 3 and their mother Maniben and according to the plaintiff, the defendant Nos.1 to 3 were the third parties and had no relation with him or his ancestors. However, considering the death certificate of Dulabhbhai Mithabhai and birth certificate of Maniben produced at Exhs.226 and 227 and on appreciation of evidence the learned trial Court has held that Maniben and the defendant Nos.1 to 3 are the legal heirs of Dulabhbhai Mithabhai. At this stage it is required to be noted that in the registered sale deed executed by the plaintiff himself produced at Exh.214, Dulabhbhai is clearly mentioned as brother of Keshabhai Mithabhai. It is required to be noted that registered sale deed produced at Exh.214 has been executed by the plaintiff himself by which he has sold 50% of his share in the suit properties. At this stage it is also required to be noted that the original plaintiff has infact suppressed the material fact by not disclosing in the plaint / suit that he had already executed the registered sale deed produced at Exh.214 while selling 50% of his share. Therefore, as such the plaintiff had not come with clean hands and after selling his 50% share by the registered sale deed produced at Exh.214 in which he has specifically mentioned that Dulabhbhai is the brother of Keshabhai Mithabhai who would be having 50% share, thereafter, when the defendant Nos.1 to 3 have sold their share (50%) in favour of defendant No.4, only thereafter the suit has been preferred. 6.2 From the pleadings it appears that the plaintiff had challenged the existence of RTS No.26/1993 proceeding and also entry No.97 contending that the same is false and fabricated. However considering other documentary evidences such as copy of the property card produced at Exh.110 in which there is a specific reference to name of Dulabhbhai Mithabhai as coowner / partner pursuant to the Taluka order dated 26.04.1930, the learned trial Court has not accepted the plea of the plaintiff that the mutation entry No.97 on the basis of the RTS No.26/1930 proceeding cannot be believed. The aforesaid finding is based on appreciation of evidence which can never be said to be either perverse and/or contrary to the evidence on record. That thereafter the learned trial Court has drawn the presumption of law under

Section 114 of the Indian Evidence Act as the said document Exh.110 was 30 years old document.

6.3 Now, so far as the contention on behalf of the plaintiff that in the document at Exh.110, entry No.97 is posted on 25.04.1930 and therefore, for the order dated 26.04.1930 entry could not have been made on 25.04.1930 and therefore, the same cannot be accepted is concerned, the aforesaid has been considered in detail by the learned trial Court while appreciating the evidence on record and on appreciation of the deposition of the plaintiff''s witness i.e. Deputy Mamlatdar Shri Jinjala, the learned trial Court has also noted that entry No.97 is clearly noted in all the documents produced by the defendants as well as the plaintiff. Thereafter, on appreciation of evidence, the learned trial Court has rightly held that the Dulabhbhai, the ancestor of defendant Nos.1 to 3 was the coowner having 1/2 share in the suit properties. At this stage it is required to be noted that in the sale deed executed by the plaintiff himself and the defendant Nos.5 to 25, in favour of defendant Nos.26 to 40 produced at Exh.214, at page 11, it is clearly mentioned that the suit property is undivided land and 1/2 share of Maniben D/o. Dulabhbhai was also there and after her death name of defendant Nos.1 to 3 were mutated in the village form No.6 vide entry No.195. In view of the aforesaid specific admission on the part of the plaintiff, as rightly held by the learned trial Court, thereafter it is not open for the plaintiff to contend anything contrary. At this stage even the conduct on the part of the plaintiff is also required to be seriously noted. It is required to be noted that as such the plaintiff did not disclose the execution of the sale deed produced at Exh.214 having the aforesaid recitals. The same was produced by the defendants. That thereafter after a period of 3 years and after recording of the evidence of the plaintiff and after he was crossexamined in the month of December 2015, the plaintiff executed rectification deed dated 25.02.2016 with a view to come out of such admission in the sale deed at Exh.214 and stated that the property was selfacquired property. As rightly held by the learned trial Court the same was obviously to come out of the admission that the suit property is undivided land and with respect to 1/2 share of Maniben D/o. Dulabhbhai and after her death, defendant Nos.1 to 3. Though it was the case on behalf of the plaintiff that such rectification deed was required with respect to some additional land under the reservation, however the same cannot be accepted as by rectification deed the entire character of the land is sought to be changed and having sold the land under reservation without any consideration. Considering the aforesaid conduct on the part of the plaintiff the learned trial Court has rightly dismissed the suit. It is also required to be noted that the evidence led by the plaintiff is just contrary to his pleadings in the suit. The plaintiff has adduced the evidence beyond the suit pleadings. When initially it was his case that Dulabhbhai Mithabhai and Maniben D/o. Dulabhbhai were strangers and not the family members of the plaintiff, it was for him to prove that, once the defendants have succeeded in proving the contrary. As discussed hereinabove, in the sale deed executed by the plaintiff himself produced at Exh.214, there is admission on the part of the plaintiff.

6.4 In the evidence the plaintiff came out with a case that the suit land was selfacquired property of Keshabhai Mithabhai. However, it is required to be noted that such was not the case pleaded in the suit. Even no issue has been framed by the learned trial Court on the aforesaid. At this stage even the conduct on the part of the defendant and/or their advocate is also required to be considered. Without any order of the Court, there was an interpolation in the original suit and certain statements were sought to be added and infact added without the order of the Court by which the plaintiff inserted that the property was selfacquired property of Keshabhai Mithabhai. The learned trial Court has taken strong exception to the above. However thereafter having caught, the learned Advocate appearing on behalf of the plaintiff stated that it was his bonafide mistake. However, the aforesaid does not seem to be any bonafide mistake. The plaintiff tried to make out altogether a new case by such interpolation in the suit, without obtaining any order of the learned trial Court and amended the suit. Without the permission of the Court, the plaintiff submitted an amended plaint with additional amendment contending that the suit properties were selfacquired properties of his grandfather Keshabhai Mithabhai and he purchased the same from his own income The same was absolutely contrary to his original pleadings. When the learned Advocate appearing on behalf of the plaintiff was asked about the said amended plaint which was without the permission of the Court, he pleaded his innocence, which was not accepted by the learned trial Court because the additional amendment was carried out by pen and the learned Advocate for the plaintiff himself put his initials at each additional amendments. Therefore, the learned trial Court has rightly drawn the adverse inference by observing that such an amendment was carried out (without the permission of the Court) with an intention to put full stop to the second branch of Mithabhai and only with a view to take disadvantage. The aforesaid conduct on the part of the plaintiff also deserves serious consideration. As stated hereinabove the plaintiff did not come with clean hands before the Court and suppressed the material fact of executing the sale deed by him and the defendant Nos.5 to 25 in favour of defendant Nos.26 to 40 in which there is a clear admission on his part with respect to the property being ancestral properties and the share of Keshabhai and his brother Dulabhbhai and thereafter Maniben and by which they sold their 1/2 share in the suit properties. Secondly, to get out of the said admission after a period of 3 years and after the evidence of the plaintiff was over and when he was confronted with the sale deed executed by them produced at Exh.214 and the aforesaid admission, they executed rectification document by stating that the suit property was selfacquired property of keshabhai Mithabhai and thirdly, to make amendment in the plaint without the order of the Court and inserting something in the plaint by pen, which was signed by the learned Advocate appearing on behalf of the plaintiff making averments just contrary to their original pleadings and thereafter to come out with a case that property was selfacquired property of Keshabhai Mithabhai, when all are considered together, the plaintiff is not entitled to any relief on the aforesaid ground also. Under the circumstances, the learned trial Court has rightly dismissed the suit. It is also required to be noted that even the evidence led by the plaintiff is just contrary to his pleadings in the plaint and the suit.

7. In view of the above and for the reasons stated above, it cannot be said that the findings recorded by the learned trial Court are perverse and/or contrary to the evidence on record. It cannot be said that the learned trial Court has committed any error in dismissing the suit. In the facts and circumstances of the case narrated hereinabove, we are of the opinion that the learned trial Court has rightly dismissed the suit which does not call for interference of this Court. We confirm the impugned judgment and decree passed by the learned trial Court dismissing the suit.

8. In view of the above and for the reasons stated above, present First Appeal fails and the same deserves to be dismissed and is, accordingly, dismissed. In the facts and circumstances of the case, there shall be no order as to costs. In view of the dismissal of main First Appeal, Civil Application No.9654/2016 also stands dismissed.

