

(2009) 12 GUJ CK 0039

Gujarat High Court

Case No: Appeal From Order No. 56 of 2009 and Civil Application No"s. 1033 and 1034 of 2009 in Appeal From Order No. 56 of 2009

Bhadraben Vinodray
Modi

APPELLANT

Vs

Narendra Maganlal
Shah

RESPONDENT

Date of Decision: Dec. 14, 2009

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 2, Order 43 Rule 1, Order 7 Rule 11, 104 , 151
- Contract Act, 1872 - Section 23
- Limitation Act, 1963 - Section 5
- Partnership Act, 1932 - Section 14, 69, 69(1), 69(2), 69(3)
- Saurashtra Gharkhed Tenancy Settlement and Agricultural Lands Ordinance Act, 1949 - Section 54
- Urban Land (Ceiling and Regulation) Act, 1976 - Section 6(1)

Citation: (2011) 1 RCR(Civil) 425

Hon'ble Judges: K.A. Puj, J

Bench: Single Bench

Advocate: Mihir Thakore, Ashish Shah, for Harin P. Raval,s 1 - 2, for the Appellant; S.P. Majmudar, for Respondent 1, Y.J. Patel, for Respondents 10 - 11, 13 - 19, Percy Kavina and Shakti S. Jadeja for Respondents 11, 13 - 19 and A.B. Munshi, for Respondent 12, for the Respondent

Judgement

K.A. Puj, J.

The appellants - ori. plaintiffs have filed this Appeal From Order u/s 104 read with Order 43 Rule 1(r) of CPC challenging the judgment and order dated 20.10.2008 rendered by the 8th Additional Senior Civil Judge, Rajkot below an application Ex.5 in Special Civil Suit No. 117 of 2007, whereby the injunction application was rejected.

2. The Civil Application No. 1033 of 2009 is filed for production of additional evidence and Civil Application No. 1034 of 2009 is filed for stay against the operation, implementation and execution of the judgment and order dated 20.10.2008 rendered by the learned trial Judge below an application Ex.5 in Special Civil Suit No. 117 of 2007 during the pendency and final disposal of this Appeal From Order.

3. This Court has admitted the Appeal From Order on 16.2.2009 and detailed order was passed on the same day directing the party to maintain status-quo as on that day and it was made clear that the order of status-quo shall not be interpreted by the appellants-ori. Plaintiffs that they were in possession of any parcel of land or anybody shall interfere with the present condition of land and from that date onward there shall be no further alienation of the title of the land in question.

4. This interim order was challenged by the present respondent Nos. 10 to 19 before the Apex Court by way of petition for Special Leave to Appeal (C) No. 6468-6469 of 2009 and while dismissing the said SLP on 27.3.2009 the Apex Court requested this Court to dispose of the Appeal within a period of four months from that date.

5. In the above background of the matter, this Appeal From Order and two Civil Applications are taken up for final hearing.

6. The brief facts of the case giving rise to the present Appeal From Order are that, a partnership firm in the name of M/s. Shri Narendrakumar Maganlal Shah was entered into between 11 persons, including present respondent Nos. 1 to 9 as well as appellants - ori. plaintiffs on 1.2.1966. The said partnership firm purchased the land bearing Survey No. 48/1 admeasuring about 5 Acres and 00 gunthas situated at Village : Mahudi, Taluka and District : Rajkot. Since the land was an agricultural land and except the respondent No. 1, no other partners were agriculturist, the land was purchased in the name of respondent No. 1. The said land was, however, purchased out of the contribution made by all but one partners, who have contributed towards the capital. The respondent No. 1 had not contributed anything towards capital. Each partner was having his respective share. The share of the respondent No. 1 was only (half) Anna. The share of the appellants was 2 (two) Annas each in the partnership firm.

7. On 2.2.1966, sale deed of the land in question was got registered with the registering authorities and the suit land was considered to be the ownership of the partnership firm in view of the recitals contained in the partnership deed executed between the parties. The firm had applied for N.A. Permission and the District Development Officer, Rajkot in exercise of powers under the Bombay Land Revenue Code, vide his order dated 10.3.1969 granted Non-Agricultural permission subject to the condition mentioned therein. The District Development Officer, Rajkot also approved lat-out plan of total 31 plots of different sizes. The total area of the said 31 plots was about 61,265 sq. mtrs. and land reserved for common plot was 1389.30 sq. mtrs. The land which was utilized for the purpose of internal road was 6552.60 sq. mtrs.

8. In view of the fact that the land having been converted into non-agriculture land and rigors of Section 54 of the Saurashtra Gharkhed Tenancy Settlement and Agricultural Land Ordinance Act, 1949 no longer being attracted, registered partition deed was executed on 17.11.1970 between the parties as regards the partnership property and the land in question and the respective plots as per the sanctioned layout plan were divided and partitioned. On partition of the land between the different partners, the land was mutated in the name of respective partners in the record of rights vide Entry No. 4819 dated 1.6.1972. It is, therefore, the case of the appellants-plaintiffs that the partnership was in fact entered into, executed and was acted upon by the respective parties.

9. On 17.10.75, after the land was mutated in the name of various partners and on its conversion into non-agricultural land and the land having been distributed, for technical breach, a show cause notice was issued by the District Development Officer, Rajkot on the respondent No. 1 as to why the N.A. Permission should not be cancelled. However, none of the plaintiffs or respondent Nos. 2 to 9 in whose names, lands were mutated in view of the partition of the land were served with such notice. Thereafter, in absolute breach of principles of natural justice and behind the back of the appellants, an order dated 15.1.1976 was passed by the District Development Officer, Rajkot whereby the order dated 10.3.1969 granting non-agricultural permission and the order dated 4.7.75 fixing the assessment of the land in question were set aside. Pursuant to the said order dated 15.1.1976, Mutation Entry No. 1648 has been mutated in the revenue record in the name of the respondent No. 1 whereby the land was restored to its original position and it was reconverted into agricultural land. It is by virtue of the said order and mutation entry that the respondent No. 1 has tried to take advantage of the situation to deal with and misappropriate the land which was otherwise only belonging to the partnership firm and all its partners. When the appellants came to know about this Entry No. 1648 they raised objection and because of such objection, the said entry was transferred to the Disputes Register.

10. It is at this juncture on 17.2.76, Urban Land [Ceiling & Regulation] Act, 1976 had come into force and the land in question was subjected to the said Act. Since the suit property was of the partners of partnership firm, each partner had filled in form u/s 6[1] of the Urban Land [Ceiling & Regulation] Act, 1976 with respect to their individual share in the said suit property as partitioned amongst them vide registered partition deed dated 17.9.70. The respondent No. 1 had also filled in the said form and he has not claimed that he was absolute owner of the entire land and had only disclosed his share of half Anna. Similarly, each partner of the partnership had also filled in their form and these forms were processed according to the share of respective partners. Thereafter, on 25.4.1981 the appellants, respondent No. 1 and other respondent Nos. 2 to 9 had entered into an agreement of sale of the said land in favour of Parishram Cooperative Society[proposed]. This agreement was signed by all the partners as joint owners including the respondent No. 1. The said agreement made it clear that the respondent No. 1 knew that simply because the land was purchased in his name, he alone was not the owner.

11. Despite the fact that the respondent No. 1 was having only half Anna share in the suit property, the competent authority has considered the entire suit property of the ownership of respondent No. 1. Being aggrieved by the said finding of the competent authority respondent No. 1 preferred Land Appeal No. 39/95 before the Urban Land Tribunal constituted under the Repealed ULC Act and even in the grounds of appeal, a ground was taken by the respondent No. 1 that he is a co-owner and entire land is not of his holding alone. The Urban Land Tribunal, vide its order dated 30.10.1996 allowed the appeal of the respondent No. 1 and set aside the order of the Competent Authority dated 29.7.95 and subsequently when the Repeal Act came into force, the proceedings under the ULC Act remained inconclusive.

12. Taking advantage of this fact though respondent No. 1 was not the owner of the land in question, by a registered document of sale dated 25.5.2007, the respondent No. 1 illegally sold the said land to respondent Nos. 10 to 19. When the said fact came to the knowledge of the appellants, they filed Special Civil Suit No. 117 of 2007 praying for necessary reliefs including setting aside of the illegal and void sale deed executed by the respondent No. 1 in favour of respondent Nos. 10 to 19 and for necessary declaration. The appellants filed an application exh.5 under Order 39 Rule 2 read with Section 151 of Code of Civil Procedure, praying for grant of temporary injunction during the pendency of the suit. The trial Court vide its judgment and order dated 20.10.2008 rejected the said injunction application and being aggrieved by the said order and judgment, the appellants - ori. plaintiffs have filed the present Appeal before this Court.

13. Mr. Mihir Thakore, learned Senior Counsel appearing with Mr. Ashish Shah, for the appellants have submitted that the partnership deed dated 1.2.66 as well as sale deed dated 2.2.1966 make it clear that the suit land was purchased out of contribution from the partners towards capital for costs and acquisition of the land and therefore, as per Section 14 of the Indian Partnership Act, the suit property is deemed to be the property of the firm. He has further submitted that there was clear averment and recital in the partnership deed to which the respondent No. 1 is signatory and it was clearly recited that the respondent No. 1 has not contributed towards capital of the purchase of the land in question. He has, therefore, submitted that the entire act of misappropriating the partnership property by the respondent No. 1 is dishonest and on this fact alone, the appellants were entitled to be granted injunction during pendency of the suit. Mr. Thakore further submitted that in the proceedings before the competent authority as well as appellate authority, there was clear admission on the part of the respondent No. 1 to the effect that the land was of the ownership of the partnership firm and he was having only half Anna share in the suit property. He has further submitted that attesting witness of the document is the real brother of the respondent No. 1, who has filed affidavit stating therein on oath that the respondent No. 1 is his real brother and partnership was entered into between the appellants and respondent Nos. 1 to 9 in respect of which, written partnership deed dated 1.2.66 was executed, wherein, he has signed as attesting witness. The respondent No. 1 has not even denied the signature while executing the

said document. Mr. Thakore further submitted that the appellants had prima facie case by proving the factum of partnership, purchase of land by partnership firm by contributing the amount towards the purchase of land and subsequent consequential events such as obtaining N. A. Permission at the cost of partnership, getting sanctioned layout plan and execution of registered partition deed amongst the partners. All these documents show that there are overwhelming documentary evidence in favour of the appellants and they are also supported by oral evidence in the nature of affidavit by attesting witnesses.

14. Mr. Thakore further submitted that even the contents of the agreement for sale also make it clear and it was categorical admission with respect to suit land being of the joint ownership and joint possession of partners which destroys the case of the respondent No. 1. Mr. Thakore further submitted that on coming into force of ULC Act, 1976, the respondent No. 1 had himself made a declaration and in the supporting form filed u/s 6[1] of the ULC Act, it was clearly indicated that the respondent No. 1 had only half [1/2] Anna share in the land in question and this important evidence has been totally ignored by the learned trial Judge. Not only before the competent authority, but, even before the appellate authority the respondent No. 1 had taken the same stand that the land was of the co-ownership of the partners.

15. Mr. Thakore further submitted that the learned trial Judge has relied on the objections filed by the respondent Nos. 10 to 19. They have submitted before the trial Court that they are the bonafide purchasers and hence no adverse order should be passed against them. However, this stand of the respondent Nos. 10 to 19 is not sustainable on facts as well as in law. The statements made by them are false, misleading and in absence of any title clearance certificate of land conferring any absolute title on respondent No. 1 and thereby upon them, their plea is clearly unsustainable. Bare perusal of the revenue record reveals right, title and interest over the suit land is that of the appellants and the respondent Nos. 2 to 9. Even certification of Mutation Entry No. 1456 confirms that the plea of respondent Nos. 10 to 19 being bonafide purchasers is wholly unsustainable.

16. Mr. Thakore further submitted that the plea of respondent Nos. 10 to 19 that they had asked their advocate Nilesh Patel to make inquiry from the revenue record and Register of documents, and the plea that their advocate Nilesh Patel had taken inspection of the revenue records, is clearly unsustainable inasmuch as had the said Nilesh Patel really taken inspection, then entry No. 1546 would have definitely come to his notice. Report of the advocate Nilesh Patel does not even contain any word or whisper as regards the said mutation entry or it is not stated that entry has been cancelled. Under the circumstances, report of advocate Nilesh Patel is absolutely unreliable and appears to have been obtained by respondent Nos. 10 to 19 only with a view to support their plea of being bonafide purchasers.

17. Mr. Thakore further submitted that the respondent Nos. 10 to 19 without entering into agreement for sale, straightaway got sale deed registered in their favour. It is unbelievable that such transaction of purchase is completed within a single day. The sale

deed in their favour also does not mention any fact of obtaining report of advocate Nilesh Patel nor any public notice has been published by respondent Nos. 10 to 19 before purchasing the land inviting objections and therefore, the transaction is not genuine and bona fide. Mr. Thakore further submitted that the sale deed has been executed on 25.5.2007 in favour of the respondent Nos. 10 to 19 and on the very same day the respondent Nos. 10 to 19 executed a registered agreement for sale in favour of wife of the respondent No. 1. Thus, the agreement for sale in favour of wife of the respondent No. 1 by the purchasers, namely, respondent Nos. 10 to 19 clearly falsifies the story of respondent Nos. 10 to 19 being bona fide purchasers. He has, therefore, submitted that document is sham and bogus and brought on record only with a view to defeat the right of the partners, more particularly, when it is not understandable as to why respondent Nos. 10 to 19 sought to become owners for temporary period when on the same day they executed agreement to sell in favour of wife of the respondent No. 1. Mr. Thakore therefore submitted that the order of the trial Court refusing to grant interim relief is required to be reversed by an order of injunction during the pendency of the suit.

18. Mr. Thakore further submitted that simply because other partners were not agriculturists on that ground alone, the partnership cannot be said to be illegal or void. At the most, it is an invalid transaction, but till it is declared as such by any competent Court it remains valid and is binding to the parties. In support of this submission, he relied on the decision of this Court in the case of [Mavjibhai Dharsibhai and Others Vs. State of Gujarat and Others](#), wherein it is held that an invalid transaction per se may be invalid but it will not be invalid unless it is decided or declared to be so. It has to be invalidated. It thus becomes clear that an invalid transaction is made equivalent to a voidable transaction and not a void transaction. It is a trite principle of law to say that a voidable transaction remains valid till it is avoided, annulled or invalidated.

19. Mr. Thakore further relied on the decision of this Court in the case of [Bhagwanbhai Karamanbhai Bharvad Vs. Arogyanagar Co-op. Housing Society Ltd. and Others](#), this Court observed that as invalid deeds of conveyance were not declared by any Court of law or by any competent authority, they will be treated as valid more so the permission has been granted by the Collector concerned u/s 63 of the Tenancy Act for transfer of the property to a person who was not an agriculturist. From the facts and circumstances of the case, the sale-deeds executed in favour of the plaintiff society by the power of attorney holder on behalf of the original land-owners, will operate from the date of execution of the sale-deeds and not from the date of registration and invalidity of sale transaction due to absence of permission u/s 63 of the Tenancy Act, would not come in the way as the permission u/s 63 of the Tenancy Act has already been granted by the Collector prior to the Registration of the sale-deeds in favour of the plaintiff.

20. An affidavit-in-reply is filed on behalf of the respondent No. 1. Mr. S.P. Majmudar, learned advocate appears on behalf of the respondent No. 1. Originally when this Appeal was heard for the purpose of admission and interim relief Mr. Mihir Joshi, learned Senior Counsel appears on behalf of the respondent No. 1 Mr. Majmudar submitted that none of

the appellants and/or respondent Nos. 2 to 9 are agriculturists and this land, on the date of filing of the suit is agricultural land. The respondent No. 1 is exclusive owner of the agricultural land in question by virtue of registered sale deed in his favour on 2.2.1966. The respondent No. 1 is in occupation and enjoys this land as full and exclusive owner from 2.2.1966 till this date. The suit itself is barred by limitation. In any case, interim injunction can never be granted after such long lapse of time. In support of this submission, he relied on the decision of this Court in the case of Veetrag Holdings Pvt. Ltd. v. Gujarat state Textile Corporation Ltd. reported in 1996 (1) G.L.H. 179, wherein this Court held that it was expected from the appellants to move for specific performance at the earliest, if they were serious about the same. The appellants certainly cannot be non-suited on the ground of limitation inasmuch as their suit is within time. However, when it comes to grant of equitable relief when the suit is filed after such a lapse of time, it cannot be said that the remedy of interim injunction was the necessary remedy and there was no other remedy available to the party concerned in this behalf. The respondent No. 1 has incurred huge expenses for levelling the land, putting up surrounding compound wall twice and constructing room for Chowkidar who has been regularly paid his salary. The respondent No. 1 has done several acts as full and exclusive owner for the last more than 42 years. He has further submitted that at the time of formation of State of Saurashtra, its policy was that the agriculture land can only be held and possessed by agriculturist and no person who is not an agriculturist can purchase or hold agricultural land. To give effect to such public policy, Saurashtra Gharkhed tenancy and Agricultural Ordinance Act, 1949 was passed. Clause 54 of this Ordinance prohibits the purchase or obtaining of agricultural land by way of transfer including decree or order of the court by a person who is not an agriculturist. In support of his submission he relied on the following decisions:

(i) In Narayan Bhimji Vadangale and Anr. v. Hukumchand Chunilal Thole and Anr. reported in 1992 (1) G.L.H. 135, the Apex Court held that the question whether a firm can be covered under the definition of the term "agriculturist" would depend upon the activities of the partners of the firm. If the partners of the firm are agriculturists, firm would be covered under the definition.

(ii) In Bechar Arjan and Co. v. Assistant Collector reported in 1996 (3) G.C.D. 705 (Guj.), this Court held that the admitted position on record is that all partners of the partnership firm in the name and style of petitioner No. 1 are agriculturists. It transpires from the material on record that they purchased the land in the name of petitioner No. 1 for the purpose of carrying on their business in agriculture. In that view of the matter, the firm in the name and style of petitioner can be said to be an agriculturist. In that view of the matter, the sale transaction in question can be said to be in favour of an agriculturist and it could not be said to be in contravention of Section 54 of the Saurashtra Gharkhed, Tenancy Settlement and Agricultural Laws Ordinance Act, 1949.

21. Based on the above decisions Mr. Majmudar submitted that if all partners are agriculturists, a partnership firm can be an agriculturist and holds agriculture land. Thus,

there is a legal prohibition that no person who is not an agriculturist can purchase agricultural land by sale or by any mode of transfer, including by partition. He has, therefore, submitted that such a partnership firm not being an agriculturist, cannot purchase agriculture land by itself or through one or more partners who is or are not agriculturists. Such a partnership firm not being agriculturist, the appellants have no authority and/or locus to bring such claim/suit. He has further submitted that all the partners except respondent No. 1 are not agriculturists and, therefore, such a partnership is void ab initio. Even if the appellants and respondent Nos. 2 to 9 are accepted to be partners in respect of the agriculture land, the partnership itself being void u/s 23 of Contract Act, the appellants themselves not being the agriculturists cannot file such a suit in respect of agriculture land in question which is of sole and exclusive ownership of respondent No. 1.

22. Mr. Majmudar further submitted that the jurisdiction of appellate Court against the discretionary order passed by subordinate Court is very limited. The scope of jurisdiction in Appeal is very limited. Unless it is proved that discretionary order passed by subordinate Court is not in accordance with law the same cannot be reversed in Appeal. He submitted that the learned trial Judge has considered each and every submission of all the parties and arrived at just and fair conclusion which cannot be interfered with.

23. Mr. Majmudar further submitted that while refusing to grant injunction the learned trial Judge has considered the following points:

- (i) The partnership firm is not an agriculturist as all the partners except respondent No. 1 are not agriculturists and partnership deed is unlawful and void u/s 23 of Contract Act.
- (ii) There is violation of Clause 54 of Gharkhed Ordinance which prohibits the purchase or obtaining of agriculture land by any mode of transfer including decree or order of the court by a person who is not an agriculturist.
- (iii) The N.A. cancellation order passed by D.D.O. Rajkot on 15.1.1976 was challenged by respondent No. 8 in the year 2005 which has been rejected by learned S.S.R.D.
- (iv) The appellants and respondent Nos. 2 to 9 did nothing for 31 years and now the present suit is filed.
- (v) According to appellants, the partnership was dissolved in 1969, and yet some of the partners have filed Civil Suit No. 494 of 2004 on 1.7.2004 for dissolution and accounts, which itself was filed beyond period of limitation u/s 5 of Limitation Act.
- (vi) The appellants themselves admitted in plaint that the approved layout plan, in consequent to cancellation of non-agricultural order does not remain and is cancelled.
- (vii) The appellants not being agriculturists cannot claim any declaration of the status of agriculture land in question as the same is prohibited and beyond the competence of the

Court to grant such prayer.

24. Mr. Majmudar further submitted that the learned trial Judge observed that looking to the whole plaint and reliefs, it appears that the appellants have filed this suit to claim agricultural land in question as if the unregistered partnership is in existence and they and respondent Nos. 2 to 9 are its partners along with respondent No. 1. He has, therefore, submitted that the unregistered partnership firm cannot file suit as it is barred u/s 69 of the Partnership Act. In support of this submission, he relied on the following decisions;

(i) In [Seth Loonkaran Sethiya and Others Vs. Mr. Ivan E. John and Others](#), the Apex Court held that Section 69 is mandatory in character and its effect is to render a suit by a plaintiff in respect of a right vested in him or acquired by him under a contract which he entered into as a partner of an unregistered firm, whether existing or dissolved, void. In other words, a partner of an erstwhile unregistered partnership firm cannot bring a suit to enforce a right arising out of a contract falling within the ambit of Section 69.

(ii) In [M/s. Raptakos Brett and Co. Ltd. Vs. Ganesh Property](#), the Apex Court held that Section 69 Sub-section (2) of the Partnership Act is a penal provision which deprives the plaintiff of its right to get its case examined on merits by the court and simultaneously deprives the court of its jurisdiction to adjudicate on the merits of the controversy between the parties. It will, therefore, have to be strictly constructed. Once on such construction of this provision the bar u/s 69(2) of the Act gets attracted, then the logical corollary will be that the said provision being mandatory in nature would make the suit incompetent on the very threshold.

(ii) In [Lalajibhai Ramjibhai Hamirani Vs. Lavjibhai Haribhai Mandanka and Others](#), this Court held that suit filed by the plaintiff is not for dissolution of partnership firm or accounts of dissolved firm or any right or power to realise the property of a dissolved firm therefore, suit is for accounts by the partnership firm asserting that the plaintiff has 25% share in profit and loss of the partnership firm and when admittedly partnership firm is not registered partnership firm, bar u/s 69(1) of the Act would be attracted and such suit for aforesaid reliefs is not maintainable. Therefore, it cannot be said that the learned trial Court has committed any error in holding that for the reliefs sought in the plaint/suit by the plaintiff such a suit u/s 69(1) would not be maintainable, and, therefore, the learned trial Court has rightly refused to grant injunction in the said suit.

(iv) In [Sri Velji Narayan Patel Vs. Sri Jayanti Lal Patel](#), while declaring the suit as not maintainable by invoking Order 7, Rule 11(d) of the Civil Procedure Code, the Court examined the effect of non-registration of firm. Suit was filed by one partner seeking to enforce his right arising out of contract against co-partner. The plaintiff-partner does not sue in his individual capacity. Prayers in plaint are basically for enforcement of his right as embodied in partnership deed which was executed by and between parties. Registration of firm is pre-requisite for entertainability or suit by Civil Court. Presentation of plaint by a partners against an unregistered firm cannot be said to be a plaint worth the name and

hence the suit is not maintainable.

25. Based on the above decisions, he submitted that Section 69 of the Partnership Act is mandatory in character and its effect is to render a suit by a plaintiff in respect of a right vested in him or acquired by him under a contract which he entered into as a partner of an unregistered firm, whether existing or dissolved, void and also it is held that Section 69(2) puts bar on the unregistered firm and enforce contract against third party, is a penal provision and it has to be strictly construed.

26. Based on the above statutory provisions as well as legal proposition, Mr. Majmudar submitted that the agriculture land in question was taken by the alleged unregistered partnership firm and the present suit was being filed by some of the partners and on those assertions, the plain could have been barred by the provisions contained in Order 7, Rule 11 of C.P.C., even if the alleged partnership firm was existing or dissolved. In other words, a partner of an erstwhile unregistered partnership firm cannot bring a suit to enforce a right arising out of a contract falling within the ambit of Section 69, Sub-section (2) of Partnership Act as no suit to enforce a right arising from a contract shall be instituted in any court by or on behalf of firm against any third party unless the firm is registered and persons suing are or have been shown in the Register of firm as partners in the firm. The Appeal From Order is, therefore, liable to be dismissed.

27. Mr. Majmudar further submitted that the appellants are guilty of fabricating false statements and of using the same knowing it to be false with a view that the Court may rely upon such false statements for deciding the matter in their favour. He has submitted that such false, fabricated and misleading statement made before the Court on oath by the appellants are highly unethical and should not be encouraged in the interest of justice. He has, therefore, submitted that the Appeal From Order may be dismissed with costs.

28. Mr. Parcy Kavina, learned Senior Counsel appears alongwith Mr. Shakti S. Jadeja, on behalf of the respondent Nos. 10 to 19 and virtually adopted the arguments of Mr. Majmudar and submitted that the suit for specific performance of an invalid agreement cannot be decreed in favour of the plaintiff. He has further submitted that the appellants' share is not included in the property sold and hence the suit itself is not maintainable and no cause of action arose in favour of the appellants. He has further submitted that there are certain legal and factual infirmities in the appellants' case and hence the appellants are not entitled to ask for any equitable relief from the Court. He has, therefore, submitted that the Appeal be accordingly dismissed.

29. Having heard the learned Counsels appearing for the parties and having considered their rival submissions in light of the documents on record, statutory provisions and decided case law on the subject, the Court is of the view that the learned Trial Judge has committed very serious error in law and on facts in rejecting the appellants' application, Ex.5 for interim relief and thereby impugned judgment and order passed by him resulted into miscarriage of justice depriving the appellants of their legitimate and legal right of

claiming their respective share in the suit property. Before rejecting the injunction application the learned Trial Judge should have taken into consideration the three essential pre-requisites of granting interim injunction i.e. prima facie case, balance of convenience and irreparable injury and above all, the conduct of the parties.

30. The appellants have prima facie case in their favour. They were the partners in the partnership firm having 2 (two) Annas share each therein. The suit property was purchased from amongst their contribution. The recital in the partnership deed leaves no room for any doubt that the property belongs to the partnership firm. After N. A. Permission was granted partition took place and each partner was allotted his respective share. Based on this, necessary declarations were made by the partners under the ULC Act. Simply because the N. A. Permission was subsequently cancelled and the respondent No. 1 being only an agriculturist partner, suit land is standing in his name and after repeal of the ULC Act, entire property remains with him, would not make him the absolute owner of the suit land or it would not disentitle the appellants from claiming their respective share in the suit property. These very factors do persuade the Court for taking the view that balance of convenience is in favour of the appellants. If the suit property is allowed to be transferred or the alleged transfer effected by the respondent No. 1 is approved by the Court, it would cause an irreparable injury or loss which cannot be adequately compensated in terms of money.

31. The conduct of the respondent No. 1 is blameworthy. He is thoroughly a dishonest person. He misused his fiduciary position. Other partners including the appellants have put trust in him and allowed the suit property to be purchased in his name. Though he has not contributed anything by way of capital contribution in the firm, his share was fixed at (half) Anna. After the N. A. Permission was granted the suit property was agreed to be partitioned. Though he had signed the partition deed, he did not appear before the registering authority. Despite receipt of show cause notice from D.D.O. Rajkot for cancellation of N. A. Permission, he did not inform other partners/co-owners. To receive benefit under ULC Act, he has shown his (half) Anna share in the suit property, but, no sooner the Repeal Act came into force, he claimed exclusive ownership on the suit property and sold away the same behind the back of other partners including the appellants. As if this is not enough, on the very same day, suit property was agreed to be retransferred in favour of the wife of the respondent No. 1. If this is the conduct of the respondent No. 1 and his ill-intention is apparent on the fact of it, the trial Court should have restrained him from achieving his improper, illegal and unlawful object. The Apex Court, time and again, held that while considering the application for grant of injunction, the Court will not only take into consideration the basic elements in relation thereto, viz. Existence of prima facie case, balance of convenience and irreparable injury. It must also take into consideration the conduct of the parties. The grant of injunction is an equitable relief and hence a party invoking the jurisdiction of the Court or opposing such application for interim relief, has to show that he himself was not responsible for bringing about the state of things complained of or providing cause to make such complaint against him and

that he was not unfair or inequitable in his dealings with the parties against whom he was seeking relief or parties against whom he was opposing to grant such relief. If these parameters laid down by the Courts are kept in mind, it is difficult to accept that the conduct of the respondent No. 1 is free from any blame and hence the Court does not approve the impugned order and judgment of the trial Court.

32. Certain legal objections are raised by the respondent Nos. 1 and 10 to 19 against the maintainability of suit and/or grant of interim injunction. The first legal objection raised is to the effect that the partnership firm of which the appellants claimed to be partners, is an unregistered firm and suit by partners of an unregistered firm is barred by Section 69 of the Indian Partnership Act, 1932. Four decisions are cited by Mr. Majmudar in support of this objection. However, looking to the prayers made in the suit and considering the nature of the suit, none of these decisions is applicable to the facts of the present case and objection is also not sustainable. Section 69(3)(a) of the Act carves out an exception and states that the provisions of Sub-sections (1) and (2) shall not affect the enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realise the property of a dissolved firm. The suit property belonged to the partnership firm. Even if it is assumed that the firm was dissolved, the appellants could not get their due share on dissolution as per the partition deed. The suit is, therefore, filed for a declaration that the suit property belonged to the firm and all partners including the appellants have their respective share. Since the respondent No. 1 illegally and fraudulently transferred the suit property by registered sale deed, the same was prayed to be cancelled. The words in Section 69(3) include the right to recover the property from a partner. The appellants could take the advantage of the exception contained in Section 69(3)(a), viz. Any right or power to realise the property of a dissolved firm. The suit filed by the appellants is, therefore, held to be maintainable and they have every right to ask for interim injunction.

33. The second legal objection raised by the respondent Nos. 1 and 10 to 19 is that all the partners of the partnership firm are not agriculturists and hence firm cannot purchase agricultural land. Such a firm itself is illegal and hit by the provisions of Section 23 of the Indian Contract Act. This argument will not have any bearing in view of the fact that the purchase of agriculture land by the firm may be by itself invalid but it will remain valid till it is declared as an invalid transaction. As a matter of fact, N.A. Permission was granted and plans were approved by the D.D.O. Rajkot. It was only because of breach of condition, N.A. Permission was cancelled. However, as and when fresh permission is granted, if not granted so far, it will operate from the date of purchase of land by the partnership firm. Moreover, the respondent No. 1 is a party to this entire transaction. It is not open for him to raise such objection or dispute.

34. The third legal objection raised is that the alleged partnership firm is of February, 1966 and the partition of property is of 1969, whereas the suit is filed in 2007 and hence it is barred by limitation. There is no substance in this objection too. Before the ULC authorities, the suit property was claimed to be joint property and all partners being

co-owners have shown their respective share in the property. It is only when ULC Act was repealed and the respondent No. 1, after claiming the suit property of his exclusive ownership and possession, sold away the property by executing registered sale deed dated 25.5.2007 in favour of respondent Nos. 10 to 19, real cause of action for filing the suit arose and hence suit filed in August, 2007 cannot be said to be barred by limitation.

35. Taking any view of the matter, the appellants succeeded in establishing their prima facie case and balance of convenience is also tilted in their favour. Looking to the loss that may be suffered by the appellants in absence of grant of interim injunction and the conduct of the respondent No. 1, the impugned judgment and order passed by the trial Court below an application Ex.5 is hereby quashed and set aside and prayers made in the said application are granted.

36. In the result, this Appeal From Order is allowed with cost of Rs. 10,000/- which the respondent No. 1 shall pay to the appellants within 30 days from today.

37. Since Appeal From Order is allowed, Civil Application for stay no longer survives and hence it is accordingly disposed off. The Civil Application for production of additional evidence also does not survive. It is open for the appellants to move appropriate application before the trial Court as the suit is still pending. The trial Court will consider such application on its own merits. Both these applications are accordingly disposed off.

38. On pronouncement of judgment, Mr. P.P. Majmudar, learned advocate appearing for Mr. S.P. Majmudar, for respondent No. 1 requested this Court to stay the operation and execution of this judgment at least for the period of six weeks so as to enable the respondent No. 1 to approach the Hon"ble Apex Court. Mr. Ashish Shah, learned advocate appearing for the appellants strongly objected to this request. Considering the facts and circumstances of the case and for the reasons recorded in the judgment, the request for stay is rejected.