

Reserved On : 11/02/2026

Pronounced On : 18/02/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SECOND APPEAL NO. 93 of 2006

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE J. C. DOSHI

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Approved for Reporting	Yes	No

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PATEL HASANBHAI ALIBHAI AADAMBHAI

Versus

PATEL JAYESHKUMAR ISHWARBHAI & ORS.

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Appearance:

MR HRIDAY BUCH(2372) for the Appellant(s) No. 1

MR RAHUL K DAVE(3978) for the Respondent(s) No. 1

PETITION/APPEAL WITHDRAWN/DISMISSED for the Respondent(s) No. 3

RULE SERVED for the Respondent(s) No. 2

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

CAV JUDGMENT

1. This Second Appeal is preferred under Section 100 of the Code of Civil Procedure 1908 ("**the Code**" for short) challenging the judgment and decree dated 6.8.2005 passed by the learned Presiding Officer, Fast Track Court No.8, Bharuch in Regular Civil Appeal No.17 of 1998 whereby the learned first Appellate Court reversed the judgment and

decree dated 31.12.1997 passed by learned Civil Judge (Junior Division), Jambusar in Regular Civil Suit No.103 of 1989 and the decreed the suit in favour of the plaintiffs directing them to deposit Rs.14610/- being the mortgage money and directed the defendant No.1 to hand over peaceful possession of the suit premises to the plaintiffs by executing the sale deed thereof.

2. The facts, in nutshell, borne out from the impugned judgment are that the the shop bearing City Survey No.2581/A admeasuring 456 square meters paiki situated on the ground floor of the plaintiffs' premises in Kava Bhagol area of Jambusar ("***the suit premises***" for short) was mortgaged to defendants through conditional sale deed dated 24.9.1979 with the conditions stipulated therein that on completion of 7 years, possession shall be handed over back to the plaintiffs on receiving sale consideration of Rs.13,000/- and also the sale deed will be executed in favour of the plaintiffs.

3. The plaintiffs, on completion of 7 years, were ready and willing to pay Rs.13,000/- to the defendants. However, the

defendants denied to accept the said amount and further denied to reconvey the suit premises to the plaintiffs so also the possession. The plaintiffs, thus, filed the suit for redumption of mortgage and also prayed to direct the defendants to execute the sale deed and to hand over peaceful possession of the suit premises. The defendants, having been served, came out with a defence that the defendant No.2 has relinquished his share from the suit premises and as such, the defendant No.1 has become absolute owner. It is further contended that the sale deed executed on 24.9.1979 is absolute sale in favour of the defendant No.1 who was initially tenant at monthly rent of Rs.300/- and in addition thereto, it is also contended that the defendant No.2 has paid Rs.25,000/- to the plaintiffs but failed to get any document / receipt thereof. The limitation was also pleaded as one of the defence so also the defence of jurisdiction. The learned trial Court, permitting the parties to lead the evidence, after framing the issues, was pleased to dismiss the suit of the plaintiffs.

4. Being aggrieved and dissatisfied, the plaintiffs preferred Regular Civil Appeal No.17 of 1998 before the learned first Appellate Court under Section 96 of the Code.

As noted (supra), learned Presiding Officer, Fast Track Court No.8, being the first Appellate Court, was pleased to allow the appeal and decreed the suit in favour of the plaintiffs. Being aggrieved, the defendant No.1 is before this Court by way of the present Second Appeal. The Second Appeal is admitted vide order dated 20.7.2006 framing the following questions of law as substantial questions of law.

“(i) Whether on the facts and in the circumstances of the case, the appellate court, after observing that present one was not a case of mortgage by conditional sale but was a case of independent right to repurchase, was justified in not considering the question relating to readiness and willingness on the part of the plaintiff ?

(ii) Whether on the facts and in the circumstances of the case, the appellate court was justified in granting the decree of specific performance in favour of the plaintiff ?”

5. Heard learned advocate Mr.Hriday Buch appearing for the appellant and learned advocate Mr.Rahul K.Dave appearing for the respondent No.1. Though served, none remained present for respondent No.2. The appeal was withdrawn for respondent No.3.

6. In the background of the aforesaid facts, learned

advocate Mr.Hriday Buch appearing for the appellant mainly argued that learned Appellate Court has committed serious mistake and error of law on the ground that after pleading that the deed in question is not mortgage by conditional sale, but the case of an independent right to repurchase was absolutely unjustified in not considering the question of readiness and willingness on the part of the plaintiffs.

6.1 He further submits that since the transaction between the parties was sale with condition to repurchase, the plaintiffs were required to plead and prove readiness and willingness as being an essential requirement for seeking a relief in the suit for specific performance under Sections 19 of 20 of the Specific Relief Act 1963.

6.2 It is further argued by learned advocate Mr.Hriday Buch that learned Appellate Court is unjustified in granting the decree of specific performance in favour of the plaintiffs.

6.3 Learned advocate Mr.Hriday Buch, in realm of the aforesaid arguments, supports the judgment and decree of learned trial Court and submits that the issue has been vividly

and widely discussed by learned trial Court being the document, on the documentary as well as oral evidence where the plaintiffs were hopelessly failed to prove the deed in question was mortgage by conditional sale.

6.4 It is further argued by learned advocate Mr.Hriday Buch that learned Appellate Court continued to hold that the deed in question is not mortgage by conditional sale, but still learned Appellate Court passed the order for executing re-conveyance deed and thereby committed serious mistake.

6.5 Mainly, upon the above submissions, learned advocate Mr.Hriday Buch submitted to allow this Second Appeal and to quash and set aside the judgment and decree delivered by the learned first Appellate Court and to restore the judgment and decree passed by learned trial Court.

7. In contrast, learned advocate Mr.Rahul Dave appearing for the respondent No.1 has supported the judgment and decree passed by learned Appellate Court and further submitted that learned Appellate Court has thoroughly assessed the issue after referring to Section 58(c) of the

Transfer of Property Act as well as Sections 10, 19 and 20 of the Specific Relief Act 1963 and believed that it is a deed where the plaintiffs have been given right to reconvey the suit property. As such, the findings of the learned Appellate Court are correct, just and reasonable.

7.1 Learned advocate Mr.Dave further submitted that learned trial Court was incorrect in saying that the defendants have failed to prove the case.

7.2 Learned advocate Mr.Dave also submitted that no substantial questions of law arise in the matter. It is submitted that the questions of law framed in the matter, at the time of admission of the Second Appeal, failed to meet the standard of substantial questions of law not decided by the higher Court rather these questions, according to him, are questions on facts. Thus, he submitted that the Second Appeal should not be entertained and be dismissed.

8. Heard learned advocates for both the sides and also perused the impugned judgments along with the Record and Proceedings of the suit.

9. The seminal issue to decide the dispute between the parties is whether the deed dated 24.9.1979 produced at Exh.26 before the learned trial Court proves to be mortgage by conditional sale or it is a sale with condition to repurchase or it is outright sale.

10. It is settled principle of law that the document has to be interpreted as it appears on its face with its literal meaning. The document must be interpreted as a whole. Focusing on the plaint, nature and ordinary meaning of its language with clear and unambiguous, the primary goal is to ascertain true intention of the parties by reading the document in its entirety rather than focusing on another part. Applying the principle of "literal rule", the words have to be given their natural ordinary meaning especially when the language is unambiguous. The words take their color from the context and the document should be understood based on text and context if the language is clear. On reading the document as a whole, the Court should not attempt to interpret it differently, rather the Court should give substantive intent and to read the document what it reflects and what has been

understood between the parties. In ***Kamal Kishore Sehgal (D) thr. Lrs and others Vs Murti Devi (Dead) thr Lrs***, reported in ***2024 SCC OnLine SC 2582***, the Honourable Supreme Court referred to the cardinal principles of interpretation of the deed. Paragraph 18 of the judgment being relevant is taken assistance as under.

“It is a cardinal principle of interpretation that where the language employed in the instrument is clear and unambiguous, the common literary meaning ought to be assigned in interpreting the same and one should not fall back on any other inference. Only the expression in clear words contained in the instrument/document must be considered and not the surrounding circumstances. In short, literal construction must be considered first, rather than going into the intention behind what is said in the instrument / document if the language of the instrument is clear and unambiguous.”

11. The execution of Exh.26 document being registered document is not in dispute, but its interpretation. If we read Exh.26, it is executed between the parties to the dispute on 24.9.1979 in regard to the suit premises whereby the plaintiffs had received Rs.13,000/- as they were in need of household and agricultural expenses from the defendants. It was conditional sale with handing over possession of the suit premises. The further condition stipulates that the defendant

shall close one window and one door which is opening in the common wall. Further, the purchaser was restrained from putting one another door in the common area. It stipulates further condition that this condition shall be for a period of 7 years and at the end of 7 years, the plaintiffs or their heirs will pay Rs.13,000/- within 7 years to the defendant and the defendant upon accepting such amount was required to reconvey the possession to the plaintiffs by executing the deed. The simple and literal meaning of the deed indicates that at relevant point of time, the plaintiffs had conveyed the title of the suit premises to the defendant. The plaintiffs, though mentioned that it was "Avej" / (consideration) of Rs.13,000/-, have been accepted however the deed further stipulates that Rs.13,000/- was taken from the defendant to meet household and agricultural expenses gives impression of creation of debtor and creditor relationship. Further terms and conditions of deed stipulates that restricts right of enjoyment of the property and did not convey title in favour of the defendant. Thus, this document creates impression of mortgage by conditional sale as defined under section 58(c) of the Transfer of Property Act.

12. On examining the judgment and decree passed by the learned trial Court, it appears that learned trial Court swung its pendulum from one end to another end in the same breath. The learned trial Court believed that it is a mortgage by conditional sale and also referred Section 58(c) of the Transfer of Property Act. The learned trial Court also referred to Sections 19 and 20 of the Specific Relief Act 1963, discussed it but then on minor inconsistencies in the oral evidence, dismissed the suit. The learned trial Court tried its best to understand the dispute between the parties but ultimately, the learned trial Court, having found itself in confusing position, dismissed the suit.

13. The learned first Appellate Court again ran from North to South but ultimately reached to the rightful conclusion that the plaintiffs are entitled to the decree as it is not outright sale, but the learned Appellate Court failed to understand distinction between “mortgage by conditional sale” and “sale with condition to repurchase”. The learned Appellate Court passed the decree in favour of the plaintiffs to reconvey the deed as also the possession thereby impliedly held that it was mortgage by conditional sale but could not

understand the provisions of law as well as the evidence laid by the parties or failed to notice true purport of Exh.26. The judgment and order passed by the learned Appellate Court is found as badlam but anyhow the learned Appellate Court reached to the correct conclusion.

14. Coming back to the facts on hand, it is not disputable that the plaintiffs received Rs.13,000/-. They have executed Exh.26. The defendant No.2 relinquished his share in favour of defendant No.1. The plaintiffs were ready and willing to pay back Rs.13,000/- within time limit as stated in Exh.26 deed. Both the Courts below did not consider the defence of defendant No.1 being the tenant and has purchased the suit premises with outright sale. Exh.26 deed does not contain any clause which transfers the title of the suit premises in favour of the defendant. Taking of Rs.13,000/-, thus, found to be borrowing by the plaintiffs from the defendant creating relationship of debtor and creditor between them which is being essential condition establishing mortgage by conditional sale.

15. Restricting enjoyment of the property is another

stark aspect decides that Exh.26 deed is not sale with condition to repurchase but it is mortgage with conditional sale. In ***Bhoju Mandal and others Vs Debnath Bhagat and others***, reported in ***AIR 1963 SC 1906***, the Honourable Supreme Court explained the legal distinction between two concepts, namely, “mortgage by conditional sale” and “sale on condition to repurchase”. Paragraph 4 is extracted as under.

“4. There is a clear legal distinction between the two concepts, a mortgage by conditional sale and a sale with a condition of repurchase. The former is a mortgage, the relationship of debtor and creditor subsists and the right to redeem remains with the debtor. The latter is an out and out sale whereby the owner transfers all his rights in the property to the purchaser reserving a personal right of repurchase. The question to which category a document belongs presents a real difficulty which can only be solved by ascertaining the intention of the parties on a consideration of the contents of a document and other relevant circumstances. Decided cases have laid down many tests to ascertain the intentions of the parties but they are only illustrative and not exhaustive. Let us therefore look at the terms of the document extracted above.”

16. In yet another judgment in the case of ***Patel Ravjibhai Bhulabhai (D) Thr.LRS. Vs Rahemanbhai M.Shaikh (D) Thr. LRS. & Ors.***, reported in ***(2016) 12 SCC 216***, the Honourable Supreme Court again referred to the distinguishing features between “mortgage by conditional

sale” and “sale with an option to repurchase” as enumerated in Sir Mulla’s Transfer of Property Act. After reproducing Section 58(c) of the Transfer of Property Act, the Honourable Supreme Court has held as under.

“7. Section 58 (c) of The Transfer of Property Act, 1882 defines “mortgage by conditional sale”, and reads as under:-

“58.(c) Mortgage by conditional sale.-
Where the mortgagor ostensibly sells the mortgaged property-

on condition that on default of payment of the mortgage money on a certain date the sale shall become absolute, or

on condition that on such payment being made the sale shall become void, or

on condition that on such payment being made the buyer shall transfer the property to the seller,

the transaction is called mortgage by conditional sale, and the mortgagee, a mortgagee by conditional sale:

Provided that no such transaction shall be deemed to be a mortgage, unless the condition is embodied in the document which effects or purports to effect the sale.”

Section 60 of The Transfer of Property Act, 1882 provides right of mortgagor to redeem the property.

8. Distinguishing features between “mortgage by conditional sale” and “sale with an option to

repurchase" are enumerated in Mulla's Transfer of Property Act (11th Edition) as under:-

"(i) In a mortgage with conditional sale, the relation of a debtor and a creditor subsists while in a sale with an option of re-purchase, there is no such relationship and the parties stand on an equal footing.

(ii) A mortgage by conditional sale is effected by a single document, while a sale with an option of repurchase is generally effected with the help of two independent documents.

(iii) In a mortgage with conditional sale the debt subsists as it is a borrowing arrangement, while in a sale with an option of repurchase, there is no debt but a consideration for sale.

(iv) In a mortgage with conditional sale, the amount of consideration is far below the value of the property in the market but in a sale with an option of repurchase the amount of consideration is generally equal to or very near to the value of the property.

(v) In a mortgage with conditional sale, since this is a mortgage transaction, the right of redemption subsists in favour of the mortgagor despite the expiry of the time stipulated in the contract for its payment. The mortgagor has the option to redeem the mortgage and take back the property on the payment of the mortgage money, after the specified time, but in a sale with an option of re-purchase, the original seller must re-purchase the property within the stipulated time period. If he commits a default the option of re-purchase is lost."

9. In *Tulsi and Others vs. Chandrika Prasad and Others*, (2006) 8 SCC 322 this Court explaining difference between mortgage by conditional sale or sale with condition to repurchase has observed as under: (SCC pp.327-28, para 15)

"15. A distinction exists between a mortgage by way of conditional sale and a sale with condition of purchase. In the former the debt subsists and a right to redeem remains with the debtor but in case of the latter the transaction does not evidence an arrangement of lending and borrowing and, thus, right to redeem is not reserved thereby".

10. In P.L. Bapuswami vs. N. Pattay Gounder, AIR 1966 SC 902 it is held that: (AIR p.903, para 5)

"5.....The definition of a mortgage by conditional sale postulates the creation by the transfer of a relation of mortgagor and mortgagee, the price being charged on the property conveyed. In a sale coupled with an agreement to reconvey there is no relation of debtor and creditor nor is the price charged upon the property conveyed, but the sale is subject to an obligation to retransfer property within the period specified. The distinction between the two transactions is the relationship of debtor and creditor and the transfer being a security for the debt. The form in which the deed is clothed is not decisive. The question in each case is one of determination of the real character of the transaction to be ascertained from the provisions of the document viewed, in the light of surrounding circumstances. If the language is plain and unambiguous it must in the light of the evidence of surrounding circumstances, be given its true legal effect".

11. In Vishwanath Dadoba Karale vs. Parisa Shantappa Upadhya, (2008) 11 SCC 504 the facts of the case were somewhat similar to the present case, and as is evident from paragraph 2 in said case, the Court held the deed was a mortgage by

conditional sale, and upheld the decree of redemption for mortgage.

12. In C.Chériathan vs. P. Narayanan Embranthiri, (2009) 2 SCC 673, the principle relating to interpreting of document as to whether the sale is mortgage by conditional sale or sale with a condition to repurchase was discussed, and this Court held as under:

"12. A document, as is well known, must be read in its entirety. When character of a document is in question, although the heading thereof would not be conclusive, it plays a significant role. Intention of the parties must be gathered from the document itself but therefor circumstances attending thereto would also be relevant; particularly when the relationship between the parties is in question. For the said purpose, it is essential that all parts of the deed should be read in their entirety".

17. Recently, this Court has also examined, whether the document is mortgage by conditional sale or sale with condition to repurchase in ***Second Appeal No.186 of 2018*** between ***Vohra Ahmedbhai Ibrahimhai Vs Augustine Alias Anilkumar anandbhai Khristi & another.***

18. Applying the aforesaid dictum of law to the facts of the present case, since it is a clear case of mortgage by conditional sale, passing of decree by the learned trial Court

to reconvey the title after accepting the money being mortgage money is just and rightous decision and does not call for any interference, more particularly, in view of the scope of Section 100 of the Code well explained by the Honourable Supreme Court in the case of ***Jaichand (dead) through LRs v. Sahanulal***, reported in **2024 INSC 996**.

19. In view of the aforesaid reasons, the substantial questions of law raised at the time of admission stage has been successfully rebutted by learned advocate appearing for the other side as they are not the substantial questions of law.

20. For the foregoing reasons, the Second Appeal sans merits and deserves rejection and accordingly, it is rejected. Interim relief, if any, granted earlier stands vacated. R & P be sent back to the learned trial Court forthwith.

H.M. PATHAN

(J. C. DOSHI,J)