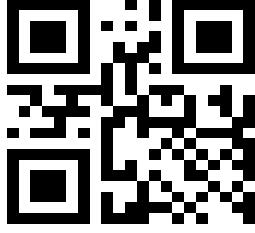


GJNV010001532012



Received on	23	07	2012
Registered on	23	07	2012
Decided on	01	01	2022
Duration	Y	M	D
	09	05	09

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**IN THE COURT OF 2nd ADDITIONAL DISTRICT JUDGE OF
NAVSARI AT NAVSARI**

=====

Regular Civil Appeal No. 30 / 2012

Exh. 47

(1) L/H. of deceased Jayantibhai Jagabhai Patel,

(1/1) Rakeshkumar Jayantibhai Patel,

Age : 30 yrs., Occ. Service,
Resi. At Mora Faliya, Post-Mogar,
Taluka & District : Navsari.

(1/2) Smitaben Sanjaybhai Patel d/o Jayantibhai Jagabhai Patel,

Age : 28 yrs., Occ. Housewife,
Resi. At Nagdhara, Puni, Taluka & District : Navsari.

(1/3) Arunaben Dipeshbhai Patel d/o Jayantibhai Jagabhai Patel,

Age : 26 yrs., Occ. Housewife,
Resi. At Kalthan, Taluka : Jalalpore, District : Navsari.

(Amendment carried out as per order below Exh.36)

(2) Mangubhai Chhotubhai Patel,

Age : 65 yrs., Occ. Agriculturist,
Resi. At Mora Faliya, Post-Mogar,
Taluka & District : Navsari.

... ... **Appellants**
(Orig. Defendants)

Versus

- (1) **~~Sukhiben w/o Lallubhai Dayalbhai Patel,~~**
Age : 90 yrs., Occ. Household Work,
Resi. At Mora Falia, At Post Mogar, Tal. & Dist. : Navsari.
(Deleted the Resp.No.1 as per order below Exh.36)
- (2) **Chhibubhai Lallubhai Patel,**
Age : 58 yrs., Occ. Service,
Resi. At Mora Falia, At Post Mogar, Tal. & Dist. Navsari.
At present Resi. At A-12, Transwal Nagar, Gandevi Road,
Navsari.
- (3) **Laxmiben Lallubhai Patel w/o Bhanabhai Dullabhbbhai Patel,**
Age : 55 yrs., Occ. Household Work,
Resi. At Manekpore, Via Vegam, Tal. Gandevi, Dist. Navsari.
- (4) **Karshanbhai Lallubhai Patel,**
Age : 50 yrs., Occ. Agriculture,
Resi. At Mora Falia, At Post Mogar, Tal. & Dist. Navsari.
- (5) **Deviben d/o Lallubhai Dayalbhai Patel &
w/o Harishbhai Maganbhai Patel,**
Age : 40 yrs. Occ. Household Work,
Resi. At Hansapore, Tal. Jalalpore, Dist. Navsari.
- (6) **Balubhai Lallubhai Patel,**
Age : 50 yrs. Occ. Service,
Resi. At Mora Falia, At Post Mogar, Tal. & Dist. Navsari.
At present Resi. At 5, Shalibhadra Apt., Nem Nagar,
Bilimora, Somnath Road, Tal. Gandevi, Dist. Navsari.
- (The Respondent No.6 is power of attorney holder of
Respondent No.1 to 5)**

... .. Respondents
(Orig. Plaintiffs)

-: Appearance :-

Ld. Adv., Mr.S.K.Deshmukh for the Appellants

Ld. Adv., Mr.B.J.Morawala for the Respondents

Appeal against the judgment and decree passed by the Ld.
Principal Senior Civil Judge, Navsari in Regular Civil Suit
No.136/2004 dated 30/06/2012

-: JUDGMENT :-

- (1) The appellants qua defendants have challenged the judgment and decree dated 30/06/2012 of Ld. Principal Senior Civil Judge, Navsari in Regular Civil Suit No.136/2004 granting to the effect that permanent injunction to the suit of respondents-plaintiffs.
- (2) The short facts leading to the present appeal are that :-
- (2.1) The plaintiffs/respondents have filed a suit against the defendants/appellants for declaration and permanent injunction, wherein, it has been contended by the plaintiffs that, the plaintiff owns and possesses, agricultural land at Village : Mogar, Taluka & District : Navsari bearing Survey No.68/1, admeasuring about 7-08 Are-Meters comprising mango trees and a shed on it. The boundaries of the property described are as under : (hereinafter referred to as "suit land")

East Side :-	Land of Dhayabhai Patel,
West Side :-	Public Way.
North Side :-	House of Mangabhai Chhotubhai Deft.No.2
South Side :-	House and backyard land of Dhayabhai Naranbhai Patel

The above mentioned land was owned in the name of plaintiff's father Lallubhai Dayalbhai, who died on 05/06/2000 and thereafter plaintiffs' names were entered as

heirs of deceased. So the suit land is an ancestral property owned by plaintiffs. There are mango trees on the southern side and a shed is on the northern side of the suit land.

It is further contended by the plaintiffs that, the defendants in collusion with each other, started attempting to usurp suit land therefore plaintiff issued a notice on 17/05/2003 to defendants through their advocate by registered post. So defendants have stopped their illegal activities. Thereafter, on 24/10/2004 defendants came to the suit land and told plaintiffs that they shall keep their tractor, trailer and agriculture equipments and plaintiffs have nothing to do with the suit land and not to enter in their suit land without their permission as mango trees are in their land. Thus, defendants got excited and told plaintiffs that they have no one to use this land so what harm they have if they put vehicles and instruments in the suit land and started threatening plaintiffs to do whatever they can. So this way defendants started to illegally usurp suit land without any right, title towards it. If defendants be allowed to encroach upon or enter upon the suit land, plaintiffs' right of peaceful enjoyment will be jeopardised and it will damage to mango trees and shed. Therefore, the plaintiffs have filed a suit for declaration and permanent injunction against the defendants.

- (3) The defendants have appeared before the Trial Court and filed their written reply vide **Exh.50**, all the contentions of the plaint, except which are specifically accepted, are denied and it is further contended by the defendants that, the defendants have

denied the whole facts of the plaintiffs' case. As the suit of the plaintiff is not prima facie tenable at law, as the plaintiff has suppressed material facts, as the plaintiffs have not come with clean hands before the Court. The suit of the plaintiff is bad for delay and laches. That the suit of the plaintiff is without any cause of action. Plaintiffs have suppressed material facts and filed this suit with twisted facts to misguide the court and to pressurize the defendants. Plaintiffs have no prima facie case restraining defendants for causing any damage to shed or mango trees or to prevent entry into the suit land on pretext of false and self serving facts. Plaintiffs have suppressed the facts that deft.no.1 and his brother Prabhubhai have their lawful rights, interest and possession towards suit land. So plaintiffs suit is liable to be dismissed and plaintiffs have no cause of action to this suit.

- (4) Being aggrieved & dissatisfied by the judgment and decree of learned Trial Judge, defendants have preferred this appeal and *inter alia* contended that order of Trial Court is illegal and against the principles of law & therefore requires to be set aside. It is contended that Trial Court has not properly appreciated the evidence on record. It is contended that Trial Court has wrongly relied on the affidavit of third party. The Trial Court has not properly appreciated the point raised by the plaintiff & defendant. The trial Court has not properly appreciated evidence on record so that this order is erroneous one and deserves to be set aside. It is contended that order of Trial Court is otherwise unjust, improper & required to be set

aside.

- (5) Heard, the Ld. Adv. for the appellants that, the present appellants/defendants have filed the present appeal. The judgment and decree of trial Court are bad in law, against the settled principles of law. The Ld. Trial Judge has not appreciated the evidence on record. As the plaintiffs have suppressed such material facts of ancestors and partition of the suit property therefore plaintiffs are not entitled for injunction. The Ld. Trial Court has erred error that deft.no.2 has proved his actual possession as putting his tractor under the shed of suit land his possession ought to be protected till plaintiffs prove contrary and therefore such findings are erroneous. The Ld. Trial Court has erred while not relying upon the deposition of the defendant's witness no.3 Maganbhai Ravjibhai Patel whose evidence is not being rebutted hence actual possession of deft.no.2 is proved therefore judgment and decree deserves to be set aside. The order of Ld. Trial Court is illegal and illegitimate and against the principles of natural justice therefore order of trial court is deserves to be prima facie dismissed. The Ld. Trial Court has not appreciated oral as well as documentary evidence in law. Hence, the judgment and decree of Ld. Trial Court capricious, trial Court is not considered oral as well as documentary evidence therefore appeal may be allowed.
- (6) Heard, the Ld. Adv. for the respondents that, the order of the learned trial Court is legal one. The learned trial Court has appreciated all the evidence on record. After considering the

pleadings of both parties evidence on record and oral as well as documentary evidence and there is no illegality in the impugned order and learned trial Court is not erred any error in impugned order, and order of the learned trial Court is legal and valid. The order of the trial Court is true, the order of trial Court is not erroneous, capricious & perverse, the trial Court is considered all the relevant oral as well as documentary evidence and there is no need to interfere in the order of trial Court, appeal may be dismissed.

- (7) Considering the pleadings by both the parties, following issues are required to be decided for this appeal:-

ISSUES

- (1) Whether the appellant point out that the judgment and decree of civil suit is not just and proper but erroneous, capricious and perverse ?
 - (2) Whether the order of the trial Court requires any interference ?
 - (3) What order and decree?
- (8) My findings as to above issues are as follows:-
1. In Negative
 2. In Negative
 3. As per final order

REASONS

I have given my thoughtful consideration to the submission made by learned advocates of both the parties at length.

Issue No.1 to 3 :-

All these issues are interconnected with each other and in order to avoid repeatedly discussion of facts as well as evidence of the case and also for the sake of convenience, said issues are required to be discussed and decided jointly.

- (9) Before dealing with the above said arguments of learned advocate for the parties, at this stage, the ratio laid down by the Hon'ble Apex in the case of **H. Siddiqui V/s. A. Ramalingam, reported in A.I.R 2011 S.C 1491**, is required to be considered, wherein it is held that:-

"The provisions of O. 41 R. 31 provide guidelines for the appellate Court as to how the Court has to proceed and decide the case. The provisions should be read in such a way as to require that the various particulars mentioned therein should be taken into consideration. Thus, it must be evident from judgment of appellate Court that Court has properly appreciated the facts /evidence, applied its mind and decided the case considering material on record. It would amount to substantial compliance of said provisions if appellate Court's judgment is based on independent assessment of relevant evidence on all important aspect of matter and findings of appellate Court are well founded and quite convincing. Thus, the entire evidence must be considered and discussed in detail."

- (10) The ratio laid down by the Hon'ble Apex Court in the case of **Union of India Vs. Moksh Builders & Financers Ltd., reported in AIR 1977 SC-409**, is required to be considered, wherein it is held that:-

"Admission by a party is substantive evidence of the

fact admitted and admission duly proved are admissible evidence irrespective whether the party making them appear in the witness box or not and whether that party when appearing as witness was confronted with those statement in case it made a statement contrary to those admissions.”

Also the ratio laid down by the Hon'ble High Court of Gujarat **Pari Kantilal Lalbhai V/s Devchand Nathalal Patel, reported in 1966 G.L.R 1123**, is required to be considered, wherein it is held that :-

“When a party to a civil suit makes an admission in pleadings or in his evidence at the hearing of the suit, those admissions are conclusive and cannot be challenged.”

- (11) Looking to the entire evidence on record and looking to the deposition of the plaintiff, he has narrated all the facts of the plaint in his examination-in-chief and in his cross-examination on the page No-9,10,11,12,13,14 and page No.15, it is transpires that, the suit land is an ancestral property of Dayalbhai Morarbhai, and Dayalbhai Morarbhai had two sons namely Lallubhai Dayalbhai and Jagabhai Dayalbhai and after the death of Dayalbhai Morarbhai the property was divided between two brothers Lallubhai Dayalbhai and Jagabhai Dayalbhai. The present plaintiff is the heirs of Lallubhai Dayalbhai. Looking to the deposition of the plaintiff no.6-Balubhai Lallubhai Patel vide **Exh.88** and in his cross-examination stated that,

“લલ્લુભાઈ દયાળભાઈ તથા જગાભાઈ દયાળભાઈ વચ્ચે મિલકતોની વહેંચણી કરવામાં આવેલી. એ વાત ખરી છે કે, તકરારી સર્વે નંબરમાં પ્રતિવાદી નં.૨ ના ઘર પાસે ઉત્તર દિશામાં ૧૨ X ૨૪ નો રોડ આવેલો

છે. એ વાત ખરી છે કે આ રોડમાં પ્રતિવાદી નં.૨ ટ્રેક્ટર મુકતા આવેલા છે. એ વાત ખરી છે કે રોડની ઉત્તરે આશરે ૩૦ ફુટ જગ્યા છોડી તાર-ખુંટાનુ ફેન્સીંગ છે. એ વાત ખરી છે કે ફેન્સીંગ પુરુ થાય ત્યાંથી તે મિલકતમાં આંબા, સફેદ ખેર તથા લીંબુ વાવેલા છે. દયાળભાઈ મોરારભાઈ મારા દાદા હતા. એ વાત ખરી છે કે દયાળભાઈને બે દિકરાઓ હતા. દયાળભાઈ મોરારભાઈ ગુજરી ગયા બાદ તકરારી મિલકત તેમના બે દિકરાઓ નામે (૧) લલ્લુભાઈ દયાળજી તથા (૨) જગાભાઈ દયાળજીના નામે મિલકતો દાખલ થયેલી. સાહેબ જણાવે છે કે મારા પિતાની સ્વપાજિત છે. મારા પિતાને તકરારી મિલકત વેચાણથી કે બક્ષિસથી મળી હોય તેવો કોઈ પુરાવો મારી પાસે નથી.

તકરારી મિલકતના દક્ષિણ ભાગમાં આંબાના ઝાડ આવેલા છે તે ઝાડ અમારા કબજામાં છે. એ વાત ખરી છે કે તકરારી મિલકતમાં ઉત્તર તરફ રોડ આવેલો છે. તાર-ખુંટાનુ ફેન્સીંગ અમોએ આશરે ૧૫ વર્ષ પહેલા કરેલું. ફેન્સીંગ વખતે કોઈ માપણી કરેલી નહીં. ફેન્સીંગ કર્યું ત્યારે ઉત્તરે એક વસા અને દક્ષીણે ચારેક વસા જગ્યા રાખેલી.”

And looking to the Exh.78 village form no.8-A of Survey No.68/1 which is mentioned in the name of Sukhiben wd/o Lallubhai Dayalbhai, Chhibabhai, Laxmiben, Karshanbhai, Balubhai, Deviben as owner and occupier and other survey numbers also mentioned in Exh.78 and looking to the Exh.79 village form no.7/12, Survey No.68/1 which is mentioned in the names of Lallubhai Dayalbhai, Sukhiben wd/o Lallubhai Dayalbhai, Chhibabhai, Laxmiben, Karshanbhai, Balubhai, Deviben as owner and occupier. Looking to the Exh.80 record of rights, it is for the fragmentation act and then after removal of fragmentation.

Looking to the Exh.80 village form no.6, Exh.81 village form no.8-A of Khata No.227 and Exh.82 village form no.7/12, Survey No.68/1, which are mentioned in the name of Sukhiben wd/o Lallu Dayal, Chhibabhai, Laxmiben, Karshanbhai, Balubhai, Deviben as owner and occupier. Looking to the Exh.89-Notice given by heirs of Lallubhai Dayalji to the Mangubhai Chhotubhai Patel, Exh.-90-Notice given by the Balubhai Lallubhai Patel to the Jayantibhai Jagabhai Patel & Mangubhai Chhotubhai Patel through their advocate, Exh.91 village form no.8-A of Khata No.227 & Exh.92 village form no.7/12 of Survey No.68/1 which are mentioned in the names of Sukhiben wd/o Lallubhai Dayalbhai, Chhibabhai, Laxmiben, Karshanbhai, Balubhai, Deviben as owner and occupier.

Looking to the deposition of Jayantibhai Jagabhai Patel vide **Exh.107** and in his cross-examination, he states that,

"એ વાત ખરી છે કે, સર્વે નં.૬૮/૧ વાળી જમીનમાં મારી જરૂર-સી ચાલી આવેલ છે તેવું બતાવવા મારી પાસે કોઈ દસ્તાવેજ પુરાવો નથી. એ વાત ખરી છે કે, આ જમીન લલ્લુભાઈ દયાળભાઈના વારસોના નામે ચાલી આવેલ છે. એ વાત ખરી છે કે આ જમીન બાબતે વહેંચણી થયેલ હોય તે બાબતે મારી પાસે કોઈ લેખિત આધાર નથી."

"આ જમીનમાં મારી જરૂર-સી ચાલી આવેલી એના બાબતે મારું નામ રેકર્ડમાં ચઢાવવા માટે મેં કોઈ પ્રયત્ન કરેલ નથી."

"આ મીલકત મારી માલીકીની અગર તો વડીલોપાર્જીત હોય તો તે સબંધે મેં કોઈ દસ્તાવેજી પુરાવો રજૂ કર્યા નથી. એ વાત ખરી છે કે મારા

જવાબમાં જે પેઢીનામું બતાવેલ છે તે મુજબ દયાળભાઈ મોરારભાઈના બે સંતાનો લલ્લુભાઈ અને જગાભાઈ બે ભાઈઓ થાય છે. દયાળભાઈ મોરારભાઈની વડીલોપાર્જીત મીલકતમા તેના વારસો લલ્લુભાઈ અને જગાભાઈના નામ ચાલી આવેલ છે. "

" એવા કોઈ દસ્તાવેજ રજુ કરેલ જેમાં વાદવાળી જમીનનો કબજો મારા ભાઈ પ્રભુભાઈના નામે ચાલતો હોય, આ દાવાની જાણ મારા ભાઈ પ્રભુભાઈને નથી. એ વાત ખરી છે કે આ કામે મે વાદવાળી મીલકત મારા નામે ચાલતી હોય તેવું બતાવવા કોઈ દસ્તાવેજી આધાર રજુ કરેલ નથી. ખાતા નંબર ૨૨૭ માં વાદવાળી મીલકત સિવાય અન્ય મીલકતોનો સમાવેશ થાય છે. એ વાત ખરી છે કે, વાદવાળી મીલકતમાં મારી મીલકતની છેડે આવેલ હોય તે બતાવવા કોઈ પુરાવો રજુ કરેલ નથી.

"મને આંક-૯૧ ગામના નમુના નંબર ૮-અ બતાવવામાં આવે છે જે તા.૩૦/૧૧/૦૪ ની તારીખનો છે અને મે રજુ કરેલ છે તેમાં મારુ નામ દાખલ થયેલ નથી. "

It is transpires that the suit property is belongs to heirs of Lallubhai Dayalbhai and it is also transpires that plaintiff had not any evidence to show and suggest that the suit property was divided and he has also right over the suit property. It is also transpires that the defendant had never tried to enter his name in revenue record and defendant never challenged entry of the plaintiffs name and it is also transpires that the defendant had not produced any documentary evidence to show and suggest that he is also one of the owner of the suit property and looking to the Exh.91, it is admitted that his name was not mentioned in Exh.91 village form no.8-A and defendant also admitted that he is not

tendered any document to suggest that brother of the defendant Jagubhai was mentioned in the suit property. Looking to the deposition of Mangubhai Chhotubhai vide **Exh.153**, in his cross-examination he admitted that, he had not any space to park his tractor and kept his agriculture instruments and he also admitted that he kept his agriculture equipments in open land besides of their house in southern side and it is also transpires that he had not any documentary evidence to show and suggest that fencing was made by him, in that circumstances, it is transpires that, the fencing was not made by the defendant.

Looking to the deposition of defendant no.1 – Jayantibhai Jagabhai Patel, he admitted that the partition was made between the plaintiff and defendant and they all are cultivated land in their shares, in that circumstances, it is transpires that the partition was made prior to the filing of the suit and all are possessed their land as per the partition, in that circumstances, it is also not transpires that, the defendant had any right over the suit property and looking to the deposition of deft.no.2, he has stated that, he was purchased the suit property from the deft.no.1. Looking to the entire evidence on record, the deft.no.1 or deft.no.2 did not produce any sale deed which was taken place between the deft.no.1 and 2 pertaining to the suit land. In that circumstances, it is also not transpires that, the deft.no.1 had sold the property to the deft.no.2 and looking to the entire evidence on record, it is transpires that the only plaintiffs are owner and occupier of the

property and looking to the revenue record, it is transpires that, defendants name had never entered in revenue record and looking to the panchnama of Court Commissioner vide Exh.124, defendants were parked their tractor in the suit property, during the panchnama of court commissioner, it is mentioned that the tractor no.GJ-15-U-8293 was parked shed of 12 x 24 besides their house. Looking to the Exh.135, copy of RC Book of tractor no.GJ-15-U-8293it is on the the name of Mangubhai Chhotubhai Patel as owner. In that circumstances, it is transpires that the defendants are trying to encroach the suit property. Looking to the judgment of trial court, the trial court has discussed all the evidence record and appreciated oral as well as documentary evidence of the parties and trial court has rightly held that defendants are trying to usurp the possession. Looking to the entire evidence, it is transpires that the trial court has rightly decided the suit of the plaintiff.

Looking to the entire evidence on record, it is transpires that the trial Court has rightly considered all the evidence on record and reasons given by the trial Court is legal and valid and based on evidence given by both the parties, in that circumstances, the judgment and decree passed by the trial Court is not erroneous, capricious and perverse.

- (12)** Looking to the facts and circumstances of the case and re-appreciation of evidence which is on record, in view of aforesaid discussion, it is crystal clear that before passing

judgment and decree the trial Court has considered the above factual and legal aspects. The judgment of the trial Court is just and proper, it is not erroneous, capricious and perverse. Hence, I answer Issue No.1 and 2 in negative and following order is passed in the interest of justice.

-: ORDER :-

1. The present appeal filed by the Appellants-Defendants is hereby **dismissed**.
2. The judgment and decree passed by the Ld. Principal Senior Civil Judge, Navsari dated 30/06/2012, in Regular Civil Suit No.136/2004, is hereby confirmed.
3. The Appellants shall bear cost of present appeal.
4. Decree be drawn accordingly.
5. Record & Proceeding along with the copy of this judgment, be sent to the concerned trial Court.

Signed and pronounced in the open Court today
on 01st day of January, 2022 at Navsari.

Date :- 01/01/2022
Place:- Navsari.

Sd/-
[**Saranga Vinodchandra Vyas**]
2nd Additional District Judge,
Navsari.
Code No. - GJ00675