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	02-05-15

**IN THE COURT OF 3rd ADDITIONAL DISTRICT JUDGE,
MAHESANA AT VISNAGAR**

REGULAR CIVIL APPEAL NO.31 OF 2018

Exh. 48

Appellant:- (Orig. Plaintiff)

Jayantkumar Kantilal Pandya
Aged about 55 years,
Occupation: Priest of Shree
Hatkeshwar Mahadev Sansthan (Mandir),
Residing at: Shree Hatkeshwar Mahadev
Temple, Tal. Vadnagar,
Dist. Mahesana.

Versus

Respondents:- (Orig. defendants)

1. Gajendra Sukhlal Patel
Aged about 70 years,
Occupation: Agriculture,
Residing at: Gorvad Madh,
Vadnagar.
2. Chandulal Chimanlal Rami
Aged about 65 years,
Occupation: Retired,
Residing at: Opp. Zampa Kui,
Nr. Swaminarayan Temple,
Tal. Vadnagar, Dist. Mahesana.

3. Mayurbhai Duleray Pandya
Aged about 70 years,
Occupation: Advocacy,
Residing at: Kuva Pol,
Raipur, Ahmedabad.

(Notices to be served through
The Office of Shree Hatkeshwar Mahadev
Temple Trust).

Subject:- **Appeal under Section 96 of the Civil
Procedure Code.**

Appearance :-

J.J. Rajgor, L.A. for appellant.
H.A. Jha, L.A. for opponents.

JUDGMENT

1. The appellant / orig. plaintiff has filed the Regular Civil Suit No.55 of 2006 (Old Regular Civil Suit No. 03 of 1996) for getting decree of declaration and permanent injunction. In the said Suit, the plaintiff has claimed his rights as a permanent Priest (Pujari) cum Clerk of Shree Hatkeshwar Mahadev Trust, Vadnagar.
2. Upon due service of Summons and Notices of the Suit, the original defendants appeared and resisted the Suit by filing Written Statement

vide Exh.53.

3. After framing of Issues by the learned Trial Court, both the parties have submitted their oral as well as documentary evidences and after final hearing of both the parties to the Suit, the learned Trial Court was pleased to dismiss the said Suit vide its judgment and decree dated 29/09/2018. Being aggrieved by and dissatisfied with the judgment and decree dated 29/09/2018 passed by the learned Principal Civil Judge, Kheralu in Regular Civil Suit No. 55 of 2006, the appellant - original plaintiff has preferred the present Appeal under Section 96 of the Civil Procedure Code on the grounds as mentioned in the memo of Appeal.
4. Learned Advocates Shri P.K. Pandya & Mr. Parekh on behalf of the appellant/ original plaintiff and learned Advocate Shri H.A. Jha on behalf of the respondents/ orig. defendants have argued at length.

5. Considering the given submissions of the parties to the Appeal as well as record of Regular Civil Suit No. 55 of 2006, the following points are emerged for my consideration and determination for final disposal of this Appeal on merits.

POINTS

1. Whether judgment and decree dated 29/09/2018 passed by the learned Principal Civil Judge, Kheralu in Regular Civil Suit No.55 of 2006 is illegal, unjust, erroneous, perverse and against the settled principle of law?
 2. Whether any interference of this Court is necessary in the aforesaid impugned judgment and decree of Trial Court in the said Suit?
 3. What order?
6. My findings to the above points are as under:
1. In negative.
 2. In negative.
 3. As per final order.

-:: R E A S O N S ::-

Point Nos.1 & 2 :-

For the sake of convenience, both the parties are referred to as plaintiff and defendants. The facts leading rise to this appeal briefly stated are as under:

As per the plaint, the appellant is the Priest (Pujari) and Clerk of Shree Hatkeshwar Mahadev Trust, Vadnagar and he was appointed on this post from 21/04/1984. The institution Shree Hatkeshwar Mahadev has given several duties, rights and powers for the protection of interest of the said institution. The appellant / plaintiff was authorized to get physical possession of connected rooms, guest house, conference hall and other adjoining assets of the institution of the said assets since long. Despite of this, on 25/09/1993, the respondents / defendants with their supporters illegally entered into the Suit premises and forcibly dispossessed the plaintiff and his family members from the room, where he was residing

with his family and then got illegal possession of the said room and other assets situated in the compound. Due to said illegal action, the plaintiff lodged criminal complaint under Sections 386, 452 and 341 against the defendants before the Vadnagar Court. Thus, the defendants had restricted the plaintiff in discharging his duties towards the institution and tried to remove the plaintiff from his post. So the plaintiff has filed the Regular Civil Suit for declaration and permanent injunction against the defendants.

After service of the process, the defendants appeared through their learned Advocate and filed Written Statement at Exh.53 contending the claims and averments of the plaint. The defendants have further contended that the plaintiff has not received the sanction of the Charity Commissioner as per the Section 80 of the Trust Act before filing Suit, so this Court has no jurisdiction to entertain the Suit, that the appointment of the plaintiff as Clerk was

cancelled by them and one Narottam Vitthaldas Patel was appointed as Clerk on 08/11/1989 on the place of plaintiff and all the account books were handed over to the said Narottambhai on 18/03/1990 so the plaintiff was not duty bound to perform his duty as Clerk. That, the plaintiff is obliged to perform his duty as a Pujari in the subordination of the trustees and secretary and he was not duty bound to protect the interest of the institution. That, they have not given any power or authority to the plaintiff. That, the plaintiff is not empowered to perform as trustee and to possess any property of the institution against the willing or consent of trustees for his personal interest. That, the plaintiff is only the servant of the institution and has no right to perform as trustee in the management of the institution. That, the duties of the Pujari are not mentioned as the rights of Pujari in the constitution of the institution. That, the plaintiff is not serving as a successor of his

forefathers on the post of Pujari. That, there were so many complaints from the public about the misbehavior of the plaintiff. That, the plaintiff was not following the instructions of the trustees and secretary since long time. That, all properties were in possession of the trustees and the plaintiff is not in possession of a single property of institution. That, only plaintiff has right to reside in one room with kitchen and store room as Pujari, but he was illegally permitted his maternal uncles Vasudev bhai, Girish bhai and their family to live in the said room and thus disobeying the instructions of Secretary and Charity Commissioner. That, the plaintiff is intending to possess other rooms illegally for residing his relative and for this purpose, he has filed present Suit. That, against the rules, will and permission of the institution, plaintiff and his relative are illegally collecting money from the devotees coming in the temple. That, on restricting him, the plaintiff with his

family members are abusing trustees and employees and are filing false complaints. That, the plaintiff is restricting the devotees in entering the temple for guidance and misleading them for getting money from them. Further, the defendants have contended that, despite the instructions of the Assistant Charity Commissioner to hand over the possession of Guest House and rooms, the plaintiff has not handed over the possession to the defendants. That, the plaintiff has suppressed the material facts before the Court, and therefore, the present Appeal is not tenable and is liable to be dismissed and hence to dismiss the same.

Thereafter, the plaintiff filed Counter Affidavit to the Written Statement filed by the defendants, wherein he has repeated his claim and averments of the plaint and denied all the contentions raised in the Written Statement by the defendants.

While hearing of the Appeal, Mr. P.K. Pandya & Mr. Parekh, learned Advocates for the appellant have argued at length and relied upon the various citations reported in; **1963 AIR 1124** - Supreme Court of India in the case of Collector of Customs, Calcutta vs East India Commercial Co. Ltd., wherein the respondent imported 2000 drums of mineral oil and the appellant confiscated 50 drums and imposed a personal penalty. The appeal of the respondent was dismissed by the Central Board of Revenue against which the respondent filed a petition under Art. 226 of the Constitution in the Calcutta High Court, wherein the Full Bench of the High Court held that, the High Court had no jurisdiction to issue a writ against Central Board of Revenue. The High Court held that, it had jurisdiction to pass an order against the appellant. The Hon'ble Supreme Court held that, if the appellant authority is beyond the territorial jurisdiction of the High Court, it would not be open to it to issue a writ to the

original authority, which is within its jurisdiction so long as it cannot issue a writ to the appellate authority. However, facts of the present case are different and the parties have no dispute of territorial jurisdiction, and hence, with due respect, ratio laid down by the Hon'ble Supreme Court would not be applicable to the facts of the present case.

AIR (SC) 1947-0- 2068- Harbhajan Singh & Others.

As per the facts of the said case, the disputed property was belonged to defendant No.4 and he sold the same to the defendant Nos.1 to 3 by registered sale deed. The appellant who is the daughter of the defendant No.4 instituted the Suit through her guardian claiming her right to pre-empt. The Suit was decreed by the trial Court, which was challenged before the first appellate Court, but the appeal was dismissed by the appellate Court. Thereafter, the appeal was preferred to the High Court challenging the

decree. The Punjab Pre-emption (Repeal) Act, 1973 received the assent of the Governor of Punjab on April 6, 1973 and was published in the Punjab Gazette on April 9, 1973. The High Court allowed the appeal and dismissed the Suit. The order of the High Court was challenged before the Hon'ble Supreme Court, wherein it has been held that, if the High Court were to confirm the decree allowing the Suit for pre-emption, it would be passing a decree in a suit for pre-emption, for, when the appellate court confirms a decree, it passes a decree of its own, and therefore, the High Court was right in allowing the appeal. However, the facts of the present case are different and there is no any repealing of any Act during the judicial process and so, with due respect, the ratio laid down by the Hon'ble Supreme Court would not be applicable to the facts of the present case.

Laws (SC) 1962-3-39 in the case of Maharaj Jagat Bahadur Singh vs. Badri Prasad Seth.

AS per the facts of the above case, the appellant is the landlord and the respondent is the tenant of premises known as Kanzor Hall in which, respondent was running cinema known as Revoli theatre or Reevolt cinema. On instruction of the local authority to repair pillar, he submitted an application to Controller directing the respondent to hand over the possession of the property for repairing purpose, but the said application was contested by the respondent. However, these facts are different to the facts of the present case and the ratio laid down by the Hon'ble Supreme Court would not be applicable to the present case.

Laws (GTH) 1989-9-9; Jasuben Madhusudan Pandya Vs. Manharlal Narandas Bhatt.

As per the facts of the cited case, during the proceedings of the Suit, plaintiff submitted application at Exh.151 to draw preliminary issue of res-judicata. However, in the present

case, none of the parties have filed such kind of application. So with due respect the ratio laid down by the Hon'ble High Court would not be applicable to the facts of the present case.

AZR (SC) 1981 -0-1113; M.M. Quasim versus Manohar Lal Sharma; in the said case, the owners/ landlords had filed Suit to get the possession of the Suit shop for their requirement i.e. to open his clinic and also on the ground that the tenant has committed default in payment of rent for a period of two months and more. However, these facts are different to the facts of the present case and the ratio laid down by the Hon'ble Supreme Court would not be applicable to the present case.

LAWS (GJH) -1993-12-16 - State of Gujarat Vs. Jaipalsingh Jaswantsingh Engineers And Contractors.

As per the facts of the cited case, the respondents executed agreement with the

appellants/ Government for the construction work of irrigation project No.IV at Rajpipla to complete the work, but it was completed late by two years due to alleged some default on the part of Government. Further, according to the opponent, the Government prepared provisional bill in the month of October- November, 1987, however as the same did not include about 14 claims, the opponent requested the concerned Executive Engineer for preparing the final bill by including the said claims, which came to be rejected. Then Superintending Engineer also rejected the same. In these circumstances, the opponents filed an application u/s. 37(4) of Arbitration Act praying for an implementation and operation of clause 52 of the agreement, to refer the disputed claims to the Arbitrator seeking extension of time limit placed by the said agreement. The Trial Court granted application on merits and extended the time as prayed for. Dissatisfied with the said order, the appellant filed Civil Revisions Application

before the Hon'ble High Court of Gujarat. Hence, the facts of the above cited case are different from the present case. So with due respect the ratio laid down by the Hon'ble High Court of Gujarat is not applicable to the present case.

LAWS (GJH) -1992-3-3; Haji Osman Haji Ajij Vs. Memon Bai Jenam Kasambhai.

As per the facts of the cited case, the parties of the Suit have disputed for movable and immovable properties as legsl heirs of deceased Haji Ajij Taher Mohmad Chamadia. However, the facts of the above cited case are different from the present case. So with due respect the ratio laid down by the Hon'ble High Court of Gujarat is not applicable to the present case.

2021 (1) GLH 289; Sardar Sarovar Narmada Nigam Ltd., Versus Rupdevsinhji Dolatsinhji Gohil-Decd. and Anr.

In the above cited judgment, the Hon'ble High Court of Gujarat held that, it is incumbent

upon the Trial Court to apply its mind to the question of admissibility of documents before they could be said to be admitted in evidence. It is duty of the Court to exclude all irrelevant as inadmissible evidence even if no objection has been taken by the opposite side. Determining the Suit without first determining the admissibility of document as evidence is not proper. I have due respect for the ratio laid down by the Hon'ble High Court. Perusing the impugned judgment and decree, the Trial Court has given proper weightage to the exhibited documents for deciding the issues. Moreover, as a first appellate Court, this Court has also discussed about the exhibited documents and not the tentative exhibited documents. This Court has while deciding the present appeal given weightage only to the exhibited documents and not to the tentatively exhibited documents. Thus, this Court has fully followed the ratio laid down by the Hon'ble High Court of Gujarat.

The crux of their arguments are that, the appellant is the original plaintiff. The plaintiff filed the Regular Civil Suit No.3 of 1996 for permanent injunction and declaration and also filed injunction application Exh.5 for temporary injunction. The Trial Court has partly allowed the injunction application till 29/04/2000 against the defendant. The Trial Court has committed grave mistake relying upon the tentative exhibited documents while deciding the Suit as such tentative exhibited documents have no evidentiary value. The Trial Court wrongly dismissed the Suit. Despite the dismissed of Suit, the defendants have no filed any execution petition. The defendants have illegally abolished the Suit properties. The defendants have illegally dispossessed him from the Suit properties. The tenure of defendant No.2 Gajendra Sukhlal Patel as a Secretary / Trustee ended in the year of 1993. The defendant No.2 was not re-appointed after 1993 as a Secretary / Trustee. The Secretary was not

authorized to issue notice or to dismiss him or to proceed against him. The appointment as a Pujari cum Clerk was on permanent base. The defendants illegally and wrongfully dismissed him as a Pujari-cum- Clerk. The Suit was dismissed at first instant due to not remaining present of the plaintiff. The order of dismissal was set aside by the Hon'ble High Court of Gujarat. Despite of the Stay/ Injunction order of the Hon'ble High Court, the defendants have illegally dismissed him from the post of Pujari-cum-Clerk on 6/6/2014. Due to illegal action, he filed contempt petition before the Trial Court. The cross Suit No.13 of 1997 was filed by the defendant which was finally withdrawn by the defendants. The defendants totally failed to prove the contentions raised in their Written Statement. Lastly, learned Advocates of the plaintiff have contended that, the Trial Court has not properly appreciated evidence on record while deciding the issues between the parties and has

committed grave mistake while dismissing the Suit. Hence, it is prayed to allow the present appeal by setting aside the judgment and decree passed by the Trial Court.

On the other side, Mr. H.A. Jha, learned Advocate appearing on behalf of the respondents has also advanced his arguments at length and relied upon the judgments reported in;

AIR 1993 Supreme Court - 1163; Kanbi Manji Abji and others v. Kanbi Vaghji Mavji and others.

As per the facts of the cited case, the plaintiff filed Suit to claim right to have idols and portraits in dormitory to read books in Pith and substance seeking alteration in scheme of Trust with object to establish superiority of their "Sect". The Hon'ble Supreme Court held that, the respondents - plaintiffs are indirectly trying to interfere with the management of the temple. The main purpose of the Suit filed by the followers of

Abji Bapa is to establish the superiority of their Sect and impose their way of thinking and worships in the management of the temple and as a consequence in the administration of the Trust. In this view of the matter, there is no escape from findings that, the Suit falls within the purview of Section 50 of the Act and as such the Trial Court rightly dismissed the same. However, the parties of the Suit have not such kind of dispute. So with great respect the ratio laid down by the Hon'ble Supreme Court would not be applicable to the facts of the present case.

GLR 2014 (1) - 862; Heirs & L.Rs. of Ramangiri Amritgiri Goswami & Ors. v. Government of Gujarat & Ors.

As per the facts of the cited judgment, the plaintiff filed Suit for declaration of hereditary rights as Pujari without permission of Charity Commissioner. In the above judgment, the Hon'ble Gujarat High Court while dismissing

the appeal held that, when the effect of the prayers was an interference in the management of the temple and as a consequence in the administration of the Trust, and therefore, such suit would fall within the purview of Sec.50 of the Trust Act and was not maintainable. However, in the present Suit, the appellant / plaintiff has not claimed any hereditary right as Pujari and the defendant has not submitted any application before the Trial Court to frame preliminary issue on legal jurisdiction of civil court and so with due respect, the ratio laid down by the Hon'ble High Court would not be applicable to the facts of the present case.

While opposing the arguments and submissions of plaintiff's Advocates, learned Advocate for the respondents Mr. H.A. Jha has submitted his Written Arguments at Exh.45 and has also argued orally at length. Learned Advocate for the respondents has also relied upon the judgment of the Hon'ble Supreme Court in the case of

Kanbi Manji Abji & Ors. vs. Kanbi Vaghji Manji & Ors., reported in AIR 1993 (SC) 1163. The crux of his oral as well as written arguments are that; the grounds stated in appeal are not proper and acceptable. The contentions raised in appeal are contrary to the oral as well as documentary evidences of the Suit. The contents of Para. 1 and 2 of appeal are baseless. The contents of para 3 related with Issue No.5 (A) and Issue Nos.7 to 9 are not sustainable with the evidence on record. The cause of action is not arisen as per Para 4 of appeal memo. The Trial Court has rightly decided that, the plaintiff is not in possession of the Suit properties or any right upon the suit properties. The defendant has issued legal notice to the plaintiff before dismissal and hence the Trial Court has rightly decided the dismissal of plaintiff as legal and proper. The Trial Court has rightly decided issues between the parties with proper appreciation of evidence. As per the Constitution of

institution vide Exh.432, the plaintiff was appointed as the employee and various duties and liabilities were mentioned in Exh.462. Out of 18 duties mentioned in Exh.462, there is not a single duty of the plaintiff to protect the suit properties. The plaintiff has no any right as per the constitution of institution produced vide Exh.432. The plaintiff has not produced any documents showing his rights. As per the constitution produced vide Exh.462 as a paid employee, the plaintiff is not entitled to claim any right or duties upon the Suit properties. The plaintiff has filed this Suit without obtaining sanction of the Charity Commissioner as per the provisions of Bombay Public Trust Act, and therefore, the plaint is not tenable as per provision of Sec. 50 and Section 80 of the Bombay Public Trust Act. Lastly, at the end of his argument, learned Advocate for the respondents submitted to dismiss the present appeal and to confirm and

upheld the judgment and decree passed by the learned Trial Court.

Now, perusing the original record and proceedings of the Suit, oral evidence of plaintiff is recorded at Exh.486 and the plaintiff has submitted documentary evidence vide Exh.431 to Exh.476, Exh. 602, 603, Exh.614 to 639, Exh.679 to 690 and Exh.720 and 721. On the other hand defendant No.2 Gajendra Sukhlal Patel has advances his oral evidence at Exh.599 and submitted his documentary evidence at Exh.572 to 598, Exh.642 to 645, Exh.650 to 653, Exh.659 to 664, Exh.700 to 705 and Exh.723 and 724.

Now, discussing the findings of the Trial Court on various important issues between the parties to the Suit, Issue No.1 is Whether the plaintiff proves that he is appointed as permanent Pujari-cum-Clerk by the Temple institution since 21-04-1984 till today? Issue No.2:- Whether the plaintiff proves that, he is

duty bound to work for the institution as per rules and to protect the interest of the institution? Issue No.5:- Whether the plaintiff proves that, he has right to possess rooms, guest house, conference room, temple house etc. situated at temple complex as per the rules of institution and he is duty bound to care for theses? Issue No.7:- Whether the defendants prove that, the suit is not tenable without prior permission of Charity Commissioner? and Issue No.11:- Whether the defendants prove that, the plaintiff is not continuing as employee and he is not entitled to continue his possession of room?, were determined and answered in negative.

Whereas Issue No.4 Whether the plaintiff proves that, he is entitled to continue "PUJA PROCEDURE", Issue No.8 is Whether the defendants prove that only plaintiff along with his family is entitled to reside in the room, kitchen and store room allotted to him? And he is permitting his brothers, maternal uncles-

aunts in these rooms and due to this he is not entitled to continue his possession upon these rooms?, Issue No.9 Whether the defendants prove that against the instructions of the Trustees, the plaintiff is not performing his duty and he is mis-managing his duty as a sole employee?, were determined and answered in partly affirmative by the learned Trial Court.

Whereas Issue No.6- Whether this Court is competent to entertain the present Suit? Issue No.10 Whether the defendants prove that, plaintiff is not employee of the institution and so he is not entitled to continue his possession of room allotted to him earlier?, were determined and answered in negative by the learned Trial Court and upon the above findings learned Trial Court has disallowed the Suit.

First of all, discussing the documentary evidence recorded by the appellant during the course of the evidence before the learned Trial Court, the appellant mainly relied upon the

Appointment letter dated 21/04/1984 produced at Exh.431, which reflects that, the appellant was appointed as Pujari-cum-Clerk on 21/04/1984 at monthly salary of Rs.201/- by the opponents, but looking to the contents of the appointment letter, he was not authorized and empowered to manage any properties, assets of the institution and he was not appointed on permanent base. Looking to Para 8 of the letter produced at Exh.437, Assistant Charity Commissioner had instructed Gajendra Sukhlal Patel, Secretary of the institution to allot one room and kitchen to Pujari for his living. In this letter, it was also observed that, relative and family members of Pujari were holding illegal possession of rooms pertaining of Guest House and the Secretary and Trustees were instructed and empowered to get the possession of the same. So it transpires that, relatives and family members of the appellant were in illegal possession of rooms. Perusing the document at Exh.462, various duties of

Pujari are described in detail, but in these duties Pujari is not empowered or authorized to possess guest house, rooms and other premises of the institution. As per the letter issued by the Secretary of Institution at Exh.465, the appellant was instructed to vacate the rooms and guest house from the possession of his relatives and family members.

So far as the oral evidence of the appellant is concerned, only the appellant himself has recorded his deposition. So discussing the important contents of the deposition at Exh.486 recorded by the appellant Jayantkumar Kantilal Pandya in his Chief Examination in the form of affidavit, he has averred that, he was appointed as Pujari-cum-Clerk by the Temple institution on 21/04/1984, that the duties, rights and powers as a Pujari-cum-Clerk were specified in the constitution of the Trust, which is produced at Exh.462 however it is exhibited during his cross-examination that he was empowered and authorized to hold the

physical possession and administration of guest house, rooms and all the properties of temple, that three rooms at ground floor were allotted to him for his residence. So far as the important contents of cross-examination of appellant is concerned, he has admitted the constitution of the temple institution, he has admitted that he is living in one drawing room, one store room and one kitchen, he has admitted that Assistant Charity Commissioner has instructed me not to allow his maternal uncle, brothers and family members to reside in the temple premises, he has admitted that only the duties are mentioned and rights are not mentioned in the constitution at Exh.462.

Thus, looking to the whole deposition of the appellant, he has mainly relied upon the constitution, which is exhibited during his cross-examination as Exh.462. However, perusing the whole document of Exh.462, there is not a single word to empower, authorizing the appellant to hold the possession or to

administer the guest house, rooms and all the properties of temple institution. Even though, he has indirectly claimed his rights in the form of his duties upon the same. Thus, the appellant has not any right upon all the properties except three rooms one drawing room, one kitchen and one store room, where he is living with his family.

I have carefully considered the submissions made by the learned Advocates of both the sides and gone through the original record and proceedings of the learned Trial Court. Looking to the impugned judgment passed by the learned Trial Judge, he has elaborately discussed in his judgment about oral as well as documentary evidence produced by both the sides.

I have considered the rival submissions and having considered the impugned judgment, it clearly emerges that, the claims and defences taken up by the appellant in the present appeal are identical as taken up by the plaintiff in

the trial proceedings. The same have, in my opinion, been effectively dealt with the learned Trial Judge in the impugned judgment. The learned Trial Judge has in fact, considered and carefully interpreted the law in this regard and context of the Suit and rightly decided the issues between the parties while coming to his findings against the plaintiff. The impugned judgment is a well reasoned, well written judgment and has carefully dealt with all claims and defences taken up by the plaintiff. In the light of the findings arrived at by the learned Trial Judge, I find the same not to warrant any interference herein. The appellant has failed to show any valid and sustainable case for appeal and do not find any material, which is pointed out to me from the records, which would make me come to conclusion that, the learned Trial Judge has erred in dismissing the plaintiff's suit. In view of the above circumstances, I find that the impugned

judgment does not deserve to be interfered with.

On perusal of the impugned judgment in the light of the aforesaid discussion and in the ye of re-appreciation and re-examination of the evidence, which is on record, it is the view of this Court, that the trial court has not committed any error in holding that, the plaintiff has miserably failed to prove his case for declaration and permanent injunction and the protection of the Suit properties as alleged in the plaint. It is crystal clear that, before passing the decree against the plaintiff, the learned Trial Court has rightly considered the oral as well as documentary evidence, which are on record. Therefore, the impugned judgment and decree passed by the learned Trial Court against the plaintiff is just, proper and cannot be said to be erroneous, capricious and perverse. Hence, I reply Point Nos.1 & 2 in negative.

In view of the above said detailed discussion, findings arrived at, reasons recorded and observations made, the present Appeal is required to be dismissed and it deserves to be dismissed. Hence, this Court is passing following orders.

POINT NO.3:-

In view of the above discussions, findings arrived at, reasons recorded and observations made, I tend to answer Issue No.3 as under:

-: O R D E R :-

1. The Regular Civil Appeal No.31 of 2018 is hereby ordered to be dismissed.
2. The judgment and decree dated 29/09/2018 passed by the learned Principal Civil Judge, Kheralu in Regular Civil Suit No. 55 of 2006 is hereby confirmed and upheld.
3. Looking to the facts and circumstances of

the case, no order as to cost.

4. Decree be drawn accordingly.
5. Original Record and Proceedings of Regular Civil Suit No.55 of 2006 is hereby ordered to be sent to the concerned trial court along with the copy of this Judgment.

Signed and pronounced in the open Court today
on this 20th day of March, 2021 at Visnagar.

[JAYENDRAKUMAR NAVNITLAL VYAS]
CODE NO.GJ00530
3rd Additional District Judge,
Mahesana at Visnagar.