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**IN THE COURT OF 5TH ADDITIONAL DISTRICT
JUDGE, BHARUCH AT ANKLESHWAR.**

REGULAR CIVIL APPEAL NO. 24 / 2021

EXH. :

Appellant

(Original Plaintiff)

- Lillaben Jamiyatram Patel**
age : 60 years,
occupation : Business
residing at : Olpad, Zapa faliya,
Tal : Olpad, District : Surat,
through her POA
Dhananjay Bhalchandra Gor,
age : 71 years,
occupation : Retired,
residing at : Olpad, Zapa faliya,
Tal : Olpad, District : Surat

Vs.

Respondent

**(Original
Defendant)**

- Kanubhai Jamiyatram Patel,**
age : adult, occupation : business ,
agriculture
- Maheshbhai Jamiyatram Patel,**
age : adult,
occupation : agriculture
- Jivkorben Jamiyatram Patel,**
age : 80 years,

**occupation : House wife,
no. 1 to 3 residing at :
village : Rayma, Tal : Hansot,
District : Bharuch.**

**4. Bhanuben Dineshbhai Patel,
age : 65 years,
occupation : House wife,
residing at : Village : Wadhwan,
Tal : Hansot, District : Bharuch.**

**5. Madhuben Prafulbhai Pandya,
age : 65 years,
occupation : House wife,
residing at Village : Shera,
Tal : Ankleshwar,
District : Bharuch.**

**Sub. : Appeal U/S 96 of CPC, 1908 against the Judgment and
Decree passed by the Ld. Additional Civil Judge of
Ankleshwar in RCS No. 219/2009 dated 22/02/2018.**

APPEARANCE:

Ld. Advocate Mr. M.S.Patel for the Appellant.

Ld. Advocate Mr. A.T.Panwala for the Respondent no.1

Ld. Advocate Mr. T.D.Joshi for the Respondent no.2 to 5.

:: JUDGMENT ::

1. The appellant (Original plaintiff), being aggrieved and dissatisfied with the judgment & decree passed by the Ld. Additional Civil Judge of Ankleshwar (herein after referred to as Ld. Trial court) in Regular Civil Suit No. 219/2009 on

22/02/2018 has preferred this appeal U/s. 96 of Civil Procedure Code.

For the sake of convenience and brevity, the parties shall be hereinafter referred to in this judgment as per their original status in the RCS no.219/2009. The suit preferred for Partition and declaration.

2. The brief facts of the plaintiff's case are that, defendant no.1 & 2 are brothers of plaintiff, whereas defendant no.3 is mother of plaintiff, and defendant no.4 & 5 are sisters of plaintiff.
- 2.1 That suit properties situated at village : Sagad, Sub : District : Ankleshwar, District : Ankleshwar bearing block no. 131, 990, and panchayat no. 886, 887, 892 and 909 are ancestral undivided properties. Plaintiff's father expired on 18.8.1996 and at this time plaintiff was minor and hence in revenue record of the suit properties, name of plaintiff's mother was entered as guardian of the plaintiff. Thereafter, plaintiff's mother wrongly agreed for deletion of the name of the plaintiff from the revenue record of the suit properties, and hence name of the plaintiff was deleted from the revenue record of the suit properties. A minor on attaining majority can deny the acts done by the guardian. Thus, plaintiff have undivided share in the suit properties. However, defendants are denying share to the plaintiff in the suit properties. Hence, plaintiff had issued notice to the defendants. However, defendants are denying share of the plaintiff in the suit properties. So, plaintiff have preferred present suit.

- 2.2 The reliefs prayed by the plaintiff are that, (i) declare that plaintiff has 1/5 share in the suit properties, and partition be ordered and share of the plaintiff be separated and possession of the same be handed over to the plaintiff, (ii) any other and further relief as may deem fit.
3. Defendant no.1 have filed written statement vide exh.12, wherein the say of defendant no.1 is that, suit is barred by limitation, as partition of suit properties have taken place in the year 1986. As per oral partition suit property bearing no.131 came to share of defendant no.1, suit property bearing no.990 came to share of defendant no. 1 to 3, whereas suit properties bearing no.886, 887, 892, and 909 came to share of defendant no.1 & 2. Plaintiff and defendants were major at the time of said partition. After having ratified the said partition, the present suit after lapse of 23 years is preferred just to harass defendant, and hence suit is not maintainable. Till filing of the present suit, plaintiff never raised any dispute as to said partition. The suit is bad for non-joinder of necessary parties, as legal heirs of deceased pravinaben are not joined as party in the present suit. Plaintiff waived her right, as defendant being her brother, and defendant as brother have fullfilled all his obligations and in the year 1986 had given aid of Rs.1,00,000/- to plaintiff and hence plaintiff has no share in the suit properties. Hence, present suit be rejected.

4. The issues framed by Trial Court in R.C.S. No. 219/2009 vide Exh. 19 are as under :

1. Whether the plaintiff proves that she is entitled to the 1/5th part of the share in the below mentioned properties :
 - a) Property vide Survey no. 131, Area 2-76-20 Aakar- 24-30, of Sub District : Sajod, Taluka : Ankleshwar, District : Bharuch.
 - b) Property vide Survey no. 990, Area 1-02-18 Aakar- 11-00, of Sub District : Sajod, Taluka : Ankleshwar, District : Bharuch which was registered in the Revenue Department ?
 - c) Property vide Survey no. 886,887,892, and 909 of Sub District : Sajod, Taluka : Ankleshwar, District : Bharuch.
2. Whether the plaintiff proves that on dated 15.08.1969 the mother of the plaintiff had taken wrongful consent of the plaintiff and cancelled her name from the revenue records ?
3. Whether the defendant proves that a family settlement took place in the year 1986 according to which the rights of the plaintiff have already been decided and relinquished by her ?
4. Whether the defendant proves that when the family settlement took place in the year 1986, the plaintiff did not took any objection rather acquiescened and gave her consent before the Talati cum mantri of Ankleshwar for the settlement ?
5. Whether the defendant proves that he gave Rs,1,00,000/- to the plaintiff on account of the family settlement in 1986 between the plaintiff and defendant no.1 ?
6. Whether the suit of the plaintiff is bad for non-joinder of necessary parties ?

7. Whether the suit of the plaintiff is barred by law of limitation ?
 8. Whether the plaintiff is entitled to the reliefs as prayed for in the plaint ?
 9. What is the final order and decree
5. Findings of trial Court in aforesaid issues are as under :
1. In negative.
 2. In negative.
 3. In affirmative.
 4. Partly in affirmative.
 5. In negative..
 6. In affirmative.
 - 7..In affirmative.
 8. In negative.
 9. As per final order.
6. The evidences produced by the plaintiff in the Suit is as follows :

Oral evidences :

Sr. No.	Exh.	Description
1.	23	Deposition of Plaintiff Lillaben Jamiyatram Patel
2.	26	Deposition of Dhananjay Bhalchandra Gor.

Documentary evidences :

Sr. No.	Exh.	Description
1.	T-54	Copy of village form no.7/12 of property bearing

		survey no.131
2.	T-55	Copy of village form no.8A of account no.101, (khedut khatavani-216)
3.	T-56	Copy of village form no.7/12 of property bearing survey no.990
4.	T-57	Copy of village form no.8A of account no.542, (khedut khatavani-216)
5.	T-58	Copy of village form no.6
6.	T-59	Office copy of notice issued to defendant no.1
7	T-60	Office copy of notice issued to defendant no.1
8	T-61	Application given by plaintiff to Collector Bharuch for succession entry.

Plaintiff have produced closing purshis vide exh.28.

7. The evidences produced by the defendant in the Suit is as follows :

Oral Evidence

Sr. No.	Exh.	Description
1	35	Deposition of Defendant No. 1 Kanubhai Jamiyatram Patel

Documentary Evidence

Sr. No.	Exh.	Description
1	T-47	Copy of entry no.2967 of village record.
2	T-48	Copy of village form no.6
3	T-49	Copy of form no.7 of property bearing survey no.990
4	T-50	Copy of form no.7 of property bearing survey no.131
5	T-51	Copy of form no.7 of property bearing survey no.155

6	T-52	Copy of reply given to the notice issued by plaintiff.
7	T-53	Postal acknowledgement regarding receipt of reply by plaintiff.

Defendant have produced closing purshis vide exh.42.

8. Thereafter, both the parties were heard, and then the judgment and decree dismissing the suit of the plaintiff was passed.
9. Being aggrieved by the said judgment and decree of Ld. Trial Court, the plaintiff have preferred this appeal.
10. The process of the appeal was duly served upon the respondent, and respondent have appeared in the matter by engaging Ld.Advocate.
11. Ld. Advocate for the appellant/plaintiff submits that, it is admitted that suit properties are ancestral properties. Plaintiff's mother against the interest of the plaintiff, got deleted the name of the plaintiff from the record of the suit properties, while plaintiff was minor. As said agreement being against the interest of the minor is null and void. Plaintiff have not ratified the said agreement on attaining majority. Hence, plaintiff do have 1/5 th share in the suit properties. Plaintiff had served notice dated 28.05.2009 & 18.5.2009 to the defendant no.1 & 2 claiming her share in the suit properties. However, as defendant no.1 & 2 did not comply the said notices, plaintiff had preferred said suit. Ld. Trial Court have failed to appreciate that property of minor cannot be alienated. Ld. Trial Court have failed to appreciate the

oral evidence of the plaintiff. Plaintiff on having knowledge that her name is deleted from the record have immediately preferred the suit, further revenue record prohibited by law can be challenged at any time and cannot be said to be barred by limitation. Plaintiff have proved their case, and hence the judgment of Ld. Trial Court being erroneous be set aside.

12. Respondent no.1/Defendant no.1 have filed written arguments vide exh. 10, wherein the say of the respondent is that, partition of properties was recorded in revenue record in the year 1986. Plaintiff had attained majority at that time and plaintiff knew of said partition, however kept quiet for long period and have preferred suit after 23 years. Further, plaintiff's mother have relinquished the right of the plaintiff in the year 1969, and revenue entry no.2967, dated : 15.8.1969, of said relinquishment is mutated in the revenue record. Plaintiff's suit is barred for absence of necessary parties. From mother's admission it transpire that rights of even other daughters are also waived by the mother. Plaintiff had preferred application T-61 before collector for re-examining the deletion of name of the plaintiff from the record, on the basis of the consent of the plaintiff's mother. Plaintiff have not stated the date of said application and decision of the collector in this regard. Plaintiff have not come with clean hands. Plaintiff in her cross examination admits that partition of the suit properties have taken place. Plaintiff on attaining majority on coming to know of the partition, have not preferred any suit within period of limitation, other sisters have not raised any dispute as regards said partition. Plaintiff have not joined legal

heirs of deceased pravinaben and hence suit is bad on ground of absence of necessary parties. Suit is time barred. Plaintiff is not entitled for the reliefs prayed for. Hence, appeal be dismissed.

None have remained present for arguments on behalf of respondent no.2 to 5.

13. Heard. Read the evidence produced. On the basis of evidence produced and arguments advanced following issues arose for my consideration.

Issues.

1. Whether Plaintiff is entitled for share in the suit properties ? If yes, what share ?
 2. Whether suit is barred by law of limitation ?
 3. Whether suit is bad on the ground of non-joinder of necessary parties ?
 4. Whether the judgment & decree passed by Ld.Trial Court is erroneous and deserves to be set aside ?
 5. What order and decree ?
14. My findings of the above issues are as follows, the reasons for which are as stated below.

Findings.

- (i) In affirmative & 1/7 share.
 - (ii) In affirmative.
 - (iii) In affirmative.
 - (iv) In negative.
 - (v) As per final order.
15. **Reasons.**

Issue no.1

The documents exhibited tentatively are true copies of the revenue record, and its correctness is not disputed by any of the party, and hence said documents are considered to be duly proved, and are considered in evidence. Plaintiff alleges that suit properties belonged to her father, and same is not denied by the defendants. From revenue record produced it transpire that suit properties belonged to father of plaintiff & defendant no.1, 2, 4 & 5. The case of the defendant no.1 is that mother, relinquished/waived the right of the plaintiff in the suit properties, however there is no written document as to waiver/relinquishment of rights. How the said waiver/relinquishment was in the interest of plaintiff, who was minor at time of said waiver is not clear. Except revenue record there is nothing to show waiver/relinquishment of right. Revenue entry is only for fiscal purpose, and it does not create or extinguishes the right and hence on basis of alleged waiver/relinquishment of right, plaintiff's right cannot be brought to an end. Hence, it is proved that plaintiff had succession right in the suit properties.

Plaintiff have not produced family chart of deceased Jamiyatram Patel. From the pleadings of the parties, and oral evidence produced it transpire that plaintiff no.1, defendant no.1,2,4,5 and deceased pravinaben are childrens of deceased jamiyatram, whereas defendant no.3 is widow of deceased jamiyatram. Thus, there being total 7 class I heir of the deceased Jamiyatram, plaintiff becomes entitle to 1/7 the share in the suit properties. Hence, issue no.1 is answered in affirmative, and 1/7 share.

16. **Issue no.2**

Plaintiff in her cross examination states that her birth date is 8.4.1959. The entry no.2967 where her rights are relinquished/waived by her mother is dated : 15.8.69. Hence, it is proved that on the date of said entry plaintiff was minor. The said entry no. 2967 is pertaining to land bearing survey no. 95/1, 679, 715/1, 172, 664 paiki. No pleading as to change in survey number of these lands transpire, nor any document (except Entry no.5595 mentions old survey no.990 as 715/1), showing change in survey number of these lands is produced by either side. However plaintiff states that entry no.2967 relates to suit properties, and same is not denied specifically by the defendants, hence it is proved that in view of entry no.2967 plaintiff's mother relinquished / waived plaintiff's right over the suit properties.

In view of entry no.2967 there being ouster of the plaintiff, the limitation to file the suit would began from the date of plaintiff attaining majority or from date of knowledge. Plaintiff fails to prove that after attaining majority, she had no knowledge of these properties for such a long time, or was in co-possession of these suit properties. Hence plaintiff fails to prove that present suit is within period of limitation, as regards said properties.

Further, the entry no.7294 wherein property bearing survey no.131, 221 got partitioned between Kanaiyalal Jamiyatram and Maheshchandra Jamiyatram is of year 3.4.1986. Plaintiff had attained majority on the date of this entry, and there is nothing to presume that co-ownership or co-possession of this property continued even after said entry, and hence in view of ouster of the plaintiff even if considered from 3.4.1986, the period of limitation as regard this property would begin from

3.4.1986, and present suit preferred in 2009 after period of 12 years, is barred by limitation as regards this property. No other document pertaining to partition of other suit properties is produced. No document pertaining to property no. 886,887,892, and 909 is produced by either party. Plaintiff having preferred the suit, the onus is on the plaintiff to show that she has right in these property no. 886,887,892, and 909 suit properties, and her claim as regards these suit properties is within period of limitation. However, in absence of any document showing co- possession of these properties, which can bring the present suit within period limitation, plaintiff fails to prove that her suit is within period of limitation. Hence, issue no.2 is answered in affirmative.

17. **Issue no.3**

Plaintiff has preferred present suit for partition. It is established position of law that in a partition suit, all co-sharers and co-owners are necessary parties and for non-joinder of necessary parties, partition suit is not maintainable and is liable to be dismissed. From the cross examination of the plaintiff it transpire that plaintiff;s sister named pravinaben, have expired, and her children are her legal heir.

Plaintiff in her cross examination admits that plaintiff, defendant no.1,2,4,5 along with Pravinaben are class I heirs deceased Jamiyatram Patel. Plaintiff have not joined pravinbhai or her children as party to the suit and no valid reason is assigned for non-joining them. Hence considering the prayer as regards partition of suit properties, the suit is bad for non-joinder of parties, and is liable to be dismissed. Hence, issue no.3 is answered in affirmative.

18. **Issue nos.4 & 5**

In view of discussion of issue no.2 and 3 no interference in the judgment and decree of the Ld. Trial court is required and hence issue no.4 is answered in negative, and on basis of above discussion issue no.5 is answered as per final order and following final order is passed.

ORDER

- The present appeal is hereby dismissed.
 - The judgment and decree passed by Ld. Addl. Civil Judge, Ankleshwar in Regular Civil Suit No.219/2009 is hereby confirmed.
 - Appellant to pay costs of appeal to respondent no.1.
 - Decree to be drawn accordingly.
 - R & P of RCS no. 219/2009 be returned back to Ld. Trial Court
- Signed and pronounced in the open Court today on 19/06/2026.

Date : 19/06/2026
Place : Ankleshwar

(Sunil Padmakar Rahatkar)
5th Additional District Judge,
Ankleshwar.
Code No. GJ00585