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Duration. Yr M. D

Exhibit -

IN THE COURT OF 9th ADDITIONAL DISTRICT JUDGE, AHMEDABAD
(RURAL).

REGULAR CIVIL APPEAL NO. 30 OF 2022

Appellants

1. Jayantibhai Manubhai Valand

Age : Adult, Occu. : Agriculture

2. Ranjanben Manubhai Valand

Age : Adult, Occu. : Agriculture/ Household work

3. Bhagvatiben Manubhai Valand

Age : Adult, Occu. : Agriculture/ Household work

4. Induben Manubhai Valand

Age : Adult, Occu. : Agriculture/ Household work

5. Ushaben Manubhai Valand

Age : Adult, Occu. : Agriculture/ Household work

All R/o. Mu. Ramol, Tal. Dascroi, Dist. Ahmedabad.

VERSUS**Respondent**

Legal heirs of Vijiben D/o. Shakarabhai wf/o. Shankarbhai Mangaldas Valand

- 1. Ratibhai Shankarbhai Valand**
Age : Adult, Occu. : Agriculture
- 2. Madhuben Shankarbhai Valand**
Age : Adult, Occu. : Agriculture
- 3. Kailashben Shankarbhai Valand**
Age : Adult, Occu. : Agriculture

All R/o. Mu. Bilasiya, Tal. Dascroi,
Dist. Ahmedabad.

Subject : Appeal Under Section - 96 read with Order 41 of the Civil Procedure Code, 1908.

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Appearance :-

Learned Advocate Mr. Y.B. Pandit for the Appellants

Learned Advocate Mr. J.P. Thakor for the Respondents

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: JUDGMENT :

[1] The present appeal has been preferred by the appellant under Section 96 read with Order 41 of the Civil Procedure Code 1908, and has challenged the judgment and decree dated 01/04/2022 passed by Learned 2nd Additional Sr. Civil Judge Ahmedabad (Rural), in Special Civil Suit No.356/2010.

[2] Upon filing the present appeal notice was issued against the

respondents which were duly served upon them and pursuant thereto Learned advocate has appeared and filed his Vakalatnama for the respondents.

[3] The parties are hereinafter referred to as their original status before the Ld. Court below as "plaintiff" and "defendants" respectively.

[4] **The concise facts leading to this appeal are as under :**

[4.1] The plaintiff filed Special Civil Suit No.356/2010 against the defendants i.e. the appellant herein this appeal, *inter-alia* alleging that the property situated at Dist. Ahmedabad sub district Dascroi, moje village Ramol Revenue Survey No./ Block No. 96 admeasuring hectare sq. meter 0-17-40 protected land and revenue survey No./ block No. 114 admeasuring 0-30-35 old tenure land (which is hereinafter referred to as the 'suit property') was belonging to Shakrabhai Chhaganbhai i.e. the head of the family of plaintiffs and defendant No. 1 to 7 and it was recorded in the record of right vide mutation entry No. 2855. The aforesaid land was in possession of the aforesaid person who died intestate and name of Vijiben, Manubhai and Chanchalben came to be entered into record of right vide mutation entry No. 4059. Name of the wife of the deceased i.e. Chanchalben came to be deleted from the record of right as she was died. It is plaintiff's case that after marriage of Vijiben she was living in Bilasiya village and the suit property was being under administration of defendant No. 1. It is say of the plaintiff that as their mother Vijiben was died intestate their names came to be entered into record of right vide mutation entry No. 5892 which came to be certified on 22.06.2007 by way inheritance. It is therefore, averred by the plaintiff that the plaintiffs have 1/2 share to the suit property. The defendant No. 1 as administrator of the suit land used to pay plaintiff's part of agricultural produce. It is plaintiff's case that defendant No. 1 with connivance to the other person illegally and fraudulently deleted the plaintiff's name from the suit property and mutation entry came to be

certified in the record of right and thereby the defendant has tried to defeat plaintiff's right. The plaintiffs were unknown to the aforesaid facts and they had never relinquished their right from the suit property but defendants have illegally entered their names and sold suit land to the other persons vide registered sale-deed No. 2733. Therefore, plaintiffs were constrained to file suit for declaration, permanent injunction and for cancellation of the registered sale-deed against defendants.

[4.2] After institution of the Civil Suit summons were issued and it was served upon the defendant and pursuant that defendant appeared before the Ld. Trial Court and filed written statement vide Exh. 20. Defendant by filing written statement has inter alia contended that the plaintiff suit is not maintainable. It is further contended that plaintiffs waved the rights from the suit land and also received various amount from the sale consideration. It is also contended that as the plaintiffs have relinquished their right in favour of the defendants, they are not entitled to raise any kind of objections as they are being estopped by doctrine of estoppel. Therefore, it is contended that suit should be dismissed with cost.

[5] After considering the pleadings and evidence on record and considering the rival submissions, Ld. Trial court came to conclusion that plaintiff has succeeded to prove his case partly and ultimately suit came to be partly decreed in favour of the plaintiffs and it was declared that plaintiffs have 1/2 share to the suit property survey No. 96. The Ld. Trial Court has also issued perpetual injunction against the defendant No. 3 to 7 that they shall not alienate the property in any manner. Being aggrieved and dissatisfied with the impugned judgment and decree the defendants No. 3 to 7 have filed this appeal under Section 96 of the Code of Civil Procedure.

[6] Plaintiff had adduced the following oral as well as documentary evidences before the Ld. Trial Court.

[7] Plaintiff's evidence :**Oral Evidence :**

Sr. No.	Description	Exhibit
1	Deposition of plaintiff Ratibhai Shankarbhai Valand	65

Documentary Evidence :

Sr. No.	Description	Exhibit
1	Copy of village extract No. 7/12 of survey No. 96 dtd. 13.9.2011	56
2	Copy of village extract No. 7/12 of survey No. 114 dtd. 13.9.2011	57
3	Copy of entry No. 4059 of revenue record dtd. 29.10.1978	58
4	Copy of entry No. 5892 of revenue record dtd. 04.04.2007	59
5	Copy of entry No. 5893 of revenue record dtd. 08.03.2017	60
6	Copy of entry No. 5971 of revenue record dtd. 21.08.2007	61
7	Copy of entry No. 6080 of revenue record dtd. 04.02.2008	62
8	Copy of entry No. 6626 of revenue record dtd. 14.10.2009	63
9	Copy of registered sale-deed dtd. 20.03.2008	64

[8] Defendants' evidence :

Defendants had produced following oral as well as documentary evidence before the learned trial Court.

Oral Evidence :

Sr. No.	Description	Exhibit
1	Deposition of defendant No. 3 Jayantibhai Manubhai Valand	97
2	Deposition of defendant No. 10 Amitkumar Pravinbhai Thakkar	104

Documentary Evidence :

Sr. No.	Description	Exhibit
1	Certificate of school leaving of defendant No. 1	70
2	Affidavit to relinquished right of the plaintiff	71
3	Agreement made by plaintiff No. 1 dtd. 5.8.2007	72
4	Agreement made by plaintiff No. 2 dtd. 12.8.2007	73
5	Agreement made by plaintiff No. 3 dtd. 5.8.2007	74
6	Affidavit of third party Balmukund Ambalal Limbachiya	75
7	Affidavit of third party Ambalal Khushalbhai Valand	76
8	Original affidavit of third party Batukbhai Valand	77
9	Voucher of relinquished right of the plaintiff no. 1	78
10	Voucher of relinquished right of the plaintiff No. 1	79
11	Voucher of relinquished right of the plaintiff No. 2	80
12	Voucher of relinquished right of the plaintiff No. 2	81
13	Voucher of relinquished right of the plaintiff No. 3	82
14	Voucher of relinquished right of the plaintiff NO. 3	83
15	Original notice which is served to the plaintiff	84
16	Revision application No. MVV HKP-AMD-361-14 made by plaintiff	85
17	Original order dtd. 21.08.2017 of item No. 16	86
18	Original order dtd. 26.06.2013 of case No. 90/2013	87

[9] Submissions :

I have heard Ld. Advocates for the respective parties *in extenso*. Ld. Advocate Mr. Y.V. Pandit for the appellant has vehemently submitted as follows.

- That Ld. Trial Court has wrongly relied upon the evidence on record without being scrutinized its probative value.
- That the Ld. Trial Court has committed error in arriving at the conclusion that the suit property is ancestral undivided property and evidence has not been properly scrutinized.
- It is submitted that married daughter loses her status of

coparcerner as she was no longer remained member of HUF.

- It is also submitted that as per sec. 115 of the Evidence Act doctrine of promissory estoppel would be applied and therefore, once the right from the suit property came to be relinquished by the plaintiffs they cannot claim any kind of right. Such aspect of the case has not been considered by the Ld. Trial Court.
- It is also submitted that plaintiffs have been paid from the sale consideration and they have received money by executing vouchers and receipts and therefore, they have no right to the property. Vijiben was died 20 to 22 years ago and all the respective amounts of the suit property had been paid and therefore, there was no cause of action for filing the present suit. In absence of cause of action the suit is not survived.
- Plaintiffs have filed the suit for recovery of money which was already paid to them but such material facts have been suppressed by the plaintiff. The plaintiffs have not come with clean hands.
- That the Ld. Trial Court has failed to consider the evidence on record and has passed judgment and decree in the suit without appreciation of evidence and therefore, the same is required to be set aside and the present appeal is required to be allowed as prayed for.
- Ld. Advocate has placed reliance upon the following judgments:
 1. Gujarat Public Service Commission vs. Dr. B.S. Maru and another. 2012(3) GLR, 1925
 2. Sundarlal Bhanabhai Bhagat vs. State of Gujarat, AIR 2012 Gujarat 71
 3. Kusheshwar Prasad Singh vs. State of Bihar,
 4. Sitaben D/o. Madaribhai Bhagabhai Dhodiya vs. Bhanabhai Madaribhai Patel, 2002(2) GLR 1365

[10] *Per contra*, Ld. advocate for the respondent has filed written

arguments vide Exh. 14. I have gone through the written arguments. The sum and substance of the arguments advanced by Ld. Advocate for the respondent is that the judgment and decree passed by the Ld. Trial Court is legally valid and correct and the findings given by the Ld. Trial Court should not be interfered with. It is submitted that this appeal should be dismissed.

[11] At this juncture, when this Court is discharging its duty as the First Appellate Court, what should be the principles governing the field of First Appellate jurisdiction are to be kept in mind and they are required to be taken into consideration. When this Court is dealing with first appeal, the principles laid down by the Hon'ble Apex Court in the case of **H. Siddiqui (Dead) by legal heirs V/s A. Ramalingam 2011 (4) SCC 240** is relevant to deal with the first appeal. In Para-18-19 of the Judgment, Hon'ble Supreme Court has held as under :

"18. The said provisions 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 the judgment of the appellate Court that the Court has properly appreciated the facts/evidence, applied its mind and decided the case considering the material on record. It would amount to substantial compliance of the said provisions if the appellate Court's judgment is based on the independent assessment of the relevant evidence on all important aspect of the matter and the findings of the appellate Court are well founded and quite convincing. It is mandatory for the appellate Court to independently assess the evidence of the parties and consider the relevant points which arise for adjudication and the bearing of the evidence on those points. Being the final Court of fact, the first appellate Court must not record mere general expression of concurrence with the trial Court judgment rather it must give reasons for its decision on each point independently to that of the trial Court. Thus, the entire evidence must be considered and discussed in detail. Such exercise should be done after formulating the points for consideration in terms of the said provisions and the Court must proceed in adherence to the requirements of the said statutory provisions. (Vide: Thakur Sukhpal Singh V/s. Thakur Kalyan Singh & Anr., AIR 1963 SC 146; Girijanandini Devi & Ors. V/s. Bijendra Narain Choudhary, AIR 1967 SC 1124; G. Amalorpavam & Ors. V/s. R.C. Diocese of Madurai & Ors., (2006) 3 SCC 224; Shiv Kumar Sharma V/s. Santosh Kumari,

(2007) 8 SCC 600; and Gannmani Anasuya & Ors. V/s. Parvatini Amarendra Chowdhary & Ors., AIR 2007 SC 2380)

19. In B.V. Nagesh & Anr. V/s. H.V. Sreenivasa Murthy, JT (2010) 10 SCC 551, while dealing with the issue, this Court held as under:-

["The appellate Court has jurisdiction to reverse or affirm the findings of the trial Court. The first appeal is a valuable right of the parties and unless restricted by law, the whole case therein is open for re-hearing both on questions of fact and law. The judgment of the appellate Court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put- forth and pressed by the parties for decision of the appellate Court. Sitting as a Court of appeal, it was the duty of the High Court to deal with all the issues and the evidence led by the parties before recording its findings. The first appeal is a valuable right and the parties have a right to be heard both on questions of law and on facts and the judgment in the first appeal must address itself to all the issues of law and fact and decide it by giving reasons in support of the findings. [Vide Santosh Hazari V/s. Purushottam Tiwari, (2001) 3 SCC 179 and Madhukar and Others V/s. Sangram and Others, (2001) 4 SCC 756]"

[12] At this juncture, reference also needs to be made towards the judgment of the Hon'ble Gujarat High Court in the case of **State of Gujarat V/s Bhartiben Dineshbhai Tank 2022 (0) GUJHC 51494** it is *inter-alia* held that as under :

"12.1 As far as Appeals arising from the Trial Courts judgment, decree and order are concerned, Chapter XX of the Code deals with the same. Para/Rule 414 of the Bombay Civil Manual provides about the manner, in which the Appellate Court should frame the suitable points for determination while deciding the Appeal. Rule 414 of the Bombay Civil Manual reads as under :

"414. The Appellate Court should frame suitable points for determination in appeals in accordance with the same principles on which issues are framed in the Trial Court."

12.2 In my opinion, combined reading of the Order 41 Rule 31 of the Code as well as Rule 414 of the Bombay Civil Manual make it clear that the first appellate Court is bound to frame points for consideration as if it is framing the issues provided under the provisions of the Code. Paras/Rules 53 and 54 of the Bombay Civil Manual provides the method of settlement/framing issues."

[13] In view of the dictum of law as laid down by the Hon'ble Apex Court, in the judgment of H. Siddiqui (Supra), and in view of order 41 Rule 31 of CPC, it is incumbent upon the First Appellate Court to frame the

necessary points for determination. Hence, from the rival contentions of both the parties, following points for determination are arisen.

: POINTS FOR DETERMINATION :

- 1) Whether plaintiffs/ respondents prove that the suit property is undivided ancestral property of plaintiffs and defendants No. 1 to 7 ?
- 2) Whether it is proved that plaintiffs/ respondents have 1/2 share to the suit property ?
- 3) Whether the judgment and decree passed by Ld. Trial Court is against the principle of natural justice, perverse, arbitrary or illegal and it requires interference ?
- 4) What order and decree ?

[14] The answers of the above points are as under:

Point No.1: In the Affirmative.

Point No.2: In the Affirmative.

Point No.3: In the Negative.

Point No.4: As per Final Order.

[15] The reasons for arriving at the aforesaid conclusion of the points for determination have been assigned as under :

REASONS

[16] Point No.1 & 2:

[16.1]As both the points are inter se connected with each other they are herein after discussed jointly for the sake of brevity and convenience. In this case, the main controversy between the parties is pertaining to the suit property in respect of ownership and possession of the survey/ Block No. 96 and 114 situated at moje village Ramol Tal.

Dascroi. Considering the facts of the present appeal the original defendant No. 3 to 7 have filed this appeal against the original plaintiffs wherein plaintiffs' suit has been partly decreed by the Ld. Trial Court. Therefore, it is undisputed fact that the present appellants original defendants No. 3 to 7 have partly raised objections against the decree and partly supported findings of the Ld. Trial Court. Now considering the issue regarding status of the suit property the plaintiffs have produced extracts of village form No. 7x12 of survey No. 96 and 114. Having considered Exh. 56 and 57 it is transpired that the land survey No. 96 is a protected land under the Gujarat Agriculture Land and Tenancy Act. So far as Exh. 57 is concerned it suggests that land revenue survey No. 114 is an old tenure agricultural land. Exh. 59 i.e. the extract of village form No. 6 proves that Vijiben was died about 23 years ago her legal heirs have been entered into record of right vide mutation entry No. 22.06.2007. The aforesaid facts prove that the suit land is undivided ancestral property of the plaintiffs and defendants.

[17] It is contended by the defendant that the plaintiffs relinquished their right voluntarily from the suit property and mutation entry No. 5893 came to be mutated on 04.04.2007 and name of the plaintiffs came to be deleted. In this regard Ld. Trial Court has evaluated the evidence on record i.e. the vouchers Exh. 78 to 83 and affidavits executed by the plaintiffs vide Exh. 70 to 74. The plaintiffs have denied to have executed the aforesaid affidavits and vouchers and receipts. The aforesaid documents go to show that the defendant No. 3 doesn't have personal knowledge about the aforesaid documents. Ld. Trial Court has considered the provisions of the Registration Act and come to the conclusion that when the value of immovable property is Rs. 100 or more is transferred the same requires registration compulsorily. It is also considered by the Ld. Trial Court that if the relinquish deed is unregistered the same cannot be taken into consideration as evidence because it is hit by sec. 49 of the

Registration Act. Ld. Trial court has placed reliance upon the judgment of the Hon'ble Supreme Court in the case of **Yellapu Uma Maheshwari vs. Buddha Jagadheeswararao reported in 2015(0) AIJEL SC 57186**, wherein it is held that

"17. It is well settled that the nomenclature given to the document is not decisive factor but the nature and substance of the transaction has to be determined with reference to the terms of the documents and that the admissibility of a document is entirely dependent upon the recitals contained in that document but not on the basis of the pleadings set up by the party who seeks to introduce the document in question. A thorough reading of both Exhibits B-21 and B-22 makes it very clear that there is relinquishment of right in respect of immovable' property through a document which is compulsorily registrable document and if the same is not registered, becomes an inadmissible document as envisaged under sec. 49 of the Registration Act. Hence, Exhibits B-21 and B-22 are the documents which squarely fall within the ambit of sec. 17(i)(b) of the Registration Act and hence are compulsorily registrable documents and the same are inadmissible in evidence for the purpose of proving the factum of partition between the parties. We are of the considered opinion that Exhibits B 21 and B 22 are not admissible in evidence for the purpose of proving primary purpose of partition."

[18] Applying the aforesaid ratio to the facts of the case, Ld. Trial Court has refused to receive the aforesaid affidavits, vouchers and receipts pertaining to the relinquishment of plaintiff's right from the suit property in favour of the defendants. Looking to the aforesaid aspect of the case, this court is of the opinion that the Ld. Trial Court has rightly applied its mind and has rightly refused to rely upon the aforesaid documents. Under the circumstances it is proved that the suit property is undivided ancestral property and there are only two legal heirs of the deceased Shakrabhai Chhaganbhai, the plaintiffs have right, title and share to the suit property and the plaintiffs are entitled for 1/2 share to the suit property. Hence, point No. 1 & 2 are answered accordingly.

[19] POINT NO. 3 :

Ld. Advocate for the appellant i.e. original defendant has argued that Ld. Trial court has wrongly considered the suit property as ancestral

undivided property as the mother of the plaintiffs after her marriage ceases to be member of the HUF. Ld. Advocate has placed reliance upon the judgment of the Hon'ble Gujarat High Court in the case of GPSC vs. Dr. B.S. Maru and in the case of Kusheshwar Prashad Singh vs. State of Bihar. Having regard to the facts of cited authorities and the facts of the case on hand are quite distinguishable and the same has no application to the facts of the present case. Hence, it is not helpful to the appellant.

[20] Ld. Advocate for the appellant has heavily relied upon the provisions of sec. 115, 116 and 117 of the Indian Evidence Act (sec. 121, 122 and 123 of BSA, 2023) and submitted that the plaintiffs should be estopped and cannot be permitted to take objections against the relinquishment made by them. The Ld.Trial Court has bestowed its thoughtful consideration to the aforesaid aspect of the case. This court is also complete agreement with the findings given by the Ld. trial Court that the relinquishment from the immovable property for the value of Rs. 100 or more is required to be registered u/s. 17 of the Registration Act. If it is not registered, the same cannot be taken into consideration as evidence as held by the Hon'ble Apex Court.

[21] Ld. Advocate for the appellant has also placed reliance upon judgment of the Hon'ble Gujarat High Court in the case of Sitaben D/o. Madaribhai Bhagabhai Dhodiya vs. Bhanabhai Madaribhai Patel and submitted that right of female member of HUF in coparcenary property she cannot sue for partition of property by metes and bounces and the suit is not maintainable. Considering the facts of the case, the judgment of the Hon'ble Gujarat High Court was rendered on 20.03.2002. It is required to be noted that radical changes in the Hindu Succession Act, 1956 has been effected by way of Hindu Succession Amendment Act, 2005. As per the amended Act the daughter is also considered to be coparcener at par with the son and the Act has retroactive application if certain conditions are satisfied. Hon'ble Supreme Court in the case of **Vineeta Sharma vs.**

Rakesh Sharma and others, 2020(0) AIR (SC) 3717 Hon'ble Supreme Court has carved out the following principles,

"129. Resultantly the answer the reference as under :

(i) The provisions contained in substituted sec. 6 of the Hindu Succession Act, 1956 confer status of coparcener on the daughter born before or after amendment in the same manner as son with same rights and liabilities.

(ii) The rights can be claimed by the daughter born earlier with effect from 9.9.2005 with savings as provided in Sec. 6(1) as to the disposition or alienation, partition or testamentary disposition which had taken place before 20th day of December, 2004.

(iii) Since the right in coparcenary is by birth, it is not necessary that father coparcener should be living as on 9.9.2005.

(iv) The statutory fiction of partition created by proviso to sec. 6 of the Hindu Succession Act, 1956 as originally enacted did not bring about the actual partition or disruption of coparcenary. The fiction was only for the purpose of ascertaining share of deceased coparcener when he was survived by a female heir, of Class-I as specified in the Schedule to the Act 1956 or male relative of such female. The provisions of the substituted sec. 6 are required to be given full effect. Notwithstanding that a preliminary decree has been passed the daughters are to be given share in coparcenary equal to that of a son in pending proceedings for final decree or in an appeal.

(v) In view of the rigor of provisions of Explanation to sec. 6(5) of the Act of 1956, a plea of oral partition cannot be accepted as the statutory recognized mode of partition effected by a deed of partition duly registered under the provisions of the Registration Act, 1908 or effected by a decree of a court. However, in exceptional cases where plea of oral partition is supported by public documents and partition is finally evinced in the same manner as if it had been effected by a decree of a court, it may be accepted. A plea of partition based on oral evidence alone cannot be accepted and to be rejected outrightly."

[22] In view of the aforesaid proposition of law when the mutation entry pertaining to the suit property survey No. 96 and 114 came to be mutated by way of mutation entry No. 5892 dtd. 04.04.2007 which was made certified on 22.06.2007 and thereby name of legal heirs of Vijiben @ Hiraben Shakrabhai have been entered into record of right as co-owners and occupiers, then it is proved that Ratibhai Shankarbhai, Madhuben Shankarbhai and Kailashben Shankarbhai are co-owners of the suit property. It is also pertinent to note that the alleged partition took place between the plaintiffs and defendants and the instrument of

relinquishment of plaintiff's share being unregistered the same cannot be taken into consideration as an evidence. This fact has also been supported by the ratio of Vineeta Sharma's case (supra). Under the circumstances when the mutation entry came to be effected on 22nd June, 2007 there is no doubt about the ownership of the plaintiffs. Hence, in view of the amended Hindu Succession Act, 2005, the plaintiffs are proved to have 1/2 share to the suit property.

[23] Furthermore, the documents on record clearly proved that land block/ survey No. 96 is a protected land under the provisions of the Gujarat Tenancy and Agriculture Lands Act, 1948 and all the co-owners are "protected tenant" as defined under sec. 2(14) of the aforesaid Act. Therefore, sec. 43 of the aforesaid Act puts restrictions on transfer of the aforesaid land unless previous sanctions of the Collector is received. It is clear that, the aforesaid land cannot be statutorily transferred without such sanction. Therefore, this court is in agreement with the findings of the Ld. Trial Court that the suit property i.e. block/ survey No. 96 is a joint undivided ancestral property of the parties and therefore, Id. Trial Court committed no error of either law or fact and has rightly declared that the plaintiffs are having 1/2 share to the suit property.

[24] Having applied the settled principles of law to the facts of the present case, this Court is of the considered view that there is no perversity or illegality committed by the Ld. Trial Court and therefore, this court is of the opinion that the judgment and decree passed by the Ld. Trial Court is not required to be disturbed and interfered with. This Court is also of the opinion that the findings given by the Ld. Trial Court are found to be legally and factually correct. Therefore, this point No.3 is answered accordingly.

[25] POINT NO. 4 :

As discussed herein above and in view of the factual and legal

aspect of the case, this appeal is devoid of merits and therefore, the final following Order is passed.

:: ORDER ::

- The present appeal is hereby **dismissed**.
- The judgment and decree dated 01/04/2022 passed by Learned 2nd Additional Sr. Civil Judge Ahmedabad (Rural), in Special Civil Suit No. 356/2010 is hereby **confirmed**.
- Decree be drawn accordingly.
- R & P of the Special Civil Suit be sent back to the Learned Trial Court forthwith.
- As per Order 41 Rule 37, a certified copy of this judgment and decree be sent to the Learned Trial Court.
- All the pending applications, if any, are also disposed of accordingly.
- The file be consigned to the record room, after due compliance.
- Parties shall bear their own cost.

Pronounced and signed in the Open Court today on 13th day of March, 2026.

Place : Ahmedabad
Date : 13.03.2026

(Sanjaykumar Chhaganbhai Makvana)
9th Add. District Judge, Ahmedabad
(Rural)
Code No. GJ00920.