

FILED ON	:	15/10/2025
REGISTERED ON	:	15/10/2025
DECIDED ON	:	31/07/2026
DURATION	:	YY MM DD

**IN THE COURT OF 2ND ADDITIONAL DISTRICT JUDGE
PETLAD**

REGULAR CIVIL APPEAL NO. 13/2025

Ex._____

Appellants / Original Defendant No. 1 :

Legal Heirs of Kamlaben Ravjibhai Patel

1. Heirs Kanubhai Ravjibhai Patel
2. Induben Ravjibhai Patel
through her administrator No. 3
3. Bhupendrabhai Ravjibhai Patel
All are R/o Tekravalu Faliyu, At Porda, Tal. Petlad

V E R S U S

Respondents :-

1. Kantibhai Ramanbhai Talpada.....Original Plaintiff
R/o Nr. Kosna Para, At Po. Porda,
Tal. Petlad
2. Heirs of Dahiben Chhotabhai Patel &.....Original Def.
Heirs of Jagdishbhai Chhotabhai Patel
2/1 Savitaben wd/o Jagdishbhai Patel
2/2 Komalben Jagdishbhai Patel
2/3 Chetankumar Jagdishbhai Patel
2/4 Hiteshkumar Jagdishbhai Patel
All are R/o Vachli Khadki, At Porda, Tal. Petlad
3. Vinubhai Chhotabhai Patel.....Original Def.
R/o Tekravalu Faliyu, At Porda, Tal. Petlad
4. Heirs of Ramanbhai Chhotabhai Patel.....Original Def.
Dharmisthaben d/o Ramanbhai Chhotabhai Patel
R/o Patel Faliyu, At Valasan, Tal. Anand
5. Lilaben Chhotabhai patel.....Original Def.
R/o Patel Society, At Po. Davda, Tal. Nadiad

Appearance :-

Ld. Advocate Mr. H.B. pathan for the Appellants

Ld. Advocate Mr. S.G. Patel for the Respondent No. 1

: J U D G M E N T :

1. Appellants were the original Defendant No. 1 where as the respondents No. 1 was the original plaintiff and respondent No. 2 to 4 were the original Defendants before the Id. Trial court and therefore for the sake of convenience they are hereinafter referred as 'plaintiffs and defendants' as per their original status in the present appeal.
2. Ld. Principal Sr. Civil Judge, Petlad has in RCS No. 70/2011 dtd 11/09/2025 vide judgment and decree, party allowed the suit preferred by the plaintiff, therefore being aggrieved and dissatisfied, the appellants - defendant No. 1 have preferred the present appeal. The Case of the plaintiffs before the trial court may shortly be narrated as under.
3. The plaintiff has filed civil suit and stated that the land bearing survey No. 129 known as Boodvalu Khetar, ad measuring 0-08-09 situated at village Porda (herein after refereed as suit land), cultivated by plaintiff's elder Kachrabhai Kalabhai Talpada since more than 20 years and after the death of said Kachrabhai, plaintiff is cultivating suit land and having possession over the suit land and plaintiff has also residential house on the suit land. Plaintiff is enjoying continuous possession of the suit land since time of his deceased father and plaintiff is also paying revenue of the suit land. It is the say of the plaintiff that deceased Kanubhai Ravjibhai Patel has no right or interest in the suit land. Plaintiff is in possession of the suit land since his father's time and plaintiff become owner on the basis of adverse

possession. Suit land was given for cultivation by deceased heirs of the defendants since more than 20 years. It is the say of the plaintiff that in the year 2010 defendant Bhupendrabhai Ravjibhai has executed mortgage deed before Notary with oral consent of other defendant and rest of the defendants were told to execute sale deed. Thereafter, plaintiff has approached defendants and told to execute sale deed, but the defendants were not interested for the same and about 15 days ago they told that the price of the land has been increased and whoever gives more money, they will execute sale deed in his favour and asked plaintiff to handover possession of the suit land. Hence, plaintiff has filed present suit.

4. In support of his claim, the plaintiff has produced following oral and documentary evidence before Id. trial court.

- Ex. 42 Deposition of plaintiff Kantibhai Ramanbhai Talpada
 Ex. 97 Deposition of witness Talati Cum Mantri Ajitbhai Ramnikbhai Parmnar

Ex. 44	Copy of Village form No. 8-A of A/c No. 706
Ex. 45 to Ex. 49.	Copy of Village form No. 8-A and 7/12 of survey No. 129 and Form No. 6
Ex. 50	Copy of Mortgage Deed
Ex. 51	Copy of Notice
Ex. 52	Postal Receipt
Ex. 53	Postal Acknowledgment
Ex. 54 to Ex. 74	Revenue and Education Cess Receipts
Ex. 75 to Ex. 83	House Tax Rreceipt

Ex. 84 to Ex. 86	Photograph of suit land and bill of photograph.
Ex. 87	Copy of Assessment sheet of house
Ex. 88 to Ex. 90	Revenue Receipts and Education Cess receipts
Ex. 94 & Ex. 95	Court commissioner's panchnama and map.

5. Whereas the defendants have also produced following oral and documentary evidence.

Ex. 110	Deposition of Bhupendrabhai Ravjibhai Patel
Ex. 114	Village Form No. 7/12 of survey No. 129
Ex. 115 to Ex. 118	Revenue Receipts of A/c No. 705
Ex. 119	Copy of notice given to plaintiff
Ex. 120	village Form no. 7/12 of survey No. 129
Ex. 121	Assessment sheet of property No. 418
Ex. 122	Resolution No. 43 of Porda Panchayat
Ex. 123	Resolution No. 31 of Porda Panchayat
Ex. 124	Copy of Consent Letter dtd 26/03/2013 given by plaintiff
Ex. 125	Village form No. 7/12 of survey No. 128

6. The Ld. Trial Court frame issues vide Exh.37 and answers same accordingly.

૧. શું વાદી પુરવાર કરે છે કે, મોજે પોરડા મધ્યે આવેલ બ્લોક/સર્વે નં .૧૨૯ બુડવાળુ ખેતર નામે ઓળખાતી ખાતાનં.૭૦૬, હે.૦-૦૮-૦૯ આ.૩૧.૦૧-૨૫ પૈસા વાળી જમીન વાદીના મૈયત વડીલ કચરાભાઈ કાળાભાઈ તળપદાનાં વખતથી વાદીના મૈયત અને ત્યાર બાદ પોતે ખેડતા આવેલ છે અને એ રીતે સદર જમીન વાદીના પ્રત્યક્ષ કબજા ભોગવટામાં આવેલ છે ? **અશંત હકારમા**

૨. શું વાદી પુરવાર કરે છે કે, દાવાવાળી જમીન પ્રતિવાદી ભુપેન્દ્રભાઈ

રાવજીભાઈ પટેલ નાઓએ વાદીને ગીરો કરાર કરી આપી, દાવાવાળી જમીનનો કબજો સોંપી આપેલ છે ? **હકારમા**

૩. શું વાદી પુરવાર કરે છે કે, આ કામના પ્રતિવાદીઓએ દાવાવાળી જમીનનો કબજો સોંપી આપવા ઘમડી આપી રહેલ છે ?

નકારમા

૪. શું પ્રતિવાદી નં.૧/૩ પુરવાર કરે છે કે, દાવાવાળી જમીન ઉપર વાદીએ ગેરકાયદેસર કૃત્ય કરેલ છે અને પ્રતિવાદીનં.૧/૩ ની પરવાનગી વગર પાકું બાંધકામ કરી તે જગ્યા ઉપર ઈંગ્લીશ દારૂ ઉતારી ગેરકાયદેસર કૃત્યો કરી રહેલ છે ? **નકારમા**

૫. શું પ્રતિવાદી નં.૧/૩ પુરવાર કરે છે કે, વાદીએ દાવાવાળી જમીન ૧૦૦ વર્ષનાં ગીરો કરારથી આપેલ ના હોવા છતાં ગેરકાયદેસર બનાવટ કરી ગીરો દસ્તાવેજ ઉભો કરેલ છે ? **નકારમા**

૬. શું પ્રતિવાદી નં.૧/૩ પુરવાર કરે છે કે, દાવાવાળી જમીન વડીલોપાર્જીત વણવહેંચાયેલી જમીન છે ? **હકારમા**

૭. શું વાદી માંગ્યા મુજબની દાદ મેળવવા હકકદાર છે? **અંશત હકારમાં**

૮. શું હુકમ અને હુકમનામું ? **આખરી હુકમ મુજબ**

7. On the basis of oral as well as documentary evidence led by the rival parties, the Ld. Trial Judge has partly allowed the suit. Against that present appeal is filed by the defendant on grounds that ;

1. The order of the Id. trial court is erroneous and against the principle of natural justice.
2. The order of Id. trial court is against the documentary evidence and erroneous.
3. Ld. Trial court has committed serious error in appreciation of evidence and oral arguments of the appellant.
4. The suit land is ancestral land of appellant and other co-owners.
5. The mortgage deed produced by plaintiff before

the Id. trial court is barred by provision of Stamp Act.

6. Plaintiff's house is situated at survey no.139 and suit land is survey no.129,adjourning to survey no.139, So, plaintiff mislead about the possession in suit land.
7. Ld. Trial court has not considered the evidence produced by the appellant and also arguments of the appellant and committed serious error while passing impugned judgment and decree which deserves to be quashed and set aside.
8. Appellant has joined respondent No. 2 to 5 as formal parties.
8. Respondent - original plaintiff has been served with the summons. Ld. Advocate for the respondents has filed written arguments vide Ex.9 and mainly argued that the suit land was mortgaged on Rs. 50-00 stamp paper for 100 years tenure in presence of witnesses and handover possession of the suit land by the appellant-defendant. Respondent has produced document before Id. trial court and proved his case. Appellant and other co-owners have given possession by oral consent and executed mortgage deed before Notary. Present appeal preferred by the appellant is not tenable. As per court commissioner's report and map produced vide Ex. 94 and 95, house of respondent is on the suit land and appellant-defendant has admitted this facts in cross examination. Appellant has filed deposition for examination in chief vide Ex. 42 wherein no where it is proved that respondent is not in possession of the suit land. Respondant has also produced and proved

assessment sheet, revenue receipts and education cess receipts by examining witness Talati cum Mantri. Ultimately, it is argued to dismiss present appeal.

9. Ld. Advocate for the appellant-defendant No. 1 has filed written arguments vide Ex. 8 and mainly argued that the respondent house situated on survey No. 139 as per assessment sheet of Ex. 121 and copy of village form No. 7/12 also produced, however, he shows his house is situated at survey No. 129 and respondent plaintiff has not produced any evidence i.e. assessment sheet on record. The disputed land is ancestral land of appellant and other co-owners. Plaintiff relied on mortgage deed but same is not registered hence, same can not be taken into consideration. It is further argued that suit property is joint property and same is not partitioned hence mortgage deed signed by only one co owner is not binding to other co owner. It is argued to set aside the judgment and decree passed by Id. trial court by allowing the present appeal.
10. Perused the original judgment and decree along with record and proceedings of the trial court. Following issues emerge for final determination of appeal for which replies are as under as per discussion made hereafter.
 1. Whether the appellant proves that the Id. trial court committed error in considering mortgage deed produced vide Ex. 50 ?
 2. Whether appellant proves that Id. trial court committed error in holding that the plaintiff is in possession of the suit land ?
 3. Whether the appellant proves that the Id. trial

court has committed error in issuing permanent injunction against true owner ?

4. What order ?

11. Answers to the above points are as under;

1. In the Affirmative
2. In the Affirmative
3. In the Affirmative
4. As per order

: R E A S O N S :

ISSUE NO. 1 TO 3 :-

12. Here, plaintiff came with the case that he is in possession of suit land for more than 20 years and he become owner of the suit land by way of adverse possession. Further, it is say of the plaintiff that in the year 2010 one of the defendant namely Bhupendrabhai patel executed notarized mortgage deed in his favour and assured to execute sale deed. Further, it is case of the plaintiff that now, defendant are trying to dispossess plaintiff, hence plaintiff has filed present suit for declaration and permanent injunction on the basis of adverse possession of suit land for more than 20 year.

13. Defendant No. 1 appeared and filed written statement vide Ex. 17 and denied possession of the plaintiff for last 20 years. Defendant admitted that suit land given on mortgage on 17/09/2020 and as per terms plaintiff is not permitted to make construction on it, but plaintiff has illegally constructed house and doing illegal business of liquor selling. It is contended that the mortgage deed is not for 100 years and same was fabricated and tried to encroach his ancestral properties.

14. As per the prayer of plaintiff he came with the case that he is in possession of suit land for 20 years and on the basis of adverse possession he should be declared as owner of the suit land and also prayed for permanent injunction against the defendants.

15. Now, on perusal of record of Id. trial court, Id. trial court has rejected plea of adverse possession of plaintiff. So far as adverse possession is concerned, plaintiff has admitted in his cross examination that he has no evidence to prove that he is in possession of suit land for last 20 years. It is settled law that when person is claiming adverse possession, he must demonstrate open, hostile and continuous possession of the property. It is further required to note that limitation period for adverse possession commence when possession become as adverse to the true owner and not when the plaintiff later acquiring ownership. In the present case plaintiff admitted that he has no evidence to prove that he is in possession of the suit land for last 20 years. So, Id. trial court rightly held that plaintiff is failed to prove that he become owner of the suit land on the basis of adverse possession.

16. It is required to note that as per prayer of suit , plaintiff claim his ownership and permanent injunction on basis of adverse possession, though plea of adverse possession was rejected, Id. Trial Court, grant permanent injunction.

17. Here it is not in dispute that the defendants are the owner of the suit land. Plaintiff has produced copy of village form No. 8-A vide Ex. 44 to 48 and form no. 7/12 vide Ex. 45,

47 and 48, from which it is established that the defendants are the owner of the suit land. Now, it is case of the plaintiff that the defendant No. 1/3 Bhupendrabhai has mortgage suit land to him by executing notarized mortgage deed and assured that other co-owners will also execute sale deed in favour of plaintiff. So, it is admitted facts that the though suit land is joint property mortgage deed on which plaintiff relies was signed by only one co-owner. It is further, required to consider that in his cross examination plaintiff admitted that the defendant Kanubhai Ravjibhai was expired and he did not joined his heirs as party in the present suit.

18. Further, plaintiff has produced copy of mortgage deed vide Ex. 50 which is notarized document and mortgage amount was Rs. 51,000-00. Now, u/s 59 of the T.P. Act, where the principal money secured is one hundred rupees or upwards, a mortgage other than by deposit of title can be effected only by a registered instrument, signed by mortgagor and attested by atleast two witnesses. Here as per mortgage deed produced vide Ex. 50, it transpires that mortgage amount was mentioned Rs.51,000-00. Even same is not signed by other co-owners. Hence, on the basis of unregistered deed produced vide Ex. 50, no right created in favour of plaintiff. Hence, Id. trial court erred in considering document produced vide Ex. 50 as same is not signed by all the co-owners and same is unregistered one. Ld. Advocate for the plaintiff argued that partition took place between co owner on spot and no one come forward to challenge the deed, hence, same can not be denied. I do not agree with the same as, looking to revenue record suit property is joint property of all defendants and there is nothing on record which proves that partition took place and only

Bhupendrabhai Patel, defendant no. 1/3 is the owner of the suit property.

19. Ld. Trial court held that on basis of mortgage deed and written statement filed by defendant No. 1/3 Bhupendrabhai, plaintiff is in possession of suit land. As discussed above, mortgage deed on which plaintiff relied is not registered one and not signed by other co-owners. So no right created in favour of the plaintiff on the basis of the said document.

20. I have also gone through the record. The suit property is survey No. 129, defendant has produced copy of village form No. 7/12 for the survey No. 139. Looking to the same it transpires that the plaintiff is co-owner of the same land and as per the pleadings, it is adjacent to the suit land. Defendant has also produced assessment sheet for the property No. 418, block No. 139 which is in the name of plaintiff. On re appreciation of document produced vide Ex. 122, it transpires that the same is issued from Talati cum Mantri, Porda village, wherein it is stated that property No. 418 is situated at block survey No. 139 and after the death of Kachrabhai Karabhai same is transferred in the name of plaintiff. So, looking to the same it transpires that the property No.418 is situated in block No. 139, which is owned by the plaintiff himself and same is not suit land. So, there is nothing on record which proves that plaintiff is in possession of suit land. As far as admission of one of the defendant that is 1/3 in written statement qua possession is concerned, same cannot be binding to other co-owners. The suit land is joint ownership property and as discussed, partition did not take place between co-owners. Hence, it cannot be said that the suit land is in possession of plaintiff.

21. Hence, Id. trial court has erred in issuing permanent injunction against the true owners. In view of above discussion, I reply issue No. 1 to 3 in the affirmative and in reply to issue No. 4, I pass the following final order.

: O R D E R :

- ➔ The present Regular Civil Appeal preferred by the appellants is hereby allowed.
- ➔ The RCS No. 70/2011 preferred by the plaintiff is hereby dismissed and Judgment and decree passed by Id. Principal Sr. Civil Judge, Petlad has in RCS No. 70/2011 dtd 11/09/2025, is hereby quashed and set aside.
- ➔ Decree to be drawn accordingly.
- ➔ No order as to costs.
- ➔ R & P be sent back to the Trial Court immediately alongwith copy of this judgment.

Pronounced and signed in the open court on today
31 day of July, 2026.

Date : 31-07-2026

Place : PETLAD

(Zankhana V. Trivedi)
2nd Additional District Judge
Petlad,
JUDGE CODE - GJ-00676

Tarun Patel
PS