

**::RCS No.87/2008::**

**::Order below Ex.197**

**Application of the plaintiff for stay of the suit::**

(1).The plaintiff has mainly stated in his application Ex.197 that the issue raised by this Court is that the defendants Nos. 4,6,8 are not farmers and are not entitled to hold the agricultural land. Therefore, as per the Tenancy Act, it is only the Mamlatdar Court that has the power to decide whether the defendants Nos. 4,6,8 are farmers or not under the Tenancy Act. Therefore, this issue should be referred to the Mamlatdar for decision.

(2). The defendant in its reply vide Ex. 205 has stated that the defendants are not farmers and do not own agricultural land. There is no dispute against this fact. But the plaintiff has to prove the fact that the decision of being a farmer and the right to hold agricultural land belongs only to the Mamlatdar. The plaintiff has earlier filed an application under Section 84-C of the Tenancy Act before the learned Magistrate Modasa. In the application, the Mamlatdar Shri Modasa had ordered the withdrawal of the notice given to the tenants, against which the plaintiff had taken action before the Deputy Collector Shri Modasa. According to the plaintiff, the Deputy Collector has again sent the application back to the Mamlatdar Shri for decision. The defendant in his reply has stated that the plaintiff's application should be dismissed. The plaintiff has not stated any fact of the Tenancy Act in the present suit. Therefore, it has been stated in the reply that the plaintiff's application should be rejected.

(4).The description of the property in dispute in paragraph 3 of the present claim is as follows.

Village	Revenue Survey No.	Area	Boundry
Modasa	362/2	00-acre , guntha -08	East:-Hamkui and the municipality's land and currently houses a Doordarshan- KENDRA

			West:Road
			North:-Roofs of Madhufali
			South:Farm of Bai Khatu and the Ghulam Rasul Mujevarkha Khokhar

(5). The plaintiff has produced a copy of the order of Assistant Collector Shri Devendra Prakash Meena (IAS) Modasa in this case No. Gadharo/ARV/02/2003 in Mark 202/1, which states in the order, "

// હુકમ //

વિવાદીઓની વિવાદ અરજી અંશતઃ ગ્રાહ્ય રાખવામાં આવે છે તેમજ મામલતદાર અને કૃષિપંચશ્રી મોડાસાના હુકમ નં.ટીએનસી/મોડાસા/ગ.ધા.ક.૮૪-સી/કેસ નં .૦૮/૨૦૨૩ તા.૧૦/૦૮/૨૦૨૩ક્ષતિગ્રસ્ત હોય રદ કરવામાં આવે છે. વધુમાં મોજે મોડાસા તા.મોડાસાના સીટી સરવે નં.૩૬૬૧/એ/૧( રેવન્યુ સ.નં.૮૯૧) ની જમીન બાબતે સદર સીટી સરવે નંબરમાં નોંધાયેલ વેચાણ વ્યવહારો ગણોતધારાની જોગવાઈ હેઠળ કાયદેસર છે કે કેમ તથા વાદગ્રસ્ત જમીનો ખેતી સદરની છે કે બિનખેતી, જો વાદગ્રસ્ત જમીન ખેતી સદરની હોય તો મુંબઈ ગણોત વહીવટ અને ખેતીની જમીન અધિનિયમ ,૧૯૪૮ની જોગવાઈઓ હેઠળ નિયમોનુસારની કાર્યવાહી કરવા સદર કેસ મામલતદાર અને કૃષિપંચશ્રી, મોડાસાને રીમાંડ કરવા આથી હુકમ કરવામાં આવે છે.

ઠરાવની જાણ પક્ષકારોને કરવી તથા હુકમ અન્વયેની નોંધ રેકર્ડમાં રાખવી આ હુકમથી નારાજ હોય તો દિન-૬૦માં સચિવશ્રી, ગુજરાત મહેસુલ પંચ, ગુજરાત મહેસુલ પંચની કચેરી , લાલ દરવાજા, અમદાવાદની કોર્ટમાં અપીલ દાખલ કરી શકે છે.

આજરોજ તા.૦૨ એપ્રિલ-૨૦૨૪ના રોજ મારી સહી તથા કોર્ટનો સીકકો કરી હુકમ બહાર પાડવામાં આવ્યો

સહી:-

(દેવેન્દ્ર પ્રકાશ મીના.આઈ.એ.એસ.)

મદદનીશ કલેક્ટર મોડાસા"

(6). The plaintiff has raised a dispute regarding the jurisdiction of the tenancy and the issue in question, therefore, in that context, it is necessary to know the provisions of Section 85 and Section 85A of the Gujarat Tenancy and Agriculture Act, 1948, which are as follows;

" The Gujarat Tenancy and Agriculture Act, 1948

**"85. Bar of jurisdiction.**

(1) No Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the mamlatdar or Tribunal, a manager, <sup>2</sup>[the Collector, the Gujarat Revenue Tribunal or the State Government] in appeal or revision or the <sup>4</sup>[State] Government in exercise of their powers of control.

(2) No order of the Mamlatdar, the Tribunal, the Collector or the <sup>3</sup>[Gujarat Revenue Tribunal] or the <sup>4</sup>[State] Government made under this Act shall be questioned in any civil or criminal court.

Explanation.—For the purposes of this section a Civil Court shall include a Mamlatdar's Court constituted under the mamlatdar's Courts Act, 1906

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<sup>2</sup>. These words were substituted for the words "the Collector or the Gujarat Revenue Tribunal" by Guj. 36 of 1965, s. 17.

<sup>3</sup>. These words were substituted for the words "Bombay Revenue Tribunal" by the Gujarat Adaptation of Laws (State and Concurrent Subjects) (Third Amendment) Order, 1960.

<sup>4</sup>. This word was substituted for the words "Provincial" by the Adaptation of Laws Order, 1960.

**<sup>5</sup>[85A. Suits involving issues required to be decided under this Act.**

(1) If any suit <sup>6</sup>[instituted, whether before or after the specified date in any Civil Court] involves any issues which are required to be settled, decided or dealt with by any authority competent to settle, decide or dealt with such issues under this Act (hereinafter referred to as the "competent authority") the Civil Court shall stay the suit and refer such issues to such competent authority for determination.

(2) On receipt of such reference from the Civil Court, the competent authority shall deal with and decide such issues in accordance with the provisions of this Act and shall communicate its decision to the Civil Court and such court shall thereupon dispose of the suit in accordance with the procedure applicable thereto.

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<sup>5</sup>. This section was inserted by Bom. 13 of 1956, s. 46.

<sup>6</sup>. These words were substituted for the words "instituted in any Civil Court" by Guj. 5 of 1973, s. 22

**(7).**The Hon'ble Supreme Court has stated about the jurisdiction of Civil Court and Revenue Court in paragraphs 14, 18, 19 and 22 of the Pyarelal judgment.... Appellant vs. Shubendra by his natural guardian (father) Shri Pradeep Kumar Piania and Ors. .... Respondents Piania (minor) Civil Appeal No. 1269-1270 of 2019, Special Leave Application (Civil) No. 21402-21403 of 2015, Judgment Hon'ble Dr. Hanan Jay Y. Chandrachud, J. that,

**"14.** In *Bank of Baroda v Moti Bhai* (1985) 1 SCC 475, a two judge Bench of this Court dealt with the question of jurisdiction under Sections 207 and 256 of the Tenancy Act. A bank had sanctioned a demand loan facility to the respondent for which the respondent executed a promissory note and a simple mortgage in favour of the bank. On his failure to repay the loan, the Bank instituted a suit in the civil court for recovery. The respondent raised a preliminary objection that the suit was essentially one for enforcing the mortgage and that the revenue court had the exclusive jurisdiction to entertain the suit by reason of the provisions contained in the Tenancy Act. The Trial court dismissed the objection. Allowing the revision filed by the respondent, the High Court held that that the mortgage deed in respect of agricultural lands formed an essential part of the cause of action. Upon an analysis of Sections 207 and 256 of the Tenancy Act, a two judge Bench of this Court set aside the judgment of the High Court with the following reasons:

“5. A combined reading of these two sections would show that the jurisdiction of civil courts is barred only in respect of suits and applications of the nature specified in the Third Schedule to the Act and in respect of suits or applications based on a cause of action in respect of which any relief could be obtained by means of a suit or application of the nature specified in the Third Schedule. The civil court has no jurisdiction to entertain a suit or proceeding with respect to any matter arising under the Act or the Rules made thereunder, provided that a remedy by way of a suit, application or appeal or otherwise is provided in the Act.

A loan given by a Bank to an agriculturist, which is in the nature of a commercial transaction, is outside the contemplation of the Act and can, by no stretch of imagination, be said to be in respect of any matter arising under the Act... The business of the Bank, in so far as lending transactions are concerned, is not to lend moneys on mortgages but the business is to lend moneys.

8. On the question of jurisdiction, one must always have regard to the substance of the matter and not to the form of the suit. If the matter is approached from that point of view, it would be clear that, primarily and basically, the suit filed by the Bank is one for recovering the amount which is due to it from the respondents on the basis of the promissory note executed by respondent 1 and the guarantee given by respondents 2 and 3.”

(Emphasis supplied)

Section 207 read with Section 256 of the Tenancy Act bars the jurisdiction of the civil courts in respect of suits and applications of the nature specified in the Third Schedule to the Act. The question before us is whether the relief claimed by the appellant can be granted exclusively by a revenue court under the provisions of the Tenancy Act.

**15.xxxxx**

**16.xxxxx**

**17.xxxxx**

**18.** The appellant has prayed that the gift deed dated 10 February, 2011 be declared void to the extent of the share claimed by the appellant and that respondent Nos. 1 to 5 be restrained from alienating the share of the appellant. The civil court may decree the relief prayed only if it is first determined that the appellant is entitled to khatedari rights in the suit property. Under the provisions of the Tenancy Act, the jurisdiction to declare khatedari rights vests exclusively with the revenue courts. Only after such determination may the civil court proceed to decree the relief as prayed. The explanation to Section 207 clarifies that if the cause of action in respect of which relief is sought can be granted only by the revenue court, then it is immaterial that the relief asked from the civil court is greater than, or in addition to or not identical with the relief which

the revenue court would have granted. In view of this matter, the civil court may not grant relief until the khatedari rights of the appellant have been decreed by a revenue court.

**19.** A claimant whose khatedari rights have been decreed by a revenue court is however on a different footing from a claimant whose khatedari rights are pending adjudication by a revenue court. Where the khatedari rights are yet to be decreed, a claimant must first approach the revenue courts. The relief to declare the gift deed void and to restrain respondents Nos. 1 to 5 from interfering with or alienating the property vesting in a civil court may be sought for in a suit by a claimant in whom khatedari rights have been decreed by a revenue court.

**20.xxxxxx**

**21.xxxxxx**

**22.** In the present case, the High Court has proceeded on the basis that the suit seeking a declaration of the gift deed relating to disputed agricultural land situated in Sikar as void and restraining Respondent Nos. 1 to 5 from transfer or sale of the agricultural land before the civil court is squarely covered by the bar to the jurisdiction of the civil court under the provisions of the Tenancy Act. The claim of the appellant to khatedari rights is pending adjudication by a revenue court which has the exclusive jurisdiction to adjudicate upon such a claim. The appellant has no right to seek relief before the civil court without first getting his khatedari rights decreed by the revenue court."

**(8).** As per the judgment of the Hon'ble Supreme Court, the Civil Court can grant the relief sought in such a case as mentioned in the present case only when it is decided by the Revenue Court whether the party to the suit is entitled to hold such agricultural land under the provisions of the Tenancy Act and whether he is a farmer. And only then can the Civil Court grant the relief sought. In view of the judgment of the Hon'ble Supreme Court, the petition of the plaintiff is allowed, wherein the Mamlatdar Modasa is referred to decide whether the disputed land is cultivable or non-cultivable and the Mamlatdar Modasa has the power to decide that issue.

**(9).** In view of all the above facts, and in view of the order passed in Case No. Gadharo/ARV/02/2003 filed by the plaintiff, the present application of the plaintiff is allowed and the issue raised in the application is directed to be referred to Mamlatdar Shri Modasa for decision. And till then, this suit is ordered to be stayed.

**(10).** The concerned clerk shall send a copy of this application with the order passed under it to the competent authority i.e. the Mamlatdar of Modasa. And the Mamlatdar Shri Modasa after determining the issue of the disputed property and determining whether the parties to the suit are farmers or not, shall file a report in the court here.

The order is pronounced under my hand and seal  
in the Open Court on this 18th day of March , 2025.

Date : 18-03-2025.

Place : Modasa

**(Smt.N.D.Sharma)**

Principal Senior Civil Judge, Modasa

Dist. Arvalli

**Code No.GJ00555**