



Exh.:	
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	Y. M . D.

**IN THE COURT OF ADDITIONAL SENIOR CIVIL
JUDGE AT MODASA, DIST. ARVALLI**

Regular Civil Suit No. 54 / 2020

Ex.

Plaintiffs :

1. Usmangani Ibrahimhai Suthar,
Age: 44 years, Occupation: Business,
2. Anwarhusen Ibrahimhai Suthar,
Age: 39 years, Occupation: Business,
3. Ilyasbhai Musabhai Suthar
Age: 44 years, Occupation: Business,
4. Legal heirs of deceased Daudbhai Sulemanbhai Suthar
 - 4.1. Mustakbhai Daudbhai Suthar
Age: Adult, Occupation: Business,
5. Legal heirs of deceased Gulamnabi Sulemanbhai Suthar,
 - 5.1 Riyaj Gulamnabi Suthar
Age: Adult, Occupation: Business,
6. Legah heirs of deceased Musabhai Alibhai Suthar,
 - 6.1. Abdulrahim Musabhai Suthar

Additional Senior Civil Judge, Modasa

Age: Adult, Occupation: Business,

7. Yusufbhai Alibhai Suthar

Age: Adult, Occupation: Business,

8. Legal heirs of deceased Ibrahimbhai Alibhai Suthar,

8.1. Siraj Ibrahimbhai Suthar

Age: Adult, Occupation: Business,

All the applicants are
residence of : Opp. Ghachivada ni mazjid,
Bandivada, Modasa, Tal. Modasa, Dist. Arvalli.

VERSUS

Defendants :

1. Fatmaben Ibrahimbhai Suthar

Aged: 65 years, Occupation: Household work,

2. Nurjahaben Ibrahimbhai Suthar

Aged: 44 years, Occupation: Household work,

3. Jahedaben Ibrahimbhai Suthar

Aged: 38 years, Occupation: Household work,

4. Mariyamben M.Yunus Suthar

Aged: 48 years, Occupation: Business,

5. Abedaben Salimbhai Musabhai Suthar

Aged: 52 years, Occupation: Household work,

6. Ikvan Salimbhai Suthar

Aged: 39 years, Occupation: Business,

7. Mustakim Salimbhai Suthar

Aged: 20 years, Occupation: Business,

8. Sikandarbhai Musabhai Suthar

Aged: 38 years, Occupation: Business,

9. Madinaben Musabhai Suthar

Aged: 34 years, Occupation: Household,

10. Nasimben Musabhai Suthar

Aged: 47 years, Occupation: Household,

11. Khatunben Musabhai Suthar

Aged: 56 years, Occupation: Household,

12. Aminaben Sulemanbhai Suthar

Aged: 55 years, Occupation: Household,

13. Fatmaben Musabhai Suthar

Aged: 55 years, Occupation: Household,

14. Nasimaben Musabhai Suthar

Aged: 49 years, Occupation: Household,

15. Madinaben Musabhai Suthar

Aged: 46 years, Occupation: Household,

16. Aminaben Ibrahimbhai Suthar

Aged: 65 years, Occupation: Household,

17. Mo.Anis Ibrahimbhai Suthar

Aged: 39 years, Occupation: Household,

18. Irfan Ibrahimbhai Suthar

Aged: 34 years, Occupation: Household,

19. Afsana Ibrahimbhai Suthar

Aged: 25 years, Occupation: Household,

20. Aminaben Alibhai Suthar

Aged: 60 years, Occupation: Household,

21. Legal Heirs of deceased Mahmamdhussain Abdulgafur Suthar

21.1. Mustakbhai Mahamdhussain Suthar

Aged: Adult, Occupation: Business,

21.2. Rhishbhai Mohmmadhussain Suthar

Aged: Adult, Occupation: Business,

21.3. Salauddin Mahmmadhussain Suthar

Aged: Adult, Occupation: Business,

22. Legal heirs of deceased Yusufbhai Karimbhai Suthar

22.1. Gulamnbi Yusufbhai Suthar

Aged: Adult, Occupatio: Business,

22.2. Ismailbhai Yusufbhai Suthar

Aged: Adult, Occupation: Business,

22.3. Sulemanbhai Yusufbhai Suthar

Aged: Adult, Occupation: Business,

22.4. Ishakbhai Yusufbhai Suthar

Aged: Adult, Occupation: Business,

22.5. Mustufabhai Yusufbhai Suthar

Aged: Adult, Occupation: Business,

22.6. Khatijaben Yusufbhai Suthar

Aged: Adult, Occupation: Household,

22.7. Nashilaben Yusufbhai Suthar

Aged: Adult, Occupation: Household,

23. Abdulrhemman Karimbhai Suthar

Aged: 65 years, Occupation: Business,

24. Aaiyubbhai Ibrahimbhai Suthar

Aged: 50 years, Occupation: Business,

25. Salimbhai Ibrahimbhai Suthar

Aged: 45 years, Occupation: Business,

26. Gulamhusain Ibrahimbhai Suthar

Aged: 43 years, Occupation: Business,

27. Imtiaz Ibrahimbhai Suthar

Aged: 45 years, Occupation: Business,

28. Idhrishbhai Ibrahimbhai Suthar

Aged: 40 years, Occupation: Business,

29. Iliashbhai Ibrahimbhai Suthar

Aged: 38 years, Occupation: Business,

30. Madinaben Ibrahimbhai Suthar

Aged: 55 years, Occupation: Household,

31. Zakirhusain Sikandarbhai Suthar

Aged: 45 years, Occupation: Business,

32. Khatunben Ibrahimbhai Suthar

Aged: 55 years, Occupation: Household,

33. Mo. Siraj Sikandarbhai Suthar

Aged: 35 years, Occupation: Business,

34. A.Rjak Sikandarbhai Suthar

Aged: 36 years, Occupation: Business,

35. Mo.Javed Sikandarbhai Suthar

Aged: 30 years, Occupation: Business,

36. Yasminben Sikandarbhai Suthar

Aged: 50 years, Occupation: Household,

37. Mustufabhai Yusufbhai Suthar

Aged: 53 years, Occupation: Business,

Defendant No. 1 to 37 are residence of:

Sahara Society, Duragvada Road,

Modasa, Tal. Modasa, Dist. Arvali.

38. Yasinkhan Abbaskhab Baloch

Aged: Adult, Occupation: Business,

Residence of: Samiyana Complex, Opp. Makhdum Highschool,

Tal. Modasa, Tal. Modasa, Dist. Arvali.

39. Khatunben daughter of Ismailbhai Suthar and wife of

Sallauddin Ahemadbhai Bhayla,

Aged: Adult, Occupation: Business,

Residing at: Hussaini Society,

Modasa, Tal. Modasa,

Dist. Arvali.

40. Legal heirs of deceased Motiben Mohanbhai Patel

40.1. Kalidas Mohanbhai Patel

Aged: Adult, Occupation: Business,

at: Dugarvada, Tal. Modasa, Dist. Arvali.

40.2. Prakashbhai Mohanbhai Patel

Aged: Adult, Occupation: Business,

at: Dugarvada, Tal. Modasa, Dist. Arvali.

40.3. Shaileshbhai Mohanbhai Patel

Aged: Adult, Occupation: Business,

at: Dugarvada, Tal. Modasa, Dist. Arvalli.

40.4. Urmilaben Mohanbhai Patel

Aged: Adult, Occupation: Household,

at: Dugarvada, Tal. Modasa, Dist. Arvalli.

41. Khatijaben daughter of Salimbhai Tintoiya

and wife of Salimhussain Gena,

Aged: Adult, Occupation: Household,

All are residence of Hussaini Society,

Modasa, Tal. Modasa, Dist. Arvalli.

Appearance :

Ld. Advocate Mr. G.K. Bhavsar for the Plaintiffs.

Ld. Advocate Mr. S.R. Bharvad for the Defendants.

Suit Valued at: Rs. 341-50/- for permanent injunction and declaration.

: JUDGMENT :

The brief facts of the plaintiff's case are as under:

1. In dispute pertains to the Moje Modasa, Taluka Modasa, District Aravalli, in respect of old Survey No. 249, measuring 5 acres and 2 gunthas, the original account-holder (mool khatedar) of the land was Suthar Rasulbhai Valabhai, whose direct lineal heirs are the Plaintiffs. The Defendants Nos. 1 to 21 are the lineal heirs of Wadil Mahammad Husein Abdul Gaffoor Suthar. The land in question has been inherited by the aforesaid heirs from the original owner, as per the records. At present, the said land is held jointly by the Plaintiffs' ancestor, Rasulbhai Valabhai, along with the ancestors of Defendants Nos. 22 to 36, who are co-owners in possession. A dispute has arisen between

them regarding the subject matter of the claim. In respect of the above-mentioned survey numbers, the Plaintiffs and Defendants Nos. 1 to 21 are entitled to a 1/4 share each from the estate of their ancestor, Rasulbhai Valabhai.

- 1.2. The Plaintiffs and Defendants Nos. 1 to 15 are the heirs of Rasulbhai Valabhai Suthar, who passed away around 1954. Rasulbhai had three sons: Sulemanbhai, whose heirs include the Plaintiffs and Defendants Nos. 1 to 15; Alibhai, whose heirs include Defendants Nos. 16 to 20; and Gafurbhai, whose heir is Defendant No. 21. On 05/07/1984, through Record No. 7130, the names of the Plaintiffs' ancestors and Defendant No. 21's ancestor, Mahammad Husein Abdul Gafur Suthar, were correctly entered in the revenue records for both lands. However, on the same date, through Record No. 7131, without serving any notice, obtaining responses, or following due procedure under the Bombay Land Revenue Code (Section 135D), Defendant No. 21's ancestor colluded with the ancestors of Defendants Nos. 22 to 36 to wrongfully transfer the jointly held and ancestral lands solely in their names, excluding the Plaintiffs' ancestors. The record ignored the fact that the parties were in a nephew-uncle relationship (kaka-bapu), not as siblings, and violated the provisions of the Registration Act and the Stamp Act. Consequently, the Plaintiffs' and Defendants Nos. 1 to 21's one-fourth hereditary share in the land was unlawfully excluded, which constitutes a violation of their hereditary ownership rights, and no such revenue record could lawfully extinguish their legal title.
- 1.3. Further, upon examining Revenue Record No. 7130, it is evident that after the death of Rasulbhai, who had passed over 30 years ago, the names of the Plaintiffs' ancestors were correctly entered to reflect their hereditary rights, and the Plaintiffs' ancestors were joint owners in possession of the land along with the present Defendants. However, the ancestors of Defendants Nos. 22 to 36, in collusion with Suthar

Mahammad Husein Gafurbhai, wrongfully caused loss to the Plaintiffs' rights. They secretly arranged to appropriately divert the income from the ancestral land solely to themselves, depriving the rightful share of the Plaintiffs' ancestors. On 27.09.1984, i.e., just one month after the disputed record, a document was executed in favor of these parties. No signature or consent of the Plaintiffs' ancestors was obtained, and the Plaintiffs' ancestors did not receive any consideration for this transaction. Thus, this document is a fraudulent and illegal attempt to destroy the Plaintiffs' visible hereditary rights over the land.

- 1.4. Further, upon examining page 7 of the document dated 27.09.1984, it is clear that the possession and allocation (kabja bhogavto) of the Plaintiffs' ancestor, Rasulbhai, has been specifically recorded. The land described in this possession and allocation has been continuously held by the Plaintiffs since the time of their ancestor.
- 1.5. Out of the aforementioned disputed Survey/Block No. 249, Plot No. 1, measuring 0 hectares 51 ares 90 sq. m. of cultivable land, specifically agriculturally usable land measuring 1.05 acres, was sold by Defendants Nos. 22 to 39 to Defendant No. 40, Motiben, wife of Mohanbhai Revabhai Patel, by a registered sale deed dated 22.04.2008. This transaction is recorded in the village record under entry No. 19031 of Record No. 6. The Defendants have since re-surveyed the land and recorded 0 hectares 51 ares 60 sq. m. of cultivable land under the new Survey/Block No. 248/1, and a separate account No. 372/8-A has been created in the revenue records.
- 1.6. Defendant No. 40 of the present case purchased from Defendant No. 39 the land situated in the aforementioned Survey/Block No. 249, Plot No. 1, which has been re-surveyed as Survey/Block No. 248/1, measuring 1 acre 51 ares 60 gunthas. The said land was sold by a registered sale deed dated 19/12/2018, and the transaction has been

recorded in the village record No. 6 under entry No. 29910 dated 19.12.2018.

- 1.7. Defendants Nos. 22 to 36 of the present case sold to Defendant No. 17, by a registered sale deed dated 25.06.2008, the land measuring 0 hectares 40 ares 79 sq. m. from the old Survey/Block No. 249, Plot No. 1, which is cultivable land valued at Rs. 0.80. This transaction has been recorded in the village record No. D under entry No. 19307 dated 15.07.2008, and a new account No. 3145 has been created in the revenue records.
- 1.8. Defendants Nos. 22 to 36 of the present case sold to Defendant No. 18, by a registered sale deed dated 01.04.2004, the land measuring 0 hectares 29 ares 06 sq. m. from Survey/Block No. 249, Plot No. 3, which is cultivable land valued at Rs. 0.75. This transaction has been recorded in the village record No. D under entry No. 15592 dated 29.04.2004, and a new Survey/Block No. 251 with account No. 2811 has been created in the revenue records.
- 1.9. Defendants Nos. 22 to 36 sold to Defendant No. 18 by a sale deed dated 09/08/2005, the land measuring 0 hectares 38 ares 32 sq. m. from Survey/Block No. 249/1, which is cultivable land valued at Rs. 0.75. This transaction has been recorded in the village record No. 6 under entry No. 16565, and a new Survey/Block No. 251 has been created. The land has been entered in the new account No. 2811 in village record No. 8-A.
- 1.10. Defendants Nos. 2 to 16 sold to Defendant No. 18, by a registered sale deed dated 12.01.2004, the land measuring 0 hectares 38 ares 45 sq. m. from Survey/Block No. 249, which is cultivable land. This transaction has been recorded in the village record No. 6 under entry No. 15591, and a new Survey/Block No. 251 has been created.
- 1.11 The Plaintiffs state that they are the direct lineal heirs of the original occupant, Late Suchar Rasulbhai Valabhai, in respect of land bearing

Survey/Block No. 407 admeasuring 4 Acres 31 Gunthas, out of which 1 Acre 8 Gunthas is in question, situated at Modasa, Taluka Modasa, District Aravalli, and also in respect of ancestral agricultural land bearing old Survey No. 249 admeasuring 5 Acres 2 Gunthas, out of which 1 Acre 10 Gunthas (being 1/4th share) is in dispute. The Plaintiffs had earlier instituted Regular Civil Suit No. 30/2018 before the Hon'ble Court; however, during the pendency of the said suit, a settlement was arrived at between the Plaintiffs and Defendant Nos. 4 to 19. Subsequently, Defendant Nos. 22 to 39 executed sale deeds in respect of Survey/Block No. 249, thereby affecting the 1/4th share of the Plaintiffs as well as Defendant Nos. 1 to 21. Therefore, with liberty granted by the Hon'ble Court, the Plaintiffs withdrew Regular Civil Suit No. 30/2018 on 08.11.2019 with a view to file a fresh suit. The present suit is filed challenging the various sale deeds executed in respect of Survey/Block No. 249, as the same were executed without the consent of the Plaintiffs and have unlawfully extinguished their 1/4th hereditary rights, and hence are null and void ab initio. Accordingly, the Plaintiffs seek cancellation of the impugned sale deeds, a declaration that they hold a 1/4th hereditary share in the suit property, and a permanent injunction restraining the Defendants from disturbing or dispossessing them from the suit agricultural land.

- 1.12 The cause of action for the present suit has arisen on account of the fact that Defendant Nos. 22 to 36, by suppressing the plaintiffs' 1/4th hereditary share in the ancestral agricultural land bearing Survey/Block No. 249 situated at village Modasa, District Aravalli (subject matter of Suit No. 30/19 pending before this Hon'ble Court), executed sale deeds in favour of Defendant Nos. 37 to 40. Further, the Hon'ble Court, by its order dated 08.11.2019, granted permission to the plaintiffs to file a fresh suit in respect of Survey/Block No. 249. Accordingly, the cause of action to file the present suit within the jurisdiction of this Hon'ble Court has arisen from the said date and continues thereafter.
- 1.13 The court fee, jurisdiction fee, and advocate's fee for the relief of permanent injunction and declaration have been valued at Rs. 300. The suit also

involves agricultural lands from Survey/Block No. 249 (various sub-divisions) with small assessed values ranging between Rs. 0.75 to Rs. 1.05 per unit, totaling Rs. 4.15 as per Section 7(V)(a). Applying the prescribed tenfold calculation, the valuation comes to approximately Rs. 44.15, and accordingly, a court fee stamp of Rs. 4.50 has been affixed.

The plaintiffs therefore pray that this Hon'ble Court may be pleased to grant the reliefs:

A. The agricultural lands situated at Moje Modasa, Taluka Modasa, District Arvalli, bearing Survey / Block No. 249 and its various sub-divisions, with the respective areas and nominal assessments as stated, have been transferred through sale deeds dated 27.09.1984, 22.09.2008, 19.12.2018, 25.06.2008, 01.04.2004, 09.08.2005, and 12.01.2004. These sale transactions were executed without the knowledge and consent of the plaintiffs and have resulted in the unlawful deprivation of the plaintiffs' 1/4th hereditary share in the said properties. Therefore, the plaintiffs pray that such sale deeds be declared illegal, void, and liable to be cancelled, and that an appropriate decree be passed against the defendants accordingly.

B. With respect to the suit property situated at Moje Modasa, District Arvalli, bearing Survey/Block No. 249 and its new sub-divisions (as described with respective areas and assessments), the plaintiffs pray that this Hon'ble Court be pleased to pass a decree declaring that the plaintiffs have a 1/4th hereditary share and lawful ownership right in the said agricultural lands.

C. The plaintiffs pray that this Hon'ble Court be pleased to pass a decree of permanent injunction restraining the defendants, their servants, agents, or any persons acting on their behalf, from in any manner interfering with or disturbing the plaintiffs' possession and enjoyment of the suit agricultural lands situated at Moje Modasa, District Arvalli, bearing Survey/Block No. 249 and its various new sub-divisions (as described with respective areas and assessments), and from obstructing the plaintiffs in carrying out cultivation or agricultural activities on the said lands.

D. Considering the overall facts and circumstances of the present suit, the plaintiffs pray that this Hon'ble Court may be pleased to grant such other and further relief(s) as it may deem fit, just, proper, and equitable in the interest of justice.

E. The plaintiffs further pray that all costs and expenses incurred in connection with the present suit be awarded against the defendants.

➤ **Reply of Defendant Nos. 38 to 41 vide Exhibit No. 17:**

The present suit and the application for injunction filed by the plaintiffs are false, fabricated, and contrary to the revenue records, and therefore liable to be dismissed with costs.

At the outset, the suit is bad for non-joinder and mis-joinder of necessary parties, as essential parties have not been impleaded, and one of the defendants has been wrongly shown as deceased despite being alive. The suit is clearly barred by limitation, as the

impugned sale deeds were executed long back (ranging from 1977 to 2018), and no challenge has been made within the prescribed period of three years. The plaintiffs have also failed to produce the said sale deeds on record. Further, the suit is barred by the principle of res-judicata, as earlier proceedings between the same parties regarding the same lands have already been decided on merits. The suit is also not maintainable under Section 11 of the Revenue Jurisdiction Act, as the plaintiffs have failed to exhaust the remedies available before the revenue authorities before approaching this Hon'ble Court. The present suit is further barred by the principles of estoppel and waiver, and is liable to be rejected under Order VII Rule 11 of the CPC, as it discloses no valid cause of action. That Defendant Nos. 38 to 41 are bona fide purchasers for value, having acquired the suit lands through duly registered sale deeds, followed by valid mutation entries in revenue records after due procedure. The defendants are in lawful, peaceful, and continuous possession of the suit properties. The plaintiffs and their predecessors were fully aware of these transactions and entries but never raised any objection at any point of time.

All allegations regarding fraud, collusion, lack of consent, or illegal mutation entries are false, baseless, and specifically denied. The plaintiffs have no right, title, or interest in the suit property. The suit has been filed without any cause of action and with mala fide intention to harass the defendants and to create unlawful claims over the property. Hence, it is most respectfully prayed that the suit as well as the injunction application be dismissed with costs, and this Hon'ble Court may be pleased to

award special compensatory costs of Rs. 50,000/- in favour of Defendant Nos. 38 to 41.

➤ **Additional Reply of the Defendant No. 38 to 41 :**

Defendants Nos. 38 to 41 submit this additional reply in continuation of their written reply dated 03.02.2021. The lands in Survey No. 249, Modasa, originally held jointly by four owners, were lawfully partitioned and subsequently sold to the defendants through registered sale deeds. Defendants Nos. 38 and 39 purchased their respective shares between 2004 and 2008, with possession and ownership duly recorded and certified. Defendants No. 40 acquired a quarter share in 1977, which was later partitioned among their children in 2018, and Defendants No. 41 purchased the land to clear title, with public notice issued. All transactions were lawful, recorded, and no objections were ever raised by the plaintiffs or their predecessors. Plaintiffs have no right, title, interest, or claim over these lands. Any compensation received from railway acquisition was in their knowledge, and no objection was made. Plaintiffs' claims are barred by limitation, false, and granting relief would cause irreparable harm to Defendants Nos. 38 to 41. Defendants are bona fide purchasers, and the claims should be dismissed with special compensatory costs.

Defendants rely on all listed documents as legally admissible evidence to substantiate their defense.

2. The parties to the matter have, in support of their case, produced oral as well as documentary evidences which are enlisted just as below.

Oral Evidence of Defendants

Sr. No.	Particulars	Exhibit
1	Chief Examination of the defendant No. 39.	38

Documentary Evidence of Defendant Nos. 38 to 41

Sr. No.	Particulars	Exhibit
1	Copy of Sale deed No. 123.	47
2	Copy of the sale deed No. 570.	48
3	Copy of the sale deed No. 1411.	49
4	Copy of the sale deed No. 1923.	50
5	Copy of the sale deed No. 1053	51
6	Copy of the entry of the sale deed No. 5813	52
7	Copy of the 7/12 extract of Survey No. 249.	53
8	Copy of the 7/12 extract of Survey No. 249.	54
9	Copy of the 7/12 extract of Survey No. 249.	55
10	Copy of the 7/12 extract of Survey No. 249.	56
11	Copy of the sale deed No. 5561.	57
12	Copy of the entry of the sale deed No. 29910.	58
13	Copy of the Account No. 3173 of 8A of Modasa.	59
14	Copy of the Sample No. 7 of Survey No. 248 Paiki 1 (Old Survey No. 249 paiki 1 / Paiki 1)	60

15	Copy of the Sample No. 12 of Survey No. 248 Paiki 1 (Old Survey No. 249 paiki 1 / Paiki 1)	61
16	Copy of the Judgment bearing RTS/Appeal/Case No. 34/2019.	62
17	The copy of the entry No. 30213 of the village form No. 6.	63
18	Copy of the RTS / Revision / Case No. 54 of 2020.	64
19	Copy of the judgment of the Revision Petition No. MVV/HKP/ARV/26/2018 filed by the plaintiffs before the Honourable Chief Secretary, Revenue Department (Disputes), Ahmedabad.	65
20	Certified copy of the order passed by the Court in this matter, bearing reference number 5 and affixed with the official seal.	66
21	Copy of Modasa land record 8A, Account No. 2811.	67
22	Copy of Survey No. 251 (Old Survey No. 249/3), Modasa, Sample No. 7 (two pages).	68
23	Copy of Survey No. 251 (Old Survey No. 249/3), Modasa, Sample No. 12.	69
24	Copy of Survey No. 252 (formerly Survey No. 249/2), Modasa, Sample No. 7 (two pages).	70
25	Copy of Survey No. 252 (formerly Survey No. 249/2), Modasa, Sample No. 12.	71

26	Copy of Modasa land record 8A, Account No. 3408.	72
27	Copy of Survey No. 250 (Old Survey No. 249 paiki 1 or 249 paiki 2), Modasa, Sample No. 7 (two pages).	73
28	Copy of Survey No. 250 (Old Survey No. 249 paiki 1 or 249 paiki 2), Modasa, Sample No. 12.	74

■ **ARGUMENTS:-**

3. The plaintiffs have not submitted any arguments while defendants' Advocate vehemently argued before the Court. Which is based on written statement as well as evidences which has to be kept in consideration while deciding the suit.

➤ **Oral as well as Documentary Evidences from the respective parties**

Plaintiffs' oral evidence

The plaintiffs have not produced the oral as well as the documentary evidence before the Hon'ble Court.

Oral Evidence of the defendants.

➤ **Examination in Chief of defendant No. 39 at Exhibit 38:**

The Chief Examination of Defendant No. 39 Khatunben Daughter of Ismailbhai Suthar, is based on the averments made in the plaint. For the sake of brevity and to avoid repetition, the same is not reproduced herein.

➤ **Cross Examination of the Defendant's No. 39 wife Khatunben Ismailbhai Suthar by Learned Advocate on**

behalf of the plaintiff:

Today, the matter was fixed for the cross-examination of the said defendant. Despite repeated calls, the learned advocate for the plaintiff remained absent and no report was submitted. The plaintiff was present; however, upon being asked regarding the cross-examination of the defendant, he failed to provide any proper response.

Therefore, the right of the plaintiff to cross-examine the said defendant is hereby closed.

➤ **Thereafter the defendants side filed the closing purshis at Exhibit: 45 .**

After the considering the oral as well as documentary evidences I determine following issues.

ISSUES

4. For the just decision of the suit following issues have been framed by my learned Predecessor vide Exhibit 36:-

- ૧) શું વાદીઓ પુરવાર કરે છે કે, દાવાવાળી જગ્યામાં વાદી તથા પ્રતિવાદી નં. (૧) થી (૧૦) નાઓના વડીલ રસુલભાઈ વાલાભાઈનો ૧/૪ હિસ્સો છે ?
- ૨) શું વાદીઓ પુરવાર કરે છે કે, તા.૨૭.૦૯.૧૯૮૪, તા.૧૨.૦૧.૨૦૦૪, તા.૦૧.૦૪.૨૦૦૪, તા.૦૯.૦૮.૨૦૦૫, તા.૨૫.૦૬.૨૦૦૮, તા.૨૨.૦૯.૨૦૦૮ તથા તા. ૧૯.૧૨.૨૦૧૮ વાળા દસ્તાવેજો તેઓની સહમતિ વિનાના હોય ગેરકાયદેસર અને રદબાતલ થવાને પાત્ર છે ?
- ૩) શું વાદીઓ પુરવાર કરે છે કે, દાવાવાળી જગ્યા તેઓના કબજા ભોગવટામાં છે ?
- ૪) શું પ્રતિવાદીઓ પુરવાર કરે છે કે, વાદીઓના દાવાને રેવન્યુ જયુરીશીડીકશન

એક્ટની કલમ-૧૧ નો બાધ નડે છે ?

૫) શું પ્રતિવાદી નં.(૩૮) થી (૪૧) નાઓ પુરવાર કરે છે કે, દાવાવાળી જગ્યા પૈકીની જગ્યા તેઓએ રજીસ્ટર્ડ વેચાણ દસ્તાવેજથી ખરીદી અને તેના કાયદેસરના માલિક કબજેદાર બનેલાં છે ?

૬) શું વાદીઓના દાવાને સમયમર્યાદાનો બાધ નડે છે ?

૭) શું વાદીઓ માંગ્યા મુજબની દાદ મેળવવા હકકદાર છે?

૮) શું હુકમ અને હુકમનામું?

5. My findings of the aforesaid issues are as under. :

- 1 In Negative
- 2 In Negative
- 3 In Negative
- 4 In not discussed as per CPC Order 20 Rule 5
- 5 In not discussed as per CPC Order 20 Rule 5
- 6 In not discussed as per CPC Order 20 Rule 5
- 7 In negative
- 8 As per final order

6. I have read & perused the entire case record. I have taken in regard the submissions advanced before me by the Ld. advocate for both the parties herein. I have taken in view the legal ratio & legal prepositions established in the following case-laws produced by the Ld. Advocate for the plaintiff herein.

7. All the above issues are inter-related and inter connected,

therefore, to avoid repetition of the facts and reasons; I have thought it proper to decide them together.

- **Before discussing the following issues I would like to kindly drawn following laws Provisions.**

As per The Bharatiya Sakshya Sahita, 2023 Section 104 burden of proof.

Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those fact exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Illustration

- (a) *A desires a Court to give judgment that B shall be punished for a crime which A says B has committed. A must prove that B has committed the crime.*
- (b) *A desires a Court to give judgment that he is entitled to certain land in the possession of B, by reason of facts which he asserts, and which B denies, to be true. A must prove the existence of those facts.*

REASONS AND ANALYSES

As per the issue no. 1 to 3 burden lies on the plaintiff side to prove those issues are corelated hence, discussed together as per issue No. 1 is concerned plaintiff averments in the plaint that the plaintiff as well as defendant no. 1 to 10 ancestrator Rasulbhai

Valibhai had 1/4th share to the disputed property while defendant side denied the said averments and the written statement on Exhibit 17 as well as the oral evidence and exhibit 38 and also argued before the Court regarding the defence. After the pursued records and evidences before the Court the plaintiff side had not produced oral as well documentary evidences to prove their rights while defendant no. 38 to 41 produced oral as well as documentary evidences for their support. Looking to the above and refer the provision of Section 101 of the Indian Evidence Act, (New Bhartiya Sakshya Adhiniyam, 104) "*Whoever desires any Court to give judgment as to any legal right or liability depend on the existance of facts which he asserts must prove that those facts exist, and when a person is bound to prove the existance of fact, it is said that the burden of prove lied on that person*".

So as per the above provisions concerned the plaintiff should prove the existance fact but pursued the records the plaintiff have not produced any oral as well as documentary evidence for the existance fact. Hence, the issue no. 1 answer is negative.

While issue no. 2 and 3 are concerned the burden lies on the plaintiffs to prove that the disputed sale deed were executed without their permissions and those are null and void and have possessions of disputed property.

Now, as per the discussion of the issue no. 1 the plaintiff side have not produced oral as well as documentary evidences before the Court to prove regarding sale deeds and have possession for that issue no. 2 and 3 answers are in negative.

While issue no. 4 and 5 are concerned the burden lies on the defendant no. 38 to 41 to prove that the plaintiffs suit is barred under the provision of the Revenue Judicial Section 11 as per issue no. 4 and as per issue no. 5 that the defendants no. 38 to 41 are real owner of disputed property and have legal possession to register sale deeds.

Now, looking to the above both the issues are concerned the plaintiffs side are not established and proved that there have 1/4 shares in the disputed property and not produced the documentary evidences regarding the registered sale deeds as per issue no. 2 is concerned. In this situation this court opined that as per CPC order 20 Rule 5 could not be given any findings and reasons for the above issue no. 4 and 5. Hence, issue no. 4 and 5 are concerned not finding reasons under CPC Order 20 Rule 5.

While issue no. 6 is concerned it is related to time barred suit. Now, as per the discussion of above issues plaintiffs had not produced oral as well as documentary evidence for their existence facts hence, as per the Civil Procedure Code Order 20 Rule 5 no finding and reasons are given for this issue.

While issue no. 7 is concerned burden lies on the plaintiffs side to prove that they are entitled reliefs as prayed. As per the discussion of above issues plaintiff side have not proved their 1/4 shares in the disputed property and also not produced oral as well as documentary evidence regarding the registered sale deed. They are not entitled to get relief as prayed. Hence, issue no. 7 is answered in negative.

While issue no. 8 is concerned, what order and decree are as per final order:-

::O R D E R::

1. The plaintiffs suit being Regular Civil Suit No. 54 of 2020 is hereby dismissed.
2. The plaintiffs to bear his own cost as well as cost of the defendants of the suit.
3. Decree be drawn accordingly.

Pronounced in the open Court, on this **23rd** day of **April, 2026** i.e., on **Thursday**.

Place: Modasa.
Date: 23.04.2026

[P. D. Jethva]
Additional Senior Civil Judge
MODASA
Code No. GJ-00-901

Bhavya D. Trivedi