

	Received on:	18-10-2012
	Decided on:	07-04-2026
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	Exhibit:	73

**IN THE COURT OF ADDITIONAL CIVIL JUDGE,
AT-VAGRA, DIST. BHARUCH**

R.C.S No.-93/2012

Plaintiff:

Punjiben Mathurbhai Rathod Thr. Legal Heirs

1.Mangalbhai Mathurbhai

2.Madhuben Mathurbhai

3.Rayjibhai Mathurbhai

4.Bhailal Mathurbhai

5.Kapilaben Mathurbhai

R/o Kundal , Ta. Jambusar. Dist. Bharuch.

V/S

Defendants:

1. Bajuben W/o Late Parshottam Mathurbhai

2. Rajubhai Parshottambhai Rathod

3. Dahiben Parshottam Rathod

Subject :- Declaration, and Permanent Injunction

Appearance:-

Advocate for the Plaintiff- Mr.N.R.Parmar

Advocate for the Defendant- Mr. S.J.Patel

JUDGMENT

PLAINTIFF'S CASE

1. The plaintiffs submit that the agricultural land bearing Khata No. 249, Block No. 538, admeasuring 3-20-00 hectares, situated at village Pakhajan, Taluka Vagra, District Bharuch, was originally owned and possessed as ancestral property by the maternal grandfather of the plaintiffs, namely Mathurbhai Dipabhai Rathod. He died on 07/01/1983, leaving behind his legal heirs in the direct line of succession, namely his daughter Punjiben Mathurbhai mother of the present plaintiffs and his son Parsottambhai Mathurbhai. A pedigree was duly prepared before the village elders and the Talati-cum-Mantri, Pakhajan, showing them as the lawful heirs.

2. After the death of Mathurbhai Dipabhai Rathod, the revenue entry bearing No. 4524 dated 10/11/1986 was mutated in the village Forms No. 7 and 12, wherein only the name of Parsottambhai Mathurbhai (maternal uncle of the plaintiffs' mother) was entered, deliberately omitting the name of Punjiben Mathurbhai, though she was a lawful heir. No notice under Section 135-D of the Gujarat Land Revenue Code was ever served upon her, nor did she relinquish her rights in the said property.

3. Thereafter, Parsottambhai Mathurbhai died on 29/06/2002, and his legal heirs, namely the present defendants No. 1 to 3, got their names mutated in the revenue record by Entry No. 5060 dated 23/08/2002, again without informing the plaintiffs' mother. Consequently, the revenue record presently reflects only the names of the heirs of Parsottambhai Mathurbhai, though the plaintiffs' mother, being a direct legal heir, is entitled to an equal share in the suit property. The property being ancestral in nature and the plaintiffs belonging to a

Scheduled Tribe community, the lawful heirs have a legal right in such ancestral property. Though daughters earlier had no coparcenary right under the Hindu Succession Act, 1956, by virtue of the amendment of 2005, daughters are also entitled to a share in ancestral property; hence, the plaintiffs' mother had a lawful share in the suit land and the plaintiffs now claim that share as her successors.

4. The plaintiffs further submits that the suit property being ancestral joint family property, every member of the joint family is entitled to a share by birth, and any previous arrangement or entry made excluding a lawful heir is not binding. The Supreme Court has held that when property is ancestral joint property, every member of the joint family is entitled to a share therein, and any decree or arrangement tainted with fraud or passed without impleading the concerned heir is not binding upon such heir. It has also been held that even if the property stands in the name of one individual as a holder or occupant, all legal heirs have a share in ancestral property. As per the relevant revenue circular dated 03/02/2003 regarding disposal of mutation entries, the names of all legal heirs are required to be entered in the heirship register. In respect of ancestral property, a notional partition under Section 6 of the Hindu Succession Act is required to be considered.

5. The plaintiffs states that the cause of action for filing the present suit arose when the plaintiffs demanded their lawful half share in the suit land as legal heirs in the direct line of succession, but the defendants refused to grant such share to the plaintiffs' mother, compelling the plaintiffs to institute the present suit. Punjiben Mathurbhai Rathod, the original heir and mother of the plaintiffs, died on 11/08/2017, and the present plaintiffs are her direct legal heirs, as shown in the pedigree produced on record.

6. The plaintiffs, therefore, pray that the Hon'ble Court be pleased to declare that the plaintiffs, being legal heirs, are entitled to a half share in the agricultural land bearing Khata No. 249, Block No. 538 situated at village Pakhajan, Taluka Vagra, District Bharuch, and to direct that their names be entered in the revenue record accordingly. The plaintiffs further pray for a permanent injunction restraining the defendants, their agents or assignees from selling, transferring or otherwise alienating the said suit property. The plaintiffs also pray for any other relief deemed just and proper in the interest of justice.

DEFENDANT'S CASE

7. The defendants filed the written statement vide Exhibit-11 where they submit that the facts stated in the plaint are false, fabricated and denied in entirety except those specifically admitted. They contend that the suit is barred by limitation and lacks any reasonable cause of action, and therefore the plaintiffs must strictly prove all their allegations with cogent evidence.

8. The defendants admit that Mathurbhai Dipabhai Rathod died on 07/01/1983 and that the heirs are as mentioned, but deny that the plaintiffs' names were deliberately excluded or that any rights were suppressed. They deny the allegations made in paragraphs 1, 2 and 4 of the plaint as incorrect. They further state that they are not aware of the assertions in paragraph 3 and call upon the plaintiffs to prove the same.

9. Defendants further submits that the plaintiffs had earlier challenged the mutation entry by filing Appeal No. 143/2009 before the Deputy Collector, Bharuch, which was dismissed on 26/04/2011. Thereafter, they filed Appeal No. 69/2012 before the Collector, Bharuch, which was also dismissed on 16/08/2012. No further appeal was preferred before the Revenue Secretary, yet the present suit has been filed. According to the defendants, Mutation Entry No. 4524 dated 18/11/1986 was lawfully made after verifying the pedigree, death

certificate and issuing notices to concerned heirs, and was confirmed on 07/05/1987. The land originally stood in the name of Mathurbhai Dipabhai as owner-cultivator since 1960, and upon his death the name of Parsottambhai Mathurbhai was duly entered, and later, after his death in 2001, the names of his legal heirs (defendants) were entered.

10. The defendants emphasize that despite two successive inheritance entries, the plaintiffs never raised any objection for decades. They further state that the plaintiffs were married and settled elsewhere and that all customary family obligations were fulfilled by their father. Only after land prices increased in village Pakhajan, the plaintiffs, at the instigation of others, have filed this false suit after about 27 years, without any application for condonation of delay, thus clearly attracting the bar of limitation and showing mala fide intention to harass the defendants.

11. Finally, the defendants submit that the plaintiffs are not entitled to any relief as prayed, and therefore the suit be dismissed with compensatory costs in favour of the defendants for having been unnecessarily dragged into false litigation.

12. Thereafter plaintiff filed an counter affidavit vide exhibit -14 where plaintiff stated that they admit the statement made by the defendants in paragraph 6 of the written statement regarding the death of Mathurbhai Dipabhai Rathod and the succession, but contend that the pedigree and related documents such as statements and panchkyas were falsely prepared and manipulated so as to exclude the plaintiffs and defeat their lawful share in the ancestral property.

13. The plaintiffs state that the facts mentioned in paragraph 8 of the written statement will be duly proved during the course of trial. With regard to paragraph 9, the plaintiffs assert that the suit land bearing Revenue Survey/Block No. 538 of village Pakhajan was the lawful property of their

father Mathurbhai Dipabhai, and after his death the defendants wrongly created false pedigree and panchkyas, deliberately omitted the plaintiffs' names and got the mutation entry effected exclusively in their favour. The plaintiffs had challenged the said entry before the Deputy Collector, but the appeal was dismissed without properly examining the revenue records or merits of the case. Thereafter, the plaintiffs have preferred a revision before the higher appellate authority, which is presently pending.

14. The plaintiffs further submit that the defendants, whose names presently appear in the revenue record, are attempting to sell the suit land to third parties and have even accepted earnest money from prospective purchasers, which would cause serious and irreparable loss to the plaintiffs. Therefore, during the pendency of the suit, the plaintiffs have filed an application for injunction restraining the defendants from alienating the suit property.

15. It is also contended that the plaintiffs were never served with any notice regarding Mutation Entry No. 4524, nor was any notice issued under Section 135-D of the Land Revenue Code, especially since the plaintiffs were residing at their matrimonial home at Kundhal, Taluka Jambusar. Hence, the defendants' claim that due procedure and notice were followed is false. The plaintiffs reiterate that their names ought to have been entered at the time of Mutation Entry No. 4524, but by preparing false pedigree and panchkyas the defendants secured exclusive entry to deprive the plaintiffs of their lawful share. Accordingly, the plaintiffs deny the defendants' contentions and pray that the written statement be rejected as false and misleading.

16. With this stand of the parties, the Ld. Predecessor court vide Exhibit-26 dated 23-12-2017 framed the following issues:

1. Whether the plaintiff proves that he and the defendant are the members of the Joint Hindu Family?
2. Whether the plaintiff proves that Suit properties are the ownership of Joint Hindu Family?
3. Whether the plaintiff proves that he has 1/2th share in the Suit properties?
4. Whether the defendants prove that the suit is barred by law of limitation?
5. Whether the Defendants prove that the suit of the plaintiff is without cause of action?
6. Whether the plaintiff proves that the suit properties are liable to be partitioned?
7. What is the share of each party?
8. What order and decree?

17. My findings on the above issues are as under.

(1) In Negative

(2) In Negative

(3) In Negative

(4) In Affirmative

(5) In Negative

(6) In Negative

(7) In Negative

(8) As per Final Order

18. To prove the issues in his favour the plaintiff side has adduced following oral as well as documentary evidence :

Exhibit	Description of documents
23	Affidavit of Punjiben Mathurbhai Rathod
34	Affidavit of Chief of Dalpatbhai Chitubhai Rathod
38	Deposition of PW Rakeshbhai Lilabhai Desai
39	Death Certificate of Punjiben Mathurbhai
40	Panchkyas
43	Affidavit of Chief of Bhikhabhai Narottambhai Rathod
47	Village form no.8-A
48	certified copy Mutation entry no.4524
49	Family pedigree of Mathurbhai Dipabhai Rathod
50	certified copy of mutation entry no.2133

19. To prove the issues in his favour the defendant side has not adduced oral or documentary evidence :

CONTENTIONS OF PLAINTIFF:-

20. The plaintiff or his counsel did not appear for arguments hence the right of arguments was forfeited.

CONTENTIONS OF DEFENDANTS

21. The defendant made oral arguments where submitted that the plaintiff has utterly failed to prove ownership as no original title deed, sale deed, mutation entry, tax receipt or legal heir certificate has been produced, and mere oral assertions cannot establish title in law; further, from the cross-examination of Dineshbhai it is clearly admitted that neither the plaintiff nor his mother ever resided in the suit property, no objection was raised for nearly fifty years, and the defendant constructed the house and has been in settled possession since then, thereby proving actual possession of the defendant; such long silence and absence of documentary title demonstrate that the plaintiff has no subsisting right to institute the present suit, rendering it not maintainable, and consequently, in absence of proof of title and possession and in view of the defendant's long, peaceful and continuous possession, the plaintiff is not entitled to any declaration, partition or injunction as prayed and the suit deserves to be dismissed with costs.

22. I have given thoughtful consideration to the pleadings, documents proved on record as also evidence led in the matter and contentions of both the parties My issue wise findings in the matter are as under.

23. The burden of proof in civil trial is the obligation on the plaintiff that the plaintiff would adduce evidence that proves his claims against the defendant and is based on preponderance of the probabilities. Under Indian law, until and unless an exception is created by law, the burden of proof lies on the person making any claim or asserting any fact. A person who asserts a particular fact is

required to affirmatively establish it. Relevant provisions of the [Evidence Act, 1872](#) dealing with burden of proof are produced as under:-

24. 101. 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 facts 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.

25. 102. On whom burden of proof lies.-- The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

26. 103. Burden of proof as to particular fact.-- The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

❖ **ISSUES NO.1 , 2 , 3 6 & 7 DISCUSSED TOGETHER**

27. The burden to prove these issues is on the plaintiff. Before dwelling into facts of the case and evidence produced by the plaintiff it is opposite to discuss the concept of joint hindu family and joint family property.

28. A Hindu Joint Family or HUF is the core concept of the Hindu Mitakshara school of thought. Under the said school, there has always been a presumption that a hindu family is a joint one. A Joint Hindu Family consists of all persons who lineally descend from the common ancestor and includes their wives and unmarried daughters. It is one in worship and holds joint assets. After separation of assets, the family ceases to be joint

29. Aforesaid presumption of the family being a joint unit has also been recorded by the *Hon'ble Apex Court in Rukhmabai v. Lala Laxminarayan,*

(1960) 2 SCR 253, There is a presumption in Hindu law that a family is joint. There can be a division in status among the members of a joint Hindu family by refinement of shares which is technically called "division in status", or an actual division among them by allotment of specific property to each one of them which is described as "division by metes and bounds". A member need not receive any share in the joint estate but may renounce his interest therein, his renunciation merely extinguishes his interest in the estate but does not affect the status of the remaining members vis-a-vis the family property. A division in status can be effected by an unambiguous declaration to become divided from the others and that intention can be expressed by any process. Though prima facie a document clearly expressing the intention to divide brings about a division in status, it is open to a party to prove that the said document was a sham or a nominal one not intended to be acted upon but was conceived and executed for an ulterior purpose. But there is no presumption that any property, whether movable or immovable, held by a member of a joint Hindu family, is joint family property. The burden lies upon the person who asserts that a particular property is joint family property to establish that fact. "

30. In Appasaheb Peerappa Chamdgade v. Devendra Peerappa Chamdgade, (2007) 1 SCC 521 Hon'ble Apex Court has held , So far as the legal proposition is concerned, there is no gainsaying that whenever a suit for partition and determination of share and possession thereof is filed, then the initial burden is on the plaintiff to show that the entire property was a joint Hindu family property and after initial discharge of the burden, it shifts on the defendants to show that the property claimed by them was not purchased out of the joint family nucleus and it was purchased independent of them. This settled proposition emerges from various decisions of this Court right from 1954 onwards.

31. In *Shyam Narayan Prasad v. Krishna Prasad*, (2018) 7 SCC 646 Hon'ble Apex Court held as under: It is settled that the property inherited by a male Hindu from his father, father's father or father's father's father is an ancestral property. The essential feature of ancestral property, according to Mitakshara Law, is that the sons, grandsons, and great grandsons of the person who inherits it, acquire an interest and the rights attached to such property at the moment of their birth. The share which a coparcener obtains on partition of ancestral property is ancestral property as regards his male issue. After partition, the property in the hands of the son will continue to be the ancestral property and the natural or adopted son of that son will take interest in it and is entitled to it by survivorship.

32. However, this connotation "ancestral property" is often misunderstood in the post 1956 era. Of course, according to the pre-codified Mitakshara law, son would inherit a right in the property by birth (due to creation of coparcenary). However, after 1956, merely because a property is ancestral, would give birth to no right title or interest of any person in the said property. That is to say, merely because a property is ancestral, the son, grandson or great grandson (or daughters, respectively) would acquire no right over the same.

33. In the present suit in order to prove their issues plaintiff has produced documentary evidence vide exhibit-47 i.e. village form 8-A for khata no.249 and vide exhibit -48 a mutation entry no.4524 of 18-11-1986 which says that property shown in column no.3 was on Mathurbhai Dipabhai but due to his death on 07-01-1983 name of his direct lineal descendent Parshottambhai Mathur is entered and vide exhibit 49 a family pedigree of Mathurbhai Dipabhai Rathod. So From Exh.47 and Exh.48, it is evident that the suit land originally stood in the name of Mathurbhai Dipabhai Rathod and upon his death on 07/01/1983, the name of his son Parsottambhai Mathurbhai came to be entered in the revenue record as his lineal descendant. Exh.49 clearly establishes the

genealogy showing that Punjiben i.e. mother of the present plaintiffs and Parsottambhai were the daughter and son respectively of Mathurbhai Dipabhai. The defendants have also admitted the relationship in their pleadings. Thus, the existence of a common ancestor and lineal descent is proved, but as it was held in landmark precedent abovementioned i.e.”A Joint Hindu Family consists of all persons who lineally descend from the common ancestor and includes their wives and unmarried daughters. so as on the date of filing of suit the plaintiff ceased to be the member of hindu joint family. Hence the issue no.1 is decided against the plaintiff.

34. As regards the nature of the property, the revenue record shows that the land belonged to Mathurbhai Dipabhai and was devolved by succession after his death on the name of Parshottambhai Mathurbhai in 1986 and There is no documentary or oral evidence produced by the plaintiff to show the ownership of property before Mathurbhai Dipabhai and as it is laid down in landmark precedent of ***Sunny and Ors. vs. Raj Singh and Ors. MANU/DE/3560/2015*** by the hon’ble Delhi High Court that “*After passing of the Hindu Succession Act, 1956 , this position has undergone a change and if a person after 1956 inherits a property from his paternal ancestors, the said property is not an HUF property in his hands and the property is to be taken as a self-acquired property of the person who inherits the same.*” In absence of such evidence, and considering that the property came down from the Mathurbhai Dipabhai to Parshottambhai, the plaintiff has failed to discharge the initial burden of showing that the property was inherited family property having the character of joint family property. Hence the issue no.2 is decided against the plaintiff.

35. As the plaintiff has failed to produce any cogent documentary or oral evidence to show that, the property was ancestral in the hands of Mathurbhai Dipabhai, or it was derived from any joint family nucleus, or it retained the character of coparcenary property. On the contrary, the record indicates that the

property devolved upon Parshottambhai after 1956 by succession. As clarified in *Shyam Narayan Prasad v. Krishna Prasad* and further reinforced in *Sunny & Ors. v. Raj Singh & Ors.*, property inherited after the enactment of the Hindu Succession Act, 1956 does not automatically assume the character of joint family property, and such inheritance is treated as separate/self-acquired property in the hands of the inheritor unless proven otherwise. Additionally, as already held while deciding Issue No. 1 and 2, the plaintiff has failed to establish that she continued to be a member of a subsisting Joint Hindu Family having unity of property and therefore the plaintiff has failed to prove that she is entitled to 1/2 share in the suit property. Hence accordingly all four issues are decided against the plaintiff.

❖ **ISSUE NO.-4**

36. The relief sought by the plaintiff in the present suit is for declaration and permanent injunction, now the limitation period for declaration and permanent induction as per article 58 and 113 the limitation act 1963 is 3 years from when the right to sue first accrues.. The plaintiff has alleged that when the plaintiffs demanded their lawful half share in the suit land as legal heirs in the direct line of succession, but the defendants refused to grant such share to the plaintiffs' mother, compelling the plaintiffs to institute the present suit, the plaintiff has not specified a particular point of time when the defendant denied the right in the whole plaint, the first mutation entry related to the suit property was given effect in 1986 and after that in year 2002 and before 2009 the entries were not challenged by Punjiben but in year 2012 the present suit is filed, However, the record reveals that mutation entries in respect of the suit property were effected as early as 1986 and subsequently in the years 2002 and prior to 2009, which clearly indicate a hostile assertion of title by the defendants and thus constituted a complete and unequivocal denial of the plaintiffs' alleged rights. Despite this, neither the plaintiffs nor their predecessor, Punjiben, challenged the said entries

within the prescribed period. The imitation commences from the first accrual of the right to sue and cannot be postponed by vague or successive denials, the present suit instituted in the year 2012, after an inordinate and unexplained delay, is clearly beyond limitation. Hence this issue is decided in favour of the defendant.

❖ **ISSUE NO. 5**

37. The burden to prove this issue squarely lies upon the defendants. A “cause of action” means every fact which the plaintiff must prove, if traversed, in order to obtain a decree. It is well settled that while deciding the existence of cause of action, the Court must primarily look at the averments made in the plaint and the supporting material, and not the defence raised in the written statement. If the plaint discloses a bundle of facts which, if proved, would entitle the plaintiff to relief, then the suit cannot be said to be without cause of action.

38. In the present case, the plaintiffs have specifically pleaded that the suit land originally belonged to their maternal grandfather Mathurbhai Dipabhai Rathod and after his death, the defendants’ predecessor got his name mutated exclusively by preparing incorrect pedigree and panchkyas, thereby excluding the plaintiffs’ mother from the revenue record. The plaintiffs have further pleaded that they are the legal heirs of Punjiben, who was the daughter and a lawful heir of Mathurbhai, and that despite demand, the defendants refused to recognize their share in the ancestral property. They have also alleged that the defendants are attempting to alienate the suit land to third parties and have already received earnest money from prospective purchasers, which has created an immediate threat to their rights and interest in the property. These pleadings, if taken at their face value, clearly disclose a subsisting and actionable

grievance against the defendants. Hence this issue is decided against the defendant.

39. In view of the above discussion and on perusal of evidence on record, this court above has already held that as the plaintiffs have failed to lead any evidence as to prove their case, the plaintiff is not entitled to relief of declaration and permanent injunction. In view of above discussion, I hereby pass following final order in the interest of justice :

:- FINALORDER :-

1. The suit of the plaintiff is hereby rejected.
2. Parties to bear their own cost.
3. Preliminary Decree to be drawn accordingly.

Signed and Pronounced in the open court today on the 7th day of April 2026.

Date:-07-04-2026

Surendrapal Singh Deora

Additional Civil Judge

Vagra, Bharuch