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IN THE COURT OF ADDITIONAL CIVIL JUDGE,**(Mr. NARENDER KUMAR), VAGRA****REGULAR CIVIL SUIT No. 27 of 2016****Exhibit No.– 36****Plaintiff : Dahiben d/o Paragbhai, w/o****Somabhai****r/o : Mahyavanshi Faliyu, Jolwa,****Ta.Vagra, Dist. Bharuch.*****V E R S U S*****Defendants : 1. Legal Heirs of the deceased****Laxmanbhai Paragbhai****1/1. Bipinchandra Laxmanbhai Parmar****r/o : House No.51, Rang Upvan Society,****Chavaj, Ta. Dist. Bharuch.****1/2. Madhiben wd/o Laxmanbhai Parmar****1/3. Smrutiben Laxmanbhai Parmar****Both residing at : Akshat Avenue, Chavaj,****Ta. Dist. Bharuch****1/4. Narendrabhai Laxmanbhai Parmar****r/o : Bharati Row House, Aali, Bharuch.**

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SUIT FOR PARTITION IN THE JOINT PROPERTY

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APPEARANCE: -

For The Plaintiff: Learned Advocate **Mr. H. I. Shah**

For The Defendants: Learned Advocate **Mr. R. M. Parmar**

:: J U D G M E N T ::

Date: 08. 08. 2026

(1) Introduction:

The plaintiff and the defendant are brother and sister. The agricultural land jointly owned, possessed, and enjoyed by the plaintiff and the defendant is situated at Village Vasti-Khandali, Taluka Vagra, District Bharuch, bearing Block/Survey No. 331, admeasuring 2 Hectares, 51 Ares, 00 Square Metres. (Hereinafter, the property mentioned above shall be described as 'Suit Property').

(2) Brief Reflection of The plaintiffs case:

(A) Pleadings:

2.1 It is stated by the plaintiff that she has repeatedly requested the defendant to partition and separate the plaintiff's lawful one-half share. However, despite such repeated requests, the defendant has refused to separate and hand over the plaintiff's lawful half share. Further, the defendant has been exclusively cultivating the suit property for several years and has neither shared the agricultural produce nor the income derived therefrom with the Plaintiff. In this regard, the Plaintiff served a legal notice upon the defendant on 22/03/2016. Although the said notice was duly served upon the defendant, the defendant neither replied to the notice

nor complied with the demands made therein. Accordingly, the plaintiff has filed the present suit seeking partition and separate possession of the plaintiff's one-half share in the suit property

2.2 Therefore, it is prayed ;

1. To pass a decree in favour of the Plaintiff directing the defendant to partition the suit property, being the jointly owned property, by metes and bounds, and to separate and deliver the plaintiff's undivided share therein.
2. To pass a decree directing that, since the defendant has been exclusively enjoying the produce and income from the suit property for several years, the plaintiff be awarded the plaintiff's one-half share of the agricultural produce/income for the last three years, and further direct that the plaintiff be entitled to recover the plaintiff's share of such produce/income from the defendant's person, property, and assets until the final disposal of the suit.
3. To grant any other reliefs in the interest of justice that may be deem fit and proper by this Hon'ble Court.
4. The costs of the suit be awarded.

(B) Evidence adduced by The plaintiff in support of pleadings :

(i) Oral Evidence:

No.	Particulars	Exh.
1.	Deposition of plaintiff	28

(ii) Documentary Evidence :

No.	Particulars	Exh.
1.	Village Form no. 7 and 12 relating to the property bearing survey no. 331	30
2.	Village Form no. 8(A) relating to the property bearing survey no. 331	31
3.	legal notice dated 22/03/2016	32
4.	Post Slip	33
5.	Unserved legal notice with its original cover	34

(C) Closure of Evidence:

Learned Advocate appearing on behalf of the plaintiff has tendered the closing pursis vide Exh.35. Hence, the stage of submission of evidence on plaintiff's side has been closed.

(3) Brief Reflection of the defendant's Case:**(A) Defence / Pleadings:**

3.1 On institution of the present Suit, the summons/ notices were duly served upon the defendant. Earlier defendant has appeared before the court and filed his written statement vide Exh.11, The defendant contends that the plaintiff's suit is false, illegal, devoid of merits and not maintainable in law. Further, defendant has denied the facts of the plaint, and only admitted to the

facts stated in his written statement.

3.2 It is averred that the true facts of the case are that after the death of their ancestor, Paragbhai, on 17/10/2002, the names of the parties were entered in the revenue records of the suit land by way of Mutation Entry No. 2428 as legal heirs. However, even prior thereto, the defendant had, on the occasions of the marriages of the plaintiff's children, celebrated the ceremonies in a grand manner and had given cash as well as gold and silver ornaments on three separate occasions. Further, when the Plaintiff's husband passed away, the defendant incurred substantial expenses for the funeral ceremonies and also paid cash to the plaintiff in accordance with the customs and traditions of the community. In consideration of the aforesaid, the plaintiff permanently relinquished her share in the suit property in favour of the defendant and undertook to have her name deleted from the revenue records relating to the suit property. However, as the market value of the suit property has now increased substantially, the Plaintiff has become dishonest in her intentions and has neither got her name deleted from the revenue records nor consented to the same.

3.3 The defendant is an agriculturist and cultivates agricultural land. The suit property is non-irrigated agricultural land. The suit property is in an almost barren condition, from which no agricultural produce can be obtained, nor is cultivation practically possible.

Further, the defendant submits that, according to the well-known judgment of the Hon'ble Supreme Court, if the father died before the year 2005, a daughter is not entitled to inherit as a coparcener. If a daughter (i.e., the Plaintiff) seeks a share in the ancestral property from her brothers, the father's death should have occurred after 9 September 2005. In the present case, the father died on 17.10.2002. Therefore, in such circumstances, the plaintiff is not entitled to claim any share in the father's property as a legal heir, and on this ground also the present suit is not maintainable in law.

3.4 Further, The defendant has no intention whatsoever of transferring the suit land to any person and does not propose to transfer it in any manner whatsoever. Further, if at any future date the suit land is acquired by the Government and compensation is awarded, the defendant is ready and willing, of his own free will, to pay an appropriate share of the compensation amount to the plaintiff. Under these circumstances, and since the plaintiff has no legal cause of action to maintain the present proceedings, it is respectfully prayed that the plaintiff's suit be dismissed with costs.

(B) Thereafter, as the defendant died during pendency of suit and amended plaint was produced, neither the defendants nor their learned advocate have chosen to file any documentary evidence or to lead oral evidence in support of their case. Such conduct clearly reflects a lack of diligence and seriousness in prosecuting their

defence. In view of the continued default and non-compliance, this Hon'ble Court was constrained to close the right of the defendants to file written reply to the amended plaint of the plaintiff, further this court has also closed the right to cross-examination and adduce documentary as well as oral evidence. Consequently, the matter deserves to proceed further on the basis of the material already placed on record by the plaintiffs.

- (4) My learned predecessor Judge, to determine the real question in the suit between the parties had framed following issues vide Exh.-17.

Sr. No.	Issues
1	Whether the plaintiff proves that the suit property is jointly owned and occupied by plaintiff and the defendants ?
2	Whether the plaintiff proves the plaintiff has a one-half right, title, interest and share in the Suit Property ?
3	Whether the defendants prove that the plaintiff voluntarily relinquished her right, title, interest and share in the suit property in favour of the defendants ?
4	Whether the plaintiff proves that she is entitled to get relief as prayed for in the plaint ?
5	What order and decree ?

(5) My findings upon such issued are as under.

Issues	Onus lies on	Findings
1	Plaintiff	In Affirmative
2	Plaintiff	In Affirmative
3	Defendants	In Negative
4	-	In Partly Affirmative
5	-	As per final order

(6) **Reasons for Findings:**

6.1 As above issues are inter-connected and inter-linked with each other and finding of one issue depends upon another and to avoid frequent repetition of facts; I have decided to discuss the above issues together by common discussion and common reasoning for the sake of convenience and brevity.

6.2 To prove the suit the plaintiff has produced oral evidence in the form of affidavit as per provisions of Code of Civil Procedure, 1908 of plaintiff filed in the present suit at Ex.28, wherein the witness has stated the facts as per the plaint at Ex.1 and therefore, the same are not reproduced here. Further, It is stated by the plaintiff that she has repeatedly requested the defendant to partition and separate the Plaintiff's lawful one-half share in the suit property. However, despite such repeated requests, the defendant has refused to separate and hand over the plaintiff's lawful half share. Further, it is submitted that the defendant has been exclusively cultivating the suit property for several

years and has neither shared the agricultural produce nor the income derived therefrom with the plaintiff. In this regard, the plaintiff served a legal notice upon the defendant on 22/03/2016. Although the said notice was duly served upon the defendant, the defendant neither replied to the notice nor complied with the demands made therein. Multiple opportunities were granted to defend their case but they failed to remain present before this court and consequently, this Court was constrained to close defendants' right to cross-examination

6.3 But on the other side, the defendants have failed to prove that the plaintiff voluntarily relinquished her right, title, interest and share in the suit property in favour of the defendants as they have not produced any evidence to prove the facts. Multiple opportunities were granted to defend their case but they failed to remain present before this court and consequently, this Court was constrained to close defendants' right to cross-examination and adduce documentary as well as oral evidence.

6.4 It is clear from the Village Form no. 7 and 12 and Village Form no. 8(A) relating to the suit property i.e. the revenue record produced before the court that suit property belongs to the plaintiff and ancestor of defendants and the trustworthiness of the same is not denied or disputed by the defendants. Further it is admitted by the plaintiff that the suit property belongs

to defendants also. On the other hand the point of contention by the defendants is that there is well-known judgment of the Hon'ble Supreme Court, if the father died before the year 2005, a daughter is not entitled to inherit as a coparcener but that is not tenable in the eyes of law. As the position of law is otherwise as held in the case of **Vineeta Sharma versus Rakesh Sharma [2020] 9 SCC 1**. In para 129 of this judgment the **Hon'ble Supreme Court** has clarified the law in following terms-

129. Resultantly, we answer the reference as under:

(i) The provisions contained in substituted Section 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 Section 6[1]s 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 Section 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 of 1956 or

male relative of such female. The provisions of the substituted Section 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 Section 6[5] of the Act of 1956, a plea of oral partition cannot be accepted as the statutory recognised 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 affected 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.

6.5 As per the discussions made hereinabove and documentary and oral evidences produced by both the parties, it is clear that the suit property belongs to the plaintiff as well as the defendants as admitted by the plaintiff in her examination. And that the suit property is joint family property is not in dispute i.e. the same has been admitted by the defendants and the same is clear from the ratio laid down by the **Hon'ble Supreme Court** in the case of *Shersingh & others versus Gamdoor Singh A.I.R 1997 SC 1333*. The property which devolved from the ancestors there was hardly any reason to disbelieve the character of the

property being ancestral property. Moreover, there is nothing on record to show that the plaintiff has relinquished her share in favour of defendant. As per section 17(1)(b) of Registration Act, any transfer of immovable property having value more than one hundred rupees has to be compulsorily registrable.

- i. 17. Documents of which registration is compulsory.
- (1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely,
- (a) instruments of gift of immovable property;
 - (b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;
 - (c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and
 - (d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;
 - (e) [non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or

order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property:] *[Inserted by Act 21 of 1929, Section 10.]*

Moreover recently the **Hon'ble Supreme Court** has held in the case of **Yellapu Uma Maheshwari versus Budha Jagadheeswara Rao (2015) 16 SCC 787** that a document relinquishing a right in immovable property must be registered under section 17; otherwise it is bar under section 49 of Registration Act. The para 15 is as follows-

Section 17 (1) (b) of the Registration Act mandates that any document which has the effect of creating and taking away the rights in respect of an immovable property must be registered and Section 49 of the Act imposes bar on the admissibility of an unregistered document and deals with the documents that are required to be registered u/s 17 of the Act.

6.6 Now looking the facts of this case, relevant provisions of law in the light of judgments discussed, it is clear that the suit property is ancestral property and the daughter of a coparcener is entitled to the same share as son. Moreover the present case is related to succession also and the plaintiff is shown as co-owner of suit property and she has neither relinquished her right in writing or by registered document. Thus, it can be believed that there is clear case in the favour of the plaintiff and the defendants have not produced any cogent, rebuttal or convincing evidence against the averments and allegations made by the plaintiff. In civil proceedings standard of proof is not as strictly required as is

required in criminal proceedings. Merely, preponderance of possibility is required. Under these circumstances, the plaintiff side has succeeded to prove their contentions and therefore, there are reasons to allow the prayer of plaintiff. The plaintiff is thus entitled to get the suit property. Hence, this court has pass the following final order in respect to issue No.5.

:: FINAL ORDER ::

1. Regular Civil Suit No. 27 of 2016 is hereby partly allowed.
2. It is hereby declared that the plaintiff having right, title and interest in suit property and is entitled to half share in joint property at village- Vasti-Khandali, Ta. Vagra, Dist. Bharuch, bearing Block/Survey No. 331, admeasuring 2 Hectares, 51 Ares, 00 Square Metres.
3. It is hereby ordered that the Collector district Bharuch is hereby appointed as Court Commissioner for partition of suit property mentioned in para-2 of this order as per section 54 of Code of Civil Procedure, 1908 for partition and necessary permission related documentation and further collector is directed to produce his report in 60 days. A certified copy of this order and necessary documents be sent to the collector. And Court Commissioner may receive any documents necessary for execution of this order from this Court as per rules.

Judgment

R.C.S. No: 27 of 2016

4. Final decree to be drawn accordingly after submission of report of Court Commissioner i.e. collector.
5. The parties are directed to bear their own cost.

***Signed and pronounced today on the day of 08^h
August, 2026 in the open Court.***

Date: 08/08/2026

(Mr. Narender Kumar)

Place: Vagra

Additional Civil Judge,

Vagra.

UIC : GJ01440