



Filed on	25/04/2017		
Registered on	25/04/2017		
Disposed on	06/05/2026		
Duration	Y	M	D
	09	00	11

**IN THE COURT OF HON'BLE PRINCIPAL SENIOR CIVIL
JUDGE, AT – JAMBUSAR**

REGULAR CIVIL SUIT No. 45 / 2017

Exhibit - 70

Plaintiff :- Naseemabanu W/o Jummakhan Ali Mahamad Pathan
& M/o. Sherkhan Jummakhan Pathan
Age : 45, Occupation : Household chores,
Resident of : - Umra, Ta.-Jambusar, Dist. - Bharuch
Current Resident : Kava, Ta.-Jambusar, Dist. - Bharuch

V/S

Defendants :-

1. Sarpanch, Gram Panchayat, Umra
Resident of : - Gram Panchayat Office,
At.: Umra Ta.-Jambusar, Dist. - Bharuch
2. Gram Panchayat, Umra
Resident of : - Gram Panchayat Office,
At.: Umra Ta.-Jambusar, Dist. - Bharuch
3. Taluka Panchayat, Jambusar
Resident of : - Ta.-Jambusar, Dist. - Bharuch
4. Land Encroachment Department,
District Panchayat, Dist. - Bharuch

Subject :- Suit for getting declaration and mandatory orders.

Appearance :-

Ld. Advocate for the plaintiff	Mr. S. I. Dola
Ld. Advocate for the defendants.	Mr. J. A. Mistry

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

1. The brief facts of the plaint are as under:

The plaintiff has stated that the following properties are situated at Village Umra, Ta. Jambusar, Dist. Bharuch.

Sr. No.	Property No.	Type of House
363	295	Tin shed pakka house
364	295/1	Clay tiles shed house

Further it is submitted by the plaintiff that the name of Jummakhan Ali Mahamad Pathan is running in property no. 295 and the name of Sherkhan Jummakhan Pathan is running in the property no. 295/1 is and both the properties are registered in panchayat records and they are also paying the revenue taxes for the same and being her husband and son in the jail, she has filed the present suit. Further it is submitted by the plaintiff that in the voter id card, ration card and in electoral list also the same address is mentioned and she lives with them. It is further submitted by the plaintiff that there is an open space (Vandho) at the suit property surrounded by fencing and there are 5 Mango trees, 2 Guava trees, 2 Neem trees which were planted by them and they are living at the suit property for about last 30 years. Further the plaintiff submitted that her husband is working as a caretaker and he was falsely implicated in murder case along with her son and the village people are harassing her being the only muslim family in the village and served a false notice issued by panchayat on 19.04.2017 with their malafied intention of breaking down the suit property. It is further submitted by the plaintiff that plaintiff is the owner & possessor of the suit property on the basis of adverse possession but a false notice of encroachment has been given to the plaintiff and the Sarpanch & Secretary of Panchayat have no right to serve the notice and the said

notice is illegal and moreover few people of village have damaged her house and they have also burnt her Tempo, Car and her house and she has filed a police complaint at Jambusar Police Station vide FIR No. 10/17. Further it is submitted by the plaintiff that if the defendants succeeds in their malafied intention then the plaintiff will have to face irreparable loss which cannot be compensated through money and hence filed the present suit for declaration & injunction.

2. The plaintiff has prayed for following reliefs from the Court ;
 - a. To declare that being suit property mentioned at para 1 of the plaint under their possession for about 30 the plaintiff has a settle possession over the suit property & the notice served by the Sarpanch is illegal.
 - b. To pass an injunction order that defendants will not demolish or vandalise any part of suit property without any legal inquiry and maintain the current condition of the suit property and also will not interfere in the possession of the suit property of plaintiff by any means by themselves or through their family members, agents, servants.
 - c. All the costs of this claim will be compensated from the Defendants
 - d. Any other order or relief which the Hon'ble Court may deem fit and proper be granted.
3. The summons of the present suit was duly served upon the defendant and the defendant appeared before the Court and filed written statement vide Exh.- 28 to challenge the contentions of the plaintiff wherein the defendants while denying the facts have submitted that the plaintiff was Dy. Sarpanch and she has illegally built a house i.e., suit property on Govt. land without any permission of govt. officer and her husband and son were of rowdy nature and the people of village filed an application at Encroachment Department, Bharuch about the encroachment of the plaintiff and upon inquiry the encroachment department informed the panchayat office to vacate the said

encroachment on 20.03.2017 and the same was registered in the Encroachment Register and the defendants called a meeting regarding the same and a resolution was passed to remove the encroachment on 11.04.2017 and on the basis of the resolution a notice was served to the husband and son of the plaintiff under section 105 of Gujarat Panchayat Act mentioning the details of the encroachment and keeping the grudge in mind the husband and son of the plaintiff committed murder of Arvindbhai Hanumanbhai Thakor and complaint of the same was registered at Jambusar Police Station vide complaint no. I 9/17 and under the same crime her husband and son are in the jail. It is further stated by the defendant that a legal notice was served to the plaintiff and the defendant no. 4 gave her report to the defendant no. 3 i.e., Taluka Development Officer, Jambusar on 21.03.2017 and on basis of that the defendants under the police protection removed the said encroachment over the government land and took the possession of same. It is further submitted by the defendant that the possession of the house built on the government land was taken over by the defendants hence the plaintiff is not liable to get relief sought by her in the plaint moreover the facts stated by the plaintiff in the plaint that the actions of the defendant are illegal is wrong and the suit of the plaintiff should be rejected considering the above stated facts by the defendants.

4. The plaintiff side has produced following oral and documentary evidences in support of the case ;

Oral Evidence of Plaintiff :-

Sr. No.	Particulars	Exhibit
1.	Affidavit of examination in chief of plaintiff Naseemabanu w/o Jummakhan Ali Mohammad.	49

Documentary Evidence of Plaintiff :-

Sr. No.	Particulars	Exhibit
1.	Copy of Assessment Sheet - Form No. 8 of Property No. 295 of Village- Umra for year 2005-06.	51
2.	Copy of Assessment Sheet - Form No. 8 of Property No. 295 of Village- Umra for year 2011-12.	52
3.	Copy of Assessment Sheet - Form No. 8 of Property No. 295/1 of Village- Umra for year 2011-12.	53
4.	Copy of Assessment Sheet - Form No. 8 of Property No. 295/1 of Village- Umra for year 2012-13.	54
5.	Copy of Receipt of Tax Payment to Panchayat of Property No. 295 for year 2016-17	55
6.	Copy of Receipt of Tax Payment to Panchayat of Property No. 295 for year 2011-12	56
7.	Electoral List of Family Member	57
8.	Certificate issued by Gram Panchayat - Umra.	58
9.	Notice given to Talati-cum-Mantri, Village - Umra, Ta.- Jambusar, Dist. Bharuch.	59
10.	Office Copy of Notice issued by Defendant No. 1 dated 19.04.2017.	60

5. The plaintiff filed closing pursis vide Exh.- 63 stating that the plaintiff does not want lead any oral or documentary evidences.

6. **Evidence of the Defendants:**

On perusal of the record ample opportunities were given to the defendants to adduce the evidence however, the defendants have not produced any evidence hence the right to adduce evidence of the defendant side was closed on 24.01.2025 vide pursis given by plaintiff side vide Exh.- 65.

7. For determination of the present suit, following issues were framed vide Exh.- 31 ;

૧. શું વાદી સાબિત કરે છે કે, દાવાવાળી મિલકતના વાદી વર્ષોથી એડવર્સ પજેશનના આધારે માલિક અને કબ્જેદાર બની ગયેલા છે ?

૨. શું વાદી સાબિત કરે છે કે, કાયદેસરની કો પંચાયત ધારા હેઠળની ઇન્કવાયરી કર્યા વગર દબાણ શાખાને નુકશો તૈયાર કરી દાવાવાળી મિલ્કતનું દબાણ બતાવેલ છે ?
૩. શું વાદી સાબિત કરે છે કે, પ્રતિવાદીઓનું કૃત્ય ગેરકાયદેસરનું છે ?
૪. શું પ્રતિવાદી સાબિત કરે છે કે, સદર તકરારી મકાન વાદી ગામના ડેપ્યુટી સરપંચ હતા ત્યારે સરકારી જગ્યામાં બનાવી દિધેલ છે ?
૫. શું વાદી માગ્યા મુજબ ની દાદ મેળવવા હકકદાર છે ?
૬. શું હુકમ અને હુકમનામું ?

8. My findings on the above issues are as under :-

Issues	Findings
Issue No.1	In Negative
Issue No.2	In Negative
Issue No.3	In Negative
Issue No.4	In Negative
Issue No.5	In Negative
Issue No.6	As per Final Order

9. **Oral evidence & cross examination of plaintiff side :-**

The plaintiff in the examination in chief on oath produced vide Exh.- 31 has reiterated the facts of the plaint and referred the documentary evidences produced and hence, for the sake of brevity and convenience and to avoid repetition of facts, the same has not been reiterated.

Sufficient opportunities were given to the defendant side to cross examine the plaintiff but the defendant side did not remain present to cross-examine the plaintiff hence the right to cross-examine the plaintiff of defendant was closed on 17.10.2024.

10. **Arguments :-**

Heard the Ld. Advocate of plaintiff at length.

Sufficient opportunities were given to the defendant side for arguments but the defendant side neither present before the court nor they argued in the matter and hence, right of argument of the defendant was closed on 04.12.2025.

- : Reasoning and Analysis : -

Issue Nos. 1 to 3 :-

As the issue nos. 1 to 3 are inter-connected and co-related to each other and hence, in order to avoid repetition of facts and for the sake of brevity and convenience, issues nos. 1 to 3 are hereunder jointly discussed.

As the Issue Nos.1 to 3 are concerned, it seems that the plaintiff has filed his examination-in-chief vide Exh. 49 and wherein she has reiterated that facts stated in the plaint however, the Ld. Advocate for the defendants was present at the time of cross-examination but he did not cross-examine the plaintiff and submitted that he was no more advocate of the defendants as he issued the notice for resigning his duty as advocate and taking in to consideration the above circumstances the defendant's right to cross-examine the plaintiff was closed on 17.10.2024.

The plaintiff has produced the documentary evidence vide Exh. 51 to Exh. 60 and on perusal of Exh. 51 to Exh. 54 which are Form No. 8 i.e., copies of Assessment Sheet of Property Tax of the plaintiff's property and Exh. 55 & Exh. 56 are copies of Payment receipts of property tax and Exh. 57 is copy of Electoral List and Exh. 58 is copy of plaintiff's residential proof and Exh. 59 is a notice sent to the defendants and Exh. 60 is a office copy of Encroachment Notice dated 19.04.2017 given by Gram Panchayat, Umara. Now, on perusal of Exh. 51 to Exh. 54 which are assessment sheet of the plaintiff's property and on perusal of the same it seems in column no. 5 the name of owner is mentioned as Government and beside column no. 5 the name of possessor is mentioned as Jummakhan Ali Mohammad Pathan in column no. 6. It seems from the documentary evidence produced vide Exh. 51 to Exh. 54 by the plaintiff the name of the plaintiff's husband was running

in the capacity of occupier and not as owner & possessor and it also seems that document produced vide Exh. 51 & Exh. 52 are assessment sheets of property no.295 and Exh. 53 & 54 are assessment sheets of property no. 295/1. On perusal of the record it is true that the plaintiff's oral evidence vide Exh. 49 was not cross-examined by the defendants however, it does not mean that no cross-examination of the plaintiff would not prove that the plaintiff's husband is the owner of the suit property. The plaintiff has to prove her husband's title of the suit property independently and merely not challenging the pleadings of the plaintiff would not result into proving the case of the plaintiff. The evidence of the plaintiff clearly suggests that the plaintiff's husband is only the occupier of the suit property. Now, on perusal of the record it seems that defendants have filed their written statement vide Exh. 28 and wherein they have stated that the plaintiff was Dy. Sarpanch of the village and she built a house illegally on the Government's land without obtaining prior sanction of the officials and the husband & son of the plaintiff was anti-social element and they became the nuisance to the villagers and therefore, the villagers filed an application dated 20.03.2017 for removal of illegal encroachment made by the plaintiff and keeping the grudges the plaintiff's husband & son committed the crime of murder of Arvindbhai Hanumanbhai Thakor and the FIR was lodged against them in Crime Register No. I 9/17 at Jambusar, Police Station. It is true that the above said defense is taken by the defendants by way of written statement however, they have not produced any oral evidence in it's support. Further, it seems from the evidence adduced by the plaintiff the plaintiff has made an attempt to convert her husband's title of occupancy into the title of ownership & possession and moreover the tax payment receipts produced by the plaintiff are in the capacity of occupier and not in the capacity of owner & possessor.

In view of the above discussion of facts it seems that the title of the plaintiff's suit property is not in the capacity of the ownership and possessor and therefore, plea of adverse possession taken by the plaintiff is not acceptable and believable. In view of the above it cannot be said that the defendants have issued the notice illegally to the plaintiff's husband & son. Therefore taking into consideration the above material placed on record by the plaintiff, the plaintiff has miserably failed to prove the facts of issue no. 1 to 3 and, hence, in view of the above discussion, Issue Nos.1 to 3 are answered In Negative.

Issue No. 4 :

As the issue no. 4 is concern that whether the defendants proves that the said suit property was constructed on government land during the period when the plaintiff was Dy. Sarpanch of the village and to prove this issue the defendants have not produced any documentary as well as oral evidence in support of his defense taken in their written statement. On perusal of the entire evidence produced on record it seems that the defendants have not produced any evidence in support of their claim and therefore, the fact of issue no. 4 is not proved by the defendants and hence Issue No. 4 is answered In Negative.

Issue No. 5 :-

So far as the issue no.5 is concerned regarding the fact that whether the plaintiff is entitled to get the reliefs as prayed for, now taking into consideration the discussion of above issues, it seems that the plaintiff has miserably failed proved the facts of issue nos. 1 to 3 to the satisfaction of this Court and the issue no. 4 is not proved by the defendant hence, this Court is of the view that the plaintiff is not entitled to get the reliefs as prayed for and, therefore, Issue No. 5 is answered In Negative and the Issue No. 6 is followed as per Final Order.

- : FINAL ORDER : -

1. The present suit of the plaintiff bearing R.C.S. No. 45 of 2017 is hereby Dismissed.
2. No order as to costs.
3. Decree to be drawn accordingly.

Pronounced and signed today in open Court on 06th day of May, 2026.

Place :- Jambusar
Date :- 06/05/2026

(A. D. Rao)
Principal Senior Civil Judge,
Jambusar
UIC : GJ01480