



|               |            |    |    |
|---------------|------------|----|----|
| Filed on      | 16/10/2019 |    |    |
| Registered on | 16/10/2019 |    |    |
| Disposed on   | 05/05/2026 |    |    |
| Duration      | Y          | M  | D  |
|               | 06         | 06 | 20 |

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

**Regular Civil Suit No. 151 of 2019**

**Exhibit - 53**

**Plaintiffs :**

Heirs of Shanabhai Nansang Makwana

1. Ramsang Shanabhai Makwana  
Age : 56, Occupation : Farming,  
Residing at : Po.-Doliya, Ta.- Jambusar, Dist.-Bharuch
2. Naginbhai Shanabhai Makwana  
Age : 36, Occupation : Farming,  
Residing at : Po.-Doliya, Ta.- Jambusar, Dist.-Bharuch
3. Amratben Shanabhai Makwana  
Age : 42, Occupation : Hosehod Chores,  
Residing at : Po.-Doliya, Ta.- Jambusar, Dist.-Bharuch
4. Ravjibhai Shanabhai Makwana  
Age : 49, Occupation : Farming,  
Residing at : Po.-Doliya, Ta.- Jambusar, Dist.-Bharuch
5. Vidhyaben Shanabhai Makwana  
Age : 32, Occupation : Farming,  
Residing at : Po.-Doliya, Ta.- Jambusar, Dist.-Bharuch

**V/S**

**Defendants :**

1. Collector, Bharuch  
Collector's Office, Ta. & Dist. Bharuch
2. Mamlatdar, Jambusar  
Mamlatdar Office, Ta: Jambusar, Dist. Bharuch

3. Talati-cum-Mantri, Doliya  
Gram Panchayat Office, Doliya Ta: Jambusar, Dist. Bharuch
4. Surajben Wd/o Budhabhai Prajapati  
Age : Aged, Occupation : Household Chores,  
Residing at : Po.-Doliya, Ta.- Jambusar, Dist.-Bharuch
5. Maheshbhai Budhabhai Prajapati  
Age : Aged, Occupation : Farming,  
Residing at : Po.-Doliya, Ta.- Jambusar, Dist.-Bharuch
6. Ramilaben Budhabhai Prajapati  
Age : Aged, Occupation : Household Chores,  
Residing at : Po.-Doliya, Ta.- Jambusar, Dist.-Bharuch
7. Devilaben Budhabhai Prajapati  
Age : Aged, Occupation : Household Chores,  
Residing at : Po.-Doliya, Ta.- Jambusar, Dist.-Bharuch
8. Umeshbhai Budhabhai Prajapati  
Age : Aged, Occupation : Farming,  
Residing at : Po.-Doliya, Ta.- Jambusar, Dist.-Bharuch
9. Kamleshbhai Budhabhai Prajapati  
Age : Aged, Occupation : Farming,  
Residing at : Po.-Doliya, Ta.- Jambusar, Dist.-Bharuch

**Subject :- SUIT FOR DECLARATION.**

**Appearance :-**

|                                            |                  |
|--------------------------------------------|------------------|
| Ld. Advocate for the plaintiffs            | Mr. S. I. Dola   |
| Ld. Advocate for the defendant nos. 1 to 3 | Mr. J. J. Parmar |
| Ld. Advocate for the defendant nos. 4 to 9 | Mr. N. M. Raval  |

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

The factual aspects of the present suit in brief are as under ;

1. The plaintiffs have mainly submitted in their plaint that there is a parcel of land situated within the limits of Village Doliya, Taluka Jambusar, District Bharuch, bearing A/c No. 102, Block No. 334, having an area of 01-31-50 (hectares-are-

sq.mtrs.) and an assessment of Rs. 9.00 and regarding the same land the plaintiffs' father had filed a suit vide Regular Civil Suit No. 127/1990, in the Court of the Ld. Principal Civil Judge, Jambusar and an interim injunction was granted in that suit until its final disposal and against the said order, the defendants filed Regular Civil Appeal No. 43/2003 in the Court of the Ld. Principal District Judge, Bharuch and the said appeal resulted in a decree in favor of the Plaintiffs. Further the plaintiffs have submitted that as per the provisions of the law and various judgments of the Hon'ble High Court of Gujarat, it is mandatory for the Revenue Authorities to record entries in the Revenue Records in accordance with the decree of the Civil Court however, despite the plaintiffs informing the Talati-cum-Mantri, no such entry has been made and currently, the names of the heirs of Budhabhai Gordhan continue to appear in the records however, the property has been in the actual cultivating possession and enjoyment of the plaintiffs for years and despite a decree being passed by the Civil Court in favor of the plaintiffs, the Revenue Department is not acting in accordance with said decree and consequently, the plaintiffs served a statutory notice under Section 80 of the Code of Civil Procedure (C.P.C.) on 08.04.2009, which was duly served upon them but despite this, they have failed to act hence, the present suit is filed against defendants no. 1 to 3 i.e., Revenue Officials and defendants no. 4 to 9 i.e., whose names appear on record but against whom the plaintiffs have already succeeded in litigation to obtain a declaration.

2. The plaintiff has prayed for following reliefs from the Court ;

- a. That the Hon'ble Court be pleased to pass an order directing that, in accordance with the decree passed by the Civil Court in favor of the plaintiffs regarding the property described in para 1, the names of the plaintiffs be mutated/entered in the Revenue Records, and the refusal to make such entry be set aside.

- c. Cost of the present suit be recovered from the defendants.
  - b. Any other relief which the Hon'ble Court may deem proper be granted.
3. The summons of the present suit was duly served upon the defendants but defendant nos. 1 to 3 did appear through government pleader but did file any written statement and their right to file written statement was closed on 02.12.2021. Further, the defendant nos. 5 to 9 appeared through their counsel and filed their written statement vide Exh. 16 against the contentions of the plaintiffs wherein the defendants while denying the facts of the plaint submitted that the true facts are that the agricultural land is situated within the limits of village Doliya, Taluka: Jambusar, District Bharuch, bearing A/c No. 102, Block No. 334, Adm. 01-31-50, with an assessment of Rs. 9.00 and the name of defendants deceased father, Shri Budhabhai Gordhanbhai was running in the revenue records of the said agricultural land and the actual physical possession and enjoyment of the said land was also with their father and year after year, their father cultivated the said agricultural land and took the produce without any hindrance. Further the defendants have contended that their deceased father, Shri Budhabhai Gordhanbhai Prajapati, passed away on 01.12.2017 and defendant nos. 4 to 9, are his legal heirs in the direct line of succession therefore, they applied for a mutation entry for inheritance at village Doliya, Taluka Jambusar, District Bharuch, and Mutation Entry No. 2541 was duly certified and by virtue of their right of inheritance, the names of defendant nos. 4 to 9, have been entered into the revenue records for the said agricultural land and at present, defendant nos. 4 to 9, are in actual and unhindered physical possession and enjoyment of the said agricultural land and, the defendants along with their father, have been cultivating the land and taking the produce for years, and they continue to take the produce at present.

Further the defendants have submitted that the father of the plaintiffs in this case, i.e., Shanabhai Narsangbhai, had filed a suit against defendant's father,

Budhabhai Gordhanbhai, in the Court of the Ld. Principal Civil Judge, Jambusar, vide R.C.S. No. 127/1990, seeking a permanent injunction and in the said suit, the Hon'ble Court passed an order dismissing the plaintiff's claim for a permanent injunction with costs and against the said order, the plaintiff had filed an appeal in the Court of the Ld. District Judge, Bharuch, being Regular Civil Appeal No. 45/2003 and in the said appeal, the appellant's appeal was allowed on 15.12.2004, and a judgment and decree were passed accordingly. Further it is submitted that from the date of the said decree until today, no execution petition of any kind has been filed against their father or defendants in the Hon'ble Court, nor has any other proceeding been initiated and consequently, a period of more than 12 years has elapsed since the said decree, and the decree is no longer enforceable by operation of law and the plaintiff has filed the present suit in the year 2019 in this Hon'ble Court to wrongly enforce the said non-existent decree moreover, the plaintiff has filed this suit u/s 80 of the C.P.C. and has joined Gram Panchayat Doliya as defendant no. 3 however, as per the provisions of the Panchayat Act, a statutory notice ought to have been served to defendant no. 3, but no such notice was served. Further the defendant has submitted that defendant Nos. 4 to 9, are the owners and occupiers of the said agricultural land and they cultivate the said land and realize the produce thereof and Previously, their father used to pay the taxes such as land revenue and education cess, and currently, the defendants are paying the same and it is prayed that the plaintiff's suit be dismissed and the defendants be awarded compensatory costs.

4. The plaintiffs have produced following oral and documentary evidences in support of the case ;

**Oral Evidence :-**

| Sr. No. | Particulars                                                                       | Exhibit |
|---------|-----------------------------------------------------------------------------------|---------|
| 1.      | Affidavit of examination-in-chief of plaintiff no. 1<br>Ramsang Shanabhai Makwana | 25      |

**Documentary Evidence :-**

| Sr. No. | Particulars                                                                               | Exhibit |
|---------|-------------------------------------------------------------------------------------------|---------|
| 1.      | Original Copy of Village Form No. 8-A Bearing A/c No. 102 of Doliya Village               | 38      |
| 2.      | Original Copy of Village Form No. 7 Bearing Survey No. 334 of Doliya Village              | 39      |
| 3.      | Original Copy of Village Form No, 6 (Haq Patrak) Bearing Entry No. 2541 of Doliya Village | 40      |
| 4.      | Photo Copy of Judgment passed in R.C.S. No. 45 of 2003                                    | 41      |
| 5.      | Photo Copy of Decree drawn in R.C.S. No. 45 of 2003                                       | 42      |
| 6.      | Notice sent to the Defendant Nos. 1 to 3.                                                 | 43      |
| 7.      | 3 R.P.A.D Receipts of Post Department of notice sent to Defendant Nos. 1 to 3             | 44      |
| 8.      | Acknowledgment Receipts of Post Department of notice served to Defendant No. 1.           | 45      |

The Ld. Advocates for the plaintiffs & defendants have filed closing pursis vide Exh.- 49 & Exh.- 50 respectively stating that they do not want to lead further any oral or documentary evidences.

5. Following are the issues which were framed vide Exh.- 19 by my Ld. Predecessor Judge for determination of the present suit ;

- (૧) શુ વાદીઓ પુરવાર કરે છે કે, દાવાવાળી મિલકત વર્ષોથી તેમના ખેડ કબ્જા ભોગવટામાં આવેલી છે ?
- (૨) શું વાદીઓ પુરવાર કરે છે કે, સીવીલ કોર્ટમાં તેમના લાભમાં હુકમનામું થયેલ હોવા છતાં રેવન્યુ ખાતુ હુકમ પ્રમાણે વર્તન કરતું નથી અને તેમની એન્ટ્રી પાડતા નથી ?
- (૩) શું વાદીઓના દાવાને સમયમર્યાદાનો બાધ નડે છે ?
- (૪) શું વાદીઓ માંગ્યા મુજબની દાદ મેળવવા હક્કદાર છે ?
- (૫) શું હુકમ અને હુકમનામું ?

6. 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 Affirmative     |
| Issue No.4 | In Negative        |
| Issue No.5 | As per Final Order |

7. **Arguments :-**

I have heard both the Ld. Advocates of respective parties at length.

8. **Oral evidence of the plaintiff :-**

The plaintiff no. 1 has filed its examination in chief on oath vide Exh.-25 and he has reiterated the facts stated in the plaint and has referred the oral and documentary evidences produced and hence, for the sake of brevity and convenience and to avoid repetition of facts, the same has not been mentioned hereunder.

The plaintiff no. 1 was cross-examined by the Ld. Advocate for the defendant nos. 1 to 3 and Ld. Advocate for the defendant nos. 4 to 9 and the plaintiff no. 1 in his cross examinations stated that the he has filed the present suit property situated at Village Doliya bearing Block No. 334 & Survey No. 102 and they have won the suits related to the said property earlier and to make entries in the revenue records they have filed this suit. He further admitted that earlier also the suit were filed for the same suit property. He further admitted that they have filed R.C.S. No. 127/1990 at Bharuch Principal Civil Court regarding the same suit land and an order was passed in year 2004 of that suit. He further stated that they had initiated proceedings for the execution of said decree however, the plaintiff has admitted that they have not produced any documentary evidence to show that they had filed execution petitions as well as they have produced any documentary evidence before revenue department for mutation entries. He further admitted that they have

not filed any objection application in mutation proceedings initiated by legal heirs of original owner deceased Budhabhai Gordhanbhai after his demise. He further admitted that he has not file any suit or initiated any proceedings to delete or remove the names of legal heirs of deceased Budhabhai Gordhanbhai. He further admitted that he has sale deed agreement which was executed in 1982 with Budhabhai Gordhanbhai and he has not initiated any proceedings to enter his name in the revenue records. He further admitted that he had prepared the documents in the name of Shanabhai Nansang Makwana. He further admitted that his father had initiated a proceeding for making mutation of his name but he has not produced any documentary evidence regarding the revenue proceedings. He further admitted that he does not have knowledge that the said deed was executed before sub-registrar by his father. He further admitted that he has not produced any documentary evidence regarding the consideration amount was paid by his father. He further admitted that he has not produced any documentary evidence to show that they went to defendant nos. 1 to 3 to make mutation entry in the revenue records.

Upon asking by Ld. Advocate for defendant nos. 4 to 9 the plaintiff no. 1 has admitted that the original owner of the suit property was Budhabhai Gordhanbhai and he used to cultivate the suit property for many years. He further admitted that after the demise of Budhabhai Gordhanbhai his legal heirs were inherited in the suit property. He further admitted that the name of legal heirs of deceased Budhabhai Gordhanbhai are running in the revenue records. He further admitted that they have not taken any objection at the time of making the revenue entry. He further admitted that the legal heirs of deceased Budhabhai Gordhanbhai are still paying the revenue tax of the suit land. He further admitted that they have not produced any documentary evidence to substantiate they have paid the revenue tax of the suit land.

## **- : Reasoning and Analysis : -**

### **Issue Nos. 1 & 2 :-**

As the issue nos. 1 & 2 are interconnected and co-related with each other hence, for the sake of brevity and convenience and to avoid repetition of facts, they are hereby discussed jointly.

As the Issue Nos. 1 & 2 are concerned that whether the plaintiffs proves that they have the possession & enjoyment of the suit property and whether the plaintiffs proves that revenue department has not acted upon the order & decree passed in favour of the plaintiff by the Civil Court and to prove these issues, the plaintiff no. 1 has filed his examination-in-chief on oath vide Exh.- 25 wherein he has reiterated the facts mentioned in the plaint however, on perusal of the cross examination of the plaintiff it seems that the plaintiff no. 1 has admitted some facts which are very crucial and his admissions are enough for deciding the present suit and no other evidence is required. Upon perusal of the cross-examination of the plaintiff no. 1, he admitted that present suit is filed for Block No. 334 and Survey No. 102 of Village Doliya and earlier they have won the suits related to the said property and to make entries in the revenue records they have filed this suit. He further admitted that earlier also the suits were filed for the same suit property. He further admitted that they did file R.C.S. No. 127/1990 at Bharuch Principal Civil Court regarding the same suit land and an order was passed during year 2004 of that suit. He further stated that they had initiated proceedings for the execution of said decree however, the plaintiff has similarly admitted that they have not produced any documentary evidence to show that they had filed any execution petitions or they have produced any documentary evidence before revenue department for mutation entries. He further admitted that they have not filed any objection application in mutation proceedings initiated by legal heirs of original owner deceased Budhabhai Gordhanbhai after his demise who is father of the

defendant nos. 4 to 9. Now, it seems that the plaintiffs had filed the civil suit at Bharuch vide R.C.S. No. 127 of 1990 and the order passed in 2004 and thereafter the plaintiffs have not initiated any proceedings of mutation entry and also did not filed any execution proceedings for a long period of time. Further, the plaintiffs have admitted that the original owner of the suit property was deceased Budhabhai Gordhanbhai and also admitted that Budhabhai Gordhanbhai used to cultivate the suit land for many years. The plaintiff no. 1 has further admitted that after the demise of Budhabhai Gordhanbhai, his legal heirs were inherited in the suit property by making mutation entry in revenue records and at that time the plaintiffs did not take any objection against the said mutation entry. The plaintiff no. 1 has also admitted that the suit property is running in the name of legal heirs of Budhabhai Gordhanbhai in the revenue records and he also admitted that the legal heirs of deceased Budhabhai Gordhanbhai are still paying the revenue taxes. Now, the above admission made by the plaintiff no. 1 indicated that the suit land was originally owned by the deceased Budhabhai Gordhanbhai and after his demise his legal heirs are in possession and their names are also running in the revenue records as legal heirs of deceased Budhabhai Gordhanbhai.

He further admitted that he has not filed any suit or initiated any proceedings to delete or remove the names of legal heirs of deceased Budhabhai Gordhanbhai. He further admitted that he has a sale deed which was executed in 1982 in the name of Shanabhai Nansang Makwana from Budhabhai Gordhanbhai and he has not initiated any proceedings to enter his name in the revenue records. Here, the plaintiff no. 1 admitted that the proceedings for mutation in the revenue record was done by his father however, he further admitted no documentary evidence is produced regarding the mutation proceedings initiated by his father. Now, it seems from the above that the plaintiffs have neither initiated any proceedings after the execution of sale deed in year 1982 nor he initiated any proceedings after getting the decree in the year 2004 from the Civil Court.

On perusal of the plaint of the plaintiffs, it seems that the plaintiffs have stated that their father had filed civil suit bearing R.C.S. No. 127/1990 before principal Civil Court, Jambusar regarding the suit property mentioned in para 1 and an injunction order was passed till the final order and against the said order the defendants filed the Regular Civil Appeal vide RCA No. 43 of 2003 before Principal District Judge, Bharuch and in that Appeal also the decree was passed in the favour of the plaintiffs. Now, the above averments of the plaintiffs seems to be misconceived with the documentary evidence vide Exh. 38 to 45 filed by them and on perusal of Exh. 41 i.e., a copy of Judgment passed by Joint District Judge, Bharuch in R.C.A. No. 45 of 2003 dated 15.12.2004 in which the appellate court observed that appellant Shanabhai Nansangbhai filed the said appeal u/s 96 of C.P.C. against the dismissal order passed in R.C.S. No. 127 of 1990 by Civil Court, Jambusar. Further the appellate court observed that the present appellant has filed the suit bearing R.C.S. No. 127 of 1990 before the Civil Court, Jambusar. The plaintiff has mentioned the number of R.C.A. as 43 of 2003 but in the documentary evidence he has produced the copy of judgment of R.C.A. No. 45 of 2003 vide Exh. 41 and also they have mentioned in the plaint that order passed in R.C.S. No. 127 of 1990 was in their favour and being aggrieved by this the defendants challenged the said order by filing the R.C.A. vide R.C.A. No. 43 of 2003 however on perusal of Exh. 41 i.e., copy of judgment of R.C.A. No. 45 of 2003 it seems that the appeal was actually filed by the present plaintiffs' father Shanabhai Nansangbhai and not by defendant's father Budhabhai Gordhanbhai and in reality the Shanabhai Nansangbhai was the only aggrieved by the order passed in R.C.S. No. 127 of 1990. Now, taking into consideration the above factual aspects the plaintiffs have mentioned the facts which seems to be inaccurate & incomplete and the plaintiffs have also mentioned that they have given the notice u/s 80 of C.P.C. to the defendant nos. 1 to 3 on 08.04.2009 however, on perusal of the documentary evidence produced vide Exh. 43 by the plaintiffs it seems that the

that the date mentioned in notice is 08.04.2019 and it is also seems mis-conceptual.

Now in view of the above discussion of facts the court is not able to understand that why the plaintiffs have filed the present suit when they already had the decree passed in their favour and therefore it seems that the evidence adduced by plaintiff no. 1 has not inspired the confidence and hence it seems doubtful and also contradictory to the facts and after taking into consideration the same, this court comes to the conclusion that the plaintiffs have miserably failed to prove the facts of issue nos. 1 & 2 **Hence, I answered Issue Nos. 1 & 2 In Negative.**

**Issue No. 3 :-**

As the issue no. 3 is concerned that whether the suit of the plaintiff is barred by law of Limitation and for this issue the averments of the plaintiff and the evidence adduced by both the parties are required to be taken into consideration. The plaintiff no. 1 has made specific admission in his cross-examination that after getting the decree in 2004 from the Civil Court he has not made any attempt to execute the said decree by way of filing execution petition till date. Further the other admission made by the plaintiff no. 1 that after executing sale deed in the year 1982 by his father from the defendants' father, the plaintiffs did not took any action or initiated any proceedings to enter their names in the revenue records. On perusal of the plaint as well as plaintiff no. 1's cross-examination it is not ascertain that when was the cause of action arose. The plaintiffs have mentioned in para 3 of the plaint that cause of action arose when the defendant no. 1 to 3 refused then thereafter a notice dated 08.04.2019 u/s 80 of C.P.C. was given and served on 10.04.2019. It seems from the above facts that plaintiffs have not specifically mentioned that on which date the defendant nos. 1 to 3 refused which prima-facie seems to be suspicious and it is the result of clever drafting for filling the present suit within the limitation period. Now, it is crystal clear that after getting the decree from the competent Civil Court in the year 2004 the plaintiffs have not

taken action or initiated any process to execute the same and they choose to remained silent for a long duration of time and thereafter the present suit was filed on 16.10.2019 i.e., nearly after 15 years of getting decree from the Civil Court which seems to be ex-facie barred by Law of Limitation. Furthermore, it seems that the said decree is not executable as it is time barred and therefore the plaintiffs have made an attempt to execute the said time barred decree by way of filing the present suit and taken into consideration the averments made by the plaintiffs it also seems that the plaintiffs have not come with the clean hand before this court and therefore this court is of the view that the fact of issue no. 3 has been proved and hence, **I answered Issue No. 3 In Affirmative.**

**Issue No. 4 :-**

As the issue no. 4 is concerned, regarding the entitlement of the reliefs as prayed by the plaintiffs, it seems from the above discussion of law & facts the plaintiffs have sought the relief that the revenue authority should make an entry on the basis of earlier decree passed by the Civil Court which prima-facie seems to be time barred decree and therefore this Court is of the view that the plaintiffs are not entitled to get reliefs as prayed for and, hence, **Issue No. 4 is answered In Negative** and the **Issue no. 5** is followed as per **Final Order.**

**- : FINAL ORDER : -**

1. The present suit of the plaintiffs bearing R.C.S. No. 151 of 2019 is hereby **Dismissed.**
2. No order as to cost.
3. Decree to be drawn accordingly.

Pronounced and signed today in open Court on 05<sup>th</sup> day of May, 2026.

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

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