

GJBK070003102019



Presented On	09	04	2019
Regd. On	09	04	2019
Disposed On	13	03	2026
Tenure	06	11	04
	Years	Months	Days

Exhibit :

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**IN THE COURT OF PRINCIPAL CIVIL  
JUDGE(L.I.VADHVA), Wav**

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Regular Civil Suit No. 84/2019

PLAINTIFFS:

1. Koli Swabhai Harirambhai,
Age 60, Occ-Agriculture,
2. Koli Vihabhai Harirambhai,
Age 45, Occ-Agriculture,
Resi-Both at Gambhirpura, Ta. Wav
3. Koli Rajuben Harirambhai (wife of) Shankarbhai,
Age 40,Residing at Mamana, Ta. Suigam

VERSUS

DEFENDANTS:

- 1.Koli Dadamben Ramchandbhai and (wife of) Nagjibhai,
Age 46, Occ-Agriculture
- 2.Koli Bababhai Ramchandbhai,

Age 44, Occ- Agriculture

3.Koli Sendhaben Ramchandbhai,

Age 42,Occ-Agriculture

Def-No-2 and 3 Residing at Gambhirpura, Ta. Wav

4. Koli Guguben Ramchandbhai and (wife of) Arjanbhai,

Age 40, Occ-Agriculture

Def-No.1 and 4 Residing at Charda, Ta. Tharad, Dist. Banaskantha

SUIT FOR:-Judgement for Suit of Declaration and Permanent Injunction

Plaintiff"s

Ld. Adv-P.M Chauhan

Defendant"s

Ld. Adv-N.R Solanki

:: JUDGMENT ::

(1) The Brief facts of Plaintiff Suit

1.1 The deceased elder (Vadil) of the plaintiffs in this case was Koli Harirambhai Chelabhai and the deceased elder (Vadil) of the defendants in this case was Koli Ramchandbhai were real brothers and they were of the same family. Within the jurisdiction of the Hon'ble Court, in the village Gambhirpura, Ta. Wav, the following agricultural land described below is situated:

S.R No.	Name of Land	Area	Akar
1.	Survey No. 125 (Old	Hec. 8-96-47	Rs.8-37/-

S.No. 65) Bodu		
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The above-mentioned land is the suit land in this case.

1.2 The suit land is the ancestral joint (Vadiloaparjit) land of the plaintiffs and the defendants of this case. The said land was being held/possessed by our deceased elder Koli Chelabhai Damrabhai, and when he passed away, the suit land devolved upon his legal heirs by inheritance — namely, our (plaintiffs') deceased elder Koli Harirambhai, the defendants' deceased elder Koli Ramchandbhai, and Nagjibhai, Chhaganbhai, Padmaben, Khetuben, Maniben, Hemaben, and Haluben, on their respective shares by inheritance. However, in the revenue record, even though the ancestor of the plaintiffs Harjibhai, being the legal heir of Chelabhai Damrabhai, was entitled to have his name entered, his name was not recorded. Among the said heirs, Padmaben, Khetuben, Maniben, Hemaben, and Haluben had relinquished their rights in our favour through proper proceedings. Further, Nagjibhai and Kanjibhai have also passed away. Despite this, in the revenue record, the names of the defendants and also the names of Nagjibhai, Kanjibhai, Padmaben, Khetuben, Maniben, Hemaben, and Haluben are still shown in respect of the disputed land. If the names of Padmaben, Khetuben, Maniben, Hemaben, and Haluben are wrongly continued in the revenue record of the disputed land, the Mamlatdar of Wav has issued an order to correct the same, and the entry of the said order has been recorded in the revenue record as Entry No. 809. The said disputed land is presently under the actual possession and cultivation of both the plaintiffs and the defendants, and cultivation of the land is continuing accordingly.

1.3 The Plaintiff's further submits that, Although the disputed land belongs jointly to the plaintiffs and the defendants and is presently under our joint possession and cultivation, the name of the plaintiffs' ancestor has not been entered in the revenue record of the disputed

land. Since the plaintiffs are farmers by occupation, they were not aware of this situation in the revenue record. However, despite the plaintiffs being in actual possession and cultivation of the land, the defendants had never raised any objection earlier. The disputed land has continuously remained in our peaceful and uninterrupted possession, and the defendants have never raised any dispute or objection against the same. However, during the last two to three months, the intention of the defendants appears to have changed. Taking advantage of the fact that the names of the plaintiffs are not recorded in the revenue record of the disputed land, the defendants are attempting to sell the disputed land illegally. About a month ago, we informed the defendants that necessary corrections should be made in the revenue record and that the names of the plaintiffs should be entered in the revenue record of the disputed land. However, they are avoiding the matter and delaying it unnecessarily. Considering the manner in which they are passing time and their conduct, it appears that their intention is to sell the disputed land. Therefore, we have been compelled to file the present suit.

1.4 The Plaintiff's further claims that, the cause of action for filing the present suit arose when the name of the plaintiffs' ancestor, Harirambhai, son of Chelabhai Damrabhai, though being the lawful heir, was not entered in the revenue record of the disputed land. Subsequently, about two to three months ago, when the defendants began making attempts to sell the disputed land, it came to our knowledge that the name of the plaintiffs' ancestor was not recorded in the revenue record. Thereafter, about one month later, when we informed the defendants that necessary corrections should be made in the revenue record and that the names of the plaintiffs should be entered in the record, the cause of action again arose. Since then, the cause of action is continuing.

1.5 Therefore, the plaintiff respectfully prays before this Hon'ble

Court may be pleased to grant the following reliefs through the present suit:

(A) That this Hon'ble Court may be pleased to declare that the land bearing Survey No. 125 (Old Survey No. 65) situated within the limits of Village Gambhirpura, Taluka Wav, having an area of Hectare-Are-Sq. Meter 8-96-47, the description of which is given in Paragraph-2 above, is ancestral property belonging jointly to the plaintiffs and the defendants and is under our joint ownership, possession, and enjoyment. It may further be declared that the plaintiffs as well as the defendants have equal rights, interest, and share in the said disputed land.

(B) That this Hon'ble Court may be pleased to grant a permanent injunction restraining the defendants from making any changes or alterations in the condition of the disputed land described in Paragraph-2 above, and also restraining the defendants from selling, transferring, or creating any rights in favour of any third party in respect of the said disputed land.

(C) That this Hon'ble Court may also be pleased to grant any other relief which it may deem just and proper in the interest of justice

(2) REPLY OF DEFENDANT:-

Upon issuing the notice of the suit to the defendant, the defendant has appeared with his learned advocate and has filed his written statement under Ex.11 denying all the allegations and has submitted the following facts. The defendants, submit the written statement to the plaint filed by the plaintiff as under:

2.1 The plaintiff's suit is not true and is not admitted by us. We, the defendants, expressly deny all the facts of the plaintiff's said suit application.

2.2 The plaintiffs of this case have fabricated false and imaginary facts, and only to harass us, and to break/destroy us mentally, physically, and financially, and with the ill-intention of grabbing our ownership, possession, and cultivation land by force, and to extort money from us, this false suit has been filed before the Hon'ble Court, which deserves to be dismissed with costs.

2.3 The plaintiffs of this case have attempted to conceal true facts in the said suit application. Therefore, the plaintiffs of this case have not come before the Hon'ble Court with clean hands.

2.4 The facts of Para-1 of the Suit Application are not true and are not admitted by us.

2.5 The facts of Para-2 of the Suit Application are true, but the said land is the land of our (defendants') ownership, possession, cultivation, and under our cultivation. In this, the plaintiffs of this case have no interest, right, or share whatsoever, nor did their elder have any interest, right, or share in the suit land in the past.

2.6 The contents of Paragraph-3 of the plaint are not true and are therefore denied by the defendants. In the said paragraph, the plaintiffs have stated that the disputed land is the ancestral property of the plaintiffs and the defendants, and that the said land was held by their ancestor Chelabhai Damrabhai, and after his death it devolved upon his heirs, namely Harirambhai, the ancestor of the plaintiffs, and Ramchandbhai, Nagjibhai, Kanjibhai, Padmaben, Khetuben, Maniben, Hemaben, and Haluben, the ancestors/heirs of the defendants. The plaintiffs have further alleged that although Harirambhai, being the lawful heir of Chelabhai Damrabhai, was entitled to have his name recorded in the revenue record, his name was not entered therein. They have also alleged that Padmaben, Khetuben, Maniben, Hemaben, and

Haluben relinquished their rights in favour of the plaintiffs, and that Nagjibhai and Kanjibhai have passed away. According to the plaintiffs, despite this, the names of the defendants and also the names of Nagjibhai, Kanjibhai, Padmaben, Khetuben, Maniben, Hemaben, and Haluben continue to appear in the revenue record of the disputed land. The plaintiffs have further stated that if the names of Padmaben, Khetuben, Maniben, Hemaben, and Haluben have wrongly continued in the revenue record of the disputed land, the Mamlatdar, Vav, has passed an order for correction of the same and that the entry of such order has been recorded in the revenue record as Entry No. 809. They have also stated that the disputed land is in the actual possession and cultivation of both the plaintiffs and the defendants. However, all the above statements made by the plaintiffs are false and are therefore denied by the defendants.

2.7 The contents of Paragraph-4 of the plaint are not true and are therefore denied by the defendants. In the said paragraph, the plaintiffs have stated that the disputed land belongs jointly to the plaintiffs and the defendants and that it is presently under their joint possession and cultivation. They have further stated that the name of their ancestor has not been entered in the revenue record of the disputed land and that since the plaintiffs are farmers by occupation, they were not aware of the situation in the revenue record. The plaintiffs have also alleged that although they were in actual possession and cultivation of the land, the defendants never raised any objection earlier and that the land has remained in their peaceful possession. They have further alleged that during the last two to three months the intention of the defendants has changed and that the defendants are trying to sell the disputed land taking advantage of the fact that the names of the plaintiffs are not recorded in the revenue record. They have also alleged that about a

month ago they informed the defendants to make necessary corrections in the revenue record and to enter the names of the plaintiffs, but the defendants avoided doing so and delayed the matter. However, all these allegations made by the plaintiffs are false and are denied by the defendants, and the defendants do not admit any of the statements made in the said paragraph.

2.8 The contents of Paragraph-5 of the plaint are not true and are therefore denied by the defendants. The plaintiffs have stated in the said paragraph that a cause of action has arisen for filing the present suit. However, no such cause of action has in fact arisen. For the purpose of filing this false suit, the plaintiffs have fabricated imaginary and incorrect statements and have created a false and baseless cause of action. Therefore, a suit based on such false and fabricated cause of action is not maintainable.

2.9 The contents of Paragraph No. 5 of the plaint in the present suit are not true and are therefore not admitted by us. The plaintiffs have stated in the said paragraph that a cause of action has arisen. However, no such cause of action has actually arisen. For the purpose of filing this false suit, the plaintiffs have fabricated imaginary and concocted facts and have created a false and baseless cause of action. Therefore, a suit based on such false and defective cause of action is not maintainable.

2.10 The contents of Paragraph No. 6 of the plaint filed by the plaintiff in the present suit are not true and are therefore not admitted by us. In the said paragraph, the plaintiff has made certain claims for relief, however the plaintiff is not entitled to any such relief, and no such relief can be granted to them.

2.11 The contents of Paragraph No. 7 of the plaint are not true and are therefore denied by the defendants. The contents of Paragraphs 8 and 9

are formal in nature.

2.12 The True Facts of the suit is as under,

(A) We, the defendants in this case, are residents of Village Gambhipura, Taluka Wav, and we are the owners and possessors of the land bearing Old Survey No. 65, New Survey No. 125, admeasuring Hectare-Are-Sq. Meter 8-96-47, situated within the limits of the said village. The said land is exclusively owned, possessed, and enjoyed by us defendants and is under our cultivation. Defendant No. 2 has constructed a hut/house on the said land and is residing there with his family and cultivating the land. The plaintiffs in this case, or their ancestors, have never had any right, title, interest, or share in the disputed land in the past and do not have any such right even at present. This fact is clearly evident from Revenue Entry No. 41 produced by the plaintiffs themselves. It is also evident that the ancestor of the plaintiffs, Harirambhai, son of Chelabhai Damrabhai, is not the legal heir of the said person. Therefore, the plaintiffs have no right or authority to file the present suit.

(B) Since the disputed land came into the share and possession of our father, it has been under our peaceful, continuous, and uninterrupted possession and cultivation up to the present day. The plaintiffs have no right, title, or share in the said land. However, with an intention to illegally grab our fertile and productive land, which is in our ownership and actual possession, the plaintiffs have fabricated false facts and filed this false suit. They are also attempting to produce false evidence before this Hon'ble Court. Further, the plaintiffs have repeatedly threatened the defendants with death and are attempting to forcibly enter our land and take illegal possession of it. On 17-08-2019, Plaintiff No. 1 and 2 along with Bhagabhai Savabhai Thakor came to our field

armed with sharp weapons and threatened us saying, “Vacate this land immediately, otherwise we will kill you.” Regarding this incident, we have submitted a written complaint on 18-08-2019 to the Police Sub-Inspector, Wav, and to the Mamlatdar, Wav. Despite this, the plaintiffs are continuing to threaten us and are attempting to forcibly dispossess us from the disputed land.

(C) In the present plaint, the plaintiffs have not given the complete description of the disputed land, nor have they mentioned the four boundaries of the land. Therefore, the plaint is incomplete and defective for want of proper description and boundaries of the land, and hence it is not maintainable.

(D) The present plaint filed by the plaintiffs is clearly barred by limitation, and therefore the said plaint is also liable to be dismissed on the ground of limitation.

2.12 Thus, since the plaintiffs of this case or their elders have no interest, right, or share in the suit land, with false facts fabricated, this false suit has been filed before the Hon’ble Court, and in support thereof, a false affidavit and false oath document has been made. Therefore, considering our above-stated written reply and the facts and circumstances therein, the plaintiff’s said Suit may kindly be dismissed with costs. It shall be so ordered.

(3) BRIEF FACTS OF THE INTERIM INJUNCTION APPLICATION OF THE DEFENDANT UNDER SEC-151 OF CPC VIDE EXHIBIT-9:-

During the pendency of this suit, the defendants filed an Interim Injunction Application vide Exhibit-9 under Sec-151 of the Code of Civil Procedure, 1908. In the said application, the defendants stated

that they are the independent owners and possessors of the suit land bearing Old Survey No. 65 (New Survey No. 125), admeasuring Hectare 8-96-47, situated at Village Gambhirpura, Taluka Wav, District Banaskantha. The defendants further stated that the said property is their ancestral property, their names appear in the Revenue Record, and they are in actual and direct possession of the said land. The defendants also stated that Defendant No. 2 has constructed a residential house on the said land and is residing there with his family and cultivating the land. The defendants pleaded that the plaintiffs have quarrelled and threatened the defendants for the said land, are regularly harassing the defendants, are restraining them from farming, and are threatening to dispossess the defendants as well as to sell the suit property. The defendants therefore prayed that the plaintiffs, by themselves or through their servants, agents, etc., be restrained from making any changes in the land affecting the ownership and possession of the defendants, from vacating the defendants from their residential house, from interfering with the defendants' agricultural farming, and from entering upon the defendants' possessed land. The defendants further stated that they have a strong prima-facie case, balance of convenience lies in their favour, and if the temporary injunction as prayed is not granted, they will suffer irreparable loss. In support of the said application, the defendants produced the copy of the application which was submitted before the Mamlatdar Office and the Police Station by Defendant No. 2 against the plaintiffs.

The said interim injunction application was duly served upon the plaintiffs, and the plaintiffs appeared before this Court and filed their reply to the said temporary injunction application vide Exhibit 10, wherein the plaintiffs denied all the facts and allegations made by the defendants and stated that the defendants have brought the interim

application before this Court without any substance, just for harassing the plaintiffs mentally, physically, and economically, and with the wrongful intention to take away the suit property by filing the interim application.

My Learned Predecessor Judge, after hearing both the parties, considering the documentary evidence produced by both sides, and after considering the provisions of Order 39 Rule 1 of C.P.C. and the law laid down by the Hon'ble Supreme Court in Deoraj v. State of Maharashtra, (2004) 4 SCC 697: AIR 2004 SC 1975 (wherein it was rightly stated that a situation may emerge where the granting of an interim relief would be tantamount to granting the final relief itself), and also the judgment in Kishoresingh Ratansingh Jadeja v. Maruti Corporation, (2009) 11 SCC 229: (2009) 4 SCC (CIV) 506 (wherein it was held that no interim injunction can be granted where it was sought after a very long time and the defendant has failed to bring on record the prima-facie case, irreparable loss, and the balance of convenience against the plaintiff), held that the defendant has failed to prove the prima-facie case, balance of convenience, and irreparable loss in his favour, and accordingly rejected the interim injunction application of the defendants vide order dated 30/01/2021. The cost of the said application was ordered to follow the cost of the suit.

(4) DETAILS OF THE EVIDENCE PRODUCED BY THE PARTIES:-

(a) Oral Evidence Produced by Plaintiff

:: ORAL EVIDENCE ::

Sr.No	<u>Particular's</u>	<u>Exhibit</u>
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<u>1.</u>	Affidavit of Examination-in-Chief of Plaintiff Witness No.1 Savabhai Hariram Koli	<u>26</u>
2.	Affidavit of Govabhai Sartanbhai Koli Witness No.2 of Plaintiff	47
3.	Affidavit of Babubhai Shankarbhai Mali Witness No.3 of Plaintiff	49

In the present case, the plaintiff **Savabhai Hariram Koli**, for the purpose of this suit, has produced his affidavit-in-chief at vide Ex.26, wherein he has, in substance, reiterated and affirmed the facts stated by him in the plaint, and therefore no repetition thereof is required or made.

Thereafter, Cross-examination by Defendant's Advocate Shri N.R. Solanki: "I am illiterate and I do not know how to read or write. It is not true that the affidavit filed in this case was written by our advocate and I signed it merely because I was told to sign. It is true that no documentary evidence has been filed in this case to show that I have a share in the suit land. It is true that after the death of the predecessor Harirambhai Chelabhai, we have not challenged Entry No. 53, dated 28/06/1973, of his heirs until today. It is true that it has not been shown in the Suit Application or any in affidavit as to which portion and how much of the suit land falls in my share. It is true that we have not made any claim in this suit to declare the possession of the portion of land falling in my share from the suit land. It is true that in this case, we have demanded a permanent injunction order regarding the entire land as per prayer (B). My age would be approximately 60 years. It is true that from the time I attained understanding until this suit was filed, no suit for partition of the ancestral

property was ever filed. It is true that even in the present suit, I have not made any claim for partition of property. It is not true that because the prices of lands have gone up due to the Narmada Canal, a false suit has been filed and in support thereof, false testimony is being given on oath.

Thereafter, In the present suit, **Witness No. 2, Koli Govdabhai Sartabhai**, aged about 68 years, resident of Village Gambhirpura, Taluka Wav, has submitted his affidavit at Exhibit-47. In the said affidavit, he has stated that he knows the parties to this suit. According to him, the parties to this case belong to the same village and the same community. The ancestor of the plaintiffs, Koli Harirambhai Chelabhai, and the ancestor of the defendants, Koli Ramchandbhai Chelabhai, were real brothers and thus belonged to the same family.

He further stated that the land bearing Survey No. 125 (Old Survey No. 65) situated within the limits of Village Gambhirpura, Taluka Wav, admeasuring 8-96-47 hectares, is the ancestral land of both the plaintiffs and the defendants. He also stated that to the southern side of this land lies another field bearing Survey No. 112, which belongs to him. He further stated that the father of the plaintiffs, Harirambhai, passed away when the plaintiffs were very young, and thereafter the management of the disputed land was looked after by the ancestor of the defendants, Ramchandbhai Chelabhai. He also stated that the said land has been divided into two parts for many years. In one part, the plaintiffs have constructed a house and have been residing there with their family and cultivating the land for many years, while in the other part the defendants are cultivating the land. According to him, the plaintiffs have an equal right and

share in the said disputed land as the defendants.

Thereafter, in this case, the witness was cross-examined in detail by the Learned Advocate Mr.P P Solanki for the defendants. During the cross-examination, the witness stated that he is aware that the present dispute relates to land. He further stated that the suit concerns the disputed land. It is not true that at the time of the promulgation, the disputed land was recorded in whose name he does not know. Witness states, that it was in name of Chelabhai Damrabhai. It is not true that I have personal knowledge regarding whose inheritance entry or other revenue entries were recorded in respect of the disputed land. The witness states that Bababhai Ramabhai's inheritance entry was recorded. It is true that in my affidavit I have not produced any documentary evidence to prove that the land bearing Survey No. 112 belongs to me. It is also true that although I have stated in my affidavit that the disputed land has been divided into two parts, I have not clearly mentioned the exact boundaries of such division in my affidavit. It is further true that I have not clearly stated in the affidavit which specific portion of the land is cultivated by the plaintiffs and which portion is cultivated by the defendants. However, it is not true that the plaintiffs have filed the present false suit in order to grab the land from the defendants, and it is also not true that I have made false statements on oath in support of the plaintiffs.

Thereafter, In the present suit, Witness No. 3, Mali Babubhai Shankarbhai, aged about 36 years, resident of Village Gambhirpura, Taluka Wav, has submitted his affidavit at Exhibit-49. In the said affidavit, he has stated that he knows the parties to this suit. The parties belong to the same village. The

ancestor of the plaintiffs, Koli Harirambhai Chelabhai, and the ancestor of the defendants, Koli Ramchandbhai Chelabhai, were real brothers and thus belonged to the same family.

He further stated that the land bearing Survey No. 125 (Old Survey No. 65) situated within the limits of Village Gambhirpura, Taluka Wav, admeasuring 8-96-47 hectares, is ancestral land belonging to both the plaintiffs and the defendants. On the northern side of the said land, after leaving the road, his field bearing Survey No. 142 is situated. He further stated that the said Survey No. 125 land has been divided into two parts for many years. In the western-southern portion of the said land, the plaintiffs have constructed a house and have been residing there with their family for many years and cultivating the land. In the eastern-northern portion, the defendants are cultivating the land. According to him, the plaintiffs have an equal right and share in the disputed land as the defendants.

Thereafter, during the cross-examination conducted by the Learned Advocate Mr. N R Solanki for the defendants, the witness stated that it is true that he has not produced any documentary evidence in his affidavit to prove that the plaintiffs and defendants are real brothers. He also admitted that he has not produced any documentary evidence to prove that the disputed land is ancestral property. He further admitted that although he has stated in the affidavit that he owns the land described therein, he has not produced the extract of Form No. 7/12 along with the affidavit to prove the same. However, he denied the suggestion that he has given false evidence on oath at the instance of the plaintiffs.

:: Documentary Evidence ::

Sr.No.	Particular's	Exhibit
<u>1.</u>	Certified copy of Form No. 8-A of Khata Account No. 107	<u>28</u>
<u>2.</u>	Certified copy of Form No. 7 of Survey No. 125 (Old S.No. 5, Paiki 1, Paiki 1)	<u>29</u>
<u>3.</u>	Certified copy of Hakkapatrak (Record of Rights) Entry No. 41	<u>30</u>
<u>4.</u>	Certified copy of Hakkapatrak Entry No. 53	<u>31</u>
<u>5.</u>	Certified copy of Hakkapatrak Entry No. 137	<u>32</u>
<u>6.</u>	Certified copy of Hakkapatrak Entry No. 809	<u>33</u>
<u>7.</u>	Copy of the Pedigree (Pedigreename) of Koli Chelabhai Damrabhai	<u>34</u>
<u>8.</u>	Original Death Certificate of Koli Harirambhai Chelabhai (based on Panch)	<u>35</u>
<u>9.</u>	Original Death Certificate of Koli Nagjibhai Chelabhai (based on Panch)	<u>36</u>
<u>10.</u>	Original Death Certificate of Koli Chhaganbhai Chelabhai (based on Panch)	<u>37</u>
<u>11.</u>	Original Death Certificate of Koli Sajuben Harirabhai (based on Panch)	<u>38</u>
<u>12.</u>	Certified copy of Hakkapatrak Entry No. 1	<u>39</u>
<u>13.</u>	Original Death Certificate of Koli Dhaniben Ramdhanbhai (based on Panch)	<u>40</u>
14.	Panchrojkam	52
15	Sketch of Panchnama	53

Thereafter, the plaintiff, through her learned advocate Mr. P. M. Chauhan, submitted the closing pursor at Exhibit No. 60.

(B) Oral and Documentary Evidence of Defendant's

Sr.No.	Particular's	Exhibit
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Thereafter, In the present case, the defendant, after availing sufficient opportunities to Defendant for producing the evidence did not give any evidence and this court closed the right of defendant to produce the evidence under ex.1.

:: Documentary Evidence ::

Sr.No	<u>Particulars</u>	<u>Exhibit</u>
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- (5) The Plaintiff has done the oral arguments and prayed to consider the evidence on record and allow the suit. And the right of defendant for argument was also closed under Ex.1
- (6) My predecessor Judge has framed issues vide Exhibit-13, which are as under.

:: ISSUES ::

1. Whether the plaintiff proves that the suit land bearing Revenue Survey No. 125 of Gambhirpura village of Wav Taluka admeasuring hectare 8-96-47 is undivided ancestral property?
2. Whether the plaintiff proves that plaintiff as well as defendants are entitled to the equal share and interest in the suit land?
3. Whether the plaintiff is entitled to the relief as prayed for?
4. What order and decree?

(6.1) Following are my Answers to the above ISSUES.

ISSUE NO.1- IN NEGATIVE

ISSUE NO.2- IN NEGATIVE

ISSUE NO.3- IN NEGATIVE

ISSUE NO.4- AS PER FINAL ORDER

:: REASONS FOR MY ABOVE ANSWERS ::

-: ISSUE NO. 1 :-

Whether the plaintiff proves that the suit land bearing Revenue Survey No. 125 of Gambhirpura village of Wav Taluka admeasuring hectare 8-96-47 is undivided ancestral property?

ANSWER: IN THE NEGATIVE

- (7) As per the provisions of Sections 101 and 102 of the Indian Evidence Act, 1872 the well-established principle of law is that the burden of proof is always positive; therefore, the burden lies on the person who asserts a fact, not on the one who denies it. The elementary rule under Section 101 is inflexible. In terms of Section 102, the initial onus is always on the plaintiff and if he discharges that onus and makes out a case which entitles him to a relief, the onus shifts to the defendant to prove those circumstances, if any, which would disentitle the plaintiff from getting the relief. Accordingly, the initial burden of proof rests upon the plaintiff, to establish before the Court that the facts stated by him are legally correct. Only when such facts are proved can the Court consider granting relief in favour of the plaintiff. Thereafter, the responsibility to rebut shifts upon the defendant. However, the weakness or negligence of the defendant can never shift the original burden of proof that lies on the plaintiff.

(7.1) The Hon'ble Supreme Court in the case of Union of India & Ors. v. Vasavi Co-operative Housing Society Ltd. & Ors., (2014) 2 SCC 269, has categorically held in Paragraph 15 that the plaintiff in a suit

for declaration of title and possession could succeed only on the strength of his own title and that could be done only by adducing sufficient evidence to discharge the onus on him, irrespective of the question whether the defendants have proved their case or not. It was further held that even if the title set up by the defendants is found against, in the absence of establishment of plaintiff's own title, the plaintiff must be non-suited. The said principle has been reiterated by the Hon'ble Supreme Court in Jagdish Prasad Patel v. Shivnath, (2019) 6 SCC 82, wherein it was held in Paragraph 41 that in a suit for declaration of title and possession, the plaintiff could succeed only on the strength of his own title and not on the weakness of the case of the defendants. Having instituted the suit for declaration, the burden of proof rested on the shoulders of the plaintiff to reasonably establish the probability of better title.

(7.2) The plaintiff has filed the present suit for declaration and permanent injunction against the defendants. For this purpose, the plaintiff has produced oral evidence vide Exhibits 26, 47 and 49, and documentary evidence from Exhibits 28 to 40, and under Exhibits 52 and 53, and has also made oral arguments and prayed to allow the suit. Against this, the defendant has objected to the suit by filing the Written Statement vide Exhibit-11 and has mainly pleaded that the plaintiffs have made a false and vexatious suit; that the suit land is exclusively owned, possessed, and enjoyed by the defendants and is under their cultivation; that Defendant No. 2 has constructed a hut/house on the said land and is residing there with his family and cultivating the land; that the plaintiffs or their ancestors have never had any right, title, interest, or share in the disputed land in the past and do not have any such right even at present. The defendants have relied on Revenue Entry No. 41 dated 2-3-1970 Vide Ex-30 produced by the plaintiffs themselves, as well as Revenue Entry No. 53 dated 28-6-1973 Vide

Ex-31 made pursuant to a Government of Gujarat order for converting land of the entire Gambhirpura Village from new tenure or restricted tenure land into old tenure, and Revenue Entry No. 137 dated 15-2-1985 Vide Ex-32 being a mutation entry made on death of Ramchandbhai by his legal heirs. The defendant's after filing the written statement does not opt to lead the evidence even after giving sufficient adjournments and therefore, defendant's right to produce evidence was closed under Ex. 1 as the defendants did not produce any evidence despite sufficient opportunity being granted.

(7.3) Now, let me examine the oral and documentary evidence produced by the plaintiff in support of his claim that the suit land is undivided ancestral property.

A. Analysis of Oral Evidence:

(7.4) The plaintiff has examined three witnesses in all. Plaintiff's Witness No. 1, Koli Savabhai Harirambhai (the plaintiff himself), has produced his affidavit-in-chief at Exhibit 26, wherein he has reiterated and affirmed the facts stated in the plaint. However, during cross-examination by the defendant's advocate Shri N.R. Solanki, the plaintiff has made several damaging admissions which go to the root of his case:

(i) The plaintiff admitted that he is illiterate and does not know how to read or write.

(ii) The plaintiff admitted that no documentary evidence has been filed in this case to show that he has a share in the suit land.

(iii) The plaintiff admitted that after the death of the predecessor Harirambhai Chelabhai, they have not challenged Entry No. 53, dated 28/06/1973, of his heirs until today, a period of approximately 46 years.

(iv) The plaintiff admitted that it has not been shown in the Suit Application or in any affidavit as to which portion and how much of the suit land falls in his share.

(v) The plaintiff admitted that no claim has been made in this suit to declare the possession of the portion of land falling in his share.

(vi) The plaintiff admitted that from the time he attained understanding until this suit was filed, no suit for partition of the ancestral property was ever filed, and even in the present suit, no claim for partition has been made.

(7.5) These admissions by the plaintiff himself are of great significance. The plaintiff has admitted in unambiguous terms that he has no documentary evidence to show his share in the suit land. Furthermore, he has admitted that the Revenue Entry No. 53 of 1973, which does not contain the name of Harirambhai, the alleged ancestor of the plaintiffs, was never challenged for approximately 46 years. This conduct of the plaintiff speaks volumes about the nature of the claim. If the plaintiffs genuinely believed that the suit land was their ancestral property, one would expect that they or their ancestors would have challenged the revenue entries at the earliest opportunity. However, the complete absence of the plaintiffs' ancestor's name from all revenue entries, coupled with the plaintiff's own admission of lack of any documentary evidence, creates a very unfavourable picture for the plaintiff's case.

(7.6) Plaintiff's Witness No. 2, Koli Govdabhai Sartabhai (aged about 68 years), has submitted his affidavit at Exhibit 47. He has stated that the ancestor of the plaintiffs, Koli Harirambhai Chelabhai, and the ancestor of the defendants, Koli Ramchandbhai Chelabhai, were real brothers. He has further stated that the suit land is the ancestral land of both the parties. However, during cross-examination, the following

facts emerged:

(i) The witness admitted that he has not produced any documentary evidence in his affidavit to prove that the land bearing Survey No. 112 belongs to him, a fact he had asserted in his affidavit to establish his neighbourhood knowledge.

(ii) The witness admitted that although he has stated that the disputed land has been divided into two parts, he has not clearly mentioned the exact boundaries of such division in his affidavit.

(iii) The witness admitted that he has not clearly stated which specific portion of the land is cultivated by the plaintiffs and which portion is cultivated by the defendants.

(7.7) Plaintiff's Witness No. 3, Mali Babubhai Shankarbhai (aged about 36 years), has submitted his affidavit at Exhibit 49 and has given substantially similar evidence. However, during cross-examination, the following significant admissions were made:

(i) The witness admitted that he has not produced any documentary evidence to prove that the plaintiffs and defendants are real brothers.

(ii) The witness admitted that he has not produced any documentary evidence to prove that the disputed land is ancestral property.

(iii) The witness admitted that although he has stated in the affidavit that he owns the land described therein, he has not produced the extract of Form No. 7/12 along with the affidavit to prove the same.

(7.8) Thus, from a careful analysis of the oral evidence produced by the plaintiff, it is evident that all three witnesses have merely made bald assertions regarding the ancestral nature of the property without any corroborative documentary evidence. The oral evidence of the witnesses is general in nature, vague, and lacks specificity. None of the

witnesses could state with certainty about the specific shares, boundaries of alleged division, or produce any independent documentary evidence to support their assertions. It is a well settled principle of law, as consistently held by the Hon'ble Supreme Court, that the burden of proof to establish that the suit property is ancestral in nature lies squarely upon the plaintiff who so asserts. In the absence of cogent and satisfactory evidence to demonstrate the ancestral character of the property, it cannot be presumed that the property is ancestral merely on the basis of oral assertions. In the present case, the plaintiff has failed to discharge this burden through oral evidence or any documentary proof whatsoever.

B. Analysis of Documentary Evidence:

(7.9) Now, let me examine the documentary evidence produced by the plaintiff. The plaintiff has produced the following key documentary evidence:

- (i) Exhibit 28 — Certified copy of Form No. 8-A of Khata Account No. 107
- (ii) Exhibit 29 — Certified copy of Form No. 7 of Survey No. 125
- (iii) Exhibit 30 — Certified copy of Hakkapatrak (Record of Rights) Entry No. 41 dated 2/3/1970
- (iv) Exhibit 31 — Certified copy of Hakkapatrak Entry No. 53 dated 28/6/1973
- (v) Exhibit 32 — Certified copy of Hakkapatrak Entry No. 137 dated 15/2/1985
- (vi) Exhibit 33 — Certified copy of Hakkapatrak Entry No. 809 dated 22/3/2019
- (vii) Exhibit 34 — Copy of the Pedigree (Pedhinamu) of Koli

Chelabhai Damrabhai prepared by Talati Mantri

(viii) Exhibits 35 to 40 — Death Certificates based on Panchnama

(ix) Exhibits 52 and 53 — Panchnama (Panchrojkam) and Sketch prepared by Court Commissioner

(7.10) The most critical documentary evidence in this case are the revenue entries, namely Entry No. 41 (Ex. 30), Entry No. 53 (Ex. 31), Entry No. 137 (Ex. 32), and Entry No. 809 (Ex. 33). Let me examine each of these in detail:

(7.11) Revenue Entry No. 41 (Ex. 30) dated 2/3/1970: This is the Hakkapatrak (Record of Rights) entry which shows the original record of the suit land. Upon careful examination of this entry, it is evident that the land was recorded in the name of Chelabhai Damrabhai. The crucial aspect of this entry is that when the heirs of Chelabhai Damrabhai were recorded, the name of Harirambhai (the alleged ancestor of the plaintiffs) does not appear as a legal heir of Chelabhai Damrabhai. The names recorded as heirs are Ramchandbhai, Nagjibhai, and others, but conspicuously, Harirambhai's name is absent. This is the document produced by the plaintiff himself, and it directly contradicts his claim that Harirambhai was a legal heir of Chelabhai Damrabhai and was entitled to a share in the suit land.

(7.11.1) Revenue Entry No. 53 (Ex. 31) dated 28/6/1973: This is a critically important entry. This entry was made pursuant to a Government of Gujarat Resolution for converting the land of the entire Gambhirpura Village from new/restricted tenure to old tenure without any charges. In this entry, the occupants/right-holders are recorded as follows: Ramchand Chela (in old Survey No. 65 and new Survey No. 125), Nagji Chela, Chagan Chela, Padmaben Chela, Khetuben Chela, Manjiben Chela, and Haluben Chela. Once again, the name of

Harirambhai Chelabhai is completely absent from this entry. This is a government record prepared pursuant to an official order for tenure conversion, and was based on the Mamlatdar's order No. 4914 dated 13/10/1972. The absence of Harirambhai's name from this entry is a very strong piece of evidence against the plaintiff's case. It is pertinent to note that this entry was made pursuant to a government order converting new tenure to old tenure, and if Harirambhai had any right or interest whatsoever in the suit land, his name would have been recorded at that crucial stage.

(7.11.2) Revenue Entry No. 137 (Ex. 32) dated 15/2/1985, This is the mutation entry made upon the death of Ramchandbhai Chelabhai. The heirs of Ramchandbhai Chelabhai who are recorded as the new right-holders are, (1) Koli Dadamben Ramchand, (2) Koli Baba Ramchand, (3) Koli Guguben Ramchand, (4) Koli Sendha Ramchand, and (5) Koli Dhaniben Ramchand, who are the defendants in this case. This entry further confirms that the suit land was being held and treated as belonging exclusively to the defendants' family, i.e., the family of Ramchandbhai Chelabhai.

(7.11.3) Revenue Entry No. 809 (Ex. 33) dated 22/3/2019, This entry has been relied upon by the plaintiff. Upon careful examination, this entry records the order of the Mamlatdar, Wav, vide Order No. Jamin Sudhara Hukam Vashi. 443-2019 dated 13/03/2019, pursuant to which the names of Padmaben, Khetuben, Maniben, Hemaben, and Haluben were directed to be deleted from the revenue record of the suit land (Survey No. 125, Khata No. 107). However, this entry does not in any manner add or recognize any right of Harirambhai Chelabhai or his legal heirs (the plaintiffs) in the suit land. The entry merely records the deletion of certain names who had already relinquished their rights. The remaining name of Koli Chhaganbhai Chelabhai (as Kabjedar/occupant

at Vahi No. 11) continues to appear, and this entry in no way supports the plaintiff's claim that Harirambhai had any right or share in the suit land. In fact, the very fact that even as late as 2019, when this entry was made, no effort was made to include the name of Harirambhai as a right-holder further demolishes the plaintiff's case.

(7.11.4) It is pertinent to note that the plaintiff has himself produced these revenue entries (Exhibits 30, 31, 32, and 33) as documentary evidence. These documents, instead of supporting the plaintiff's case, directly contradict and demolish the plaintiff's claim. The plaintiff claims that Harirambhai Chelabhai was a legal heir of Chelabhai Damrabhai and was entitled to an equal share in the suit land. However, his own documentary evidence, the revenue entries consistently show that the name of Harirambhai was never entered as a right-holder or heir in respect of the suit land. Entry No. 41 (1970) does not show Harirambhai as heir; Entry No. 53 (1973) does not show him as occupant; Entry No. 137 (1985) shows only the defendants as heirs of Ramchandbhai; and Entry No. 809 (2019) merely deletes certain names but adds no right in favour of the plaintiffs.

(7.11.5) The Hon'ble Supreme Court in *P. Kishore Kumar v. Vittal K. Patkar* 2023 (0) AIJEL- SC 72762, categorically held in Para- 11 "that revenue records are not documents of title." However, in the present case, the significance of the revenue entries lies not in what they prove in favour of the defendants, but in what they fail to show in favour of the plaintiffs — namely, any record of Harirambhai Chelabhai ever having been recognized as a right-holder, occupant, or heir in respect of the suit land at any point of time from 1970 to 2019.

(7.11.6) As regards the Pedigree/Pedhinamu (Ex. 34) produced by the plaintiff, this document has been prepared by the Talati Mantri at the instance of the plaintiff himself and is based on the affidavit filed by

the plaintiff and the statements of witnesses identified by the plaintiff. It is essentially a self-serving document and cannot be treated as independent evidence of the genealogy of Chelabhai Damrabhai. Without independent corroboration from official revenue records or other government documents, the Pedhinamu standing alone cannot establish that Harirambhai was a son of Chelabhai Damrabhai, particularly when all the official revenue entries from 1970 onwards consistently exclude the name of Harirambhai.

C. Analysis of Court Commissioner's Panchnama (Exhibits 52 and 53):

(7.11.7) The plaintiff has also relied upon the Panchrojkam (Panchnama) under Exhibit 52 and the Sketch under Exhibit 53, which were prepared by the Court Commissioner, Shri S.M. Mali, appointed by this Court. The Panchnama was conducted on 03/02/2023 at the site of the suit land, i.e., Survey No. 125 (Old Survey No. 65) of Village Gambhirpura, Taluka Wav. The Panchnama records the physical features and present condition of the suit land, including the boundaries, structures, crops, and habitations found thereon.

(a) Upon careful examination of the Panchnama (Ex. 52) and Sketch (Ex. 53), the following facts are noted:

(i) The Panchnama records that the suit land measures Hectare 8-96-47 and its four boundaries are: North — Road from Gambhirpura to Bhakhri; South — Land of Ishwarbhai Hegodabhai Thakor and Dharmshi Sartanbhai Thakor; East — Land of Pababhai Madhavbhai Thakor and Sendhabhai Ramchibhai Mali; West — Land of Narbatbhai Savratbhai Harijan, Mali Davabhai Virabhai, and Ishwarbhai Maharaj.

(ii) The Panchnama records that in the southern portion of the suit land, Defendant Bababhai Ramchandbhai (Defendant No. 2) has constructed

a cemented residential structure (Dhaliya) and is residing there.

(iii) The Panchnama also records that the plaintiff Harirambhai's family has also constructed a cemented structure (Dhaliya) and the plaintiff's family is also shown to be residing in a portion of the land.

(iv) The Panchnama records that crops of wheat, ajmo, and rayda were sown on certain portions of the land at the time of the Panchnama.

(v) The Panchnama records a temple -Mataji's Mandir and other structures in various portions of the land.

(7.11.8) Now, I must observe that while the Panchnama records the physical condition and features of the suit land as observed by the Court Commissioner, the Panchnama does not and cannot determine the question of ownership or title to the suit land. The Court Commissioner was appointed to record the physical condition of the suit land, not to adjudicate upon the rights of the parties. The fact that certain structures may exist on the suit land or that certain persons may be found residing thereon does not, by itself, establish any right, title, or ownership in favour of those persons. Physical presence or habitation on land does not equate to legal title or ownership. The question of title and ownership can only be determined by examining the documentary evidence of title, which, as already discussed above, is entirely against the plaintiff's case.

(7.12) Furthermore, it is significant that even the Panchnama does not record that the plaintiffs are in exclusive or independent possession of any specific demarcated portion of the suit land. The Panchnama merely records the physical features found on the land. The plaintiff's claim of joint possession remains wholly unsubstantiated by any independent evidence of title. Physical presence on a land may have many explanations — it could be permissive, by way of licence, or even

unauthorized — and cannot by itself establish a right of ownership. Therefore, the Panchnama and Sketch (Exhibits 52 and 53) do not advance the plaintiff's case in any manner.

(7.13) The death certificates (Exhibits 35 to 40) are based on Panchnama (village elders' attestation) and while they may prove the deaths of the respective persons, they do not establish any right, title, or interest in the suit land.

(7.14) The plaintiff's case rests upon the assertion that Harirambhai Chelabhai was the real brother of Ramchandbhai Chelabhai and both were sons of Chelabhai Damrabhai. However, this assertion finds no support whatsoever from the documentary evidence produced by the plaintiff himself. Not a single official revenue record, government document, or independent piece of evidence shows that Harirambhai was ever recognized as a co-owner, co-occupant, or heir of Chelabhai Damrabhai in respect of the suit land.

(7.15) It is a well settled and consistently reiterated principle of law, as laid down by the Hon'ble Supreme Court in a catena of decisions, that the burden of proof to establish that the suit property is ancestral or joint family property lies squarely upon the person who so asserts. There is no presumption under law that a property is joint family property merely on account of the existence of a joint Hindu family. The plaintiff who claims that the property is ancestral or joint family property must affirmatively prove the same by leading cogent evidence, both oral and documentary. In the absence of such cogent and satisfactory evidence, the property cannot be presumed to be ancestral merely on the basis of oral assertions or bald averments. Furthermore, the Hon'ble Supreme Court in Jagdish Prasad Patel v. Shivnath, (2019) 6 SCC 82 (Para 41), while relying upon Union of India and Others v. Vasavi Co-operative Housing Society Limited and

Others, (2014) 2 SCC 269 (Para 15), has categorically held that the plaintiff cannot succeed merely by pointing out deficiencies or weaknesses in the title or case of the defendant. The weakness, if any, of the case set up by the defendants would not be a ground to grant relief to the plaintiff. In the present case, the plaintiff has wholly failed to discharge the aforesaid onus — the plaintiff has neither proved that the suit property is ancestral by leading any cogent evidence, nor has the plaintiff done anything beyond merely attempting to point out alleged deficiencies in the defendant's title, which in law, is not sufficient to grant the relief as claimed.

(7.16) In the present case, the plaintiff has singularly failed to prove, either through oral or documentary evidence, that:

- (a) Harirambhai Chelabhai was indeed a legal heir of Chelabhai Damrabhai with respect to the suit land;
- (b) Harirambhai had any right, title, or interest in the suit land at any point of time;
- (c) The suit land was held jointly by Harirambhai and Ramchandbhai as ancestral/undivided property;
- (d) The plaintiffs or their ancestor Harirambhai were ever in possession or cultivation of any part of the suit land as owners.

(7.17) It is also very significant that the plaintiff has admitted during cross-examination that from the time he attained understanding until this suit was filed (approximately 60 years), no suit for partition of the alleged ancestral property was ever filed. If the property was indeed ancestral and jointly held, one would expect the family members to assert their rights through legal proceedings at some point during these six decades. The inaction and silence of the plaintiffs for such a long period raises a very strong inference against the plaintiff's claim. The

delay of approximately 46 years in challenging Entry No. 53 of 1973, and the filing of the present suit only in 2019, when the prices of land have reportedly gone up due to the Narmada Canal (as suggested in cross-examination), further weakens the credibility of the plaintiff's case.

(7.18) The fact that the defendants' right to produce evidence was closed under Ex. 1 for non-production of evidence cannot, in any manner, strengthen the plaintiff's case. The weakness of the defendant's case cannot be treated as the strength of the plaintiff's case. This principle is well-established and has been consistently reiterated by the Hon'ble Supreme Court.

(7.19) For all the above reasons, this Court holds that the plaintiff has utterly failed to prove that the suit land bearing Revenue Survey No. 125 (Old Survey No. 65) of Gambhirpura village, Taluka Wav, admeasuring Hectare 8-96-47, is undivided ancestral property. Hence, Issue No. 1 is answered in the Negative.

-: ISSUE NO. 2 :-

Whether the plaintiff proves that plaintiff as well as defendants are entitled to the equal share and interest in the suit land?

ANSWER: IN THE NEGATIVE

- (8)** Issue No. 2 is directly consequential upon Issue No. 1. The plaintiff's claim that both parties are entitled to equal share and interest in the suit land is premised upon the assertion that the suit land is undivided ancestral property belonging jointly to the families of Harirambhai Chelabhai (plaintiffs' ancestor) and Ramchandbhai Chelabhai (defendants' ancestor).

(8.1) Having already held under Issue No. 1 that the plaintiff has failed to prove that the suit land is undivided ancestral property, the

foundation of the claim for equal share stands completely demolished. However, even independently, let me examine whether the plaintiff has proved any entitlement to an equal share.

(8.2) For a plaintiff to succeed in a claim for equal share in immovable property, the plaintiff must establish: (a) That the property is ancestral or joint family property; (b) That the plaintiff is a co-owner or co-sharer in the property; and (c) The nature and extent of the share claimed.

(8.3) In the present case, the plaintiff has failed to establish any of the above. As discussed in detail under Issue No. 1, not a single revenue entry from Entry No. 41 (1970) to Entry No. 809 (2019) records the name of Harirambhai Chelabhai as a right-holder, occupant, or heir in respect of the suit land. The plaintiff himself admitted during cross-examination that no documentary evidence has been filed to show that he has a share in the suit land. He further admitted that it has not been shown anywhere as to which portion and how much of the suit land falls in his share.

(8.4) Moreover, the plaintiff has admitted that he has not made any claim in this suit to declare possession of any specific portion of the land. This admission is telling. If the plaintiff genuinely believed that he had an equal share in the suit land, he would have identified and claimed a specific portion. The vagueness of the claim for an equal share, without any specification of the nature, extent, or boundaries of the alleged share, further weakens the plaintiff's case.

(8.5) It is also pertinent to note the inconsistency in the plaintiff's own case. The plaintiff's pleadings in the plaint state that the disputed land is under "joint possession and cultivation" of both parties. However, the oral evidence of PW-2 and PW-3 states that the land has been "divided into two parts" with the plaintiffs cultivating one part and the

defendants cultivating the other. This material inconsistency between the plaint and the oral evidence further damages the credibility of the plaintiff's case. Neither the plaint nor the oral evidence is supported by any documentary proof of possession or cultivation by the plaintiffs.

(8.6) For all the above reasons, this Court holds that the plaintiff has failed to prove that the plaintiffs as well as the defendants are entitled to equal share and interest in the suit land. Hence, Issue No. 2 is answered in the Negative.

-: ISSUE NO. 3 :-

Whether the plaintiff is entitled to the relief as prayed for?

ANSWER: IN THE NEGATIVE

- (9)** The plaintiff has prayed for the following reliefs: (A) A declaration that the suit land is ancestral property belonging jointly to the plaintiffs and the defendants, and that both parties have equal rights, interest, and share therein; and (B) A permanent injunction restraining the defendants from making any changes, alterations, or transfers in respect of the suit land.

(9.1) As held in Issue No. 1 and Issue No. 2, the plaintiff has completely failed to prove that the suit land is undivided ancestral property or that the plaintiffs have any right, title, interest, or share in the suit land. The plaintiff's own documentary evidence contradicts his claim. The revenue records produced by the plaintiff himself show that the name of his ancestor Harirambhai was never recorded as a right-holder or heir in respect of the suit land.

(9.2) It is a well-settled principle of law that a suit for declaration under Section 34 of the Specific Relief Act, 1963 can be granted only when the plaintiff proves his title to the property in question. In the absence of proof of title, no declaration can be granted. Similarly, a

permanent injunction under Section 38 of the Specific Relief Act, 1963 is a relief ancillary and consequential to the main relief of declaration. When the main relief of declaration fails, the ancillary relief of permanent injunction also cannot be granted.

(9.3) It is a well settled and consistently reiterated principle of law, as laid down by the Hon'ble Supreme Court in a catena of decisions, that the burden of proof to establish that the suit property is ancestral or joint family property lies squarely upon the person who so asserts. There is no presumption under law that a property is joint family property merely on account of the existence of a joint Hindu family. The plaintiff who claims that the property is ancestral or joint family property must affirmatively prove the same by leading cogent evidence, both oral and documentary. In the absence of such cogent and satisfactory evidence, the property cannot be presumed to be ancestral merely on the basis of oral assertions or bald averments. The Hon'ble Supreme Court in *Anathula Sudhakar v. P. Buchi Reddy (Dead) by LRs.*, (2008) 4 SCC 594 (Paras 11.3 and 17(a)), has held that where the title of the plaintiff is in dispute or under a cloud, or where the defendant asserts title thereto, the plaintiff must seek declaration of title and establish the same by adducing sufficient evidence; and that a cloud is said to be raised over a person's title when some apparent defect in his title or some prima facie right of a third party over the property is made out or shown. Furthermore, the Hon'ble Supreme Court in *Jagdish Prasad Patel v. Shivnath*, (2019) 6 SCC 82 (Para 41), while relying upon *Union of India and Others v. Vasavi Co-operative Housing Society Limited and Others*, (2014) 2 SCC 269 (Para 15), has categorically held that the plaintiff cannot succeed merely by pointing out deficiencies or weaknesses in the title or case of the defendant. The weakness, if any, of the case set up by the defendants would not be a ground to grant relief to the plaintiff. In the present case, the plaintiff

has wholly failed to discharge the aforesaid onus — the plaintiff has neither proved that the suit property is ancestral by leading any cogent evidence, nor has the plaintiff done anything beyond merely attempting to point out alleged deficiencies in the defendant's title, which in law, is not sufficient to grant the relief as claimed.

(9.4) It is also pertinent to note that during the pendency of this suit, the defendants had also filed an interim injunction application under Exhibit 9, wherein the defendants had prayed for restraining the plaintiffs from interfering with their possession of the suit land, and for protecting the defendants' residential house and agricultural farming on the suit land. The said interim injunction application was considered and rejected by my Learned Predecessor Judge, vide order dated 30/01/2021, on the ground that the relief claimed by the defendants in the interim application would be tantamount to granting the final relief itself, and therefore the defendant had failed to prove prima-facie case, irreparable loss, and balance of convenience. The cost of the said interim application was ordered to follow the cost of the suit. It is significant to note that in the said order, the predecessor Judge had observed that the defendant is the independent owner and possessor of the suit land, the defendant's name appears in the revenue record, and the defendant is in actual and direct possession of the land. However, the interim application was rejected only on the technical ground that granting interim relief would be tantamount to granting final relief. This observation by the Predecessor Judge regarding the defendant's ownership and possession further supports the finding of this Court that the defendants are the true owners and possessors of the suit land.

(9.5) Furthermore, the plaintiff has admitted during cross-examination that no suit for partition was ever filed during the last approximately 60 years, despite the alleged ancestral nature of the

property. The plaintiff has also admitted that he has not challenged Revenue Entry No. 53 of 1973 for approximately 46 years. This prolonged inaction and silence raises serious questions about the bona fides of the present suit, which was filed only in 2019.

(9.6) Considering the totality of the evidence on record, and having answered Issues No. 1 and No. 2 in the negative, this Court holds that the plaintiff is not entitled to any of the reliefs prayed for. Hence, Issue No. 3 is answered in the Negative.

-: ISSUE NO. 4 :-

What order and decree?

(10) Before passing the final order, this Court deems it necessary to address the question of costs. The defendants in their Written Statement (Ex. 11) had specifically pleaded that the plaintiffs have fabricated false and imaginary facts, and only to harass the defendants mentally, physically, and financially, and with the ill-intention of grabbing the defendants' ownership, possession, and cultivation land by force, this false suit has been filed. The defendants had prayed for dismissal of the suit with costs.

(10.1) This Court has carefully considered the entire evidence on record and the conduct of the plaintiff throughout these proceedings, and is satisfied that this is a fit case for imposing costs on the plaintiff for the following reasons:

(i) The plaintiff's own documentary evidence contradicts his claim. The revenue entries produced by the plaintiff himself (Exhibits 30, 31, 32, and 33) — spanning from the year 1970 to 2019 — consistently show that the name of Harirambhai (the plaintiffs' ancestor) was never recorded as a right-holder, occupant, or heir in respect of the suit land.

Despite being fully aware that his own documents do not support his claim, the plaintiff has instituted and prosecuted this suit.

(ii) The plaintiff admitted in cross-examination that he has no documentary evidence to show his share in the suit land. This is a clear admission that the suit was filed without any supporting documentary evidence, which amounts to a false and vexatious claim.

(iii) The plaintiff remained silent for approximately 46 years after Revenue Entry No. 53 of 1973 was made, which excluded Harirambhai's name. The belated filing of this suit in 2019, coinciding with the reported increase in land prices due to the Narmada Canal, indicates that the suit was motivated by greed rather than any genuine grievance.

(iv) The defendants have been compelled to suffer agony and mental stress on account of this frivolous litigation. It is evident from the defendants' Written Statement that the plaintiffs have not only filed this false suit but have also threatened the defendants with death and attempted to forcibly enter their land. The defendants were compelled to file a written complaint on 18/08/2019 before the Police Sub-Inspector, Wav, and before the Mamlatdar, Wav, placed before court as Marked-9A submitted with Ex.9 an application filed by defendant as interim application, seeking protection against the plaintiffs' threats and aggression. This shows the extent of harassment suffered by the defendants at the hands of the plaintiffs.

(v) The defendants have been compelled to engage a lawyer and incur litigation expenses to defend their legitimately held property against this false and frivolous suit. The suit was filed on 09/04/2019 and has remained pending for approximately 7 years, during which the defendants have had to repeatedly attend the Court and bear the burden of this unjustified litigation.

(vi) This suit has consumed the valuable time of this Court which could have been utilized for hearing and disposing of genuine and deserving cases. In the current scenario where the courts are overburdened with cases, frivolous litigation of this nature adds to the backlog and delays justice for genuine litigants.

(vii) It is further pertinent to note that during the pendency of this suit, the defendants filed an application under for reopening the right to lead evidence, which was marked as Exhibit-68. On the said application, the plaintiff himself made an endorsement stating that if the defendants' application is allowed, it should be allowed with costs. This endorsement by the plaintiff is of great significance. It demonstrates that the plaintiff was fully conscious and expectant that costs are a legitimate consequence to be imposed upon a party whose conduct warrants the same. The plaintiff who himself demands costs from the defendant for his defaults cannot claim immunity from similar consequences when his own suit is found to be false and vexatious. The same yardstick of costs that the plaintiff sought to apply to the defendants must equally apply to the plaintiff. This conduct of the plaintiff further reinforces the conclusion that costs ought to be imposed upon the plaintiff.

(10.2) The Hon'ble Supreme Court in the landmark judgment of *Ramrameshwari Devi & Ors. v. Nirmala Devi & Ors.*, (2011) 8 SCC 249, has laid down detailed guidelines regarding imposition of costs in frivolous litigation. The Hon'ble Supreme Court observed in Para 45 that unless we ensure that wrongdoers are denied profit or undue benefit from frivolous litigation, it would be difficult to control frivolous and uncalled for litigations. In Para 52(C), the Court held that imposition of actual, realistic or proper costs and/or ordering prosecution would go a long way in controlling the tendency of

introducing false pleadings and forged and fabricated documents by the litigants. In Para 54, the Court observed that while imposing costs, pragmatic realities must be taken into consideration, including the prevalent fee structure of lawyers and miscellaneous expenses incurred in litigation. In Para 55, the Court further observed that the duration for which the defendants were compelled to contest and defend the litigation is a relevant factor. Finally, in Para 56, the Court imposed costs of Rs. 2,00,000/- (Rupees Two Lakhs) stating that the costs were being imposed not out of anguish but by following the fundamental principle that wrongdoers should not get benefit out of frivolous litigation.

(10.3) Further, the Hon'ble Supreme Court in *A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam*, (2012) 6 SCC 430 (Paras 34, 35, 37, 38 and 42), has held that Courts must adopt a realistic approach while awarding costs so that frivolous litigations are discouraged and no undue benefit is derived by any litigant by abuse of the process of law. It was further observed that unless wrongdoers are denied profit or undue benefit from frivolous litigations, it would be difficult to control such litigations, and that the Courts should take effective and preventive steps to ensure that false pleas are not taken to confuse the Courts and cause delay in disposal of cases. The Hon'ble Supreme Court also laid down that once the Court discovers falsehood, concealment, distortion or confusion in pleadings and documents, the Court should, in addition to full restitution, impose appropriate costs, and must ensure that there is no incentive for a wrongdoer in the temple of justice. Similarly, the Hon'ble Supreme Court in *Salem Advocate Bar Association, Tamil Nadu v. Union of India*, (2005) 6 SCC 344 (Para 39), has observed that it is an unfortunate practice that has developed in the judiciary of directing parties to bear their own costs, and that in a large number of cases,

either costs are not awarded or only nominal costs are awarded on the unsuccessful party. Such a practice encourages filing of frivolous suits and taking up of frivolous defences. The Hon'ble Supreme Court held that when Section 35(2) of the Code of Civil Procedure provides for cost to follow the event, it is implicit that the costs have to be those which are reasonably incurred by a successful party, and such costs have to be actual reasonable costs including the cost of time spent, transportation, lodging, court fee, lawyer's fee and other incidental costs in relation to the litigation. The Court directed that the practice of awarding realistic costs must be adopted.

(10.4) In the present case, considering the totality of the facts and circumstances — including the false and fabricated nature of the plaintiff's claim, the plaintiff's own admissions in cross-examination, the contradiction between the plaintiff's documentary evidence and his claims, the harassment and mental agony suffered by the defendants who were compelled to approach the Police and the Mamlatdar for protection, the expenses incurred by the defendants in engaging a lawyer and defending this frivolous litigation for approximately 7 years, and the valuable judicial time wasted — this Court is satisfied that costs must be imposed on the plaintiff under Section 35 and Section 35A of the Code of Civil Procedure, 1908.

(11) In view of the findings recorded on Issues No. 1 to 3, the following order is passed below Issue No.4

:: ORDER ::

- (i)** The suit of the plaintiff for declaration and permanent injunction is hereby DISMISSED.
- (ii)** The plaintiff has failed to prove that the suit land bearing Revenue Survey No. 125 (Old Survey No. 65) of Village Gambhirpura,

Taluka Wav, admeasuring Hectare 8-96-47 is undivided ancestral property.

(iii) The plaintiff has failed to prove that the plaintiffs and defendants are entitled to equal share and interest in the suit land.

(iv) The plaintiff is directed to pay compensatory costs of Rs. 50,000/- (Rupees Fifty Thousand Only) to the defendants under Section 35 and 35A of the Code of Civil Procedure, 1908, for filing this false and vexatious suit, which has caused harassment, mental agony, and financial loss to the defendants, and has wasted the valuable time of this Court. The said costs shall be paid by the plaintiff to the defendants within a period of sixty days from the date of this order, failing which the defendants shall be entitled to recover the same as per law.

(v) The decree be drawn up accordingly.

Date:13/03/2026

(Laxman Vadhva)

Pl : Wav

**Principal Civil Judge,Wav.
Judge Code: GJ01700**