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Exh.	91 /A



**IN THE COURT OF PRINCIPAL CIVIL JUDGE
BHABHAR-BANASKANTHA**

REGULAR CIVIL SUIT NO.6/2023

PLAINTIFFS:-

Heirs of Late Dehla Kuvra Lebdas

1. Vashram Dehlaji Koli

R/O Aldeshan, Tal- Kadi, Mehsana

2. Laxmiben Kesaji Dehlaji Koli

3. Sureshji Darghaji Koli

4. Champaben Babuji Koli

5. Bharatji Babuji Koli

All Age : Adult, Occupation: Farming

R/O Chamundanagar, Opp. Bharwad Vas, Naroda, Ahmedabad

DEFENDANTS:-**1. Balaji Maganji Thakor**

Age- Adult, Occupation- Farming

R/O Gangun, Tal- Bhabhar-Banaskantha

2. Talaji Dhulaji Parmar

Age- Adult, Occupation- Farming

R/O Thakurvas, Gangun, Tal- Bhabhar-Banaskantha

Sub:- Suit for Partition, Cancellation, Declaration and Permanent Injunction**Appearance:**

Mr. R.B Chavda Ld. Adv. for Plaintiffs
Mr. A.J Ghanchi Ld. Adv. for Defendant no.1
Mr. R.T Akhani Ld. Adv. for Defendant no.2

-::JUDGEMENT::-

1. The plaintiffs have filed the present suit seeking partition, declaration and injunction with regard to land measuring Hect. Sq. Metres 00-25-39 in block/survey no. 225 (Old block/survey no. 13/3), land measuring Hect. Sq. Metres 00-21-38 in block/survey no. 489 (Old block/survey no. 117/2), land measuring Hect. Sq. Metres 02-74-30 in block/survey no. 187

(Old block/survey no. 155). That all the above described land are situated in Khata No. 123 situated at Gangun, Bhabhar Taluka **(from now-onwards referred to as “the suit properties”)**. That the suit properties are ancestral properties and they are having equal share in the suit properties hence to divide the properties and to give the possession of said property and to cancel the registered sale deed no. 747/2023 dated 13/04/2023 and to direct the defendants not to cause any interference, disturbance and intrusion in the suit properties.

2. **Brief facts as stated by the plaintiffs are:**

- 2.1 That the plaintiffs and defendant no. 1 are lineal descendants of Late Koli Kuvra Lebdas. That initially the suit properties was in the name of their forefather Late Devlaji Kuvraji Lebdasji and thereafter the suit properties came into possession of Late Koli Kuvra Lebdas. That Late Manji Kuvra, Late Dehla Kuvra and Late Darga Kuvra are lineal descendants of Late Koli Kuvra Lebdas. That the plaintiffs are lineal descendants of Late Dehla Kuvra and Late Darga Kuvra whereas the defendant no. 1 is lineal descendant of Late Manji Kuvra. It is stated that the plaintiffs and defendant no.1 owns and possess the suit properties and does farming in the said properties.
- 2.2 It is stated that the suit properties were in the name and possession of Late Koli Kuvra Lebdas and after his death at the relevant time due to prevailing rules and regulations of

government, the suit properties were entered only in the name of his elder son Manji Kuvra and names of father of plaintiffs Late Dehla Kuvra and Late Darga Kuvra did not entered.

2.3 It is stated that as time passes away Manji Kuvra died and names of his legal heirs Vaniben, Shankarji, Maganji Bhudarji were entered in the suit properties. Out of these legal heirs Vaniben(wife of Late Manji Kuvra) died and thereafter Shankarji and Bhudarji also without any heirs. Accordingly the names were deleted from the revenue record. The sole legal heir Maganji also died and his wife Daniben also died and hence name of Defendant no.1 remained in revenue record.

2.4 It is stated that since the plaintiffs are legal heirs/descendants of Late Kuvra Lebdas hence the defendant no.1 had executed one notarized compromise deed and accepted that the plaintiffs are also having equal share in the suit properties and accordingly to enter their names in revenue record the plaintiffs and defendant no.1 filed required application before mamlatdar office, Bhabhar.

2.5 It is stated that since the prices of the suit properties increased the defendant no.1 without consent of the plaintiffs sold one of the suit property i.e. block/survey no.187 to the defendant no.2 through registered sale deed no. 747/2023 dated 13/04/2023 and effect of such sale deed is also reflected in revenue records through entry no. 1333. It is

stated that the said sale deed is illegal and void ab initio. It is stated that in this way the defendant no.1 will sold out the remaining suit properties hence present suit is filed.

On basis of the aforesaid facts the plaintiffs have filed the present suit for partition, declaration, cancellation and injunction and specifically the reliefs as mentioned in para 10 of the plaint.

3. That the summons was issued to the defendants and the defendants have filed their written statements Exh-13.

4. The averments made by the defendants in their written statement, in brief, are as follows-

4.1 The defendants have denied all material facts ascertained by the plaintiffs. It is averred that the suit is barred by principle of res-judicata. It is submitted that suit is barred by law of limitation as well.

4.2 It is submitted that defendant no.2 is bonafide purchaser of the suit property and legally bought the suit property. It is submitted that the suit properties were legally entered into his name and as per revenue record he is sole owner of the same. It is submitted that the plaintiffs by using fraud have executed the compromise deed. It is submitted that revenue litigations were filed by the plaintiffs but all of them were rejected. That since Bharatmala project and due to Narmada canal the prices of the suit properties were rapidly increased and hence in order to gain financial advantage present false suit is been filed with malafide intentions.

Hence, on the above and other grounds as mentioned in the written statement, the defendants prayed for dismissal of the suit.

5. That in order to support their case the plaintiffs adduced following oral as well as documentary evidence:

Oral Evidence by Plaintiff		
S.No.	Description	Ex.
1.	Affidavit of Chief Examination of Plaintiff no.3	23
2.	Affidavit of Chief Examination of Maheshji Bhupatji	43

Documentary Evidence by Plaintiff		
S.No.	Description	Ex.
1.	Copy of Hakk Patrak Entry no. 269	25
2.	Copy of Hakk Patrak Entry no. 822	26
3.	Copy of Form 7 of Survey no. 225 (Old survey no. 13/3)	27
4.	Copy of Form 7 of Survey no. 489 (Old survey no. 117/2)	28
5.	Copy of Form 7 of Survey no. 187 (Old survey no. 155)	29
6.	Copy of Notarized Compromise Deed	30
7.	Copy of Notarized Affidavits signed by the Defendant no.1	31-32

8.	Copy of Compromise and application before Mamlatdar to enter names of Plaintiffs in the suit properties	33
9.	Copy of Notarized Affidavit signed by the Defendant no.1	34
10.	Copy of application filed jointly by the plaintiffs and defendant no.1 before Mamaltdar to enter names of plaintiffs in the suit properties being legal heirs	35
11.	Copy of order of Mamlatdar in RTS case no. 1/16	36
12.	Copy of Regd. Sale Deed no. 747/2023 dated 13/04/2023	37
13.	Copy of Hakk Patrak Entry no. 1333	38
14.	Copy of Objection application against entry no.1333	39
15.	Copy of order dated 14/07/2023 passed by Dy. Collector Suigam in RTS case 11/23	40
16.	Copy of order dated 28/12/2023 passed by Collector Banaskantha in Appeal case no.53/2023 against order of Dy. Collector Suigam in case no. 11/23	41
17.	Copy of Pedigree certificate	47
18.	Copy of order dated 01/08/2024 passed by Assistant Collector Suigam in RTS remand case	48

	11/24	
19.	Voter id Card of Keshaji Dehlaji	53
20.	Voter id Card of Laxmiben Keshaji Dehlaji	54
21.	Ration Card of Keshaji Dehlaji	55

6. That in order to support their case the defendants adduced following oral as well as documentary evidence:

Oral Evidence by Defendant		
Sr. No.	Description	Exh.
1.	Affidavit of Chief-Examination of Defendant no. 2	57

Documentary Evidence by Defendant		
Sr. No.	Description	Exh.
1.	Copy of Form 8 of Suit Properties	59
2.	Copy of Form 7, 12 of Survey no. 187	60-61
3.	Copy of Hakk Patrak Entry no. 22	62
4.	Copy of Hakk Patrak Entry no. 132	63
5.	Copy of Hakk Patrak Entry no. 269	64
6.	Copy of Hakk Patrak Entry no. 822	65
7.	Copy of Hakk Patrak Entry no. 856,964	66
8.	Copy of Hakk Patrak Entry no. 1020	67
9.	Copy of Hakk Patrak Entry no. 1098,1325	68
10.	Copy of Hakk Patrak Entry no. 1332	69
11.	Copy of Hakk Patrak Entry no. 1333	70
12.	Copy of documents related to entry no. 1098	71

13.	Copy of order dated 14/07/2023 passed by Dy. Collector Suigam in RTS case 11/23	72
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7. That the advocate for the plaintiff requested to close their evidence vide Exh-56 and the advocate for the defendant no.2 requested the court to close their evidence vide Ex-83. That the matter was posted for evidence for defendant no. 1 but no evidence is been filed hence his right to file evidence is been closed and then the matter was taken up for the arguments. Advocate for the plaintiffs filed their detailed written arguments vide exh-88 and filed judgments in support of their case vide exh-89 and advocate for defendant no. 2 argued orally and filed judgments in support of their case vide exh-90. For the sake of brevity and convenience the arguments shall be dealt along with the reasons and discussion.
8. After considering the pleadings on record, the following issues have been framed by my predecessor at Ex-19:
- 1 Whether the Plaintiffs proves that they are lineal descendants of Late Koli Kuvra Lebdas?**
 - 2 Whether the Plaintiffs proves that the suit properties are ancestral property and Defendant has recognized their right by executing compromise deed as alleged ?**
 - 3 Whether the Plaintiffs proves that they have right and share over the suit properties ?**
 - 4 Whether the defendant no. 1 proves that he is sole owner of the suit property ?**

- 5 **Whether the defendant no. 2 proves that he is bonafide purchaser of the suit property ?**
 - 6 **Whether the plaintiff is entitled for the relief as prayed for ?**
 - 7 **What order and decree?**
 - 8 **Whether the defendants proves that the suit is not filed within limitation period ?**
9. After careful consideration of the pleadings, oral as well as documentary evidences on record and the arguments advanced, this court hereby answers the above issues as follows:
1. In Affirmative
 2. In Affirmative
 3. In Affirmative
 4. In Negative
 5. In Negative
 6. In Affirmative
 7. As per final order
 8. In Negative
10. The reasons for the above conclusions are here as follows:

REASONS AND DISCUSSION

10.1 ISSUE NO.1:

Whether the Plaintiffs proves that they are lineal descendants of Late Koli Kuvra Lebdas?

ISSUE NO.2

Whether the Plaintiffs proves that the suit properties are ancestral property and Defendant has recognized their right by executing compromise deed as alleged ?

ISSUE NO.3

Whether the Plaintiffs proves that they have right and share over the suit properties ?

Discussion:

- 10.1.1 Since the issues are interconnected and having common discussion and reasoning hence are discussed together.
- 10.1.2 Considering the issue the burden of proof has been cast on the plaintiffs. In support of the same the plaintiff no. 3 filed their evidence affidavit at Exh- 23 wherein he has reiterated the facts as stated in the plaint. He has been cross examined by the defendant advocate where he has admitted that he has not filed or challenged the revenue entry no. 22 and 132. He admits that for last 48 to 50 years he is been living in Ahmedabad. He admits that ration card, aadhar card, voter Id card of his family is having address of Ahmedabad. He admits that he himself does not yielded the suit properties. Further, he states that his

ancestors would have yielded it but he doesn't know about it.

10.1.3 The plaintiffs have produced documents in support of this issue. Exh-47 is pedigree certificate, Exh-30 is compromise deed on notarized stamp paper wherein defendant no.1 admitted that the plaintiffs are his family members and are lineal descendants of Late Koli Kuvra Lebdas. It is stated in the said affidavit that the suit properties were in the name of Late Koli Kuvra Lebdas and after his death the suit properties were entered in name of elder Manji Kuvra. In the said compromise deed the defendant no. 1 stated that the plaintiffs are legal heirs of Late Koli Kuvra Lebdas and if their name is entered in the suit properties then he is having no problem at all. In the said compromise deed the defendant no.1 has stated about the application filed before Mamlatdar for entering the names of Plaintiffs but the said application was rejected and only the name of defendant no.1 is entered in revenue record and against such order RTS appeal no. 7/2013 is also been filed. Apart from this the plaintiffs filed affidavits of defendant no.1 Exh-31,32 wherein he has directly admitted that the plaintiffs are legal heirs of Late Kuvra Lebdas. Further, one joint application Exh-33 is also filed before mamlatdar by the plaintiffs and defendant no.1 to

enter their name in revenue record on the basis of legal heirship. That another affidavit is filed at Exh-34 regarding heirship. Considering all the documents clearly the defendant no.1 has admitted in the notarized affidavit regarding suit properties being ancestral property and the plaintiffs are legal heirs/lineal descendants of Late Koli Kuvra Lebdas. That the documents filed are certified copy and nothing adverse is filed or stated that the defendant no.1 has not signed such affidavits or application. Only general denial is taken regarding such affidavits. It is true that the plaintiff has to prove its case on his own and not to depend on the defects of defendant. However, in the present case nothing adverse stated/proved by the defendant no.1 to deny such affidavits. Merely denying execution of a notarized document is not enough, rather to disprove it something cogent has to be filed, which the defendants failed in it. In cross examination nothing substantial is been taken so as to disprove the case of the plaintiffs.

10.1.4 The learned advocate for Defendant No. 2 has contended that the pedigree certificate is not valid in the eyes of law and, therefore, cannot be relied upon. It is further argued that no panch witnesses have been examined to prove the same, and that the certificate does not contain details of the wife, thereby rendering

it unreliable. It is also submitted that, apart from the pedigree certificate, no additional documentary evidence has been produced nor has any witness been examined in support thereof.

10.1.5 Upon consideration of these submissions, it appears that the learned advocate for Defendant No. 2 is attempting to raise minor and technical objections regarding the sanctity of the pedigree certificate. However, no substantive or cogent material has been brought on record to demonstrate why such a pedigree certificate should be held inadmissible or unworthy for consideration. It is to be noted here that defendant no 1 has not filed his evidence hence with regard to affidavits filed by him it raises a presumption that those are true and made by him. Nothing is filed on record so as to prove that the said affidavits are not as per law and should not be considered. Further, nothing adverse filed by the defendant no.1 so as not to believe the pedigree certificate.

10.1.6 Even assuming, for the sake of argument, that the pedigree certificate is not admissible in evidence but the affidavits filed by Defendant No. 1, wherein the pedigree and the legal heirs are clearly set out and effectively admitted, cannot be overlooked or denied. Such admissions carry evidentiary value and deserve due consideration in the present case as the

defendant no.1 has not filed any cogent material against the said affidavits.

10.1.7 It is argued that the plaintiffs are farmers but no such document filed to show that they are farmers hence no relief as sought for shall be granted. Further, it is argued that the exh-30 compromise deed is not mentioned by the plaintiffs in their affidavit hence cannot be admissible. And the compromise deed is not as per transfer of property act hence not admissible. Considering this issue when the plaintiffs proves that they are legal heirs of deceased then there is no question of filing any evidence regarding certificate of farmer. Further, this court perused the affidavit at Exh-23 wherein clearly it is stated about such compromise deed. This court fails to understand as to how compromise deed is not as per transfer of property act. Such arguments are raised only for the sake of raising of it, they have no legal backing hence are rejected.

10.1.8 Learned advocate for defendant no.2 cited judgments vide Exh-90. This court perused the said judgments but failed to understand as to how such judgments are applicable/ relevant in the present case.

10.1.9 From the aforesaid circumstances and discussion, it can safely be concluded that the plaintiffs are legal descendants of Late Koli Kuvra Lebdas and the suit

properties are ancestral and as per compromise deed the defendant no.1 has recognized rights of plaintiffs.

10.1.10 Accordingly, considering the above discussion this court comes to the conclusion that the plaintiffs have proved the present issues. Evidence on record supports the plaintiffs version. Hence, this court answers the **Issue no.1, 2 and 3 in Affirmative.**

10.2 ISSUE NO.4:

Whether the defendant no. 1 proves that he is sole owner of the suit property ?

ISSUE NO. 5

Whether the defendant no. 2 proves that he is bonafide purchaser of the suit property ?

Discussion:

10.2.1 No evidence affidavit is been filed by the defendant no.1 to prove the issue no.4. Further, considering the above discussion as done in issue no. 1 to 3 wherein several affidavits is been filed by defendant no.1 in which the defendant no.1 admits that the suit properties are ancestral property and the plaintiffs are legal heirs of Late Koli Kuvvara Lebdas of the suit properties and they are entitled to such properties.

Such statement is ante as to what has been alleged in the present case. Hence, when it is proved that the suit properties are ancestral and nothing is shown on record that the suit properties are being partitioned then clearly it can be concluded that defendant no.1 is not sole owner of the suit properties. When defendant no.1 is not sole owner of suit properties then it cannot be said that defendant no.2 are bonafide purchaser of the suit properties. Hence, this court answers the **Issue no.4 and Issue no. 5 in Negative.**

10.3 ISSUE NO. 8

Whether the defendants proves that the suit is not filed within limitation period ?

Discussion

10.3.1 It is argued that Exh-64 entry is been made in the year 1957 and since then the suit properties is been entered in the name of grandfather, father of defendant and now in the name of defendant. It is argued that since 1957 the plaintiffs have done nothing in this regard and if we calculate the time period then its almost more than 60 years that the plaintiffs remain mute with regard to their entitlement. It is argued that clearly the remedy is barred by law. Considering the arguments this court fails to understand as to how the suit is barred by

limitation. Nothing specific provision is been stated by the defendant regarding limitation period. The relevant article in this regard is article 110 of limitation act wherein it is prescribed that a suit for partition can be filed within a period of 12 years and time begins to run from the date the exclusion becomes known to the plaintiff. In the present facts clearly the suit is filed within limitation period as the sale deed is executed in the year 2023. Considering the same this court comes to the conclusion that the suit is filed within limitation period hence this court answers the **Issue no.8 in Negative.**

10.4 ISSUE NO. 6

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

10.4.1 In view of the findings recorded on the earlier issues, this Court is of the considered opinion that the plaintiffs are entitled to the reliefs as prayed for. The plaintiffs have proved that the suit properties are ancestral properties and they are legal heirs and are entitled to such properties.

10.4.2 In the present suit, a relief for cancellation of registered sale deed no. 747/2023 dated 13/04/2023 has been sought. Considering, such relief and

considering the evidence on record, when the plaintiff has proved their case and the properties have been proved to be ancestral undivided property then clearly the plaintiffs are having equal share in the suit properties. Therefore, the registered sale deed executed by the defendant no.1 in favour of the defendant Nos. 2 is null and void ab initio as consent of the co-owner i.e plaintiffs had not been availed by the transferor. Hence, the registered sale deeds are required to be cancelled.

10.4.3 Next relief is sought with regard to partition. It is prayed by the plaintiffs that partition may be done and accordingly the share of the suit properties be divided between the legal heirs. Considering the same the suit properties are properties of hindu undivided family then as per Hindu Succession Act equal share is to be divided between the plaintiffs and defendant no.1.

10.4.4 Considering the cumulative effect of the evidence on record, it is clear that the plaintiffs are legal heirs and are entitled to the suit properties and the sale deed is void ab initio. Consequently, the plaintiffs are entitled for the reliefs as prayed for hence this court answers the **Issue No. 6 in Affirmative** and as per the **Issue**

No. 7 this court in the larger interest passes the following final order:

ORDER

1. The suit of the plaintiff is hereby allowed.
2. It is hereby declared that the plaintiffs and defendant No. 1 are having equal share to the suit properties. Applying the rules of the Hindu Succession Act and considering the pedigree certificate defendant no.1 is entitled for 1/3 share, plaintiff no. 1, 2 and 3 are entitled for 1/6 share each, plaintiff no. 4 and 5 are entitled for 1/12 share each in the suit properties. The shares are ordered to be separated and handed over to the concerned person after making partition of such properties.
3. It is declared that the sale deed no. 747/2023 dated 13/04/2023 executed in favour of defendant no.2 as mentioned in the plaint is illegal and void ab initio and the same is ordered to be cancelled.
4. Copy of the decree be sent to the officer in whose office the instrument has been so registered, and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation and report this court.
5. The defendant no.2, or his agent and/or servants, heirs etc, are permanently restrained from sell, mortgage, alienate, transfer, or create any kind of interest, in any manner, in the suit properties particularly described in the plaint.

6. Before actual partition necessary inquiry is to be made hence preliminary decree is drawn accordingly.
7. Mamlatdar, Bhabhar is hereby appointed as court commissioner for the inquiry with regard to partition of the suit properties. Necessary yaadi be issued to the Mamlatdar, Bhabhar in this regard after depositing necessary court commission fees by the plaintiffs. It is to be noted that court commissioner fees and other expenses in this regard shall be borne by the plaintiffs. For the time being the plaintiffs are directed to deposit Rs.5,000/- as court commission fees.
8. Parties shall bear costs of the suit.
9. Pending applications, if any, are disposed hereby.

Pronounced and signed in the open Court on 20th Day of April, 2026 at Bhabhar.

Bhabhar-Banaskantha

Date:20-04-2026

(Ashish K. Somani)

Principal Civil Judge

Bhabhar-Banaskantha

UIC: GJ01690