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Ex. 30

**IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE,
BHAVNAGAR**

Regular Civil Appeal No.21 of 2023

Dhirubhai Golanbhai Vanarka,
Age: 60 years, Occu: Agriculture,
Resi: Village Thadach, Taluka Palitana,
District Bhavnagar.

**..... Appellant
(Original Plaintiff No.1)**

VERSUS

- 1) Thadach Village Panchayat,
Notice through the Sarpanch,
Talati-Cum-Mantri,
Village Thadach, Taluka Palitana,
District Bhavnagar.
- 2) The Taluka Development Officer,
Taluka Panchayat, Palitana.
- 3) Bhavnagar District Panchayat,
Notice through the District Development Officer,
District Panchayat, Bhavnagar.
- 4) The Collector,
Bhavnagar.
- 5) The State of Gujarat,
Through the Chief Secretary,
Sachivalaya, Gandhinagar. (Original Defendants)
- 6) Madhubhai Shefabhai,
Age: Adult, Occu: Agriculture. (Original Plaintiff No.2)

- 7) Heirs of Deceased Keshubhai Godadbhai Vanarka :
- 7-1) Ganuben Keshubhai,
Age: 60 years, Occu: Home-Maker,
Resi: Village Thadach, Taluka Palitana,
District Bhavnagar.
- 7-2) Savuben Keshubhai Vanarka,
Wife of Nirubhai Valshi,
Age: 40 years, Occu: Home-Maker,
Resi: Village Tansa, Taluka Ghogha,
District Bhavnagar.
- 7-3) Bharatbhai Keshubhai Vanarka,
Age: 37 years, Occu: Agriculture,
Resi: Village Thadach, Taluka Palitana,
District Bhavnagar.
- 7-4) Gitaben Keshubhai Vanarka,
Wife of Bharatbhai Poshatar,
Age: 35 years, Occu: Home-Maker,
Resi: Village Tansa, Taluka Ghogha,
District Bhavnagar.
- 7-5) Hemkuben Keshubhai Vanarka,
Wife of Shaprajbhai Megal,
Age: 31 years, Occu: Home-Maker,
Resi: Village Balapar, Taluka Rajula,
District Amreli.
- 7-6) Pathubhai Keshubhai Vanarka,
Age: 29 years, Occu: Agriculture,
Resi: Village Thadach, Taluka Palitana,
District Bhavnagar. **(Original Defendant No.3)**
..... Respondents

: Appeal Under Section-96 of the Civil Procedure Code, 1908 :

Appearance :

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Learned Advocate for the Appellant, Mr.MV Sojitra
Learned Advocate for the Respondents Nos.1 to 3, Mr.PL Sonpal
Learned A. G. P. for the Respondents Nos.4 & 5

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: J U D G M E N T :

1. Being aggrieved and dissatisfied with the judgment and decree, dated 07-01-2023, passed in Regular Civil Suit No.127 of 2017 (old RCS No.17 of 1998), passed by the Ld. Principal Senior Civil Judge, Palitana (hereinafter referred as "the Ld. Trial Court"), the present appellant has preferred the present Appeal under section-96 of the Civil Procedure Code, 1908 (hereinafter referred as "the Code").

2. For the sake of brevity and convenience, the parties to the present Appeal are hereinafter referred in their original status, as they were arrayed as parties before the Ld. Trial Court.

3. The factual matrix, leading present proceedings, are as under :

3.1 The present appellant – original plaintiff No.1 preferred an RCS No.127/2017 (old RCS No.17 of 1998) seeking declaration and permanent injunction contending that the plaintiffs are staying in the disputed property since last more than 60 - 70 years and the said parcel of law was allotted by the authority, namely, Panchayat to the forefathers of the plaintiffs and since then, the plaintiffs are staying in the said property by constructing a residential house. It was further averred that the plaintiffs have not constructed any building illegally and without permission of the authority and, therefore, the notice 21-08-1997 and 27/28-08-1997 for removal of the illegal construction are bad in eye of law.

3.2 After service of notice, the defendant No.1 appeared and

filed written statement and contended that the plaintiffs had preferred an RCS No.15/1996 which was dismissed against which, an Appeal being Miscellaneous Civil Appeal no.206/1996 was preferred and the same was also dismissed and though the suit of the plaintiffs is not maintainable in view of the provisions, contained under section-270(3) of the Gujarat Panchayats Act, 1993, they had wrongly preferred the suit before the Civil Court. In fact, the plaintiffs are required to be removed under the provisions, contained under the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972 and as such, suit of the plaintiffs is not maintainable.

3.3 The defendant No.3 filed written statement at Ex.23 and averred that the earlier suit, preferred by the plaintiffs bearing RCS No.15/1996, had been dismissed and the Appeal filed against against the order, passed in RCS No.15/1996, was also dismissed and, therefore, the suit of the plaintiffs is not maintainable.

3.4 The defendant No.4 filed written statement at Ex.48 and raised contention that without serving them any notice under section-80 of the Code, the suit has been preferred and, therefore, the suit is required to be dismissed.

3.5 After completion of the pleadings, the Ld. Trial Court framed the following issues (transferred from Gujarati into English language) :

1. Whether the plaintiffs prove that they are continuously in possession of the suit property since last 50 to 60 years ?

2. Whether the plaintiffs prove that notice, dated 27-28/11/1997, given by the defendant No.1 is illegal and of without jurisdiction ?
3. Whether the plaintiffs prove that the defendant No.1 is illegally and forcefully trying to take possession of the property, possessed by the plaintiffs ?
4. Whether the suit of the plaintiffs suffers from jurisdiction ?
5. Whether the plaintiffs are entitled to get the relief as prayed for in plaint para-10 ?
6. What order and decree ?

3.5 The Ld. Trial Court answered the above issues as under :

1. In the negative.
2. In the negative.
3. In the negative.
4. In the negative.
5. In the affirmative.
6. As per the final order.

3.6 Ultimately, the Ld. Trial Court was pleased to dismiss suit of the plaintiffs which is challenged by way of the present Appeal before this Court.

4. The Ld. Advocate for the appellant – original plaintiff No.1 submitted that the plaintiffs are residing in the disputed premises since last more than 60 - 70 years and as per the documents, produced by the plaintiffs, their possession is adverse to the possession of the defendants and, therefore, the Ld. Trial Court ought to have granted a decree in favour of the plaintiffs. He further submitted that the notice, issued under section-105 of the Gujarat Panchayats Act, 1993, is illegal and, therefore, the same is required to be set aside.

5. *Per contra*, the Ld. Advocate appearing for defendants Nos.1 to 3 and the Ld. APP for the defendants Nos.4 and 5 have submitted that the suit of the plaintiffs was not maintainable and the same is barred in absence of any notice, issued under section-270 of the Gujarat Panchayats Act, 1993 and section-80 of the Code. They further submitted that the plaintiffs preferred an RCS No.15/1996 for the similar relief which was dismissed and an Appeal against the order, passed in RCS No.15/1996 was also dismissed and, therefore, no relief can be granted in favour of the plaintiffs. They lastly submitted that the actions are required to be taken under the provisions, contained in Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972 and as such, the suit of the plaintiff was not maintainable at all.

6. I have heard the Ld. Advocates for the parties.

7. From the above referred rival submissions, the following points emanate for determination of the present Appeal :

1. Whether the plaintiffs have proved that they and their forefathers were in possession of the suit premises since last more than 60 to 70 years ?
2. Whether the suit of the plaintiffs is maintainable ?
3. Whether the impugned judgment and decree, dated 07-01-2023, passed by the Ld. Principal Senior Civil Judge, Palitana in Regular Civil Suit No.127/2017 (old RCS No.17/1998), are required to be interfered with ?
4. What order and decree ?

7.1 For the reasons stated hereinafter, my findings on the above points are as under :

1. In the negative.
2. In the negative.
3. In the negative.
4. As per final order.

: REASONS :

8. **POINT NO.1 :**

8.1 In support of their case, the plaintiffs have produced the payment receipt of Panchayat Taxes and copy of *Panch Rojkam*, produced at Exs.115 and 110 respectively. The plaintiffs have also produced a copy of Electricity Bill at Ex.21 and payment receipt of Panchayat Taxes at Exs.122 and 123. Relying on these documents, the plaintiffs have sought to prove that they are in possession of the suit premises since last 60 to 70 years,

but the bare perusal of the above documents depicts the fact that the plaintiffs are not in possession of the suit premises since last 60 to 70 years, but all these documents are about 5 to 10 years old prior to filing of the suit. It is also required to be noted that the plaintiffs have produced the Lease Agreement at Ex.127 and the letter, addressed by the BSNL at Ex.29 and have produced the copy of an agreement at Ex.130. The bare perusal of this document depicts the fact that the above referred document does not establish the fact that the plaintiffs or their forefathers were in possession of the suit premises since last 60 to 70 years since last 60 to 70 years. Thus, from the documentary evidence, produced by the plaintiffs does not lead this Court to conclude that the plaintiffs were in possession of the suit premises since last 60 to 70 years. Therefore, the contention of the plaintiffs that they are in possession of the disputed property since last 60 to 70 years cannot be accepted and, therefore, the point No.1 is answered in the negative.

9. **POINT NO.2 :**

9.1 It is required to be noted that the plaintiffs were served a notice under section-105 of the Gujarat Panchayats Act, 1993. For the sake of brevity, the same is reproduced as follows :

Section-105 of the Gujarat Panchayats Act, 1993 :

105. (1) Whoever, within the limits of a village-

(a) builds or sets up any wall, or any fence, rail, post, stall, verandah, platform, plinth, step or structure or thing or any other encroachment, or obstruction, or

(b) deposits, or causes to be placed or deposited, any box, bale, package or merchandise, or any other thing, or

(c) without written permission given to the owner or occupier of a building by a panchayat puts up, so as to project from an upper storey thereof any verandah, balcony, room or other structure or thing, in or over any public street or place, or in or upon any open drain, gutter, sewer or aqueduct in such street or place, or contravenes any conditions subject to which any permission as aforesaid is given or the provisions of any bye-law made in relation to any such projections or cultivates or makes any unauthorised use of any grazing land, not being private property, shall on conviction, be punished with fine, and with further fine which may extend to twenty five rupees for each day on which such obstruction, deposit, projection, cultivation or unauthorised use continues after the date of first conviction for such offense.

(2) The panchayat may remove any such obstruction or encroachment and remove any crop unauthorised cultivated, on grazing land or any other land not being private property, and may remove any unauthorised obstruction or encroachment of the like nature in any open site not being private property, whether such site is vested in the panchayat or not:

Provided that if the site be vested in the State Government, the permission of the Collector or any officer authorised by him in this behalf, shall have first been obtained the expenses of such removal shall be paid by the person who has caused the said obstruction or encroachment and shall be recoverable under Chapter X:

Provided further that when before the removal of any such encroachment or projection a notice for bringing action in that behalf has been given under sub-section (2) of section 270, no action for the removal of the encroachment or projection shall be taken until the expiry of the period of such notice and further period of seven days.

(3) Nothing in sub-section (2) shall prevent the panchayat from permitting any construction referred to in clause (a) or clause (c) of sub-section (1) to stand on such terms and conditions as may be prescribed.

(4) The power under sub-section (2) may be exercised in respect of any obstruction, encroachment, or projection referred to therein whether or not such obstruction, encroachment, or projection has been made before or after the village is specified as such under clause (g) of article 243 of the Constitution or before or after the property is vested in the panchayat.

(5) Whoever not being duly authorised in that behalf removes earth, sand or other material from, or makes any encroachment in or upon any open site which is not private property, shall, on conviction, be

punished with fine and, in the case of an encroachment, with further fine which may extend to twenty five rupees for every day on which the encroachment continues after the date of first conviction.

(6) Nothing contained in this section shall prevent the panchayat from allowing any temporary occupation of or erection in, any public street on, occasions of festivals and ceremonies, of the piling of fuel in by-lanes and sites for not more than seven days, and in such manner as not to inconvenience the public or any individual or from allowing any temporary erection on or putting projection over, or temporary occupation of, any such public street or place, or any other purpose in accordance with the bye-laws made under this Act.

(7) Where the panchayat finds it difficult to remove any obstruction or encroachment or any crop unauthorised cultivated on grazing lands as referred to in sub-section (2), it shall inform the Taluka Development Officer accordingly and the Taluka Development Officer shall on receipt of such information exercise the powers of the panchayat under sub-section (2) and take action to remove the obstruction, encroachment or, as the case may be, the crop.

(8) The Taluka Development Officer may, take action referred to in sub-section (7) suo-motu or whenever it is reported to him that though the panchayat was moved to take action under sub-section (2) it has not taken any action for three months:

Provided that before taking action suo motu he shall direct the village panchayat to take action and if the panchayat fails to do so within a specified time, the Taluka Development Officer may thereafter take action.

9.2 Alongwith this, the provisions, contained under section-270 of the Gujarat Panchayats Act, 1993, are required to be taken into consideration which reads as under :

Section-270 of the Gujarat Panchayats Act, 1993 :

270. (1) No action shall be brought against any panchayat or any member, officer, servant or agent of a panchayat or any member of a committee of a panchayat acting under its direction, in respect of anything in good faith done under this Act or under any rule or bye-law made thereunder.

(2) No action shall be brought against any panchayat or any member, officer, servant or agent of such panchayat or any member of a

committee of a panchayat acting under its direction for anything done or purporting to have been done by or under this Act, until the expiration of one month next after notice in writing has been left or delivered at the office of the panchayat, and also at the residence of the member officer, servant or agent thereof against whom the action is intended to be brought; the notice shall state the cause of action, the nature of the relief sought; the amount of compensation claimed and the name and place of abode of the person who intends to bring the action.

(3) Every such action shall be commenced within six months after the accrual of the cause of action, and not afterwards.

(4) If any panchayat or person to whom the notice under sub-section (2) is given shall, before an action is brought, tender sufficient amount to the plaintiff, and pay into Court the amount so tendered, the plaintiff shall not recover more than the amount so tendered; the plaintiff shall also pay all costs incurred by the defendant after such tender.

9.3 Thus, the conjoint reading of sections-105 and 270 of the Gujarat Panchayats Act, 1993 depicts the fact that no action shall be brought against the Panchayat until the expiration of one month next after the notice in writing has been served upon the Panchayat. Here in the present case, the plaintiffs have not produced any notice as prescribed under section-270 of the Gujarat Panchayats Act, 1993 and, therefore, the suit of the plaintiffs itself was barred in view of the provisions, contained under section-270 of the Gujarat Panchayats Act, 1993.

9.4 It was also not in dispute that the plaintiffs are unauthorised occupants of the land, owned by the Government and actions can be taken under the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972 and if any action is taken against the plaintiffs under the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972, the

Civil Court has no jurisdiction. In view of above referred discussion, I hold that the suit of the plaintiffs was not maintainable. In view of above, point No.2 is answered in the negative.

10. **POINT NO.3 :**

10.1 Since this Court has answered points Nos.1 and 2 against the plaintiffs and in favour of the defendants and also taking into consideration the reasonings, assigned by the Ld. Trial Court, I do not find it fit to interfere with the impugned judgment and decree, dated 07-01-2023, passed in RCS No.127/2017 (old RCS No.17/1998) and, therefore, I answer point No.3 in the negative and for point No.4, I pass the following final order :

: ORDER :

1. The present Appeal is here by dismissed.
2. The impugned judgment and decree, dated 07-01-2023, passed by the Ld. Principal Senior Civil Judge, Palitana in RCS No.127 of 2017 (old RCS No.17/1998), is hereby confirmed.
3. Interim relief, if any, passed in the original Civil Suit, shall stand vacated.
4. No order as to costs.
5. Decree be drawn accordingly.

6. R & P be sent back to the Ld. Trial Court alongwith the copy of this order.

Pronounced and signed in the open Court on today
13th day of March, 2026.

(H. S. MULIA)
Principal District Judge
Bhavnagar
(Code : GJ00915)

Place: Bhavnagar
Date : 13-03-2026

* * *

Yasin Kalvatar