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Exhibit	

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**IN THE COURT OF ADDITIONAL SENIOR CIVIL JUDGE
AT BOTAD**

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Regular Civil Suit No : 125/ 2022

Plaintiff	Bhupatbhai Bhimjibhai Dabhi, Age : Adult, Occupation : Agriculture, R/o. Bodi Village, Tal. Dist. Botad.
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VERSUS

Defendants	(1) Mathurbhai Karshanbhai Zapadiya, Age : 60 years, Occupation : Agriculture, (2) Chaturbhai Karshanbhai Zapadiya, Age : 57 years, Occupation : Agriculture, Both residing at Bodi village, Tal. Dist. Botad.
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Sub: Suit for recovery of Rs.20,40,600/- being loss/damages.

Appearance:-

Ld. Advocate Mr. R.C. Prajapati for the plaintiff.

Ld. Advocate Mr. A.S. Metaliya for the defendants.

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

1. The Plaintiff above-named most respectfully submit as under:

1.1. The Plaintiff is the absolute owner and occupier of ancestral agricultural land situated at Bodi village, Survey No. 132/1 paiki 7 paiki 1(known as "Khakhrawalu) admeasuring 1-42-42 sq.m. and Survey No. 132 paiki 9 (known as "Piparia) admeasuring 1-78-06 sq.m., totaling an area of 3-20-48

sq.m. (approx. 20.03 Gunthas). The Plaintiff derive his livelihood solely from the cultivation of the said land.

- 1.2. It is further submitted that the Plaintiffs' land is situated such that access is derived from a public road known as "Shelna," passing through the northern portion of Survey No. 132, originally belonging to the Plaintiffs' uncle, Kanaiyalal Lakhabhai. Upon the sale of the uncle's land to the Defendants, the Defendants took possession subject to the Plaintiffs' established easementary right of way. However, in 2012, the Defendants illegally obstructed this access by digging up the road and placing thorns and stones, effectively land-locking the Plaintiffs' property.
- 1.3. It is further submitted by the plaintiff that the Plaintiffs initiated proceedings under the Mamlatdar Courts Act. The Mamlatdar, Botad, ruled in favor of the Plaintiffs. Further, the Defendants' appeal before the Deputy Collector was dismissed. The Plaintiffs filed a suit (RCS No.46/13) before the Principal Judge, Botad, obtaining an injunction. The Defendants' subsequent appeal led to Special Civil Application No. 16781/13 before the Hon'ble High Court of Gujarat. Pursuant to the High Court's directions, the Mamlatdar, Botad, executed the order via JCB on 16-06-2015, restoring the road as per the official Panchnama.
- 1.4. It is further submitted that due to the Defendants' illegal and high-handed actions from 2011 to 2015, the Plaintiff was unable to access his land, resulting in the land remained fallow for four consecutive years. Based on a minimum yield of 30 maunds of cotton (Rs. 30,000/-) and

summer crops (Rs. 15,000/-) per bigha, the annual gross income for 20 bighas is Rs. 9,00,000/-. After deducting agricultural expenses (Rs. 4,00,000/- per annum), the net annual loss is Rs. 5,00,000/-. For four years, this totals **Rs. 20,00,000/-**. Due to the forced abandonment, the land became infested with acacia trees. The Plaintiffs incurred an expense of **Rs. 40,600/-** for 58 hours of JCB work (Shakti Krupa Earth Movers) between 16-06-2015 and 22-06-2015 to make the land cultivable again.

1.5 The Plaintiff served a formal legal notice upon the Defendants on 15-02-2021 demanding compensation. The Defendants issued a reply dated 08-03-2021, denying liability without any legal basis and failing to settle the claim. Further, the cause of action first arose in 2011-12 when the road was blocked, and it is a continuing wrong. A fresh cause of action arose on 16-06-2015 when the road was finally opened through legal execution, and again on 08-03-2021 when the Defendants refused to pay compensation. The suit is within the period of limitation as the underlying injury was a "continuing wrong" under Section 22 of the Limitation Act. The subject matter and the property are situated within the territorial jurisdiction of this Hon'ble Court. The Plaintiffs have paid the requisite Court Fee of Rs. 36,450/- on the suit valuation of Rs. 20,40,600/-.

1.6. Under the circumstances, it is prayed that **(a)** The Defendants be ordered and decreed to jointly and severally pay the Plaintiffs a sum of **Rs. 20,40,600/-** (Rupees Twenty Lakhs Forty Thousand Six Hundred only) towards loss of

agricultural income and restoration expenses; **(b)** The Defendants be ordered to pay interest at the rate of **18% per annum** on the said amount from the date of filing the suit until realization; **(c)** The costs of this suit be awarded to the Plaintiff.

2. The defendants were duly served with the summons-notice and appeared through their learned advocate and filed their reply vide Exh.7. The Defendants hereby deny each and every allegation, contention, and statement made by the plaintiff in the Plaint as if the same were specifically set out herein and traversed, save and except what is specifically admitted herein. The plaintiff is put to strict proof of all such facts. It is further contended that the suit in its present form is not maintainable either in law or on facts. It is a frivolous, vexatious, and vacuous litigation filed with the sole intent of harassing the Defendants. The suit is ex-facie barred by the Law of Limitation. The alleged loss pertains to the period 2011–2015, whereas the suit has been filed in the year-2022. Under the Limitation Act, a suit for damages must be filed within three years of the occurrence. A final settlement was reached between the parties on 13-04-2018 in (RCS No. 46/13). This settlement resolved all disputes regarding the easementary right. The plaintiff is now legally estopped from reopening concluded matters or seeking "consequential damages" that were not part of the court-recorded settlement. No cause of action has ever arisen against the Defendants. The claim is based on manufactured facts and hypothetical losses. It is further contended that the contents regarding the ownership and

partition of Survey No. 132/1 and 132 are not within the personal knowledge of the Defendants. The plaintiff is put to strict proof regarding their title and the exact boundaries of the inherited land. The allegations of obstructing the road, digging, or placing thorns are vehemently denied. While the Defendants exercised their legal rights of appeal before the Deputy Collector and High Court, they never violated any interim orders. The restoration of the road by the Mamlatdar was a procedural execution of the Court's order and does not, by itself, prove that the Defendants caused actionable damage to the plaintiff. It is admitted that a settlement was reached on 13-04-2018. However, the claim regarding acacia trees and JCB expenses (Rs. 40,600/-) is entirely fabricated. The bill provided by "Shakti Krupa Earth Movers" is a manufactured document. Any such work, if performed, likely pertains to different land owned by the plaintiff and has no nexus with the suit property. The claim for a net loss of Rs. 20,00,000/- is astronomical and devoid of evidence. The Defendants specifically deny that the land remained fallow due to their actions. The plaintiff has consistently cultivated the land during the disputed period. The plaintiff has alternative access routes to their land, which they have utilized for agricultural operations. Banking records (Axis/ICICI) would indicate that the plaintiff continued to take agricultural loans and generate produce during this period. If the land was left fallow, it was due to the plaintiff's own negligence or health issues (eye ailments), for which the Defendants cannot be held liable. It is admitted that the Defendants

received a notice dated 15-02-2021. The Defendants provided a detailed, point-wise rebuttal to the said notice, which the plaintiff has suppressed. The contention that the cause of action is "continuing" under Section 22 of the Limitation Act is legally flawed. The alleged injury (obstruction) ceased on 16-06-2015 when the road was opened. The limitation for damages expired in 2018. The Court Fee paid is insufficient based on the valuation of the suit. Furthermore, the claim for 18% interest is usurious and has no basis in law or contract. The Defendants have never stopped the plaintiff from using the road since the Mamlatdar's order. No police complaints or contempt applications were filed by the plaintiff during 2012–2015 alleging any physical prevention of movement. This current suit is a delayed attempt to extort money after the original dispute was already settled.

In short, the above named defendants prayed to dismiss the suit of the plaintiff with exemplary costs.

3. Against the reply of the defendants, the plaintiff has filed counter affidavit vide Exh.9, wherein, he has denied all the facts as stated in the reply of the defendants. It is stated by the plaintiff that the Plaintiff reiterates all the facts stated in the Plaint and deny all the averments made by the Defendants in their Written Statement which are contrary to the record. The defenses raised by the Defendants are legally untenable, contradictory, and aimed at misleading this Hon'ble Court. The Defendants' contention in Para 8 and 9 of their Written Statement—claiming they lack "personal knowledge" of the Plaintiffs' land and

easementary rights—is a blatant falsehood. The parties have been in active litigation under the **Mamlatdar Courts Act** and before the **Provincial Officer**, where the Defendants were the contesting parties. The identity of the land, the boundaries, and the Plaintiffs' rights were formally established in RCS No. 46/13 and through the Court Commissioner's Panchnama. Having signed a Written Settlement in the previous proceedings, the Defendants are now legally estopped under the principle of Issue Estoppel from denying facts that formed the basis of a judicial order and decree. The Plaintiffs deny that the settlement dated 13-04-2018 precludes the right to seek damages for the period of illegal obstruction (2011–2015). The road was restored on 16-06-2015 only after high-level intervention by the Circle Officer with JCB equipment and Police protection. The official Panchnama of this execution confirms the state of the land. The revenue records and Village Forms (7/12 and 8A) submitted by the Plaintiffs clearly indicate that the land remained uncultivated (fallow) specifically due to the obstruction of the "Shela" road by the Defendants. The loans taken from Axis Bank and ICICI Bank were specifically necessitated by the total loss of income caused by the Defendants. These funds were used to restore the fertility of the soil and remove the wild growth (Acacia trees) caused by years of forced abandonment. The Plaintiffs categorically deny that the Court Fee is insufficient. The suit has been valued accurately as per the Gujarat Court Fees Act based on the compensation claimed (Rs. 20,40,600/-), and the requisite

fees have been deposited. The Defendants' plea to dismiss the suit on technicalities is a tactic to avoid the liability of their tortious acts. The Defendants' claim that the Plaintiffs had an "alternative road" or that the land was fallow due to "negligence" is a desperate and imaginary defense. The Court Commissioner's Panchnama previously concluded that no other access point exists for the Plaintiffs' land except the disputed road. The fact that the Defendants contested the matter up to the Hon'ble Gujarat High Court to prevent the opening of the road proves their intent to cause maximum financial injury to the Plaintiffs. The Defendants argue that no police complaint was filed; however, the Plaintiffs pursued the appropriate legal remedy through the Mamlatdar Court and Civil Court. The restoration of the road via JCB in the presence of authorities is sufficient proof of the Defendants' prior illegal resistance. The Defendants cannot raise disputes that have already been settled by judicial orders. The damage caused between 2011 and 2015 is a direct consequence of the Defendants' defiance of the law. In all such, it is prayed that the defenses raised in the Written Statement be rejected and the suit for compensation be decreed in favor of the Plaintiff's as prayed for in the Plaint.

4. In order to prove the present suit, following oral as well as documentary evidences have been produced by the plaintiff:-

(A) ORAL EVIDENCE LED BY THE PLAINTIFF:

Sr. No	Particulars of document.	Exh.
1.	Affidavit on behalf of plaintiff Mr. Bhupatbhai Bhimjibhai.	12
2.	Affidavit of plaintiff's witness namely Sureshbhai Rayjibhai Parmar	48

(B) DOCUMENTARY EVIDENCE LED BY THE PLAINTIFF

Sr. No	Particular of document	Exh.
1.	Copy of village form no.7 of S.No.132 paiki 9	15
2.	Copy of village form no.8/A of S.No.132 paiki 9	16
3.	Copy of village form no.12 of S.No.132 paiki 9	17
4.	Copy of village form no.7 of S.No.132 paiki 7 paiki 1	18
5.	Copy of village form no.8/A of S.No.132 paiki 7 paiki 1	19
6.	Copy of village form no.12 of S.No.132 paiki 7 paiki 1	20
7.	Copy of plaint of Mamlatdar Court Case No.18/2011	21
8.	Notice of Mamlatdar Court Case No.18/2011	22
9.	Copy of plaint of RCS No.46/2013	23
10.	Copy of amended plaint	24
11.	Panchnama of Court Commissioner	25
12.	Copy of sketch/map of Court Commissioner	26
13.	Spl.C.Application No.16787/2013	27
14.	Copy of Rozkam	28
15.	Copy of compromise deed.	29
16.	Copy of decree (RCS No.46/13)	30
17.	Original bills (total-08)	31/38
18.	Copy of notice through advocate.	39
19.	Acknowledgment/s of said notice.	40/41
20.	Copy of reply of notice.	42
21.	Copy of Mamlatdar Court Case No.18/2012	49

5. Thereafter, the learned Advocate for the plaintiff has submitted closing pursis vide Exh.50.

6. Against the suit of the plaintiff, following oral evidences have been produced by the defendant's side:-

(A) ORAL EVIDENCE LED BY THE DEFENDANT'S SIDE:

Sr. No	Particulars of document.	Exh.
1.	Affidavit on behalf of defendant no.1 namely Mathurbhai Karshanbhai Zapadiya.	53
2.	Affidavit of defendant's witness namely Rameshbhai Laghubhai Zapadiya.	56

No any documentary evidence produced on behalf of the defendant's side.

7. Thereafter, the learned Advocate for the defendants has submitted closing pursis vide Exh.60.
8. Heard the learned advocates for the respective parties at length. Perused the record and proceedings of the present matter.
9. From the pleadings of the respective parties, the following issues have been framed by my learned predecessor vide Exh.8, for determination of the present suit:-

1) શું વાદી પુરવાર કરે છે કે, વાદગ્રસ્ત જમીન વાદીના હિસ્સે આવેલ વારસાઈ હક્કની જમીન છે?

2) શું વાદી પુરવાર કરે છે કે, પ્રતિવાદીના કૃત્યના કારણે તેઓને રૂ. ૨૦,૪૦, ૬૦૦/- જેટલું નુકશાન થયેલ છે ?

3) શું વાદીના દાવાને સમય મર્યાદાનો બાધ નડે છે?

4) શું વાદીના દાવાને રેસજ્યુડીકાટાનો બાધ નડે છે ?

5) શું વાદી માગ્યા મુજબ અનુશાર દાદ મેળવવા હક્કદાર છે? જો હા તો, કેટલા વ્યાજથી?

6) શું હુકમ તથા હુકમનામું ?

10. My findings of above issues are as under :-

(1) In the affirmative.

- (2) In the negative.
- (3) In the affirmative.
- (4) In the negative.
- (5) In the negative.
- (6) As per final order.

:: REASONS ::

Issue no.1 :

11. So far as the issue no.1 is concerned and to prove the facts of the case, the plaintiff has been examined himself at Exh.12. In his deposition, he has reiterated the averments made in the plaint. Therefore, to avoid repetition, the same are not discussed herein. The said plaintiff has been duly cross-examined by the learned advocate for the defendants.

In his cross-examination, the said plaintiff has admitted that he has read the contents of the affidavit filed in lieu of his examination-in-chief. He further stated that he does not specifically recall the date of submission of the said affidavit. The said plaintiff admitted that his agricultural land is situated in Survey No. 132. He also admitted that his brother's land is situated within the same Survey No. 132. The total land was partitioned into four parcels, out of which two shares were allotted to him and two to his brother. The said plaintiff further admitted that the land belonging to Kanaiyalal Lakhabhai is situated on the Eastern side of his portion. He further admitted that Bhimjibhai's portion is situated on the Western side. It is true that a road exists to the South of Survey No. 132 for access. He admitted that his father Bhimjibhai's land was

bifurcated into two parts: the Northern portion belongs to Dhirubhai and the Southern portion is his share. He further admitted that the access road is locally known as the **"Chelana Marg."** The said plaintiff stated in his cross examination that he had initiated proceedings before the Mamlatdar's Court. It is true that the Mamlatdar passed an order in his favor granting the right of way. However, he denies the suggestion that they were effectively using the said road immediately after the order. The plaintiff voluntarily states that the *Defendants preferred an appeal against the said order.* It is true that they were physically obstructed from using the path even after the Mamlatdar's order. The plaintiff admitted that he did not file any fresh application before the Mamlatdar or a complaint before the Police regarding this specific post-order obstruction. It is true that there is only a single common access path for the lands belonging to him and his brothers, they generally use the same route to reach their respective fields. He also admitted that his brother's land is not lying fallow. It is further admitted that my brother has not initiated any legal proceedings seeking compensation for his portion of the land. The plaintiff also admitted that he has not produced any photographs on record to substantiate the allegation that acacia (*Baval*) trees had grown on the suit land. He has submitted JCB bills as evidence of land restoration. It is true that the said JCB bills do not specify the exact location (survey number) or the specific hours/timing of the work performed. He admitted that the sale vouchers/bills from Radheshyam Company do not bear his signature. It is also

true that the bills from Jitendra & Company are unsigned. The plaintiff further admitted that a compromise/settlement was arrived at between the parties in **Regular Civil Suit (RCS) No. 46/13**. He admitted that the said Settlement Agreement/Decree does not contain any clause, condition, or reservation of right allowing me to claim future compensation for the period the land remained fallow.

12. The plaintiff has also examined one more witness, namely Mr. Sureshbhai Parmar (Mamlatdar-Rural), Botad, at Exh. 48. The said witness in his chief examination, has stated that he is presently serving as Mamlatdar Grama Botad from 30/10/2023. He has appeared with the necessary papers of the case after being summoned by the Court. He further submitted that he has brought the original record of Mamlatdar Court Case No. 18/2011. He has been shown a copy of the claim application of the Mamlatdar Court Case No.18/2011, which is on the spot when compared with his record. Further, he has brought with him today the true copy of the order approving the claim application of the plaintiff Bhupatbhai Bhimjibhai dated 27/06/2012, which has the signature of the then Mamlatdar and the office stamp, the true copy of which is produced vide Exh.49.

The said witness in his cross-examination, has stated that he having no any personal information of the record which is produced in the present matter.

13. The defendant no.1 has been examined at **Exh. 53**. In his deposition, he has reiterated the same defence as stated in his written statement at **Exh.7**; therefore, to avoid

repetition, the same is not discussed herein. The said defendant has been duly cross-examined by the learned advocate for the plaintiff.

During cross-examination, the said defendant stated that he does not specifically recall if the Plaintiffs' land is Survey No. 132/1; he believes that it may be Survey No. 132/2. The said defendant admitted that Bhupatbhai's land is situated in Survey No. 132/2. Originally, the entire parcel was identified as Survey No. 132. He admitted that the original tenure-holder was Lakhabhai and following partition, Survey No. 132 was divided between Bhimji Lakha and Kanaya Lakha. The said defendant admitted that a public road exists at the east boundary of the disputed land. The said defendant admitted that the land adjacent to the river originally belonged to Kanaya Lakhabhai. It is true that Kanaya Lakhabhai sold the portion of his land adjacent to the road to an intermediary, from whom we subsequently purchased it. He specify that they purchased the land from Hathibhai Merambhai. At present, Kanaya Lakhabhai holds no land adjacent to the road. The said defendant admitted that Bhimjibhai Lakhabhai's land is contiguous west side to the land originally held by Kanaya Lakha. The said defendant admitted that Plaintiff - Bhupatbhai, is the son of Bhimjibhai. The said defendant denies that Kanaya Lakhabhai's land must be crossed to reach Bhupatbhai's land; he states that there is a road situated in between. He denies the suggestion that the said road does not lead to Kanayabhai's land. He further denied the suggestion that there is no alternative access to Bhupatbhai's land except

through his property. The said defendant admitted that Bhupatbhai initiated a claim against them in the Mamlatdar's Court regarding the right of way. The said defendant admitted that the Mamlatdar passed an order granting the Plaintiffs the right to use the path through our land. He has no personal knowledge as to whether an appeal was preferred before the Deputy Collector against the said order, though I admit that the Deputy Collector issued an order against them. The said defendant admitted that a Civil Suit was filed by Bhupatbhai in the Botad Court regarding the road dispute and that we preferred an appeal before the District Court against the interim order. He does not recall the specifics of the proceedings initiated by Bhupatbhai before the Hon'ble Gujarat High Court. He has no knowledge regarding any specific order from the High Court directing the opening of a closed road. However, he admitted that the Circle Officer of Botad, accompanied by Police personnel, arrived at the site and undertook the execution to open the road in our presence. A Panchnama was drawn on the spot, and the signatures of the Panchas were obtained. He further stated that he does not recall if the initial application was filed in the Mamlatdar Court in 2011. He has no personal knowledge that the road was officially opened on 16/06/2015 pursuant to High Court directions. I deny the suggestion that the Plaintiffs' land remained fallow or that wild vegetation grew as a result of our failure to open the road. He further stated that he is aware that a settlement was reached between the parties. He does not specifically recall if the written settlement was

restricted solely to the right of way. He is conversant with the contents of the settlement. He denies the suggestion that the settlement agreement explicitly mentioned that the land was lying fallow and that no compensation was being sought at that time. He has no knowledge of any clause in the document that waives the right to seek compensation. He is unaware of any bank loans taken by the Plaintiff due to the land remaining uncultivated. He has no knowledge regarding any JCB work undertaken by Bhupatbhai to clear the path. The said defendant admitted to signing the settlement agreement before the Court. He does not know the other survey numbers of the Plaintiffs' property as they are omitted from the affidavit. He denies the suggestion that he received a notice seeking compensation from Bhupatbhai, though he admits that he has issued a reply to a notice. He is unaware of any settlement discussions involving village elders following the issuance of the notice. He further stated that he denies that he is suppressing facts or providing false testimony to avoid the liability of paying compensation.

14. The defendants have examined one witness namely Rameshbhai Zapadiya vide Exh.56. The said witness has been cross examined by the learned advocate for the plaintiff. In the cross examination, the said witness defendants are his uncle. It is true that he was not aware of the facts of the claim/suit and that fact is not stated in the evidence of the affidavit of the certificate. It is true that the fact where his agricultural land is located is not stated in his affidavit of the certificate, and its survey number is not

stated either. It is true that the fact who the neighbors of my agricultural land are is not stated in his affidavit of the certificate. It is not true that he is denying the fact that the plaintiff has eye problems. It is true that he has not presented evidence that the plaintiff has eye problems. He further submitted that he does not know why he has filed an affidavit in the Court. He further stated that he has been to the Court many times. It is not true that he has come to the Court for the first time. It is true that no evidence has been produced in this case regarding the plaintiff having acquired any other land. It is true that the fact that the plaintiff has acquired any other survey number of land has not been stated. It is true that in his cross-examination, the fact that Bhupatbhai has incurred expenses on any other land has not been stated. It is true that he was not present at the settlement of the plaintiff's previous claim. It is true that he is not personally aware of the conditions on which the settlement was made as he was not present at the settlement of the previous claim. It is true that there was no condition in the settlement that the plaintiff was not entitled to receive or demand any compensation. The said witness further stated in his cross examination that he has not seen 7/12 of the plaintiff's land. It is true that he has not read the order and decree of the plaintiff's previous claim/suit. It is not true that the Circle, Mamlatdar and Police came to the spot and cleared the road for the previous claim. It is not true that a Panchnama was also done at that time. He further stated that he was not present during the Panchnama. It is not true that he is

giving false testimony in support of the defendant being his uncle.

15. From the above oral as well as documentary evidence and as per the relief sought by the plaintiff, the Burden of Proof Under **Section 101 of the Indian Evidence Act**, the burden of proof lies squarely on the Plaintiff. To succeed in a claim for damages, the Plaintiff must first prove a legal interest in the property. If the Plaintiff cannot prove ownership or a lawful right to occupy the land, the question of "loss of income" becomes redundant. The Court relies heavily on the testimony of **PW-1 (Bhupatbhai Bhimjibhai)** and the admissions made by **DW-1 (Mathurbhai Zapadiya)**. In the cross examination (Exh.12), the Plaintiff successfully traced the lineage of the property. He testified that the land was originally a single block (Survey No. 132) held by his grandfather, Lakhabhai. He detailed the family partition between his father (Bhimji Lakha) and his uncle (Kanaya Lakha). Further, on perusing the cross examination of the defendant no.1 (Exh.53), admitted during cross-examination that the original tenure-holder was indeed Lakhabhai and the land was partitioned as well as the Plaintiff is the son of Bhimjibhai Lakhabhai. Under the law, **"Facts admitted need not be proved."** Since the Defendant admitted the family history and the partition, the Plaintiff's burden regarding the *status* of the land as ancestral property was largely discharged.
16. Further, the oral testimony must be corroborated by the "best evidence"—documentary records. The Plaintiff produced a comprehensive set of revenue records i.e.

Village Form No. 7 & 12 (Exh. 15, 17, 18, 20), these are the "Record of Rights" and "Crop Register." They prove who is the registered occupant and what is being grown. Further, on perusing the Village Form No. 8/A (Exh. 16, 19), these documents also confirm the total holding of the individual khatedar (landholder). In support of his case, plaintiff has also produced Court Commissioner's Panchnama (Exh. 25 & 26), these documents provide a geographical "snapshot" of the land, confirming that the Plaintiff's plot is situated exactly where he claims it is, and highlighting the location of the disputed road (Chelana Marg). The Court noted that the parties had already litigated this exact land in RCS No. 46/13, meaning the identity of the land was *Res Judicata* (already decided) between them.

Thus, in view of the above sets of discussions and perusing the oral as well as documentary evidence adduced and produced by the respective parties, this Court finds that the revenue records clearly show the Plaintiff's name as the occupant via inheritance. Further, the concerned defendant admitted the genealogical link and the partition of Survey No. 132. The previous litigation (Mamlatdar Case and RCS 46/13) had already established the Plaintiff's possession of this specific share. Therefore, the Plaintiff successfully proved that the land is his ancestral property received through a valid family partition. Accordingly, I give the answer of **issue no.1 in Affirmative.**

Issue No.2 :-

17. To prove this issue, the Plaintiff had to establish three things: **Liability** (the Defendants caused the harm), **Causation** (the

harm led to the land being fallow), and **Quantum** (the exact mathematical calculation of the loss). As far as the the question of Liability is concerned (The Act of the Defendants), the plaintiff has successfully proved that the Defendants obstructed the road. This was backed by the order of Mamalatdar (Exh.49), which proves that the road was blocked and as per the High Court Direction (Exh. 27), which is proving the Defendants refused to open it voluntarily. Upon perusing the Execution Panchnama (Exh. 28), proves that the road had to be opened by authorities using a JCB in 2015. However, proving the *act* of blocking the road is not the same as proving the *financial loss* resulting from it. While, biggest hurdle for the Plaintiff was proving that the land remained uncultivated **solely** because of the road blockage. The Defendants argued the Plaintiff could have reached the land through other means. In cross-examination, the Plaintiff admitted that his brother, who shares the same access, **continued to cultivate his land**. If the road was completely blocked for four years, the Court questioned how the brother managed to farm. This admission severely weakened the Plaintiff's claim that farming was "impossible." The Plaintiff claimed the land became a jungle of acacia (*Baval*) trees. However, he admitted in cross-examination that he **produced no photographs** of the overgrown land before the JCB cleared it. In modern civil litigation, the absence of photographic evidence for a physical condition is often viewed unfavorably.

18. So far as the Financial "Quantum" (Calculation) is concerned, the Plaintiff claimed a net loss of Rs. 20,40,600/- based on estimated crop yields. The Court found several flaws in this evidence i.e. Unverified Bills (Exh. 31-38). The Plaintiff submitted bills for JCB work and crop sales from companies like *Radheshyam Company*

and *Jitendra & Company*. During cross-examination, the Plaintiff admitted these bills were **unsigned**. Under the Indian Evidence Act, private documents that are not properly authenticated or signed carry very low evidentiary value. Further, the JCB bill for Rs. 40,600/- did not specify the survey number where the work was done. The Defendants argued this work could have been done on any of the Plaintiff's other lands. The claim of "30 maunds of cotton per bigha" was treated as an estimate rather than a proven fact. The Plaintiff did not produce past "Sowani" (sowing) certificates or historic income records to show he ever earned that much before the dispute. Under the law of damages (Torts), a Plaintiff has a duty to **mitigate their losses**. The Court looked at whether the Plaintiff sat idle for four years or tried to find a way to farm. The fact that the brother continued farming suggested that the Plaintiff might have been able to do the same, or at least failed to show why he specifically was prevented while his brother was not. Under the above discussions, this Court finds that the plaintiff has categorically failed to establish his case that due to the act of the defendants, they have suffered a loss of Rs. 20,40,600/. Accordingly, I give the answer of **issue no.2 in the Negative**.

Issue No.3 :-

19. So far as the issue of limitation is concerned, the controversy is governed by the provisions of the **Limitation Act, 1963**. Under the schedule to the Act, a suit seeking compensation or damages for tortious interference or obstruction must be instituted within **three years according to the scheduled (55) of the Limitation Act** from the date on which the alleged injury or damage occurs.

The learned counsel for the Plaintiff has heavily relied upon **Section 22 of the Limitation Act, 1963**, which regulates "Continuing Breaches and Torts." It is contended by the Plaintiff that since the access road was continuously blocked from 2011 to 2015, the obstruction constituted a "continuing wrong," thereby extending the accrual of the cause of action daily until the restriction was lifted. It is further argued that the Defendants' subsequent refusal to clear damages following the legal notice of 2021 generated a fresh cause of action. This Court is of the firm opinion that while the physical obstruction constituted a continuing tort, such a "continuing" nature automatically ceased the moment the access way was cleared and opened on **June 16, 2015**. Once the obstruction was removed, a static cause of action accrued, and the Plaintiff had exactly three years—relying on statutory timelines—to file a substantive suit for the monetary losses suffered during those fallow years. The statutory period to file this claim expired on **June 16, 2018**. The present suit was instituted in the year **2022**. It is a settled principle of law that the issuance of a fresh legal notice in 2021 or a subsequent reply thereto cannot operate to revive a statutory claim that has already become extinct or dead by operation of law. Although collateral litigation regarding the core easementary right concluded in 2018, the specific claim for monetary compensation was not preserved. Consequently, since the suit was not instituted within three years from June 16, 2015, the claim for damages is thoroughly **Time-Barred under the above mentioned provisions of the Limitation Act** . Hence, in

view of the statutory mandate, **Issue No. 3** is answered in **the Affirmative**.

Issue No.4 :-

20. To determine this issue, the Court must examine **Section 11 and Order II Rule 2 of the CPC**, which prohibit splitting claims and multiple litigations for the same cause of action. The Court finds a clear distinction between the previous litigation (**RCS No. 46/13**) and the present suit. The former was for the **restoration of an easementary right** (injunction), while the current suit is for **tortious liability** (monetary damages for loss of income). **The 2018 Settlement (Exh. 29)**, although a compromise was reached in the previous suit, the document is silent regarding compensation. The Plaintiff admitted in cross-examination that no condition for claiming damages was included in that settlement.

Purusuant to the judgment cited by the learned advocate for the plaintiff i.e. in the case of **Anilkumar Shukla S/o. Late Shri Dr. Sitaram Shukla and others Vs. Smt. Shantibai Sharma through her legal heris and others (Hon'ble High Court of Chhatisgadh in F.A. No. 23/2016 decided on 25/02/2025)**. In the said judgment, the Hon'ble High Court has held in Para-12 as under :

"12". It will be notices that the words used in Section 11 of CPC are "directly and substantially in issue". If the matter was in issue directly and subsantially in a prior litigation and decided agaisnt a party then the decision would be res judicata in a

subsequent proceeding. Judicial decision have however held that if a matter was only "collaterally or incidentally" in issue and decided in an earlier proceeding, the finding therein would not be ordinarily be res judicata in a latter proceeding where the matter is directly and substantially in the issue."

For *Res Judicata* to apply, the matter must have been "heard and finally decided." Since the issue of financial loss was never raised or adjudicated in the previous proceedings, the technical bar does not apply. While the Plaintiff's failure to reserve this right in the 2018 settlement makes the claim weak on equity (**Issue Estoppel**), it does not legally block the suit. The legal bar of *Res Judicata* does not strictly apply as the causes of action are distinct. Accordingly, **Issue No. 4** is answered in the **Negative**.

Issue No.5 :-

21. This issue is consequential to the findings of **Issue No. 2**. Since the Plaintiff seeks a decree for **Rs. 20,40,600/-** plus **18% interest**, the following points are considered:

As determined in Issue No. 2, the Plaintiff failed to provide credible or authenticated evidence to substantiate the financial loss. The reliance on unsigned bills and speculative crop yields carries no legal weight. The Plaintiff's admission that his brother successfully cultivated adjacent land using the same access route negates the claim that farming was "impossible." Thus, the essential link

between the Defendants' actions and the alleged financial ruin is broken. Since the principal claim for damages is not proved, the prayer for 18% interest—which the Court otherwise finds excessive and without basis—is rendered redundant. In civil law, damages cannot be awarded on the basis of mere assertions or sympathy. Without strict proof of the "quantum of loss," no relief can be granted.

As the Plaintiff has failed to establish the actual loss or the necessity of restoration expenses, he is not entitled to any compensation or interest. Accordingly, **Issue No. 5** is answered in the **Negative**. Hence, following final order is passed in the larger interest of justice.

:: O R D E R ::

- (1) The Suit of the Plaintiff is hereby **dismissed**.
- (2) The Plaintiff's claim for compensation alongwith interest is rejected in its entirety.
- (3) The parties are directed to bear their own costs of this litigation.
- (4) Decree be drawn accordingly.

Signed & Pronounced in Open Court today on this day of **2nd July, 2026**.

Sd -

[M. S. Soni]

Additional Senior Civil Judge,
Botad.

CODE: GJ01262

Date: 02/07/2026
Place: Botad.

IMR...