



Received On	:	05/08/2021
Registered on	:	05/08/2021
Decided on	:	21/04/2026
Duration	:	04 Years 08 Months 16 Days
Exhibit	:	56

**IN THE COURT OF ADDITIONAL CIVIL JUDGE,
GADHADA, BOTAD.**

Regular Civil Suit No: 203 of 2021

PLAINTIFF/s:

1. LABHUBEN DHANJIBHAI RAJAPARA, Age:- 70.
2. SAVITABEN DHANJIBHAI RAJAPARA, Age:- 77.
Occupation:- Agriculture.
Both Residing at Dhasa Village, Gadhada, Botad.

VERSUS

DEFENDANT/s:

1. KANCHANBEN DAMJIBHAI RAJAPARA,
Age:- 66, Occupation:- Housewife.
2. MAHESHBHAI DAMJIBHAI RAJAPARA,
Age:- 45, Occupation:- Contractor.
3. DARSHANABEN DAMJIBHAI RAJAPARA,
Age:- 37, Occupation:- Housewife.
4. HIRENKUMAR DAMJIBHAI RAJAPARA,
Age:- 26, Occupation:- Contractor.
All residing at 904, Shubham Residency, Above Krishna
Hospital, Parbat Patiya, Surat.

RE:- SUIT SEEKING PARTITION AND DECLARATION.

APPEARANCES:-

FOR PLAINTIFF/s :- SHRI S. C. Thaker.
FOR DEFENDANT No. 1 to 3 :- SHRI V. M. Khachar.
FOR DEFENDANT No. 4 :- Ex-Parte

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

1. The plaintiff has filed suit seeking partition of the suit property and further sought relief of declaration against the defendants.
2. **SUIT PROPERTY :-**
 1. Survey No. 231 Paiki 6 measuring 01-29-50 Hec. Are. Sq. Mtrs situated at Dhasa Village, Taluka Gadhada, District Botad.
 2. Survey No. 231 Paiki 5 measuring 02-48-81 Hec. Are. Sq. Mtrs situated at Dhasa Village, Taluka Gadhada, District Botad.
 3. City Survey No. 704/3, situated at Dhasa Village, Taluka Gadhada, District Botad.
3. **FACTS :-**

Plaintiff has asserted that:-

 - 3.1. The defendant no. 1 is the sister in law of the plaintiff who is the mother of the defendant no. 2 to 4;
 - 3.2. Father of the plaintiffs i.e. *Dhanjibhai Madhabhai* married Kashiben and had 2 daughters and 1 son namely *Savitaben, Labhuben (Plaintiff No. 1 & 2) and Damjibhai (Husband of Defendant No. 1)*;
 - 3.3. After the demise of *Dhanjibhai Madhabhai and Kashiben*, all the properties mentioned above have become ancestral properties of the parties of this suit and therefore necessary entries have been made in the revenue records and names of plaintiff and defendants have been entered in the revenue records;
 - 3.4. Earlier a suit has been filed by the plaintiff before the court i.e. Regular Civil Suit No. 68 of 2007 seeking partition of Revenue Survey No. 231 Paiki 5 and 6 and thereafter the suit was decreed by compromise and as per the decree, 7 Bighas were directed to be given to the plaintiff;
 - 3.5. When the defendants did not comply with the decree, the plaintiff gave a notice dated 06/08/2020 to the defendants but defendants did not act.

3.6. Plaintiffs are having $\frac{1}{3}$ rd share each in the suit properties and the plaintiffs are in the possession of the suit properties whereas the defendants are residing at surat from the last 25 years.

3.7. The suit properties have not been partitioned till date and hence this suit has been filed.

4. **PROCEEDINGS:-**

a. Summons have been issued to the defendants and representation by filing Vakalatnama has been recorded;

b. Vide order dated 16/09/2022, right to reply on behalf of the Defendant No. 1 to 3 has been closed.

c. Vide Order dated 09/10/2023, proceedings against defendant no. 4 was ordered to be proceeded *Ex-parte*.

d. Vide order dated 06/04/2026, right to lead evidence on behalf of the defendant no. 1 to 3 has been closed.

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

A. ORAL EVIDENCE LED BY THE PLAINTIFF:-

Sr.No.	Particulars	Exhibit/s
1.	Affidavit of Examination In Chief of plaintiff <i>Labhuben Dhanjibhai Rajapara</i>	23

B. DOCUMENTARY EVIDENCE LED BY THE PLAINTIFF:-

Sr.No.	Particulars	Exhibit/s
1.	Village Form Number 6, 7/12 and 8-A of the Survey No. 231 Paiki 5 and 6.	40-45

2.	Notice sent to the Defendants by the Plaintiffs and R.P.AD.	46-50
3.	Certified Copy of the Decree Drawn in RCS/68/2007	54
4.	Property Card of City Survey No. 704/3	55

A. ORAL AS WELL AS DOCUMENTARY EVIDENCES LED BY THE DEFENDANTS:-

No oral as well as documentary evidence has been led by the defendants.

6. This Court has framed the following issues at Exhibit-21, which are as under:-

1. Whether the plaintiffs prove that they have shares of 7 Bighas i.e. 2 Acres 3 Ghunthas in non-partitioned property bearing Survey No. 231 Paiki 6 measuring 01-29-50 Hec. Are. Sq. Mtrs situated at Dhasa Village, Taluka Gadhada, District Botad and Survey No. 231 Paiki 5 measuring 02-48-81 Hec. Are. Sq. Mtrs situated at Dhasa Village, Taluka Gadhada, District Botad?
2. Whether the plaintiffs prove that the plaintiffs have $\frac{2}{3}$ rd shares in the non partitioned property bearing City Survey No. 704/3 situated at Dhasa?
3. Whether the suit is barred by any law?
4. Whether the plaintiff is entitled to the relief/s as prayed in Para 10 of the plaint?
5. What order and decree?

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

1. Affirmative.
2. Affirmative.
3. Negative.

4. Partly Affirmative
5. **As per final order.**
8. Heard learned advocates for the parties. Perused the case records and evidence and written-statement filed by the defendants.

-:: REASONS ::-

9. **ISSUE No. 1.**

- 9.1. The plaintiff has submitted that the suit properties are ancestral properties and hence they have a share of 7 Bighas i.e. 2 Acres 3 Ghunthas in non-partitioned property bearing Survey No. 231 Paiki 6 measuring 01-29-50 Hec. Are. Sq. Mtrs situated at Dhasa Village, Taluka Gadhada, District Botad and Survey No. 231 Paiki 5 measuring 02-48-81 Hec. Are. Sq. Mtrs situated at Dhasa Village, Taluka Gadhada, District Botad.
- 9.2. The defendant has not come up with any defence and has not led any evidence.
- 9.3. Looking at the records, vide Exhibit-54, the plaintiff has filed Decree drawn in the case of Regular Civil Suit No. 68 of 2007. Looking at Exhibit-54, it appears that the plaintiff has claimed relief of declaration and permanent injunction against the defendants with regard to property bearing Survey No. 231 Paiki 6 measuring 01-29-50 Hec. Are. Sq. Mtrs situated at Dhasa Village, Taluka Gadhada, District Botad and Survey No. 231 Paiki 5 measuring 02-48-81 Hec. Are. Sq. Mtrs situated at Dhasa Village, Taluka Gadhada, District Botad and in which the parties have compromised and the decree was drawn that the plaintiff shall be given portion of 7 Bighas i.e. 2 Acres and 32 Ghunthas out of the non-partitioned property bearing Survey No. 231 Paiki 6 measuring 01-29-50 Hec. Are. Sq. Mtrs situated at Dhasa Village, Taluka Gadhada, District Botad and Survey No. 231 Paiki 5 measuring

02-48-81 Hec. Are. Sq. Mtrs situated at Dhasa Village, Taluka Gadhada, District Botad and hence it is clear that the plaintiff was earlier adjudicated and was allotted the share of 7 Bighas i.e. 2 Acres and 32 Ghunthas.

- 9.4. The defendant has not come forward to lead any evidence and has not even cared to remain present before the court.
- 9.5. At this stage, it is pertinent to refer to the provision of Hindu Succession Act, 1956

“Section-8. General rules of succession in the case of males.-

The property of a male Hindu dying intestate shall devolve according to provisions of this Chapter-

(a) firstly, upon the heirs, being the relatives specified in Class I of the Schedule;

(b) secondly, if there is no heir of Class I, then upon the heirs, being the relatives specified in Class II of the Schedule;

Section-9. Order of succession among heirs in the Schedule-

Among the heirs specified in the Schedule, those in Class I shall take simultaneously and to the exclusion of all other heirs; those in the first entry in Class II shall be preferred to those in the second entry; those in the second entry shall be preferred to those in the third entry; and so on in succession.

Section-10. Distribution of property among heirs in Class I of the Schedule.-

Rule-2:- The surviving sons and daughters an the mother of the intestate shall each take on share.”

- 9.6. With regard to having such a share of the plaintiff in the said suit properties, the plaintiff has submitted that the plaintiff and the defendants are the only legal heirs of the suit properties and apart from

them, no other person has right or share in the suit properties and the said fact has not been contested by the defendant. Therefore there is no such dispute that the plaintiff is not having share of 7 Bighas i.e. 2 Acres and 32 Ghunthas in the suit properties namely Survey No. 235 Paiki 5 and 6. Hence in the background of these circumstances and the discussion, I answer issue No. 1 in **Affirmative**.

10. **ISSUE No. 2**

10.1. The plaintiff has submitted that the plaintiffs have $\frac{2}{3}$ rd share in the City Survey No. 704/3 which is the residential property. Looking at the Exhibit-55, it transpires that the names of the plaintiffs and the defendants have been entered in the property card of the said suit property of City Survey No. 704/3 and the defendant has not contested this fact that the plaintiff is not having the right or share and has not brought anything adverse to the said fact. The defendant has not even conducted cross examination of the plaintiff and hence it appears that the averments shown by the plaintiff are true and the plaintiffs and the defendants combinedly having the right or share in the said property. Therefore it appears that the Plaintiffs namely *Labhuben Dhanjibhai Rajapara* and *Savitaben Dhanjibhai Rajapara* are each having $\frac{1}{3}$ rd share in the suit properties and the defendants combinedly has $\frac{1}{3}$ rd share in the suit properties and hence in the background of these discussions and for the aforesaid reasons, I answer issue No. 2 in **Affirmative**.

11. **ISSUE No. 3**

11.1. There is no evidence suggesting that the said suit is barred by any law. The defendant has not come forward to appear before this court and has not even taken cross examination of the plaintiff and has not led any evidence.

11.2. Looking at the records, there is no iota of evidence suggesting that the

plaintiff's suit is barred by any law and hence in the background of these discussions and for the aforesaid reasons, I answer issue No. 3 in **Negative.**

12. **ISSUE No. 4**

12.1. The plaintiff has sought following reliefs:

- a. *To grant declaration that the plaintiff has the non partitioned share in Survey No. 231 Paiki 6 measuring 01-29-50 Hec. Are. Sq. Mtrs situated at Dhasa Village, Taluka Gadhada, District Botad and Survey No. 231 Paiki 5 measuring 02-48-81 Hec. Are. Sq. Mtrs situated at Dhasa Village, Taluka Gadhada, District Botad and as held by the court in the Regular Civil Suit No. 68 of 2007 the plaintiff has share of 7 Bighas i.e. 2 Acres and 32 Ghunthas in the property bearing Survey No. 231 Paiki 5 measuring 02-48-81 Hec. Are. Sq. Mtrs situated at Dhasa Village, Taluka Gadhada, District Botad and has a combined share of $\frac{2}{3}^{\text{rd}}$ in City Survey No. 704/3 in which there are 2 rooms, Hall, Kitchen, washroom and Bathroom measuring 212.52 Square Meters;*
- b. *to partition and hand over possession of the shares of the plaintiff of 7 Bighas i.e. 2 Acres and 32 Ghunthas in the suit property no. 231 Paiki 5 as it was held in the Regular Civil Suit No. 68 of 2007*
- c. *to grant partition and hand over possession of plaintiff having a combined share of $\frac{2}{3}^{\text{rd}}$ in City Survey No. 704/3 in which there are 2 rooms, Hall, Kitchen, washroom and Bathroom measuring 212.52 Square Meters;*
- d. *to grant any other relief, the court deems fit to grant and to recover all the costs of this suit from the defendants."*

12.2. In the present case, the plaintiff has been able to prove that the said property is the ancestral property and as per the decree drawn in RCS/ 68 of 2007 it was directed that the plaintiff shall be given portion of 7

Bighas i.e. 2 Acres and 32 Ghunthas out of the non-partitioned property bearing Survey No. 231 Paiki 5 measuring 02-48-81 Hec. Are. Sq. Mtrs situated at Dhasa Village, Taluka Gadhada, District Botad.

- 12.3. Further the plaintiff has been able to establish that the Plaintiffs namely *Labhuben Dhanjibhai Rajapara* and *Savitaben Dhanjibhai Rajapara* are each having $\frac{1}{3}$ rd share and the defendants combinedly have $\frac{1}{3}$ rd share in the City Survey No. 704/3 in which there are 2 rooms, Hall, Kitchen, washroom and Bathroom measuring 212.52 Square Meters. The plaintiff has been able to prove that they have rights in the suit properties and the said properties have not been partitioned till date and hence the plaintiff is entitled for the relief of partition.
- 12.4. At this stage it is pertinent to refer to the provision of Civil Procedure Code, 1908 which are as follows:-

“Section-54. of Civil Procedure code Partition of estate or Separation of share.-

Where the decree is for the partition of an undivided estate assessed to the payment of revenue to the Government, or for the separate possession of a share of such an estate, the partition of the estate or the separation of the share shall be made by the collector or any Gazetted sub ordinate of the Collector deputed by him in this behalf, in accordance with the law (if any) for the time being in-force relating to the partition, or the separate possession of share, of such estates.

Order 20 Rule 18 of Civil Procedure code:-

“Decree in suit for partition of property or separate possession of a share therein.”

Where the Court passes a decree for the partition of property or for the separate possession of a share therein, then-

i. if and insofar as the decree relates to and estate assessed to the payment of revenue to the Government, the decree shall declare the rights of the several parties interested in the property, but shall direct such partition or separation to be made by the Collector, or any Gazetted subordinate of the Collector deputed by him in this behalf, in accordance with such declaration and with the provisions of sec-54.”

- 12.5. Therefore for the reasons and discussion as held above it appears that the plaintiff is entitled for the reliefs as he has sought in the plaint as the plaintiffs are entitled for 7 Bighas i.e. 2 Acres and 32 Ghunthas out of the non-partitioned property bearing Survey No. 231 Paiki 5 measuring 02-48-81 Hec. Are. Sq. Mtrs situated at Dhasa Village, Taluka Gadhada, District Botad as well as Plaintiffs namely *Labhuben Dhanjibhai Rajapara* and *Savitaben Dhanjibhai Rajapara* are each having $\frac{1}{3}$ rd share in the City Survey No. 704/3 in which there are 2 rooms, Hall, Kitchen, washroom and Bathroom measuring 212.52 Square Meters and hence in these circumstances and aforesaid reason, I answer Issue No. 4 in **Partly Affirmative.**
13. As per all the above discussions and reasons, in the interest of justice, in respect of Issue No. 5, I hereby pass the following final order, in the interest of justice.

:- Preliminary Decree :-

1. The present suit of the plaintiff is hereby partly allowed.
2. It is hereby declared that the suit properties bearing Survey No. 231 Paiki 6 measuring 01-29-50 Hec. Are. Sq. Mtrs situated at Dhasa Village, Taluka Gadhada, District Botad and Survey No. 231 Paiki 5 measuring 02-48-81 Hec. Are. Sq. Mtrs situated at Dhasa Village, Taluka Gadhada, District Botad and City Survey No. 704/3, situated at

Dhasa Village, Taluka Gadhada, District-Botad, are the ancestral and coparcenary properties of the plaintiff namely *Labhuben Dhanjibhai Rajapara and Savitaben Dhanjibhai Rajapara and Kanchanben Damjibhai Rajapara and Maheshbhai Damjibhai Rajapara and Darshanaben Damjibhai Rajapara and Hirenkumar Damjibhai Rajapara*.

3. It is further directed to **The Collector Shri, Botad** that 7 Bighas i.e. 2 Acres 32 Ghunthas of the Survey No. 231 Paiki 5 measuring 02-48-81 Hec. Are. Sq. Mtrs situated at Dhasa Village, Taluka Gadhada, District Botad shall be distributed to the plaintiff namely *Labhuben Dhanjibhai Rajapara and Savitaben Dhanjibhai Rajapara* and the remaining portion shall be distributed to the defendants namely *Kanchanben Damjibhai Rajapara and Maheshbhai Damjibhai Rajapara and Darshanaben Damjibhai Rajapara and Hirenkumar Damjibhai Rajapara* and possession shall be also transferred to the plaintiff as well as defendants as per the rules and Section 54 of Civil Procedure Code, 1908.
4. It is further directed to **The Collector Shri, Botad** that City Survey No. 704/3, situated at Dhasa Village, Taluka Gadhada, District-Botad shall be distributed to the plaintiff namely *Labhuben Dhanjibhai Rajapara and Savitaben Dhanjibhai Rajapara* each having $\frac{1}{3}$ shares and the remaining $\frac{1}{3}^{\text{rd}}$ shall be distributed to the defendants namely *Kanchanben Damjibhai Rajapara and Maheshbhai Damjibhai Rajapara and Darshanaben Damjibhai Rajapara and Hirenkumar Damjibhai Rajapara* combinedly and possession shall be also transferred to the plaintiff as well as defendants as per the rules and Section 54 of Civil Procedure Code, 1908.
5. It is further directed that **The Collector Shri, Botad** to proceed in

accordance with the preliminary decree and file a report **within 90 days from the date of this decree.**

6. *No order as to cost.*
7. Preliminary Decree shall be drawn accordingly.
8. Yadi shall be made to the Collector Shri, Botad for compliance.

Judgment Signed & pronounced in the open Court today on the 21st day of April, 2026 at Gadhada, Botad.

(RAVINDRA KUMAR)

ADDITIONAL CIVIL JUDGE,
GADHADA, BOTAD

(GJ01713)