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Exhibit	:	81

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

Regular Civil Suit No: 238 of 2021

PLAINTIFF:

1. RAMJIBHAI VASHRAMBHAI GOHIL
REPRESENTED THROUGH POWER OF ATTORNEY
VALJIBHAI NARSHIBHAI RATHOD
Age:- 63, Occupation:- Agriculture,
Residing at Dhasa, Gadhada, Botad.

VERSUS

DEFENDANT/s:

1. VASHRAMBHAI KESHUBHAI DABHI,
Age:- 65, Occupation:- Labor,
2. PRATAPBHAI VASHRAMBHAI DABHI,
Age:- 35, Occupation:- Labor
Both residing at Shankarpara, Gadhada, Botad.

**RE:- SUIT SEEKING MANDATORY INJUNCTION AND PERMANENT
INJUNCTION.**

APPEARANCES:-

FOR PLAINTIFF :- SHRI G. B. SHUKAL.
FOR DEFENDANT/s :- SHRI D. A. MALVANIYA.

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

1. The plaintiff has filed suit seeking relief of declaration and sought relief of permanent injunction against the defendants.

2. **SUIT PROPERTY :-**

1. Plot No. 40 measuring 100 Square Yards situated at Dhasa Village, Taluka Gadhada, District Botad.

3. **FACTS :-**

Plaintiff has asserted that:-

3.1. The said suit property has been allotted to the plaintiff by the government vide order dated 1-08-1972 and which is reflected in his name in the Village Sample Form No. 2 at Serial No. 493/1;

3.2. The suit property has been allotted to the plaintiff by Taluka Panchayat;

3.3. The defendants are not having any right/interest/ share in the suit property of the plaintiff and then also the defendants have encroached the plaintiff's property from the Northern, Southern and western side;

3.4. The plaintiff has placed stones and other concrete material in his suit property which has also been taken away by the defendants

3.5. The plaintiff has asked the defendants to refrain but the defendants have threatened the plaintiff and encroached on his suit property 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 Exhibit-15, Defendants have filed reply to plaintiff's Suit;

c. Vide Order dated 14/09/2021 below Exhibit-6, the Court Commission was ordered and the *panch rojkam* and the map is Exhibited at Exhibit-

47 and 48;

- d. Vide Order dated 14/10/2022 below Exhibit-5, *Status Quo* was ordered by the court.
- e. Vide Order Dated 13/10/2025 below *Exhibit-57*, application by the plaintiff for breach of injunction order came to be rejected.
- f. Vide Order Dated 15/07/2025 below *Exhibit-63*, application by the defendants for Rejection of Plaint under Order 7 Rule 11 came to be rejected.
- g. Vide Order Dated 20/01/2026, Right to lead further evidence by the plaintiff came to be closed.

5. **SUBMISSIONS IN WRITTEN STATEMENT:-**

Defendants have submitted by way of filing written statement:-

1. that the averments of the application and plaint are denied;
2. that the suit is bad because of non joinder of necessary party as the Taluka Development Officer and the Talati has not been joined to the present suit;
3. that there is no relation between the plaintiff and the power of attorney and hence the power of attorney is not valid;
4. that the plaintiff has not filed any evidence such as Sanad etc;
5. that the defendant no.1 was allotted a plot no. 30 by the government vide order dated 31/03/1984;
6. that the defendants are residing in the suit property and currently constructing house in the plot no. 30;
7. that the plot no. 40 is not nearby the defendant's property and the plaintiff has no right to obstruct the defendants;

8. that the plaintiff wants to grab the plot no. 30 which is the property of the defendants;
 9. that the suit is barred by the law of limitation because the defendants are residing in the plot no. 30 since 1985;
 10. That the plaintiff's suit shall be rejected with cost.
6. 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 and Cross Examination of plaintiff <i>Mr. Valjibhai Narshibhai Rathod.</i>	34
2.	Examination-In-Chief and Cross Examination of <i>Mr. Prakashbhai Nanjibhai Chauhan.</i>	44
3.	Examination-In-Chief and Cross Examination of <i>Mr. Pareshbhai Veljibhai Dharajiya</i>	51

B. DOCUMENTARY EVIDENCE LED BY THE PLAINTIFF:-

Sr.No.	Particulars	Exhibit/s
1.	Village Sample Form No. 2 of the Suit Property	36
2.	Power of Attorney for authorising <i>Valjibhai Narshibhai Rathod.</i>	37

3.	Court Commissioner Report And Map	47 & 48
4.	Village Sample Form No. 2	52

A. ORAL EVIDENCES LED BY THE DEFENDANTS:-

Sr.No.	Particulars	Exhibit/s
1.	Affidavit of Examination In Chief and Cross Examination of <i>Hiteshbhai Virjibhai Mishra</i>	76

B. DOCUMENTARY EVIDENCES LED BY THE DEFENDANTS:-

Sr.No.	Particulars	Exhibit/s
1.	Letter of Taluka Development Officer	77
2.	Sanad issued by the Taluka Development Officer of the Plot No. 30	78 and 79

7. This Court has framed the following issues at Exhibit-26, which are as under:-

1. Whether the plaintiff proves that in the year 1972, by the order of the Taluka Panchayat Office, Gadhada, the Government allotted Plot No. 40 measuring 100 sq. m. in Dhasa village and his ownership is as per the four directions as per the para-2 of the plaint and the defendants are trying to encroach on the plot by creating permanent structure on the north/south/west sides?

2. Whether the defendants prove that the plaintiff's suit is bad because of non-joinder of necessary parties?
3. Whether the defendants prove that he has been the owner-occupier of the land of Plot No. 30 since 1985 and is constructing a permanent construction on the same land in which the plaintiff has no legal right to obstruct?
4. Whether the defendants prove that the plaintiff's claim is barred by the law of limitations?
5. Whether the plaintiff is entitled to the relief/s as prayed in Para 12 of the plaint?
6. What order and decree?
8. My findings of above issues are as under :-
 1. Affirmative
 2. Negative
 3. Affirmative
 4. Negative
 5. Partly Affirmative
 6. **As per final order.**
9. Heard learned advocates for the parties. Perused the case records and evidence and written-statement filed by the defendants.

-:: REASONS ::-

10. **ISSUE No.1 and 3**

Since both the issues are interconnected and interrelated and for the sake of brevity and to avoid repetition, both the issues are dealt with together.

- 10.1. The plaintiff has submitted that the suit property i.e. Plot No. 40 was allotted to him by the government vide order dated 1-08-1972 and the

defendants are creating encroachment in the said property.

- 10.2. The defendant has strongly objected by contending that there is no such plot no. 40 and it is the plot no. 30 in which the defendants are constructing.
- 10.3. With this regard, the power of attorney of the plaintiff namely *Valjibhai Narshibhai Rathod* has by way of filing examination-in chief supported the averments of the plaint and the defendant has conducted the cross examination in which he has submitted that in the year 1972, Circle Officer has given them the possession after conducting panch rojkam but the possession slip he can not produce before the court. He has further asserted that in the year 1972, Sanad was also given but he does not have at this time. It is also deposed that he has not caused to make any entry in the City Survey and has not caused to conduct measurement by Surveyor. He has also not submitted the certificate of direction from Talati-cum-mantri. But he has affirmed that the plot no. 40 has been allotted to him by the government.
- 10.4. Therefore looking at the testimony it is clear that there is a plot no. 40 which has been allotted to him by way of the government order dated 01-08-1972 and with this regard the plaintiff has submitted the Village Sample Form No. 2 which is at *Exhibit-36* in which there is no mention of the plot no. 40 but it shows that property measuring 100 sq. yards has been allotted in the name of the Plaintiff namely Ramjibhai Vashrambhai Gohil.
- 10.5. It is pertinent to refer to the testimony of *Pareshbhai Veljibhai Dharjiya* who is Talati - Cum- Mantri at Gadhada and deposed before court that

the property shown in *Exhibit-36* is also there with the records he has brought before the court and which is exhibited at *Exhibit-52*. As per *Exhibit-52* by way of the Serial No. 483/1 a plot measuring 100 Sq. Yards has been allotted to the plaintiff. In the cross examination also, he has asserted that In the *Exhibit-36* the serial no. is 493/1 and in the *Exhibit-52*, the Serial No. 483/1. He has clarified that in the original records, there is no entry by the serial no. 493/1 but there is an entry by the name of the plaintiff by serial no. 483/1 Therefore it is clear that the plaintiff owns the property in his name measuring 100 sq. yards and the entry for which is there by serial no. 483/1. Therefore the said witness who is the public servant has from the records asserted that the plaintiff owns the property in his name measuring 100 sq. yards and the entry for which is there by serial no. 483/1 and hence inspire confidence.

- 10.6. The defendant has argued that the said suit property does not exist because it is not there in the records but by the testimony of the said witness by *Exhibit-51* has clarified that the plaintiff owns the said suit property and by the *Exhibit-52*, it transpires that the said property has been allotted to the plaintiff on 01-08-1972 and hence the argument of the defendant is not tenable.
- 10.7. The defendant has submitted that the said suit property is the plot no. 30 and the defendant is constructing in their own property and for that purpose, Vide *Exhibit-76*, *Hiteshbhai Virjibhai Mishra* has testified before the court and with the records he has asserted that the plot no. 30 was allotted to the *Vashram keshavbhai* and Vide *Exhibit-78 and 79*

he has submitted the Sanad of the plot no. 30 and by which it is clear that the plot no. 30 was allotted to the defendant no. 1 but in the present suit, the dispute is about the plot no. 40 which was in the name of the plaintiff and it is not in dispute of plot no. 30.

- 10.8. For this purpose, it is very much pertinent to refer to the Report of the Court Commissioner which is at *Exhibit-47 and 48*. As per the court commissioner report, he has conducted local investigation of the suit property with the presence of the panchas for each party and in the presence of the plaintiff and defendant. The panchas and the parties have not taken any objection as to whether the suit property is plot no. 40 or not. After filing of the report and map by the court commissioner, none of the parties have objected and the court commissioner has also in the cross examination below *Exhibit-44* has submitted that as per the plaintiff, defendant and their panchas, the said suit property is plot no. 40.
- 10.9. When the records suggest that the suit property is the plot no. 40 and it was allotted to the plaintiff by way of the order dated 1-08-1972 and which is affirmed by the records produced by the Talati-Cum-Mantri then if the defendant suggest that the said suit property if the plot no. 30 then the burden of proof is upon the defendant to show that the said suit property is the plot no. 30 and allotted to the defendant.
- 10.10. It would be relevant to refer to the provision of law as enshrined in the Indian Evidence Act,

“101. Burden of proof. --

Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts,

must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

102. On whom burden of proof lies.

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side."

Therefore as per the provisions of law, the defendant has called *Hitesbhai Virjibhai Mishra* but he has submitted the records of the plot no. 30 which is allotted to the defendant and hence the defendant has right to enjoy his property i.e. Plot No. 30 but the defendant has not produced any other evidence by which it can be suggested that the said suit property is the plot no. 30 and it is not the plot no. 40. Furthermore The defendant has not taken any objection to the court commissioner report as well which also suggests that the said suit property is the plot no. 40 and said fact has been affirmed by the Talati Cum Mantri at *Exhibit-51*.

The defendant has himself submitted by way of the written statement that the said property is the plot no. 30 and the plaintiff wants to grab but it is clear from the records that the said property is the property of the plaintiff. Further the defendant has affirmed that he is constructing in the said property and which is his own but the said suit property is not of the defendant and therefore it is clear from the records itself that the defendants are constructing in the said suit property and in the court commissioner report as well it is clear that the defendant is constructing in the said suit property.

The report of the court commissioner is also a piece of evidence when

there is a question of the encroachment as held by the Hon'ble Apex Court in the case of, Ramlal & Ors. Versus Salig Ram & Ors.¹ and By the Hon'ble Bombay High Court in the case of, Natwarlal Shivaji Patel vs Ganesh Ashoklal Bhandari,² and Madhav Bhimrao Patil Versus Govind Gunderao Patil.³

- 10.11. Therefore when the defendant has not taken any objection to the court commissioner report as well as the Court Commissioner has also been examined before the court, the court commissioner report also supports the plaintiff's averments.
- 10.12. Therefore the plaintiff has been able to prove that the suit property is of the plaintiff and the defendant is constructing the suit property and further the defendant has been able to show that the plot no. 30 was allotted to him and hence he has right to enjoy the property and therefore in the background of these circumstances and the discussion, I answer issue No. 1 in **Affirmative** and Issue No. 3 in **Affirmative**.

11. **ISSUE No. 2**

11.1. The defendant has argued that the suit property is alleged by the plaintiff to be allotted by the Taluka Development Officer and Talati Cum Mantri and hence they are the necessary parties and hence the suit of the plaintiff is bad because of non-joinder of the necessary parties.

11.2. At this stage, it is relevant to refer Rule 9 of Order I of Civil Procedure Code, 1908 which is as follows:-

"Rule 9: Misjoinder and non-joinder.—

¹ CIVIL APPEAL NO. 8285 OF 2009,

² Writ Petition No. 6937 of 2022

³ Writ Petition No. 671 of 2017

No suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it:

Provided that nothing in this rule shall apply to non-joinder of a necessary party."

- 11.3.** At this stage it is pertinent to refer the Judgment of Hon'ble Supreme Court, Mumbai International Airport Private Limited v. Regency Convention Centre and Hotels Private Limited and Others,⁴ in which it was discussed that:-

"15. A "necessary party" is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a "necessary party" is not impleaded, the suit itself is liable to be dismissed. A "proper party" is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance."

- 11.4.** In another judgment of the Hon'ble Supreme Court, Moreskar S/O Yadaorao Mahajan Vs. Vyankatesh Sitaram Bhedi (D) Thr. Lrs. And Others,⁵ it was discussed that:-

⁴ (2010) 7 SCC 417

⁵ Civil Appeal Nos. 5755 - 5756 of 2011.

"It can thus be seen that what has been held by this Court is that for being a necessary party, the twin test has to be satisfied. The first one is that there must be a right to some relief against such a party in respect of the controversies involved in the proceedings. The second one is that no effective decree can be passed in the absence of such a party."

11.5. Therefore looking at the records and circumstances in the present case, merely since the Taluka Development Officer and Talati Cum Mantri have allotted the suit property can not be said to be necessary parties further when the Talati Cum Mantri has been examined on oath before the court it can not be said that Talati Cum mantri and Taluka Development Officer are necessary parties and hence in the background of these discussions and for the aforesaid reasons, I answer issue No. 2 in **Negative.**

12. **ISSUE No. 4**

12.1. The defendant has argued that the defendant has been constructing in the property from 1985 but the plaintiff has filed this suit in the year 2021 hence the suit is barred by the law of limitation.

12.2. Looking at the records, it appears that the plaintiff has specifically submitted that now the defendants have encroached in the suit property and upon the perusal of the court commissioner report as well it appears that the defendant has started construction now. Further the defendant himself has specifically submitted in the written statement that the defendant has now started construction in the property and hence there is no other evidence led by the defendant suggesting that the suit is barred by the law of limitation and hence in my opinion the said present suit is within the period of limitation and hence in the

background of these discussions and for the aforesaid reasons, I answer issue No. 4 in **Negative.**

13. ISSUE No.5

13.1. The plaintiff has sought following reliefs:

- a. *To grant mandatory injunction against the defendants that they shall not illegally excavate in the suit property and;*
- b. *to grant permanent injunction against the defendants directing them to remove the encroachment in the suit property at his own expenses and neither the defendants nor his agent, servant, attorney shall enter or cause to be entered into the said suit property without authorization;*
- a. *to grant any other relief, the court deems fit to grant and to recover all the costs of this suit from the defendants."*

13.2. In the present case, the plaintiff has sought the relief of seeking mandatory injunction. It would be pertinent to refer to the provision of mandatory injunction enshrined in the Section 39 of Specific Relief Act, 1963 which is as follows:-

"39. Mandatory injunctions.—

When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the court is capable of enforcing, the court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts."

13.3. As per the provision of law, when to prevent the breach of an obligation there is also required to be compelled performance of requisite acts which the court is capable of performing than the court may grant.

13.4. In the current factual aspect, the plaintiff has sought the removal of encroachment which is falling under the category of performance of

capable act but looking at the records, the court has earlier vide dated 14/10/2022 has ordered status quo and hence there can not be said to be removal of encroachment and hence the plaintiff in my opinion is entitled for the relief of the prevention of the breach of an obligation and hence since the plaintiff has been able to prove as held above, he is entitled for the relief of the injunction against the defendants that they shall not construct in the said suit property and neither the defendants nor his agent, servant, attorney shall enter or cause to be entered into the said suit property without authorization of the plaintiff.

13.5. 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 and hence in these circumstances and aforesaid reason, I answer Issue No. 5 in **Partly Affirmative.**

14. As per all the above discussions and reasons, in the interest of justice, in respect of Issue No. 6, I hereby pass the following final order, in the interest of justice.

-:: O R D E R ::-

1. The present suit is hereby **Partly Allowed.**
2. The defendants are hereby directed that they shall not illegally excavate/construct in the suit property i.e. Plot No. 40 measuring 100 Sq. Yards situated at Dhasa Village, Taluka Gadhada, District Botad.
3. The defendants are further directed that neither the defendants by themselves nor through their agents, servants or attorney shall enter or cause to be entered illegally into the said suit property i.e. Plot No. 40 measuring 100 Sq. Yards situated at Dhasa Village, Taluka Gadhada, District Botad.

4. Order below Exhibit-5 granting *Status Quo* stands vacated.
5. Parties to bear their own costs.
6. Decree be drawn accordingly.

Judgment Signed & pronounced in the open Court today on the 20th day of April, 2026 at Gadhada, Botad.

(RAVINDRA KUMAR)

ADDITIONAL CIVIL JUDGE,

GADHADA, BOTAD

(GJ01713)