



Received On	:	14/09/2023
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Decided on	:	25/03/2026
Duration	:	02 Years 06 Months 09 Days
Exhibit	:	41

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

Regular Civil Suit No: 270 of 2023

PLAINTIFF:

1. VASANBEN MAVABHAI ALIAS MAVJIBHAI
W/O RAVJIBHAI JARMARIYA,
Age:- 63, Occupation:- Housewife,
Residing at Gala, Gadhada, Botad.

VERSUS

DEFENDANT/s:

1. PARVATIBEN MAVABHAI ALIAS MAVJIBHAI SOLANKI,
Age:- 73, Occupation:- Housework
2. SARDULBHAI MAVABHAI ALIAS MAVJIBHAI SOLANKI,
Age:- 53, Occupation:- Housework
Both residing at Goradka, Gadhada, Botad.
3. HANSABEN MAVABHAI ALIAS MAVJIBHAI SOLANKI,
Age:- 47, Occupation:- Housework
Residing at Sanala, Vinchiya, Rajkot.
4. MUKTIBEN MAVABHAI ALIAS MAVJIBHAI SOLANKI,
Age:- 43, Occupation:- Housework
Residing at Itariya, Gadhada, Botad.

**RE:- SUIT SEEKING PARTITION, DECLARATION AND PERMANENT
INJUNCTION.**

- 3.6. The defendants having knowledge that the plaintiff is having share in the suit properties is trying to alienate the suit properties and want to grab the share of the plaintiff from the suit properties;
- 3.7. The plaintiff is having $\frac{1}{2}$ share in the suit properties;
- 3.8. The suit properties have not been partitioned till date and Defendants are threatening to plaintiff 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-12, Defendants have filed reply to plaintiff's Suit;

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 plaintiff married 40 years ago and thereafter residing there;
3. that the plaintiff has orally relinquished her shares in the suit properties willingly;
4. the suit properties were in the name of *Mavabhai@Mavjibhai Solanki* and after the demise of him, names of parties of the suit were entered in the revenue records;
5. the plaintiff has never sought any partition until *Mavabhai@Mavjibhai Solanki* was alive;
6. it was asserted by the plaintiff that the plaintiff will sign for the relinquished whenever she is called for to do so;
7. plaintiff has agricultural property in her in laws;
8. approx 15-20 years ago, when the plaintiff has to purchased a property, *Mavabhai@Mavjibhai Solanki* has helped her by paying money and

hence the plaintiff has assured that she will not claim any share in the suit properties;

9. when the defendants have asked the plaintiff to sign the documents of relinquishment, the plaintiff has evaded and filed the present suit;
 10. defendants have never tried to grab the share of the plaintiff;
 11. share of the plaintiff has already been settled by *Mavabhai@Mavjibhai Solanki* years ago and the plaintiff has no rights/share in the suit properties;
 12. The plaintiff is provoked by *Laljibhai Mavabhai@Mavjibhai Solanki*. *Laljibhai* was the son of the *Mavabhai@Mavjibhai Solanki* and was adopted by the brother of *Mavabhai@Mavjibhai Solanki* namely *Khimabhai Nagjibhai*; Laljibhai has also entered his name in the revenue records of the suit properties fraudulently which came to be revised by the revenue authorities after the application filed by the present parties and hence having ill will Laljibhai has provoked the plaintiff to file the present suit.
 13. 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 Mrs. <i>Vasanben Mavabhai Alias Mavjibhai</i> .	16

B. DOCUMENTARY EVIDENCE LED BY THE PLAINTIFF:-

Plaintiff has filed documents along with the plaint vide Mark 4/1 to 4/6 but the plaintiff has not exhibited them and filed closing purshis vide Exhibit- 24.

A. ORAL EVIDENCES LED BY THE DEFENDANTS:-

Sr.No.	Particulars	Exhibit/s
1.	Affidavit of Examination In Chief and Cross Examination of plaintiff Mrs. <i>Sardulbhai Mavabhai Alias Mavjibhai Solanki.</i>	27

B. DOCUMENTARY EVIDENCES LED BY THE DEFENDANTS:-

Sr.No.	Particulars	Exhibit/s
1.	Village Form Number 7 and 8-A of the properties of Ravjibhai Kadvabhai Jarmariya	16

7. This Court has framed the following issues at Exhibit-14, which are as under:-

1. Whether the plaintiff proves that the agricultural land in Revenue Survey No. 74/1 Paiki and Revenue Survey No. 88 Paiki 2 situated at village Goradka, Gadhada is ancestrally acquired in which the plaintiff has 1/5th share of the inheritance right and interest?
2. Whether the plaintiff proves that the defendants, despite the plaintiff's right to inherit the disputed agricultural land, intentionally intend to wrongfully alienate, sell or transfer the disputed property?
3. Whether the defendants prove that when the plaintiff was to acquire land in his father-in-law's village in addition to 5 bighas, in her own name, the plaintiff's father, Deceased *Mavabhai alias Mavajibhai*, gave

him money in exchange for the said suit land, in return for which the plaintiff stated that she would not raise any objections or disputes regarding the inheritance rights in the said suit property in the future?

4. Whether the plaintiff is entitled to the relief/s as prayed in Para 12 of the plaint?
5. What order and decree?
8. My findings of above issues are as under :-
 1. Affirmative
 2. Negative
 3. Negative
 4. Partly Affirmative
 5. **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 to avoid repetition and for the sake of brevity, both the issues are discussed and dealt together.

- 10.1. The plaintiff has submitted that the suit properties are ancestral properties and hence she has $\frac{1}{6}$ share in the suit properties. The defendant has also affirmed that the said suit properties are ancestral properties and hence there is no dispute as to the properties being ancestral.
- 10.2. Only dispute taken by the defendants is that when the plaintiff had to purchase a property, the father of the plaintiff has paid the amount and then the plaintiff has assured that she will not claim any right or

interest in the suit properties.

- 10.3. With this regard, the learned advocate for the defendant has conducted cross examination of the plaintiff and in which she has stated that,

“એ વાત ખરી નથી કે મારા લગ્નના કરિયાવર માં સોના, ચાંદી દાગીના તથા કરિયાવર ભરી આપેલો. એ વાત ખરી નથી કે રિવાજ મુજબ મારું શ્રીમંત પિયરમાં કરેલું. એ વાત ખરી છે કે રિવાજ મુજબ મારા છોકરાનું મામેરું મારા ભાઈઓએ કરેલું.”

She has further deposed that it is not true that when the plaintiff had to purchase a property, the father of the plaintiff has paid the amount and the plaintiff has assured that she will not claim any right or share in the suit property. Hence the plaintiff has specifically denied about the averments contended by the defendants and apart from this, the defendants have not submitted any evidence by which it can be suggested that the plaintiff has orally contended that she has relinquished her share in the suit properties. The defendants have only alleged that the name of the plaintiff in the revenue records was entered only as an heir but she has no right or share in the suit properties.

- 10.4. It is also admitted by both the parties that names of plaintiff as well as defendants are entered in the revenue records as the said property was ancestral property.

- 10.5. With this regard, the defendants vide Exhibit- 33 and 34, have also submitted Revenue Records of the properties of husband of plaintiff, namely *Ravjibhai Kadvabhai Jarmariya* but there is nothing on records by which it can be suggested that the consideration for the said properties have been paid by the father of the plaintiff and the plaintiff relinquished her share in the suit properties. Further the defendant no.

2 has vide exhibit-27 filed Examination-in Chief and cross examination has been conducted thereafter but has apart from the averments there is nothing on records by which it can be said that the father of the plaintiff has paid the amount to plaintiff for purchasing land and in return she has assured that she will not claim any right or share in the suit properties and the said fact is also supported by the names entered in the revenue records.

- 10.6. 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 and the mother of the intestate shall each take an share.”

- 10.7. With regard to having a share of 1/5 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 also been supported by the defendant. Therefore there is no such dispute that the plaintiff is not having 1/5 share in the suit properties and the defendant has not been able to prove that the plaintiff has at the relevant time relinquished her share in the suit properties and Hence in the background of these circumstances and the discussion, I answer issue No. 1 in **Affirmative** and Issue No. 3 in **Negative**.

11. **ISSUE No. 2**

11.1. The plaintiff has submitted that the defendants want to grab the share of the plaintiff from the suit property and wants to oust the plaintiff from the suit properties but the plaintiff has not submitted any evidence except mere assertion that the defendants wants to grab her share or want to oust her. Further in the revenue records also, there are names of plaintiff as well as the defendants and hence the contention that the defendants can alienate the suit properties is untenable 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 plaintiff has sought following reliefs:

- a. *To grant declaration that the plaintiff has the right, interest, share as legal heir in the undivided agricultural land described in para-8 of the plaint;*
- b. *To direct the defendants that they shall hand over the possession of 1/5*

share in the suit property to the plaintiffs as plaintiff has a share of 1/5 of the legal share of our deceased father in the agricultural land mentioned in para-8 the plaint and further direct that if defendants fail to do so, the court may order the Court Commissioner or the Revenue Magistrate to hand over the legal possession;

- c. To direct the defendants to pay the amount of the produce i.e. Mesne profits, equal to plaintiff's share from the produce obtained by the defendants from the agricultural land described in para-8 of the plaint;*
- a. To issue a permanent injunction prohibiting the defendants from selling, transferring or assigning the ancestral agricultural land having the right, interest and share of the plaintiff, to any other person or in any way, or from entering into any such agreement, either by themselves or through their authorized representative, or from creating any kind of encumbrance, loan, lien or charge on the property, until the defendants hand over the legal share of the agricultural land described in para-8 of the plaint to the plaintiff.*
- b. to grant any other relief, the court deems fit to grant;*
- c. 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 the plaintiff and the defendants each having 1/5th share in the suit properties and hence the plaintiff is entitled to the relief of declaration that she is having right, title or interest in the suit properties.

12.3. The second relief sought by the plaintiff is that the property shall be partitioned and the plaintiff shall be given her share of 1/5 in the suit properties. The plaintiff has been able to prove that she has right of 1/5 share in the suit properties and the said properties have not been

partitioned till date and hence the plaintiff is entitled for the second relief of partition.

- 12.4. The plaintiff has sought the relief of granting the *mesne profit* but has not been able to establish such fact and hence the plaintiff can not be granted such relief of granting *mesne profit*.
- 12.5. The plaintiff has sought the relief of granting permanent injunction that the defendants shall not sell, transfer or assign the ancestral agricultural land having the right, interest and share of the plaintiff, to any other person or in any way, or from entering into any such agreement, either by themselves or through their authorized representative, or from creating any kind of encumbrance, loan, lien or charge on the property, until the defendants hand over the legal share of the agricultural land and since the plaintiff is able to establish that she is having the right of share of $\frac{1}{8}$ th in the suit property, relief of permanent injunction can be granted.
- 12.6. 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."*

12.7. 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 plaintiff as well as the defendants have $\frac{1}{6}$ th share each in the suit properties which are ancestral 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 having Survey No. 74/1 Paiki 5 measuring 01-95-26 Hec. Are. Sq. Mtrs situated at Goradka Village, Taluka Gadhada, District Botad and Survey No. 88 Paiki 2 measuring 00-81-95 Hec. Are. Sq. Mtrs situated at Goradka Village, Taluka Gadhada, District Botad are the ancestral and coparcenory

properties of the plaintiff namely *Vasanben Mavabhai@Mavjibhai Solanki W/o Ravjibhai Jarmariya* and Defendants namely *Parvatiben Mavabhai@Mavjibhai Solanki, Sardulbhai Mavabhai@Mavjibhai Solanki, Hansaben Mavabhai@Mavjibhai Solanki, Muktiben Mavabhai@Mavjibhai Solanki.*

3. It is further directed to **The Collector Shri, Botad** that Suit properties having Survey No. 74/1 Paiki 5 measuring 01-95-26 Hec. Are. Sq. Mtrs situated at Goradka Village, Taluka Gadhada, District Botad and Survey No. 88 Paiki 2 measuring 00-81-95 Hec. Are. Sq. Mtrs situated at Goradka Village, Taluka Gadhada, District Botad shall be distributed equally having $\frac{1}{5}$ th share each among the plaintiff namely *Vasanben Mavabhai@Mavjibhai Solanki W/o Ravjibhai Jarmariya* and Defendants namely *Parvatiben Mavabhai@Mavjibhai Solanki, Sardulbhai Mavabhai@Mavjibhai Solanki, Hansaben Mavabhai@Mavjibhai Solanki, Muktiben Mavabhai@Mavjibhai Solanki* 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 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.**
5. It is further directed that the defendants shall not sell, transfer or assign the ancestral agricultural land having the right, interest and share of the plaintiff, to any other person or in any way, or shall not enter into any such agreement, either by themselves or through their authorized representative, or create any kind of encumbrance, loan, lien or charge on the property, until the

defendants hand over the legal share of the suit properties.

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 25th day of February, 2026 at Gadhada, Botad.

(RAVINDRA KUMAR)

ADDITIONAL CIVIL JUDGE,

GADHADA, BOTAD

(GJ01713)