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DURATION : 07 - 11 - 05
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**IN THE COURT OF PRINCIPAL DISTRICT JUDGE
AT : GANDHINAGAR**

REGULAR CIVIL APPEAL NO.29 OF 2018

EX.: 26

APPELLANT(S):
(ORIGINAL PLAINTIFFS)

**HEIRS OF DECEASED JIVANJI RAIJIJI
THAKOR**

1. LILABEN D/O. JIVANJI RAIJIJI THAKOR
AGE : 60 YEARS,
OCCUPATION : HOUSEHOLD WORK,
RELIGION : HINDU,,
PRESENTLY RESIDING AT :
BAHERAMPURA, DHABAVALI CHALI,
AHMEDABAD.

ORIGINAL RESIDENT OF :
VILLAGE : DABHODA,
MAHAKALI VALO VAS,
TAL. & DIST. : GANDHINAGAR.

2. HASMUKHJI S/O. JIVANJI RAIJI THAKOR
AGE : ABOUT 50 YEARS,
OCCUPATION : LABOUR WORK,
RELIGION : HINDU,
PRESENTLY RESIDING AT :
MAKARBA, OPP. SHRINANAD NAGAR-2,
SENDHAJI NI CHALI, VEJALPUR,
AHMEDABAD.

ORIGINAL RESIDENT OF :
VILLAGE : DABHODA,
TAL. & DIST. : GANDHINAGAR.

VERSUS

RESPONDENT(S):
(ORIGINAL DEFENDANT(S))

1. THAKOR PRAHLADJI PUNJAJI
DELETED ON ACCOUNT OF DEATH
1/1 THAKOR KESHEIBEN WD/O. PRAHLADJI
PUNJAJI
1/2 THAKOR JESANGJI PRAHLADJI
1/3 THAKOR DINESHJI PRAHLADJI
1/4 SURYABEN PRAHLADJI THAKOR
1/5 KAILASHBEN PRAHLADJI THAKOR
ALL AGED : ADULTS,
OCCUPATION : AGRICULTURE /
HOUSEHOLD WORK,
ORIGINAL RESIDENT OF :
VILLAGE : DABHODA, DADUNAGAR ROAD,
DIST. : GANDHINAGAR.
2. THAKOR NARENDRASINH PUNJAJI
3. THAKOR RANJITSINH PUNJAJI
BOTH AGED : ADULTS,
OCCUPATION : AGRICULTURE,

RESIDENTS OF : VILLAGE : DABHODA,
DABHODA-PRABHUPURA ROAD,
NR. PRIMARY SCHOOL,
DADUNAGAR, DABHODA,
TAL. & DIST. : GANDHINAGAR.

4. THAKOR BABUJI JIVANJI
AGE : ABOUT 48 YEARS,
OCCUPATION : SERVICE,
RELIGION : HINDU,
PRESENTLY RESIDING AT :
VEJALPUR, MAKARBA ROAD,
OPP. SHRINAND NAGAR-2,
SENDHAJI NI CHALI, VEJALPUR,
AHMEDABAD.
5. THAKOR AMARSANG GAGAJI
DELETED ON ACCOUNT OF DEATH
PRESENTLY RESIDING AT :
JIVRAJ PARK, AT : NILDHARA SOCIETY,
BUNGALOW NO.19/B, VEJALPUR,
AHMEDDABAD.
 - 5/1 THAKOR SAJANBEN D/O. AMARSANG
GAGAJI AND W/O. SHASHIKANT THAKOR
AGED : ADULT,
OCCUPATION : HOUSEHOLD WORK,
RESIDENT OF : SOMAJI BHUPTAJI NO
KUVU, OPP. BALDEVNAGAR,
132 FT. RING ROAD, JIVRAJ PARK,
AHMEDABAD.
 - 5/2 THAKOR KESARBEN D/O. AMARSANG
GAGAJI AND W/O. GOTAJI THAKOR
AGE : ADULT,
OCCUPATION : HOUSEHOLD WORK,
RESIDENT OF : SOMAJI BHUPTAJI NO
KUVU, OPP. BALDEVNAGAR,
132 FT. RING ROAD, JIVRAJ PARK,
AHMEDABAD.

APPEARANCE:

- MR.V.K.THAKOR : LD. ADVOCATE FOR APPELLANTS.
- MR.R.A.PANDYA : LD. ADVOCATE FOR RES. NO.1

J U D G E M E N T

1) Present appeal has been preferred by the appellants (original plaintiffs), under the Section 96 of the Code of Civil Procedure, being aggrieved by the Judgement and order dated 30.07.2016 passed in Regular Civil Suit No.411 of 2008 by learned 9th Additional Civil Judge, Gandhinagar, whereby the suit of the appellants (original plaintiffs) was dismissed.

2) The brief facts of the appeal are as under:

2.1) Present appellants are original plaintiffs and respondents are original defendants. For the sake of brevity and convenience, in the present appeal, the parties will be referred to, as per their original status i.e. plaintiffs and defendants.

2.2) The short facts leading to the present appeal are that the plaintiffs had filed Regular Civil Suit No.411/2008 before trial court for the purpose of cancellation of sale deed and getting permanent declaration and injunction against the defendants. The plaintiffs had stated before the trial court that plaintiff and defendant No.4 and 5 belong to same family and they are heirs of Rajiji Zaverji Thakor, who was grandfather of plaintiffs and

defendant No.4. Their name was running on the revenue record in connection with the land survey No.2237, ad-measuring 01-55-81 Hec-Are-Sq.Mtrs. of of village Dabhoda (herein after to be referred as suit land/disputed property) and they are having share in the said land. After death of plaintiffs father Jivanji Raijiji Thakor name of plaintiffs and defendant No.4 and others were entered in revenue records vide entry No.4112 dated 10.08.1981.

2.3) When the plaintiffs approached to Talati-cum-Mantri of Dabhoda Gram Panchayat for getting information about their ancestral land on 15.07.2008, at that time, they were informed that the names of defendant No.1, 2 and 3 are running in revenue records in connection with the suit land. Then after, they inquired about the said entry and came to know that on 18.02.1973 plaintiffs' father had died and the name of defendant No.4-Babuji Jivanji was entered in revenue record. Thus, since the name of plaintiffs was not in revenue record, the defendant No.4 and 5 took benefit of the same and sold the suit land to Punjaji Javanji Thakor at consideration amount of Rs.14,000/- on date 23.07.1981 by way of sale deed and after death of father of defendant No.1 to 3, the names of defendant No.1 to 3 have been entered in revenue records.

2.4) Thus, despite the plaintiffs are having share in their ancestral land, the sale deed has been executed without entering

their names in the revenue record and without their knowledge and therefore, they prayed for cancellation of the sale deed, permanent injunction and declaration regarding share of the plaintiffs in the suit property.

2.5) After conclusion of trial, learned trial court dismissed the suit of the plaintiffs, by way of impugned order.

2.6) Being aggrieved and dissatisfied by the said order and decree, the appellants (original plaintiffs) have challenged the judgement and decree of the trial court by way of this appeal. It is submitted that the impugned judgement and decree are improper and against the settled principles of law. The learned trial court has erred while dismissing the suit of the plaintiffs and has not properly considered the material available on record. The learned trial court has wrongly held that the plaintiffs have failed to prove their suit. The learned trial court has committed grave error, while deciding the issues and the findings of the learned trial court are erroneous and contrary to the provisions of law. The learned trial court has erred in appreciating oral and documentary evidence produced on record. Therefore, the impugned judgement and decree are erroneous and required to be set aside.

3) On presentation of the appeal, notice was issued to the other side and after service of notice, respondents have remained present through their learned advocate. The appellants have filed written arguments at Ex.25.

4) On presentation of appeal, R&P of the Regular Civil Suit No.411/2008 was called for and has been taken into consideration. Looking to the R&P, it appears that the plaintiffs have produced following evidence:

<u>Oral Evidence</u>		
<i>Sr. No.</i>	<i>Particulars</i>	<i>Exh. No.</i>
1.	Affidavit of deposition of Plaintiff	37
<u>Documentary Evidence</u>		
1.	Original affidavit	59
2.	Copy of form No.7/12 of survey No.2237	60
3.	Copy of form No.7/12 of survey No.2237	61
4.	Copy of form No.7/12 of survey No.2237	62
5.	Copy of form No.7/12 of survey No.2237	63
6.	Copy of form No.7/12 of survey No.2237	64
7.	Copy of form No.6	65
8.	Copy of form No.6	66
9.	Copy of form No.6	67
10.	Copy of form No.6	68
11.	Copy of form No.6	69

4.1) The defendants has produced following evidence:

*Principal District Judge
Gandhinagar*

<u>Oral Evidence.</u>		
<i>Sr. No.</i>	<i>Particulars</i>	<i>Exh. No.</i>
1.	Deposition of defendant No.4	49
2.	Affidavit of defendant No.5-Kesarben	57
3.	Affidavit of defendant No.5-Sajanben	58

4.2) The defendants have not produced any documentary evidence.

5) I have heard the arguments advanced by respondent side only. No one is appearing on behalf of the appellants. Therefore, matter was fixed for judgement and appellants were given time to address arguments on or before 18.02.2026 but even then nobody appeared for the appellants. Hence, this judgement is pronounced without hearing arguments of the appellants. Considering the above mentioned facts and circumstances and considering the record of learned trial court, following issues have been framed for final disposal of the appeal:-

Issues

- (i) Whether the judgement and order passed by the trial court is erroneous and suffers from impropriety?
- (ii) Whether the order of the trial court requires interference?
- (iii) What order and decree?

Findings

6) My findings on the above points are as under for the reasons following thereafter:

Issue No.1 : In negative.

Issue No.2 : In negative.

Issue No.3 : As per final order.

REASONS #**Issue No.1 & 2:**

7) All the points/issues are inter-connected, hence, to avoid repetition of facts and for the sake of convenience, they are discussed together.

8) I have gone through the averments of the plaint, produced vide Ex.1 in Regular Civil Suit No.411/2008 and impugned order passed by the learned trial court, and I have also gone through the documentary evidences produced on record.

9) Considering the impugned judgement of learned trial court, it transpires that in its judgement, the learned trial court has decided issue No.1 to 5 in negative, which are regarding share of plaintiffs, revenue record and limitation.

10) From the record, it transpires that plaintiffs father has died on 18.02.1973 and therefore, as per Hindu Succession

Act (Amended) 2005, the plaintiffs, whose ancestors are died before 2005 will not be having undivided share in the suit property. Further, the plaintiffs have not been able to prove their case that how they are having undivided share in the suit property.

10.1) It is stated by the plaintiffs that defendant No.4 and other persons' names have been entered in the the revenue record vide revenue entry No.4012 dated 10.08.1981. However, the plaintiffs have filed their suit in the year 2008 and further, the defendant No.4 and 5 have supported the case of the plaintiffs and panchnama of the place has also not been done by the plaintiffs. Thus, the question will arise that when the plaintiffs are living at Ahmedabad and their land is situated in nearby city only, why they remained silent for so many years (i.e. about 27 years from 1981 to 2008) and now they are claiming their share, possession and injunction over the suit property. The said deed is also alleged to have been executed in the year 1981. In this regard, the plaintiffs have not proved their case on the point of limitation.

10.2) Further, the defendant No.4 and 5 have filed their affidavit in favour of plaintiffs and they have not clarified that why they did not take any legal action, when they had not received any consideration since year 1981. The plaintiffs have

prayed for cancellation of the sale deed, but they have not produced any cogent and reliable evidence to prove that they have filed the suit within limitation.

It is the case of the plaintiffs that defendant No.4 & 5 sold the suit property on 23.07.1981. Both the defendants cannot be said to be unaware of the sale. They are favouring the plaintiffs. They must have informed the plaintiffs about the sale, that is why plaintiffs kept mum for 27 years. A party, who sleeps over its right for 27 years, cannot be allowed to claim property after so much time has elapsed and limitation for taking recourse to legal remedies has expired. There is no ground why no action was taken for such a long time.

11) It transpires that the plaintiffs have mainly relied on revenue entries and have not produced any certified copy of pedigree. Further, it is settled position that any revenue entry does not create any right, title or interest. Thus, from the material available on record, it transpires that the plaintiffs have not produced any material evidence to prove their case, before the trial court.

12) If we refer to Section 101 of the Evidence Act, the burden of proof lies on the plaintiffs. The plaintiffs must prove all facts necessary to establish their legal right or liability, meaning they must prove their title and claim for possession. It would be fruitful to refer the judgement of Hon'ble Supreme

Court in the case of *Anil Rishi vs Gurbaksh Singh* reported in AIR 2006 SC 1971, wherein it is held that "*Act has clearly laid down that the burden of proving fact always lies upon the person, who asserts it...*". Here, in the case before the trial court, it transpires that the plaintiffs have failed to discharge their duty, of proving his case against the defendants. Thus, looking to the evidence produced before the trial court, it appears that the plaintiffs have not sufficiently established their case before the trial court against the defendants. It was for the plaintiffs to prove that the suit land is ancestral land and they are having their share in the suit land and the suit property has been sold without their knowledge and without giving any consideration / share to them. The plaintiffs have miserably failed to prove that.

13) In view of above discussion, this court is of the view that the plaintiffs (present appellants) have failed to establish their case before the trial court and the learned trial court has rightly decided the issues. In these circumstances, the present appeal does not have any substance and the judgement and decree of learned trial court does not appear erroneous. Hence, this court is of the view that no interference is required to be made in the impugned judgement and present appeal is required to be dismissed. Therefore, issue No.1 and 2 are decided in negative and for issue No.3 following final order is passed:

ORDER

- (a) The present appeal is hereby dismissed.
- (b) The judgement/order and decree dated 30.07.2016 passed in Regular Civil Suit No.411 of 2008 by

learned 9th Additional Civil Judge, Gandhinagar is hereby confirmed.

- (c) Decree to be drawn accordingly.
- (d) R&P of Regular Civil Suit No.411/2008 along with a copy of this order, is ordered to be sent to the concerned trial court.
- (e) No order as to costs.

Signed and Pronounced in open Court on **10th** day of **March, 2026**.

Date : 10.03.2026

Place: Gandhinagar

[ASHISH J.S. MALHOTRA]

GJ01504

PRINCIPAL DISTRICT JUDGE

GANDHINAGAR

vb/gnr



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