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DECIDED ON :
DURATION : _____
YY-MM-DD

**IN THE COURT OF PRINCIPAL DISTRICT JUDGE AT
: GANDHINAGAR**

REGULAR CIVIL APPEAL NO.44 OF 2019

EX.: 36

APPELLANT(S):
(ORIGINAL PLAINTIFF)

1. HEIRS OF DECEASED HEMTUJI JAVANJI
GOHIL

1/1 SATUJI HEMTUJI GOHIL

1/2 ISHWARJI HEMTUJI GOHIL

1/3 PRITHVISINH HEMTUJI GOHIL

1/4 JUJARJI HEMTUJI GOHIL

1/5 MANNUSINH HEMTUJI GOHIL

DIED AND HEIRS JOINED AS PER
ORDER PASSED BELOW EX. 28 & 30

1/5/1 RAMILABEN MANUJI GOHIL
AGE : ABOUT 54 YEARS,
OCCUPATION : AGRICULTURE/
HOUSEHOLD WORK

1/5/2 VIRENDRASINH MANUJI GOHIL
AGE : ABOUT 31 YEARS,
OCCUPATION : AGRICULTURE

1/5/3 VIPULSINH MANUJI GOHIL
AGE : ABOUT 29 YEARS,
OCCUPATION : AGRICULTURE,
ALL RESIDENTS OF : RANDESAN, TAL.
& DIST. : GANDHINAGAR.

1/6 POPATSINH HEMTUJI GOHIL

1/7 BHUPATJI HEMTUJI GOHIL

1/8 RANJANBEN HEMTUJI GOHIL

1/9 DHANRAJJI JASHUJI HEMTUJI GOHIL

2. HEIRS OF GAFULBEN DAUGHTER OF
NATHAJI JESANGJI

2/1 SURESHJI KALUJI THAKOR

2/2 KAPILABEN JASHUJI THAKOR

ALL AGED : ADULT,
OCCUPATION : AGRICULTURE /
HOUSEHOLD WORK,
ADDRESS : RANDESAN,
TAL. & DIST. : GANDHINAGAR.

VERSUS

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

1. THE DISTRICT COLLECTOR
DISTRICT COLLECTOR OFFICE,
SECTOR-11, JILLA SEVA SADAN,
GANDHINAGAR.
2. THE MAMLATDAR,
DISTRICT COLLECTOR OFFICE,
SECTOR-11, JILLA SEVA SADAN,
GANDHINAGAR.
3. TALATI-CUM-MANTRI,
RANDESAN GRAM PANCHAYAT,

LANDESAN,
TAL. & DIST.: GANDHINAGAR.

APPEARANCE:

- MR.S.J.DAVE : LD. ADVOCATE FOR APPELLANTS.
- MR.P.D.VYAS : LD. A.P.P. FOR RES.NO.1 TO 3.

J U D G E M E N T

- 1) Present appeal has been preferred by the appellant (original plaintiffs), under the provision of 0.41 and Section 96 of the Code of Civil Procedure, being aggrieved by the Judgement and order dated 28.06.2019 passed in Special Civil Suit No.36 of 2015 by learned 4th Additional Senior 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 plaintiff had filed Special Civil Suit No.36/2015 before trial court. The plaintiffs had submitted that the

plaintiffs are heirs of their ancestor Dolaji Sangalji. After death of their ancestor, the land bearing revenue block No.246 (old survey No.224) ad-measuring 00-40-47 Hec-Are-Sq.Mtrs. of village Randesan, District and Sub-District : Gandhinagar (herein after to be referred to as disputed/suit land/property) came to the share of their family members. Father of plaintiff No.1/1 to 1/9 - Hemtuji Javanji died on 29.12.1992 and his possession was over 20 gunthas in south side. Further, the nanaji of plaintiff No.2/1 to 2/2 - Nathaji Jesangji died about 25 to 27 years ago and he was having possession over 20 gunthas in north side.

- 2.3) The plaintiffs were having possession over the suit land and names of their ancestors were mentioned from year 1951 to 2004 in the Water Statement (*Pani Patrak*) and in form No.7/12. On the said suit land the defendant No.2 filed encroachment case (*Daban Case*) No.9/93 and 10/93 in which plaintiffs filed reply for their ancestors and also paid the amount of fine ordered by defendant No.2. Then after, also the plaintiffs are having possession over the suit land and they are cultivating the said land. In the year 2003, the plaintiffs had also filed application for transferring the land in the names of plaintiffs. However, defendant No.1 and 2 have not proceeded with their application. The defendant No. 3 has made panchnama of the land on 04.09.2013 and on

19.02.2015 in which also it is shown that plaintiffs are having possession over the suit land. The defendants have not done any procedure to transfer the suit land in the name of plaintiffs. Thus, the plaintiffs submitted that they are having possession over the suit land since last 60-65 years and to protect their possession, the plaintiffs had filed suit against the defendants. The plaintiffs had received notice dated 21.02.2015 from defendant No.2 for evacuating possession of land under Section 61 of the Land Revenue Code. Therefore, the plaintiffs filed suit before the trial court to restrain defendants, from dispossessing them from the suit land.

- 2.4) After conclusion of trial, learned trial court dismissed the suit of the plaintiffs, by way of impugned order.
- 2.5) Being aggrieved and dissatisfied by the said order and decree, the appellants (original plaintiffs) have challenged the judgement/order and decree of the trial court. It is submitted that the learned trial court has not considered that the plaintiffs are having possession over the suit land and they have proved their case. Learned trial court has not considered the copies of form No.7/12 and panchnamas submitted by the plaintiffs. Thus, the plaintiffs have proved their case by producing cogent and reliable evidence, whereas the defendants have not produced any evidence, even though the suit of the

plaintiffs has been rejected by the learned trial court. The learned trial court has failed to believe that the plaintiffs are in possession and they are cultivating the said land. The learned trial court has wrongly dismissed the suit of the plaintiffs based on false observations. Thus, the learned trial court has wrongly passed the order, and not properly evaluated the material/evidence available on record. Therefore, the order passed by trial court is required to be set aside.

- 3) On presentation of the appeal, notice was issued to the other side and after service of notice, respondent No.1 to 3 have remained present through learned A.P.P..
- 4) On presentation of appeal, R&P of the Special Civil Suit No.36/2015 was called for and has been taken into consideration. Looking to the R&P, it appears that the plaintiffs (present appellants) have produced following oral as well as documentary evidence:

<u>Oral Evidence</u>		
<i>Sr. No.</i>	<i>Particulars of Witness</i>	<i>Exh. No.</i>
1.	Examination-in-chief of plaintiff-Manusinh Hemtuji Gohil	37
2.	Deposition of witness Manubhai Kuberbhai Patel	82
3.	Deposition of witness Amrutbhai Gopalbhai	84
<u>Documentary Evidence</u>		

1.	Copy of form No.7/12 of block No.246 of village Randesan from year 1951-52 to 2004.	59
2.	Copy of notice under Section 61 of Encroachment Case No.9/1993 and 10/1993.	60
3.	Copy of receipt of fine paid in Encroachment Case No.9/1993 and 10/1993.	61
4.	Copy of reply filed in Encroachment Case No.9/1993 and 10/1993.	Mark 36/2
5.	Copy of application for transferring suit land in the name of plaintiffs	Mark 36/5
6.	Copy of Zoning Certificate given by Gandhinagar Development Authority	Mark 36/6
7.	Copy of application for getting suit land on permanent basis	62
8.	Copy of panchnama dated 04.09.2013 of suit property	63
9.	Copy of panchnama dated 19.02.2015 of block No.286 of suit property.	Mark 36/9
10.	Copy of Form No.7/12 dated 26.02.2015 of suit property	64
11.	Copy of form No.8-A of suit property of account No.168	65
12.	Copy of notice dated 21.02.2015 given by defendants to plaintiffs	66
13.	Copy of panchnama dated 29.08.2009 made by Talati-cum-Mantri in connection with the suit land	67
14.	Copy of panchnama dated 04.05.2010 made by Talati-cum-Mantri in connection with the suit land	68
15.	Copy of panchnama dated 09.05.2011 made by Talati-cum-Mantri in connection with the suit land	69
16.	Copy of notice of Encroachment Case	70
17.	Copy or order passed in Encroachment Case.	71
18.	Copy of fine paid	72
19.	Copy of entry No.114 in form No.6 record of right	73
20.	Copy of change entry No.199 in form No.6 record of rights	74
21.	Copy of change entry No.200 in form No.6 record of rights	75

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22.	Copy of panchnama made by court commissioner in connection with the suit land	86
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4.1) The defendants (present respondents) had not produced any evidence and therefore, their right of evidence was closed.

5) I have heard the arguments advanced by both the sides. 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 Special Civil Suit No.36/2015 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 observed that the plaintiffs have stated that they are having possession since last 60-65 years and in support of their case they have produced copies of form No.7/12 from year 1951 to 2004 along with panchnama dated 04.09.2013, 29.08.2009, 04.05.2010 and 09.05.2011 from Ex.67 to 69 in which possession of the plaintiffs is shown. Further, plaintiffs have also filed applications before the defendants to transfer the said suit lands in their name, by taking appropriate consideration. Learned trial court has also observed that from year 1951-52 plaintiffs' are having possession over

the suit land from the time of their ancestors, and the plaintiffs have filed suit for protecting their possession.

- 9.1) Learned trial court has also observed that for deciding the possession, legal ownership of the land is also required to be taken into consideration. It is observed that considering revenue record from Ex.59 to 75 and considering the evidence produced on record, the suit property, for which the plaintiffs are asking to protect their possession, is shown as government waste land and it is also observed that the defendants have issued notice to hand over possession of the suit property from plaintiffs under Section 61 of the Land Revenue Code, however, the plaintiffs have not produced any evidence to disprove this fact. Further, from panchnama made by Court Commissioner produced at Ex.86, the suit property has been mentioned as government waste land.
- 9.2) Further, witness Manubhai Kuberbhai has been examined vide Ex.82, who has drawn panchnama from Ex.67 to Ex.69 and witness Patel Amrutbhai Gopalbhai has been examined at Ex.84, who has drawn panchnama Ex.63 in connection with the suit land, both these witnesses have stated that the plaintiffs are having possession over the suit. However, in their cross-examination, these witnesses have admitted that the suit land is a government waste land.

- 10) Thus, from the material available on record, it is observed by learned trial court that the plaintiffs are having possession over the suit land and also they are cultivating the same, but with whose permission or by which title, they have been in possession of the suit land, is not shown by the plaintiffs. Therefore, learned trial court has observed that the plaintiffs are having illegal possession over the suit property and as per settled law, illegal possession cannot be protected. The plaintiffs has also submitted before the trial court that they are ready to pay consideration for transfer of ownership in their name, however, they have not proved that on what basis, they are having possession of the suit land, which is a government waste land.
- 10.1) 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 and also not produced cogent and reliable evidence.
- 11) If we refer to Section 101 of the Evidence Act, the burden of proof lies on the plaintiff. The plaintiff 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 plaintiff has failed to discharge his duty, of proving his case against the defendants.

- 12) 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 28.06.2019 passed in Special Civil Suit No.36 of 2015 by learned 4th Additional Senior Civil Judge, Gandhinagar is hereby confirmed.
- (c) No order as to costs.

- (c) Decree to be drawn accordingly.
- (d) R&P of Special Civil Suit No.36/2015, if any, along with a copy of this order, is ordered to be sent to the concerned trial court.

Signed and Pronounced in open Court on **22nd** day of **April, 2026**.

Date : 22.04.2026
Place: Gandhinagar

[ASHISH J.S. MALHOTRA]
GJ01504
PRINCIPAL DISTRICT JUDGE
GANDHINAGAR

vb/gnr



*Principal District Judge
Gandhinagar*