

GJGN050003072010 	 सत्यमेव जयते				
		Received on	26	10	2010
		Registered on	26	10	2010
		Decided on	28	07	2026
		Duration			
			Y	M	D

IN THE COURT OF 2nd ADDITIONAL CIVIL JUDGE, KALOL,
DIST.GANDHINAGAR

REGULAR CIVIL SUIT NO: 265 of 2010

Exh. No. _____

Parmar Maheshbhai Gandabhai

Age: 42 years, Occupation: Labourer,

Residing at : Dhanaj,

Tal.Kalol, Dist.Gandhinagar

...Plaintiff

V/s.

(1) Parmar Kamleshbhai Bababhai

Age: Adult,

Residing at : Dhanaj,

Tal.Kalol, Dist.Gandhinagar

(2) Legal heirs of Dec.Parmar Jyantibhai @ Jonubhai Bababhai

2/1 Babiben Jayantibhai @ Jonubhai Parmar

2/2 Alpesh Jayantibhai @ Jonubhai Parmar

2/3 Sanjay Jayantibhai @ Jonubhai Parmar

2/4 Jayesh @ Dhabubhai Jayantibhai @ Jonubhai Parmar

All Age: Adult, Occupation-labourer,

All Residing at : Dhanaj,

Tal.Kalol, Dist.Gandhinagar

(3) **Talati Cum-Mantri**

Dhanaj Gram Panchayat, Dhanaj

Tal.Kalol, Dist.Gandhinagar

(4) **Taluka Development Officer,**

Taluka Panchayat office,

Tal.Kalol, Dist.Gandhinagar

...Defendants

**SUIT FOR DECLARATION AND PERMANENT
INJUNCTION**

Mr. B. K. Vankar, Learned Advocate for the Plaintiff
Mr. A. K. Oza Learned Advocate for the defendant no.1 & 2
Mr.M.D.Raval, Learned Advocate for the defendant No.3 & 4

J U D G M E N T

PLAINT IN BRIEF:

1. The plaintiff have filed this suit seeking declaration of rights and permanent injunction in respect of suit property bearing Property/Gada No.40 situated at Mouje Dhanaj, Harijan Vas, Tal.Kalol (hereinafter it is referred to as “**suit property**”) The plaintiff is owner and possessor of the suit property, which is an open land Gada. The suit property stands recorded in the name of plaintiff at the office of Grampanchayat. The plaintiff is also regularly paying the Grampanchayat Tax in respect of suit property.

1A. The Plaintiff states that the defendants have no right, title, interest or share in the suit property. Despite having no lawful claim over the suit property, the defendants have illegally entered suit property and started digging work with an intention to raise construction thereon. When the plaintiff objected to such illegal acts, the defendants threatened the plaintiff. Thereafter, the plaintiff submitted written representation to the Sarpanch, Grampanchayat, Taluka Panchayat, District Panchayat and the Collector seeking appropriate action against the defendants. For the last one month, the plaintiff has been approaching the concerned authorities for redressal of grievance, however, no action has been taken. The defendants are carrying out digging and proposed construction work on the suit property without obtaining prior permission from the Grampanchayat or any other competent authority. The defendants have no legal right to undertake such activities on the suit property. Hence, the acts of the defendants are illegal.

1B. The plaintiff further submits that on 24.10.2010, the defendants again threatened the plaintiff and stated that the plaintiff may approach any authority for any help, but no action would be taken against them and that they would complete the construction over the suit property before Diwali. Being aggrieved by the said threat and illegal acts of the defendants, the plaintiff obtained legal advice to file the present suit before the Court. The cause of action arose about one month ago when the defendants started digging to raise construction over the suit property without any legal right and further arose on 24.10.2010

when the defendant extended the aforesaid threats.

1C. In this suit the plaintiff prayed declaration that the defendants have no right, title or interest over the suit property as the suit property is under ownership of the plaintiffs and also prayed permanent injunction against the defendants that the defendants be restrained from entering, digging, or carrying out any construction work on the suit property.

WRITTEN STATEMENT IN BRIEF:

2. On service of summons to the defendants, the defendants have appeared through their learned advocate before this Court. The defendant no.1 & 2 have filed their written statement cum reply vide Exh-16. However, after joining as defendants in this suit, the defendant no.3 & 4 have not filed their written statement in this suit and therefore there is no written statement on record from the defendant no.3 & 4.

2A. The defendant no.1 & 2 have filed their written statement cum reply vide Exh-16, wherein defendant no.1 and 2 have denied all the averments made by the plaintiff in the plaint. It is stated by the defendants that the defendant no.1 and 2 are real brother, residing together and earning their livelihood through labour work. No such suit property as shown in the possession of the plaintiff exists in our village. After this suit is filed, the defendants made inquiries regarding the suit property with the Talati-cum-Mantri of the Grampanchayat. During such inquiry, the Talati-cum-Mantri informed the defendants that entry

regarding suit property in the name of plaintiff appears to have mistakenly recorded during the process of new assessment and proceeding for deletion of name is currently ongoing.

2B. The defendants state that the plaintiff has submitted before this Court that the suit property is in his possession, but, this suit property is allotted to the defendant No.1 through order No.5/Jamin/Gamtal/Vashi/10090/94 dated 21.03.1994 by the Taluka Development officer, Kalol. A copy of the said order along with the relevant acknowledgment is annexed herewith. The defendants has also paid tax and other dues in respect of said land. The suit property is currently in their possession. The defendant intended to construct a residential house on the said property, but, due to lack of money, the defendants have not been able to undertake such construction till date. At present, the defendants are using the said property for sheltering and keeping their cattle. The property is also recorded vide registration no.724 in the assessment property register maintained by the Grampanchayat. Copies of relevant tax assessment receipts are annexed. The plaintiff has falsely filed the suit and liable to be dismissed with costs.

COUNTER AFFIDAVIT BY THE PLAINTIFF IN BRIEF

3. The plaintiff has filed his counter affidavit vide Exh-23 against the reply of the defendants, wherein, he has denied the facts stated by the defendants and reiterated the facts stated in his plaint.

TEMPORARY INJUNCTION

4. The Plaintiff has preferred an application for interim injunction vide Exh-5 along with this suit. An order was passed below this application on 27.03.2017 by my Ld. Predecessor presiding officer to decide this application along with the suit .

ISSUES:

5. After considering the pleadings filed by both the parties, following issues were framed vide Exh-62.

૧. શું વાદી પુરવાર કરે છે કે, દાવાવાળી મિલકતના તેઓ સ્વતંત્ર માલિક કબજે ભોગવટે દાર છે ?
૨. શું વાદી પુરવાર કરે છે કે, દાવાવાળી મિલકતમાં પ્રતિવાદીઓને કોઈ હકક અધિકાર નથી ?
૩. શું વાદીને કોઈ દાદ મળવાપાત્ર છે ?
૪. શું હુકમ? શું હુકમનામું ?

FINDINGS:

6. My findings thereon are as under:

- (1) In Negative
- (2) In Negative
- (3) In Negative
- (4) As per final order.

PLAINTIFF'S EVIDENCE:

7. The plaintiff has produced following evidence in support of his suit:

ORAL EVIDENCE

No.	Description	Exhibit
1	Examination in chief on Affidavit of Paliben Gandabhai Parmar (P.O.A. holder of the Plaintiff)	102
2	Examination in chief on Affidavit of Patel Chandubhai Parsottamdas (witness of the Plaintiff)	107

DOCUMENTARY EVIDENCE

No.	Description	Exhibit
1	Notarized true copy of tax bill receipt No.21, Dhanaj, Tal.Kalol	73 (with objection)
2	Notarized true copy of demand bill, Dhanaj, Tal.Kalol	74 (with objection)
3	Notarized true copy of tax bill receipt No.94, Dhanaj, Tal.Kalol	75 (with objection)
4	Notarized true copy of demand bill, Dhanaj, Tal.Kalol	76 (with objection)
5	Assessment letter for the year 2003-04	77 (with objection)
6	Notarized true copy of tax bill receipt No.55, Dhanaj, Tal.Kalol	78 (with objection)
7	Photo Copy of Information given to the Plaintiff by the Talati Cum Mantri, Dhanaj, dated 18.11.2014	79 (with objection)
8	Photo Copy of Notice sent by the Plaintiff to	80

	the Talati Cum Mantri, Dhanaj and Sarpach Shri, Dhanaj	(with objection)
9	Photo Copy of Application to stop construction addressed to the District Development officer, Gandhinagar	81 (with objection)
10	Photo Copy of Application seeking Sanad of plot No.40 to the District Development officer, Gandhinagar	82 (with objection)
11	Notarized true copy of Resolution book of the Dhanaj Gram Panchayat	83 (with objection)

DEFENDANTS EVIDENCE:

8. The defendant no.1 & 2 have produced following evidence in support of their defense:

ORAL EVIDENCE

No.	Description	Exhibit
1	Examination in chief on affidavit of Parmar Kamleshbhai Bababhai (the defendant No.1)	119
2	Examination in chief on affidavit of Prajapati Prakashbhai Jayantibhai (witness of the defendants)	136

DOCUMENTARY EVIDENCE

No.	Description	Exhibit
1	Order passed by the Taluka Panchayat, Kalol on 21.03.1994 (Parmar Kamleshbhai Bababhai Village Dhanaj, Tal.Kalol)	121

2	Terms and condition agreed ('Kabulat') for order passed by the Taluka Panchayat, Kalol dated 21.03.1994	122
3	Resolution book extract for construction permission granted by the Dhanaj Grampanchayat on 30.08.2008	123
4	Assessment letter for the year 2007-2008	124
5	Assessment letter for the year 2020-2021	125
6	Receipt of Tax Bill of Grampanchayat	126
7	Original Panchanma	127
8	Photo Copy of letter sent by the Mamlatdar, Kalol to the Taluka Development officer, Kalol	128 (with objection)

8A. The defendant no.3 & 4 has not produced any evidence in this suit. Thereafter, on 01.07.2025, right of evidence of the defendants was closed by passing an order in Rojkam. Thereafter, the defendant no.1 & have filed application for opening their rights vide Exh-154, however, this application was rejected by passing order below this application. Accordingly, no further evidence is produced from the defendants side.

ARGUMENTS:

9. As per record and proceedings of this suit, this suit was pending on stage of final arguments till 25.07.2025. The plaintiff side had preferred several adjournments application which was allowed. However, last adjournment application preferred by the plaintiff vide Exh-162 was allowed as last

adjournment. However, on next date i.e. 13.07.2026, neither the plaintiff nor their Ld. Advocate appeared before this court or filed any application. Therefore, in the interest of justice right of arguments of the plaintiff was closed. Thus, even after giving more than ample opportunities for arguments to the plaintiff side, no arguments advanced from the plaintiff side in this suit.

9A. The Ld. Advocate of the defendant no.1 & 2 Mr. A.K. Oza submitted the written Arguments of the defendant no.1 & 2 vide Exh-163 and this court has duly gone through the same in detail.

9B. No oral or written submissions were made from the defendant no.3 & 4 on the stage of arguments.

REASONS FOR DECISION

FOR ISSUE NO.1 to 3 :-

10. Looking to the facts and circumstances of the suit, all this issues are interconnected and related to each other as well, therefore, to avoid repetition & for convenience, all of them have been discussed together.

11. As per **Section 101 of the Indian Evidence Act, 1872**, Whoever desires any Court to give Judgment as to any legal right or liability on the existence of facts which he asserts, must prove that those facts exist. In this matter on hand, plaintiff has brought this suit and hence the burden to prove the claim of the suit is on the plaintiff.

12. The Plaintiff has filled this suit for getting declaration that the defendants have no right, title or interest over the suit property as the suit property is under ownership of the plaintiff and the plaintiff has also prayed permanent injunction against the defendants that the defendants be restrained from entering, digging, or carrying out any construction work on the suit property. Thus, in this suit, the Plaintiff claims that the suit property is under his ownership and possession.

13. On the other hand, the defendants denies claim of the plaintiff regarding his ownership and possession of the suit property. The defendant no.1 & 2 states that the suit property is under their ownership & possession by virtue of order No.5/Jamin/Gamtal/Vashi/10090/94 dated 21.03.1994 by the Taluka Development officer, Kalol.

14. Now, to decide the issues emerged in this suit, it is important to evaluate oral as well as documentary evidences advanced from both sides in light of established principles of law and applicable legal provisions.

REGARDING ORAL EVIDENCE:

15. The Plaintiff had initially submitted his oral evidence vide Exh-71 by filing his own examination in chief on affidavit. Thereafter, right of evidence of the plaintiff was closed. Thereafter, right of the evidence of the plaintiff was opened by allowing application filed by the plaintiff vide Exh-101. Thereafter, the Plaintiff has submitted his oral evidence vide

Exh-102 by filing examination in chief on affidavit of P.O.A. holder of the plaintiff i.e. Paliben Gandabhai Parmar. The plaintiff side examined witness vide Exh-107 namely Patel Chandubhai Parsottamdas in support of this suit.

15A. In examination in chief on affidavit submitted by the plaintiff side, the P.O.A. of the plaintiff has reiterated the averments & claims made in the plaint. However, in cross examination made by the Ld. Advocate of the defendant no.1 & 2, she has accepted that suit property currently recorded in the name of the defendant no.1 and possession of the suit property is also with him. She also accepted that no documentary evidence is filed to show that the panchayat has given the suit property to the plaintiff. Thus, this facts goes against the facts of this suit and it does not support the claim of the plaintiff.

15B. In examination in chief on affidavit submitted by the witness of the plaintiff, he has reiterated the averments & claims made in the plaint and he has also supported this facts in his cross examination carried out by the defendant side.

15C. Furthermore, it is also vital to mention here that the defendant no.3 & 4 has given pursis vide Exh-108 and 109 that they do not want to cross examine.

16. On the other hand, the defendants have submitted their oral evidence vide Exh-119 by filing examination in chief on affidavit of the defendant no.1 i.e. Parmar Kamleshbhai Bababhai. The defendant side examined witness vide Exh-136

namely Prajapati Prakashbhai Jayantibhai in support of their defence.

16A. In examination in chief submitted by the defendant no.1, he has reiterated the averments & claims made in the written statement of the defendants and he has also supported facts of written statement in his cross examination. Furthermore, in examination in chief on affidavit submitted by the witness of the defendant, he has also supported averments & claims made in the written statement, but, in cross examination carried out by the plaintiff side has stated that he doesn't know the property number of the defendant no.1.

REGARDING DOCUMENTARY EVIDENCE:

17. In this matter, both parties rely on documentary evidences and these documentary evidences requires detail considerations and these documents are vital to evaluate claims of both sides.

18. Now, as stated above, this suit is preferred by the plaintiff, therefore, burden lies on the shoulders of the plaintiff to prove this suit with cogent evidence. However, considering the entire documentary evidences submitted by the plaintiff, this court humbly believes that the plaintiff has hopelessly failed to establish the basic facts of the suit that the suit property is under ownership of the plaintiff. It is very significant to mention here that the plaintiff has not bothered to file any single original document before this court and all the documentary evidence submitted by the plaintiff has been exhibited with objection. The

plaintiff has not submitted any original document of title of the suit property before this court.

19. It is equally vital to mention that the plaintiff has not bothered to give description of the suit property in his plaint. It is claim of the plaintiff that the suit property bears number 40 and the defendants claims that this suit property bears number 16 and it belongs to the defendant no.1. Furthermore, the defendant no.1 owns property bearing number 16 and the defendant side has also produced documents pertaining to this property bearing number 16 in the name of the defendant no.1. Thus, the case of the defendant no.1 is supported by the documentary evidence produced in this suit. The case of the plaintiff is not supported by the documentary evidence produced in this suit. The plaintiff failed to establish that the suit property bears property number 40 & not 16 and also failed to establish that suit property is under ownership of the plaintiff. It is also becomes difficult to ascertain and identify the suit property in absence of proper description of the suit property.

20. Thus, there is nothing on record which support the claim of the plaintiff and establish that the plaintiff owns & possesses the suit property. This court humbly believes that tax payment receipts and assessment register can not be considered as cogent evidence of title and also for proving the ownership of the of suit property. Thus, this court humbly believes that the plaintiff has failed to establish basic facts of his suit through his evidences. On the other hand, case of the defendants are

supported by the documentary evidence.

REGARDING ISSUES.

21. As the plaintiff has failed to prove that the defendants have no right, title or interest over the suit property and that the suit property is under ownership of the plaintiff, this court has answered issue no.1 to 3 in negative.

FOR ISSUE NO.4 :-

22. Thus, considering all the above discussion of law & fact, when plaintiff has failed to establish his suit and as this court has answered issues in questions accordingly, therefore in larger interest of justice for issue no.4, following final order is passed:

:- ORDER :-

1. The suit of Plaintiff is hereby Rejected.
2. The plaintiff will bear his own cost as well as cost of all the defendants.
3. Decree to be drawn up accordingly.

Pronounced in the open court today, on 28th Day of July, 2026.

Date:28/07/2026
Place:Kalol.

S. G. Sheikh
2nd Addl. Civil Judge, Kalol
Dist : Gandhinagar
(GJ01615)