

GJGS010000902024



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**IN THE COURT OF PRINCIPAL DISTRICT JUDGE,
GIR-SOMNATH, AT VERAVAL.**

REGULAR CIVIL APPEAL No. 04/ 2024

Exh. _____

Appellants :~

Heirs of Reman Rahim @ Babubhai Chhel ;

- (1) **Jubedaben Remanbhai Chhel,**
Age : 72, Occ. : Household
- (2) **Mahamadhusen Remanbhai Chhel**
Age : 51, Occ. : ---
- (3) **Sabiraben Remanbhai Chhel**
Age : 48, Occ. : Household
- (4) **Enaben Remanbhai Chhel**
Age : 45, Occ. : Household
- (5) **Fatmaben Remanbhai Chhel**
Age : 42, Occ. : Household
- (6) **Shabanaben Remanbhai Chhel**
Age : 40, Occ. : Household
- (7) **Yasinbhai Remanbhai Chhel**
Age : 38, Occ. : ----
- (8) **Yusufbhai Remanbhai Chhel**
Age : 36, Occ. : -----
- (9) **Munafbhai Remanbhai Chhel**
Age : 34, Occ. : -----
- 10) **Shabirhusain Remanbhai Chhel**
Age : 32, Occupation : -----
All R/o : Prabhas Patan
Tal. : Veraval, Dist. Gir-Somnath.

Versus**Respondents :~****Heirs of Late Rahim Ibrahim Chavda****(1) Heirs of Late Husain Rahim Chavda****(1/1) Mahekben Husain Chavda**

Age : 58, Occ. : Household

(1/2) Abdulgani Husain Chavda

Age : 40, Occ. : -----

(1/3) Asmin Husain Chavda

Age : 38, Occ. : -----

(1/4) Memudaben Husain Chavda

Age : 32, Occ. : Household

(1/5) Anvar Husain Chavda

Age : 30, Occ. : -----

(1/6) Asif Husain Chavda

Age : 28, Occ. : -----

(1/7) Mustak Husain Chavda

Age : 26, Occ. : -----

(2) Heirs of Late Ali Rahim Chavda**(2/1) Amina Ali Chavda**

Age : 60, Occ. : Household

(2/2) Hanif Ali Chavda

Age : 35, Occ. : -----

(2/3) Altaf Ali Chavda

Age : 35, Occ. : -----

(2/4) Havabai Rahim Chavda

Age : 80, Occ. : Household

All R/o : Prabhas Patan,

Tal. : Veraval, Dist. : Gir-Somnath.

Appearance

Ld. Advocate Mr. B.M. Sumra for the appellants.

Ld. Advocate Mr. R.A. Siraji for the respondents.

Appeal under Section 96 and Order-41, Rule-1 of C. P. C.

J U D G M E N T

1. The present appeal emanates from the judgment and decree dated 30.12.2023 passed by the Learned 2nd Additional Sr. Civil Judge, Veraval in Regular Civil Suit No. 181/2006, whereby the suit preferred by the present Appellants / Original Plaintiffs was dismissed.
2. The appeal was filed by the Appellants – original plaintiffs, hence, for the sake of brevity and convenience, present “Appellants” are herein referred to as “Original Plaintiffs” and present “Respondents” are hereinafter referred to as “Original Defendants”.
3. Filtering the unnecessary details, the facts in question and contentions raised by the parties, which are requisite to be frescoes for the purpose of disposal of present appeal are as under:-
 - 3.1. Plaintiff’s father Rahim Reman Chhel was the owner and occupant of the suit property bearing Prabhas Patan City Survey No.B/102 and Prabhas Patan City Survey No.B/99 as he purchased the suit property from its original owner Memon Jamal Aarbi Mamdani for Rs.95/- on dated 14/11/1947 and after his death Plaintiffs became the owners and occupant

of the suit property as other legal heirs of his father relinquished their rights from the suit property and Prabhas Patan City Survey No.B/99.

- 3.2. Further, it is the say of Plaintiff that, father of Defendants was the tenant of Memon Ishak Mamad and was living in property of Memon Ishak Mamad and at that time Defendant's father requested Plaintiff's father to use the suit property for keeping cattle.
- 3.3. Thereafter Memon Ishak Mamad filed Eviction suit against legal heirs of Rahim Ibrahim Chavda bearing Regular Civil Suit No.409 of 1967 wherein the Court decreed the suit in favour of Memon Ishak Mamad and ordered legal heirs Rahim Ibrahim Chavda to evict the premises of Memon Ishak Chavda.
- 3.4. Thereafter legal heirs of Rahim Ibrahim Chavda requested father of Plaintiff to permit them to live in the suit property and Plaintiff's father permitted them to live in the suit property due to his relationship with Defendant's father.
- 3.5. Further it is the say of Plaintiff that, Defendants have removed old construction in the suit property and raised new construction in the suit property in the absence of Plaintiff when he went to Mumbai to attend the marriage.
- 3.6. Therefore Plaintiff filed Regular Civil Suit No.121 of 2006 against father of Defendants for declaration

and permanent injunction restraining them to construct in the suit property. But Defendants filed caveat application before filing of the suit and completed construction work in the suit property and thereby they became illegal occupants

3.7. Therefore, Plaintiff has filed the present suit against the Defendants for Eviction of the suit property bearing Prabhas Patan City Survey No.B/102 and also to obtain peace and vacant possession of the suit property from Defendants and also to obtain usage charges of the suit property and compensation for damage of the suit property from Defendants.

3.8. The prayer in the said suit is reproduced herein below;

(૧) ઉપર દાવા પારા-૨ માં દર્શાવ્યા મુજબની વિગતવર્ણન, ભરતરી અને ચતુરદિશાવાળી અમારી માલીકીની સ્થાવર મિલકત મકાનોનો શાંત, ખાલી અને નિર્ભય કબ્જો આ કામનાં પ્રતિવાદીઓ પાસેથી અમો વાદીને અપાવતું હુકમનામું પ્રતિવાદીઓની વિરૂદ્ધ અને અમો વાદીના લાભમાં કરી આપવા તેમજ-

(૨) આ કામનાં પ્રતિવાદીઓ પાસેથી દાવા પારા-૨ માં જણાવેલ વિગતવર્ણન, ભરતરી અને ચતુરદિશાવાળી સ્થાવર મિલકતનાં, કબ્જા, વસવાટ અને વપરાશ બદલની નુકશાનીનીનાં માસીકરૂપીયા ૧૦૦૦/-લેખે આ દાવો દાખલ થયા તારીખથી કબ્જો મળતા સુધી જે કાંઈ હીસાબે થાય તે પ્રતિવાદીઓની જાત, જંગમ અને સ્થાવર મિલકતથી એકી રકમે એકીસાથે વસુલ અપાવતું હુકમનામું પ્રતિવાદીઓની વિરૂદ્ધ અને અમો વાદીના લાભમાં કરી આપવા તથા-

(૩) તેમજ-આ દાવાનું તમામ ખર્ચ પ્રતિવાદીઓ પાસેથી વસુલ અપાવવા તેમજ

(૪) આ દાવા અંગે મળી શકતી હરકોઈ યોગ્ય અને અનુરૂપ દાદ અપાવતું હુકમનામું આ કામના પ્રતિવાદીઓની વિરૂદ્ધ અને અમો વાદીના લાભમાં કરી આપવા અમારી નમ્ર અરજ છે.

4. The Original Defendants were duly served with the summons / notice of the suit and Original Defendants appeared through Learned Advocate and filed written statement at Exh.11 wherein they denied all material facts of the plaint. Defendants have contended that, their father took the suit property as well as other property bearing Prabhas Patan City Survey No.99 on rent from its original owner Mamad Jamal Aarbi and was using the suit property to put his cattle and thereby their father was the tenant of Mamad Jamal Aarbi in respect of the suit property before independence of India. That, thereafter their father vacated Prabhas Patan City Survey No.99 due to arrears of rent as he could not pay the rent of the said premises to its owner Mamad Jamal Mamdani and thereafter their father started residing in the suit property. It is contended that, due to earthquake walls of the suit property was damaged. But they could not repair damaged wall of the suit property due to their weak financial condition. That, they raised new construction in the suit property as the said suit property was collapsed suddenly and they have no option except to repair the same. That, Plaintiff's father has neither purchased the suit property nor gave the suit property to his father for the purpose of residence. Plaintiff has created bogus and forged document in respect of the suit property and also signed bogus signature of its owner in the said forged and bogus document and thereby trying to snatch away the suit property. That, Plaintiff has suppressed material facts before this Court and filed the

present suit on the basis of forged and bogus documents. Moreover Plaintiff has not joined legal heirs of original owner of the suit property and therefore Plaintiff's suit is barred by non joinder of necessary party. Therefore Defendants have requested to dismiss the present suit of Plaintiff with cost.

5. In support of their suit, the parties have produced the following oral as well as documentary evidence in the trial court :-

Oral Evidence of Plaintiffs' side:-

Sr. No.	Exhibit	Particulars
1	50	Deposition of Shabbirhusen Remanbhai Chhel
2	76	Deposition of Ismailbhai Rahimbhai Chhel

Documentary Evidence of Plaintiffs' side :-

Sr. No.	Exhibit	Particulars
1	71	Certified copy of a judgment passed by Civil Court Veraval in Regular Civil Suit No. 409 of 1967
2	72	Copy of an order of Hon'ble High Court of Gujarat in Special Civil Application No. 4164 of 2012
3	73	Copy of an order of Hon'ble High Court of Gujarat in Special Civil Application No. 4164 of 2012
4	132	Certified copy of a property card bearing Prabhas Patan City Survey No. B/99
5	133	Certified copy of a property card bearing

Sr. No.	Exhibit	Particulars
		Prabhas Patan City Survey No. B/102
6	60	Original sale deed of the suit property
7	82/100	Original application of Memon Mamad Jamal before Revenue Commissioner

Oral Evidence of Defendants' side:-

Sr. No.	Exhibit	Particulars
1	96	Deposition of Defendant No.2/2 Hanifbhai Alibhai Chavda.
2	125	Deposition of Gafar Husainbhai Panja.

Documentary Evidence of Defendants' side :-

Sr. No.	Exhibit	Particulars
1	97	Copy of an order of the Collector Junagadh in Case No. Land/4/C/1129/06 and No. Land/4/Appeal/04/07-08
2	106	Certified copy of Village Form No. 8-A bearing Account No. 582 of Prabhas Patan Village
3	107	Certified copy of Village Form No. 7 of Revenue Survey No. 963/2 of Prabhas Patan Village
4	108	Certified copy of Village Form No. 12 of Revenue Survey No. 963/2 of Prabhas Patan Village
5	109	Certified copy of an order in Case No. 6/89
6	110 to 116	Certified copy of tax bill of Veraval Patan Municipality
7	117	Certified copy of a panchnama in respect

		of varsai of Memon Jamal Aarbi
8	118	Certified copy of a Rojnama
9	119	Certified copy of a certificate issued by Chief Officer, Veraval-Patan Municipality
10	120	Certified copy of a map of the suit property
11	40	Original report of Hand Writing Expert of FSL Gandhinagar
12	137	Copy of a notice issued by the Office of Deputy Collector, Veraval in RTS Appeal No. 34/2022
13	138	Copy of Special Civil Application No. 17931 of 2022 before Hon'ble High Court of Gujarat
14	144	Final Writ – Original in Special Civil Application No. 17931 of 2022
15	121	Certified copy of property card of the suit property
16	103	Certified copy of property card bearing Prabhas Patan City Survey No. 98
17	104	Certified copy of property card bearing Prabhas Patan City Survey No. 99
18	105	Certified copy of property card bearing Prabhas Patan City Survey No. 102 (Suit Property)
19	123	Original Partition Deed.

6. The following issues have been framed by the Ld. Trial Court, which are as under:-

- (૧) શું વાદીઓ પુસ્તક કરે છે કે, તેઓ દાવાવાળી બ્લોક નં.૯૯ અને ૧૦૨ ના સંપૂર્ણ માલિક અને મુખત્યાર છે ?

- (૨) શું વાદીઓ પુરવાર કરે છે કે, દાવાવાળી મિલકત પૈકી બ્લોક નં.૧૦૨ વાળી મિલકત પ્રતિવાદીના પિતાશ્રી મરહુમ રહીમ ઈબ્રાહીમ ચાવડાએ વગર ભાડે વાપરવા માટે આપેલ ?
- (૩) શું વાદી માંગ્યા મુજબની દાદ મેળવવા હક્કદાર છે ?
- (૪) શું પ્રતિવાદીઓ સાબીત કરે છે કે, પ્રતિવાદી નં.૧ ના પિતા મરહુમ રહીમ ઈબ્રાહીમ ચાવડાએ મેમણ ઈશાક મામદ પાસેથી મકાન ભાડે લીધેલ અને તે જ અરસામાં આ મકાનની બરાબર સામે આપેલ મામદ જમાલ મામદાણીની સીટી સર્વે બ્લોક નં. ૧૦૨ વાળી મિલકત ભાડે રાખેલ ?
- (૫) શું પ્રતિવાદી સાબીત કરે છે કે, દાવાવાળી મિલકતની ચારેય દીવાલોમાં તિરાડો પડી જતા તે દીવાલની જગ્યાએ નવી દીવાલ ચણી પ્લાસ્ટર કરી રહેલાકની વ્યવસ્થા કરેલ ?
- (૬) શું વાદીના દાવાને જરૂરી પક્ષકારનો બાધ નડે છે ?
- (૭) શું હુકમ અને હુકમનામું ?

7. The learned Trial Court has answered the Issue Nos.1 & 2 in the affirmative, Issue Nos. 3, 4 & 6 in the negative and Issue No.5 in the partly affirmative and on the basis of such findings, has dismissed the suit of the plaintiffs.
8. Being aggrieved and dissatisfied by the judgment and decree of the Learned Trial Court, present appeal is preferred by the Original Plaintiffs on the following grounds:-
1. The order passed by the learned trial Court is contrary to law and has not been passed in accordance with the applicable provisions. Instead of passing the decree in favour of the appellants, the learned Court has committed a serious error in dismissing the suit.

2. The learned trial Court, without properly applying its mind, though having held that the main ingredients were proved by the appellants and having accepted the appellants as the owner of the disputed property, ought not to have dismissed the suit.
3. The learned trial Court, though having understood the subject matter of the suit and the facts involved, and having held them to be true and proved, has committed a serious error in dismissing the suit.
4. The learned trial Court, despite having accepted the title of the appellants over the property, has committed a serious error in dismissing the suit.
5. The learned trial Court, though having drawn inferences from the oral evidence in favour of the appellants, has committed a serious error in dismissing the suit on the ground that the suit was not one for title and declaration.
6. The learned trial Court, after discussing all the issues and having decided the same in favour of the plaintiffs/appellants, has committed a serious error in dismissing the suit.
7. The learned trial Court, despite having discussed and considered all the issues in detail, ought to have decreed the suit in favour of the appellants, but instead has committed a serious error in dismissing the same.

8. The learned trial Court, instead of determining the subject matter of the suit and granting appropriate relief, has given a different direction and dismissed the suit, thereby committing a serious error.
 9. The learned trial Court, though the suit was filed for necessary relief, has wrongly held that it was not maintainable and has dismissed the suit by observing that it ought to have been filed under a different head, thereby committing a serious error.
 10. The learned trial Court, despite the fact that the relief sought was clearly for possession of the ownership property and that a tenant has no “locus standi” regarding ownership rights and despite the fact that the Hon’ble Gujarat High Court had laid down the same principle which directly applied to the subject matter of the present suit has failed to give the benefit of such citation to the appellant and has thereby committed a serious error.
 11. The learned trial Court has committed a serious error in appreciating the subject matter of the plaintiff’s suit and the relief sought therein.
9. Before this Court, notice was issued to Respondents - Original Defendants, who appeared through Learned Advocate and filed the cross-objection at Exh.17, contending that though the learned trial Court has rightly dismissed the suit, it committed serious errors of law and fact in deciding certain issues in favour of the Appellants. The Respondents submit that the Appellants are not the

lawful owners of the suit property bearing Block Nos. 99 and 102 at Prabhas Patan, that the property has been in tenancy of the Respondents' forefathers since long prior to independence and that the Appellants filed the suit without joining the true owner or his legal heirs, therefore ownership could not have been declared in their favour. The alleged sale deed at Exh. 60 is not genuine as it lacks essential stamp particulars, contains discrepancies in block numbers, refers to the Saurashtra Government which was not in existence on the date mentioned, and the signatures therein do not match as per the FSL report (Exh. 40), besides the alleged executant having died prior to the date of execution as per City Survey records. The learned trial Court failed to properly appreciate documentary and oral evidence, including cross-examination and expert evidence, and wrongly presumed ownership based merely on revenue entries, which are fiscal in nature and presently under challenge before the District Collector. Hence, while the dismissal of the suit is correct, Issues Nos. 1 and 2 ought to have been decided in the negative and Issues Nos. 4 and 6 in the affirmative, and therefore the appeal deserves to be dismissed with costs and the findings suitably modified in terms of this Cross Objection.

10. The Learned Advocate for the appellants - Original Plaintiffs has submitted written arguments vide Exh.28, and contended that the suit property bearing City Survey Nos. 99 and 102 was given to the Respondent only for use and not on rent and the Respondent has failed to produce

any rent receipt, rent agreement, or documentary proof of tenancy despite having sufficient opportunity since 2006, thereby establishing that he is merely an illegal occupant. The trial Court has already held in favour of the Appellant on Issues Nos. 1 and 2 by affirming his ownership and by holding that the property was given without rent and has also decided Issues Nos. 4 and 6 in the negative, thereby rejecting the Respondent's tenancy claim and objection of non-joinder of parties, yet, despite these findings, the Court wrongly dismissed the suit by answering Issue No. 3 in the negative. The Appellant's ownership documents and mutation entries have been upheld up to the Hon'ble Gujarat High Court in Special Civil Application No. 4164/2012, wherein it was held that the Respondents have no locus standi to challenge ownership and as per settled law, an unregistered document below Rs.100/- is valid under Section 17 of the Registration Act. The real owner or his heirs have never challenged the Appellant's title for decades, and therefore the Respondents, being neither owner nor tenant, cannot dispute ownership. Since the suit was filed for possession and damages based on established ownership, there was no necessity to seek declaration of title, and dismissal of the suit on that ground is a serious legal error. Hence, the Appellants prays that the impugned judgment dated 30/12/2023 be set aside, the suit be decreed for possession and damages and the present appeal be allowed.

11. The Learned Advocate for the respondents have appeared and submitted written argument vide Exh.26 and contended that, the entire suit instituted by the Appellants is based upon a fabricated and legally unsustainable foundation, namely the alleged sale deed at Exh. 60 and a concocted story of permissive possession. The said document, dated 12-11-1947 is demonstrably not genuine, as it lacks essential stamp particulars, does not disclose the stamp vendor details, contains discrepancies in block numbers by referring to Block "C" instead of Block "B", refers to a government which was not in existence on the date of the alleged execution and bears signatures which have been scientifically found not to match as per the FSL report, which remained unshaken in evidence. Even the plaintiffs' own witness, in cross-examination, admitted material defects in the document. The plaintiffs have thus failed to establish lawful purchase or valid title and significantly, have not joined the original owner or his heirs as necessary parties despite clear documentary evidence of their existence in property cards, heir-ship proceedings and municipal records. The revenue and city survey entries relied upon by the plaintiffs are merely fiscal in nature and do not confer title and mere antiquity of a document does not establish its genuineness under Section 90 of the Evidence Act. On the contrary, municipal assessment records and other documentary evidence demonstrate long-standing possession of the defendants' predecessors since prior to independence, thereby

falsifying the plea of permissive possession. In such circumstances, without proving valid title and without instituting a proper title suit against the true owners or their heirs, the plaintiffs are not entitled to seek possession or any consequential relief against the Respondents, and though the dismissal of the suit was correct, the findings on Issues Nos. 1 and 2 deserve modification in favour of the Respondents and the appeal is liable to be dismissed with costs.

12. From the submissions made by both the parties and looking to the facts and evidence on record as well as submissions made by the Learned Advocate for both the parties and the prayer in the appeal, following points arise for determination of appeal:-
 1. Whether the Learned Trial Court has erred in dismissing the suit of the plaintiffs?
 2. What order and decree ?
13. My findings for the aforesaid issues are as under.
 1. In the affirmative.
 2. As per final order.

REASONS

Issue No.1

14. This being a First Appeal under Section 96 of the Code of Civil Procedure, this Court is duty bound to re-appreciate the entire evidence both on facts and law. The Appellate

Court is the final Court of facts, and therefore it must examine whether the findings recorded by the learned Trial Court are consistent with the pleadings, evidence and settled principles of law.

15. The learned Trial Court, while deciding Issue Nos.1 and 2, has elaborately discussed the oral and documentary evidence and has recorded categorical findings that the suit property bearing Prabhas Patan City Survey Nos. B/99 and B/102 originally belonged to Memon Jamal Aarbi Mamdani and that the same was sold to Rahim Reman Chhel, father of the plaintiffs, by way of sale deed dated 14/11/1947 at Exh.60. The Trial Court has further held that after the death of Rahim Reman Chhel, his legal heirs relinquished their rights in favour of the plaintiffs and thereby the plaintiffs became the owners of the suit property.
16. The learned Trial Court has further considered the challenge raised by the defendants regarding the genuineness of the sale deed. The defendants relied upon the handwriting expert's report at Exh.40. However, the Trial Court, after referring to Section 45 of the Evidence Act and relying upon judicial precedents, rightly held that expert evidence is merely an opinion and cannot override substantive documentary evidence. It further held that, the sale deed at Exh.60 is more than thirty years old document and therefore presumption under Section 90 of the

Evidence Act is attracted and is produced from proper custody.

17. The Trial Court also recorded that, neither the original owner nor his legal heirs have challenged the sale deed at any point of time. It further held that, the defendants failed to rebut the documentary evidence produced by the plaintiffs. On the basis of such appreciation, Issue Nos.1 and 2 were answered in the affirmative.
18. Similarly, while deciding Issue No.4 relating to tenancy, the learned Trial Court has held that the defendants failed to produce any rent note, rent receipt or documentary proof of tenancy. Mere production of municipal tax bills does not establish tenancy. Thus, the plea of tenancy was rejected.
19. Thus, from the findings recorded by the learned Trial Court itself, it stands established that, the plaintiffs proved ownership. The defendants failed to prove tenancy. The suit property was given to the defendants without rent and the defendants raised construction. These findings were recorded in favour of the plaintiffs.
20. However, despite recording the above findings, the learned Trial Court dismissed the suit, while deciding Issue No.3 on the ground that the plaintiffs had not sought declaration of title and that since the defendants denied title, the suit ought to have been filed for declaration along with

consequential relief. At this stage, it becomes necessary to carefully examine whether the learned Trial Court was justified in dismissing the suit on such ground. The Ld. Trial Court has decided the Issue No.1 in favour of the plaintiff declaring that the plaintiff is the owner of the suit property. The Ld. Trial Court has further decided the issue whether the plaintiff has given the suit property to Rahim Ibrahim original defendants without any rent in favour of the plaintiffs. Now, while deciding the issue No.3 the Ld. Trial Court has observed in Para No.20.2 that, the original plaintiffs have filed the suit for permanent injunction against the defendant restraining them to construct in the suit property and also to remove construction made by the defendant in suit property and other consequential reliefs against the defendants in respect of the suit property bearing Prabhas Patan City Survey No. “B/102”. However, looking to the suit the prayer at Para No.8 is reproduced herein below;

(૧) ઉપર ઠાવા પારા-૨ માં દર્શાવ્યા મુજબની વિગતવર્ણન, ભરતરી અને ચતુરદિશાવાળી અમારી માલીકીની સ્થાવર મિલકત મકાનોનો શાંત, ખાલી અને નિર્ભય કબ્જો આ કામનાં પ્રતિવાદીઓ પાસેથી અમો વાદીને અપાવતું હુકમનામું પ્રતિવાદીઓની વિરૂદ્ધ અને અમો વાદીના લાભમાં કરી આપવા તેમજ-

(૨) આ કામનાં પ્રતિવાદીઓ પાસેથી ઠાવા પારા-૨ માં જણાવેલ વિગતવર્ણન, ભરતરી અને ચતુરદિશાવાળી સ્થાવર મિલકતનાં, કબ્જા, વસવાટ અને વપરાશ બદલની ગુકશાનીનીનાં માસીકરૂપીયા ૧૦૦૦/-લેખે આ ઠાવો ઠાખલ થયા તારીખથી કબ્જો મળતા સુધી જે કાંઈ હીસાબે થાય તે પ્રતિવાદીઓની જાત, જંગમ અને સ્થાવર મિલકતથી એકી રકમે એકીસાથે વસુલ અપાવતું હુકમનામું પ્રતિવાદીઓની વિરૂદ્ધ અને અમો વાદીના લાભમાં કરી આપવા તથા-

(૩) તેમજ-આ ઠાવાનું તમામ ખર્ચ પ્રતિવાદીઓ પાસેથી વસુલ અપાવવા તેમજ

(૪) આ દાવા અંગે મળી શકતી હરકોઈ યોગ્ય અને અનુરૂપ દાદ અપાવતુ હુકમનામું આ કામના પ્રતિવાદીઓની વિરુદ્ધ અને અમો વાદીના લાભમાં કરી આપવા અમારી નમ્ર અરજ છે.

21. Therefore, the prayer (1) was direction to the original defendants to vacate and hand over the peaceful and vacant possession of the suit property and (2) reliefs is mesne profits of Rs.1,000/- which would occur every months till the trial of the suit was decided. No where in the suit, there is relief claimed for permanent injunction. Secondly, the Ld. Trial Court has also recorded the written statements of the defendants, wherein the original defendants have claimed that the plaintiff is not the owner and occupant of the suit property and the Meman Jamal Arbi Mamdani is the owner and occupant of the suit property, who are the tenants of Meman Jamal Arbi Memdani and thereby the defendants have raised the doubt over the title of the claim. However, the Ld. Trial Court failed to consider that, while deciding issue No.1, Ld. Trial Court itself has discarded the contentions of the defendant and has taken into consideration the Sale Deed at Exh.60. The Ld. Trial Court has observed that;

(18.6) Moreover it is very important to note here that, the original owner of the suit property Memon Jamal Aarbi Mamdani or his legal heirs have neither challenged the execution of sale deed of the suit property nor challenged the genuineness of sale deed in respect of the suit property submitted by Plaintiff vide Exh-60.

(18.7) Moreover sale deed submitted by Plaintiff in respect of the suit property vide Exh-60 on the record of the present suit is more than 30 years old document and the said document is submitted from the proper custody. Therefore as per Section 90 of the Indian Evidence Act, 1872 the said document may

be presumed genuine and the signature and every other part of such document, which purport to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purport to be executed and attested unless and until it is disproved.

(18.8) Here in the present suit on hand the original owner of the suit property Memon Jamal Aarbi Mamdani or his legal heirs have neither challenged the execution of sale deed of the suit property nor challenged the genuineness of sale deed in respect of the suit property submitted by Plaintiff vide Exh-60 on the record of the present suit.

(18.9) That, Defendants have failed to rebut the evidences submitted by Plaintiff and also has failed to produced rebuttal evidence against evidences submitted by Plaintiff.

22. Moreover, the Ld. Trial Court has, following the judgments of *Balkrishna Das Agarwal Vs. Smt. Radha Devi and Others*, reported in *AIR 1989 Allahabad 133*, answered the issue Nos. 1 & 2 in the affirmative and in favour of the plaintiffs, therefore, the question of the ownership is not in doubt. Again the Ld. Trial Court has committed a factual error by holding that the plaintiff have filed the suit for permanent injunction. The suit is not for permanent injunction but the same is for Eviction on the ground that the defendants have destroyed the old construction and have constructed new rooms and bathrooms.
23. Therefore, the Ld. Trial Court has wrongly come to the conclusion that the plaintiff was required to filed the suit for declaration of title and the consequential reliefs of injunction. It is worthwhile mentioning that, the plaintiffs

had filed a suit prior to this suit being R.C.S. No. 121 of 2006, which was at the inception, when the defendants were demolishing the old walls. Since, the Ld. Trial Court has not granted any stay and caveat was to be heard. The new wall was completed. The said suit was for a direction for removal of new construction and restoring the suit property in its original form along with permanent injunction against the defendants restraining from making new construction. On one side the trial court while deciding the issue No.1 & 2 has come to the conclusion that the title is with the plaintiff and have given the property to be used by the original defendants without any rent and while deciding issue No.3 has held that the title of the plaintiff is in dispute and not in possession and not being able to establish the possession and therefore, the plaintiffs have to file the suit for declaration, possession and injunction, whereas the prayer in the suit is for Eviction and not for permanent injunction. Therefore, the Ld. Trial Court has totally error in deciding the issues properly by not reading the pleadings in the plaint and the prayer in the suit.

24. In view of the aforesaid as far as the issue No.3 is concerned, this Court is required to intervene. In order to decide the same, one aspect requires attention that, a civil suit had been filed by the prior owner i.e. Meman Jamal Arbi Memdani through his heir Meman Ishak against the

original defendants in the year 1967 being Regular Civil Suit No. 409/1967, which was decreed in favour of the Meman Isaq Mahmad and the original defendants were directed to vacate the said premises. Therefore, the arguments of the defendant that, they are tenants of the suit property have been dismissed by a Civil Court. The original plaintiffs have placed on record the judgment and decree passed in Regular Civil Suit No. 409/1967, wherein the Ld. Trial Court has directed the defendants to hand over the possession of the suit premises to the owners on or before 15.11.1969 and all the defendants were also directed to pay Rs.540/- to the plaintiffs and the plaintiffs were also entitled to obtain mesne profits at the rate of Rs.15/- per month from the date of the suit till obtaining of the possession after making an inquiry, under Order 20, Rule 12 of Cr.P.C. and defendants were also ordered to pay a costs of the suit. The judgment and decree dated 16.08.1969 has not been challenged by any of the defendants and therefore, from 16.08.1969 the original defendants were never the tenants of the original owner Ishaq Mahmad, who is heir of Jamal Arbi Memdani. Therefore, as far as the plea of the original defendants that they were tenants of the Jamal Arbi Memdani can not be taken into consideration for the reason that the judgment and decree dated 06.08.1969 became final and the original defendants had already been evicted by the direction of the

court. The original defendants only entered to the said property on the say of the father of the original plaintiffs i.e. Rahim Rehman Chhela without any rent and now on the date, when the cause of action has arose i.e. when they destroyed the old construction and built the new construction on survey No. B/102, the original plaintiffs were entitled to file the suit for eviction against the original defendants. Therefore, the title of the original plaintiffs, right of the original plaintiffs to evict the defendants have been successfully proved by the original plaintiffs and therefore, I hold that, the Ld. Trial Court has erred in deciding the Issue No.3 and 5 against the original plaintiffs. From the aforesaid discussion, I hold that, the Ld. Trial Court has erred in dismissing the suit on misconceived ground that the suit was filed for permanent injunction but factually the suit is an Eviction suit and for the possession of the suit property.

25. It is further required to be noted that the learned Trial Court, while deciding Issue No.6, has held that the suit is not bar for non-joinder of necessary parties. The said finding does not suffer from any legal infirmity. The alleged original owner or his heirs have not asserted any competing claim in the present proceedings and an effective decree for possession can be passed in their absence of legal heirs. Therefore, the finding recorded by

the learned Trial Court on Issue No.6 calls for no interference.

26. The respondents in the present matter have produced a copy of the order passed by the learned Collector, which order pertains to the application made by the plaintiffs of this case before the City Survey Office for entering their names in the disputed property. The learned Collector remanded the litigation on two issues:-

- 1) *On behalf of the opponents in the present matter, it is stated that in Special Civil Application No. 4164 of 2012 before the Hon'ble Gujarat High Court, by order dated 30/11/2021, all the orders of the lower authorities were quashed and set aside, and the City Survey Superintendent was directed to decide the matter afresh after hearing all concerned parties. However, it appears that the City Survey Superintendent, Patan, decided the matter by hearing only the petitioners of Special Civil Application No. 4164 of 2012, without hearing the necessary parties. In the impugned order passed by the Deputy Collector, Veraval, the present applicants were heard as tenants/occupants, but the legal heirs of the original owner of the disputed property were not joined as parties.*
- 2) *Further, the opponents in the present matter had filed Civil Suit No. 121/2006 before the learned Civil Court at Veraval against the present applicants, seeking a permanent injunction restraining the defendants (present applicants) from making construction over the disputed property and for removal of the construction already made. They had also filed Civil Suit No. 121/2006 seeking possession of the suit property and recovery of mesne profits/compensation for use and occupation, as well as damages, since the defendants had raised a dispute regarding the title of the suit property. By order dated 30/12/2023, the learned Civil Court at Veraval dismissed both suits on the ground that necessary parties were not joined and that the plaintiffs (present opponents) were not entitled to relief. Upon checking the online records of the District Court, Gir-Somnath, it does not appear that any appeal has been filed against the said judgments. The learned Civil Court, Veraval, has also recorded that, no injunction order has been passed by the learned District Court in any appeal proceedings, and that necessary parties were not joined.*

27. However, in the present case, the learned Collector has relied upon the order passed in the first round of litigation, i.e., on the ground that the document of the plaintiff was unregistered and therefore mutation was not granted. However, the Hon'ble Gujarat High Court in Special Civil Application No. 4164 of 2012 has clearly held that any document involving consideration of less than Rs.100/- does not require registration. The relevant portion of para-6 herein below:-

Heard learned advocates for the parties. Considered the material placed on record. On perusal of the impugned orders, it appears that the rejection of the application for mutation is solely based on the observation that the said sale-deed relied upon by the petitioner, is not registered one. At this juncture, it is pertinent to referred to the sale-deed, of course which is unregistered, wherein the land survey number is specifically mentioned along with the four boundaries thereof. Not only that but, it is also on the Stamp papers of the Saurashtra State at the relevant time. The averments regarding the sale consideration is of Rs.95/-. At this stage Section 17 of the Registration Act is required to be referred to wherein it is specifically provided that the documents relating to transaction of immovable property of consideration of less than 100/- does not required registration. Section 17 of the Registration Act is reproduced herein-below:

“Section 17: Documents of which registration is compulsory.-

(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:-

(a) instruments of gift of immovable property;

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish,

whether in present or in future, any right, title or interest, whether vested contingent, of the value of one hundred rupees and upwards, to or in immovable property;

xxxx	xxxx	xxxx
xxxx	xxxx	xxxx
xxxx	xxxx	xxxx

Therefore, the grounds on which the application came to be rejected is not in consonance with the law.”

28. Therefore, in view of the aforesaid order, since in the first round of litigation necessary parties were not heard and the pendency of the civil suit was not mentioned, the learned Collector cannot now grant approval on new grounds. Further, the learned Collector has no authority to vest the land in the Government, as the relevant provisions are contained in Section 72, which reads as under:-

Section 72: *Interstate occupancy or holding to be sold: If an occupant who is either a Hindu, a Mahomedan, or a Buddhist dies intestate and without known heirs, the Collector shall dispose of his occupancy by sale, subject to the provisions of this Act, or of any other law at the time in force for the sale of forfeited occupancies in realization of the land. revenue, and the law at the time in force concerning property left by Hindus, Mahomedans or Buddhists, dying intestate and without known heirs shall not be deemed to apply to the said occupancy but only to the proceeds of such sale after deducting all arrears of land revenue due by the deceased to [the [Government]] and all expenses of the said sale.*

29. Further, in the civil proceedings, the learned Trial Court has held the document at Exh.60 (Sale Deed) to be genuine and no material has been produced by the defendants to treat the document as not genuine. Therefore, by virtue of the order passed by the learned Collector, the said

document cannot now be treated as bogus. Even otherwise, the Collector has no jurisdiction to decide title or genuineness of a document. That, power is vested in a civil court. Therefore, any order passed by a Collector is not binding upon the civil Court or this Court. In this case, Hon'ble High Court in Sp. Civil Application has already decided the evidentiary value of the document Exh.60, the sale deed. The ownership of the plaintiffs has been decided rightly in favour of the original plaintiffs, by the Civil Court. However, the order of the Ld. Trial Court qua the title and order passed by this court is definitely binding upon the Collector. Therefore, the order of Collector would not help the original defendants in any manner. It is pertinent to note that, the Hon'ble High Courts in catena of judgments have consistently held that, where due to subsequent change in circumstances the relief sought does not survive, the proceedings are required to be disposed of as having become infructuous, in exercise of inherent powers under Section 151 of the Code of Civil Procedure, as no effective adjudication remains necessary.

30. In view of the aforesaid discussion, this Court is of the considered opinion that, the learned Trial Court has committed a serious error of law as well as of fact in dismissing the suit of the plaintiffs despite having recorded categorical findings in their favour on Issue Nos.1 and 2. Once the ownership of the plaintiffs over the suit property

bearing Prabhas Patan City Survey Nos. B/99 and B/102 was accepted and it was further held that the suit property was given to the defendants without any rent, the necessary and logical consequence ought to have been a decree for eviction and possession. The learned Trial Court, after affirming the title of the plaintiffs and the permissive nature of the defendants' possession, could not have dismissed the suit on the erroneous assumption that the plaintiffs were required to file a separate suit for declaration. The dismissal of the suit on such technical ground is unsustainable and the impugned judgment and decree therefore deserve to be set aside. Accordingly, this Court holds that the learned Trial Court has erred in dismissing the suit and the impugned judgment deserves to be set aside.

ORDER

1. The present Regular Civil Appeal No. 04 of 2024 is hereby **Allowed**.
2. The judgment and decree dated 30.12.2023 passed by the learned 2nd Additional Senior Civil Judge, Veraval in Regular Civil Suit No.181 of 2006 are hereby **quashed and set aside**.
3. The suit filed by the original plaintiffs for eviction and possession of the suit property bearing

Prabhas Patan City Survey No. B/102, along with consequential reliefs, is hereby **decreed**.

4. The defendants are hereby directed to hand over peaceful and vacant possession of the suit property to the plaintiffs within a period of three months from the date of this judgment, failing which the plaintiffs shall be at liberty to execute the decree in accordance with law.
5. The plaintiffs shall be entitled to recover mesne profits/usage charges from the defendants at the rate claimed in the plaint from the date of filing of the suit till delivery of possession, and an inquiry under Order XX, Rule 12 of the Code of Civil Procedure shall be conducted by the Trial Court for determination of the exact amount payable.
6. The defendants shall also pay the costs of the suit as well as of this appeal to the plaintiffs.
7. Decree be drawn accordingly.
8. Record and proceedings be sent back to the Trial Court forthwith, with a copy of this judgment.

Signed and Pronounced in the open Court today on 20th day of March, 2026.

Date : 20.03.2026.

Place : Veraval.

(**Vikramsingh B. Gohil**)
Principal District Judge,
Veraval
Unique ID No.GJ01042