

GJGS010014342023



Received on : 30.10.2023

Registered on : 30.10.2023

Decided on : 09.04.2026

Duration : Y-02, M-05, D-10

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

RCA No. 21 OF 2023

Exh. ____.

Appellant :

Ambuja cement Ltd.

is a company registered under the Companies Act. Its registered office was earlier located at Ambuja Nagar, Kodinar, and is currently situated in Ahmedabad.

Vedang Jitendrakumar Mulani,

Age: adult, Occupation: service (job), R/o: at Ambuja Nagar, Taluka Kodinar.

V/s.

Respondents:

1. Rameshbhai Jethabhai Vadher

Age : 57 years, Occu. Labour
R/o.Bhalpara, Veraval
Di. Gir Somanath.

2. Lakhabhai Arsibhai Vadher

Age : 67 years, Occu. Agri.
R/o.Kukrash, Veraval
Di. Gir Somanath.

=====
Appearance :-

Ld. Advocate Mr.M. D. Jethava for the appellant.

Ld. Advocate Mr.L. K. Chandrani for the Res. No. 1

Ld. Advocate Mr. H. V. Jethava for the Res. No. 2

GJGS010014352023



Received on : 30.10.2023
 Registered on : 30.10.2023
 Decided on : 09.04.2026
 Duration : Y-02, M-05, D-10

=====

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

=====

RCA No. 22 OF 2023

Exh. ____.

Appellant :

Lakhabhai Arsibhai Vadher
 Age : 67 years, Occu. Agri.
 R/o.Kukrash, Veraval
 Di. Gir Somanath.

V/s.

Respondents:

1. **Rameshbhai Jethabhai Vadher**
 Age : 57 years, Occu. Labour
 R/o.Bhalpara, Veraval
 Di. Gir Somanath.
2. **Ambuja cement Ltd.**
 is a company registered under
 the Companies Act.
 Its registered office was
 earlier located at Ambuja
 Nagar, Kodinar,
 R/o: at Ambuja Nagar, Taluka
 Kodinar.

=====

Appearance :-

Ld. Advocate Mr. H. V. Jethava for the appellant.
 Ld. Advocate Mr.L. K. Chandrani for the Res. No. 1
 Ld. Advocate Mr.M. D. Jethava for the Res. No. 2

=====

:: C O M M O N J U D G M E N T ::

- (1) Since both the present appeals arise from the same judgment, they are being decided by a common judgment.
- (1.1) The appellants/original defendants have filed the present appeals, being aggrieved and dissatisfied with the order and decree dated 30.09.2023 passed by the learned Principal Senior Civil Judge, Veraval, in Special Civil Suit No. 16/2009, and have challenged the same before this Court under the provisions of Section 96 of the Code of Civil Procedure (CPC).
- (2) Upon filing the present appeals by the appellants, notice was served to the respondents, and Respondent No. (1) appeared through their learned advocate Mr. L. K. Chandrani and submitted objections/reply.
- (3) The appellants were the original defendants in the main suit, whereas Respondent No. (1) was the plaintiff in the original suit; therefore, for the sake of convenience, the parties are referred to according to their original status in the present appeal.
- (4) The brief facts of the original suit giving rise to the present appeal are that the plaintiff filed the suit seeking a declaration that he has a right, title, and share in the suit property being agricultural land, and also for a permanent injunction restraining the defendants from transferring or alienating the suit land. In brief, the case of the plaintiff is that he resides at Bhalpara village of

Veraval Taluka and earns his livelihood through labour work. Defendant No. 1 is the plaintiff's paternal uncle, residing at Kukrash village of Veraval Taluka, and is engaged in agriculture. Defendant No. 2 is a company registered under the Companies Act, engaged in the manufacture of cement, and for such purpose, purchases agricultural and waste lands from various persons by paying substantial consideration. Defendant No. 2 has recently entered into an agreement with Defendant No. 1 concerning the suit land. Therefore, since the plaintiff has a right and interest in the suit land, Defendant No. 2 has been joined as a necessary party.

Further, the agricultural land bearing Revenue Survey No. 108/Paiki 3, admeasuring Hectare 1 Are 36 Sq. Mtrs. 58 (Acre 3-15 Gunthas), assessment Rs. 8-56 Paise, Khata No. 346, situated at village Kukrash, Taluka Veraval, stands in the joint names of Defendant No. 1 and the plaintiff's father, deceased Jethabhai Arshibhai. The plaintiff's father died in an accident on 06/07/2007, and the plaintiff is his sole legal heir. Recently, Defendant No. 1, with the intention of depriving the plaintiff of his share, submitted a false affidavit before the revenue authorities stating that deceased Jethabhai Arshibhai died unmarried, and on that basis sought deletion of his name from the revenue record and continuation of Defendant No. 1's sole name. Accordingly, Entry No. 1417 dated 18/12/2008 was made in Village Form No. 6 (Record of Rights). The plaintiff has filed

objections against the said entry, and therefore the same has not been certified and remains pending before the revenue authority. The boundaries of the suit land are as under:

East: Land of Meramanbhai Kisabhai Pampaniya and Bhikhabhai Ubhrambhai

West: River of village Kukrash

North: Land of Sidabhai

South: Land of Ukabhai Mandabhai

(4.1) Further, the plaintiff has stated that Defendant No. 1 entered into a registered agreement to sell dated 24/12/2008 (Reg. No. 3685) with Defendant No. 2 for a consideration of Rs. 15,70,050/-. The plaintiff issued a legal notice dated 24/12/2008 to Defendant No. 1 asserting his right and share in the suit land as the legal heir of deceased Jethabhai Arshibhai. Despite service, no reply was given. About 30 years ago, around 02/08/1968, the plaintiff's deceased father and mother separated by mutual understanding according to the customs of the Koli community, through a decision of community elders (Panch). The written record of such decision is dated 02/08/1978 and bears thumb impressions of the elders and the plaintiff's parents and grandfather. At that time, the plaintiff was about six months old. The plaintiff is the son born from the lawful marriage of deceased Jethabhai Arshibhai and Rakhmanben, and therefore is the legal heir entitled to his father's share. The plaintiff lived with his

mother at Meghpur, and about 20 years prior to filing the suit, his mother remarried Kalabhai Lakhabhai Sevara of Bhalpara village, from which marriage one son and four daughters were born. Upon the accidental death of the plaintiff's father, the plaintiff received Rs. 1,00,000/- under a government Kishan insurance scheme as the legal heir. Despite this, Defendant No. 1 falsely declared that the deceased died unmarried and filed a false affidavit.

The above facts show that Defendant No. 1, with intent to deprive the plaintiff of his lawful half share in the suit land, falsely declared that the plaintiff's father died unmarried and initiated proceedings to remove his name from revenue records. Further, even before any decision by the revenue authority, Defendant No. 1, falsely claiming exclusive ownership and possession, entered into an agreement dated 24/12/2008 to sell the land to Defendant No. 2 and received consideration.

Thus, Defendant No. 1 has attempted to defeat the plaintiff's rights and transfer the land to the company. Therefore, the plaintiff was compelled to file the present suit seeking declaration of his rights and permanent injunction, and for recovery of his 1/2 share.

Further, the cause of action arose on 18/12/2008 when Defendant No. 1 applied for deletion of the father's name, and on 24/12/2008 when the sale agreement was

executed. The suit is within limitation. The plaintiff has therefore prayed for:

- Declaration that he is the legal heir of deceased Jethabhai Arshibhai;
- Declaration that he has 1/2 share in the suit land bearing R.S. No. 108/Paiki 3;
- Declaration that the land is jointly owned by the plaintiff and Defendant No. 1;
- Declaration that Defendant No. 1 has no right to transfer the land unilaterally;
- Declaration that the agreement dated 24/12/2008 is not binding upon the plaintiff;
- Possession of his 1/2 share in the land;
- Permanent injunction restraining Defendant No. 1 from transferring, altering, damaging, or alienating the suit property;
- Costs of the suit; and
- Any other relief deemed just and proper in law in favour of the plaintiff.

(5) In the suit proceedings, upon service of summons, Defendant No. 1 appeared through his learned advocate and filed a joint written statement at Exh. 21 opposing the plaint as well as the application for injunction. In the said written statement, the Defendant has, in substance, denied the averments made in the plaint and contended that the application for injunction filed by the plaintiff is contrary to law, not maintainable, and based on false

facts, and therefore liable to be rejected at the threshold.

It is admitted that Defendant No. 2 has recently entered into an agreement with Defendant No. 1 in respect of the suit land. It is further contended that, considering the true facts and the revenue record, the suit land has been entered in the name of Defendant No. 1 in the revenue records. Defendant No. 1 is the sole owner and heir of the said land, and accordingly Entry No. 1417 has been certified, which is a true fact. It is admitted that about 30 years ago, on 02/08/1978, the plaintiff's deceased father Jetha Arsi and his mother were divorced by mutual consent as per caste customs. However, the plaintiff's contention that he was about six months old at that time is false. It is contended that the plaintiff was not even born at that time and had no existence. In support of this contention, Defendant No. 1 has produced affidavits of witnesses to the said divorce deed stating that the plaintiff was not born at that time.

It is further contended that the plaintiff never had any right, title, or share in the suit land, and therefore has no locus or authority to file the present suit. It is also contended that the suit is insufficiently stamped and barred by court fees. Defendant No. 1 has further stated the true facts that his elder brother, deceased Jethabhai Arshibhai, had no children, and at the time of his divorce from his wife Rakhman, he also had no issue. During his lifetime, the father of Defendant

No. 1, Arsi Jesa, had four children—three sons namely (1) Kanabhai, (2) Jethabhai, (3) Lakhabhai, and one daughter Devanben—who were the legal heirs. During his lifetime, Arsi Jesa partitioned the ancestral properties among all his heirs and gave them their respective shares. Accordingly, deceased Jetha Arsi was allotted approximately 5 vighas of land from Survey No. 76 of village Kukrash.

It is further contended that the said land was independently possessed and enjoyed by Jetha Arsi, and during his lifetime, while residing separately from Defendant No. 1, he sold the said land by a registered sale deed to Defendant No. 2 - Ambuja Cement Factory. Thus, Jetha Arsi had already disposed of his share of land prior to his death, and therefore had no right, title, or interest in the present suit land.

It is therefore contended that the plaintiff has suppressed true and material facts and has filed the present suit by making false claims to obtain an illegal share. Hence, the relief sought by the plaintiff in para (B) of the plaint seeking declaration of 1/2 share in Survey No. 108/Paiki 3 is not tenable. Similarly, the relief in para (C) seeking declaration of joint ownership is not maintainable. Further, the relief in para (D) seeking restraint against Defendant No. 1 from transferring or encumbering the property is also not maintainable. Likewise, the prayer seeking declaration that the agreement dated

24/12/2008 is not binding upon the plaintiff is also not sustainable.

It is further contended that since the plaintiff has no right or share in the suit land, he is not entitled to possession of any portion thereof. Therefore, it is prayed that the suit of the plaintiff be dismissed with costs. It is also prayed that, since the plaintiff has filed a false and frivolous suit, causing Defendant No. 1 to unnecessarily approach this Hon'ble Court, special costs be awarded against the plaintiff.

- (6) Upon service of summons, Defendant No. 2 appeared through his learned advocate and filed a joint written statement at Exh. 15 opposing the plaint as well as the application for injunction. In the said written statement, Defendant No. 2 has, in substance, denied the averments made in the plaint and contended that the plaintiff's suit is neither true nor lawful. It is alleged that the plaintiff has suppressed material facts and presented false facts, and therefore the present suit is not maintainable.

Defendant No. 2 has contended that it is a bona fide purchaser for value without notice. Therefore, the suit against Defendant No. 2 is not maintainable. It is further contended that, if the plaintiff has any dispute regarding his alleged share against Defendant No. 1, and if he is entitled to any share, he may claim such share in monetary terms; however, a suit in the present form, merely seeking declaration and

permanent injunction, is not maintainable. The plaintiff has produced along with the plaint a registered agreement to sell executed by Defendant No. 1 in favour of Defendant No. 2. Therefore, the market value of the suit property can be ascertained in definite monetary terms. In such circumstances, as per the provisions of the Bombay Court Fees Act, ad valorem court fees on the market value of the property are required to be paid. The plaintiff has stated the market value of the suit property as Rs. 15,70,050/-. Accordingly, ad valorem court fees ought to have been paid on the said amount, which has not been done, and therefore the suit is liable to be rejected.

Further, though the plaintiff has produced the registered agreement to sell and has referred to the transaction in the plaint, no relief has been sought for cancellation of the said agreement. Therefore, despite the existence of a registered agreement, in absence of a prayer for its cancellation, the suit is not maintainable. It is further contended that a registered sale deed has been executed, necessary permissions from competent authorities have been obtained, and possession is with Defendant No. 2. The boundaries of the suit property as stated in the plaint are admitted to be correct.

It is further contended that since the market value of the suit property is fixed at Rs. 15,70,050/-, the valuation for jurisdiction and court fees must be based on such market value. Only in cases where there is no

agreement and the suit is merely for partition of agricultural land, valuation may be based on land revenue assessment; however, where there is a sale agreement, court fees must be paid on market value. Since the requisite court fees have not been paid, the plaint is liable to be rejected under Order VII Rules 10 and 11 of the Code of Civil Procedure. Alternatively, if any doubt arises regarding payment of court fees, it is prayed that the matter be referred to the Court Fee Inspector for appropriate opinion. Defendant No. 2 has further contended that it has purchased the suit property as a bona fide purchaser. Though the plaintiff relies upon the agreement, he has not sought cancellation of the same; therefore, Defendant No. 2 cannot be restrained from enforcing the said agreement. In absence of a prayer for cancellation, the suit is not maintainable. In view of the above facts, it is prayed that the plaintiff's suit as well as the application for injunction be dismissed with costs.

- (7) The plaintiff, in support of his case, has produced the following oral as well as documentary evidence:

- Oral Evidence -

Sr. No.	Particulars	Exh
1	Examination-in-chief of the plaintiff - Rameshbhai Jethabhai	52

- Documentary Evidence -

Sr. No.	Particulars	Exh
1	Death certificate of deceased Jetha Arsi	64
2	Divorce deed/document	65
3	Certified copy of Village Form No. 7/12 extract of Survey No. 108/3 of village Kukrash	66
4	Certified copy of Village Form No. 8-A extract of Survey No. 108/3 of village Kukrash	67
5	Objection application submitted before the Mamlatdar	68
6	Acknowledgment (Regd. A.D.) signed by Mamlatdar	69
7	Postal window receipt	70
8	Legal notice issued by the plaintiff to the defendant	71
9	Postal window receipt	72
10	Acknowledgment receipt (Registered A.D.)	73
11	Letter received from District Panchayat	74
12	Agreement to sell executed by Defendant No. 1 in favour of Defendant No. 2	75
13	Extract of savings bank passbook of Harkari Bank	76
14	Letter issued by Assistant Director of Agriculture to the plaintiff	77
15	Letter issued by District Panchayat to Defendant No. 1	78
16	Affidavit executed by Defendant No. 1	79
17	Certified copy of Village Form No. 6 (Record of Rights) of the suit land	80

8) The defendants, in support of their case, have produced the following oral as well as documentary evidence:

- Oral Evidence -

Sr. No.	Particulars	Exh
1	Examination-in-chief of Vedang Jitendrakumar Mulani on behalf of Defendant No. 2	123

Sr. No.	Particulars	Exh
2	Deposition of witness Vasabhai Meramanbhai Vala	137
3	Deposition of witness Arjuben Ghanshyambhai Gajjar	143
4	Examination-in-chief of Defendant No. 1 Lakhabhai Arshibhai Vadher	147

- Documentary Evidence -

Sr. No.	Particulars	Exh
1	Certified copy of birth certificate from Bhalpara Primary School No. 2 showing plaintiff's name as Rameshbhai Kalabhai Sevara, date of birth 10/08/1977 (Entry No. 132 dated 22/06/2009)	125
2	Certified copy of Voter List (2009) of Somnath Assembly Constituency showing plaintiff's name at Serial No. 106 with Election Card No. GJ/06/038/459613	126
3	Certified copy of registered sale deed No. 1119/2009 dated 15/04/2009	127
4	Certified copy of order dated 06/04/2009 passed by Deputy Collector, Veraval granting permission to purchase the land	128
5	Certified copy of Power of Attorney issued by the Board of Directors of Defendant Company	129
6	Certified copy of register of Bhalpara Primary School	138
7	Letter dated 15/03/2023 issued by Assistant Electoral Registration Officer to Electoral Registration Officer, Veraval	144
8	Letter dated 27/03/2023 issued by Assistant Electoral Registration Officer to Electoral Registration Officer, Veraval	145
9	Copy of Village Form No. 8-A (Land Account Register)	148
10	Divorce deed/document	149
11	Affidavit filed by Defendant No. 1	150

(9) Thereafter, the Trial Court framed the following issues at Exh. 51:

૧. શું વાદી પુરવાર કરે છે કે, વાદી ગુજરાત જિલ્લામાં અરસીભાઈનો પુત્ર છે?
૨. શું વાદી પુરવાર કરે છે કે, વાદવાળી જમીનના તેઓ કાયદેસરના વારસ છે અને તેમનો ૧/૨ હિસ્સો છે?
૩. શું વાદી પુરવાર કરે છે કે, વાદવાળી જમીન વાદી અને પ્રતિવાદી નં. ૧ ની સંયુક્ત માલિકીની છે?
૪. શું વાદી પુરવાર કરે છે કે, વાદવાળી જમીન પ્રતિવાદી નં. ૧ ને સ્વતંત્ર રીતે કોઈપણ રીતે તબદીલ કરવા હકક કે અધિકાર નથી ?
૫. શું વાદી પુરવાર કરે છે કે, તા. ૨૪/૧૨/૨૦૦૮ ના રોજ પ્રતિવાદી નં. ૧ નામે પ્રતિવાદી નં. ૨ સાથે જે કરાર કરેલ છે તે વાદીને બંધનકર્તા નથી?
૬. શું વાદી પુરવાર કરે છે કે, ૧/૨ હિસ્સાની જમીનનો કબજો મેળવવા વાદી હકકદાર છે?
૭. શું વાદી પુરવાર કરે છે કે, દાવાવાળી મિલકત પ્રતિવાદી નં. ૧ પોતે કે અન્ય મારફતે ફેરફાર કે તબદીલી કરાવે નહીં કે નુકશાન કરે, કરાવે નહીં તેવો કાયમી મનાઈ હુકમ મેળવવા હકકદાર છે?
૮. શું પ્રતિવાદી નં. ૨ પુરવાર કરે છે કે, વાદીનો દાવો યોગ્ય કોર્ટ ફી ઉપર નથી?
૯. શું પ્રતિવાદી નં. ૨ પુરવાર કરે છે કે, રજીસ્ટર્ડ સાટા કરાર અન્વયે વેચાણ થયેલ લેણ અને મિલકતનો કબજો તેમની પાસે છે ?
૧૦. શું પ્રતિવાદી નં. ૨ પુરવાર કરે છે કે, વાદીનો દાવાવાળી જમીનમાં કોઈ હકક, હિત, લાગભાગ, માલિકીના ટાઈટલ નથી? અને પ્રતિવાદી નં. ૧ ના જ દાવાવાળી મિલકતના માલિક છે?

૧૧. શું પ્રતિવાદી નં. ૧ પુરવાર કરે છે કે, પ્રતિવાદી નં. ૧ ના મોટાભાઈ જેઠાભાઈ અરસીને કોઈ સંતાન ન હતા?
૧૨. શું પ્રતિવાદી નં. ૧ પુરવાર કરે છે કે, જેઠાભાઈ અરસીભાઈએ રખમણબેન સાથે છૂટાછેડા લીધેલા ત્યારે કોઈ સંતાન ન હતા?
૧૩. શું પ્રતિવાદી નં. ૧ પુરવાર કરે છે કે, અરસીભાઈ વાઢેરે તેના વારસદારોને અને જેઠાભાઈ અરસીભાઈને તેની બાપદાદાની જમીનમાંથી હિસ્સો આપેલ છે?
૧૪. શું વાદી માગ્યા મુજબની દાદ મેળવવા હકકદાર છે?
૧૫. શું હુકમ અને હુકમનામું?

(10) After framing the above issues, and upon considering the evidence and arguments advanced by both parties, the learned Trial Court decided Issues Nos. (1) to (7), (9), and (14) in the affirmative, and Issues Nos. (8) and (10) to (13) in the negative. While deciding Issue No. (15), the Trial Court allowed the suit of the plaintiff. The Trial Court held that the plaintiff, being the son and legal heir of deceased Jethabhai Arshibhai, is entitled to a 1/2 (half) share in the suit property, i.e., agricultural land bearing Revenue Survey No. 108/Paiki 3, admeasuring Acre 3-15 Gunthas (Hectare 1-36-58 Sq. Mtrs.), Khata No. 346, situated at village Kukrash, Taluka Veraval. The Trial Court further directed the defendants to hand over possession of 1/2 share of the suit land to the plaintiff. It was also declared that the agreement dated 24/12/2008 executed by Defendant No. 1 in favour of Defendant No. 2 is not binding upon

the plaintiff. Further, the Trial Court granted a permanent injunction restraining the defendants from selling, mortgaging, gifting, transferring, or otherwise altering, damaging, or causing any loss to the suit property until the partition is effected and possession of the plaintiff's share is handed over. The Court also directed that, since the suit land is assessable to government revenue, the Collector or any subordinate revenue officer authorized by the Collector shall carry out the partition by metes and bounds and deliver possession of the plaintiff's share accordingly. The said order and decree dated 30/09/2023 being challenged as illegal and erroneous, the present appeal has been filed by the appellants being aggrieved and dissatisfied with the same.

(11) In the present matter, in Regular Civil Appeal No. 21/23, the learned advocate Mr. M. D. Jethwa has appeared on behalf of the appellants and has filed his vakalatnama. He has advanced arguments in line with the written submissions previously filed at Exh. 13 by learned advocate Mr. B. M. Purohit. It is contended that Respondent No. (1) had filed a suit before the Trial Court against the present appellants, and the Trial Court has passed a decree against the appellants. The said judgment and decree are contrary to the settled principles of law and are illegal, and therefore deserve to be quashed and set aside.

It is further submitted that Respondent No. (2) was the owner and in independent possession

of the agricultural land bearing Survey No. 108/Paiki 3, admeasuring Hectare 1-36-58 (Acre 3-15 Gunthas), situated at village Kukrash, Taluka Veraval, and the said land stood in the name of Respondent No. (2). The said land has been sold to the present appellants by way of an agreement, and since then, the appellants are bona fide purchasers of the property. The entire sale consideration has been paid by the appellants to Respondent No. (2) through banking channels. However, the Trial Court, without considering these material facts, has passed a one-sided judgment and decree, which deserves to be set aside.

It is further submitted that a registered sale deed bearing No. 1119/2009 dated 15/04/2009 has been executed in favour of the appellants, and on the basis of the said document, the revenue records have also been mutated in the name of the appellants. The appellants, in support of their case before the Trial Court, have produced oral evidence, including the affidavit at Exh. 123 and the deposition of witness Arjuben Ghanshyambhai Gajjar, Mamlatdar, Veraval at Exh. 143. They have also produced documentary evidence at Exh. 125 to 129, 138, 144, 145, and 148. Despite this, the Trial Court has ignored these evidences and has erroneously decreed the suit in favour of the plaintiff.

It is further contended that the Trial Court has committed a serious error in holding that the plaintiff has established a prima

facie case, when in fact no such case exists. The findings recorded on various issues are also erroneous. It is also submitted that before holding that the plaintiff is the son of deceased Jetha Arsi Vadher, the Trial Court failed to consider the fact that the plaintiff's name is recorded as Rameshbhai Kalabhai Sevara, and even in the election card at Exh. 126, the name of Respondent No. (1) is shown as Rameshbhai Kalabhai Sevara. Despite such record, the Trial Court has wrongly concluded that the plaintiff is the son of deceased Jetha Arsi Vadher, which is a grave error.

It is further submitted that when the plaintiff has failed to prove that he is the son of deceased Jetha Arsi Vadher, he is not entitled to claim any share in the suit property. However, the Trial Court has failed to appreciate this aspect and has committed a serious error. It is also contended that the Trial Court has failed to consider the revenue records and the evidence produced by the appellants, and has passed an arbitrary and one-sided judgment and decree. Therefore, it is prayed that the impugned judgment and decree be quashed and set aside, and the present appeal be allowed.

(11.1) In Regular Civil Appeal No. 22/23, the learned advocate Mr. H. V. Jethwa has appeared on behalf of the appellants and has submitted written arguments at Exh. 12. It is contended that Respondent No. (1) had filed a suit before

the Trial Court against the present appellants, and the Trial Court has passed a judgment and decree against the appellants. The said judgment is contrary to the settled principles of law and is illegal, and therefore deserves to be quashed and set aside. It is further submitted that the appellants were in independent possession and ownership of the agricultural land bearing Survey No. 108/Paiki 3, admeasuring Hectare 1-36-58 (Acre 3-15 Gunthas), situated at village Kukrash, Taluka Veraval. The said land was sold by the appellants to Respondent No. (2) by way of an agreement, and since then Respondent No. (2) has become a bona fide purchaser of the said land. The entire sale consideration has been paid by Respondent No. (2) to the appellants through banking channels. However, the Trial Court, without considering these material facts, has passed a one-sided judgment and decree, which deserves to be set aside.

It is further submitted that a registered sale deed bearing No. 1119/2009 dated 15/04/2009 has been executed in favour of Respondent No. (2), and on the basis of the said document, the revenue records have also been mutated in the name of Respondent No. (2). The appellants, in support of their case before the Trial Court, have produced oral evidence including the affidavit at Exh. 147. Respondent No. (2) has examined an independent witness Vasabhai Meramanbhai Vala at Exh. 137 and also examined Mamlatdar, Veraval, Arjuben Ghanshyambhai Gajjar at Exh. 143. Further,

Respondent No. (2) has produced documentary evidence at Exh. 125 to 129, 138, 144, 145, and 148 in support of his case. Despite the same, the Trial Court has ignored these material evidences and has erroneously decreed the suit in favour of the plaintiff, which is illegal and erroneous and deserves to be set aside.

It is further contended that the Trial Court has committed a serious error in holding that the plaintiff has established a prima facie case, despite there being no such case. The findings recorded on various issues are also erroneous. It is also submitted that before concluding that the plaintiff is the son of deceased Jetha Arsi Vadher, the Trial Court failed to consider that the plaintiff's name is recorded as Rameshbhai Kalabhai Sevara, and even in the election card at Exh. 126, the name of Respondent No. (1) is shown as Rameshbhai Kalabhai Sevara. Despite such record, the Trial Court has wrongly concluded that the plaintiff is the son of deceased Jetha Arsi Vadher, which is a grave error.

It is further submitted that when the plaintiff has failed to prove that he is the son of deceased Jetha Arsi Vadher, he is not entitled to claim any share in the suit property. However, the Trial Court has failed to appreciate this aspect and has committed a serious error. It is also contended that the Trial Court has failed to consider the revenue records and the evidence produced by the appellants, and has passed an arbitrary and

one-sided judgment and decree. Therefore, it is prayed that the impugned judgment and decree be quashed and set aside and the present appeal be allowed.

(12) In these two appeals, Respondent No. (1), through his learned advocate Mr. L. K. Chandrani, has submitted written arguments stating that all the grounds raised by the appellants in the present appeals are incorrect. It is contended that the judgment and decree passed by the Trial Court are in accordance with the settled principles of law, and therefore, this Court does not need to interfere. Hence, it is prayed that both the present appeals filed by the appellants be dismissed. It is further submitted that in the suit, the plaintiff (Respondent No. 1) had produced the divorce deed executed by the plaintiff's mother, which was not challenged by the defendants. During cross-examination, Respondent No. 1 was asked and admitted: "We are the sons of deceased Jetha Arsi." Further, the plaintiff (Respondent No. 1) has proved his claim before the Trial Court through oral and documentary evidence. The plaintiff's father had died accidentally, and the heirs received compensation of Rs. 1 lakh, which the plaintiff has received as the lawful heir of deceased Jetha Arsi. While Respondent No. (1) had applied for this compensation, the application was incomplete as certain required information was missing, which fact was also established in the Trial Court. Moreover, the transaction concerning the disputed land between Lakh Arsi

and Ambuja Cement Company is also suspicious. Respondent No. (1) had executed a false affidavit in his sole name to claim the disputed land, while the land had actually been sold to Respondent No. (2). Thus, the claim of Respondent No. (1) / plaintiff has been proved through oral and documentary evidence, and the Trial Court rightly decreed the suit. There is no apparent error in the Trial Court's judgment. Therefore, it is prayed that the judgment of the Trial Court be upheld and both appeals filed by the appellants be dismissed.

(13) I have considered the written as well as oral submissions advanced by the learned Advocates for the respective parties, the facts stated in the memorandum of appeal, the evidence produced in the present appeal, the entire record and proceedings of the learned trial Court, as well as the entire evidence led by the parties before the trial Court, and the impugned judgment and decree. Upon re-appreciation of the same, the present appeal is being decided.

(14) In view of the aforesaid facts, the following points arise for my determination in the present appeal:

:: Points for Determination ::

1. Whether the Appellants/original Defendants have proved that the order and judgment passed by the Principal Senior Civil Judge of Veraval in Special Civil Suit No. 16/2009 on 30.09.2023, which allowed the

claim of the plaintiff, are contrary to legal provisions and legally erroneous, and that this court is therefore entitled to interference ?

2. What order?

(15) My findings on the above points are as under:

1. In the Negative.
2. As per the final order.

(16) The reasons for my aforesaid findings are as under:

::: Reasons :::

Point No. 1

(17) In this case, after considering the submissions of the advocates of both parties and the trial court's order and record, the plaintiff has made the following submission in the claim: that the plaintiff is the son of the late Jethabhai Arsi Bhai and the sole heir, and that the disputed land, located in Kukarash village of Veraval Taluka, survey no. 108/3, measuring 3-15 gunthas (or 1-36-58 sq. meters), is part of the joint agricultural land of the late Jethabhai Arsi Bhai and Respondent No. 1. Since the plaintiff is the sole heir of Jethabhai Arsi Bhai, he is a legal heir to the disputed land and is entitled to a ½ share. The disputed land is jointly owned by the plaintiff and Respondent No. 1. It is alleged that Respondent No. 1, in order to avoid giving the plaintiff his share, submitted a false affidavit to the revenue officer claiming that

the late Jethabhai Arsi Bhai had died, thereby providing false information, and got the plaintiff's name removed from the revenue record while keeping Respondent No. 1's name intact. This was recorded in the village record, Survey No. 6, entry no. 1417 dated 18/12/2008. The plaintiff challenged this entry by filing an objection, and therefore the entry has not been approved. The respondent, in the claim, has disputed that the plaintiff is not a legal heir of the late Jethabhai Arsi Bhai, claiming that the plaintiff never had any right or share in the disputed land. They further argue that when Jethabhai Arsi Bhai was alive, he was suffering from a disease, and the plaintiff's mother, Rakhman Ben / Lakhabhai Waja, residing at Meghpurwala, had divorced Jethabhai Arsi Bhai and the marriage had ended without having any children. Therefore, the current plaintiff cannot be considered a legal heir of Jethabhai Arsi Bhai. Additionally, they have claimed that entry no. 1417 was approved and that the plaintiff has no right or share in the disputed land.

(18) Now, before the trial court, the plaintiff submitted an affidavit as evidence to prove his claim. In this affidavit, the plaintiff attempted to support his claim by stating the facts of the case. During cross-examination by the respondent, the plaintiff admitted that his father, Jethabhai, has passed away. At the time of his father's death, he was not present and did not participate in the last rites. The plaintiff has not submitted a ration card to

prove that Jethabhai was his father in this case. At the time of his father's death, his mother was not living with his father. The disputed land was under the possession of his uncle, and the plaintiff voluntarily admitted that while his father was alive, the land was in his father's possession. After his father's death, the possession of the land remained with his uncle. The plaintiff also admitted that he was a minor when his mother divorced his father.

(19) Now, considering the cross-examination conducted by Respondent No. 1, it is recorded that they established the facts. The plaintiff is the son of the late Jethabhai Arsi Bhai. The plaintiff's mother divorced the late Jethabhai Arsi Bhai. At the time of his father's death, the plaintiff's mother was not living with his father. Respondent No. 1 also suggested that the plaintiff was a minor when his mother divorced his father, and the plaintiff admitted this fact. Thus, according to the questions asked by Respondent No. 1 and the suggestions made during cross-examination, it is established that the plaintiff was a minor when his mother divorced his father, and the plaintiff has admitted this fact.

(20) Now, to prove that Respondent No. 1 is not a heir of Jethabhai Arsi Bhai, during cross-examination of the plaintiff, the admissions were made. "It is correct that, according to record No. 1417, the disputed land was registered in my uncle's name. It is correct that the possession of the disputed land is

with my uncle." "It is correct that I used to live permanently with my grandfather, Kala Lakha." Thus, during the plaintiff's cross-examination, Respondent No. 1 asked questions indicating that Jethabhai Arsi Bhai was the plaintiff's father and that Respondent No. 1 was the plaintiff's uncle. Further, in paragraph 7 of the affidavit, the plaintiff stated that "My mother, Ramkhanben, and the late Jethabhai Arsi Bhai, who were married, separated by mutual consent on 2/8/1978, approximately 34 years ago, according to our caste customs, thereby ending the marriage. At that time, I, the plaintiff, was approximately six months old. The written decision of the community elders is dated 2/8/1978 and signed by Jethabhai Arsi Bhai, my mother, my grandfather, and the community elders, with thumb impressions." This fact has not been challenged or questioned by Respondent No. 1 or Respondent No. 2. Now, looking at the affidavit submitted by the plaintiff (Exhibit-147) before the trial court, the cross-examination by Respondent No. 1 shows. Respondent No. 1 admitted that Jethabhai was their brother, older than them, married, and his wife's name was Ramkhanben. The disputed land pertains to Jethabhai and Ramkhanben, and they had legally separated. The divorce document was executed in the presence of village elders, which has been presented by the plaintiff. The divorce document submitted as Exhibit-65 before the trial court, although not showing the exact date, is from the year 1978 and is therefore

over 30 years old. No challenge has been made by any respondent questioning the authenticity of this document. Under Section 90 of the Indian Evidence Act, the handwriting and signatures on this document can be presumed. The document indicates the divorce between Jethabhai and Ramkhanben, and during cross-examination, Respondent No. 1 verbally admitted that it was executed. The document also mentions that "And Rs. 400 to be given to Ramkhan for the sons ('sokra')." From this, it can be inferred that Jethabhai Arsi Bhai and Ramkhanben had one son.

(21) Furthermore, before the trial court, to prove that the plaintiff Rameshbhai is the son of Kalabhai Lakhabhai and not of Jethabhai Arsi Bhai, the respondents examined Vasabhai Meramanbhai, headmaster of Bhalpara Primary School (Exhibit-137), and submitted evidence including a certified copy of the relevant page of the age register (Exhibit-138). In Exhibit-138 and Exhibit-125, at serial No. 153, the student's name is recorded as Rameshbhai Kalabhai Sevara. The child's birth is shown to have occurred in Bhalpara village on 10/08/1977. The register does not mention Rameshbhai's mother's name. It also does not mention Jethabhai Wadher's name as his father. Subsequently, the plaintiff cross-examined this witness. During cross-examination, It was confirmed that the age register (Exhibit-138) does not mention the mother or father's name for Rameshbhai Kalabhai Sevara (serial No. 153).The witness could not confirm who had

requested the entry. The place of birth as Bhalpara is indicated in the age register. However, based on the evidence from Respondent No. 1, who is the plaintiff's uncle, it is established that Rameshbhai is the heir of Jethabhai Arsi Bhai (Respondent No. 1's brother). The witness in question only gave testimony based on records and does not have personal knowledge. Since Respondent No. 1 is the plaintiff's uncle and the younger brother of Jethabhai Arsi Bhai, his personal testimony carries more weight than the record-based witness. Additionally, the respondents examined Mamlatdar Arjuben Ghanshyambhai (Exhibit-143) and referred to voter list Exhibit-126, showing the name of Sevara Rameshbhai Kalabhai at serial No. 106. They attempted to prove that the plaintiff is the son of Kalabhai Lakhabhai, not Jethabhai Arsi Bhai. However, as discussed above, based on personal knowledge and testimony of Respondent No. 1, it is established that the plaintiff is indeed the heir of Jethabhai Arsi Bhai. This testimony is considered more credible and reliable than the record-based evidence submitted by the plaintiff.

(22) Before the trial court, the plaintiff claimed that he received the compensation amount following the accidental death of Jethabhai Arsi Bhai, and provided oral evidence accordingly. He also submitted Exhibit-74, which is an office order dated 13/10/2008 from the Agriculture Branch of the District Panchayat Office, Junagadh. This order directed

that the applicant, Rameshbhai Jethabhai Wadher, as the direct-line heir of the late Jethabhai Arsi Bhai Wadher, should receive the compensation amount. During cross-examination, Respondent No. 1 stated in Exhibit-147: "My brother Jethabhai died by falling into a well. It is true that if a farmer dies in an accident, the government provides relief, and I filed an application with the District Panchayat. I sent the requested documents from the District Panchayat. I do not know whether I sent the documents or not." When asked whether Rameshbhai received Rs. 1 lakh relief for Jethabhai's accident, he replied that Rameshbhai is not the son of his brother. The plaintiff also submitted Exhibit-78, a letter dated 17/06/2008 from the Agriculture Branch of the District Panchayat Office, Junagadh, addressed to Lakhabhai Arsi Bhai Wadher, requesting information as per the letter. There is no dispute by Respondent No. 1 that he never received this letter. Respondent No. 1 has also not provided any evidence showing that he submitted the necessary documents to the concerned office as requested in Exhibit-78. Exhibit-74 confirms that the District Panchayat Office approved the farmer accident insurance claim in favor of the plaintiff, and this has not been challenged by the respondents. Considering all these facts, it is clear that the plaintiff is acknowledged as the son and heir of the late Jethabhai Arsi Bhai, as even Respondent No. 1 admitted during cross-examination. Additionally, the documentary

evidence submitted by the plaintiff includes Exhibit-65, which is the divorce document between the plaintiff's mother and father. On examining this document, it shows that Rs. 800/- was fixed as a settlement amount, of which Rs. 400/- was specifically allocated for the responsibility toward the son (child) of Rakhman Ben. This confirms that at the time of divorce, Jethabhai Arsi Bhai and Rakhman Ben had a son, thereby proving that the plaintiff existed as their child.

(23) In the response and cross-examination by Respondent No. 1, it was stated that when Jethabhai Arsi Bhai divorced Rakhmanben, there were no children. However, the plaintiff submitted Exhibit-80, which is the village record (Sample Village No. 6, Hakpatrak, Record No. 1417 dated 18/12/2008). It shows that Jethabhai Arsi Bhai, as one of the account holders, was recorded as having died unnaturally on 06/07/2007, and a request and affidavit were made to remove his name from the records. This temporary entry confirms that Respondent No. 1 declared Jethabhai Arsi Bhai to be deceased when updating the revenue records. Meanwhile, in the current case, Respondent No. 1 states in his reply and cross-examination that Jethabhai Arsi Bhai had divorced and had no children at the time. This indicates that Respondent No. 1 concealed the true facts. Additionally, the plaintiff submitted Exhibit-79, which is an affidavit by Respondent No. 1. This affidavit was provided to update the revenue records for the disputed

land. In it, Respondent No. 1 declared that his brother Jethabhai Arsi Bhai had died unnaturally and had no heirs. Thus, Respondent No. 1 formally declared to the revenue authority that Jethabhai Arsi Bhai had died without heirs, while in the current case, he claims that Jethabhai had divorced and had no children at the relevant time. Furthermore, during the plaintiff's cross-examination, it was suggested that the plaintiff was a minor when his father Jethabhai Arsi Bhai died. Considering all these facts: Respondent No. 1 gave contradictory statements regarding Jethabhai Arsi Bhai's status. The plaintiff's cross-examination confirms that Jethabhai Arsi Bhai was the plaintiff's father. Respondent No. 1 also acknowledged in cross-examination that Jethabhai was his brother and that the disputed land was jointly in the names of both brothers. Therefore, it is clear that the plaintiff is the sole son and heir of Jethabhai Arsi Bhai. Accordingly The plaintiff and Respondent No. 1 are co-owners of the disputed land, with the plaintiff holding half (1/2) share of the land.

(24) In the matter of the claim, the plaintiff stated the fact that Respondent No. 1 entered into a sale agreement with Respondent No. 2 for the disputed land without possession. However, the disputed land was not the sole property of Respondent No. 1, as the plaintiff was also a co-owner of the disputed property. Therefore, Respondent No. 1 did not have the right or authority to independently transfer the land, and the agreement made on 24/12/2008 between

Respondent No. 1 and Respondent No. 2 did not bind the plaintiff. These facts were denied by the respondents. However, since it has been proved that the plaintiff is the sole son and heir of the deceased Jethabhai Arsi Bhai, and that the plaintiff and Respondent No. 1 are joint owners of the disputed land with the plaintiff holding a 1/2 share, Respondent No. 1 did not have the right to independently transfer the property. Examining the agreement made by Respondent No. 1 with Respondent No. 2 without possession, it is noted that Respondent No. 1 registered the disputed land in his name with the Revenue Authority and then entered into the agreement with Respondent No. 2. Looking at the Hakpatrak entry in Exhibit-80 (Village Sample No. 6, Record No. 1417), it is a temporary entry subject to confirmation. No proof has been provided by Respondent No. 1 that this record was officially certified before the proceedings. Exhibit-75 shows the agreement between Respondent No. 1 and Respondent No. 2, dated 24/12/2008. The Hakpatrak entry submitted by the plaintiff (Exhibit-80) is dated 18/12/2008 and is a temporary entry, which the plaintiff challenged in Exhibit-68. Thus, considering the facts on 18/12/2008, the temporary entry (entry No. 1417) showing the removal of rights in Village Sample No. 6 was still a temporary entry. Six days later, on 24/12/2008, Respondent No. 1 entered into a sale agreement with Respondent No. 2. At that time, the record in Respondent No. 1's name had not been officially certified,

and the plaintiff's share in the land had not been considered. Therefore, Respondent No. 2, the company, did not act as a bona fide purchaser, as they entered into the agreement before the land registration was officially completed and without doing due diligence.

(25) Furthermore, looking at the trial court's order and the record, Respondent No. 1 was already joined when the plaintiff filed the claim. Respondent No. 1 had entered into a sale agreement without possession of the disputed land, and subsequently a registered sale deed was executed. Respondent No. 2 claims that they obtained permission from the competent authority. However, when the current claim concerns ownership and interest in the disputed property, any such transfer falls under the principles of "lis pendens" under the Transfer of Property Act, which prohibits transfer during ongoing litigation. Therefore, whatever the court's order is regarding the disputed land, Respondent No. 2 remains bound by it, and their defense of being a bona fide purchaser cannot succeed because they executed the registered sale deed while knowing that litigation over the property was pending in civil court. Currently, the disputed land is entered in the revenue record in the name of Respondent No. 2, but as established by multiple judgments of the High Court and Supreme Court, an entry in the revenue record is made only for fiscal purposes. A challenge to the revenue record does not determine ownership or title. In these circumstances,

Respondent No. 1 did not have the independent right or authority to enter into a sale agreement with Respondent No. 2 or to transfer the disputed land in Respondent No. 2's name. Even if Respondent No. 1 executed such an agreement with Respondent No. 2, it cannot bind the plaintiff, who is a co-owner and heir of the disputed land.

(26) In the matter of the claim, Respondent No. 2 contended in their written reply that the plaintiff's claim was filed without proper court fee stamps. They argued that an ad valorem court fee should have been paid based on the market value of the disputed property. The plaintiff, in their claim petition, had stated the market value of the disputed property as ₹15,70,050, and the court fee should have been paid on this amount. Respondent No. 2 argued that since this fee was not paid, the claim should be dismissed. However, considering the nature of the plaintiff's claim, which is to partition their share in the disputed property, obtain a declaration, and restraining order, and that the disputed land is agricultural land, under the Bombay Court Fee Act, the court fee to be paid for agricultural land is based on 20% of the land's area. The court fee required in the claim was duly paid, and Respondent No. 2 has not been able to prove that the plaintiff's claim is not based on the proper court fee. Furthermore, before the trial court, Respondent No. 2 claimed that the disputed land was sold to them under a registered sale agreement and

that the possession of the property is with them. However, in the plaintiff's cross-examination of Respondent No. 1, it was stated that "After my father passed away, the possession of the land came to my uncle. It is true that the current possession of the disputed land is with Respondent No. 2." Thus, in the plaintiff's cross-examination, it was admitted that Respondent No. 2 has possession of the disputed land, and the respondents also produced evidence confirming possession is with Respondent No. 2. Therefore, Respondent No. 2 has successfully proved possession before the trial court. Respondent No. 2 also contended that the plaintiff has no rights, interest, share, or title in the disputed property and that Respondent No. 1 is the sole owner. However, the plaintiff is the son of the late Jethabhai Arasibhai, and therefore has a $\frac{1}{2}$ share in the disputed land. Respondent No. 2 has not been able to disprove this, so their contention cannot succeed. Furthermore, Respondent No. 1 stated in their reply that their father, Arasibhai Jesabhai, had three sons - Kanabhai (eldest), Jethabhai, and Lakhabhai - and a daughter Devanben, all legal heirs, and during his lifetime, he had apportioned shares of ancestral land to all his children. Respondent No. 1 produced affidavit evidence (Exhibit 147) to support this, but no documentary evidence was produced regarding the disputed property, and cross-examination also confirms that the disputed land was jointly held by Jethabhai and Respondent No. 1.

Therefore, Respondent No. 1 has not been able to prove this fact through their evidence.

(27) Considering the trial court's judgment and the record, it is clear that the plaintiff is the son of the late Jethabhai Arasibhai, and the disputed land is jointly owned by Jethabhai Arasibhai and Respondent No. 1. As the legal heir of the late Jethabhai Arasibhai, the plaintiff owns a $\frac{1}{2}$ share in the disputed property. There is no proof that Respondent No. 1 has the independent right or authority to transfer, sell, or otherwise dispose of the entire disputed property to any other person. Similarly, the agreement executed by Respondent No. 1 with Respondent No. 2 on 24/12/2008 does not make the plaintiff a party, nor is there proof that the agreement was made in good faith. Under these circumstances, the agreement cannot bind the plaintiff, and until the plaintiff obtains possession of their share, Respondent No. 1 cannot sell, transfer, encumber, or damage the disputed property. The trial court issued a restraining order to this effect, and the respondents have not been able to prove any illegality or violation of law in this order. Therefore, the trial court's judgment and order are fully appropriate and reasonable, and there is no scope for interference by this court.

(28) Considering all these facts and circumstances, and after re-evaluating and analyzing all the evidence presented by the parties before the trial court in Civil Suit No. 16/2009, it is clear that the trial court properly appreciated

the evidence according to law. There is no record showing that the trial court acted unilaterally, ignored evidence, or made a legal or factual error. Hence, the trial court's order is lawful and proper, and the appeals filed by the appellants cannot be allowed. Accordingly Point No. 1 is decided against the appellants. Point No. 2 is decided in favor of justice and equity, and the final order is passed accordingly.

:: Final Order ::

1. The appeals filed by the appellants / original defendants under Section 96 of the Civil Procedure Code are hereby **rejected**.
2. The judgment and order dated 30/09/2013 passed by the Principal Senior Civil Judge, Veraval in Special Civil suit No. 16/2009 are hereby **confirmed**.
3. The appellants shall bear their own costs of this case. The appellants shall also pay the costs incurred by Respondent No. 1.
4. Decree be drawn accordingly.
5. A copy of this judgment along with the record be transmitted to the Trial Court forthwith.
6. A certified copy of this order shall be kept in R.C.A. No.22.2023.

Pronounced in open court today on this 09th day of April, 2026.

Place : Veraval.

Date : 09.04.2026.

(Vikramsingh B. Gohil)
Principal District Judge,
Gir-Somnath at Veraval.
Code No.GJ01042