

GJGS020007212020



Received on : 19.08.2020

Registered on : 19.08.2020

Decided on : 16.06.2026

Duration : 5Y 9M 28D

**IN THE COURT OF 2ND ADDITIONAL SR. CIVIL
JUDGE, AT VERAVAL.**

REGULAR CIVIL SUIT NO.77/2020

Plaintiff :

Ibrahimbhai Ismailbhai Aagariya

Age : 50 years, Occupation : Riksha Driving,

R/o. Prabhas Patan, Nr. Bhansarivav,

Ta. Veraval, Dist. Gir Somnath.

VERSUS

Defendants :

1. Shri Abbas Islambhai Aagariya

Age : 60 years, Occupation : Labourer,

R/o. Behind Madina Masjid, Nava Plot Dari,

Ta. Veraval, Dist. Gir Somnath.

2. Suleman Ismailbhai Aagariya

Age : 55 years, Occupation : Labourer,

R/o. Bage Yusuf Colony,

Behind Saint Kaushar School,

Nr Juna Jamatkhana,

Ta. Veraval, Dist. Gir Somnath.

Ld. Advocate Mr. P. I. Buch for the Plaintiff.

Ld. Advocate Mr. A. I. Sumra for Defendants.

Sub: Suit for Declaration and Permanent Injunction.

-:: J U D G M E N T ::-

1. The Plaintiff has instituted the present suit for Declaration and Permanent Injunction contending that one late Ismailbhai Suleman Aagariya had purchased the suit property situated at Prabhas-Patan under Registered Document No. 377. It is the case of the plaintiff that upon the demise of said Ismailbhai Suleman Aagariya and after relinquishment of their respective rights, title and interest by his widow Mariyam Ismail Aagariya, Daud Ismail Aagariya and Fatma Ismail Aagariya, the said property came to be divided into three shares. According to the plaintiff, at present Abbas Ismailbhai Aagariya, Suleman Ismailbhai Aagariya and Ibrahimbhai Ismailbhai Aagariya are the co-sharers and joint owners of the suit property.
2. It is further the case of the plaintiff that no dispute exists with regard to the share and interest of Suleman Ismailbhai Aagariya in the suit property and, therefore, no separate notice was issued to him. The plaintiff has further averred that no substantive relief has been claimed against defendant No.2 and he has been impleaded only with a view to avoid any technical objection regarding non-joinder of parties.

3. The suit property is described as a property bearing City Survey No. C-426 situated at Prabhas-Patan, admeasuring approximately 24.154 sq. metres, bounded as under:

East : House of Ibrahimbhai Agwan;
West : House of Adreman Jamal;
North : House of Mahmadsa Garibsha;
South : House of Husen Kamal Pathan.

It is the further case of the plaintiff that one Pidhiya-vadu Makan (a residential structure) exists in the front portion of the property and a Naliya vadu Makan (tiled structure) exists on the back side thereof.

4. The plaintiff has contended that despite having a lawful share, right, title and interest in the suit property, the defendant alone has been managing and dealing with the same and has not rendered any account or paid the plaintiff's share from the income derived therefrom. According to the plaintiff, the defendant has been permitting third parties to occupy or use the suit property and has been receiving monetary consideration therefor without informing the plaintiff or accounting for his share.
5. The plaintiff has further averred that he had earlier issued a legal notice demanding his lawful share in the suit property. It is alleged that the defendant is attempting to transfer the suit property in favour of third parties and, if such transfer is effected, the plaintiff would suffer irreparable loss and may be deprived of his lawful share, right and interest in the suit property.

6. The plaintiff has also alleged that when the defendant recently met the plaintiff, the defendant stated that no share would be given to the plaintiff and that the property would be privately transferred to another person. According to the plaintiff, such threat was extended on 08.08.2020 and, therefore, the cause of action for filing the present suit arose on the said date.
7. In support of his claim, the plaintiff has relied upon a copy of the City Survey Property Card. According to the plaintiff, Entry No.158 dated 29.05.2008 records his name in respect of the suit property and the said entry came to be certified by the City Survey Superintendent on 29.07.2008. It is further contended that no subsequent mutation entry has been effected in respect of the suit property. On the basis of the said revenue record, the plaintiff claims to have established a prima facie right, title and interest in the suit property.
8. On the aforesaid averments, the plaintiff has instituted the present suit seeking a declaration that he is entitled to one-third share in the suit property bearing City Survey No. C-426 situated at Prabhas-Patan and admeasuring approximately 24.154 sq. metres. The plaintiff has also prayed for a decree of permanent injunction restraining the defendant from selling, alienating, transferring, leasing or otherwise creating any third-party interest in the suit property until his share is duly determined. The plaintiff has further sought such other and consequential reliefs as may be deemed fit and proper in the facts and circumstances of the case together with costs of the suit.

9. **Written Statement under Order VIII Rule 1 of the Code of Civil Procedure :**

In the present case, notice and summons were duly issued to the defendants. Upon service of summons, defendants appeared through their learned advocate and sought time to file their written statement and sufficient opportunity has been given to file written statement. It emerges from the record that no written statement came to be filed by them within the prescribed period. Consequently, the right of the defendants to file written statement came to be closed.

10. **Evidence of Plaintiff :**

In support of the suit, the plaintiff has not adduced any **oral and documentary evidence**. It is pertinent to note that plaintiff submitted pursis at Exh.10 declaring that the suit is based on documentary evidence therefore he did not intend to adduce any oral evidence.

11. **Evidence of defendants :**

Similarly, the defendants also submitted closing pursis at Exh.13 stating that as plaintiff has not adduced any oral as-well-as documentary evidence therefore they did not desire to lead any evidence in the matter.

12. **Arguments :**

At the stage of final arguments, learned advocate for the plaintiff orally submitted that he does not wish to advance any further arguments and that his submissions may be considered on the basis of the record of the case. Learned advocate appearing for the defendants submitted that since no substantive

arguments were advanced on behalf of the plaintiff, he also does not intend to address the Court. Accordingly, as neither side desired to advance further oral submissions, the hearing of final arguments came to be concluded and the matter was reserved for judgment.

13. For the purpose of deciding the present suit, my learned predecessor has framed the following issues at Exh.-8, dated 31.08.2024,

(૧) શું વાદી સાબિત કરે છે કે, દાવાવાળી મિલ્કતમાં વાદીનો હિસ્સો છે ?

(૨) શું વાદી સાબિત કરે છે કે, દાવાવાળી મિલ્કતમાં પ્રતિવાદી એકલા વહીવટ કરે છે અને વાદીને થતો લાભ, ભાગ, હક્ક, હિત હિસ્સો આપતા નથી?

(૩) શું વાદી સાબિત કરે છે કે, દાવાવાળી મિલ્કત પ્રતિવાદી અન્ય કોઈ આસામીને ટાન્સફર કરી આપવાની વિધી કરી રહ્યા છે?

(૪) શું વાદી દાવા અરજીમાં માંગ્યા મુજબની દાદ મેળવવા હક્કદાર છે ?

(૫) શું હુકમ અને હુકમનામું ?

14. findings on the above issues are as under:

Issue No. 1 – In the Negative

Issue No. 2 – In the Negative

Issue No. 3 – In the Negative

Issue No. 4 – In the Negative

Issue No. 5– As per final order

-:: REASONS ::-

15. Considering the arguments advanced by the Ld. Adv.

for both the sides, pleadings and oral as well as documentary evidence produced on record, my findings and reasons to the issues framed at Exh.14 are as under.

16. **Section 101 of the Evidence Act, 1872** defines "burden of proof" and lays down that the burden of proving a fact always lies upon the person who asserts the facts. Therefore, the burden of proof always lies on the plaintiff initially to prove the facts alleged by him. This principle of law remains the same even in cases where the suit has been proceeded ex-parte qua the defendant.

17. The law with regard to burden of proof of plaintiff even in cases where ex-parte proceeding has been conducted. It is well settled in a plethora of judgments of the Hon'ble Supreme Court. Though, the burden of proof on the plaintiff in exparte proceeding is not very heavy, but the necessity of proof by the plaintiff of his case to the satisfaction of the court cannot be dispensed with.

The Hon'ble Apex Court in Ramesh Chand Ardawatiya v. Anil Panjwani, AIR 2003 SC 2508, explained the law with regard to burden of proof of plaintiff in an exparte suit. The observations of the Hon'ble Apex court may be reproduced herewith as follows: "Even if the suit proceeds ex parte and in the absence of a written statement, unless the applicability of Order 8 Rule 10 CPC is attracted and the court acts thereunder, the necessity of proof by the plaintiff of his case to the satisfaction of the court cannot be dispensed with. In the absence of denial of plaint averments the burden of proof on the plaintiff is not very heavy. A prima facie proof of the relevant facts constituting the cause of action would suffice and the court would grant the plaintiff such relief as to which he may in law be found entitled. In a case which has proceeded ex parte the court is not bound to frame issues under Order 14 and deliver the judgment on every issue as required by Order 20 Rule 5. Yet the trial court should scrutinize the available pleadings and documents, consider the evidence adduced, and would do well to frame the "points for determination" and proceed to construct the ex parte judgment

dealing with the points at issue one by one. Merely because the defendant is absent the court shall not admit evidence the admissibility whereof is excluded by law nor permit its decision being influenced by irrelevant or inadmissible evidence."

In civil proceedings, the plaintiff must prove the issues framed against him. A plaintiff cannot succeed merely because the defendant has not taken any defence or weaker defence. The plaintiff must prove the facts asserted in the plaint. Unless the plaintiff discharges this primary burden, the burden does not shift to the defendant. Only after establishing foundational facts does the burden shift to the opposite party to rebut the same. In the present case, the issues framed at Exh. 8 were required to be proved by the plaintiff.

18. Issue No.1:

શું વાદી સાબિત કરે છે કે, દાવાવાળી મિલકતમાં વાદીનો હિસ્સો છે ?

[Whether the plaintiff proves that he has a share, right, title and interest in the suit property?]

(18.1) The burden of proving this issue squarely lies upon the plaintiff. Though the plaintiff has pleaded that he is a co-sharer in the suit property and has relied upon a copy of the City Survey Property Card, the plaintiff has not entered the witness box nor examined any witness in support of his case. The record reveals that the plaintiff produced only certain documents marked for identification, namely, office copy of legal notice (Mark 3/1), original RPAD postal receipt (Mark 3/2) and xerox copy of the property card (Mark 4/1). However, none of these documents came to be exhibited in accordance with law.

(18.2) It is settled law that mere production of a document does not amount to proof thereof. A document marked for identification cannot be treated as substantive evidence unless duly proved and exhibited. Further, the averments made in the plaint do not constitute evidence.

(18.3) In absence of any oral or documentary evidence legally proved on record, the plaintiff has failed to establish his alleged share, right, title and interest in the suit property. **Hence, Issue No.1 is answered in the Negative.**

19. Issue No.2 :

શું વાદી સાબિત કરે છે કે, દાવાવાળી મિલ્કતમાં પ્રતિવાદી એકલા વહીવટ કરે છે અને વાદીને થતો લાભ, ભાગ, હક્ક, હિત હિસ્સો આપતા નથી?

[Whether the plaintiff proves that defendant No.1 alone manages the suit property and does not give the plaintiff his lawful share, benefit, right, title and interest?]

(19.1) The burden to prove this issue is also upon the plaintiff. Except making averments in the plaint, no evidence whatsoever has been adduced to establish that defendant No.1 is exclusively managing the suit property or that any income is being derived therefrom without accounting to the plaintiff.

(19.2) No witness has been examined and no documentary evidence has been duly proved. Therefore, there is absolutely no evidence available on record to substantiate the allegations levelled by the plaintiff.

(19.3) Accordingly, the plaintiff has failed to discharge the burden cast upon him. **Hence, Issue No.2 is answered in the Negative.**

20. Issue No.3 :

શું વાદી સાબિત કરે છે કે, દાવાવાળી મિલકત પ્રતિવાદી અન્ય કોઈ આસામીને ટાન્સફર કરી આપવાની વિધી કરી રહ્યા છે?

[Whether the plaintiff proves that the defendants are attempting to transfer the suit property in favour of any third party?]

(20.1) The plaintiff has alleged that the defendants were making attempts to transfer the suit property to third parties. However, except for the bare assertions contained in the plaint, no evidence has been adduced in support of such allegations.

(20.2) No witness has entered the witness box to depose regarding the alleged threat or proposed transfer. Likewise, no documentary evidence has been produced and proved showing any attempt by the defendants to alienate the suit property. Therefore, the plaintiff has failed to establish this issue. **Hence, Issue No.3 is answered in the Negative.**

21. Issue No.4 :

શું વાદી દાવા અરજીમાં માંગ્યા મુજબની દાદ મેળવવા હકકદાર છે ?

[Whether the plaintiff is entitled to the reliefs prayed for in the plaint?]

In view of the findings recorded on Issues Nos.1 to 3, the plaintiff has failed to establish the foundational facts necessary for grant of declaration and permanent injunction.

It is a settled principle of law that a decree for declaration or injunction cannot be granted merely on the basis of pleadings. The plaintiff must establish his case by leading cogent and admissible evidence. Since the plaintiff has failed to prove his alleged right in the suit property as well as the

alleged acts of the defendants, he is not entitled to any of the reliefs prayed for in the suit. **Hence, Issue No.4 is answered in the Negative.**

22. Issue No.5 :

શું હુકમ અને હુકમનામું ?

[What order and decree?]

For the foregoing reasons, the suit fails. Hence, I pass the following final order for the **Issue No. 5** which is as follows:

:: ORDER ::

1. The suit filed by the plaintiff is **hereby dismissed**.
2. Ad-interim protection, granted earlier in connection with the present suit land stands vacated forthwith.
3. In the facts and circumstances of the case, **no order as to costs**.
4. Decree be drawn accordingly.

Judgement signed and pronounced in the Open Court on this **16th day of June, 2026**.

Date : 16.06.2026

Place : Veraval

(**A. V. Chaudhary**)

2nd Addi. Senior Civil Judge,

Veraval @ Gir-Somnath.

Judge Code : GJ 01250