

GJJM020003182002



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Duration	Y	M	D
	26	09	03



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**IN THE COURT OF 3RD ADDITIONAL SENIOR CIVIL
JUDGE, At : JAMNAGAR.**

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Regular Civil Suit No. 672 of 2002

1. **Bavanji @ Bava Manjibhai Dhameliya**
(Plaintiff No. 1 expired during the pendency of
present suit)
legal heirs have been brought on record as
Plaintiff Nos. 2, 3 & 4)
(Amended as per the order of Hon'ble Court)
2. **Dhirajlal Bavanji Dhameliya**
3. **Ratilal Bavanji Dhameliya @
Ramesh Bavanji Dhameliya**
4. **Rukshmani Bavanji Dhameliya**
All are Residing at: Krushnnagar, Street No. 4,
Shreeji Nivas, Shanker Tekari, Udhyognagar,
Beside Janata Society, Jamnagar.

..... Plaintiffs

VERSUS**1. Maganlal Bavanjibhai Dhameliya**

Residing at: Krushnnagar, Street No. 4,
Jamnagar.

2. Samjuben Bavanjibhai Dhameliya

C/o. Chhaganbhai Kadavabhai Bhandari
Village: Bhadra, Taluka: Jodiya,
District: Jamnagar.

3. Nirmalaben Bavanjibhai Dhameliya

C/o. Naresh Savjibhai Limbasiya
Residing at: Jalani Jar,
Jamnagar.

4. Jayshreeben Bavanjibhai Dhameliya

C/o. Hasmukhbhai Devrambhai Markana
Residing at: Mavadi Plot, Beside Patel Bording,
Rajkot.

..... **Defendants**

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Subject:- Suit for Declaration, Permanent Injunction and Partition.

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Appearance :

Ld. Advocate Mr. A. C. Kothari for the Plaintiffs.

Ld. Advocate Mr. P. S. Raval for the Defendant No. 1.

Ld. Advocate Mr. V. H. Baxi for the Defendant No. 2 & 3.

Ld. Advocate Mr. H. M. Bhatt for the Defendant No. 4.

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ORDER BELOW EXH.-1

1. The present suit has been filed by the plaintiff, inter alia,

praying for a declaration, partition and separate possession in respect of the suit properties, namely, agricultural land bearing Revenue Survey No. 232, admeasuring 5 Acres and 20 Gunthas (Hectare-Are-Sq. Mtrs. 2-22-58), situated at Village Hadmatiya, Taluka Jamnagar, and a residential plot situated at Krishnanagar, Jamnagar, admeasuring 2,800 Sq. Mtrs.

2. Upon completion of the trial and after considering the evidence on record, my learned Predecessor, the 3rd Additional Senior Civil Judge Saheb, Jamnagar, has decreed the suit. It was declared that the plaintiff and the defendants are each entitled to a 1/6th share in the agricultural land of the suit property. The respective shares of the parties in the residential plot situated at Krishnanagar, Jamnagar, were also declared. Pursuant thereto, a preliminary decree has been drawn by my learned Predecessor and a direction was issued to forward the same to the Collector, Jamnagar, for effecting partition of the suit property, agricultural land by metes and bounds and for delivery of separate possession of the respective shares to the parties, in accordance with the preliminary decree, under Section 54 of the Code of Civil Procedure, 1908, read with Order XX, Rule 18 thereof.
3. Being aggrieved by the judgment and preliminary decree dated 23rd December, 2015, Defendant No. 1, namely,

Maganlal Bavanjibhai Dhameliya, preferred First Appeal No. 09 of 2016 before the Hon'ble Appellate Court. Upon hearing the parties and considering the merits of the case, the Hon'ble Appellate Court dismissed the said appeal and upheld the judgment and preliminary decree passed by this Court.

4. Order XX Rule 18(1) of the Code of Civil Procedure applies only to such properties in respect of which the payment of revenue to the Government is involved, namely, agricultural lands. Therefore, in a suit for partition where the subject matter consists of agricultural land, the Civil Court is only required to determine and declare the respective shares of the parties. However, the implementation of such determination is not to be done by the Civil Court itself. The actual partition by metes and bounds and the allotment of separate possession are to be effected by the Collector or by such revenue officer as may be authorised by the Collector in that behalf. Consequently, after determining the shares of the parties in agricultural land, no further proceedings are required to be done by the Civil Court. Thus, in a partition suit relating to agricultural land, once the Court determines the shares of the parties and directs the decree to be sent to the Collector for effecting partition and separate possession in accordance with law, such decree attains finality and constitutes a final decree for all practical purposes. This is

because, after the declaration of shares by the Civil Court, the subsequent process of actual partition and delivery of separate possession falls exclusively within the domain of the revenue authorities.

5. At this stage, it is necessary to take into consideration the principles laid down by the Hon'ble Supreme Court and the Hon'ble High Court of Gujarat regarding the final decree of the suit in cases where the agricultural land is incapable of being partitioned by metes and bounds.

In the case of ***Ravatsinh Ranubha Vs. Sinha Or His Successor, 2000 (0) AIJEL-HC 210518 (Guj)***, Special Civil Application No. 8405 of 1999, decided on 19th September 2000 by the Gujarat High Court.

13. A perusal of Secs. 54 & 2(2), as well as Rule 18, Order 20 Civil Procedure Code, and the above stated pronouncements or these provisions, make it clear that whenever a preliminary decree in the partition suit is passed and the copy thereof is sent to the Collector under Sec. 54 of the Civil Procedure Code for effecting the partition of the properties assessed to land revenue, nothing further is required to be done by the Civil Court in the matter. The Civil Court cannot direct to reopen the partition, or after partition is effected the Court cannot send the case again to the Collector. The Court can neither dictate how to partition the estate assessed to the payment of revenue to the Government, nor hear objections qua partition and possession to be given. The Collector is also not under the superintendence of the Court. However, the Court is not powerless; it has limited control over the Collector to whom the decree is sent

for effecting partition under Sec. 54 C.P. Code and put the parties into the possession of the land fallen to their respective shares. If the Collector disregards the decree, or alters the decree or alters the rights and obligations of the parties under decree, or does not divide the estate in conformity with the decree, or refuses to esteem the decree, or acts in bad faith, or acts as the Appellate Authority over the Civil Court, or decides the question determinable only by the Civil Court, the Civil Court on being moved can pass appropriate order, correct the mistake made relating to the subject falling within limited control and issue appropriate direction. It may be stated that if the Collector is acting contrary to the direction of a decree or is not putting the sharers in the possession or there is a confusion and correct interpretation of the decree is not possible and some explanatory note is necessary or the properties in the meanwhile are sold and transferees are not heard by the Collector, or their claim is also not considered by the Collector or a question regarding devolution or any other issue arises for which the Collector is not competent to decide, the Civil Court will have the power to dispose of the application in that regard and give to the Collector an appropriate direction. Such limited control indicates that the decree in partition suit passed relating to the estate assessed to the payment of revenue to Government is the final decree, and not the preliminary decree. The view taken in Ramagouda Rudregouda's case (supra) is for the above-stated provisions and reasons is with respect not appealing.

In Shub Karan Bubna Vs. Sita Saran Bubna[AIR 2009 SC(Supp) 2863] the Supreme Court of India, directed that,

9.1) In regard to estates assessed to payment of revenue to the government (agricultural land), the Court is required to pass only one decree declaring the rights of several parties interested in the suit property with a direction to the Collector (or his subordinate) to effect actual partition or separation in accordance with the declaration made by the Court in regard to the shares of various parties and deliver the respective portions to them, in accordance with Section-54 of Code. Such entrustment to the Collector under law was for two reasons. First is that Revenue Authorities are more conversant with matters relating to agricultural lands. Second is to safeguard the interests of government in regard to revenue. (The second reason, which was very important in the 19th century and early 20th century when the Code was made, has now virtually lost its relevance, as revenue from agricultural lands is negligible). Where the Collector acts in terms of the decree, the matter does not come back to the Court at all. The Court will not interfere with the partitions by the Collector, except to the extent of any complaint of a third party affected thereby.

6. Having considered Preliminary decree, my learned Predecessor, 3rd Additional Senior Civil Judge Saheb, has already effected the partition by physical division recorded in panchnama submitted by the Court Commissioner vide Exh. 165, therefore, the preliminary decree itself operates as final decree and nothing further remain to be done by this Court regarding suit properties.

- 6.1 My learned Predecessor, the 3rd Additional Senior Civil Judge, Jamnagar, has forwarded a copy of the

preliminary decree to the Collector, Jamnagar, for effecting partition proceedings. Pursuant thereto, the Mamlatdar, Jamnagar (Rural), submitted his report, which has been taken on record vide Exh. 252. Neither the plaintiff nor any of the defendants has filed any objection to the report submitted by the Mamlatdar.

7. Having regard to the principles laid down in the aforesaid judgments, the definition of “decree” as provided under Section 2(2) of the Code of Civil Procedure and the provisions contained in Order XX, Rule 18(1) of the Code, it is clear that, in matters relating to the partition of agricultural lands, the preliminary decree passed by the Court attains the character of a final decree. In view of the aforesaid judgment of the Hon’ble High Court and the principles enunciated therein, once the Civil Court determines the shares of the parties in respect of the agricultural land and passes a decree accordingly, if any consequential proceedings, such as the actual partition of the property by metes and bounds, remain to be carried out by the revenue authorities under the provisions of the Fragmentation Act or any other revenue enactments, the entire proceedings in that regard are required to be undertaken and concluded by the Collector.

Even if an appeal is preferred against such decree passed by the Civil Court, the decree nevertheless assumes the character of a final decree. Therefore, once the Civil Court has adjudicated upon and determined the respective

shares of the parties in relation to the agricultural land and has passed a decree to that effect, no further proceedings are required to be done by the Civil Court. Any proceedings, if at all required to be undertaken thereafter, are to be carried out by the competent authority, namely, the Collector.

In the present suit, the preliminary decree passed by this Court has attained the character of a final decree. In such circumstances, after determining the respective shares of the parties in relation to the agricultural land, and physical division recorded in Preliminary Decree in respect of another Suit property a Residential Plot, the Civil Court has already discharged and exhausted its jurisdiction by passing the decree. Consequently, the decree passed by the Court has become a final decree and, therefore, no further judicial proceedings are required to be done by the Civil Court in the present matter.

Accordingly, taking into consideration the explanation of the expression “decree”, the provisions of Order XX, Rule 18 of the Code of Civil Procedure, and the principles laid down by the Hon’ble High Court as well as the Hon’ble Supreme Court, in larger interest of justice, this Court passed following order.

-:: O R D E R ::-

1. The preliminary decree passed below Exhibit-249 determining the shares of the parties in the Suit

Properties in the present partition suit shall itself operate as the final decree. Accordingly, the suit stands finally disposed of.

Order passed and pronounced in an open Court today on this 18th day of July, 2026.

Date : 18/07/2026

Place: Jamnagar

[S. I. Patel]

3rd Additional Senior Civil Judge,
Jamnagar.

Code No. GJ01096