



Received On	16-08-2011
Registered On	16-08-2011
Decided On	25-06-2026
Duration On	Y.01, M.10, D.16
Exh.	

**IN THE COURT OF THE ADDITIONAL SENIOR
CIVIL JUDGE & ADDITIONAL CHIEF JUDICIAL
MAGISTRATE, AT LALPUR**

REGULAR CIVIL SUIT NO. 14 OF 2011

PLAINTIFFS:	1. Hiruben Ramjibhai Rabadiya, Resident of Pipartoda, Taluka Lalpur, District Jamnagar.
	2. Patel Ranchhodbhai Ravjibhai, Aged about 56 years, Occupation: Agriculture, Resident of Pipartoda, Taluka Lalpur, District Jamnagar. (Joined as plaintiff vide order dated 24- 01-2016 passed below Exh. 36)

V E R S U S

DEFENDANTS:	1. Jivrajibhai Bhagabhai Chovatiya.
--------------------	--

	2. Gordhanbhai Kurjibhai Vaishnav (deceased). (Suit abated as against Defendant No. 2 vide order dated 16-10-2021 passed below Exh. 105)
	3. Hareshbhai Jivrajbhai Chovatiya, Resident of Jamnagar, Shree Nivas Colony, Street No. 3, Sumair Club Road, Jamnagar. (Joined as defendant vide order dated 21-12-2016 passed below Exh. 43)
	4. Ranchhodbhai Gordhanbhai Vaishnav, Resident of Pipartoda, Taluka Lalpur, District Jamnagar. (Joined as defendant vide order dated 21-12-2016 passed below Exh. 43)

APPEARANCE :

Ld. Advocate for the Plaintiffs	Mr. Mr. K. M. Kanzariya
Ld. Advocate for the Defendants	Mr. B. H. Chotai

SUIT FOR DECLARATION AND PERMANENT INJUNCTION.

J U D G M E N T

1. Facts of the Plaintiffs' Case

The case of the plaintiffs, as set out in the plaint, is briefly stated as under:

According to the plaintiffs, Plaintiff No. 1 is the owner and occupier of agricultural land bearing Revenue Survey No. 649 situated at village Pipartoda, Taluka Lalpur, District Jamnagar, admeasuring Hectare 2-60-01 sq. m., locally known as “Kharo”. The said land is stated to be of old tenure. To the south of the suit land are situated the lands of the defendants bearing R.S. Nos. 641/2, 642/2, 643 and 644. The boundaries and location of the suit land are shown in the map produced at Mark “A”.

The plaintiffs contend that within the suit land there exists an open strip which has been kept for the flow of rainwater and which is shown by a blue broken line in the map at Mark “A”. According to them, the said strip forms part of their land and remains in their exclusive ownership and possession. It is their case that the defendants are attempting to use the said strip as a road and are claiming a right of way over it.

The plaintiffs further state that the defendants already have sufficient access to their lands through three existing routes shown in dark-pink colour in the map at Mark “A”.

According to the plaintiffs, these routes have been in existence for a long time and provide adequate access to the defendants' lands. It is therefore contended that there is no necessity for creating any additional way through the plaintiffs' land.

The plaintiffs assert that despite the availability of these existing routes, the defendants are trying to establish a new right of way through the disputed strip situated in R.S. No. 649. They apprehend that if such a right is recognised, they would effectively lose their independent ownership and enjoyment of that portion of land.

The plaintiffs further state that the defendants had earlier initiated proceedings before the Mamlatdar being Mamlatdar Courts Act Case No. 38 of 2010. In the said proceedings, the Mamlatdar partly allowed the claim of the defendants regarding the right of way. The plaintiffs contend that the Mamlatdar had no jurisdiction to decide questions relating to easementary rights. They have challenged the said order before the Prant Officer/Deputy Collector, Lalpur, where the appeal is stated to be pending.

On the basis of the above facts, the plaintiffs have prayed for a declaration that they are the exclusive owners of the suit land bearing R.S. No. 649 and that the defendants have no right to use the disputed strip shown by the blue broken

line as a road or to claim any easementary right over it. They have also sought a permanent injunction restraining the defendants and persons acting through them from using the said strip as a road or interfering with the plaintiffs' possession and enjoyment thereof, together with such other reliefs as may be deemed fit and the costs of the suit.

2. Written Statement of the Defendants

The defendants contested the suit by filing their joint written statement at Exh. 18 and denied the allegations made by the plaintiffs.

As a preliminary objection, the defendants contended that the suit is false, not maintainable in law and does not disclose any valid cause of action. They further contended that this Court has no jurisdiction to entertain the suit. According to the defendants, the plaintiffs have suppressed material facts and, therefore, are not entitled to any equitable relief. It is also their case that the plaintiffs have failed to produce any document establishing their title over the suit property and that the court fee paid is insufficient.

The defendants further raised an objection regarding the maintainability of the suit. They pointed out that the plaintiffs had already initiated proceedings before the Mamlatdar and had thereafter preferred an appeal before the

Prant Officer/Deputy Collector, Lalpur, which is still pending. According to the defendants, once the plaintiffs had chosen to pursue the remedy available under the special statute, they could not simultaneously pursue the same dispute before the Civil Court. On this basis, they contended that the present suit is barred and not maintainable.

On merits, the defendants denied the plaintiffs' assertion that there are three alternative roads or cart-tracks available for access to the defendants' lands. According to them, no such fact was found during the site inspection and panchnama conducted in Mamlatdar Court Case No. 38 of 2010. The defendants relied upon the order dated 27.07.2011 passed by the Mamlatdar, wherein the defendants were granted protection against obstruction to the existing cart-track/watercourse situated between the eastern side of R.S. No. 649 and R.S. No. 650. According to the defendants, the said order was passed after a local inspection and correctly reflects the actual position on the spot.

The defendants further contended that they have a lawful right of way over the disputed strip. In support of this contention, they relied upon a registered sale deed bearing Registration No. 98 dated 28.01.1960. According to them, the cart-track in question was being used even prior to the

execution of the said sale deed and has continued to be used by them and their predecessors for more than fifty years. They therefore claimed to have acquired an easementary right, including an easement of necessity, as the disputed cart-track is the only access available to their lands. The defendants denied that they were attempting to create any new road or easement through the plaintiffs' property.

The defendants also contended that the Mamlatdar had jurisdiction under the Mamlatdar Courts Act to decide and protect the right of way claimed by them and that the order dated 27.07.2011 was lawfully passed. According to them, no independent cause of action arose thereafter in favour of the plaintiffs for filing the present suit.

Lastly, the defendants alleged that the suit has been filed due to strained relations between the parties. According to them, the plaintiffs had earlier obstructed the defendants in using the cart-track, which compelled them to approach the Mamlatdar. It is their case that, being dissatisfied with the order passed by the Mamlatdar, the plaintiffs have instituted the present suit without any genuine cause and only with a view to harass the defendants.

On these grounds, the defendants prayed that the suit be dismissed with costs and that special costs be awarded in their favour.

3. Counter-Affidavit filed by the Plaintiff

In response to the written statement, Plaintiff No. 1, Hiruben Ramjibhai Rabadiya, filed her counter-affidavit at Exh. 24 and denied the allegations and contentions raised by the defendants.

With regard to the objection concerning parallel proceedings, the plaintiff admitted that an appeal arising out of Mamlatdar Case No. 38 of 2010 is pending before the Prant Officer/Deputy Collector, Lalpur. However, she contended that the pendency of such proceedings does not affect the maintainability of the present suit. According to her, the dispute relates to easementary rights, and the question of easement can be decided only by a Civil Court. It is her case that neither the Mamlatdar nor any revenue authority has jurisdiction to adjudicate such rights and, therefore, the present suit has been rightly filed before this Court.

As regards ownership of the suit land, the plaintiff relied upon the revenue records produced at Mark 3/12, including Village Forms 7/12 and 8-A, and contended that the said documents establish her ownership and possession over the suit property. The plaintiff further challenged the reliance placed by the defendants on the registered sale deed dated 28.01.1960. According to her, the said document does not

clearly identify the location referred to therein and the executant of the sale deed has not stepped into the witness box to support the defendants' case.

The plaintiff further relied upon documents produced at Mark 4/1 to Mark 4/4 to show the existence of the three access roads referred to in the plaint. According to her, these roads have been in existence for a long time and continue to be available for use by the defendants. She also relied upon the affidavits of independent witnesses produced at Exh. 7 to Exh. 11, contending that their evidence supports her case and there is no reason to disbelieve such independent witnesses.

The plaintiff further contended that even the map relied upon by the defendants shows that the disputed strip forms part of her land and remains in her ownership and possession. According to her, the defendants never had any cart-track through the disputed portion and have not acquired any easementary right over it. She maintained that when three separate access roads are already available to the defendants, including one directly connected to the main road, there is no basis for claiming any additional right of way through her land. She therefore denied the defendants' plea of easement by necessity as well as the other contentions raised in the written statement.

In conclusion, the plaintiff asserted that the documentary evidence as well as the affidavits of independent witnesses support her case. According to her, the defendants have not produced any independent witness in support of their claim. She therefore prayed that the suit be decreed and the reliefs claimed in the plaint be granted.

4. Issues framed for Trial

On the rival pleadings of the parties, this Court framed the following issues at Exh. 50 on 14.06.2017:

1. Whether the plaintiff proves that the plaintiff is the owner of the suit property?
2. Whether the plaintiff proves that the defendant has no right of way in the suit property?
3. Whether the defendant proves that the defendant has an easementary right of way over the suit property for the last 20 years?
4. What is the order and decree?

5. Evidence adduced by the Plaintiff Side during Trial

5.1 Oral Evidence

In support of the suit, the plaintiff side examined the following witnesses:

1. Exh. 58 — Deposition of Plaintiff Patel Ranchhodbhai Ravjibhai.
2. Exh. 75 — Deposition of plaintiff's witness Lakhmanbhai Khodabhai Pambhar.
3. Exh. 77 — Deposition of plaintiff's witness Niteshbhai Girdharbhai Chauhan.
4. Exh. 81 — Deposition of plaintiff's witness Bavanjibhai Karmshibhai Vaishnav.
5. Exh. 83 — Deposition of plaintiff's witness Jayeshbhai Jamanbhai Vaishnav.
6. Exh. 88 — Deposition of plaintiff's witness Kailash Bhagwanjibhai Rathod, Record Keeper, DILR office.

5.2 Documentary Evidence

The plaintiff side produced the following documents:

1. Exh. 33 — Court Commissioner's Report dated 23/07/2012 filed in the present proceedings.
2. Exh. 62 (Mark 4/1) — True copy of Registered Sale Deed No. 978 dated 08/11/1995, executed by vendor Panchabhai Bhimabhai Vaishnav in favour of vendee Mahesh Arjan Vaishnav.
3. Exh. 63 (Mark 4/2) — True copy of Registered Sale Deed No. 979 dated 08/11/1995, executed by vendor Panchabhai Bhimabhai Vaishnav in favour of vendee Jayesh Jamanbhai Vaishnav.

4. Exh. 64 (Mark 4/3) — True copy of Registered Sale Deed No. 980 dated 08/11/1995, executed by vendor Panchabhai Bhimabhai Vaishnav in favour of vendee Bavji Karamsi Vaishnav.
5. Exh. 65 (Mark 4/4) — True copy of Registered Sale Deed No. 981 dated 08/11/1995, executed by vendor Panchabhai Bhimabhai Vaishnav in favour of vendee Gitaben Mohanlal Vaishnav.
6. Exh. 66 (Mark 4/5) — Village Form Nos. 7/12 and 8-A of Vallabh Popat.
7. Exh. 67 (Mark 4/6) — Village Form Nos. 7/12, 8-A and Form 6 of the heirs of deceased Khima Punja, namely Rambhaben Khimaji and others.
8. Exh. 68 (Mark 4/7) — Village Form Nos. 7/12, 8-A and Form 6 of Jivraj Bhaga.
9. Exh. 69 (Mark 4/10) — True copy of Registered Sale Deed No. 1029 dated 11/05/2011, executed by Defendant No. 2.2 Ranchhodbhai Gordhanbhai Vaishnav in favour of Ghanshyambhai Madhabhai Rabadia.
10. Exh. 70 (Mark 4/12) — Village Form Nos. 7/12 and 8-A of R.S. No. 649 as on 22/12/2010, showing the name of Hiruben Ramjibhai.
11. Exh. 71 (Mark 4/13) — Village Form Nos. 7/12 and 8-A of Patel Dayalal Karmashi.
12. Exh. 72 (Mark 4/14) — Village Form Nos. 7/12 and 8-A of Jadiben Jivraj.

13. Exh. 73 (Mark 4/15) — Village Form Nos. 7/12 and 8-A of Haresh Jivraj.
14. Exh. 89 (Mark 33/3) — Original measurement sheet of the map of Revenue Survey No. 649 (new Survey No. 347), prepared by Court Commissioner Shri K.K. Kateshiya (date of measurement 21/07/2012).
15. Exh. 90 (Mark 20/6) — Copy of the boundary measurement sheet (Had-Mapni Sheet) of Revenue Survey No. 649 dated 28/02/2011, prepared by Surveyor D.K. Kotecha.
16. Exh. 91 — True copy of the Tippan (field note and sketch) of Revenue Survey No. 649.
17. Exh. 92 — True copy of the Part Plan (boundary/part plan) of Revenue Survey No. 649.
18. Exh. 97 (Mark 95/1) — True copy of Agreement Deed No. 392 dated 04/06/1962.
19. Exh. 98 (Mark 95/2) — True copy of Registered Sale Deed No. 260 dated 17/02/1964.

After completion of its evidence, the plaintiff side filed a closing purshis vide Exh. 99 dated 15/06/2021.

6. Evidence adduced by the Defendant Side during Trial

6.1 Oral Evidence

In support of the defence, the defendant side examined the following witnesses:

1. Exh. 106 — Deposition of Defendant No. 2.2 Ranchhodbhai Gordhanbhai Vaishnav.
2. Exh. 121 — Deposition of defendant's witness Hiteshbhai Mathurbhai Rabadiya.
3. Exh. 122 — Deposition of defendant's witness Rabadiya Damjibhai Chanabhai.
4. Exh. 123 — Deposition of defendant's witness Arvind Ravjibhai Vaishnav.

6.2 Documentary Evidence

The defendant side produced the following documents:

1. Exh. 125 (Mark 120/1) — Copy of Village Form Nos. 7 and 8-A of Revenue Survey No. 650 (new R.S. No. 376), Khata No. 306, Pipartoda village, showing the names of Ramesh Ravji Vaishnav and others.
2. Exh. 126 (Mark 120/2) — Copy of Village Form Nos. 7, 8-A and Haq-Patrak Form 6, containing Entry Nos. 60, 920, 3338 and 4350.
3. Exh. 130 (Mark 25/1) — Application submitted before the Mamlatdar, Lalpur, for opening the way to the defendants' agricultural land, dated 02/12/2010.
4. Exh. 131 (Mark 25/2) — Statement/reply submitted by Ranchhodbhai Gordhanbhai Vaishnav (Defendant No. 2.2) to the Circle Officer, Lalpur, and Talati-cum-Mantri, Pipartoda Gram Panchayat, dated 09/12/2010.

5. Exh. 132 (Mark 25/3) — Statement/reply submitted by Ramesh Ravjibhai Vaishnav to the Circle Officer, Lalpur, and Talati-cum-Mantri, Pipartoda, dated 09/12/2010.
6. Exh. 133 (Mark 25/4) — Statement/reply submitted by Jivrajibhai Bhagabhai to the Talati-cum-Mantri, Pipartoda Gram Panchayat, and Circle Officer, Lalpur, dated 09/12/2010.
7. Exh. 134 (Mark 25/5) — Panch Rojkam prepared by the Sarpanch, Pipartoda Gram Panchayat, dated 09/12/2010.
8. Exh. 135 (Mark 25/6) — Written reply submitted by Plaintiff No. 2 Ranchhodbhai Ravjibhai Rabadiya to the Circle Officer, Lalpur, and Talati-cum-Mantri, Pipartoda Gram Panchayat, dated 09/12/2010.
9. Exh. 136 (Mark 25/7) — Letter No. SO/744/10 dated 10/12/2010 issued by the Circle Officer, Lalpur.
10. Exh. 137 (Mark 25/8) — Letter dated 10/12/2010 issued by the Circle Officer, Lalpur.
11. Exh. 138 (Mark 25/9) — Reply submitted by Defendant No. 2/2 Ranchhodbhai Gordhanbhai to the Police Sub-Inspector, Lalpur.
12. Exh. 139 (Mark 25/10) — Letter No. S.O./18/010 dated 18/12/2010 issued by the Circle Officer, Lalpur, to the Mamlatdar, Lalpur, requesting action under Section 5 of the Mamlatdars' Courts Act.

13. Exh. 140 (Mark 25/11) — Affidavit of Narubha Madarsang Jadeja filed in Mamlatdar Court Case No. 38/2010, dated 20/01/2011.
14. Exh. 141 (Mark 25/12) — Affidavit of Bhikhabhai Limbabhai Vasoya filed in Mamlatdar Court Case No. 38/2010, dated 20/01/2011.
15. Exh. 142 (Mark 25/13) — Reply letter issued by Lalpur Police Station to the Mamlatdar Office, Lalpur, dated 10/01/2011.
16. Exh. 143 (Mark 20/3, later Mark 103/3) — Application filed before the Mamlatdar, Lalpur, seeking action for breach of injunction by Jivrajbhai Bhagabhai Chovatiya and Gordhanbhai Kurjibhai Vaishnav, dated 24/12/2010.
17. Exh. 144 (Mark 103/4) — Certified copy of the order passed by the Mamlatdar, Lalpur, in Mamlatdar Court Case No. 38/2010, dated 21/07/2011.
18. Exh. 145 (Mark 103/5) — Certified copy of the order passed by the Deputy Collector, Lalpur, in Revision Application No. 4/11-12, dated 30/01/2012.
19. Exh. 146 (Mark 103/6) — Original letter dated 27/12/2010 issued by the Mamlatdar, Lalpur, to the Police Sub-Inspector, Lalpur Police Station, regarding Mamlatdar Court Case No. 38/2010, directing action under Section 188 IPC.
20. Exh. 153 (Mark 103/1, later Mark 151/1) — Certified copy of Registered Sale Deed No. 98 dated

28/02/1960, executed by Patel Lavji Bhaga and Jivraj Bhaga, containing recitals regarding the right of way.

21. Exh. 154 (Mark 103/7, later Mark 151/2) — Certified copy of the boundary measurement sheet (Had-Mapni Sheet) of Revenue Survey No. 649 dated 28/02/2011, prepared by Surveyor D.K. Kotecha.

After completion of its evidence, the defendant side filed a closing purshis vide Exh. 155 dated 05/07/2023.

7. Arguments submitted by both sides

7.1 Arguments submitted on behalf of the Plaintiffs

Learned advocate for the plaintiffs, relying upon the written submissions at Exh. 165 and the oral arguments advanced before the Court, submitted that the disputed strip situated along the eastern boundary of the plaintiff's land bearing R.S. No. 649 is merely a natural watercourse ("chhellu") meant for drainage of rainwater flowing from higher lands. According to the plaintiffs, the said strip forms part of their own land and ownership, and it is neither a road nor a cart-track over which the defendants can claim any right of way.

It was further submitted that the revenue records support the plaintiffs' case. Reliance was placed upon the boundary measurement sheet of R.S. No. 649 dated 28.02.2011 (Exh. 90 / Exh. 154), the tippan at Exh. 91 and the part-plan at

Exh. 92. According to the plaintiffs, none of these documents show any road or cart-track on the eastern side of R.S. No. 649 or between R.S. Nos. 649 and 650. The plaintiffs also relied upon the evidence of the DILR Surveyor examined at Exh. 88, who, according to them, supports the position emerging from the survey records.

Referring to the sale deed relied upon by the defendants, the plaintiffs submitted that Sale Deed No. 98 merely contains a reference to access through a “chhelda” from the Pipartoda-Dhandha road. According to the plaintiffs, the said reference does not relate to the disputed strip. It was argued that the access mentioned in the sale deed refers to the existing “pagthiyali” road, which is one of the alternative routes available to the defendants.

The plaintiffs further argued that the defendants have several existing access routes to reach their lands. In support of this contention, reliance was placed upon the registered sale deeds and agreement deeds produced at Exh. 62 to Exh. 65, Exh. 68, Exh. 69, Exh. 97 and Exh. 98, as well as the village records. According to the plaintiffs, these documents clearly establish the existence of alternative roads. It was also submitted that the defendants’ own evidence supports this position. Particular reliance was placed upon the cross-examination of Defendant No. 1 (Exh. 106), wherein he is stated to have admitted the

correctness of the recital regarding a road contained in the sale deed at Exh. 69. The plaintiffs further pointed out that the witness at Exh. 122 admitted the existence of two other roads, whereas the witnesses examined at Exh. 121 and Exh. 123 expressed no knowledge regarding the roads in question. It was also argued that the statements made by the plaintiffs' witnesses at Exh. 75, Exh. 77, Exh. 81, Exh. 83 and Exh. 88 regarding the existence of alternative roads remained substantially unchallenged in cross-examination and therefore deserve acceptance.

Lastly, it was submitted that the Mamlatdar has no jurisdiction to adjudicate upon or create easementary rights. According to the plaintiffs, questions relating to easement can be decided only by a competent Civil Court. On the basis of the documentary and oral evidence on record, the plaintiffs therefore prayed that it be held that the defendants have no right of way or easementary right over the disputed strip and that the suit be decreed as prayed for.

7.2 Arguments submitted on behalf of the Defendants

Learned advocate for the defendants, relying upon the written submissions at Exh. 164 and the oral arguments advanced before the Court, submitted that the dispute relates to a government drainage channel ("chhellu"), which has been used by the defendants and their predecessors for

access to their agricultural lands for several decades. According to the defendants, the present suit is therefore not maintainable.

It was submitted that the original Defendant No. 1, Jivrajbhai Bhagabhai Chovatiya, through whom the present defendants claim, had purchased the land by registered Sale Deed No. 98 dated 28.02.1960 (Exh. 153). According to the defendants, the said sale deed specifically records that access to the land is available through the “chhellu” connecting the Pipartoda-Dhandha road to the land in question. It was therefore argued that the defendants and their predecessors have been continuously using the said route since 1960. The defendants further submitted that the sale deed has never been challenged by the plaintiffs or by any other person and, therefore, the recitals contained therein carry evidentiary value. According to them, the plaintiffs cannot be permitted to dispute a right which has been exercised openly for more than fifty years. It was also argued that, having regard to the long-standing use claimed by the defendants, the suit filed in the year 2011 is barred by limitation.

The defendants further contended that the plaintiffs have not approached the Court with complete and proper disclosure of facts. According to them, the plaintiffs have not produced any title document showing how and when

they acquired ownership of the suit land. It was pointed out that the plaintiffs have relied mainly upon documents relating to neighbouring lands and the defendants' property, while failing to place their own title deed on record. On this basis, it was argued that the plaintiffs have failed to prove Issues Nos. 1 and 2. On the other hand, the defendants submitted that they have successfully established Issue No. 3 through the registered sale deed dated 28.02.1960 (Exh. 153) and the oral evidence led on their behalf. According to them, the evidence clearly shows that the disputed "water chhellu" lies between the plaintiff's land and R.S. No. 650 and that the defendants have been using it as an access route since 1960.

On the issue of maintainability and jurisdiction, the defendants relied upon the orders passed by the Mamlatdar (Exh. 144) and the Deputy Collector (Exh. 145). It was submitted that orders passed under the Mamlatdars' Courts Act are subject to challenge before the High Court under Article 226 of the Constitution of India and that the present civil suit is not maintainable. The defendants also contended that the suit suffers from want of jurisdiction and non-joinder of necessary parties.

In support of their submissions, reliance was placed upon several judicial precedents, including *Samji Shivji v. Devji Valji* (Second Appeal No. 374 of 1983), *Lakshmanbhai*

Ukabhai Parmar v. Karamsibhai Lalabhai Parmar (S.C.A. No. 101 of 2014), *Harijan Dharmashibhai Mansangbhai v. Patel Virambhai Parkhabhai* (S.C.A. No. 3030 of 2020), *Patel Maheshbhai Keshavlal v. Mamlatdar* (2022), *Patel Bhavikkumar Praveenbhai v. Harmanbhai Maganbhai Bhoi* (AIR 2024 Gujarat 163) and *Moreshar Yadaorao Mahajan v. Vyankatesh Sitaram Bhedi* (AIR 2022 SC 4710).

On the basis of the above submissions, the defendants prayed that the suit be dismissed with costs.

8. Decision and Reasons

8.1 Burden of Proof and Standard of Proof — General Principles

Before examining the issues on merits, it is necessary to consider the settled principles relating to burden of proof and standard of proof, as these principles govern the appreciation of evidence led by the parties.

The first and foremost principle is that the party who asserts a fact must prove it. Under Section 101 of the Indian Evidence Act, 1872 (corresponding to Section 104 of the Bharatiya Sakshya Adhiniyam, 2023), a person who seeks a judgment in respect of a legal right or liability based upon certain facts must establish the existence of those facts.

Accordingly, in the present case, the initial burden lies upon the plaintiffs to prove their ownership over the suit property and to establish that the defendants do not possess any right of way over it. Conversely, the burden of proving the easementary right of way claimed by them lies upon the defendants.

It is equally well settled that there is a distinction between the burden of proof and the onus of proof. The burden of proof is determined by the pleadings and generally remains fixed throughout the trial, whereas the onus of proof may shift from one party to the other depending upon the evidence brought on record. Under Sections 102 and 103 of the Indian Evidence Act (corresponding to Sections 105 and 106 of the Bharatiya Sakshya Adhiniyam), the onus lies upon the party who would fail if no evidence were led by either side. As evidence unfolds during the trial, this onus may shift from one party to another.

Another settled principle is that when a particular fact is especially within the knowledge of a person, the burden of proving that fact rests upon that person. This principle, embodied in Section 106 of the Indian Evidence Act (corresponding to Section 109 of the Bharatiya Sakshya Adhiniyam), assumes significance in cases involving a claim of long-standing user or easementary necessity, since

such facts are particularly within the knowledge of the party asserting them.

So far as the standard of proof is concerned, a civil dispute is decided on the basis of preponderance of probabilities and not on the standard of proof beyond reasonable doubt, which applies in criminal cases. A fact is said to be proved when, upon consideration of the entire material on record, the Court either believes it to exist or finds its existence so probable that a prudent person would act upon such belief. The Court is therefore required to assess the entire evidence and determine on which side the balance of probabilities lies.

It is also a recognised principle that a party is expected to produce the best evidence available in support of its case. Where relevant evidence is within the power and possession of a party and is withheld without satisfactory explanation, the Court may draw an adverse inference against that party. Therefore, non-production of material documents or failure to examine a person having direct knowledge of the disputed facts may, in an appropriate case, operate against the party concerned.

Lastly, it is the quality of evidence and not the number of witnesses that matters. A fact may be proved by the testimony of a single reliable witness, while evidence of

several witnesses may still fail to inspire confidence. The Court is therefore required to assess the credibility, reliability and evidentiary value of the material brought on record rather than merely counting the number of witnesses examined by either side.

The evidence led by the parties and the issues framed in the present suit are required to be examined in the light of the above principles.

8.2 Appreciation, Evaluation and Marshalling of Evidence

Keeping the above principles in view, the oral and documentary evidence produced by both sides is now examined and appreciated with reference to the issues involved in the suit.

A. Oral Evidence Led by the Plaintiffs

Exh. 58 – Deposition of Plaintiff No. 2, Patel Ranchhodbhai Ravjibhai

This witness supported the case of the plaintiffs. He deposed that R.S. No. 649 is in the ownership and possession of the plaintiffs, that the disputed strip situated on the eastern side of the land is only a rainwater drainage

channel (“chhellu”), and that the defendants already have three separate roads available for reaching their lands.

However, an important aspect emerges from his cross-examination. He admitted that on the date of institution of the suit, i.e., 16.08.2011, he was not the owner of R.S. No. 649 and that he acquired the land subsequently through an exchange deed dated 12.12.2013 during the pendency of the suit. Therefore, he did not have personal knowledge of the position prevailing at the time when the dispute originally arose. Consequently, his testimony regarding the earlier use and condition of the disputed strip cannot be treated as evidence based on long-standing personal knowledge. Nevertheless, being the present owner and a party to the proceedings, his evidence remains relevant and is required to be considered along with the other evidence on record.

Exh. 75 – Deposition of Lakhmanbhai Khodabhai Pambhar

This witness is the son of Khoda Dungar, who had executed the agreement deed dated 22.05.1962 (Exh. 97). According to him, under the said agreement a seven-foot-wide road passing through R.S. No. 636 paiki was made available to the predecessor of the defendants for access to R.S. No. 642. He identified his father’s signature on the document

and deposed regarding the existence and use of the said road.

At the same time, it is noticed that the witness is illiterate and admitted that he had not read the contents of his affidavit and had affixed his thumb impression at the instance of his advocate. He also admitted in cross-examination that he had never seen any road passing through a “chhellu” in village Pipartoda. This admission, however, tends to support the plaintiffs’ case that the disputed “chhellu” is not a road. His testimony regarding the route through R.S. No. 636 finds support from the agreement deed at Exh. 97 and can therefore be relied upon to that extent.

Exh. 77 – Deposition of Niteshbhai Girdharbhai Chauhan

This witness is an adjoining landholder. He deposed that three access routes are available to the defendants and that the disputed “chhellu” is being used only by the plaintiffs. The witness stated that he had read his affidavit before signing it and his evidence appears to have been given in a straightforward manner. He also disclosed that proceedings regarding the road had earlier been initiated by Hiruben and that the defendants had pursued proceedings regarding the cart-track.

His evidence regarding the existence of alternative routes is consistent with the evidence of other neighbouring witnesses as well as the documentary record. No material contradiction or infirmity could be brought out in his cross-examination.

Exh. 81 – Deposition of Bavanjibhai Karmshibhai Vaishnav

This witness relied upon his own sale deed (Mark 64) and deposed regarding the existence of the “pagthiyali” road from the Dhandha side as well as the other access routes available to the defendants.

However, in cross-examination he admitted that his land is not shown in any of the four boundaries mentioned in the map at Mark “A” and that he does not possess any boundary certificate. This admission creates some doubt regarding the extent of his familiarity with the suit property. Therefore, his testimony can safely be relied upon only to the extent that it is supported by the documentary evidence and the consistent testimony of other witnesses.

Exh. 83 – Deposition of Jayeshbhai Jamanbhai Vaishnav

This witness also relied upon his own sale deed (Mark 63) and deposed regarding the existence of the “pagthiyali”

road, described by him as the “18-step road” from the Dhandha side, as well as the other access routes.

Like the witness at Exh. 81, he admitted in cross-examination that his land does not find place in any of the four boundaries shown in the map at Mark “A”. He further stated that he had known both parties since childhood and had no personal interest in the dispute. His evidence serves as corroborative evidence regarding the existence of alternative routes, though it must be appreciated with due regard to the limitations arising from his admission regarding the boundaries.

**Exh. 88 – Deposition of Kailash Bhagwanjibhai Rathod,
Record Keeper, DILR Office**

This witness is an official witness from the DILR office and his evidence assumes importance because it relates to the survey records concerning R.S. No. 649. He produced the boundary measurement records and deposed that neither the boundary measurement sheet (Exh. 90), nor the tippan (Exh. 91), nor the part-plan (Exh. 92) shows any road on the eastern side of R.S. No. 649. According to him, the records indicate only a “chhellu” and, in some documents, even that is not shown.

At the same time, the limitations of his evidence cannot be overlooked. He admitted that he joined service after institution of the suit, had no personal knowledge of the facts in dispute, had never visited the site and that the records in question were not prepared in his presence. He also admitted that he had produced copies rather than original records. Consequently, his testimony cannot be treated as direct evidence regarding the actual condition existing on the spot. Its evidentiary value lies in proving the contents of the official survey records, which are required to be considered independently while appreciating the documentary evidence on record.

B. Documentary Evidence Led by the Plaintiffs

Exh. 33 – Court Commissioner’s Report dated 23.07.2012

This report was prepared by the Court Commissioner appointed during the course of the proceedings for local inspection and measurement of the suit property. The report is a relevant piece of evidence regarding the physical condition and features of the land as they existed at the time of inspection. The report is required to be considered together with the measurement map produced at Exh. 89.

Exh. 62 to Exh. 65 (Marks 4/1 to 4/4) – Registered Sale Deeds dated 08.11.1995

These are certified copies of Registered Sale Deed Nos. 978, 979, 980 and 981 executed by Panchabhai Bhimabhai Vaishnav in favour of different purchasers in respect of lands situated in R.S. No. 645. The plaintiffs relied upon these documents on the ground that they contain recitals regarding the existence of roads available in the locality. According to the plaintiffs, these recitals support their case that alternative access routes were available to the defendants. These are registered documents of the year 1995 and are therefore admissible in evidence. It is also noteworthy that two of the purchasers under these deeds, namely Jayesh Jamanbhai Vaishnav and Bavanjibhai Karmshibhai Vaishnav, have been examined as witnesses at Exh. 83 and Exh. 81 respectively. To that extent, the contents of these documents lend support to their oral testimony.

Exh. 66 to Exh. 68 (Marks 4/5 to 4/7) – Revenue Records

These documents consist of Village Forms 7/12, 8-A and Form No. 6 relating to the lands of Vallabh Popat, the heirs of deceased Khima Punja and Jivraj Bhaga. The documents establish the ownership and possession of the neighbouring lands through which the plaintiffs claim the alternative

access routes are available. Exh. 68, in particular, records the holding of Jivraj Bhaga in R.S. No. 641 paiki. These documents support the plaintiffs' description of the surrounding lands and the alleged routes passing through them.

Exh. 69 (Mark 4/10) – Registered Sale Deed No. 1029 dated 11.05.2011

This document was executed by Defendant Ranchhodbhai Gordhanbhai Vaishnav in favour of Ghanshyambhai Madhabhai Rabadia in respect of land bearing R.S. No. 643 paiki. The document assumes significance because Defendant No. 1, while deposing at Exh. 106, admitted the correctness of the recitals regarding the road mentioned therein. To the extent the document refers to access routes other than the disputed strip, it lends support to the plaintiffs' contention that alternative access routes were available to the defendants. The evidentiary value of the document is further strengthened by the admission made by the defendant himself.

Exh. 70 to Exh. 73 (Marks 4/12 to 4/15) – Revenue Records

These documents consist of Village Forms 7/12 and 8-A relating to R.S. No. 649 and other adjoining lands. Exh. 70

records the name of original Plaintiff No. 1, Hiruben Ramjibhai Rabadiya, in respect of R.S. No. 649 and is therefore directly relevant to Issue No. 1 regarding ownership and possession of the suit property. Although revenue entries are not documents of title by themselves, they constitute relevant evidence regarding possession and enjoyment of the land. The remaining documents relate to adjoining holdings and assist in understanding the surrounding properties and routes.

Exh. 89 (Mark 33/3) – Measurement Map prepared by the Court Commissioner

This is the original measurement map prepared by Court Commissioner Shri K.K. Kateshiya pursuant to the measurement carried out on 21.07.2012. As the map was prepared by a Court-appointed Commissioner, it carries considerable evidentiary value as an objective record of the physical features noticed during measurement. The plaintiffs rely upon this map to contend that the disputed eastern strip is a “chhellu” and not a road. The map is required to be read along with the Commissioner’s Report at Exh. 33 and the survey records produced thereafter.

**Exh. 90 and Exh. 154 – Boundary Measurement Sheets;
Exh. 91 – Tippan; Exh. 92 – Part Plan**

These documents constitute the principal survey records relied upon by the plaintiffs. Exh. 90 is the boundary measurement sheet of R.S. No. 649 prepared on 28.02.2011 by Surveyor D.K. Kotecha, while Exh. 154 is its certified copy. Exh. 91 is the tippan and Exh. 92 is the part plan relating to the same survey number.

According to the plaintiffs, and as reflected in the evidence of the DILR official at Exh. 88, these records do not show any road on the eastern side of R.S. No. 649. At the most, they indicate the existence of a “chhellu”. Being official survey records prepared in the regular course of official duties, these documents carry considerable evidentiary value and are relevant while determining whether the disputed strip was ever recorded as a road. At the same time, their evidentiary weight has to be assessed keeping in view the admissions of the DILR witness that the original records were not produced and that part plans do not necessarily depict every physical feature such as a “chhellu”.

Exh. 97 (Mark 95/1) – Agreement Deed No. 392 dated 04.06.1962

This document records the grant of a seven-foot-wide access road through R.S. No. 636 paiki by Patel Khoda Dungar in favour of Lava Bhaga, the predecessor of the

defendants, for reaching R.S. No. 642. The document forms the foundation of the plaintiffs' case regarding one of the alternative access routes available to the defendants. The contents of the deed are supported by the evidence of Lakhmanbhai Khodabhai Pambhar at Exh. 75. Being a registered document of considerable antiquity, it carries substantial evidentiary value and supports the plaintiffs' contention that access was available through R.S. No. 636.

Exh. 98 (Mark 95/2) – Registered Sale Deed No. 260 dated 17.02.1964

Under this document, Lava Bhaga and Jivraj Bhaga purchased land in R.S. No. 636 paiki. The deed records the Dhandha village road on the northern side of the property. According to the plaintiffs, this document demonstrates the existence of a direct access route from the Dhandha side and corroborates the route referred to in Exh. 97. The document therefore lends support to the plaintiffs' case that access to the defendants' lands was available through routes other than the disputed strip situated in R.S. No. 649.

C. Oral Evidence Led by the Defendants

Exh. 106 – Deposition of Defendant Ranchhodbhai Gordhanbhai Vaishnav (DW-1)

This witness is the principal witness examined on behalf of the defendants. In his examination-in-chief, he supported the defence case by asserting that the defendants have a right of way through the disputed “chhellu”. He relied upon the sale deed of the year 1960 and also claimed an easementary right by necessity.

However, certain admissions made by him during cross-examination assume significance. He admitted that the plaintiff had never executed any document granting a road in favour of the defendants. He further admitted that R.S. No. 649 belongs to the plaintiff. He was also unable to produce the order relating to the alleged proceedings under Section 188 of the IPC. More importantly, he admitted the correctness of the recitals regarding the road contained in the sale deed at Exh. 69. He also admitted that Sale Deed No. 98 records the existence of the Dhandha village road on the northern side for access to the land concerned.

These admissions are relevant because they indicate the existence of an alternative access route from the Dhandha side. Consequently, they weaken the defendants’ contention that the disputed strip is the only available route or that the claimed easement is one of necessity. Although the witness asserted that he and his predecessors had been using the disputed route since his childhood, such assertions are

required to be tested against the documentary evidence and other material on record.

Exh. 121 – Deposition of Hiteshbhai Mathurbhai Rabadiya

This witness, who stated that he works as Deputy Sarpanch and also undertakes JCB and tractor work on hire, deposed that the defendants use the disputed “chhellu” as a cart-track.

However, his cross-examination reveals certain limitations. He admitted that he does not maintain records of survey numbers and was unable to state which survey numbers belong to the defendants. He did not produce any documentary record or bill in support of the work allegedly carried out by him on the defendants’ lands. He also admitted that he has good relations with the defendants. Further, his statement regarding the width and nature of the disputed strip is not supported by any measurement or documentary evidence. In these circumstances, his testimony has limited evidentiary value and cannot by itself establish the defendants’ claim.

Exh. 122 – Deposition of Rabadiya Damjibhai Chanabhai

This witness was examined by the defendants to support their claim regarding use of the disputed strip as a cart-track. However, certain aspects of his cross-examination are noteworthy.

The witness admitted that he is related to the plaintiff and described the plaintiff as his family member. He further admitted that he does not know the survey numbers involved in the dispute, including the survey number of his own land. According to him, the lands of the plaintiff and the adjoining owner are fenced and the disputed “chhellu” lies between those fences.

Significantly, while answering questions regarding the alleged alternative routes, he admitted the existence of the “pagthiyali” road along the boundaries of the lands of Khima Punja and Vallabh Popat. He further stated that the 66 KV road and the pagthiyali road are the same and also stated that the defendants use the Dhandha road. These statements tend to support the existence of alternative access routes. Viewed as a whole, his evidence does not provide clear and consistent support to the defendants’ claim of an exclusive right of way through the disputed strip.

Exh. 123 – Deposition of Arvind Ravjibhai Vaishnav

This witness is a co-holder of the adjoining land bearing old R.S. No. 650 (new R.S. No. 387). In his examination-in-chief, he supported the defendants' case regarding the disputed route.

However, in cross-examination he admitted that he does not know the survey number or account number of his own land and that he has never got his land measured. He further stated that he has been residing at Jamnagar for the last several years and had last visited the defendants' field about eight to ten years ago. He stated that the "chhellu" passes between the boundaries of the two lands and denied that it forms part of the plaintiff's land. At the same time, he expressed ignorance regarding the alternative routes suggested to him during cross-examination.

The witness also admitted that one of the defendants is his relative. In view of his limited knowledge of the present condition of the lands and his inability to speak about the alternative routes, his testimony provides only limited assistance in determining the nature of the disputed strip. His statement that the "chhellu" lies between the boundaries of the adjoining lands does not, by itself, establish the existence of any easementary right in favour of the defendants.

D. Documentary Evidence Led by the Defendants

**Exh. 125 and Exh. 126 (Marks 120/1 and 120/2) –
Revenue Records of R.S. No. 650**

These documents consist of Village Forms 7/12, 8-A and Haq Patrak Form No. 6 relating to R.S. No. 650 (new R.S. No. 376), Khata No. 306. The records show the names of Ramesh Ravji Vaishnav and other holders along with the relevant revenue entries. These documents establish the ownership and possession of the land situated to the east of R.S. No. 649. However, while they prove the existence and ownership of the adjoining land, they do not by themselves establish that the disputed “chhellu” is a road or that the defendants possess any right of way over it.

**Exh. 130 to Exh. 142 (Marks 25/1 to 25/13) – Records of
Proceedings before the Mamlatdar**

These documents comprise the proceedings initiated before the Mamlatdar, including the application dated 02.12.2010, statements and replies submitted by the parties and neighbouring landholders, the Panch Rojkam prepared by the Sarpanch, communications issued by the Circle Officer, replies submitted before the police authorities, affidavits filed in Mamlatdar Case No. 38 of 2010 and related correspondence.

These documents establish the sequence of events leading to the proceedings before the Mamlatdar and indicate that disputes regarding obstruction and use of the disputed route existed between the parties even before the present suit. However, the evidentiary value of these documents is limited to that extent. Most of the statements and affidavits contained in these proceedings are assertions made before the revenue authorities. The persons who made those statements have not been examined before this Court, and therefore such material cannot by itself prove the easementary right claimed by the defendants in the present proceedings.

Exh. 143 to Exh. 146 (Marks 103/3 to 103/6) – Orders and Proceedings of Revenue Authorities

These documents include the application seeking action for alleged breach of injunction, the certified copy of the order passed by the Mamlatdar in Case No. 38 of 2010 dated 21.07.2011, the certified copy of the order passed by the Deputy Collector in Revision Application No. 4 of 2011-12 dated 30.01.2012 and the communication issued by the Mamlatdar to the police authorities regarding action under Section 188 of the IPC.

The defendants have relied heavily upon these documents to contend that the dispute has already been adjudicated by the

revenue authorities. These documents undoubtedly establish that the Mamlatdar passed an order in favour of the defendants and that the revision preferred by the plaintiffs was rejected by the Deputy Collector. However, the proceedings under the Mamlatdars' Courts Act are summary in nature and are primarily concerned with possession and existing use. Such proceedings do not finally determine questions relating to title or easementary rights. Therefore, while these documents show what transpired before the revenue authorities, they do not conclusively decide the issues which arise for determination in the present civil suit.

Exh. 153 (Mark 103/1 / 151/1) – Registered Sale Deed No. 98

This certified copy of Registered Sale Deed No. 98 of the year 1960 is the principal document relied upon by the defendants. Being a registered document of considerable age, it is admissible in evidence and carries significant evidentiary value.

The defendants rely upon the recital contained in the document regarding access to the land through a “chhelda” from the Pipartoda-Dhandha road. According to them, this recital establishes their long-standing right of way. However, on a plain reading, the recital appears to refer to access from the Pipartoda-Dhandha road and does not

specifically identify the disputed eastern strip of R.S. No. 649 as the route in question. The document therefore establishes the existence of an access route, but it does not clearly establish that the disputed “chhellu” forming the subject matter of the present suit is the very route referred to therein.

Further, when the document is read together with Exh. 97, Exh. 98 and the admissions made by DW-1 during cross-examination, it appears that access from the Dhandha side was also available to the defendants. Though some variation appears in the record regarding the precise date of the sale deed, nothing substantial turns on that discrepancy for the purpose of deciding the present controversy.

Exh. 154 (Mark 103/7 / 151/2) – Boundary Measurement Sheet of R.S. No. 649

This document is the certified copy of the boundary measurement sheet dated 28.02.2011 prepared by Surveyor D.K. Kotecha. It is substantially the same document as that produced by the plaintiffs at Exh. 90.

Significantly, the document shows a “chhellu” on the eastern side of R.S. No. 649 and does not depict any road at that location. Thus, the document produced by the defendants themselves is consistent with the survey records

relied upon by the plaintiffs. To that extent, it does not provide support to the defendants' case that the disputed strip is a recorded cart-track or recognised road. On the contrary, the document lends support to the position emerging from the official survey records that the eastern feature adjoining R.S. No. 649 is recorded as a "chhellu".

E. Marshalling of Evidence

On an overall appreciation of the oral and documentary evidence on record, certain broad features emerge.

The documentary evidence produced by both sides presents a largely consistent picture regarding the nature of the disputed eastern strip adjoining R.S. No. 649. The survey records, including the Court Commissioner's measurement map (Exh. 89), the boundary measurement sheets (Exhs. 90 and 154), the tippan (Exh. 91) and the part plan (Exh. 92), do not record any road on the eastern side of R.S. No. 649. These documents show the existence of a "chhellu". Significantly, even the certified boundary measurement sheet produced by the defendants at Exh. 154 reflects the same position.

The documents relating to neighbouring lands, namely the sale deeds at Exhs. 62 to 65, the agreement deed at Exh. 97, the sale deed at Exh. 98 and the relevant revenue records,

indicate the existence of access routes through R.S. No. 636 and from the Dhandha side. These documents lend support to the plaintiffs' contention that alternative routes to the defendants' lands existed. The recital contained in the defendants' own sale deed at Exh. 153 also refers to access from the Pipartoda-Dhandha road, which is broadly consistent with the existence of such alternative routes.

The oral evidence also requires to be viewed in the light of the documentary record. The neighbouring witnesses examined by the plaintiffs at Exhs. 77, 81 and 83 have, in substance, spoken about the existence of alternative access routes available to the defendants. Though certain limitations and admissions emerged during their cross-examination, their evidence remains broadly consistent with the documentary material on record.

On the other hand, the evidence of the defence witnesses at Exhs. 121, 122 and 123 is not entirely consistent. During cross-examination, these witnesses made admissions regarding the existence of the Dhandha road and the pagthiyali route and also stated that the disputed "chhellu" lies between adjoining boundaries. These aspects of their evidence do not materially strengthen the defendants' claim of an exclusive right of way through the disputed strip.

Particular significance attaches to the admissions made by Defendant No. 1 while deposing at Exh. 106. He admitted the correctness of the recitals regarding the road contained in Exh. 69 and also acknowledged the reference to access from the Dhandha side found in the relevant sale deed. These admissions are relevant while assessing the defendants' plea that the disputed strip constitutes their only access route.

Thus, when the evidence is considered as a whole, the survey records, the title documents relating to neighbouring lands, the revenue records and the admissions emerging from the oral evidence provide the factual background against which the issues framed in the suit are required to be decided. The effect of this evidence on the questions of ownership of the suit property, existence or otherwise of a right of way in favour of the defendants and the defendants' claim of an easementary right acquired by long user is considered while recording findings on the respective issues.

8.3.1 Issue No. 1 — Whether the plaintiff proves that the plaintiff is the owner of the suit property?

The burden of proving this issue lies upon the plaintiffs. Their case is that they are the owners and possessors of agricultural land bearing R.S. No. 649 situated at village

Pipartoda, Taluka Lalpur, District Jamnagar, admeasuring Hectare 2-60-01 sq. m., as described in the plaint and the map produced at Mark “A”.

To establish their ownership, the plaintiffs have relied mainly upon the revenue records relating to R.S. No. 649. The Village Forms 7/12 and 8-A produced at Exh. 70 show the name of original Plaintiff No. 1, Hiruben Ramji Rabadiya, as the holder of the land as on 22.12.2010. Plaintiff No. 2, Patel Ranchhodbhai Ravjibhai, has deposed at Exh. 58 that he subsequently acquired the land from Plaintiff No. 1 through an exchange deed registered on 12.12.2013. This fact has also been stated by him during his cross-examination.

It is true that revenue entries do not by themselves confer title. However, they are relevant evidence regarding possession and enjoyment of land. In the present case, the revenue entries in favour of the plaintiffs are supported by an important admission made by Defendant No. 1 during his cross-examination at Exh. 106, wherein he admitted that Survey No. 649 belongs to the plaintiff. Thus, the revenue records and the admission of the defendant, when read together, provide substantial support to the plaintiffs’ claim of ownership over R.S. No. 649.

The defendants have argued that the plaintiffs have failed to produce the original title deed under which Plaintiff No. 1 acquired ownership of the land. According to them, the plaintiffs have relied only upon revenue records and documents relating to neighbouring lands without producing the foundational document of title. It was therefore contended that the plaintiffs have failed to establish ownership by positive evidence. In support of this submission, reliance has been placed upon the decision in *Patel Maheshbhai Keshavlal v. Mamlatdar*.

This contention of the defendants deserves consideration. The best evidence regarding acquisition of title would ordinarily be the document under which ownership was acquired. The plaintiffs have not produced such document on record. Therefore, an adverse comment regarding non-production of the title deed is not entirely unwarranted.

However, the question is whether such omission is sufficient to defeat the plaintiffs' case on the present issue. In the facts of this case, the answer is in the negative. The revenue records standing in the name of the plaintiffs have remained un rebutted. More importantly, Defendant No. 1 himself has admitted that R.S. No. 649 belongs to the plaintiff. In view of this admission, there remains little real dispute regarding ownership of Survey No. 649 as such. The decision relied upon by the defendants is distinguishable on

facts, as that case concerned a public road where no private ownership was established, whereas the present dispute concerns a privately held survey number recorded in the plaintiffs' name.

At the same time, it is necessary to clarify the scope of the present issue. Issue No. 1 concerns ownership of the suit property, namely R.S. No. 649. The evidence discussed above is sufficient to establish that the plaintiffs are the owners of that survey number. However, this finding should not be understood as finally deciding the separate controversy regarding the precise location and character of the disputed eastern strip or "chhellu". The parties are at variance on the question whether the disputed strip forms part of R.S. No. 649 exclusively or whether it lies between R.S. No. 649 and adjoining R.S. No. 650. The survey records relied upon by the plaintiffs and the oral evidence relied upon by the defendants give rise to that dispute. Since that controversy is directly connected with the defendants' alleged right of way and easementary claim, it is more appropriately considered while dealing with Issues Nos. 2 and 3.

Having considered the entire evidence on record, this Court is of the view that the plaintiffs have succeeded in establishing, on the preponderance of probabilities, that they are the owners of the suit land bearing R.S. No. 649.

The non-production of the original title deed, though a weakness in the plaintiffs' case, is not sufficient to outweigh the revenue records and the admission made by Defendant No. 1.

Accordingly, **Issue No. 1 is answered in the affirmative. The plaintiffs have proved that they are the owners of the suit property bearing R.S. No. 649. However, the question regarding the exact location and exclusive ownership of the disputed eastern "chhellu" is left open for consideration under Issues Nos. 2 and 3.**

8.3.2 Issue No. 2 — Whether the plaintiff proves that the defendant has no right of way in the suit property?

Though the burden of proving this issue is placed upon the plaintiffs, the nature of the issue requires consideration. The plaintiffs are required to establish a negative fact, namely that the defendants do not have any right of way over the disputed strip. Ordinarily, a party cannot be expected to prove a pure negative. Therefore, once the plaintiffs place evidence on record to show that the eastern "chhellu" is a drainage channel and not a road, and that the defendants have access to their lands through other routes, the burden shifts to the defendants who assert a positive right of way to prove the same. In that view of the matter, Issue No. 2 is closely connected with Issue No. 3. Since the evidence and

arguments relating to both issues substantially overlap, they are being considered together. The reasons recorded herein are common to both issues, though the specific finding on Issue No. 3 shall be recorded separately.

The plaintiffs have contended that the defendants neither require nor have any lawful right to use the disputed “chhellu” as a way, as alternative routes have long been available for access to their fields. In support of this contention, reliance has been placed on the agreement deed dated 04.06.1962 (Exh. 97), whereby Patel Khoda Dungar granted a seven-foot-wide road through R.S. No. 636 paiki to Lava Bhaga, the predecessor of the defendants, for access to R.S. No. 642. The existence and execution of this document has also been spoken to by Lakhmanbhai Khodabhai Pambhar (Exh. 75), who identified the signature of his father on the deed. The plaintiffs have further relied upon the sale deed dated 17.02.1964 (Exh. 98), under which Lava Bhaga and Jivraj Bhaga purchased land in R.S. No. 636 paiki, wherein the Dhandha village road is shown in the northern boundary. Reliance has also been placed upon the neighbouring sale deeds dated 08.11.1995 (Exhs. 62 to 65) and the revenue records at Exhs. 66 to 68, which, according to the plaintiffs, indicate the existence of alternative routes available to the defendants through the adjoining lands.

The plaintiffs have further relied upon the survey records relating to R.S. No. 649. These include the Court Commissioner's measurement map (Exh. 89), the boundary measurement sheet dated 28.02.2011 (Exh. 90 and its certified copy at Exh. 154), the tippan (Exh. 91) and the part plan (Exh. 92). According to the evidence of the DILR witness at Exh. 88, these records consistently show a "chhellu" on the eastern side of R.S. No. 649 and do not record any road at that location. It is significant that the certified copy of the same boundary measurement sheet has been produced by the defendants themselves at Exh. 154. The plaintiffs have also relied upon the evidence of the neighbouring witnesses at Exhs. 77, 81 and 83, who have supported the existence of alternative routes and have stated that the disputed strip is a "chhellu" used by the plaintiffs. It is true that the witnesses at Exhs. 81 and 83 admitted during cross-examination that their lands do not fall within the four boundaries shown in the memo of Mark "A". However, that circumstance only requires their evidence to be appreciated with caution and does not by itself render their testimony unreliable, particularly when it finds support from the documentary evidence on record.

Particular significance must also be attached to certain admissions made by the defendants and their witnesses. Defendant No. 1 (DW-1, Exh. 106) admitted in his cross-examination that the recitals regarding the road contained in

his own sale deed at Exh. 69 are correct. He further admitted that the sale deed of 1960 shown to him records, at page 3, that the persons in whose favour it was executed had access through the Dhandha village road situated on the northern side. Similarly, the defence witness Damjibhai (Exh. 122) admitted that the road passing along the boundaries of the lands of Khima Punja and Vallabh Popat is the pagthiyali road. He further stated that the 66 KV road and the pagthiyali road are one and the same and also volunteered that the defendants pass through the Dhandha road. These admissions, coming from the defendants' own side, lend support to the plaintiffs' contention that the defendants have access to their fields through routes other than the disputed "chhellu".

The principal defence of the defendants is founded upon the registered Sale Deed No. 98 dated 28.02.1960 (Exh. 153). The interpretation of the recital contained in this document lies at the centre of the present controversy. According to the defendants, the reference in the deed to a cart-track through a "chhelda" relates to the very strip which is the subject matter of the present suit and establishes their right of way over it since the year 1960. The plaintiffs, on the other hand, contend that the "chhelda" referred to in the document is not the disputed eastern strip at all, but refers to the access available from the Pipartoda-Dhandha road, commonly known as the pagthiyali route. Thus, while the

defendants rely upon Exh. 153 as the foundation of their claim of right of way, the plaintiffs contend that the document does not refer to the disputed strip and instead supports the existence of an alternative route.

Upon examining the recital contained in Exh. 153 in the light of the entire evidence on record, this Court finds the interpretation suggested by the plaintiffs to be more probable. The recital specifically refers to access “from the Pipartoda-Dhandha road through the chhelda”. The reference to the Pipartoda-Dhandha road indicates the northern access route and is consistent with the Dhandha-side access reflected in Exhs. 97 and 98. It is also consistent with the admissions made by DW-1 regarding the contents of the document. Significantly, the recital does not specifically identify the disputed eastern strip situated between R.S. Nos. 649 and 650, nor does it describe any right of way running along that boundary. Had it been intended to reserve or recognise a right of way over the disputed strip, one would ordinarily expect a clearer description of the route concerned. In these circumstances, the recital in Exh. 153 appears to refer to the Pipartoda-Dhandha (pagthiyali) access rather than to the disputed “chhellu” forming the subject matter of the present suit.

The oral evidence led by the defendants also does not materially strengthen their case. Hiteshbhai (Exh. 121)

admitted during cross-examination that he could not state which defendant owned which survey number. He also failed to produce any bill or record in support of the work allegedly carried out by him on the defendants' lands and admitted that he had good relations with the defendants. His assertion that the disputed "chhellu" is sufficiently wide for passage is not supported by any measurement or documentary evidence. Arvind (Exh. 123), who is a holder of the adjoining land, admitted that he did not know even the survey number of his own land, had never got his land measured and had not visited the defendants' field for several years. He also admitted his family relationship with one of the defendants. Damjibhai (Exh. 122), though examined in support of the defence, made the admissions already referred to regarding the Dhandha road and the pagthiyali route. In the opinion of this Court, the oral evidence led by the defendants is insufficient to outweigh the documentary evidence and the admissions emerging from their own side.

Two further contentions raised by the defendants also require consideration. The first is that, in view of the orders passed by the Mamlatdar (Exh. 144) and the Deputy Collector (Exh. 145), the present suit is not maintainable and that the plaintiffs ought to have challenged those orders before the Hon'ble High Court under Article 226 of the Constitution of India. This contention cannot be accepted.

Proceedings under the Mamlatdars' Courts Act are summary in nature and are intended to protect possession and existing user. The Mamlatdar has no jurisdiction to finally adjudicate questions relating to title or easementary rights. Therefore, the orders passed by the Mamlatdar and the Deputy Collector can at best show the outcome of the proceedings before the revenue authorities, but they do not conclusively determine the questions relating to ownership and easement which arise for consideration in the present suit. The decisions relied upon by the defendants also do not support the proposition that a regular civil suit is barred in such circumstances. On the contrary, the decisions in *Lakshmanbhai Ukabhai Parmar v. Karamsibhai Lalabhai Parmar* and *Patel Bhavikkumar Praveenbhai v. Harmanbhai Maganbhai Bhoi* recognise that a party affected by such summary proceedings may seek adjudication of his civil rights before a competent Civil Court. The plaintiffs have, therefore, rightly approached this Court for determination of the dispute.

The second contention is based on the decision in *Samji Shivji v. Devji Valji* (Second Appeal No. 374 of 1983), wherein reliance has been placed on the finality attached to a decision of the Mamlatdar under Section 22 of the Mamlatdars' Courts Act. In my view, the said decision does not assist the defendants in the facts of the present case. A reading of the judgment shows that the finality

contemplated under the Act does not extend to adjudication of title or easementary rights. The decision itself recognises that findings recorded by the Mamlatdar cannot conclude questions relating to proprietary rights. Therefore, the question whether the defendants possess an easementary right over the disputed strip remained open for adjudication by this Court and is required to be decided on the basis of the evidence led before it.

Drawing the threads together, the documentary record — namely the survey records showing a “chhellu” and not a road, the documents of the years 1962 and 1964 establishing access through R.S. No. 636 and from the Dhandha side, and the neighbouring sale deeds and revenue records — indicates, on the whole, that the defendants had alternative and established routes to reach their fields and that the disputed “chhellu” was a drainage channel rather than a cart-track. As discussed above, the recital contained in the defendants’ own sale deed of 1960 refers to the northern access and not to the disputed strip. Further, the admissions made by **Defendant Ranchhodbhai Gordhanbhai Vaishnav (Exh. 106)** and the other defence witnesses also support the existence of alternative routes. On the other hand, the oral evidence led by the defendants in support of a right of way through the disputed “chhellu” is not supported by any measurement record and is inconsistent with the documentary evidence on record. It may also be noted that,

as discussed while deciding Issue No. 1, some doubt remains regarding the exact location of the “chhellu”, namely whether it lies entirely within R.S. No. 649 or between R.S. Nos. 649 and 650. However, that circumstance does not assist the defendants, since the burden of proving a positive right of way over the disputed strip lies upon them and they have failed to discharge that burden.

On the basis of the evidence on record and applying the test of preponderance of probabilities, this Court is satisfied that the plaintiffs have proved that the defendants do not possess any established right of way over the suit “chhellu”, their access to the fields being available through the other routes referred to in the evidence.

Issue No. 2 is accordingly answered in the affirmative. The plaintiffs have proved that the defendants have no right of way in the suit property.

8.3.3 Issue No. 3 — Whether the defendant proves that the defendant has an easementary right of way over the suit property for the last 20 years?

The burden of proving this issue lies entirely upon the defendants. The defendants have claimed an easementary right of way over the disputed “chhellu” and have asserted such right both on the basis of long user and on the ground

of necessity. It is, therefore, for the defendants to establish the existence of such right by leading cogent and reliable evidence. Since much of the evidence relevant to this issue has already been discussed while considering Issue No. 2, the findings recorded therein have a direct bearing on the present issue. However, as the burden of proof under this issue lies upon the defendants, the evidence is required to be examined from that perspective.

The defendants have founded their claim on two grounds. Firstly, they rely upon the registered Sale Deed No. 98 dated 28.02.1960 (Exh. 153), contending that it records and recognises a right of way through the disputed “chhellu” since the year 1960. Secondly, they contend that they and their predecessors have been using the disputed route continuously for several decades and have thereby acquired an easementary right over it. So far as the first ground is concerned, this Court has already discussed Exh. 153 while deciding Issue No. 2. For the reasons recorded therein, the contention of the defendants cannot be accepted. The recital in the document refers to access “from the Pipartoda-Dhandha road through the chhelda” and, in the opinion of this Court, relates to the northern pagthiyali route rather than to the disputed eastern strip. The document does not specifically record or grant any right of way over the suit “chhellu”. Therefore, while Exh. 153 is undoubtedly an old registered document and carries evidentiary value, it cannot

be read as creating or recognising the easementary right now claimed by the defendants over the disputed strip.

The second basis of the defendants' claim is that they and their predecessors have been using the disputed "chhellu" openly and continuously for several decades and have thereby acquired an easementary right. The defendants have also pleaded an easement of necessity. Both these claims are required to be examined in light of the evidence on record. To establish an easement by prescription, it must be shown that the right has been enjoyed openly, peacefully, continuously and as of right for the statutory period. Likewise, an easement of necessity can arise only where there is no other reasonable means of access to the dominant heritage. In the present case, the evidence on record does not support either of these requirements. The documents at Exhs. 97 and 98 establish access through R.S. No. 636 and from the Dhandha side. The existence of the pagthiyali route and the 66 KV route also emerges from the evidence. More importantly, the existence of these alternative routes stands reinforced by the admissions made by Defendant Ranchhodbhai Gordhanbhai Vaishnav (Exh. 106) and the defence witness Damjibhai (Exh. 122). In view of the existence of such alternative access routes, the plea of an easement of necessity cannot be sustained.

The evidence led by the defendants to establish long and continuous user of the disputed “chhellu” is also not sufficient to prove a prescriptive easement. Defendant Ranchhodbhai Gordhanbhai Vaishnav (Exh. 106) stated that he and his predecessors have been using the disputed route for several years. However, during his cross-examination, he admitted the correctness of the recitals regarding the road contained in Exh. 69 and also admitted the existence of access from the Dhandha side as reflected in the relevant documents. These admissions do not support the case that the disputed “chhellu” was the only or exclusive route available to the defendants. His statements regarding continuous use of the disputed strip remain unsupported by any contemporaneous record. The evidence of the supporting witnesses also does not materially improve the defendants’ case. Hiteshbhai (Exh. 121) admitted that he was unable to identify the survey numbers held by the defendants, produced no documentary record in support of the work allegedly carried out by him and acknowledged his close relations with the defendants. Arvind (Exh. 123) admitted that he did not know even the survey number of his own land, had never got his land measured and had not visited the defendants’ field for several years. Damjibhai (Exh. 122), though examined in support of the defence, made admissions regarding the existence of the Dhandha road and the pagthiyali route. Thus, the oral evidence led by the defendants is neither sufficiently reliable nor supported

by independent documentary material so as to establish continuous and uninterrupted user of the disputed strip as a matter of right for the period required by law.

The documentary evidence on record also does not support the defendants' claim. The survey records relating to R.S. No. 649, namely the Court Commissioner's measurement map (Exh. 89), the boundary measurement sheets (Exh. 90 and Exh. 154), the tippan (Exh. 91) and the part plan (Exh. 92), consistently show a "chhellu" on the eastern side of the suit land and do not record any road at that location. Significantly, the certified copy of the boundary measurement sheet produced by the defendants themselves at Exh. 154 reflects the same position. If the disputed strip had in fact been used as an established cart-track for several decades, one would ordinarily expect some indication of such user in the relevant survey records. However, no such material is forthcoming. The reliance placed by the defendants upon the orders of the Mamlatdar (Exh. 144) and the Deputy Collector (Exh. 145) also does not advance their case. As already discussed while deciding Issue No. 2, those proceedings were summary in nature and neither determined nor could have conclusively determined the existence of an easementary right. Consequently, those orders cannot be treated as proof of the easement claimed by the defendants before this Court.

Upon an overall consideration of the evidence on record, this Court finds that the defendants have failed to establish either of the foundations on which their claim rests. The registered Sale Deed No. 98 of 1960 (Exh. 153), when properly construed, refers to the northern access from the Pipartoda-Dhandha road and does not record any right of way over the disputed “chhellu”. The defendants have also failed to prove open, continuous and uninterrupted user of the disputed strip as of right for the period required to acquire a prescriptive easement. Equally, the plea of easement of necessity cannot be accepted in view of the existence of alternative access routes emerging from the documentary evidence and the admissions made by the defendants’ own witnesses. Since the burden of proving this issue lies upon the defendants, and the evidence led by them falls short of establishing the claimed right, the claim of an easementary right of way cannot be accepted.

Issue No. 3 is therefore answered in the negative. The defendants have failed to prove that they possess an easementary right of way over the suit property for the last 20 years.

8.3.4 Issue No. 4 — What is the order and decree?

In view of the findings recorded on the foregoing issues, the plaintiffs are entitled to succeed in the suit. Issue No. 1 has

been answered in the affirmative, holding that the plaintiffs have proved their ownership of the suit land bearing R.S. No. 649. Issue No. 2 has also been answered in the affirmative, holding that the defendants do not possess any right of way over the disputed “chhellu”. Further, Issue No. 3 has been answered in the negative, as the defendants have failed to establish any easementary right of way over the suit property, whether by grant, prescription or necessity.

Consequently, the plaintiffs are entitled to the reliefs claimed in the suit. They are entitled to a declaration that the defendants have no right, title or authority to use the strip shown by the blue broken line in the memo and map of Mark “A” as a road or way, nor are they entitled to claim any easementary right over the said strip. The plaintiffs are also entitled to a permanent injunction restraining the defendants, their agents, servants or any person claiming through them from passing through, obstructing or using the said strip as a road.

It is, however, clarified that the declaration regarding ownership is confined to the finding recorded under Issue No. 1, namely that the plaintiffs have established their ownership over R.S. No. 649. Nothing contained in this judgment or decree shall be construed as determining the rights, if any, of persons who are not parties to the present

suit in respect of adjoining Survey No. 650 or the channel situated alongside that survey number.

Ordinarily, costs would follow the event and the successful party would be entitled to costs. However, having regard to the nature of the dispute and the fact that it arises between neighbouring agriculturists, this Court is of the view that the ends of justice would be met by directing each party to bear its own costs.

Issue No. 4 is answered accordingly and the final order is passed as under:

FINAL ORDER

1. The suit is decreed.
2. It is hereby declared that the plaintiffs are the owners of the suit land bearing Revenue Survey No. 649 situated at village Pipartoda, Taluka Lalpur, District Jamnagar, as described in the memo and map of Mark "A".
3. It is further declared that the defendants do not possess any right of way or easementary right over the strip shown by the blue broken line in the memo and map of Mark "A". The

defendants, their heirs, agents, servants and all persons claiming through them are permanently restrained from passing through, using, obstructing or treating the said strip as a road or way.

4. In the facts and circumstances of the case, the parties shall bear their own costs.
5. Decree be drawn up accordingly.

Pronounced in open Court on this 25th of June, 2026

Date: 25/06/2026
Place: Lalpur

(Narendra Mohanlal Kadoliya)
Addl. Sr. Civil Judge & Addl.C.J.M.
at Lalpur Judge Code: GJ01115

DBKaria/PS