



Received On	04-03-2022
Registered On	04-03-2022
Decided On	20-04-2026
Duration On	Y.04, M.01, D.16
Exh.	

**IN THE COURT OF PRINCIPAL SENIOR CIVIL  
JUDGE, LALPUR**

**REGULAR CIVIL SUIT NO. 3 OF  
2022**

**Exh. - .....**

<b><u>PLAINTIFFS</u></b>	<b>1.</b>	<b>NANDUBEN HANSRAJBHAI BHALODIYA, W/O SUREJA NARASIBHAI, Age : 71 Yrs, Occupation : Agriculture, Residing At. : Makdiya Vadi, Street No.8, Ward No.12, Jamjodhpur, Dist. : Jamnagar.</b>
	<b>2.</b>	<b>JERAJBHAI HANSRAJBHAI BHALODIYA, Age : 78 Yrs, Occupation : Retired, Residing At. : Viroja Plot,</b>

		Lalpur, Dist. : Jamnagar.
	<b>3.</b>	<b>LALAJIBHAI HANSRAJBHAI BHALODIYA,</b> Age : 72 Yrs, Occupation : Retired, Residing At. : Viroja Plot, <b>Lalpur, Dist. : Jamnagar.</b>
	<b>4.</b>	<b>SHARADABEN HANSRAJBHAI BHALODIYA,</b> <b>W/O SURESHBHAI MEGHPARA,</b> Age : 63 Yrs, Occupation : House-hold, Residing At. : Dharamnagar, Aavaj Yojan 7/189, Raiya, Gandhigram, Rajkot – 2 Pin-360007
	<b>5.</b>	<b>LILAVATIBEN HANSRAJBHAI BHALODIYA,</b> <b>W/O VACHHANI AMRUTLAL,</b> Age : 57 Yrs, Occupation : House-hold, Residing At. : Varundhavan, Kolaki Road, Nr. Shriji Society, Upleta Lati Plot, Upleta, Dist. : Rajkot.

**VERSUS**

<b><u>DEFENDANTS</u></b>	<b>1.</b>	<b>SAVITABEN HANSRAJBHAI BHALODIYA,</b> <b>W/O NAR JIVANBHAI,</b> Age : 75 Yrs, Occupation : Retired, Residing At. : Janata Society, Station Road, Bhayavadar, Dist. : Rajkot. Pin – 360450
	<b>2.</b>	<b>HEIRS OF DECEASED LAXMIBEN HANSRAJBHAI BHALODIYA,</b> <b>W/O LAXMIBEN @ LALITABEN MANSUKHBHAI GARMORA</b>
	<b>2.1</b>	<b>GARMORA KIRANBHAI</b>

		<p><b>MANSUKHBHAI</b> Age : 50 Yrs, Occupation : Private Service, Residing At : Surat, C-103, Navkar Palace Residency, Khadsad, Kamrej, Surat, Ta. &amp; Dist. : Surat</p>
	2.2	<p><b>GARMORA DIPAKBHAI</b> <b>MANSUKHBHAI</b> Age : 48 Yrs, Occupation : Private Service, Residing At : Surat, C-103, Navkar Palace Residency, Khadsad, Kamrej, Surat, Ta. &amp; Dist. : Surat</p>
	3.	<p><b>HEIRS OF DECEASED JENTILAL HANSRAJBHAI BHALODIYA,</b></p>
	3.1	<p><b>REKHABEN W/O JENTILAL BHALODIYA,</b> Age : 61 Yrs, Occupation : Agriculture, Residing At : Viroja Street, opp. Four storey building, Lalpur.</p>
	3.2	<p><b>BHAVANABEN JENTILAL BHALODIYA,</b> <b>W/O JITENDRA VITHHALBHAI BHUVA,</b> Age : 39 Yrs, Occupation : House-hold, Residing At : Vasantpur, Ta. Jamjodhpur, Dist. : Jamnagar.</p>
	3.3	<p><b>AMITBHAI JENTILAL BHALODIYA,</b> Age : 37 Yrs, Occupation : Agriculture, Residing At : Viroja Street, opp. Four storey building, Lalpur.</p>
	3.4	<p><b>ARUNBHAI JENTILAL BHALODIYA,</b> <b>W/O VIJAYBHAI VALLABHBHAI,</b></p>

			Age : 35 Yrs, Occupation : House-hold, Residing At : Upleta
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<b>APPEARANCE</b>
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Ld. Advocate for the Plaintiffs	:	Mr. K.M.Karangiya
Ld. Advocate for the Defendant No.1 & 2/1 to 2/2	:	Mr. D.N.Chiroriya
Ld. Advocate for the Defendant No.3/1 to 3/4	:	Mr. D.R. Dhamsaniya

<b>Subject :</b> Suit for for partition and separate possession.
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<b>J U D G M E N T</b>
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[1] The brief facts of the plaintiff suit are as under :

- [1.1] The Plaintiffs have filed present suit against the defendants for partition and separate possession of ancestral property. Brief facts of the suit are that plaintiffs as well as defendants are heirs of deceased Kasturben Hansrajbhai. Ancestral agricultural land of plaintiffs as well as defendants are situated at Village Lalpur Taluka Lalpur District Jamnagar. Detail description of the lands are as under :

Sr.No.	Old Survey No.	New Survey No.	He-Are
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1	523 paiki 3	1257	1-93-66
2	17 paiki 1	1640	0-20-02
3	17 paiki 3	1641	0-62-92
Total			2-76-60

[1.2] All four boundaries of the above three survey Numbers are separately mentioned in the plaint and looking to the four boundaries of the land it seems that all three survey numbers are adjacent to each other. **(Land of these three survey numbers i.e. survey no.1257, 1640, 1641 are hereinafter referred as suit land.)**

[1.3] Suit land was belong to mother of plaintiffs and defendants namely Kasturben Hansrajbhai Bhalodiya and she died on dtd.24.16.2013 ,after her death and by entry No.7636 suit land is running on the name of plaintiffs and defendants since Kasturben Bhalodiya has died intestate all her issues have 1/8 share in the suit land and from issues of Kasturben her daughter Laxmiben and a son Jentilal are died and their heirs are entitled for respective shares of deceased . Although suit property is joint property, by mutual consent and for shake of convenience plaintiff No.2, 3 and defendant No.1, 2 and 3/1 to 3/4 are cultivating their portion but no partition has been carried

out by metes and bounds but plaintiff No.2, 3 and 3/1 to 3/4 are cultivating their portion by mutual understanding and due to the reason that suit land is joint property ,plaintiffs are unable to take loan on their land , moreover disputes arise in divide the crop and therefore plaintiffs do not want to remain joint in suit land and they wants to partition but defendants are not agree in partition , on 20.01.2022 defendants were asked to execute affidavits for partition but they denied for the same and therefore this suit has been filed.

- [1.4]** By filing this suit plaintiffs have prayed to declare that all plaintiffs have 1/8 share in the suit property and also prayed to separate their respective 1/8 share from the suit property. They have also prayed for the cost of the suit.
- [2]** Summons duly served on the defendants and defendants appeared through their Ld. Advocates.
- [2.1]** Defendants No.1 and 2 have submitted their written statement vide Exh.24. In which they have admitted the suit and categorically stated that each heir of deceased Kasturben Hansraj Bhalodiya has 1/8 share in the suit land and since Jentilal has died his heirs i.e. defendant No.3/1

to 3/4 are entitled for 1/8 share of deceased Jentilal.

**[2.2]** By filing this written statement defendant No.1 and 2 have categorically stated that they have no objection if the suit is decreed and their 1/8 share is given to them.

**[2.3]** Defendants No.3/1 to 3/3 have submitted their written statement vide Exh.60. In which they have stated that plaintiffs have not come with clean hands and therefore they are not entitled for any relief.

**[2.4]** Defendants No.3/1 to 3/3 have accepted the fact stated in Pera No.1 of the plaint i.e. they have accepted the fact that plaintiffs as well as defendants are heirs of deceased Kasturben Hansraj Bhaloidya. Other facts of the plaint are Pera vise denied by the defendants No.3/1 to 3/3 and they have stated that their father Jentilal's name is running in the revenue record and after death of their father (i.e.father of defendant no.3/1 to 3/4)plaintiffs are not supporting the heirs of Jentilal to enter their name in revenue record and when names of heirs of deceased Jentilal have not mutated how their name can ben deleted ? And they i.e. heirs of Jentilal i.e. defendants No.3/1 to 3/4 are not cultivating the land more then their share but in reality survey No.1640

and 1641 are open and without cultivation since long. Moreover, they raised the objection that if partition is made and 1/8 share are given to all 8 heirs of deceased Kasturben then it will be contravention of Bombay Fragmentation Act and hence, partition can not be made in contravention of Fragmentation Act and hence, suit is required to be rejected.

[2.5] By filing this written statement defendant No.3/1 to 3/3 have asked to reject the suit

[3] In support of their suit plaintiffs have adduced the following oral as well as documentary evidence.

[3.1] **ORAL EVIDENCE ON BEHALF OF PLAINTIFFS**

Sr. No.	Name of witness	Exh.
1	Affidavit of Plaintiff No.3 Lalajibhai Hansrajbhai Bhalodiya,	29
2	Affidavit of Plaintiff No.1 Savitaben Hansrajbhai Bhalodiya,	51

[3.2] **DOCUMENTARY EVIDENCE ON BEHALF OF PLAINTIFFS**

<b>Sr. No.</b>	<b>Description of Document</b>	<b>Exh./ Mark</b>
1	True Copy of village form No.8-a of Lalpur Taluka Village Lalpur Account No.831	31
2	True copy of village Form No.7 of land bearing old Revenue Survey No.523 paiki 3 New Revenue Survey No.1257	32
3	True copy of village Form No.12 of land bearing old Revenue Survey No.523 paiki 3 New Revenue Survey No.1257	33
4	True copy of village Form No.7 of land bearing old Revenue Survey No.17 paiki 1 New Revenue Survey No.1640	34
5	True copy of village Form No.12 of land bearing old Revenue Survey No.17 paiki 1 New Revenue Survey No.1640	35
6	True copy of village Form No.7 of land bearing old Revenue Survey No.17 paiki 3 New Revenue Survey No.1641	36
7	True copy of village Form No.12 of land bearing old Revenue Survey No.17 paiki 3 New Revenue Survey No.1641	37
8	Village Form No.6 Entry No.27	38
9	Village Form No.6 Entry No.193	39
10	Village Form No.6 Entry No. 340	40
11	Village Form No.6 Entry No.2052	41
12	Village Form No.6 Entry No.4030	42
13	Village Form No.6 Entry No.7636 Succession Entry	43
14	Village Form No.6 Entry No.8289	44
15	Village Form No.6 Entry No.9249 Correction in record	45

16	Entry No.8033 of land bearing Revenue Survey No.523 regarding heirship entry of defendant No.3/1 to $\frac{3}{4}$	46
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The Plaintiff have filed closing pursis vide Exh.50.

**[3.3] ORAL EVIDENCE ON BEHALF OF DEFENDANTS**

Sr. No.	Name of witness	Exh.
1	Affidavite of Defendant No.3/3 Amitbhai Jentibhai Bhalodiya,	72

**[3.4] DOCUMENTARY EVIDENCE ON BEHALF OF DEFENDANTS**

Sr. No.	Description of Document	Exh./ Mark
1	Copy of village Form No.7/12, 8-A &12 of land bearing Revenue Survey No.1258	77

The defendant No.1 & 2 has submitted closing pursis vide Exh.53.

**[4] ARGUMENTS**

**[4.1]** Ld. Advocate for the plaintiffs has submitted written arguments vide Exh.81. In which he has stated the fact of

the suit and referred the evidence of the plaintiffs and has argued that defendants No.1 & 2 have admitted the fact stated by the plaintiffs, defendants No.3/1 and 3/2 have also not denied the relation stated by the plaintiffs and they have also not denied the fact that plaintiffs are heirs of deceased Kasturben Bhalodiya. Similarly they have also not denied the fact that the suit land is ancestral property, now main defense raised by the defendants No.3/1 and 3/2 is that, there is bar of Fragmentation Act in this suit but competent authority to decide “Whether there is bar of Fragmentation Act or not?” is collector and not Civil court and as per Provision of Bombay Fragmentation Act there is no bar on the court in passing the decree of partition but mode of execution of such decree has been given in Section-8 of the said Act and when plaintiffs have proved the issues required to be proved by them, they are entitled for relief asked in the suit. By arguing such Ld. Advocate for plaintiffs has prayed to decreed the suit.

Ld. Advocate for defendants No.1 and 2/1 and 2/2 has submitted his written arguments vide Exh.81, in which he has supported the plaint and prayed to decreed the suit.

[4.2] Ld. Advocate for the defendant no.3/1 to 3/3 has submitted his written arguments vide Exh.84, in which he has focused on the contradiction come out in the cross-examination of plaintiff in Exh.29 and has argued that plaintiff has changed his version again and again. Moreover, he has argued that there is clear bar of Fragmentation Act on this suit.

By arguing such Ld. Advocate for defendant No.3/1 to 3/3 has prayed to reject the suit.

[5] Following issues are framed vide Exh.28 for determination of this suit.

<b>I S S U E S</b>
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1. Whether the plaintiffs prove that suit lands are ancestral property of the parties of this suit?
2. Whether the plaintiffs prove that their share is involved in the suit land?
3. Whether the plaintiffs prove that they have right of partition in the suit land?
4. Whether the defendants No.3/1 to 3/3 prove that their

right is involved in the suit land by inheritance?

5. Whether the suit is barred by the Fragmentation Act?
6. Whether the plaintiffs prove that they are entitled for reliefs as prayed for?
7. What order and decree?

**[5.1]** My Findings for the aforesaid issues are as under :

- 1] In the Affirmative.
- 2] In the Affirmative.
- 3] In the Affirmative.
- 4] In the Affirmative.
- 5] Undecided.
- 6] In the Affirmative.
- 7] As per final order.

<b>REASONS</b>
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**ISSUE NO. 1 TO 4 :**

- [6]** The issues No.1 to 4 are interconnected with each other and therefore all these four issues are discussed together.

[7] Here, in this suit plaintiffs suit itself is that plaintiffs as well as defendants No.1, 2 and 3 are issues of their deceased mother Kasturben Hansraj Bhalodiya and suit land was belong to deceased Kasturben Hansraj Bhalodiya and since she has died all her heirs have equal 1/8 share in the land of deceased Kasturben. Now looking to the written statement of defendants, neither defendant No.1 & 2 and after death of defendant no.2 his heirs nor heirs of defendant no.3 have denied this fact (i.e. No any defendants has claimed that suit land was not belonged Kasturben Hansraj Bhalodiya and they have also not denied share of any parties in the suit land) and hence, when it is undisputed fact that suit land was belong to mother of plaintiffs and original defendants No.1 to 3 and it is undisputed fact that suit land was come in the hand of Kasturben after death of his husband (i.e. after death of father of plaintiffs and original defendant No.1,2 & 3) hence, as per Section 15 of the Hindu Succession all sons and daughter of deceased Kasturben have equal share in the land left behind her by the deceased Kasturben and since original defendant No.3 (son of deceased) has died

defendants No.3/1 to 3/4 are entitled for that share of original defendant No.3 and when plaintiffs shares are involved in the suit land naturally they are entitled for partition and in such circumstances no detail discussion on evidence are required and hence I reply issue No.1 to 4 in affirmative.

**ISSUE NO. 5 :**

[8] So far issue No.5 is concerned, it is such that, Whether the suit is barred by Fragmentation Act?

[9] Defendant No.3/1 to 3/3 have raised the contention that if the suit is decreed then it will amount to breach of the provision of Fragmentation Act and Ld. Advocate for the plaintiffs has clarified in his argument that there is no embargo on passing a decree of partition when it amount to breach of Fragmentation Act but how such decree can be executed is mentioned in the Section 8 of Fragmentation Act. In this connection I would like to reproduce Section 8 of the Bombay Fragmentation Act, which is as under :

*8AA. Restriction on partition of land.— (1) Where, by transfer,*

*decree, succession or otherwise, two or more persons are entitled to shares in an undivided agricultural land in any local area for which standard areas have been fixed, and the land has to be partitioned among them, such partition shall be effected so as not to create a fragment. (2) Where such partition is made by the Court or the Collector, the following procedure shall be adopted :—*

*(a) If, in effecting a partition among several co-sharers, it is found that a co-sharer is entitled to a specific share in the land and cannot be given that share without creating a fragment, he shall be compensated in money for that share. The amount of compensation shall be determined so far as practicable in accordance with the provisions of section 23 of the Land Acquisition Act, 1894 (I of 1894). 6 [\* \*] 7 [\* \*]*

*(b) If, in effecting a partition, it is found that there is not enough land to provide for the shares of all the co-sharers in accordance with the provisions of sub-section (1), the co-sharers may agree among themselves as to the particular co-sharer or co-sharers who should get the share of land and which of them should be compensated in money. In the absence of any such agreement, the co-sharers to whom a share of land can be provided and those to whom money compensation should be given shall be chosen by lot in the manner prescribed.*

*(c) The compensation shall be payable by each co-sharer in proportion to the excess value of land he gets over the share of land*

*legally due to him, and such co-sharer shall deposit the proportionate amount of compensation in the manner prescribed before taking possession of the share allotted to him. On his failure to do so, his share shall be allotted to any other co-sharer to whom land has not been previously allotted and who is chosen in the manner provided in clause (b) subject to the payment of similar compensation to the co-sharers not getting sharers of land.*

*(d) If none of the co-sharers to whom land has been allotted under clause (c) pays the compensation and takes the share, the share shall be sold in auction to the highest bidder, and the purchase money shall be paid to the co-sharers not getting land in proportion to their respective shares.*

*(e) Where the parties agree upon any other method of partition which will not result in the creation of a fragment, that method shall be followed in effecting partition. (3) Where a partition is effected in execution of a decree all questions relating to the partition of the land and apportionment of compensation shall be decided by the Court executing the decree or by the Collector effecting the partition, as the case may be, in accordance with the provisions of sub-section (2).*

**[10]** Looking to this Section, it seems that this Section does not restrict the Civil Court from passing a decree of partition when partition would be amount to make a fragment of the

land but this Section provides the procedure to be adopted by the Collector in execution of the decree of partition and this function is of Collector and not of the Court and hence, this Court can not decide this issue and hence, this issue is undecided.

**ISSUE NO. 6 :**

- [11] So far issue No.6 is concerned, it is as that “Whether the plaintiffs entitled for reliefs prayed for”. In this connection when it is proved that plaintiffs and original defendants are sons and daughters of deceased Kasturben and there are total 8 heirs (sons and daughter) of Kasturben, then as per Section 15 of the Hindu Succession Act all of them have equal share in the suit property (each issue of deceased Kasturben has 1/8 share in this suit land) and hence, I reply issue No.6 in affirmative and pass following final order for Issue No.7.

**ORDER**

1. The plaintiffs’ suit is hereby allowed.
2. It is hereby declared that all plaintiffs as well as

defendant No.1, 2 and 3 have 1/8 share in the suit land I.e land of New survey No. (1) 1257, (2) 1640 and (3) 1641 of village Lalpur Taluka Lalpur District Jamnagar and after death of defendant No.2 his heirs who are defendant No.2/1 and 2/2 are jointly entitled for 1/8 share of their deceased mother (I.e.Laxmiben). Similarly, after death of defendant No.3 (i.e. Jentilal Hansraj Bhalodiya) his heirs defendant No.3/1 to 3/4 are jointly entitled of 1/8 share of their deceased father (i.e. Jentilal Hansraj Bhalodiya)

3. Parties shall bear their own cost.
4. Preliminary decree shall be drawn accordingly and sent to the Collector of Jamnagar district for its execution.

Signed and Pronounced in open court today on this 20<sup>th</sup> day of April, 2026.

Date : 20.04.2026  
Place : Lalpur

**(Arafat Abdulkadar Vayda)**  
Principal Sr. Civil Judge, Lalpur  
UID :GJ00986.