

IN THE HON'BLE COURT OF  
PRINCIPAL DISTRICT JUDGE,  
JUNAGADH.

Regular Civil Appeal No. 26 of 2022

**Exh.:-**

|                                                        |            |                   |                                    |
|--------------------------------------------------------|------------|-------------------|------------------------------------|
| <b><u>Appellant (Original Plaintiff) :</u></b>         |            |                   |                                    |
|                                                        | <b>Age</b> | <b>Occupation</b> | <b>Address</b>                     |
| Ranjitsinh Ravatvala                                   | 84         | Retire            | Bilkha<br>At present at:<br>Rajkot |
| <b><u>VERSUS</u></b>                                   |            |                   |                                    |
| <b><u>Respondent (Original Defendant) :</u></b>        |            |                   |                                    |
| The State of Gujarat<br>Summons Through: The Collector | —          | —                 | Collector Office,<br>Junagadh      |

**Appearance :-**

Ld. Advocate **Mr. N. S. Seth** for appellant.

Ld. AGP **Mr. J. M. Devani** for respondent.

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

- 1. The facts of the case of the plaintiff :-**
- 1.1** Herein, parties are referred as plaintiff or defendant as they stood in Regular Civil Suit No.186/2005.
- 1.2** The plaintiff has filed a suit for a decree of vacating the unauthorized possession, mense profit and other ancillary

reliefs.

- 1.3 It is pleaded by the plaintiff that the plaintiff is the son of Darbar Shri Rawatwala Saheb of Bilkha. At the relevant time, prior to merger, Bilkha was a princely state, and Shri Rawatwala Saheb was the Darbar (ruler) of Bilkha. Therefore, he was the owner and in possession of all properties of Bilkha State which were not of a private nature.
- 1.4 It is further pleaded that after August 1947, when the administration of Bilkha State was taken over by the Government upon its merger with the Government of India, until such takeover, all lands of Bilkha State were owned and possessed by Darbar Shri Rawatwala Saheb.
- 1.5 It is further pleaded that by Huzur Order No. 106 dated 27/01/1948, one property of Bilkha State was granted to the plaintiff through an outright sale and a title document Hakk Lekh No. 94 was issued by the Hajur Office, Bilkha, and the same was granted to the plaintiff by the Bilkha State on 13/02/1948. Thus, from that time, the plaintiff has become the owner and possessor of the said property.
- 1.6 It is further pleaded that the land sold to the plaintiff measures 900 square yards, and its four boundaries are more specifically stated in para 3 of the suit plaint.
- 1.7 It is further pleaded that this property is currently being used as a police headquarters, and at the time of filing the suit, PSI Shri S. Biranjodiya and a Head Constable were residing there. However, since these quarters are allotted to transferable government employees, the occupants keep

changing. The office of the DSP has allocated this property for use by police officers and constables as residential quarters.

- 1.8** It is further pleaded that the plaintiff is the owner of this property, but its possession has been given by the State Government to various police personnel for use as quarters. The plaintiff no longer wishes to permit such use, as he requires the property for himself. Therefore, the plaintiff issued a notice to the defendant and to the then-occupants, PSI Shri Ranjoliya and Constable Shri Pravinbhai Lathiya.
- 1.9** It is further pleaded that despite the notice having been duly served, the possession of the immovable property has not been vacated, nor has any reply been given. Hence, the present suit has been filed by impleading the defendant as a party.
- 1.10** The plaintiff has therefore prayed for the reliefs as sought in para 11 of the suit plaint wherein, the plaintiff has prayed that the Honorable Court be pleased to pass a decree directing the defendant or any person claiming through the defendant to hand over vacant possession of the immovable property belonging to the plaintiff, situated at Bilkha village in Junagadh district, bearing the boundaries as stated in para 3 and acquired under Hakk Lekh No. 94 dated 13/02/1948 of Bilkha State. Additionally, the plaintiff has prayed for determination and recovery of mesne profits for unauthorized occupation for a period of three years prior to the filing of the suit and

continuing until possession is handed over and also prayed for any other relief which deems fit and cost of the suit.

**2. Defense of the defendant:**

- 2.1 The defendant has filed a written statement cum objections (**Exh. 10**) denying most of the facts stated in the plaint.
- 2.2 It is contended that the plaintiff's claim is neither proper nor legal and the suit in its present form is not maintainable.
- 2.3 It is further contended that before filing a claim against the Government, the plaintiff was required to issue a notice under Section 80 of the Civil Procedure Code, 1908, which has not been done and thus, in the absence of such notice, the present claim or injunction application is not maintainable.
- 2.4 It is further contended that the plaintiff has also not paid the required court fees in full; therefore, the suit is not maintainable on this ground as well.
- 2.5 It is further contended that the true facts of the case are that, as per the plaintiff's own submission, the Bilkha State was merged into united India in the year 1947. Consequently, all properties of Bilkha State became the property of the Government. Therefore, it is prima facie clear that any document of disputed sale of the suit property could not have been executed in the year 1948.
- 2.6 It is further contended in reply to paragraph 1 of the plaint that after August 1947, the administration of Bilkha State was taken over by the Government following its merger with India, and all lands of Bilkha State became the

property of the Government and this fact is admitted and no comments are offered on the other statements made in the paragraph.

- 2.7** It is further contended in reply to paragraph 2 of the plaint that the plaintiff has not provided copies of the alleged orders - Huzur Farman No. 106 dated 27/01/1948 or Title Deed No. 94 dated 13/02/1948 along with the application. Further, since Bilkha State had already merged into India in August 1947, no such sale document could have been executed on 27/01/1948 or 13/02/1948 and therefore, the plaintiff's contention is expressly denied.
- 2.8** It is further contended in reply to paragraph 5 that the owner and possessor of the disputed property is the Government and the property is being used in accordance with the prevailing policies and rules of the Government. The claim that the disputed property belongs to the plaintiff is expressly denied.
- 2.9** It is further contended that the present suit of the plaintiff suffers from non-joinder of necessary parties as the disputed property is in possession of the Gujarat Police Housing Corporation Limited under the Home Department of the State Government, and they have not been joined as a necessary party, the suit is defective for non-joinder of proper parties and therefore, it is prayed that the suit be dismissed.
- 2.10** It is further contended that as stated in paragraph 1 of the plaint, after August 1947, the administration of the Bilkha State was taken over by the Government of India upon its merger. Therefore, as stated in paragraph 2, since the

administration was taken over after 1947, the Darbar of Bilkha - Rawatwala Saheb had no right, title, or authority to execute any sale deed such as Huzur Farman No. 106 dated 27/01/1948 or Title Deed No. 94. Since the property no longer belonged to Bilkha State and the Darbar was no longer the owner, any such alleged sale transaction is not genuine and is not admitted and thus, it is prayed that the suit be dismissed.

- 2.11** It is further contended that as stated by the plaintiff in paragraph 1 of the plaint, the plaintiff is the son of Darbar Shri Rawatwala Saheb of Bilkha. In such circumstances, if the Darbar Rawatwala Saheb of Bilkha State was the owner of the property, then the property would automatically devolve upon his son i.e. the plaintiff by inheritance. However, since in 1948 the Bilkha State had no existence, and all its properties had already vested in the Government of India, any such alleged Huzur Farman or title document is illegal.
- 2.12** It is further contended that if the father was truly the owner, there would be no need to execute such documents in favor of his son and therefore, such document appear to be fabricated. Hence, it is prayed that the plaintiff's suit be dismissed.
- 2.13** It is further contended that If the plaintiff was truly the owner of the property, he should have clearly stated when and how the property was given to the Government, and how the Government came into possession of it. However, no such facts have been provided.
- 2.14** It is further contended that this is because the plaintiff is

well aware that the property does not belong to him, nor was it ever given by him to the Government. Rather, after independence, when Bilkha State merged into India, all its properties vested in the Government.

- 2.15** It is further contended that the plaintiff has nowhere explained how the property was given to the Government, nor how he ceased to possess it. In such circumstances, it was necessary for the plaintiff to first seek a declaration of ownership, which he has failed to do. Since the State Government is the rightful owner of the property, the plaintiff is not entitled to seek or obtain any relief. Hence, it is prayed that the suit be dismissed.
- 2.16** It is further contended that after independence, post-August 1947, the administration of the Bilkha State was taken over by the Government of India and acts and actions carried out during the “Act of State” process cannot be taken cognizance of by ordinary courts under general law.
- 2.17** It is further contended that the act of taking over the properties of Bilkha State by the Government was part of the “Act of State” process and therefore, the Court cannot inquire into such acts, as they were official declarations of that time and are binding in nature.
- 2.18** Thus, on this ground as well, the suit deserves to be dismissed. Furthermore, this Honorable Court also lacks jurisdiction to entertain such a claim in these circumstances. Hence, it is prayed that the suit be dismissed.
- 2.19** Thus, the changes that occurred during the “Act of State”

process after independence cannot be used as a basis to create a false cause of action. Therefore, the plaintiff's suit deserves to be dismissed with costs.

### **3. Evidence of the parties :**

**3.1** The following evidence has been presented by the plaintiff in both oral and documentary forms:-

#### **3.2 Oral evidence of the plaintiff :**

|        |                                                                          |
|--------|--------------------------------------------------------------------------|
| Exh.81 | Deposition of power of attorney holder of plaintiff – Godadvala Bhojvala |
|--------|--------------------------------------------------------------------------|

#### **3.3 Documentary evidence of plaintiff :-**

|         |                                                                                                                                                                                           |
|---------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Exh.87  | True copy of Lekh NO.97 dated 13.02.1948 (actual exhibit number is not written on the document but it is written in the proceeding)                                                       |
| Exh.88  | True copy of payment receipt dated 13.02.1948 of Rs.1923.4 in the name of Kumarshri Ranjitsinhji Ravatvala issued by Bilakh Pra. Vahi Office                                              |
| Exh.89  | True copy of Sanad issued by City Survey, Bilkha in the name of Kumar Shri Ranjit Sinhji Ravatvala                                                                                        |
| Exh.90  | Copy of Property Card No.1107 in the name of Kumar Shri Ranjitsinhji Ravatvala                                                                                                            |
| Exh.91  | Copy of Lekh No.35 dated 13.02.1948 in the name of Mogal Husenbeg Mirjaji                                                                                                                 |
| Exh.92  | Lekh No.100 dated 13.20.1948 in the name of Kumar Shri Harichandra Sinhji Ravatvala                                                                                                       |
| Exh.93  | Copy of Inspection Register of City Survey showing entry Nos.562 to 567, 116, 117, 120, 111, 112, 114, 115                                                                                |
| Exh.94  | Lekh NO.94 dated 13.02.1948 in the name of Ranjitsinh                                                                                                                                     |
| Exh.95  | Copy of power of attorney dated 27.06.2011 executed by Ranjitsinhji Ravavala in favour of Godadvala Bhojvala                                                                              |
| Exh.105 | Office copy of notice dated 30.03.2005 issued by Ld. Advocate Shri K. B. Sanghavi upon (1) The State of Gujarat, (2) PSI Shri S. V. Ranjoliya, (3) Head Constable Shri Pravinbhai Lathiya |

|                               |                                                                                                                               |
|-------------------------------|-------------------------------------------------------------------------------------------------------------------------------|
| Exh.106<br>Exh.107<br>Exh.108 | Postal acknowledgment cards of RPAD                                                                                           |
| Exh.109                       | Copy of letter dated 28.04.2009 written by Superintendent of Police, Junagadh addressed upon Ld. Advocate Shri K. B. Sanghavi |
| Exh.91                        | Closing purshis                                                                                                               |

### 3.4 Evidence of the defendant :

#### Oral evidence of the defendant :

|         |                                                                             |
|---------|-----------------------------------------------------------------------------|
| Exh.112 | Deposition of defendant's witness – Rohitbhai Saburbhai Variya<br>Mamlatdar |
|---------|-----------------------------------------------------------------------------|

#### Documentary evidence of the defendant :

|         |                 |
|---------|-----------------|
| Exh.117 | Closing purshis |
|---------|-----------------|

### 4. Issues framed by the court below.

4.1 After considering the material proposition of facts as well as law and at where parties are at variance following issues have been framed vide **Exh.11** under the Order 14 of the Code of Civil Procedure Code, 1908 (*hereinafter be referred as 'the Code'*).

1. Whether the pltff proves that he is owner of the suit premises ?
2. Whether the pltff proves that he has given the suit premises to the Govt on rent?

**(Deleted as per order passed below Exh.-100)**

3. Whether the deft proves that after merger of Bilkha state in to the union of India, the then Bilkha state Darbar had no right whatsoever of the suit property ?
4. Whether the pltff proves that he is in bonafide

requirement of suit property ?

5. Whether the plttf proves that he is entitled to relief as claimed for ?
6. Whether the suit is in want of proper parties ?
7. What order and decree ?

**4.2** Findings of the Ld. Trial Court on above issues are as under.

1. In Negative.
2. **Issue Deleted.**
3. In Negative.
4. In Negative.
5. In Negative.
6. In Affirmative.
7. As per final order.

5. After considering the materials available on record, the **Ld. Principal Senior Civil Judge, Junagadh** (hereinafter referred to as “**Ld. Trial Judge**”) has rejected the plaintiff’s suit. Aggrieved by this judgment and decree, the original plaintiff has filed this appeal.

6. Since the appeal was not dismissed under Order 41, Rule 11 of the Code of Civil Procedure, notice as contemplated under Order 41, Rule 14 of the Code has been issued to the respondents, who have appeared before this Court.

**7. Point for determination :-**

I have perused the entire record of the court below, heard arguments of Ld. Advocates of the parties and considering the matter, following points under Order 41, Rule 31 of the

Code of Civil Procedure, 1908 are arose to decide present appeal.

- (1) Whether the judgment & decree of Regular Civil Suit No.186/2005 which is in question is arbitrary, capricious, perverse and illegal, and judgment & decree required to be interfered ?
  - (2) Whether the Trial Court failed to decide the issue as to merger of Bilkha State into the Union of India in the proper perspective?
  - (3) Whether the Trial Court failed to consider the documentary evidence i.e. deed-Lekh No.94 in the proper perspective?
  - (4) What order should be passed in this matter ?
8. Reply of the said points under Order 41, Rule 31 of Code of Civil Procedure, 1908.
- (1) In Negative, as discussed.
  - (2) In Negative, as discussed.
  - (3) In Negative, as discussed.
  - (4) As per final order.

**As to maintainability of appeal :**

9. General provision as to file first appeal has been provided in Sec.96 of the Code of Civil Procedure, 1908. Sec.96 says that, *'Save where otherwise expressly provided in the body of this code or by any other law for the time being in force, an appeal shall lie from every decree passed by any court exercising original jurisdiction to the court authorized to hear appeals from the decisions of such court.'*
- 9.1 Further neither decree under challenge has not been passed by the consent of the parties nor it is decree of suit of the

nature cognizable by the Courts of Small Cause prescribed in sub-section (2) and (3) of the Section 96 of the Code of Civil Procedure, 1908, and therefore the present appeal is maintainable and under the Gujarat Civil Court Act, 2005 this court is empowered to hear first appeal in present case.

**THE POWER OF APPELLATE COURT AS PROVIDED UNDER THE ORDER 41 RULE 33 OF THE CODE OF CIVIL PROCEDURE, 1908:-**

Under O-41 Rule-33 of the Code of civil procedure, 1908, the power of court of appeal has been provided and it is reproduced herein as under-

" 33:Power of Court of Appeal-

The Appellate Court shall have power to pass any decree and make any the order which ought to have been passed or made and to pass or-make such further or other decree or the order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favor of all or any of the respondents or parties, although such respondents or parties, may not have filed any appeal or objection 1.1. Ins. by Act 104 of 1976, Sec. 87 (w.e.f. 1st February, 1977). [and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees] : ”

- 9.2** Therefore, by reading said provision then it is quite clear that the court of appeal can pass any order or decree which ought to have been passed and such power can be exercised against any party to the proceedings.

**Standard of proof :**

- 10.** The Evidence Act, 1872 provides as regards how evidence becomes admissible, impact of evidence and how and

when any fact can be said to be proved. In interpretation clause of The Evidence Act, 1872, the interpretation of proved has been given as under :-

“proved – “A fact is said to be proved when, after considering the matter before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.”

- 10.1 Second part of said clause says as to standard of prudent man and it is settled proposition of civil jurisprudence that standard of proof in civil matter is preponderance of probability. It means such degree of probability as would satisfy the mind of a reasonable man as to the existence of a fact. Thus herein also court has to keep said standard in mind while evaluating the evidence.

**Arguments of the appellant side : (original plaintiff):**

11. The learned advocate for the appellants/original plaintiff has argued out reiterating the facts stated in the appeal memo as well as the averments made in the suit plaint filed before the Trial Court.
- 11.1 It is argued out that the discussion made by the Hon'ble Court under the heading “Reasons for Decision,” and the interpretation given therein of Sections 101 and 102 of the Evidence Act, contain serious errors both in terms of legal perspective and the method of interpretation and this is because the opposing party is the Government, and if the Government contends—on behalf of the Union of India—that the State of Bilkha was merged into the Union of India prior to 15/04/1948, and accordingly that all properties of the Bilkha State did not vest any rights, title, or interest in

Darbar Shri Rawatwala Saheb of Bilkha, then the best evidence of such a claim can only be provided by the Government of India itself.

- 11.2 It is further argued out that this is so because the documents relating to the merger would have been executed under its authority, and naturally, at that time, no xerox facility was available. Therefore, the document indicating the date of merger of the Bilkha State into the Union of India must necessarily be in the custody of the Union of India. Hence, the best evidence ought to have been produced by the Union of India, which has not been done in the present case.
- 11.3 It is further argued out that the case of the defendant is also that, after 15th August 1947, the State of Bilkha had merged into India, and therefore, thereafter, Darbar Shri of Bilkha State had no right or authority to carry out any transaction of sale with respect to any property of the State. It is contended that any such sale transaction, if carried out, would be illegal and with such a contention, the defendant has come forward and has further stated that the document executed in favor of the plaintiff on 13/02/1948 was executed by a person who had no right or authority to execute such a document. Therefore, this fact was also required to be proved by the defendant. However, the defendant has failed to prove the same.
- 11.4 It is further argued out that it is a settled principle of law that the party in possession of the best evidence must necessarily produce such evidence. If that party fails to produce the best evidence, then naturally an adverse

inference should be drawn against that party. This established principle of law has also been violated.

- 11.5** It is further argued out that the findings given by the Hon'ble Civil Judge with regard to Issue No. 1 and Issue No. 3, particularly, fail to consider an important aspect: the reference to “police” in the original document produced at Exhibit 94 is to be understood as the police of the Bilkha State itself. That is, the police referred to is the State’s own police. Another important aspect is that, generally, documents that are more than 30 years old are presumed to have been executed lawfully unless proved otherwise. This principle has also not been taken into consideration by the Hon'ble Civil Judge. Under such circumstances, the findings given by the learned lower court on Issue Nos. 1 and 3, whereby both issues have been decided in the negative, suffer from serious errors in law, facts, and in the interpretation of the record.
- 11.6** It is further argued out with regard to the findings on Issue Nos. 4, 5, and 6 that the Hon'ble Civil Judge has observed, based on the document at Exhibit 94, that the disputed land appears to have been in possession of the police since 1948. However, it is respectfully submitted that at the relevant time, Bilkha was a princely State, and such States used to collect revenue and maintain their own police departments for the protection of life and property of their subjects. Accordingly, Bilkha State also had its own police department, and the police referred to was that of the State itself.
- 11.7** It is further argued out that despite this, neither in the

plaint nor in the affidavit of evidence produced at Exhibit 81 is there any explanation as to why the owner suddenly felt the necessity to recover possession of the property. In absence of proper pleadings and supporting evidence, the Hon'ble Court has committed a serious error in law, facts, and interpretation by answering Issue No. 4 in the negative.

- 11.8** It is further argued out that this is not a suit for rent. Whenever the owner needs to use his property in any manner, he has the right to approach the Court to recover possession and remove unauthorized occupation. In such circumstances, the Court ought not to question the owner's "necessity" and thereby grant a premium to an unauthorized occupant. Therefore also, the finding on Issue No. 4 is erroneous.
- 11.9** It is further argued out that similarly, the Hon'ble Civil Judge has committed a grave error in answering Issue No. 5 in the negative. The finding proceeds on the basis that Darbar Shri Rawatwala Saheb of Bilkha did not have the authority to execute the disputed sale document. However, such a finding is erroneous because no such issue was even framed. Moreover, as stated earlier, when a document more than 30 years old is produced from proper custody, it ought to be presumed to have been validly executed. In the present case, the plaintiff, being the son of Bilkha Darbar Shri Rawatwala, has lawfully paid consideration, executed the document, and acquired the property. There is no evidence to the contrary, nor has any documentary evidence been produced by the Government. Hence,

answering Issue No. 5 in the negative is a serious error.

- 11.10** It is further argued out with respect to Issue No. 6 that the suit land is in possession of the police department and is being used for residential purposes of police officers/employees. On that basis, it has been held that the police department or concerned officers were not joined as parties, and therefore the issue has been answered in the affirmative. However, before doing so, the Hon'ble Civil Judge ought to have examined the matter more deeply.
- 11.11** It is further argued out that the State of Gujarat, through the Collector, Junagadh, has already been impleaded as a party and has fully participated in the proceedings. The village in question, Bilkha, falls within Junagadh district. Once the State of Gujarat is made a party, it necessarily includes its police department, as the police functions under the State. Moreover, arrangements for police housing, police stations, and offices are not made independently by the police department but are provided directly or indirectly by the State Government and this is self-evident.
- 11.12** It is further argued out that ownership of such properties vests with the Government. In the present case, the State Government has not allotted the disputed property to the police department; rather, the police have occupied it without lawful authority. No property is transferred to any department unless formally done so by the State Government. If any department is in unauthorized possession, it is the State Government that has the authority to evict such occupation.

**11.13** It is further argued out that therefore, there was no necessity to implead any other party apart from the State of Gujarat, which has already been joined. Furthermore, possession of the police is not established from the original document. Revenue records under Section 133 of the Land Revenue Code have been produced and verified by the competent authority as seen in Mark 64 and related exhibits but despite this, the Hon'ble Civil Judge has committed a serious error in answering Issue No. 6 in the affirmative.

**12. Arguments of the respondent : (original defendant)**

**12.1** Ld. AGP for the respondent has argued out encircling the contentions taken in their written statement before the Trial court and has further argued out that the Trial Court has passed just and proper order after appreciating the entire evidence on record which does not require any interference of this Hon'ble Court and thus, prayed to dismiss the appeal with costs.

**REASONS**

**As regard Issue Nos.1 and 3:-**

1. Whether the plaintiff proves that he is owner of the suit premises ?
3. Whether the deft proves that after merger of Bilkha state in to the union of India, the then Bilkha state Darbar had no right whatsoever of the suit property ?

**13.** Herein, it is the case of the plaintiff that on 27.01.1948, the

plaintiff purchased the suit property and is therefore the owner of such property. The disputed property is described in paragraph 3 of the plaint.

**13.1** Herein so far as said issue is concerned, the Trial Court has answered said issue in Negative form.

**13.2** The trial Court has observed as under:

“(૭) મુદા નંબર ૧ અને ૩ :- પક્ષકારો વચ્ચેની મુખ્ય તકરાર ધ્યાને લેતા પુરાવાની ચર્ચા અને મુલ્યાંકનમાં બીજા જરૂરી પુનરાવર્તન અને લંબાણ ટાળવા માટે મુદા નં.૧ અને ૩ નો નિર્ણય એક સાથે કરવામાં આવે છે.

પક્ષકારો વચ્ચેની મુખ્ય તકરાર ધ્યાને લેવામાં આવેતો, વાદીનો કેસ એવો છે કે, આઝાદી પહેલાના બીલખા સ્ટેટના દરબાર સાહેબ શ્રી રાવતવાળા સાહેબ દ્વારા હજુર ફરમાન નં.૧૦૬, તા.૨૭/૦૧/૪૮ થી બિલખા સ્ટેટની દાવા અરજી પારા-૩ માં જણાવ્યા મુજબની ૮૦૦ ચો.વાર જમીન હજુર લેખ નં.૮૪, તા.૧૩/૦૨/૪૮ થી વાદીને વેચાણ આપવામાં આવેલી છે અને તે આધારે વાદી દાવા વાળી મિલ્કતના માલીક છે, પરંતુ સદર જમીન પ્રતિવાદી શ્રી સરકાર હેઠળના પોલીસ વિભાગના કર્મચારીઓના રહેણાંક ક્વાર્ટર માટે ગેરકાયદેસર ઉપયોગ કરવામાં આવે છે, જે મિલ્કતનો કબજો મેળવવા હાલન દાવો કરેલો છે. જ્યારે પ્રતિવાદી પક્ષનો મુખ્ય બચાવ એવો છે કે, આઝાદી બાદ દેશી રજવાડાઓનું યુનીયન ઓફ ઈન્ડિયમાં વિલીનીકરણ થતું! બીલખા સ્ટેટના તત્કાલીન દરબાર શ્રી રાવતવાળા વાળા સાહેબને સદર મિલ્કત વેચાણ કરવાનો અધિકાર ન હતો. તેમજ આઝાદી બાદ દાવા વાળી મિલ્કત સરકારશ્રીની માલીકીની થયેલી છે. આમ, પક્ષકારો વચ્ચેની તકરારનો નિર્ણય કરવા માટે રેકર્ડ પર

રજુ કરવામાં આવેલ મૌખિક અને દસ્તાવેજી પુરાવા ધ્યાને લેવામાં આવે તો, આ કામના મુળ વાદી શ્રી રણજીતસિંહ રાવતવાળા વાળાએ આંક-૪૫ થી પોતાની સસ્તપાસનું સોગંદનામું રજુ કરેલ, ત્યાર બાદ મુળ વાદી ઉમર તથા બીમારીના કારણે પોતાની ઉલટ તપાસ માટે કોર્ટ સમક્ષ આવવા સમર્થ નહીં હોવાનું વાદીના વકીલશ્રી દ્વારા જાહેર કરવામાં આવતા આંક-૪૫ થી રજુ મુળ વાદી શ્રી રણજીતસિંહ રાવતવાળા વાળા ની સતપાસનું સોગંદનામું રેકર્ડ પરથ ડીસ્કાર્ડ કરવામાં આવેલું હતું. ત્યાર બાદ મુળ વાદીના કુલમુખત્યાર તરીકે શ્રી ગોદડવાળા ભોજવાળા વાળાએ આંક-૮૧ થી પોતાની જુબાનીનું સોગંદનામું રજુ કરેલ છે. જે મૌખિક પુરાવામાં વાદીના કુલ મુખત્યારએ જણાવેલ છે કે, ભારત સરકાર સાથે થયેલા વિલિનીકરણ પહેલા બીલખા નેટીવ સ્ટેટના સર્વભોમત્વ હક ધરાવતા રાજવી તરીકે બીલખા સ્ટેટની માલીકીની મીલકત કચર મુજબ અને કાયદા મુજબ બીલખાના પ્રજાજનોને તથા રાજવી કુટુંબના સભ્યોને પ્રવૃત્તમાન ધારા-ધોરણ મુજબ વેચાણ કરવા અધિકાર ધરાવતા હતા. જે સર્વભોમ હક તરીકે દાવા વાળી મિલકત વાદીને વેચાણ આપવામાં આવી હતી, તેમજ અન્ય પ્રજા જનોને અને રાજ કુટુંબના અન્ય સભ્યોને પણ મિલકત વેચાણ કરવામાં આવેલી હતી. જે રીતે વાદી દાવા વાળી મીલકતના માલીક -કબજેદાર બનેલા છે. વાદીના કુલ મુખત્યાર બાદ વધુમાં એવો પુરાવો આપવામાં આવેલો છે કે, તા. ૧૫/૦૮/૪૭ના ભારત દેશને આઝાદી મળ્યા બાદ તમામ સાર્વભોમ દેશી રજવાડાઓને યુનીયન ઓફ ઈન્ડીયામાં ભળવાનો, પાકીસ્તાનમાં ભળવાનો કે સ્વતંત્ર રહેવાનો અધિકાર આપવામાં આવેલો હતો. જે અનુસંધાને સોરાષ્ટ્રના જેને વખતના બધા રજવાડાએ ભેગા મળી એક કોવેનન્ટ કરી યુનીયન ઓફ કાઠીયાવાડ રચી હતા અને તેને યુનાઈટેડ સ્ટેટ

ઓફ કાઠીયાવાડ નામ આપવામાં આવું અને તેમાં યુનિયન ઓફ ઈન્ડિયા સાથે વિલિન થવા જુદા-જુદા આર્ટીકલ રચવામાં આવ્યા હતા, જેમાં બધા પતિ જામનગરના રાજા જામસાહેબ વાતાઘાટો કરતા હતા અને છેવટે યુનિયન ઓફ ઈન્ડિયા સાથે વિલીનીકરણ કરવા દરેક સ્ટેટે સ્વતંત્ર સહી કરવાની હતી. આ યુનિયનમાં બીલખા સ્ટેટનો નં.૨૮ મો હતો. જે આર્ટીકલ મુજબ દરેક સ્ટેટે મોડામાં મોડુ તા.૧૫/૦૪/૪૮ ના રોજ રાજ્યનો વહીવટ રાજ પ્રમુખને સોંપી દેવાનો હતો, પરંતુ દરેક સ્ટેટે પોતાને અનુકુળ આવે તે તારીખે ગર્વનમેન્ટ ઓફ ઈન્ડિયા સાથે વિસર્જિત થયા હતા આ કોવેનન્ટમાં દરેક સ્ટેટ વિસર્જિત થાય તે પહેલા દરેકે પોતાની સોર્વેનીટી જાળવી રાખી હતી અને આ બધી વિધિ પુરી થયા બાદ સોરાષ્ટ્ર સ્ટેટ રેગ્યુલેશન ઓફ ગર્વનમેન્ટ ઓડીનન્સ ૧૯૪૮ કોવેનન્ટની શરતો બહાલ રાખવામાં આવી હતી. આ ઓડીનન્સ તા.૦૧/૦૩/૪૮ ના રોજ ગર્વનમેન્ટ ગેઝેટમાં બહાર પાડવામાં આવેલ હતું. આમ, આ રીતે કાયદાકીય પોઝીશન પ્રમાણે મોડામાં મોડુ તા.૧૫/૦૪/૪૮ ના રોજ નેટીવ સ્ટેટનું વિલીનીકરણ થયું હતું, જ્યારે હાલના દાવા વાળો દસ્તાવેજ તા. ૧૩/૦૨/૪૮ ના કાયદેસર બીલખા દરબાર શ્રી તરફથી દાવા વાળી મીલકતનો દસ્તાવેજ થયેલ છે.

આમ, વાદીના કુલ મુખત્યાર ના પુરાવા મુજબ તેઓ એવો પુરાવો આપી રહેલા છે કે, બીલખા સ્ટેટનું વિલીનીકરણ યુનિયન ઓફ ઈન્ડિયામાં તા.૧૫/૦૪/૪૮ ના થયેલું હતું અને તે વિલીની કરણ પહેલા બીલખા સ્ટેટના દરબાર સાહેબને તા: ૧૩/૦૨/૪૮ ના દસ્તાવેજથી તેમની માલીકીની મીલકત વેચાણ કરવાનો અધિકાર હતો. પરંતુ આ કામે વાદીનું મુળ પ્લીડીંગ ધ્યાને લેવામાં આવે તો વાદીનો ]એવો કોઈ કેસ નથી કે, બીલખા સ્ટેટનું વિલીનીકરણ તા.૧૫/૦૪/૪૮ ના થયેલું હતું. તે સિવાય વાદીના કુલ મુખત્યાર પોતાની

સતપાસના પારા-૯, ૧૦, ૧૧ માં જે કેસ રજુ કરેલ છે તેવી કોઈ હકીકત મુળ દાવા અરજીમાં જણાવેલી નથી. જેથી આંક-૮૧ થી રજુ સરતપાસના પારા-૦૯, ૧૦, ૧૧ માં જણાવેલી હકીકત એવીડન્સ વિધાઉટ પ્લીડીંગ છે, જે કાયદા મુજબ ગ્રાહ્ય નથી. તેથી વિંપરીત વાદીએ દાવા અરજીમાં એવી હકીકત જણાવેલી છે કે, ઓગસ્ટ ૧૯૪૭ બાદ બીલખા સ્ટેટના વહીવટ બીલખા ભારણ સરકાર સાથે ભળી જતા સરકારે સંભાળી લીધેલ, ત્યાં સુધી બીલખા સ્ટેટની બધી જમીનોની માલીકી અન કબજો દરબાર શ્રી રાવતવાળા સાહેબનો હતો. વધુમાં આ કામના વાદીએ દાવા અરજીમાં કોઈ સ્થાને બિલખા સ્ટેટ તા.૧૫/૦૪/૪૮ ના રોજ ભારત સંઘમાં વિલીન થયું હતું તેવું કોઈ પ્લીડીંગ કરેલ નથી. વધુમાં આ કામના વાદીએ કે વાદી ના કુલ મુખત્યારએ પોતાના પ્લીડીંગ કે પુરાવામાં બીલખા સ્ટેટે, યુનીયન ઓફ ઈન્ડીયામાં ભળા માટે ચોક્કસ કઈ તારીખે સહી કરેલી તેવી કોઈ સ્પષ્ટતા કરેલી નથી કે તેવું દર્શાવતો કોઈ પુરાવો પણ રજુ કરેલો નથી. વધુમાં વિચાર કરવામાં આવે તો, તા.૧૫/૦૮/૧૯૪૭ ના ભારતને આઝાદી પ્રાપ્ત થઈ તે જ તારીખે તમામ દેશી રજવાડાઓ યુનીયન ઓફ ઈન્ડીયામાં ભળી ગયેલા નહીં તે હકીકત માની શકાય છે. તેમજ તે સમયે અસ્તીત્વ ધરાવતા કુલ-૫૬૨ રજવાડાઓએ તબક્કાવાર અને જુદી જુદી તારીખોએ પોતાના રાજ્યો યુનીયન ઓફ ઈન્ડીયાના નિર્માણ માટે સમર્પીત કરવા કરાર કરી પોતાની સહી કરી આપેલ હતી. પરંતુ આ કામના વાદી પક્ષનો પુરાવો ક્યાં લેવામાં આવેતો બીલખા સ્ટેટના તત્કાલીક દરબાર સાહેબ દ્વારા ચોક્કસ કઈ તારીખે સહી કરી બીલખા રાજ્ય યુનીયન ઓફ ઈન્ડીયાને સમર્પીત કર્યું તે અંગે કોઈ સ્પષ્ટતા કરેલી નથી. હાલના કેસમાં જ્યારે વાદી કેસ લઈને આવેલા છે કે વિવાદીત દસ્તાવેજના આધારે તેઓ મીલકતના માલીક છે તો પુરાવા અધિનિયમની કલમ-૧૦૧

મુજબ વાદી પર પુરાવાનો બોજો રહે છે કે, તેમને જેમની પાસેથી મીલકત વેચાણ મળેલી છે તેવી વ્યક્તિ મીલકત વેચાણ કરવા માટે અધિકાર હતો. પરંતુ હાલના કેસમાં વિવાદીત દસ્તાવેજ જે તારીખે થયેલો છે તે તારીખે બિલખા સ્ટેટ યુનીયન ઓફ ઈન્ડિયાનો ભાગ નહીં પરંતુ સ્વતંત્ર સર્વભોમ સ્ટેટ હતુ અને તેના રાજવીને, સદર મિલકત વેચાણ કરવા અધિકાર હતો તેવું પુરવાર કરવા માટે વાદી પક્ષ દ્વારા વિલીનીકરણ કઈ તારીખે થયું તે અંગે કોઈ પુરાવો રજૂ કરવામાં આવેલો નથી. વધુમાં વિવાદીત ૯૦૦ ચો.વારની જમીન આઝાદી બાદથી હાલ સુધીમાં ક્યારે પણ વાદીના નામે સીટી સર્વે રેકર્ડમાં કે અન્ય કોઈ સરકારી રેકર્ડમાં નોંધાયેલી હોય તેવું દર્શાવતો કોઈ પુરાવો રજૂ કરવામાં આવેલો નથી. તે સિવાય ૧૯૪૮ થી હાલ સુધીમાં આ કામના વાદી ક્યારે પણ વિવાદીત મીલકતનો વાસ્તવીક અને પ્રત્યક્ષ કબજો ધરાવતા હોય તેવું દર્શાવતો પણ કોઈ સ્વતંત્ર દસ્તાવેજી પુરાવો રજૂ થયેલો નથી. આ કામે આંક-૯૪ થી રજૂ અસલ લેખ વંચાણે લેવામાં આવેતો, તે લેખમાં પણ સદર મીલકતનો ઉપયોગ પોલીસ વિભાગ દ્વારા થતો હોવાનો ઉલ્લેખ છે, તેમજ હાલમાં પણ સદર મીલકતનો કબજો પોલીસ વિભાગ પાસે હોવાનું સ્વયંમ વાદીએ પ્લીડિંગમાં સ્વીકારેલ છે. આમ, વિવાદી જમીનનો કબજો ૧૯૪૮ થી પોલીસ વિભાગ હસ્તક હોવાનું જણાય છે. તે સિવાય આ કામના વાદીએ અનઅધિકૃત કબજા વાળી મીલકતનો કબજો ખાલી કરાવવા હાલનો દાવો કરેલો છે, પરંતુ પોલીસ વિભાગ ક્યારથી આવી મિલકતનો કથીત અનઅધિકૃત કબજો ધરાવે છે તે અંગે કોઈ સ્પષ્ટતા કરેલી નથી.

વધુમાં પ્રતિવાદી પક્ષ પણ બિલખા સ્ટેટનું વિલીનીકરણ ચોકક્કસ ક્યારે થયેલું તે અંગે કોઈ તારીખ જણાવતા નથી અને વિવાદીત દસ્તાવેજ જે તારીખે થયેલો છે

તે તારીખે બીલખા સ્ટેટનું ભારત સંઘમાં વિલીનીકરણ થઈ ગયેલ હતું તેવું દર્શાવતો પણ કોઈ પુરાવો રજૂ કરતા નથી. આમ, વાદી કે પ્રતિવાદી બંને પક્ષ દ્વારા બીલખા સ્ટેટનું યુનીયન ઓફ ઈન્ડિયામાં ચોક્કસ કઈ તારીખે વિલીનીકરણ થયેલું હતું તેની કોઈ ચોક્કસ તારીખ જણાવતા નથી કે તે અંગેનો કોઈ પુરાવો પણ રજૂ કરતા નથી. આવા સંજોગોમાં પુરાવા અધિનિયમની કલમ-૧૦૨ ધ્યાને લેતા વાદી પક્ષ પર પુરાવાનો બોજો રહે છે કે, તે પુરવાર કરે કે, વિવાદીત દસ્તાવેજ વખતે બિલખા સ્ટેટ નું વિલીનીકરણ થયેલું નહીં અને તે સર્વભોમ હતું. પરંતુ વાદી પક્ષ તે અંગે કોઈ પ્લીડિંગ કરતા નથી, કે પુરવાર કરતા નથી. જેથી આ કામના વાદી, વિવાદીત દસ્તાવેજના આધારે વિવાદીત જમીનના માલિક બનેલાનું પણ પુરવાર થતું નથી. તેમજ પ્રતિવાદી પક્ષ પણ બીલખા સ્ટેટના વિલીનીકરણની ચોક્કસ તારીખ પુરવાર કરતા ન હોય બીલખા દરબાર સાહેબને સદર મીલકત અંગે કોઈ અધિકાર ન હતો ન હતો તેવું પુરવાર કરતા નથી. જે ધ્યાને લેતા વાદી વિવાદીત જમીનના માલિક હોવાનું પુરવાર થતું નથી (નોટ પ્રુવ). તેમજ વિલીનીકરણની ચોક્કસ તારીખની સ્પષ્ટતાના અભાવે પ્રતિવાદી પક્ષ પણ બીલખા દરબાર સાહેબને મિલકત અંગે અધિકાર ન હતો તેવું પણ પુરવાર થતું નથી (નોટ પ્રુવ). જે ધ્યાને લઈ મુદા નં.૧ અને ૩ નો જવાબ નકારમાં આપવામાં આવે છે.”

**13.3** Therefore, it is now to be considered whether such findings are in accordance with law or are erroneous.

**13.4** It is the case of the plaintiff that there was a Bilkha State, and its ruler was Ravatvala.. It is specifically pleaded in the plaint by the plaintiff that "ઓગષ્ટ ૧૯૪૭ બાદ બીલખા સ્ટેટ નો વહીવટ બીલખા ભારત સરકાર સાથે ભળી જતા સરકારે

સંભાળી લીધેલ. ત્યાં સુધી બીલખા સ્ટેટની બધી જમીનોની માલિકી અને કબજો દરબાર શ્રી રાવતવાળા સાહેબનો હતો"

**13.5** Therefore, it is specifically pleaded that the Bilkha State was merged with India, and prior to such merger, the Bilkha State was the owner of the suit property. It is the specific case of the plaintiff that until 1947, the Bilkha State remained the owner of the said property, and upon merger, the State became part of Union of India. In view of this, the question arises whether the ruler of such State was competent to sell any property after its merger with Union of India in 1947. This amounts to an admission on the part of the plaintiff, and such admission falls within the ambit of Section 58 of the Indian Evidence Act, 1872, which provides as under:

**“58. Facts admitted need not be proved.**—No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings:

Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.”

**13.6** Therefore, this constitutes a judicial admission. By way of such admission, the plaintiff has himself admitted that in 1947, the Bilkha State was merged with India, and consequently, upon such merger, all properties vested in the Government of India. In view of this admission, the question arises whether, in the year 1948, the ruler had any authority to deal with property that had already vested in the Government. It is specific admission, as discussed

above, that Bilkha State had been merged with Union of India in August, 1947 and therefore, it is evident that as of 13.02.1948, the said ruler had no authority to execute any sale deed in respect of such property. Therefore, the plaintiff has failed to prove that he became the owner by virtue of the said document dated 13.02.1948. The plaintiff's own admission establishes that after the merger of Bilkha State into the Union of India, the then Bilkha State Darbar had no right whatsoever over the suit property. Accordingly, Issue Nos. 1 and 3 have been properly decided by the Trial Court.

- 13.7 It is required to be noted that the plaintiff sought permission to adduce additional evidence under Order XLI Rule 27 of the Code of Civil Procedure, 1908, by filing an application at Exhibit 8. However, such application was rejected by the predecessor of this Court. The document sought to be produced was the *White Paper on Indian States (1950) – Formation of Saurashtra*.

**As regards issue No.:4**

4. Whether the plaintiff proves that he is in bonafide requirement of suit property ?

- 13.8 Since the plaintiff has failed to prove his ownership over the suit property, Issue No. 4 has been properly decided by the Trial Court. In fact, considering the facts and circumstances of the case, such an issue was not required to be framed.

**As regards issue No.5:**

5. Whether the plaintiff proves that he is entitled to relief as claimed for ?

**13.9** Herein, the plaintiff has sought a prayer to the effect that, by virtue of the document dated 13.02.1948, he became the owner, and therefore, possession of the suit property be handed over to him. The plaintiff has also claimed mesne profits.

**13.10** Herein, the plaintiff has failed to prove that he is the owner of the suit property, and therefore, he is not entitled to possession or mesne profits in respect of the suit property. Accordingly, Issue No. 5 has also been properly decided by the Trial Court.

**As regards issue no.6:**

6. Whether the suit is in want of proper parties ?

**13.11** The Trial Court has discussed that :

“વધુમાં સ્વીકૃત રીતે દાવા વાળી જમીન પોલીસ વિભાગ હસ્તક છે અને પોલીસ અધિકારી/કર્મચારીના રહેણાંક માટે સદર મીલકતનો ઉપયોગ થય છે પરંતુ તેમ છતાં વાદી પક્ષ દ્વારા પોલીસ વિભાગને કે જવાબદાર પોલીસ અધિકારીને પક્ષકાર તરીકે જોડેલા નથી. જ્યારે કે હાલના દાવામાં થઈ શકતી ડ્રીકી સીધી રીતે તેઓના અધિકારને અસરકર્તા થાય તેમ છે. પરંતુ તેમ છતાં વાદી પક્ષ દ્વારા આવા આવશ્યક પક્ષકારને જોડવામાં આવેલા નથી. જેથી મુદા નં.૬ નો જવાબ હકારમાં આપવામાં આવે છે અને નીચે મુજબનો આખરી હુકમ કરવામાં આવે છે.”

13.12 However, since the Government has been made a party herein, such issue has not been decided in the proper perspective. Therefore, Issue No. 6 is answered in the negative.

13.13 In view of the foregoing discussion and findings, the plaintiff has failed to establish his ownership over the suit property or his entitlement to possession and mesne profits.

13.14 Upon careful examination of the evidence on record and the findings arrived at by the Trial Court, it is evident that the judgment has been passed after proper appreciation of facts and law except the issue no.6. The Trial Court has rightly analyzed the issues involved and rendered a reasoned decision. There appears to be no perversity, illegality, or material irregularity in the judgment that would warrant interference by this appellate forum. Hence, the judgment and order passed by the Trial Court do not call for any interference.

13.15 Therefore, considering the said facts and circumstances, reply of point Nos.7(1) to 7(3) is in Negative, as discussed and therefore, following order is passed so far as Point No.7(4) is concerned:

**:: ORDER ::**

1. This appeal is hereby **dismissed**. Therefore, the Judgment and Decree dated 31.12.2021 passed by the Ld. Principal Senior Civil Judge, Junagadh, in Regular Civil Suit No.186/2005 is hereby **confirmed and upheld**.

2. Taking into consideration the circumstances of the present case, the appellant shall bear the entire costs of this appeal.
3. Pursuant to Order 41 Rule 37 of the Code of Civil Procedure, 1908, a certified copy of the judgment of this appeal shall be sent to the court below for the necessary procedures as stipulated in Order 41, Rule 37 of the Code of Civil Procedure, 1908.
4. Any interim order, if issued, shall be merged into the final order.
5. Application(s) pending, if any, shall be disposed of accordingly.
6. The original record shall be promptly returned to the court below.
7. The decree shall be drawn accordingly.

Pronounced in the open Court today  
on this 27<sup>th</sup> day of April, 2026.

Date : 27.04.2026  
Junagadh.

(B. G. Dave)  
Principal District Judge  
Junagadh  
[ GJ00469 ]