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Decided on	:	13/05/2026		
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		02	05	11

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

Regular Civil Appeal No. 41 of 2023

Exh.:- _____

Appellants (Original Plaintiffs) :

		Age	Occupation	Address
	Harsukhbhai Parsotambhai Amarseda as Power of Attorney Holder of:	53	–	– Sukhnath Chowk, Jail Road, Junagadh
1	Heirs of deceased Parsotambhai Jinabhai:			
1	Jiviben Parsotambhai Amarseda	75	–	
2	Gauriben Parsotambhai Amarseda	55	–	
3	Haresh Parsotambhai Amarseda	50	–	
4	Hitesh Parsotambhai Amarseda	48	–	
5	Heirs of deceased Himatlal Jinabhai who has expired pendente lite:			
5/1	Hetalben Himatlal Amarseda	50	–	
5/2	Atulbhai Himatlal Amarseda	47	–	
5/3	Jayshriben Himatlal Amarseda	45	–	

5/4	Ashvinbhai Himatlal Amarseda	43	–	
5/5	Hiteshbhai Himatlal Amarseda	40	–	
6	Heirs of deceased Bhaniben Jinabhai who has expired pendente lite:	–	–	
6/1	Pravinbhai Chhaganbhai Sarvaiya	46	–	
7	Heirs of deceased Vajiben Jinabhai who has expired pendente lite:	–	–	
7/1	Navinbhai Bhagvanbhai Sikotara	49	–	
7/2	Induben Bhagvanbhai Sikotara	46	–	
7/3	Rinaben Himatbhai	43	–	
8	Heirs of deceased Lilaben Jinabhai who has expired pendente lite:	–	–	
8/1	Dalsukhjbhai Karshanbhai Kamothi	61	–	
8/2	Madhuben Karshanbhai Kamothi	59	–	
8/3	Rameshbhai Karshanbhai Kamothi	51	–	
8/4	Vasantbhai Karshanbhai Kamothi	46	–	
9	Heirs of deceased Vijayaben Jinabhai who has expired pendente lite:	–	–	
9/1	Bharbada Haresh Bhimjibhai	58	–	
9/2	Bharkhada Rekhaben Dipakbhai Bhimjibhai	55	–	
9/3	Bharkhada Vasantbhai Bhimjibhai	53	–	

9/4	Vadher Rekhaben Kishorbhai	51	–	
10	Jayvantiben Jinabhai	–	–	Mumbai

<u>V E R S U S</u>

<u>**Respondents (Original defendant Nos.1 to 3)**</u> :

1	Heirs of deceased Kantilal Chhaganlal: who has expired pendente lite	–	–	
1/1	Hansaben Kantibhai Amarseda	68	Household work	Block No.C/208, Rel Nagar, Popatpara, Near Sunshine School, Sadhuvasvani Road, Kuj Road, Rajkot
1/2	Jayesh Kantilal Amarseda	42	Masonry work	
1/3	Tusharbhai Kantilal Amarseda	29	Masonry work	Katargam, Nadu Doshi’s Vadi, Opp. Pipal Rajmotir Video, Surat
1/4	Jayshriben Kantibhai W/o.Paragkumar Parbada	41	Household work	Block No.C/208, Rel Nagar, Popatpara, Near Sunshine School, Sadhuvasvani Road, Kuj Road, Rajkot
2	Heirs of deceased Dalsukhbhai Ranchhodbhai Amarseda:	–	–	
2/1	Madhuben Dalsukhbhai Amarseda	70	Household work	406, Vachanamrut, Lashkana, Kamrej Valak Patiya, Surat
2/2	Anilkumar Dalsukhbhai Amarseda	46	Household work	
2/3	Alpeshbhai Dalsukhbhai Amarseda	42	Embroidery Machine	A/1, 406, Vachanamrut Lashkana

				Kamresj Valak Patiya, Surat
2/4	Jayshriben Vijaybhai Higu	43	Tailoring work	Plot No.1452, Bamkimchandra Jain Nagar, Jalgav, Maharashtra State
2/5	Minaben Rakeshbhai Nandha	37	Tailoring work	Block No.3, Sahjanand Society, Street no.1, Hanumanpara Road, Amreli
3	Heirs of deceased Ratilal Manji Amarseda:	–	–	
3/1	Rekhaben Ratilal Amarseda W/o.Ajaybhai Nagdiya	–	–	Kothariya Solvent Road, Adarsh Green Park Society, Block No.81, Divali Mension, Rajkot
3/2	Ramaben Ratilal Amarseda W/o.Sukhlal	–	–	Near Bhuvneshvari Mataji's Temple, Gondal, Dist. Rajkot
3/3	Ghanshyambhai Ratilal Amarseda	–	–	Kothariya Solvent Road, Adarsh Green Park Society, Block No.81, Divali Mension, Rajkot
3/4	Nayanaben Ratilal Amarseda W/o.Maheshbhai Vrajlal Solanki	–	–	Dwarkesh Society, Amreli Road, B-47, Opp. Pachmaliya, Opp. Mahadev Petrol Pump,

				Babara
3/5	Urmilaben Ratilal Amarseda W/o.Bhaveshbhai Patubhai Hingu	–	–	Chorvadi Street, Street No.4, Savarkundala
3/6	Praful Ratilal Amarseda	–	–	Kothariya Solvent Road, Adarsh Green Park Society, Block No.81, Divali Mension, Rajkot
4	The State Summons Through: The District Government Pleader	–	–	Junagadh

Appearance :-

Ld. Advocate **Mr. H. N. Dave** for appellants.

Ld. Advocate **Mr. V. J. Pipaliya** for respondent Nos.1/1, 1/4, 2/1 to 2/5.

None on behalf of respondent No.1/2.

Respondent Nos.1/3, 3/1 to 3/6: Ex-parte.

Ld. AGP **Mr. V. G. Donga** for respondent No.4-State.

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

1. **The facts of the case of the plaintiffs :-**

1.1 Herein, parties are referred as plaintiffs or defendants as they stood in Regular Civil Suit No.297/2012.

1.2 The plaintiffs have filed a suit for an order to certify the entry No.2408 in revenue record of rights of village Bhaglgam, permanent injunction and other ancillary reliefs.

1.3 It is pleaded that the plaintiffs are currently acting in this matter as authorized representative and presently reside at Junagadh and the disputed land is situated at village Bhalgam under Bilkha, bearing Account No. 163 and Lekh No. 240 and in reality, this land belonged to their grandfather, Jina Keshav.

1.4 It is further pleaded that their grandfather had a total of four brothers: (1) Bhimji Keshav Amarseda, (2) Nanjibhai Keshavbhai Amarseda, (3) Jina Keshav Amarseda, (4) Manji Keshav Amarseda.

1.5 It is further pleaded that their grandfather, Jina Keshav, was the rightful owner of properties at village Bhalgam, of Gamtal Kiraya Account No. 163 and 40 and after his demise, the plaintiffs, as his legal heirs, hold ownership rights over the said property.

1.6 It is further pleaded that upon verifying the records, the plaintiffs had applied to transfer the property standing in the name of Jina Keshav into their names. However, the malicious intention of the defendants are clearly evident, as with the sole intention of grabbing property of the plaintiffs, they filed R.R.T. Case No. 7/05-06 before the Mamlatdar to cancel the legal entry. In doing so, the said defendants had concealed the names of their own brothers, their heirs, and their real sisters, and submitted a false claim with misrepresentation, thereby misleading the Mamlatdar and obtaining an order.

1.7 It is further pleaded that the defendants have attempted to show the sale of another property as this property with the dishonest intention of grabbing it. The defendants have a habit of creating bogus documents.

1.8 It is further pleaded that before the Hon'ble Sub-Divisional Magistrate, Junagadh, the defendants had submitted false affidavits in the names of two sisters and in response, those two sisters filed affidavits stating that the affidavits presented by the defendants were false and the Hon'ble Sub-Divisional Magistrate accepted this and remanded the case.

1.9 It is further pleaded that the defendants appear to believe that merely possessing any property—whether legally or illegally—or even if the property is measured, makes it lawful. In reality, illegal possession does not make a property legal. If they had legally purchased the property, a lawful entry would have been recorded at that time. In fact, the property is recorded in the name of Jina Keshav and if the defendants were genuine, they would have taken steps to record the entry in the Panchayat records.

1.10 It is further pleaded that in truth, after the death of Jina Keshav, when the legal heirs went to enter their names, the defendants raised a dispute through Entry No. 2408 only to avoid criminal liability.

1.11 It is further pleaded that nowadays, even encroached land may receive a electricity connection, but that does not make the occupant the owner of the property. Similarly, permits for business may be granted, and people may conduct business on rented or encroached land, but that does not make them owners. On the contrary, such acts amount to cheating the government, as the Panchayat tax and government dues are still being paid in the name of Jina Keshav.

1.12 It is further pleaded that the grand father of the plaintiffs was the sole owner of the suit property.

1.13 It is further pleaded that Manji Keshavbhai, Bhimji Keshavbhai, and Nanjibhai Keshavbhai were well aware that this land and the house built upon it belonged to Jina Keshavbhai, and that he was residing there.

1.14 It is further pleaded that even the defendants have admitted in their application before the Mamlatdar Court, as well as in his written arguments (Para 1) before the Mamlatar Court, that land bearing Entry No. 40, measuring 800 sq. yards, was granted in the name of Jina Keshav by the Bilkha Darbar.

1.15 It is further pleaded that thus, the defendants themselves have admitted that the disputed land was the absolute property of Jina Keshav. However, in order to mislead the Hon'ble Mamlatdar Court, they referred to some other property that Jina Keshav had given to Manji Keshav and falsely tried to portray that this disputed land also belonged to Manji Keshav.

1.16 It is further pleaded that in reality, after the death of Jina Keshav, his son who is the plaintiffs' father shifted and settled in Junagadh. Taking advantage of this, the defendants illegally encroached upon land of the plaintiffs and house. Now, in order to avoid any criminal liability, they have made false representations and filed claims before the Hon'ble Mamlatdar Court.

1.17 It is further pleaded that the disputed property actually belongs to grandfather of the plaintiffs and after his death, since the plaintiffs and their father moved to Junagadh for work and residence, the defendants illegally took possession of the property and they are fully aware of this fact. Therefore, they never got any entry recorded in the Gram Panchayat.

1.18 It is further pleaded that on the contrary, since the property legally belongs to the plaintiffs, the Gram Panchayat recorded entry of the plaintiffs under No. 2408. However, with malicious intent, the defendants made false representations before the Hon'ble Mamlatdar Court and obtained an order to cancel entry of the plaintiffs. Therefore, the plaintiffs request that their Entry No. 2408 be confirmed as valid.

1.19 Thus, the plaintiffs have sought the relief as sought in para 10 of the suit plaint wherein they have prayed that the Hon'ble authority pass an order confirming Entry No. 2408 in the records of village Bhalgam, Taluka Junagadh. Additionally, the plaintiffs have also prayed for an order that the defendants be directed to hand over possession of their legally owned property to them, and further prayed for a declaration that after handing over possession, the defendants should not create any obstruction or interference and also prayed for any other relief which deems fit.

2. Defense of the defendants:-

3. Defense of the defendant Nos.1 to 3:

3.1 The defendant Nos.1 to 3, represented by Ld. Advocate, has filed a written statement cum objections **(Exh. 23)** denying most of the facts stated in the plaint.

3.2 It is contended that the present suit is liable to be dismissed as it is not true, not legal, or not in proper form and the plaint has not been properly presented and suit, in its current form, is not maintainable.

3.3 It is further contended that the relief claimed in this suit is barred under Section 135(L) of the Bombay Land Revenue Code and Section 11 of the Revenue Jurisdiction Act. Since the main relief itself is barred, the suit is not maintainable. The remaining reliefs are also barred by limitation. The entire suit is time-barred; therefore, it is not maintainable.

3.4 It is further contended that the plaintiffs have suppressed material facts and filed the present suit; hence, the application for interim injunction is liable to be rejected.

3.5 It is further contended that the suit suffers from misjoinder of necessary parties; therefore, it is not maintainable and all co-owners/concerned parties of the property have not been joined as parties in this case.

3.6 It is further contended that there is no personal knowledge that the plaintiffs reside at Junagadh; therefore, it is not admitted. It is true that the land in question is situated at Bilkha, but the plaintiffs have no right, title, or share in it. In this paragraph, only the names of the brothers of Jina Keshav are mentioned, but the full genealogy is not provided; therefore, it is not admitted.

3.7 It is contended with regard to Paragraph 2 of the plaint that there was never any account bearing No. 40 in the name of Jina Keshav. During his lifetime, a family partition had already taken place, and the suit property did not fall to his share. These facts have been suppressed by the plaintiffs. Prior to this suit, the said defendants had made detailed representations before the revenue authorities, which are also mentioned in the orders of the Mamlatdar and Deputy Collector submitted by the plaintiffs themselves. However, the plaintiffs have not mentioned these facts in their suit. Thus, the plaintiffs have not approached the court with clean hands, and therefore the application for injunction is liable to be rejected.

3.8 It is further contended that the plaintiffs have no right or interest in the property and therefore, it is incorrect to allege that intention of the defendants is dishonest or to grab the property. In fact, the property belongs to the defendants and they did not file any case before the Mamlatdar; rather, upon receiving notice on the application filed by the plaintiffs, the defendants had filed their objections, after which the Mamlatdar registered the matter as RRT Case No. 7/05-06.

3.9 It is further contended that the defendants have not suppressed any facts before the Mamlatdar. In those proceedings, after considering their submissions, the Mamlatdar did not grant the plaintiffs' request for mutation entry.

3.10 It is further contended that even after the order of the Sub-Divisional Magistrate, the Mamlatdar has passed an order rejecting the plaintiffs' request for mutation entry. Against that order, the plaintiffs ought to have preferred an appeal before the Deputy Collector (Sub-Divisional Magistrate), but instead of doing so, they have filed the present suit, which is not maintainable.

3.11 It is further contended with regard to Paragraph 4 of the plaint that the property has already been partitioned within the family, and copies of the same have been produced. The property that fell to the share of Jina Keshav was sold by his heirs through three separate documents—one to Kantaben Ranchhod (mother of Defendant No. 2, Dalsukhbhai), another to Defendant No. 2, and a third to Rasikbhai Ranchhod who are not a party to this suit. Since the revenue entry remained only in the name of Jina Keshav, the plaintiffs have no right, title, or share in it. The belief expressed by the plaintiff in this paragraph is contrary to law. The plaintiff makes absurd allegations that a criminal offence arises from a revenue entry, which is not sustainable and the defendants have raised genuine and lawful objections before the revenue authorities.

3.12 It is further contended with regard to Paragraph 6 of the plaint that the plaintiff has distorted submissions of the defendants made before the revenue authorities in an attempt to succeed in the suit. It is true that the land was originally purchased in the name of the plaintiffs' grandfather, but thereafter a partition took place and this land did not fall to the share of the plaintiffs' predecessor.

3.13 It is further contended that this property is defendants' independent and exclusive ownership and by quoting selected portions of written submissions of the defendants before the Mamlatdar in the plaint, the property does not become of the plaintiff's. Therefore, it is not correct to say that they have admitted any right, title, or interest of the plaintiff in the suit property. The documents regarding the partition and transfer by Jina Keshav to others were produced before the Mamlatdar and therefore, they have not misled anyone and they have not taken possession unlawfully and they have presented true facts along with documents before the Mamlatdar.

3.14 It is further contended with regard to Paragraph 7 of the plaint that the plaintiff's father has no right, title, or interest in this property. In fact, many years ago, this suit property had already been partitioned. No specific time has been given as to when the plaintiff's grandfather passed away or when the plaintiff's father shifted to Junagadh. The plaintiffs are also unable to provide such dates because the plaintiffs are aware that if dates are given, the issue of adverse possession would arise.

3.15 It is further contended that the plaintiff's belief that since the defendants have not entered their names in the Gram Panchayat record, the property has become the plaintiffs' is baseless and contrary to law. The Gram Panchayat does not carry out mutation entries. Entry No. 2408 was only a provisional entry, which has already been cancelled.

3.16 It is further contended with regard to Paragraphs 8 and 9 of the plaint that the Civil Court has no jurisdiction regarding the validity of revenue entries. Moreover, under Section 135(L) of the Bombay Land Revenue Code, this suit is barred on the same cause of action. Against the Mamlatdar's order cancelling Entry No. 2408, the plaintiff had earlier filed an appeal before the Deputy Collector, and the same appellate remedy is still available. Therefore, under Section 11 of the Revenue Jurisdiction Act, as long as the remedy of appeal is available, the suit cannot be filed.

3.17 It is further contended that as stated in Paragraph 9 regarding jurisdiction, this Hon'ble Court has no jurisdiction to try this case. Issuing a notice under Section 80 of the Code of Civil Procedure, 1908, to the Government does not bring a time-barred suit within limitation. The plaintiff's suit is clearly barred by limitation. The plaintiff admits that possession is with the defendants but deliberately does not state since when. In fact, possession of the defendants have continued for more than 30 years; therefore, the defendants have also become owners by adverse possession.

3.18 It is further contended that the true facts of the case are that the property originally belonged to the plaintiffs' grandfather and his brothers by inheritance. Thereafter, on or about 12/08/1950, a family partition took place between Jina Keshav and his brothers—Bhimji Keshav, Nanji Keshav, and Manji Keshav—and separate shares were allotted to each. The property that fell to the share of Jina Keshav was subsequently sold by his heirs through registered sale deeds: (1) Sale Deed No. 1500 dated 24/05/1982 executed by Parshotam Jina and Himmat Jina in favor of Dalsukh Ranchhod (Defendant No. 2), (2) Sale

Deed No. 1501 dated 24/05/1982 executed in favor of Smt. Kantaben Ranchhod (mother of Defendant No. 2) and (3) The remaining property sold by Sale Deed No. 1502 dated 24/05/1982 to Rasik Ranchhod.

3.19 It is further contended that Rasik Ranchhod has not been joined as a party in this case. He is the son of Ranchhodbhai, who is the son of Manjibhai (brother of Jina Keshav), and also the brother of Dalsukhbhai. Thus, all the property that had come to the share of Jina Keshav has been sold by his heirs through valid sale deeds. Therefore, the plaintiffs have no right, title, or interest in the property, and they have not even sought cancellation of these sale deeds. The plaintiff's suit is clearly barred by limitation.

3.20 Thus, prayed to dismiss the suit with costs.

Defense of the defendant Nos.4 and 5:

3.21 The right of the defendant Nos.4 and 5 to file written statement was closed by passing an order below Exh.1 on 17.01.2013.

4. Evidence of the parties :

4.1 The following evidence has been presented by the plaintiffs in both oral and documentary forms:-

4.2 Oral evidence of the plaintiffs :

Exh.32	Deposition of Power of attorney holder of plaintiffs – Hasmukhbhai Parsotambhai Amarseda

4.3 Documentary evidence of plaintiffs :-

Exh.53	True copy of order dated 30.05.2006 passed by Mamlatdar, Junagadh in R.R.T. Case NO.7/05-06 filed

	by Heirs of Manji Keshav: (1) Kantilal Chhaganlal i.e. defendant No.1, (2) Dalsukhray Ranchhodbhai i.e. defendant No.2, (3) Ratilal Manjibhai i.e. defendant No.3 against Heirs of Parsotam Jina: (1) Jiviben Parsotam Amarseda i.e. plaintiff No.1/1, (2) Gauriben Parsotam Amarseda i.e. plaintiff No.1/2,. (3) Hasmukh Parsotam Amarseda, (4) Haresh Parsotam Amarseda i.e. plaintiff No.1/3, (5) Hitesh Parsotam Amarseda i.e. plaintiff No.1/4, (6) Himatlal Jinabhai i.e. plaintiff No.1/5, (7) Bhaniben Jinabhai i.e. plaintiff No.1/6, (8) Vajiben Jinabhai i.e. plaintiff No.1/7, (9) Lilaben Jinabhai i.e. plaintiff No.1/8, (10) Vijayaben Jinabhai i.e. plaintiff No.1/9, (11) Jashvantiben Jinabhai i.e. plaintiff No.1/10 whereby the entry No.2408 dated 18.08.2005 in revenue record of rights of Village Bhalgam was cancelled
Exh.54	True copy of order dated 01.10.2010 passed by Mamlatdar, Junagadh in No.Jamin/RRT (Remand)/Case Regi. No.2/2008-09 by Heirs of Manji Keshav: (1) Kantilal Chhaganlal i.e. defendant No.1, (2) Dalsukhray Ranchhodbhai i.e. defendant No.2, (3) Ratilal Manjibhai i.e. defendant No.3 against Heirs of Parsotam Jina: (1) Jiviben Parsotam Amarseda i.e. plaintiff No.1/1, (2) Gauriben Parsotam Amarseda i.e. plaintiff No.1/2,. (3) Hasmukh Parsotam Amarseda, (4) Haresh Parsotam Amarseda i.e. plaintiff No.1/3, (5) Hitesh Parsotam Amarseda i.e. plaintiff No.1/4, (6) Himatlal Jinabhai i.e. plaintiff No.1/5, (7) Bhaniben Jinabhai i.e. plaintiff No.1/6, (8) Vajiben Jinabhai i.e. plaintiff No.1/7, (9) Lilaben Jinabhai i.e. plaintiff No.1/8, (10) Vijayaben Jinabhai i.e. plaintiff No.1/9, (11) Jashvantiben Jinabhai i.e. plaintiff No.1/10 which was partly allowed and the case was remanded back to Mamlatdar, Junagadh
Exh.56	True copy of Notice u/s.135D of Bombay Land Revenue Code issued upon Himatlal Jinabhai i.e. plaintiff No.1/5 etc. in respect to entry No.2408 dated 18.08.2005
Exh.57	True copy of Village Form No.6 showing entry No.2408 dated 18.08.2005 which shows that account No.163 stood in the name of Jinabhai Keshavbha who has expired before 52 years and his wife Gangabai

	Jinabhai had expired on 20.05.1974 and his son Parsotam Jinabhai had expired on 29.01.1997 and therefore, the names of lineal heirs (1) Himatlal Jinabhai-Son, (2) Lilaben Jinabhai-Daughter, (3) Vijayaben Jinabhai-Daughter, (4)Jasvantiben Jinabhai-Daughter, (5)Vajiben Jinabhai-Daughter, (6) Bhaniben Jinabhai-Daughter, (7) Jiben Parsotambhai-Daughter in law, (8) Gauriben Parsotambhai-Grand Daughter, (9) Harsukhbhai Parsotambhai-Grand Son, (10) Hareshbhai Parsotambhai-Grand Son, (11) Hiteshbhai Parsotambahi-Grand Son were entered and as per the endorsement dated 28.11.2005, as the objections were raised on 11.10.2005, it was registered as Takrari Case and was to be forwarded to Taluka Office
Exh.58	True copy of Tax Payment receipts dated 16.11.2005 in the name of Jinabhai Keshavbhai through Kantilal Jinabhai etc.
Exh.59	True copy of Village Form No.8A of account no.163 in the name of Bhalgam in the name of Sutar Jina Keshav
Exh.60	True copy of Village Form No.2 of village Bhalgam showing entry No.33 showing the name of Sutar Jiva Keshav
Exh.61	True copy of Panch Rojkam dated 12.08.2005 prepared by Talati Mantrik, Bhalgam Gram Panchayat and others in respect of death of decd. Jina Keshav, his wife and son which shows the lineal heirs of the decd. Jina for account No.163 of village Bhalgam
Exh.62	True copy of old Lekh
Exh.73	Closing purshis

4.4 Evidence of the defendants :

Oral evidence of the defendant Nos.1 to 3 :

Exh.76	Deposition of Defendant No.2-Dalsukhbhai Ranchhodbhai Amarseda

Documentary evidence of the defendant Nos.1 to 3 :

Exh.64 Exh.65	True copies of family partition deeds dated 12.08.50
Exh.66	True copy of registered sale deed no.1500 dated

	24.05.1982 executed by (1) Mistri Parsotam Jinabhai Amarseda i.e. plaintiff No.1, (2) Mistri Himatlal Jinabhai Amarseda i.e. plaintiff No.1/5 in favour of Mistri Dalsukhray Ranchhodbhai Amarseda i.e. defendant No.2 for shop No.1 and backside passage and warranda admeasuring 73 square yard approximately situated in area known as Lalbati Dela Bhalgam village
Exh.67	True copy of registered sale deed No.1501 dated 24.05.1982 executed by (1) Mistri Parsotam Jinabhai Amarseda i.e. plaintiff No.1, (2) Mistri Himatlal Jinabhai Amarseda i.e. plaintiff No.1/5 in favour of Kantaben Ranchhodbhai Amarseda for shop No.1 along with backside passage and warranda situated in area known as Lalbati Dela of Bhalgam
Exh.68	True copy of registered sale deed No.1502 dated 24.05.1982 executed by (1) Mistri Parsotam Jinabhai Amarseda i.e. plaintiff No.1, (2) Mistri Himatlal Jinabhai Amarseda i.e. plaintiff No.1/5 in favour of Mistri Rasiklal Ranchhodbhai Amarseda for shop NO.1 along with backside passage and warranda of Bhalgam village
Exh.69 Exh.70	True copy of notarized affidavit dated 16.10.2006 executed by Bhaniben Jinabhai W/o.Chhaganbhai
Exh.71	True copy of notarized affidavit dated 06.11.2006 executed by Lilaben Karshanbhai Kamothi
Exh.81	Closing purshis

5. Issues framed by the court below.

5.1 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.28** under the Order 14 of the Code of Civil Procedure Code, 1908 *(hereinafter be referred as 'the Code').*

૧. શું વાદી પુરવાર કરે છે કે, દાવાવાળી મીલકત તેઓની સ્વતંત્ર માલીકીની છે?

૨. શું હાલનો દાવો સાંભળવાની અત્રેની અદાલતને સતા છે?

૩. શું વાદીનો દાવો સમય મર્યાદામાં છે?

૪. શું વાદી દાવામાં માંગ્યા મુજબની દાદ મેળવવા હક્કદાર છે?

૫. શું હુકમ અને હુકમનામુ?

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

1. In Negative.
2. In Affirmative.
3. In Negative.
4. In Negative.
5. As per final order.

6. After considering the materials available on record, the **Ld. 2nd Additional Senior Civil Judge, Junagadh** (hereinafter referred to as "**Ld. Trial Judge**") has rejected the plaintiffs' suit. Aggrieved by this judgment and decree, the original plaintiffs have filed this appeal.

7. 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.

8. **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.297/2012 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 issues in the proper perspective?

(3) Whether the Trial Court has misconstrued the documentary evidence to decide exclusive ownership of decd. Jina Keshav?

(4) Whether the Trial Court has failed to consider admission on the part of the defendants as they have admitted the exclusive ownership of the decd. Jina Keshav?

(5) What order should be passed in this matter ?

9. 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) In Negative, as discussed.

(5) As per final order.

As to maintainability of appeal :

10. 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.'*

10.1 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] : ”

10.2 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 :

11. 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 exists, 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."

11.1 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 appellants side : (original plaintiffs)

12. The learned advocate for the appellants/original plaintiffs have filed his written arguments vide **Exh.40** wherein he 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.

12.1 It is argued out that the plaintiffs are presently appearing in this matter as power-of-attorney holders and are currently reside at Junagadh. The land in dispute is situated at Bhalgam under Bilkha, bearing Account No. 163 and Lekh No. 240. This property originally belonged to our grandfather, Jinabhai Keshavbhai. Our grandfather had four brothers: Bhimjibhai Keshavbhai of Amroda, Nanjibhai Keshavbhai of Amarseda, Jinabhai Keshavbhai of Amarseda, Manjibhai Keshavbhai of Amarseda.

12.2 It is argued out that their grandfather, Jinabhai Keshavbhai, was the owner of properties recorded under village accounts including Account No. 160 and 40 other running accounts at Bhalgam and after his death, the plaintiffs, as his legal heirs, hold ownership rights over these properties.

12.3 It is argued out that upon verification of the records, the plaintiff applied to have the property standing in the name of Jinabhai Keshavbhai transferred to their names. However, the ill intention of the defendant were clearly evident.

12.4 It is argued out that with the sole intention of grabbing property of the plaintiffs, the defendant filed R.R.T. Case No. 7/05-06 before the Mamlatdar to cancel the lawful entry. In doing so, the defendants deliberately concealed the name of their father's brothers, their heirs, and his own real sisters, and submitted a false claim application, thereby misleading the Mamlatdar and obtaining an order.

12.5 It is argued out that in this matter, the defendants have acted with dishonest intent by misrepresenting the sale of some other property as if it were this property, in order to usurp it. The defendants have a habit of creating bogus documents. Before the Hon'ble Sub-Divisional Magistrate, Junagadh, the defendants have submitted false affidavits in the names of two sisters. In response, those two sisters filed affidavits stating that the affidavits submitted by the said defendants were false. The Hon'ble Sub-Divisional Magistrate accepted this and remanded the case.

12.6 It is argued out that illegal possession by the defendants does not make the property lawful. If the defendants had legally purchased the property, then an entry in their name would have been made at the relevant time. In reality, the property stands in the name of Jinabhai Keshavbhai and if the defendants' claim were genuine, they would have taken steps to enter their name in the Panchayat records. However, after the death of Jinabhai Keshavbhai, when his heirs went to record the entry, the defendants raised an objection only to avoid criminal liability, specifically against Entry No. 2408.

12.7 It is argued out that nowadays, merely having possession of land or obtaining a electricity connection does not make someone the owner of the property. Similarly, licenses for business activities can be obtained even on rented or encroached land, but that does not confer ownership. On the contrary, such acts may amount to fraud against the government, especially when Panchayat tax and government taxes are still being paid in the name of Jinabhai Keshavbhai.

12.8 It is argued out that in the plaintiffs' suit, there were four brothers, all living separately. The disputed land was the exclusive property of the plaintiffs' grandfather, and none of his brothers had any right or share in it. This is because their grandfather lived alone in that property in his independently owned house. Manjibhai Keshavbhai, Bhimjibhai Keshavbhai, and Nanjibhai Keshavbhai were well aware that the land and the house belonged solely to Jinabhai Keshavbhai, who resided there.

12.9 It is argued out that even the defendants in this case has admitted in paragraph 1 of their application and written submissions before the Mamlatdar Court that land measuring 800 sq. yards (Entry No. 40) was granted to Jinabhai Keshavbhai by Bilkha Darbar. Thus, the defendants themselves acknowledges that the disputed property was the exclusive property of Jinabhai Keshavbhai.

12.10 It is argued out that despite this, to mislead the Hon'ble Mamlatdar Court, the defendants falsely referred to some other property allegedly given to Manjibhai Keshavbhai and tried to claim that this disputed land also belongs to Manjibhai Keshavbhai. In reality, after the death of Jinabhai Keshavbhai, his son (the plaintiffs' father) moved to Junagadh for residence, and thereafter the defendant illegally encroached upon the land and house. To avoid criminal charges, the defendant has made false representations before the Mamlatdar court.

12.11 It is argued out that in fact, after the death of the plaintiffs' grandfather and due to the plaintiffs' father residing in Junagadh for work, the defendants unlawfully occupied the disputed property. The defendants are fully aware of this fact. Therefore, the defendants never got any entry recorded in the Gram Panchayat. Meanwhile, since the property is legally of the plaintiffs, the Gram Panchayat recorded Entry No. 2408 in favor of the plaintiffs. However, the defendants, with malafide intent, made false representations before the Mamlatdar Court and obtained an order to cancel entry of the plaintiffs. Therefore, it is requested that Entry No. 2408 be confirmed.

12.12 It is argued out that generally, a person who executes a document signs it. Here, the dispute is not that the signatures are not of Jinabhai Keshavbhai or Parsotambhai Jinabhai. The dispute is that the document is unsigned and pertains to some other property. The disputed property is a plot of 800 sq. yards with a house, whereas the document submitted by the defendants before the Trial Court does not even mention 800 sq. yards. This crucial fact was not considered by the Trial Court, and therefore the order deserves to be set aside.

12.13 It is argued out that a person does not lose ownership of property merely because they go out of town for work. This fact was also not considered by the Trial Court, making the order liable to be quashed.

12.14 Considering the above arguments and the grounds mentioned in this appeal, it is requested that the appeal be allowed.

12.15 Thus, prayed to allow the appeal with costs and set aside the impugned Judgment and Decree of the Trial Court.

13. **Arguments of the respondent Nos.1 to 3 : (original defendant nos.1 to 3):**

13.1 Ld. Advocate for the respondent Nos.1 to 3 has filed his written arguments vide **Exh.42** wherein he has argued out encircling the contentions taken in their written statement before the Trial Court.

13.2 It is argued out that the present appellants had filed a suit being R.C.S. No. 297/2012 in the Hon'ble Court of the

Principal Senior Civil Judge at Junagadh. The facts stated in that suit are that Plaintiff No. 1 has filed the suit on behalf of the other plaintiffs through a power of attorney. The land situated at village Bhalgam bearing Account No. 163 and Lekh No. 240 belongs to the plaintiffs' grandfather. As stated in Paragraph (1) of the plaint, the plaintiffs' grandfather had four brothers.

13.3 Thereafter, the plaintiffs applied to have the property entered in their names, to which the defendants have raised objections, resulting in R.R.T. Case No. 07/2005–06. In this matter, false allegations have been made against the defendants. As stated in the plaint, the property is claimed to belong to the plaintiffs' grandfather.

13.4 It is further argued out that by filing such a suit, the first relief sought was to pass an order confirming Entry No. 2408. The second relief sought was regarding possession, requesting that the defendants should not interfere. However, no relief has been sought for declaration of ownership.

13.5 It is further argued out that respondents No. 1 to 3 who were Defendants No. 1 to 3 in the Trial Court filed their objections and replies at Exhibit 23 and presented the true facts, along with fundamental technical objections such as: (1) Since the first relief is for confirmation of an entry, the present suit is not maintainable under Section 135(L) of the Bombay Land Revenue Code (now Gujarat Land Revenue Code) and Section 11 of the Revenue Jurisdiction Act. The remaining reliefs are time-barred. The plaintiffs have suppressed material facts. There is also a defect of misjoinder of parties.

13.6 It is further argued out that as per Paragraph (8) of the written statement, "જીણા કેશવની હયાતીમાં કૌટુંબીક વહેચણી થઈ ગયેલ છે." In this regard, the defendants had made detailed submissions before the revenue authorities.

13.7 It is further argued out that as per Paragraph (10) of the written statement at Exhibit 65, after the family partition document at Exhibits 64/65, the property that came to the share of Jina Keshav was sold by him at that time through sale documents at Exhibits 66 to 68. Only the name of Jina Keshav remained in the revenue record, and the plaintiffs are trying to take advantage of this situation.

13.8 It is further argued out that in Paragraph (14) of the written statement, it has been explained in detail how the suit is barred under Section 135(L) of the Bombay Land Revenue Code and Section 11 of the Revenue Jurisdiction Act. Further, for the second relief, a defense of adverse possession has been taken.

13.9 It is further argued out that the true facts of this matter are that the property originally came to the plaintiffs' grandfather and his brothers through Entry No. 62. Thereafter, on or around 12/08/1950, Jina Keshav and his brothers—Bhimji Keshav, Nanji Keshav, and Manji Keshav—effected a family partition through Entries No. 64–65, whereby separate shares were allotted to each.

13.10 It is further argued out that out of this, the property that fell to the share of Jina Keshav was subsequently sold by his heirs as (1) through Exh. 66 registered sale deed No. 1500, dated 24/05/1982, Parsotam Jina and Himmat Jina sold the property to Dalsukh Ranchhod (Defendant No. 2). (2) through Exh. 67 Registered sale No. 1501, dated 24/05/1982, Parsotam and Himmat Jina sold the property to Smt. Kantaben Ranchhod, who is the mother of Defendant No. 2. (3) the remaining property was sold through Exh. 68 Registered sale deed No. 1502, dated 24/05/1982 to Rasik Ranchhod.

13.11 It is further argued out that Rasik Ranchhod has not been joined as a party in this suit and hee is the son of Ranchhodbhai, who is the son of Manjibhai (brother of Jina Keshav), and also the brother of Dalsukhbhai.

13.12 It is further argued out that thus, the entire property that had come to the share of Jina Keshav has been sold by his heirs through registered sale deeds. Therefore, the plaintiffs have no right, title, or interest in the said property. Moreover, the plaintiffs have not sought any relief for cancellation of these sale deeds.

13.13 It is further argued out that the defendants have also taken a defense that the plaintiff’s claim is clearly time-barred.

13.14 It is further argued out that before the Hon'ble Trial Court, the plaintiff produced documentary evidence at Exhibits 53 to 62 and examined Plaintiff No. 1 at Exhibit 32.

13.15 It is further argued out that defendants No. 1 to 3 (Respondents No. 1 to 3 in this matter) produced oral evidence at Exhibit 76 and documentary evidence at Exhibits 64 to 71 before the Trial Court. These documents (Exh. 64 to 71) were submitted along with the documentary evidence list at Exhibit 63, and the plaintiff had endorsed that there was no objection to marking these exhibits.

13.16 It is further argued out that further, the documents at Exhibits 64 to 68 are certified copies and are more than 30 years old. Therefore, under the Evidence Act, a presumption of genuineness applies to them.

13.17 It is further argued out that the appellants/original plaintiffs had initially filed Regular Civil Suit No. 349/2010 (Mark 4/1). In that suit, the Hon'ble Court rejected the interim injunction application filed by the plaintiffs and returned the plaint for compliance with the provisions of Section 80 of the Civil Procedure Code, 1908 and thereafter, the present suit was filed.

13.18 It is further argued out that in the present suit, it does not appear that the plaintiffs have produced any notice under Section 80 of the Code of Civil Procedure, 1908. However, in Paragraph 8 on page 9 of the plaint, the plaintiff has stated that notice was given, stating that: "....before filing this suit, notice under Section 80 of the Civil Procedure Code was given to the Deputy Collector, Mamlatdar, etc." (which they do not admit).

13.19 It is further argued out that now, as per Section 80(2) of the Code of Civil Procedure, 1908: “In the case of a suit against any State, the notice shall be served upon the Secretary to that Government or the Collector of the district.”

13.20 It is further argued out that thus, if Section 80(2) is considered, although the plaintiffs claims to have issued notice under Section 80 of the Code of Civil Procedure, 1908, before filing the suit, such notice has not been given to the Secretary of the Government or to the Collector. Therefore, the suit is liable to be dismissed on this ground alone.

13.21 It is further argued out that further, if Section 79 of the Code of Civil Procedure, 1908 is considered, when a suit is filed against Defendant Nos. 4 and 5, the State of Gujarat is a necessary party, which the plaintiff has not impleaded in this matter.

13.22 It is further argued out with regard to Issue No. 1 that the plaintiffs have failed to prove this issue either by evidence or by pleadings. No strong documentary evidence has been produced by the plaintiff to establish this issue.

13.23 It is further argued out that if Tentative Exhibits 53 to 55 are examined, they consist of orders of the Mamlatdar and the Deputy Collector. Out of these, the Mamlatdar rejected the R.R.T. case, whereas the Deputy Collector remanded the matter. Nowhere in these documents has the ownership of the plaintiffs been recognized. Moreover, as per the settled principle that revenue courts cannot decide ownership rights, these Exhibits 53 to 55 do not support the plaintiff.

13.24 It is further argued out that tentative Exhibit 58 is a tax payment receipt dated 16/11/2005. However, the plaintiff Himmat Jina had applied for entry on 16/08/2005 (Exh. 53). No other tax receipts have been produced. This indicates that the tax payment at Exhibit 58 has been deliberately created by the plaintiffs, and considering the intention, it is not reliable.

13.25 It is further argued out that Exhibits 59 and 60 are revenue records. Revenue entries do not determine ownership.

13.26 It is further argued out that if Exhibit 62 is examined, it shows names such as Sutar Manji Keshav, Nanji Keshav, etc., and not solely in the name of Jina Keshav. Therefore, the plaintiffs' claim that Jina Keshav was the sole owner is incorrect. All these documents are only tentative exhibits and have not been properly produced as certified copies.

13.27 It is further argued out that on the other hand, through the documentary evidence list at Exhibit 63, Exhibits 64 (family partition document) and sale deeds at Exhibits 66 to 68 have been produced. These sale deeds show that Jina Keshav and/or his heirs accepted the partition at Exhibits 64–65 and acted upon it.

13.28 It is further argued out that since Exhibits 66 to 68 are more than 30 years old, they are admissible in evidence under Section 90 of the Evidence Act. Since the plaintiffs have allowed Exhibits 64 to 71 to be exhibited without objection, it is deemed that they are admitted. Therefore, the plaintiffs have no right in the suit property.

13.29 It is further argued out that as per the partition at Exhibits 64–65, the property that came to the share of Jina Keshav was sold by his heirs through Exhibit 66 to Mistri Dalsukhray Ranchhod (Defendant No. 2), who is from the family of Manji Keshav (brother of Jina Keshav).

13.30 It is further argued out that further, through Exhibit 65, the heirs of Jina Keshav sold property to Smt. Kantaben Ranchhodbhai, who is also a descendant of Manji Keshav.

13.31 It is further argued out that through Exhibit 68, the heirs of Jina Keshav sold the property to Rasiklal Ranchhod, who is also an heir of Manjibhai. In all three of these documents, the sellers Parsotam and Himmat were alive at the time of filing Regular Civil Suit No. 349/2010, and they have been shown as Plaintiff No. 5. Despite Himmat Jina being alive, he has not signed the suit and instead a power-of-attorney holder has filed it. Moreover, despite being aware of these facts, the plaintiffs have not challenged the sale documents, which reflects their malafide intention.

13.32 It is further argued out that if we examine the cross-examination of the plaintiff, at the time of cross-examination his age was 40 years. Despite other plaintiffs being older, they were neither examined nor is any explanation given for the same. This plaintiff himself admits that he has been residing in Junagadh for the past 40–45 years. When questioned about the claim that the suit property belonged to his grandfather, he stated: "The fact that the suit property belonged to my grandfather Jina Keshav and that he had four brothers is something I have stated in the suit based on what my mother told me." The plaintiffs' mother, Jiviben, is still alive, yet she has not been examined. Thus, the plaintiffs have no personal knowledge or information, and therefore his testimony is not reliable.

13.33 It is further argued out that further, the plaintiffs have not specifically denied documents of the defendants and written statement in his cross-examination.

13.34 It is further argued out that on the other hand, through Exhibit 76, Defendant No. 2, Dalsukhbhai Ranchhodbhai, has submitted an affidavit of evidence and stated the true facts. In cross-examination, the relevant portions have not been challenged. In particular, there has been no cross-examination regarding the documents at Exhibits 64 to 71.

13.35 Thus, the plaintiff has failed to prove Issue No. 1.

13.36 It is further argued out with regard to Issue No. 2 that the plaintiffs had initially applied to the Talati-cum-Mantri of village Bhalgam to record his alleged rights. Upon objection of the defendants, the matter was registered as a disputed case and taken up by the Mamlatdar as R.R.T. Case No. 7/2005–06. Entry No. 2408 dated 18/08/2005 in the said case was cancelled. Against this, the plaintiffs filed R.R.T. Appeal No. 93/2006 before the Deputy Collector, who by order dated 16/07/2008 remanded the case. After remand, the Mamlatdar again registered the case as R.R.T. Case Register No. 2/2008–09 and once again cancelled Entry No. 2408, after which the plaintiffs filed the present suit.

13.37 It is further argued out that the present suit is barred under Section 11 of the Bombay Land Revenue Jurisdiction Act.

13.38 It is further argued out that further, the suit is also barred under Section 135(L) of the Bombay Land Revenue Code.

13.39 It is further argued out that under the Bombay Land Revenue Code and Rules, in R.T.S. proceedings, after the Mamlatdar’s decision, an appeal lies before the Deputy Collector (which the plaintiff had earlier filed). Thereafter, revision lies before the Collector and the Government. Only after exhausting this entire channel does the right to file a suit arise. Therefore, the plaintiffs’ suit is also barred under Section 41(4) of the Specific Relief Act.

13.40 It is further argued out that if Relief No. 10(1) is considered, unless the plaintiffs exhaust the complete revenue channel regarding entries before the revenue authorities, the Civil Court does not acquire jurisdiction. Moreover, it is not the plaintiffs' case that the Mamlatdar acted beyond his jurisdiction or wrongly rejected Entry No. 2408. Therefore, this Hon'ble Court has no jurisdiction to entertain this suit.

13.41 It is further argued out with regard to issue No. 3 that if Relief No. (2) is considered, it relates to possession. In the plaint as well as in the affidavit of examination-in-chief, the plaintiff has not mentioned when he allegedly lost possession. Further, from the documents at Exhibits 66 to 68 produced by the defendants, it is clear that the property which came to the share of Jina Keshav has been sold by his heirs. Moreover, no relief has been sought for cancellation of these documents.

13.42 It is further argued out that if the plaintiff's cross-examination is considered, the plaintiff himself admits: "અમો જુનાગઢમાં –૪૦–૪૫ વર્ષથી રહીએ છીએ. મારો જન્મ જુનાગઢમા થયો." "એ વાતની મને ખબર નથી કે, આઝાદી બાદ મારા પીતાશ્રી જુનાગઢ રહેવા આવી ગયેલા."

13.43 It is further argued out that as per the plaintiffs' own admission, the plaintiffs and their father (i.e., the heirs of Jina Keshav) have been residing in Junagadh for 40–45 years. During all these years, neither Jina Keshav nor his heirs ever claimed possession. After such a long period—well beyond 12 years—the present claim for possession is clearly time-barred.

13.44 It is further argued out with regard to Issue No. 4 that if the judgment of the Hon'ble Trial Court is considered, except for the finding on Issue No. 2, all other findings are proper and in accordance with law. Therefore, there is no justification for interference with the judgment of the Hon'ble Trial Court.

13.45 It is further argued out that the Hon'ble Trial Court decided Issue No. 2 in the affirmative and held that it has jurisdiction to entertain the suit. However, this finding suffers from factual as well as legal errors.

13.46 It is further argued out that as held in A.I.R. 1991 M.P. 11 (C), the defendants can challenge the finding on this issue even at the stage of arguments. Therefore, it is humbly submitted that this representation for Issue No. 2 be considered, and it be held that the Hon'ble Civil Court does not have jurisdiction to try this case.

13.47 It is further argued out that the finding given by the Hon'ble Trial Court in Paragraph (12) of its judgment at Exhibit 92 on page (15) is correct. However, at the beginning of page (16), in the unnumbered paragraph (2), where the Hon'ble Trial Court has observed that "આમ વાદીએ હાલની દાવા અરજીમાં..... સદર દાદ અત્રેની અદાલત દ્વારા મળી શકે નહી.," a serious error has been committed in deciding Issue No. 2 in the affirmative.

13.48 It is further argued out that the Hon'ble Trial Court has held that the relief claimed in Paragraph (10)(1) of the plaint is not grantable. Therefore, it is an error to conclude that merely because there is another relief of declaration, the Trial Court has jurisdiction to entertain the suit.

13.49 It is further argued out that the relief regarding Entry No. 2408 is the main relief. When the Court has no jurisdiction to grant the main relief itself, it cannot acquire jurisdiction to grant any ancillary relief.

13.50 It is further argued out that further, in the judgment at Exhibit 92, the Hon'ble Trial Court has held that the suit is time-barred.

13.51 It is further argued out that moreover, at page (18) of the judgment, the Hon'ble Trial Court has observed that "પ્રતિવાદીનો વાદગ્રસ્ત મીલકતમાં ૧૨ વર્ષ ઉપરાંતથી કબજો હોવાનું જણાઈ આવે છે." In such circumstances, deciding Issue No. 2 in the affirmative is a serious error.

13.52 Thus, in view of the above submissions, it is requested that it be held that the Civil Court has no jurisdiction to try this suit.

13.53 It is further argued out that upon perusal of the judgment of the Hon'ble Trial Court, the appellants have not shown any valid grounds in their appeal memo warranting interference and out of the grounds mentioned in the appeal memo, Grounds No. 8(1) and 8(2) are not acceptable.

13.54 It is further argued out that in Grounds No. 3 and 4, the appellants contend that the documents relate to some other land. However, upon perusal of the sale deeds at Exhibits 66 to 68, this contention is not sustainable. These documents show that the heirs of Jiva/Jina Keshav (grandfather of the plaintiffs), including the father of Plaintiff Nos. 1/1 to 1/4 and Himmat Jina (shown as

Plaintiff No. 5 in the original suit), have sold the suit properties respectively to Dalsukhray Ranchhodbhai (Defendant No. 2), as well as to Kantaben Ranchhodbhai and Rasikbhai Ranchhod.

13.55 It is further argued out that the plaintiffs have not produced any rebuttal evidence to show that, apart from the suit property, they had any other property at village Bhalgam.

13.56 It is further argued out that thus, Grounds No. 3 and 4 are not acceptable.

13.57 It is further argued out that similarly, Ground No. 8(5) of the appeal memo is also not acceptable.

13.58 It is further argued out that it is a well-established principle that the plaintiffs must prove their own case. In this regard, reliance is placed on A.I.R. 2000 Gauhati 181 (B) and Second Appeal No. 157/2016.

13.59 It is further argued out that the plaintiffs/appellants claims ownership on the basis that the revenue record stands in their names. However, as held in 2005 (3) GLR 2110, Paragraph 35: "..... Title to the property cannot be decided on the basis of the mutation entries....". Under Section 135(J) of the Gujarat Land Revenue Code, a revenue entry carries only a presumption of correctness. Whereas, the defendants have produced registered sale deeds at Exhibits 66 to 68. Therefore, the plaintiffs' appeal is not sustainable.

13.60 It is further argued out that considering the judgment of the Hon'ble Trial Court and their written submissions, there appears no reason to interfere with the Trial Court's judgment. Hence, it is requested that the appellant's appeal be dismissed.

R E A S O N S

As regard Issue No.1 :-

૧. શું વાદી પુરવાર કરે છે કે, દાવાવાળી મીલકત તેઓની સ્વતંત્ર માલીકીની છે?

14. Herein, the plaintiff has sought the prayer vide para 10(a) of the plaint as under:

> "જુનાગઢ તાલુકાના ભલગામ ગામનો હકક પત્રક નોધ નં. ૨૪૦૮ ની એન્ટ્રી પ્રમાણીત કરવાનો હુકમ ફરમાવવા અરજ છે."

15. Therefore, the suit property pertains to Entry No. 2408 in Village Form No. 6, and Village Entry No. 2408 of Village Form No. 6 describes the property as "ખાતા નં.૧૬૩ થી જમીન, મકાનનું કીરાયા ખાતુ"

15.1 According to the plaint, Jinabhai Keshavbhai was the owner of the suit property, and the said Jinabhai Keshavbhai was the grandfather of the plaintiffs.

15.2 Herein, it transpires from the cause title of the plaint that deceased Parshotambhai, i.e. plaintiff No.1; deceased Himatlal, i.e. plaintiff No.5; deceased Bhaniben, i.e. plaintiff No.6; deceased Vajiben, i.e. plaintiff No.7; deceased Lilaben, i.e. plaintiff No.8; and deceased Vijayaben, i.e. plaintiff No.9, were the heirs of deceased Jinabhai. Plaintiff Nos.1 and 5 were the sons, while plaintiff Nos.6, 7, 8, and 9 were the daughters of deceased Jinabhai.

15.3 Herein, it is pleaded by the plaintiffs that, by way of Lekh (Deed) No.40, the suit property was given to Jinabhai Keshavbhai by Bilkha State, and that fact has been admitted by the defendants before the Mamlatdar Court. However, the alleged document of admission has not been produced by the plaintiffs. The plaintiffs have produced one Lekh at Exh.62, wherein the names of Bhimji Keshav, Keshav Jina, Nanji Keshav, Jina Keshav, and Manji Keshav are stated. Therefore, from the document at Exh.62, the sole ownership of Jina Keshav is not established, because the said deed mentions the names of all the brothers of Jina Keshav.

15.4 Ownership of any immovable property can be acquired by the modes provided under the Transfer of Property Act, such as by way of transfer, lease, charge, mortgage, gift, etc. Further, immovable property can also be acquired by way of testamentary succession, succession by inheritance, grant, or adverse possession or by way of grant etc.

15.5 Therefore, the plaintiffs are required to prove by which mode deceased Jina Keshav became the owner of the suit property. Herein, the plaintiffs have not produced any documentary evidence to show how Jina Keshav became the sole owner of the suit property. The plaintiffs have produced only Entry No.2408 of Village Form No.6, wherein it is stated that: "ભલગામ ગામે જીણાભાઈ કેસવભાઈ ના નામે ગામતળ કીરાયા ખાતા નંબર–૧૬૩ ની જમીન મકાન નુ કીરાયા ખાતુ ચાલે છે.''

15.6 Therefore, Entry No.2408 shows that, by way of Account No.163, the suit property stood in the name of deceased Jinabhai Keshavbhai; however, such entry does not prove how Jina Keshav became the owner of the suit property.

15.7 Herein, in the deposition of defendant No.2, it is deposed in Paragraph No.6 of the examination-in-chief at Exh.76 that:

> " આ કામમાં ખરી હકીકત એવી છે કે, આ મીલ્કત મુળ વાદીઓના દાદા તથા તેના ભાઇઓને લેખથી મળેલ જે બાદ ૧૨/૮/૫૦ ના રોજ કે તે અરસામાં જીણા કેશવ તથા તેના ભાઇઓ ભીમજી કેશવ, નાનજી કેશવ તથા મનજી કેશવ વચ્ચે ઘરમેળે કૈાટુંબીક વહેંચણ થયેલ..."

15.8 Therefore, this is nothing but a judicial admission, and by way of such judicial admission, defendant Nos.1 to 3 have admitted that the property belonged to Jina Keshav and the brothers of Jina Keshav. Therefore, even such judicial admission does not prove that the property belonged exclusively to Jina Keshav.

15.9 Herein, the plaintiffs have pleaded that the defendants admitted before the Mamlatdar Court that the property belonged to Jina Keshav; however, no admissible document evidencing such admission has been produced by the plaintiffs. Therefore, mere pleadings of the plaintiffs do not prove any admission on the part of the defendants.

15.10 Therefore, herein, it was the duty of the plaintiffs to prove that Jina Keshav was the sole owner of the suit property.

However, the plaintiffs have failed to prove such facts, and therefore, Issue No.1 has been decided by the Trial Court in the proper perspective.

As regards issue No.2:

૨. શું હાલનો દાવો સાંભળવાની અત્રેની અદાલતને સતા છે?

15.11 Herein,trial Court has observed under para 12 as under:

> "(૧૨) સદર કામમાં વાદીએ તેમની દાવા અરજીમાં જુનાગઢ તાલુકાના ભલગામ ગામના હકકપત્રક નોંધ નં.૨૪૦૮ ની એન્ટી પ્રમાણીત કરવાનો હુકમ કરવાની દાદ માંગેલ છે. પ્રતિવાદી તરફે વિ.વકીલશ્રીએ રજુઆત કરેલ છે કે, બોમ્બે રેવન્યુ જયુરીસ્ડીકશન એકટ, ૧૮૭૬ ની કલમ–૧૧ મુજબ હાલનો દાવો મેઈન્ટેનેબલ નથી તેવી રજુઆત કરેલ છે કારણ કે વાદીએ રેવન્યુના હુકમ સામે જે કાયદાકીય રેમેડી મળેલ છે તેનો ઉપયોગ કરેલ નથી. આ તબકકે બોમ્બે રેવન્યુ જયુરીસ્ડીકશન એકટ, ૧૮૭૬ ની કલમ–૧૧ ધ્યાને તથા વંચાણે લેવી જરૂરી છે જે નીચે મુજબ છે.
>
> 11. Suits not to be entertain unless plaintiff has exhausted of appeal;-
>
> No Civil Court shall entertain any suit against the Government on account of ant act or omission of any Revenue Officer unless the plaintiff first proves that previously to bringing his suits he has presented all such appeals allowed by the law for the time being in force,as within the period of limitation allowed for bringing such suit it was possible to present.
>
> હાલના કામમાં વાદી દવારા આંક–૫૪ થી રજુ થયેલ મામલતદારશ્રી જુનાગઢનાએ ભલગામ ગામના હકકપતક નોંધ નં.૨૪૦૮ તા.૧૮/૮/૨૦૦૫ ની નોંધાયેલ છે તે રદ કરવાનો જે હુકમ કરેલ છે તે હુકમ સામે કોઈ અપીલ રીવીઝન દાખલ કરવામાં આવેલ તેવી હકીકત રેકર્ડ પર નથી અને વાદીએ પણ તેઓની ઉલટ તપાસમાં આ ઠરાવ સામે તેઓએ ડેપ્યુટી કલેકટરમાં અપીલ કરેલ નથી તે હકીકત સ્વીકારેલ છે. આમ, વાદી દવારા તેમને જે રેમેડીઓ મળે છે તે રેમેડીનો ઉપયોગ કરવામાં આવેલ નથી."

15.12 Herein, as stated above, the main relief sought by the plaintiffs in Paragraph 10(a) is as follows:

> "જુનાગઢ તાલુકાના ભલગામ ગામનો હક્ક પત્રક નોધ નં. ૨૪૦૮ ની એન્ટ્રી પ્રમાણીત કરવાનો હુકમ ફરમાવવા અરજ છે."

15.13 Therefore, for such relief, Section 11 of the Revenue Jurisdiction Act, 1876, as stated above, comes into play, which provides as follows:

> "**11. Suits not to be entertain unless plaintiff has exhausted of appeal-**No Civil Court shall entertain any suit against the Government on account of ant act or omission of any Revenue Officer unless the plaintiff first proves that previously to bringing his suits he has presented all such appeals allowed by the law for the time being in force,as within the period of limitation allowed for bringing such suit it was possible to present."

15.14 Therefore, for such relief, the suit is barred by the provisions of the Revenue Jurisdiction Act, 1876. Therefore, the finding recorded by the Trial Court on the said issue is proper and correct.

As regards issue no.3:

૩. શું વાદીનો દાવો સમય મર્યાદામાં છે?

15.15 Herein, the Trial Court has observed in para 13 as under:

> "...સદર કામમાં વાદી દવારા તેમની દાવા અરજીમાં વાદી તેમની માલીકીની મિલ્કતનો કબજો પ્રતિવાદીઓ વાદીને સોંપી આપે અને કબજો મળ્યા બાદ તેમાં કોઈ અડચણ, અવરોધ ઉભો કરે કરાવે નહી તેવા ડેકલેરેશનની દાદ માંગવામાં આવેલ છે. સદર કામમાં વાદી દવારા સૌ પ્રથમ તો વાદગ્રસ્ત મિલ્કત વાદીની માલીકીની છે તેવી કોઈ ડેકલેરેશનની દાદ માંગવામાં આવેલ નથી. વાદી તેમની દાવા

અરજીમાં કે તેમના આંક–૩૨ ના પુરાવાના સોગંદનામામાં પ્રતિવાદીઓએ વાદગ્રસ્ત જમીનનો કબજો કયારે લીધો તે કયાય સ્પષ્ટપણે જણાવતા નથી. વાદી હસમુખભાઈ પરસોતમભાઈની આંક–૩૨ લગત પ્રતિવાદીના વિ.વકીલશ્રી દવારા ઉલટ તપાસ કરવામાં આવેલ છે જેમાં તેમણે જણાવેલ છે કે, પરસોતમભાઈ તેમના પિતાજી થાય છે અને તેઓ સતર, અઢાર વર્ષથી ગુજરી ગયા ત્યારે તેમની ઉંમર ૩૨, ૩૩ વર્ષની હતી અને દાવો દાખલ કર્યો ત્યારે તેમની ઉમર ૪૦ વર્ષની હતી અને તેઓ જુનાગઢમાં ૪૦, ૪૫ વર્ષથી રહે છે અને તેમનો જન્મ પણ જુનાગઢ માં થયેલ છે. આમ, વાદી દવારા વાદગ્રસ્ત મિલ્કતનો કબજો પ્રતિવાદીએ કયારે લીધો તે અંગેની કોઈ હકીકત વાદી સ્પષ્ટપણે જણાવતા નથી. આંક–૬૬ માં મિલ્કતના વર્ણનમાં ૧/૬૩ વાળી મિલ્કતનો ઉલ્લેખ છે. વાદી હસમુખભાઈ પરસોતમભાઈ આંક–૩૨ લગતની ઉલટ તપાસમાં એ હકીકતનો સ્વીકાર કરે છે કે દાવાવાળી મિલ્કતના વિગત વર્ણન દાવા અરજીમાં કે તેમના સોગંદનામામાં તેમણે કયાય જણાવેલ નથી જે હકીકત જણાવવાની જવાબદારી વાદીની છે. વાદી તરફે તેમની દાવા અરજીમાં લીમીટેશન અંગેની કોઈ હકીકત જણાઈ આવતી નથી. સદર કામમાં પ્રતિવાદી તરફે આંક–૬૬ ૬૭ અને ૬૮ થી દસ્તાવેજ રજુ કરવામાં આવેલ છે જેમાં દસ્તાવેજની તા.૨૪/૫/૧૯૮૨ ના રોજની છે ના રોજની છે અને તે રજીસ્ટર્ડ દસ્તાવેજ છે. વાદી દવારા દસ્તાવેજોને ચેલેન્જ કરવામાં આવેલ નથી. વાદીએ હાલનો દાવો તા. ૧૩/૯/૨૦૧૨ ના રોજ દાખલ કરવામાં આવેલ છે. આમ, વાદીએ હાલનો દાવાં ૧૨ વર્ષ બાદ દાખલ કરેલ છે. વાદી તરફે તેમની દાવા અરજીમાં કોઝ ઓફ એકશન રેવન્યુ એન્ટી રદ કરવાનો હુકમ કર્યો ત્યારથી દર્શાવેલ છે તે કોઝ ઓફ એકશન વાદીએ ખોટુ અને બનાવટી ઉભુ કરેલ છે. નોંધ નં.૨૪૦૮ ની એન્ટીના હુકમ સામે યોગ્ય ફોરમમાં વાદી કાર્યવાહી કરી શકે છે. વાદી આંક–૩૨ લગત તેમની પ્રતિવાદી નં. ૧ થી ૩ ના વિ.વકીલશ્રી દવારા કરવામાં આવેલ ઉલટ તપાસમાં મામલતદાર કોર્ટમાં કેસ ચાલેલ અને કામ રીમાન્ડ થતા તેમની વિરૃધ્ધમાં ઠરાવ આવેલ તેની સામે ડેપ્યુટી કલેકટરમાં અપીલ કરેલ નથી તે હકીકત વાદી સ્વીકારે છે. ખરેખર વાદીએ દાવાવાળી વાદગ્રસ્ત મિલ્કતનો કબજો લીધો હોય ત્યારથી કોઝ ઓફ એકશન ઉભુ થયેલું ગણાય. લીમીટેશન એકટ ૧૯૬૩ ની કાયદાકી જોગવાઈને ધ્યાને લેતા વાદી હાલનો

દાવો કબજા માટેનો દાખલ કરેલ હોય દાવાનું કોઝ ઓફ એકશન ઉભુ થયાના ૧૨ વર્ષમાં દાખલ કરવો જોઈએ. પ્રતિવાદીનો વાદગ્રસ્ત મિલ્કતમાં ૧૨ વર્ષ ઉપરાંતથી કબજો હોવાનું જણાઈ આવે છે. હાલના દાવામાં ઉપરોકત ચર્ચા કર્યા મુજબ વાદીએ દાવાનું કારણ ઉપસ્થિત થયાના ૧૨ વર્ષમાં દાવો દાખલ કરેલ નથી. આમ, વાદીએ હાલનો દાવો સમય મર્યાદામાં દાખલ કરેલ નથી. "

15.16 Therefore, considering the fact that the plaintiffs have not stated when possession of the suit property was taken by the defendants and, at the same time, there is an admission on the part of the plaintiffs that even Parshotambhai had died 17 to 18 years prior to the deposition of the plaintiffs, the relevant circumstances are required to be considered. Further, the documents at Exh.66, Exh.67, and Exh.68 bear the date 24.05.1982. Further, the documents at Exh.64 and Exh.65 pertain to partition, and both the documents are dated 12.08.1950.

15.17 When the plaintiffs have not stated as to when possession of the suit property was taken from them, it can be presumed from the documents at Exh.64 and Exh.65 that the defendants have been in possession of the suit property since such date. Therefore, considering all the circumstances, the observation made by the Trial Court regarding the law of limitation is proper and correct because, under Limitation Act, particularly Article 65 thereof, the suit is barred by limitation.

As regards issue No.4:

૪. શું વાદી દાવામાં માંગ્યા મુજબની દાદ મેળવવા હકકદાર છે?

15.18 Herein, the plaintiffs have failed to prove the fact that Jina

Keshav was the sole owner of the suit property. At the same time, so far as the relief prayed for in Paragraph 10(a) is concerned, the same is barred by the provisions of the Revenue Jurisdiction Act, 1876, as discussed above. Simultaneously, the suit is also barred by limitation, as discussed hereinabove. Therefore, the plaintiffs are not entitled to any of the reliefs prayed for.

15.19 In view of the aforesaid discussion and upon overall appreciation of the oral as well as documentary evidence available on record, this Court is of the considered opinion that the plaintiffs have failed to establish that deceased Jina Keshav was the sole and exclusive owner of the suit property, inasmuch as the documents produced on record do not conclusively prove exclusive ownership of Jina Keshav. Mere revenue entries and pleadings, in absence of cogent and reliable documentary evidence of title, are insufficient to establish absolute ownership in favour of the plaintiffs. Further, though the plaintiffs have alleged admission on the part of the defendants before the Mamlatdar Court, no admissible documentary evidence of such alleged admission has been produced. Moreover, the relief sought by the plaintiffs, particularly in Paragraph 10(a) of the plaint, is barred by the provisions of the Revenue Jurisdiction Act, 1876 and, simultaneously, the suit is also barred by limitation under Article 65 of the Limitation Act, as the plaintiffs have failed to prove the date on which possession of the suit property was allegedly taken by the defendants, while the documentary evidence on record indicates long-standing possession of the defendants since decades. It is a settled principle of law that the plaintiffs must succeed on the strength of their own case and not on the weakness of the defence, and in the present case, the plaintiffs have failed to discharge the burden cast upon them to prove lawful exclusive title of decd. Jina Keshav, possession, and entitlement to the reliefs prayed for. The learned Trial Court has properly appreciated the evidence and correctly decided the issues in accordance with law, and this Court does not find any illegality, perversity, or infirmity in the findings recorded by the learned Trial Court warranting interference. Accordingly, the plaintiffs are not entitled to any of the reliefs prayed for and the appeal, being devoid of merits, deserves to be dismissed.

15.20 Therefore, considering the said facts and circumstances, reply of point Nos.8(1) to 8(4) is in Negative, as discussed and therefore, following order is passed so far as Point No.8(5) is concerned:

:: O R D E R ::

1. This appeal is hereby **dismissed.** Therefore, the Judgment and Decree dated 25.02.2020 passed by the Ld. 2nd Additional Senior Civil Judge, Junagadh, in Regular Civil Suit No.297/2012 is hereby **confirmed and upheld.**

2. Taking into consideration the circumstances of the present case, the appellants 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 Trial Court 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 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 **13th day of May, 2026.**

Date : 13.05.2026
Junagadh.

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