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Date of decision-	16/05/2026		
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	04	06	18

IN THE COURT OF PRINCIPAL CIVIL JUDGE, MENDARDA
(Presiding Officer- Krishan Singh Rathore,)

RCS/54/2021
Ex.- 65

- (1) LR.s. of Deceased of Devjibhai Govindbhai Zinzuvadia
Shrimati Vanitaben Devjibhai Zinzuvadia
Aged:-55, R/o- Nani khodiyar, Taluka-Mendara

.....Plantiffs

Versus

- (1) Harsukhbhai Ravjibhai Busa
Age- 50,
(2) Bhavnaben Harsukhbhai Busa
Age- 45,
All r/o- Nani Khodiyar, Taluka-Mendara

.....Defendants

Subject- Suit for declaration and permanent injunction.

Ld. Advocate R.M. Baloliya of Plaintiff.

Ld. Advocate V.D.Dobariya of Defendants.

:: JUDGMENT ::

1. The present suit has been filed by the plaintiffs for the declaration and permanent injunction.
2. The brief gist of the facts are, the plaintiffs and the defendants are the residents of the Nani khodiyar village of the Mendarda taluka. It is stated in the plaint that the late husband of the plaintiff Devjibhai Govindbhai Zinzuvadia had purchased an open plot of land measuring 82-06 sq.yards located in the village site (Gaamtal) of Nani Khodinar, Mendarda taluka. This plot was purchased from Govindbhai Kachrabhai Kanani via a registered sale deed no.1057 dated 23/09/2004. Since an error was made regarding the boundaries in the document, husband of plaintiff executed a non-consideration supplementary deed of correction on 13/1/2015. Her predecessor owner, Govindbhai Devjibhai Kanani, had purchased the property from Ukabhai Nathubhai via registered sale deed No. 77 on 20/8/1966. The plaintiff has been in possession and enjoyment of the plot since he purchased it on 23/9/2004. Plaintiff's husband, Devjibhai Govindbhai Jhinjhuvadiya, passed away on 6/6/2017, and Plaintiff is currently living as a widow. In addition to this, her husband purchased the adjacent village-site plot land in Nani Khodiyar village,

measuring 363-46-57 square yards, via sale deed No. 1056 on 23/9/2004 from Savjibhai Kanani. Plaintiff's residential house is located on this land.

3. The boundaries of the plot in the village-site of Nani Khodiyar village, Mendarda Taluka, measuring 82-06-00 square yards, are as follows:
 - 3.1 To the East is a public road;
 - 3.2 To the West is the house of Savjibhai Laljibhai;
 - 3.3 To the North is the house of Vajubhai Laljibhai;
 - 3.4 And to the South is the house of Ravjibhai Shivabhai.

The plot with the aforementioned boundaries is hereafter referred to as the "Suit Property".

4. The defendants also reside in Nani Khodiyar village, Mendarda Taluka, and live adjacent to this suit property. Late Devjibhai Jhinhuvadiya had purchased this suit property; however, following his death on 6/6/2017, when plaintiff attempted to file an inheritance entry with the Mamlatdar/Talati Mantri, she found that land transfers for non-agricultural/village-site lands in certain villages of Mendarda Taluka have been suspended for the last three to four years. Consequently, Plaintiff has been unable to record the inheritance in her husband's property.

5. Currently, as the suit plot in the name of the plaintiff's husband is an open plot and some encroachment has been made from two sides. Upon having a measurement conducted by a private surveyor (Jarif), it was stated during the on-site measurement that encroachment exists; however, a measurement sheet was not prepared at that time. Therefore, to prevent further encroachment on the property owned and possessed by the plaintiff and to protect the open plot, plaintiff had started construction work to put up a compound wall and a gate around our owned plot. However, the defendants in this case, having the intention to forcibly park their vehicles in our owned open plot, have obstructed the construction of the wall and gate in our owned suit plot with the hope of gaining something from us, and they are giving us mental harassment and verbal abuse. Furthermore, since family members of Defendant No. 1 possess political influence, they are illegally obstructing and creating hurdles in the construction and the installation of the gate in our plot. The defendants repeatedly tell us that if we do any construction in the plot, their JCB will come and level it, and we won't even know where our materials have gone.
6. the plaintiff is widowed women. Since the defendants are part of a group and are people with political influence, we, out of fear, are unable to carry out the work of installing a gate or a compound wall in our owned suit plot. The

defendants of this case have no right or authority to illegally stop or obstruct the installation of a gate or compound wall in our owned suit plot, or to enter our owned plot; therefore, we, the plaintiffs, have found it necessary to bring the present suit for a declaration and permanent injunction.

7. As the defendants of this case were forcibly obstructing us, giving us threats and verbal abuse, and attempting to seize our owned open plot from us, we, the plaintiffs, filed a written complaint at the Mendarda Police Station around 4/9/2021. Subsequently, around 7/9/2021, we also approached the Talati Mantri of Nani Khodiyar village, the Mamlatdar of Mendarda, and the Taluka Development Officer of Mendarda.
8. Currently, as the suit plot in the name of the plaintiff's husband is an open plot, some encroachment has been made from two sides. Upon having a measurement conducted by a private surveyor (Jarif), it was stated during the on-site measurement that encroachment exists; however, a measurement sheet was not prepared at that time. Therefore, to prevent further encroachment on the property owned and possessed by the plaintiff and to protect the open plot, we had started construction work to put up a compound wall and a gate around our owned plot. However, the defendants in this case, having the intention to forcibly park their vehicles in our owned open plot, have obstructed the

construction of the wall and gate in our owned suit plot with the hope of gaining something from us, and they are giving us mental harassment and verbal abuse. Furthermore, since family members of Defendant No. 1 possess political influence, they are illegally obstructing and creating hurdles in the construction and the installation of the gate in our plot. The defendants repeatedly tell us that if we do any construction in the plot, their JCB will come and level it, and we won't even know where our materials have gone.

9. The plaintiff is widowed women. Since the defendants are part of a group and are people with political influence, we, out of fear, are unable to carry out the work of installing a gate or a compound wall in our owned suit plot. The defendants of this case have no right or authority to illegally stop or obstruct the installation of a gate or compound wall in our owned suit plot, or to enter our owned plot; therefore, we, the plaintiffs, have found it necessary to bring the present suit for a declaration and permanent injunction. As the defendants of this case were forcibly obstructing her, giving her threats and verbal abuse and attempting to seize our owned open plot from plaintiff. The plaintiffs filed a written complaint at the Mendarda Police Station around 4/9/2021. Subsequently, around 7/9/2021, she also approached the Talati Mantri of Nani Khodiyar village, the Mamlatdar of Mendarda, and the Taluka Development

Officer of Mendarda. At the end, plaintiff filed the present suit and praying to the Declaration and permanent injunction against the defendant.

10. The summons were duly served to the defendant. The defendant filed the written statement vide exhibit-19. In his written statement, the defendant denied the facts of the plaint. Further, it is stated in the written statement that the suit property upon which the plaintiff wants to construct the wall, is a public way and not belonging to plaintiff. Further, the suit is barred by principal of non joinder of necessary parties. Further, it is stated that plaintiff changed the direction of boundaries and wants to encroach on the public way. The document produced vide mark 4/2 is a false and fabricated with intent to encroach the public way. At the end, the defendant is praying to dismiss the plaint.

11. The plaintiff had filed following oral as well as documentary evidence:-

Oral evidence:-

Sr.No.	Name of witness	Exhibit
1.	Vanitaben Devsibhai Zinzuvadiya	35

Documentary evidence:-

Sr no.	Name of Documents	Exhibit
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1.	Sale deed of the suit property	52
2.	Rectification of sale deed	53
3.	Sanad of Suit property	54
4.	Written complaint to police	55
5.	Application to Talati mantri and Mamlatdar	56
6.	Reply of Sarpanch	57
7.	Measurement sheet	58

12. The Defendants had filed the oral evidence:-

12.1.1 Oral Evidence:-

Sr. No.	Name of Witness	Exhibit
1.	Harsukhbhai Ravjibhai	45

12.1.2 Documentary Evidence:-

Sr. No.	Name of Document	Exhibit
1.	Rojkam	49
2.	Map	50

13. Taking into the consideration of the pleading of the both side, this court has

framed following issued vide exhibit-34:-

- 13.1 શું વાદી સાબીત કરે છે કે મેંદરડા તાલુકાના નાની ખોડિયાર ગામે ગામતળમાં આવેલા ચો.વા. ૮૨.૦૬.૦૦ વાળી પ્લોટની જગ્યા વેચાણા દસ્તાવેજથી ખરીદ કરેલ છે અને તેની ચતુર્દિશા દાવા અરજી પારા-૪ માં જણાવેલ છે તે ખરી અને કાયદેસરની છે?
- 13.2 શું વાદી સાબીત કરે છે કે, દાવાવાળી મિલકત તેઓની માલિકીની આવેલ છે અને તેઓની દાવાવાળી મિલકત ફરતે કમ્પાઉન્ડ દિવાલ પેશકદમી ન થાય તે માટે કરવા માંગે છે?
- 13.3 શું પ્રતિવાદી સાબીત કરે છે કે, દાવાવાળી મિલકતએ વાદીની માલિકીની મિલકત નથી પરંતુ સાર્વજનિક રસ્તાની જગ્યા આવેલ છે?
- 13.4 શું પ્રતિવાદી સાબીત કરે છે કે, વાદી સાર્વજનિક રસ્તાની જગ્યા પોતાના પ્લોટ તરિકે દર્શાવી બાંધકામ કરીને સાર્વજનિક રસ્તાની જગ્યા બંધ કરવા માંગે છે?
- 13.5 શું વાદીના દાવાને જરૂરી પક્ષકારની ખામીનો બાધ નડે છે?
- 13.6 શું વાદી દાવા અરજીમાં જણાવ્યા મુજબની દાદ માંગ્યા મુજબની દાદ મેળવવાના હકદાર છે?
- 13.7 શું હુકમ અને હુકમનામું ?

14. Answer

- 14.1 Partly affirmative.

- 14.2 Negative.
- 14.3 Affirmative.
- 14.4 Affirmative.
- 14.5 Negative
- 14.6 Negative.
- 14.7 As per final order.

15. The plaintiff neither produced the further evidence nor produced the closing pursis, thus court has close the right of the plaintiff. Same, defendant neither produced the further evidence nor produced the closing pursis, thus court has close the right of the defendant. The plaintiff filed the written argument vide exhibit-59, whereas defendant filed the written argument vide exhibit-63.

:: REASONS AND FINDING ::

16. ISSUE NO.1,3 and 4

16.1 To resolve this issue, the core question is whether the Plaintiff has successfully discharged the burden of proving his absolute ownership and clear title over the suit property. The Plaintiff's claim rests primarily on the registered Sale Deed and the physical description of the boundaries as

mentioned in Paragraph 4 of the plaint. In light of the Indian Evidence Act, the court shall now examine the documentary evidence and the oral testimony to verify the validity of the said transaction. The burden is on the plaintiff to prove this issue. The plaintiff produced the examination in chief vide exhibit-35 and was cross examined by the defendant. In her cross examination, she admitted that suit property was purchased from govindbhai devsibhai kanani vide sale deed no.1056 dated September 23,2004. She admitted that the copy of document produced today is a certified copy of the document through which the predecessor owner govindbhai devjibhai kanani purchased it from Ukabhai Nathubhai. She has seen and read the document produced in this court. Further, she admitted that the boundaries of the property in document no.77 (Govindbhai Devsibhai kanani purchased from Ukabhai Nathubhai) and the sale deed no.1056 (her husband purchased from Govindbhai Devjibhai Kanani) are shown differently. She admitted that the suit property was originally granted to Ukabhai Nathubhai and the sanad was produced vide mark 4/3. Further, she denied the suggestion that the boundaries mentioned in the sanand are different from boundaries shown in the aforementioned documents of the property. Further she deposed that there is a wall on the east-side of the suit

property, the west side is open, the north side is open and the south side is also open. Later, she said there is a wall on the north side of property. Further, deposed that she was not aware that the boundaries of the suit property are shown differently in the document produced vide mark 4/1 to 4/3. Further, she denied that there is a public road on suit property. Further, she admitted her sign on the rojkam produced vide mark 26/1. Further, she admitted that in mark 26/2 there is a public way on north side. Further, she admitted that she had not taken any prior construction permission from the Gram panchayat.

16.2 The plaintiff vide exhibit-52 produced the copy of the registered sale deed of the suit property. This court has gone through the sale deed. The sale deed was registered in sub registrar office mendarda on September 23, 2004. The measurement is shown as 86.06 chorasvar, which is same mentioned in the plaint as the suit property. The seller of the suit property is Govindbhai kachrabhai kanani and buyer of suit property is Devjibhai govindbhai. The plaintiff in his cross examination admitted that the suit property was purchased by the husband of the plaintiff from Govindbhai Kachrabhai kanani. Further, vide exhibit-53, rectified without consideration sale deed was registered in the sub-registrar office mendarda dated

13/01/2005. In this document the direction was corrected. Further, vide the plaintiff produced a certified copy of the sale deed no. 77, which is the sale-deed of the suit property purchased by the Govindbhai kacharabhai kanani from the ukabhai nathubhai. It is defence of the defendant that the plaintiff has not produce the document of the ownership of the suit property. The husband of the plaintiff has been died and the plaintiff has not produced any document showing that the plaintiff become the owner of the suit property. The plaintiff in her plaint stated that her husband, Devjibhai Jhinjhuvadiya had purchased this suit property; however, following his death on 6/6/2017, when plaintiff attempted to file an inheritance entry with the mamlatdar/talati mantri, she found that land transfers for non-agricultural/village site lands in certain villages of mendarda taluka have been suspended for last three to four years. Consequently, plaintiff has been unable to record the inheritance in her husband's property. Now, it is not in dispute that the husband of the plaintiff died. The defendant also admitted in his written statement. Further, the defendant has also admitted that the husband of the plaintiff purchased 82.06 sq. yard. Under the law of intestate succession, specifically Section 8 of the Hindu Succession Act, the Plaintiff, being the widow, is a Class-I heir. The right to the property vests in the

legal heirs immediately upon the death of the owner by operation of law. Therefore, in the absence of any other competing legal heirs or a Will to the contrary, the Plaintiff is deemed to have inherited the right, title, and interest of her deceased husband. Her failure to produce a formal heirship certificate does not extinguish her substantive right to protect and claim the property based on the registered Sale Deed in her husband's name. Moreover, the defendant is admitted that the defendant has also admitted that the husband of the plaintiff purchased 82.06 sq. yard. from Govindbhai kachrabhai kanani vide registered sale deed. Thus, perusing the documentary evidence and the deposition of the plaintiff, it appears that the plaintiff's husband had purchased the property 82.06 sq.yard from the govind bhai and plaintiff is the owner of the plot.

16.3 Now, this court has to see whether the direction mentioned in the para 4 of the plaint is correct. It is stated in the plaint that the husband of the plaintiff purchased the 82.06 sq.yard suit property from the Govindbhai kachrabhai vide registered sale deed no. 1059. on 23/09/2004. Further, it is stated that the correction of the direction was made through a registered sale deed(without consideration) on 13/01/2005. The rectified registered sale deed was produced vide exhibit-53. This court has gone through the

direction mentioned in the document exhibit-53 is different from the document produced vide exhibit-52. The suit property was purchased by the plaintiff from the Govindbhai kachrabhai kanani vide sale deed no.1059 and the govindbhai kacharabhai kanani purchased the suit property from the Ukabhai nathubhai vide sale deed no. 77. On being asked during the cross examination that whether the plaintiff wants to produced the document which is the sale deed no.77. The plaintiff produced the sale deed vide exhibit-38/1. Now, it has to see what the actual boundaries were in sale deed no.77. It appears from the record that, the boundaries shown in the sale deed no.77 is different from the rectified sale deed i.e. exhibit- 53. The boundaries are not as shown in the exhibit- 53. Further, the court ordered to conduct a court commissioner on the suit property. The report of the court commissioner is produced vide exhibit- 49 and rough map vide exhibit-50. These documents will brought attention of the court on the actual geographical situation of the suit property. Upon perusal of the court commissioner's report and the map at exhibit-50, a significant encroachment is observed. It appears that the Plaintiff, under the guise of constructing a wall, has extended the structure onto the public road. Specifically, the record indicates that the Plaintiff has placed a stone alignment extending

from their own wall up to the center of the road, situated beyond the Defendant's residence. This extension, as depicted in the map, clearly suggests attempt to obstruct the public way by projecting the construction into the midpoint of the thoroughfare. It is proved that the plaintiff holds or owner of the property bearing measurement of 82.06 sq. yard, as discussed above and perusing document, but it is view of the court that the plaintiff is not the owner of the suit property i.e. where the stone wall was constructed. The plaintiff failed to proved that the suit property was same as mentioned in the document produced vide exhibit-53. Considering the above observation and relied upon the documents, this court is answered issue no.1 in partly affirmative and partly in negative and issue no.3 and 4 in affirmative.

17. ISSUE NO. 2

17.1 The central issue before this Court is whether the Plaintiff has established absolute ownership and clear title over the suit property, specifically concerning the land where the stone wall construction is proposed. The Plaintiff relies heavily on the registered Sale Deed i.e. exhibit-52 and a subsequent Rectified Sale Deed vide exhibit-53 to define the boundaries of the 82.06 sq. yard plot. While the Court acknowledges

that the Plaintiff, as a Class-I heir under Section 8 of the Hindu Succession Act, inherited the rights of her late husband, Devjibhai Jhinjhuvadiya, the substantive question remains whether the physical boundaries of the suit property match the descriptions provided in the documentary evidence.

17.2 Upon a detailed examination of the evidence, significant discrepancies have surfaced regarding the property's topography. The boundaries listed in the original title chain i.e. Sale Deed No.-77, (Exhibit-38/1) differ from those in her husband's Sale Deed and the Rectification Deed (Exhibit-53). Crucially, the Plaintiff admitted during cross-examination that the *Rojkam* (Exh. 26/1) and associated marks indicate the presence of a public way on the northern side, which contradicts her claim of exclusive private ownership over that specific area. To resolve these geographical inconsistencies, the Court appointed a Commissioner to inspect the site. The Court Commissioner's report produced vide exhibit-49 and the map produced vide exhibit-50 are pivotal in this determination. The report reveals that the Plaintiff, under the pretext of securing her property, has extended a stone alignment into the center of a public thoroughfare, past the Defendant's residence. This physical evidence suggests an attempt to obstruct a public way by projecting construction beyond the lawful

limits. In conclusion, while the Court finds that the Plaintiff is indeed the lawful owner of a plot measuring 82.06 sq. yards as per the registered documents, she has failed to prove that the "suit property", specifically the area where the stone wall has been placed falls within those legal boundaries. The evidence indicates that the contested construction encroaches upon public land. Therefore, the Plaintiff has not discharged the burden of proving that the specific land under dispute is part of her purchased and inherited estate. Thus, court is inclined to give answer in negative.

18. Issue no. 5

The defendant contends that the suit is defective because the plaintiff failed to join the Mamlatdar, Talati, and Gram Panchayat as parties. However, the plaintiff's suit is for a declaration and permanent injunction to prevent the defendant from obstructing the construction of a boundary wall on the suit property. The plaintiff asserts absolute ownership of the 82.06 sq. yard property, originally acquired via registered sale deed No. 1057 on September 23, 2004, from Govindbhai Kacharabhai Kanani. As the dispute is centered on protecting the property from encroachment by a private individual, and since the land does not belong to the government, these administrative authorities

have no legal interest in the outcome. Consequently, it is the view of the court that the dispute is strictly between the private parties and the aforementioned authorities are not necessary or proper parties to the suit. My answer to this issue is in negative.

19. Issue no. 6

This Court finds that the Plaintiff is not entitled to the requested relief of declaration and permanent injunction. While the Plaintiff successfully proved that her late husband purchased a plot of 82.06 sq. yards and that she is a lawful Class-I heir under the Hindu Succession Act, she failed to establish that the "suit property" specifically the area where the stone wall was being constructed falls within the legal boundaries of that purchase. The evidence provided by the Court Commissioner's report and map vide exhibits 49 and 50 conclusively demonstrates that plaintiff attempted to extend her construction onto a public thoroughfare, creating a significant encroachment beyond the Defendant's residence. A permanent injunction cannot be granted to protect an encroachment on public land or to validate construction undertaken without the requisite permission from the Gram Panchayat. Furthermore, the suit is technically and legally barred due to the

non-joinder of a necessary party. Under Section 8 of the Hindu Succession Act, the Plaintiff's daughter is an equal co-sharer in the estate of the deceased, her absence from the litigation prevents the court from passing an effective and final decree regarding the title. Due to these geographical discrepancies, the proven encroachment on a public way and the failure to implead all necessary legal heirs, the Plaintiff has not discharged the burden of proof required to sustain her claim. Thus, answer of this in negative.

20. Issue no. 7

From the above the discussion and documentary evidence produced on the record. The court is inclined to pronounce the following judgment:-

FINAL ORDER

1. The present suit is hereby dismissed.
2. The pending application if any, merged with this order.
3. Parties shall bear own costs.
4. Decree be drawn accordingly.

Date: -16/05/2026

Place:- Mendarda

Krishan Singh Rathore

Principal Civil Court

Mendarda. GJ01638