

RCS/09/2012

JUDGEMENT

Received on: 27/03/2012
Registered on: 27/03/2012
Decided on: 07/10/2016
Duration: Y. M. D.
04 06 07

IN THE TALUKA COURT AT MAHUDHA

REGULAR CIVIL SUIT NO. 09 OF 2012.

Exhibit : 115

Plaintiffs:

- 1. Jasodaben Prabhatbhai Talpada**
Aged: Adult, Occupation : Household
Resi: Bhaner, Taluka Kathlal, Dist-Kheda
- 2. Punjiben Mohanbhai Talpada (dead pending suit)**
Aged: ADult, Occupation : Household
- 2/1 Babubhai Mohanbhai Talpada**
- 2/1 Jivabhai Mohanbhai Talpada**
- 2/3 Radhaben Mohanbhai Talpada**
- 2/4 Leelaben Mohanbhai**
- 2/5 Kamlaben Mohanbhai**
- 2/6 Lalitaben Mohanbhai**
[All joined as legal heir vide order below exhibit 27]
- 3. Gangaben Naranbhai Talpada**
Aged: Adult, Occupation : Household
Both Resi: Alina, Taluka Mahudha
- 4. Subhadraben Chimanbhai Talpada**

Aged: Adult, Occupation : Household

Resi: Keshra, Ta-Mahemdabad, Dist-Kheda

[All legal heirs of Late Dhanabhai Hajabhai Talpada]

VERSUS

Defendants:

1. Murtuzamiya Mushtufamiya Malek

Aged: 57, Occupation : Business

2. Malek Bachumiya alias Babakhan Mushtufamiya

Aged: 51, Occupation : Business

3. Malek Amanulla Mushtufamiya

Aged: 44, Occupation : Business

All Resi: Finav Bhagol, Ta-Mahudha

[All legal heirs of Madinaben Mushtufamiya Malek]

Appearance:

Advocate R C Saxena For the Plaintiffs

Advocate K C Patel For the Defendants

JUDGEMENT

As per the prayer clause plaintiffs has preferred the present suit against the defendants to declare Will made by the defendants with respect to the property menntioned in para 1 of the plaint and situated at village Finav, Taulka Mahudha as null and void and further praying to cancel the instrument or pass appropriate relief.

:Case of the Plaintiff:

01. Brief facts of the plaintiff's case is that fathat of the plaintiff was

the owner of land situated at village Finav, Taluka Mahudha bearing old survey no. 643 and new block no. 773 as per the description in para (1) of the plaint [for brevity now onwards it will be termed as suit property]. The father of the plaintiff's used to cultivate the land and he was in possession of the suit property. Father of the plaintiff's expired on 21/8/1995 and mother used to reside with the plaintiff's at village Bhaner. After the death of the mother all the four plaintiff daughters are legal heirs.

It is the case of the plaintiff that the defendants knew that father of the plaintiff's do not have any legal heir except the plaintiff daughters who are married in different villages. Defendants are neighbours of the suit property and therefore they are known to the father of the plaintiff's. Under this influence the defendants wanted to grab the suit property. One effort was made on 13/5/1982 when agreement to sell the suit property was executed in the name of Madinabibi Mushtufamiya with condition to execute registered sale deed. However by knowing the fact that the suit property was restricted with new conditions and not to be sold without prior permission of the Government, the agreement of sell was revoked by the defendants. Thereafter the defendants made a forged Will of the father of the plaintiff's and got it registered before the office of the sub registrar at Nadiad. In this Will signature of mother of the plaintiff's was obtained as witness and thumb impression of father was taken as testator. All the witnesses of the Will are false witnesses and the father of the plaintiff's did not know any such witness. Father of the plaintiff's was sick and unhealthy on the date of Will and he was worried about the future of the wife and daughters as he did not have male heir. The defendant took benefit of this state of mind and prepared a false and illegal Will and got it registered. Plaintiff's have filed RTS Appeal No. 154/2011 before the Mamlatdar as the defendants without taking a probate has mutated their name in the revenue record. Hence the suit.

:Case of the Defendant :

02. The defendants were duly served with the summon, who appeared through advocate and filed their reply respective replies. Defendant no. 1 in his reply the defendant has denied the case of the plaintiff and have stated that due to old age of the father of plaintiff's and his wife defendants used to take care of him and the suit property. Defendants use to provide all necessary needs of them and also attended social functions of them as their daughters were married to different villages and due to this reason daughters could not come take care of their fathers and mothers. Monetary help was also given by the defendants as the lands of both parties are adjoining and the father of the plaintiff's was friend of the defendant. Defendant was treated as son by father of the plaintiff's. Father and mother of the plaintiff's decided to bequeath the suit property to the defendants by way of Will and therefore registered Will was executed on 30/9/1990. No evidence is laid by plaintiff to show that their father was literate being able to read and write. Plaintiff's were not present at the time of Will and therefore say of the plaintiff's that the witnesses were false is not true. Will was executed in the presence of witnesses and registered before registrar. Possession of the suit property was with the defendants before Will and he was cultivating the same. Defendant no. 2 was brother of defendant no. 1. Defendant no. 2 wanted to have share in the suit property and a suit was filed by him but due to the fact that the suit property is not ancestral property his suit was rejected. Hence in collusion with the plaintiff's the present suit is filed. Allegations of the plaintiff's regarding different caste is not true as looking to the nature of the pleadings defendant no. 2 is supporting the plaintiff's. Plaintiff's have filed suit after 16 years and during these years plaintiff's did not come to the suit property.

Defendant no. 3 has filed a separate reply at exhibit 18 wherein he has stated the same facts which are pleaded by defendant no. 1. Therefore it is not repeated. One fact is to be noted that the defendant

no, 2 in his reply states that defendant no. 2 and 3 are falsely implicated in the suit as name of defendant no. 1 alone is running in the revenue record.

Defendant no. 2 has filed reply at exhibit 21. In his reply he has stated that in fact deceased father of the plaintiff's was in need of money for his daughters and therefore he had decided to sell the suit property to the mother of the plaintiff's by executing agreement to sell on a stamp paper dated 13/5/1982 for consideration price of rupees 43,000/- as per prevailing village rituals. Rupees 5000/- was handed over at that time with condition that as the suit property is pertaining to tenancy rights, first permission is to be obtained to convert into old conditional land and thereafter sale deed is to be executed. Cost of it will be bourn by buyer and it was resolved that no other deed is to be executed. This terms and conditions were accepted by father of the plaintiff's. Thereafter mother of the defendant no. 3 paid the agreed price and took possession of the suit property. Since then possession is with him. The suit property was subject to new conditions and therefore due to the fact that more time will be consumed to get it converted into old conditional land and plaintiff's and their father were in need of money Will dated 30/5/1990 was executed. It was decided that due to joint family of the defendants, Will to be executed in the name of defendant no. 1. Will is not a forged one. Suit property is joint family property of the defendants. Since some years there is dispute in the family of the defendants and defendant cancelled the agreement to sell in 1983. In this way defendant no. 1 wants to show that after cancellation of agreement to sell Will was executed in his name. In fact defendant no. 1 wants to burry share of the defendant no.2. It has come to knowledge of defendant no. 2 that plaintiff's and defendant no. 1 and 3 wants to declare exclusive right of defendant no. 1 in the suit property.

6/16
:ISSUES:

03. Following issues were framed at Ex. 39 by my predecessor as under: -

- ૧) શું વાદી પુરવાર કરે છે કે, દાવા અરજીમાં જણાવેલ મીલકતનું વાદીઓના પિતાએ પ્રતિવાદી નંબર ૧ ને કરી આપેલ વીલ ખોટું અને ગેરકાયદેસરનું અને રદ થવા પાત્ર છે ?
- ૨) શું પ્રતિવાદી નંબર ૧ પુરવાર કરે છે કે, તેઓ દાવાવાળી મીલકતના કાયદેસરના માલિક અને કબ્જેદાર છે ?
- ૩) શું પ્રતિવાદી નંબર ૨ પુરવાર કરે છે કે, દાવાવાળી મીલકત તે પ્રતિવાદીઓની વણવહેંચાયેલ સંયુક્ત કુટુંબની મીલકત છે ? અને તેમાં પ્રતિવાદી નંબર ૨ નો પણ હકક હિસ્સો આવેલ છે ?
- ૪) શું હુકમ અને હુકમનામુ ?

04. My findings on the above points are as under :

- (1) Negative
- (2) Partly Affirmative
- (3) Negative
- (4) As per final order.

05. **:Evidences on record:**

Plaintiff's Side:

S.No	Oral evidence	Exhibit
1	Deposition of Plaintiff witness Babubhai Mohanbhai	60
2	Deposition of Plaintiff no.1 Jashodaben Prabhatbhai	68
3	Deposition of Plaintiff witness Jayantibhai Shanabhai	73
	Documentary evidence	
1	village form no. 7	46/1
2	village form no. 12	46/2
3	village form no. 8-A	46/3
4	village form no. 6	46/4

5	village form no. 6 entry no. 1765 dtd 27/2/2013	46/5
6	copy of Will	46/6
7	Copy of FIR	46/8
8	Original agreement to sell	66

Defendants Side:

S.No	Oral evidence	Exhibit
.		
1	Defendant Witness Mustufamiya Rasulmiya Khokhar	78
2	Deposition of Defendant Murtuzamiya Mushtufamiya	85
3	Deposition of Defendant witness Kamrudin rasul Malek	91
	Documentary Evidence	
1	Original Will	93

06. **: Submissions of the Plaintiff's and Defendants:**

(i) Learned Advocate on behalf of the plaintiff has submitted written submissions recorded and marked as exhibit 107. Learned Advocate on behalf of the defendant no. 2 has submitted written submissions recorded and marked as exhibit 107. Defendants no. 1 and 3 have also submitted written submissions recorded and marked as exhibit 111. I have considered the oral and arguments advanced on behalf of the parties in detail. Perused written submissions which are the part of record. Learned Advocate on behalf of the plaintiff's has relied upon following judgments of Hon'ble Supreme Court and High Court's. Copies is supplied. Copies of these judgments as it appears are printed from Nadia Bar Association licensed software.

AIR 1962(SC) 1962; Rani Purnima Debi V/S Kumar Khagendra Narayan Laws(SC) 1998-3-72; Gurdial Kaur V/S Kartar Kaur

AD(DEL) 2001 6 415 ; Yashoda Gupta V/S Suniti Goyal (Delhi HC)

AIR(CAL) 1984 0 223 ; Ashutosh Seal V/S Umashasi Santra (Cal HC)
AIR(PAT) 1993 0 129 ; Haradhan Mahatha V/S Dukhu Mahatha (Patna)
AIR(MP) 1998 0 324 ; Virendra Singh Pal V/S Kashibai (M.P. HC)
AIR(CAL) 1961 0 359 ; A.E.G Carapiet V/S A.Y. Derderian (Cal HC)
AIR (SC) 1977 0 74 ; Jaswant Kaur V/S Amrit Kaur (Supreme Court)
AD(DEL) 2004 8 314 ; Satish Chander Sabharwal V/S State (Del HC)
CIVCC 2002 2 543 ; Radhika Khanna V/S State of Delhi (Del HC)
AIR(GAU) 2006 0 56 ; Pradip Saikia V/S Suwala Saikia (Gau HC)
DLT 1992 46 619 ; Ishwar Dass Rajput V/S Chaman Parkash Pun

::REASONS::

07.

Issue number 1

(i) Plaintiff's entire suit is based on a Will dated 30/5/1990. Plaintiff's prayer is also to cancel this Will as being illegal and void. Therefore law regarding governing Will and its characteristics has to be looked into before proceeding with the evidences laid by the parties. Chapter II of The Indian Succession Act, 1925 deals with provisions of a Will. Section 59 provides that " Every person of sound mind not being a minor may dispose of his property by Will ". Some explanations are provided regarding categories of persons who may dispose by Will. Relevant is explanation 4 which says that " No person can make a Will while he, is in such a state of mind, whether arising from intoxication or from intoxication or from illness or from any other cause, that he does not know what he is doing". This means that the testator must be in sound state of mind able to understand and accept the deposition made in Will. Mere old age is not the criteria to suspect the Will. Now section 61 of this Act which is relevant for this suit provides that " A Will or any part of a Will, the making of which has been caused by fraud or coercion, or by such importunity as takes away the free agency of the testator, is void". Hence the burden to prove that the Will was forged or that it was obtained under undue influence or coercion or by

playing a fraud is on the person who alleges it to be so. In the present case the plaintiff's alleges that the Will of their father was forged or it was obtained under undue influence or coercion or by playing a fraud and therefore the burden is on the plaintiff's. With this understanding I would like to look into the evidences laid by the plaintiff's.

(ii) Examination in chief of plaintiff Jashodaben is recorded at exhibit 68. In her examination in chief Jashodaben has stated the facts of the plaint and alleged that after the marriage of plaintiff's in different villages the defendants being neighbours and from different caste used to threaten the lonely father of the plaintiff's and therefore their father executed agreement to sell on 13/5/1982. But due to restricted new conditions of the suit land agreement to sell was revoked by the defendants and thereafter by playing fraud Will was made and got it registered. Thumb impression of the mother was obtained as witness which is bogus. Thumb impression of father was obtained which is also bogus. Father of the plaintiff's was in tension and was mentally ill thinking that who will take care of the suit property as he had no son. Defendants took benefit of this situation and Will was prepared and got it registered. In her cross examination she has refused to recognize Murtuzamiya who is defendant no. 1 as the neighbor of the suit property. Whereas the plaintiff's have filed suit stating that defendant is the neighbour of the suit property. She has admitted that after her marriage she was residing at village bhaner in her in laws place and therefore she did not know what his father used to cultivate in the suit property. She has also stated that his father was residing with her when he took his last breath. She has also stated that her mother also stayed with her. In her further cross she has stated that she do not know whether defendant no. 1 is neighbour of suit property. She has admitted that defendant no. 1 used to cultivate the suit property as her father mother was staying with her. She has also admitted that defendant no. 1 Murtuzamiya cultivates the suit property at present. In her cross examination taken on behalf of defendant no. 2 she has denied

the fact of agreement to sell executed by her father. Whereas she has averred in her examination in chief. All these admitted facts of cross examination tends to show that this plaintiff has failed to prove any fraud of Will. She has spoken some contradictory facts which are against her stand taken in the suit. Being the plaintiff she has not supported her pleadings itself regarding the fact that her father was alone and defendants were neighbours. She has not stated anything about registration of a Will and how she come to know about a Will and when she come to know about it whether by perception or knowledge from any person. Will in this matter is a registered Will. Therefore plaintiff has to show the fraud by cogent convincing evidence.

(iii) Examination in chief of plaintiff's witness Babubhai is recorded at exhibit 60. In his examination in chief he has stated that the plaintiff's daughters are only children of deceased Dhanabhai Hajabhai Talpada (testator). As per him due to death of plaintiff no. 2 legal heirs of her were brought on record as per order passed in exhibit 27. He is the administrator of plaintiff's and he is joined as a plaintiff in the suit. He has stated as per the original plaint. He is son of late plaintiff no. 2 Punjiben. In his cross examination taken on behalf of defendant no. 2 he has stated that father of the plaintiff's i.e his grandfather was residing alone at Mahudha. He has stated that his grandfather expired on 21/08/1995. He admits that his grandfather and defendant no. 1 were friends. He also admits that suit property and land of defendant no. 1 are adjoining and from the date of his grandfathers death and till today defendant no. 1 is cultivating the suit property. He has denied having made any complaint against defendant for threatening his grandfather to grab the property. He has admitted that fact of threat is stated in his examination in chief for first time and the fact that defendant used to threaten plaintiff's and their father was not pleaded in the plaint. He has admitted that he did not know that at the time of Will who were present and who were the signatories of Will. In his cross examination taken on behalf of defendant no. 1 and 3 he has admitted the fact of agreement to sell as alleged by the plaintiff's and homely relations were

there between his grandfather and Madinabibi who happens to be the buyer in agreement to sell. In his further cross examination he states that he used to come to village Finav where suit property is situate to have share in the suit property. He has admitted that he was absent when the Will was made by his grandfather. He has also admitted that he was not present when agreement of sell was executed. Looking to the deposition of this witness he was not present when the Will was made. He is a late comer in this suit as representative of late plaintiff no. 2 who expired during the course of this suit. In his deposition nothing is found to believe that the Will was made by playing fraud as this witness was not present when the Will was made.

(iv) Plaintiff's has examined independant witness Jayantibhai whose examination in chief is recorded at exhibit 73. He has stated that he has seen the suit property. He has stated ditto facts as per the plaint of the plaintiff's. In his cross examination on behalf of defendant no. 1 and 3 he has admitted that he has no personal knowledge of threat given to late Dhanabhai i.e father of the plaintiff's by defendant. He has stated that fact of Will was known to him from late Dhanabhai. He has admitted that name of defendant no. 1 is at present in the revenue record of suit property. Cross examination on behalf of defendant no. 2 is taken on the point of agreement to sell. He has admitted that Madinaben took suit property from late Dhanabhai by way of agreement to sell. He has denied having any knowledge whether suit property was transferred in the name of defendant no. 1 by way of a Will at the instance of Madinaben due to the fact that the suit property was new conditional property. He has denied having any knowledge about the fact that no notice was given by late Dhanabhai or plaintiff's regarding bogus Will. In the deposition of this witness also nothing is proved regarding fraud in making Will.

(v) All the above oral evidences of plaintiff's side nothing is coming out regarding the fact that Will was forged or it was obtained under undue influence or coercion or by playing a fraud. From the record it appears that there are disputes between defendant no. 1-3 and

defendant no. 2 and some proceedings in the nature of suit and RTS proceedings are also pending. All the three parties i.e. plaintiff's and defendant no. 2 and 1-3 are fighting for the entitlement of suit property. But as far as this suit is concerned it is a suit challenging a Will. Plaintiff's have not able to prove fraud by probable evidence. Original Will is produced by the defendant at exhibit 93. Contents of a Will suggest that it was prepared by testator in fit state of mind and due to love and affection suit property was given to defendant. This Will was witnessed by witnesses one of whom is examined by defendant no.1 at exhibit 91. He has stated that on 30/5/1990 Will was prepared and was registered in the sub registrar office. Perusing this Will it transpires that the Sub Registrar has verified it and endorse that contents are admitted by the person making a Will. Will bears round seal and signature of Sub Registrar and witnesses. Plaintiff's has not made any allegations against Sub Registrar. Witness to Will was cross examined by both plaintiff and defendant no. 2. In his cross examination by plaintiff he has denied that he was not in touch with the testator Dhanabhai. He has admitted that he had put signature in a agreement to sell and had not signed any other document. But before that he has denied having any knowledge of agreement to sell between Madinabibi and late Dhanabhai. He has also denied that at the time of giving money back to Madinabibi he had put signature as witness. In his cross examination by defendant no. 2 he has admitted his signature on a Will and identified the thumb impression of late Dhanabhai. He has also stated that all signatures on this Will including signature of other two witnesses Ashwinbhai and Bharatbhai were taken at the Sub Registrar office and will was read over by Sub Registrar. He has stated that other two witnesses are now in America. I do not find any suspicious thing in his deposition. May be he has stated that in 1990 he signed the registered agreement to sell but he has not being specifically asked as to whether he has not put his signature as a witness to a Will. Some infirmities are expected from witnesses coming from rural areas. This witness was also asked about cases between defendants. Whereas he has

cured his say in the further cross examination on behalf of defendant no. 2. Also it is for the plaintiff to prove the fraud. Even otherwise Will is registered. Therefore, the endorsement by the sub-registrar that the executant has acknowledged before him execution did also amount to attestation. In the original document the executants signature was taken by the sub-registrar. The signature and thumb impression of the identifying witnesses were also taken in the document. After all this, the sub-registrar signed the deed. It is settled by a catena of decisions that each and every circumstance is not a suspicious circumstance. Even in a case where active participation and execution of the Will by the propounders/beneficiaries was there, it has been held that that by itself is not sufficient to create any doubt either about the testamentary capacity or the genuineness of the Will. It has been held that the mere presence of the beneficiary at the time of execution would not prove that the beneficiary had taken prominent part in the execution of the Will. A presumption by a reference to Section 114 of the Evidence Act shall arise to the effect that particulars contained in the endorsement of registration were regularly and duly performed and are correctly recorded.

(vi) Another important point which emerge from the record is that Will is registered in year 1990 and the testator died in the year 1995. Plaintiff Jashodaben has admitted that his father and mother was residing with her till last breath of her father. There is nothing on record that during this 5 years between 1990 and 1995 any steps were taken by the testator to revoke his own Will. It is open for him to revoke his own Will during his life time. If plaintiff's say that due to undue influence or coercion bogus Will was prepared then there must be any material to suggest that her father told her about the Will and thereafter some steps were taken to either revoke a Will or file appropriate proceedings or complaint against the defendants. Nothing is on record to believe suspicious circumstance. One more important point is that Will of 1990 is challenged in 2012. Delay not explained. In the plaint it is not mentioned as to when the plaintiff's come to knowledge

of a Will. Hence to declare or cancel any registered instrument on the ground of forgery the date or period when the registration becomes known to the plaintiff. Nothing has been stated in the plaint.

(vii) Learned advocate on behalf of the plaintiff's had submitted various citations as per above list. I have gone through the list of citations. All these citations are regarding the factors to be considered regarding suspicious circumstances and genuineness of a Will and its attestation etc. In the facts and circumstances of this suit Will is a registered one. There is no dispute regarding attestation. It is not a case of plaintiff's that there was no Will and the alleged Will is concocted. But the allegations of the plaintiff's are that it was made under undue influence or coercion. But no evidence is produced by the plaintiff's regarding ill health of testator who was father of the plaintiff's. No evidence is produced regarding unsound mind of the testator. Therefore I could not find any suspicious circumstance regarding Will. When a Will is registered one I would also like to cite observations made by Hon'ble Supreme Court in the case of AIR 2005 SUPREME COURT 4362 "Pentakota Satyanarayana v. Pentakota Seetharatnam" wherein in para 24 it is observed that " A perusal of Ex.B9 (in original) would show that the signatures of the Registering Officer and of the identifying witnesses affixed to the registration endorsement were, in our opinion, sufficient attestation within the meaning of the Act. The endorsement by the sub-registrar that the executant has acknowledged before him execution did also amount to attestation. In the original document the executants signature was taken by the sub-registrar. The signature and thumb impression of the identifying witnesses were also taken in the document. After all this, the sub-registrar signed the deed. Unlike other documents the Will speaks from the death of the testator, and so, when it is propounded or produced before a Court, the testator who has already departed the world cannot say whether it is his Will or not and this aspect naturally introduces an element of solemnity in the decision of the question as to whether the document propounded is proved to be the last Will and the testament of departed testator.

Further in para 26 it is observed that " It is settled by a catena of decisions that any and every circumstance is not a suspicious circumstance. Even in a case where active participation and execution of the Will by the propounders/beneficiaries was there, it has been held that that by itself is not sufficient to create any doubt either about the testamentary capacity or the genuineness of the Will. It has been held that the mere presence of the beneficiary at the time of execution would not prove that the beneficiary had taken prominent part in the execution of the Will. This is the view taken by this Court in Sridevi and Ors. v. Jayaraja Shetty and Ors., (2005) 2 SCC 784. In the said case, it has been held that the onus to prove the Will is on the propounder and in the absence of suspicious circumstances surrounding the execution of the Will proof of testamentary capacity and the proof of signature of the testator as required by law not be sufficient to discharge the onus. In case, the person attesting the Will alleges undue influence, fraud or coercion, the onus will be on him to prove the same and that as to what suspicious circumstances which have to be judged in the facts and circumstances of each particular case. Therefore the plaintiff's have failed to prove issue no. 1. Accordingly I answer the issue in negative.

08.

Issue number 2 & 3:

(i) Plaintiff's has not able to prove their case and therefore the onus has never shifted on the defendants. As far this issues are concerned name of defendant no. 1 appears in the record of rights of the suit property. Witnesses of plaintiff admits that the suit property is cultivated by defendant no. 1. Original Will is produced at exhibit 93. No suspicious circumstances regarding genuiness of Will have come on record. Will is a registered one. Now the question is two fold as far this issue no. 2 framed by my predecessor is concerned. One is regarding ownership and other regarding possession. It has come on record that some disputes regarding partition of suit property are pending and one suit is pending. Defendant no. 1 has also admitted that suit is pending

in the Court of Nadiad and status quo is granted. Therefore looking to the evidence of defendant no. 1 and available documentary evidence on record I can only held that defendant no. 1 is in possession and accordingly answer issue no. 2 in partly Affirmative. Issue no. 3 is cast for defendant no. 2. From the record it appears that there are some disputes pending between defendants regarding share in the suit property. No evidence is laid by defendant no. 2 regarding family partition. In fact suit is pending as per above observation. Therefore I answer the issue in negative.

09.

Issue number 4

(i) As per above observations plaintiff's have failed to prove their case and therefore I pass appropriate order below issue no. 4 as follows.

-: O R D E R: -

1. The Regular Civil Suit of the plaintiff is dismissed.
 2. Decree Shall be drawn accordingly
- Pronounced in the open court to-day on the 07th October, 2016.

Date : 07-10-2016**(Kalpesh Manoharlal PANDIT)****Place : MAHUDHA****Principal Civil Judge.****Code : GJ00838**