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Duration:	09 09 08 YY MM DD

IN THE COURT OF PRINCIPAL CIVIL JUDGE & J.M.F.C.

AT MAHUDHA, DIST: KHEDA

[ PRESIDED OVER BY: MR. K. R. MAURYA ]

REGULAR CIVIL SUIT NO. 47-2016

EXH- \_\_\_\_\_

Legal heir of late Abdulmiyan Karimmiyan Malek

1. Sikandarmiyan Abdulmiyan Malek

Age: 40 Years, Occupation: Agriculturist

R/o. Joshiyapura, Khuntaj,

Ta. Mahudha, Dist: Kheda.

....Plaintiff

V/S

1. Legal heir of Late Rahimiyan Bhulamiyan Malek

1.1 Ismailmiyan Rahimiyan Malek

Age: Adult, Occupation: Agriculturist.

1.2 Sirajmiyan Rahimmiyan Malek

Age: Adult, Occupation: Agriculturist.

- 1.3 Legal heir of late Sharifa Rahimmiyan Malek  
Age: Adult, Occupation: Agriculturist.
- 1.3.1 Sohelmiyan Imammiyan Malek  
Age: Adult, Occupation: Agriculturist.  
R/o: Sindhali, Ta: Mahudha, Dist: Kheda.
- 1.4 Madinabibi Rahimmiyan Malek  
Age: Adult, Occupation: Agriculturist.
- 1.5 Hanifabibi Rahimmiyan Malek  
Age: Adult, Occupation: Agriculturist.
- 1.6 Legal heir of late Hasanmiyan Rahimmiyan Malek
- 1.6.1 Anifabibi Wd/o Hassanmiyan Malek  
Age: Adult, Occupation: Homemaker.
- 1.6.2 Abdulrehman Hasanmiyan Malek  
Age: Adult, Occupation: Agriculturist.
- 1.6.3 Imranmiyan Hasanmiyan Malek  
Age: Adult, Occupation: Agriculturist.
- 1.6.4 Salimmiyan Hasanmiyan Malek  
Age: Adult, Occupation: Agriculturist.
- 1.6.5 Mumtazbibi Hasanmiyan Malek  
Age: Adult, Occupation: Agriculturist.
- 1.7 Shakinabibi D/o. Rahimmiyan Bhulamiyan  
Age: Adult, Occupation: Homemaker.
- 1.8 Jetunbibi D/o. Rahimmiyan Bhulamiyan  
Age: Adult, Occupation: Homemaker.
2. Legal heir of late Karimmiyan Bhulamiyan Malek

- 2.1 Legal heir of late Nuriben Karimiyan Malek
  - 2.1.1 Sirajmiyan Kalumiyan Malek
  - 2.1.2 Faridmiyan Kalumiyan Malek
  - 2.1.3 Sagirmiyan Kalumiyan Malek
  - 2.1.4 Manjurmian Kalumiyan Malek
  - 2.1.5 Zarinabibi D/o Kalumiyan Malek
  - 2.1.6 Nasimbibi D/o Kalumiyan Malek
  - 2.1.7 Nafisabibi D/o Kalumiyan Malek
  - 2.1.8 Tamizabibi D/o Kalumiyan Malek
  - 2.1.9 Farzanabibi D/o Kalumiyan Malek
  - 2.1.10 Rehanabibi D/o Kalumiyan Malek

R/o: Dantali, Ta: Nadiad. Dist: Kheda.
- 2.2 Legal heirs of late Abdulmiyan Karimiyan Malek
  - 2.2.1 Legal heir of late Mahammadmiyan Abdulmiyan Malek
    - 2.2.1.1 Aminabibi Wd/o Mahammadmiyan Abdulmiya Malek
    - 2.2.1.2 Mohsinmiyan Mahammadmiyan Malek
    - 2.2.1.3 Saberabibi Mahammadmiyan Malek ‘
    - 2.2.1.4 Nasimbanu Mahammadmiyan Malek
    - 2.2.1.5 Bilkishbanu Mahammadmiyan Malek
    - 2.2.1.6 Faridabanu Mahammadmiyan Malek
    - 2.2.1.7 Rehanabanu Mahammadmiyan Malek
  - 2.2.2 Legal heir of late Isubmiyan Abdulmiyan Malek
    - 2.2.2.1 Jetunbibi Wd/o Isubmiyan Abdulmiyan
    - 2.2.2.2 Nafisabanu D/o. Asubmiyan Malek

2.2.2.3 Aishabanu D/o Isubmiyan Malek

2.2.2.4 Rukaiyabanu D/o Isubmiyan Malek

2.2.2.5 Misbabanu D/o Isubmiyan Malek

2.2.3 Rehmanmiyan Abdulmiyan Malek

2.2.4 Jubedaben Abdulmiyan Malek

2.2.5 Taiyababen Abdulmiyan Malek

Nos. 2.2.1.1 to 2.2.5 R/o: Village: Khuntaj,

Ta: Mahudha, Dist: Kheda.

**Suit for Declaration and Partition.**

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**Appearance:-**

Ld. Adv. Shri N. B. Chauhan for the Plaintiff

Ld. Adv. Shri P. B. Bhatt for the Defendant Nos. 1.1 to 1.8.

No one has filed an appearance for the rest of the Defendants.

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**JUDGEMENT**

1. The Plaintiff has filed the present suit against the Defendants for declaration and partition on the ground of co-shares/coparceners of the suit properties.

**2. The brief facts of the Plaintiff's case is as follows:-**

A. The suit properties for which the plaintiff has filed present suit for partition is as follows:-

Village	Block/Survey No.	Area	Khata No.	Aakar(Rs .)
Khuntaj	222	0-46-54	97	4.44
Khuntaj	263	0-22-26	97	1.94
Hajatiya	19	0-82-96	12	7.18
Hajatiya	25	2-55-97	12	20.91

B. It is the say of the Plaintiff that the aforesaid subject lands are ancestral property belonging to the predecessors of the Plaintiff and Defendant Nos. 1 to 2. The land originally stood in the name of the Plaintiff's grandfather, namely Bhulamiyan Rajubhai. Upon his demise, the property devolved by way of inheritance upon the Plaintiff's father and the father of Defendant No. 1. Thereafter, upon their demise, the property has continued in the names of the Plaintiff and the present Defendants by succession. The subject lands are thus ancestral, undivided property, and no partition by metes and bounds has taken place till date. Defendant No. 1 holds an undivided 1/2 share in the suit land. Similarly, Defendant No. 2.1 holds 1/2 share out of the undivided 1/2 portion, and the Plaintiff along with Defendant No. 2.2 holds 1/2 share out of the remaining undivided 1/2 portion. Accordingly, as stated above, the suit land remains joint, ancestral, and undivided property of the

parties. The Plaintiff and the Defendant are close relatives and members of the same family. Defendant No. 1 is the paternal uncle of the Plaintiff, Defendant No. 2.1 is the paternal aunt, and Defendant No. 2.2 are the real siblings of the Plaintiff. Thus, all parties are legal heirs of late Bhulabhai Rajubhai. Despite the lands being ancestral and undivided, no formal partition has been effected. However, for convenience, Defendant No. 1.1 had given approximately seven vighas of lands to the Plaintiff, which is currently under the possession and enjoyment of the Plaintiff and Defendant Nos. 2.1 to 2.2. Nevertheless, no lawful partition by metes and bounds has been carried out till date.

C. The Plaintiff has further submitted that as stated in Paragraph 2 of the plaint, the Plaintiff has an undivided share in the suit lands. Defendant No. 1.1 has been cultivating the land and enjoying the produce. About one month ago, the Plaintiff requested Defendant No. 1.1 to effect partition of the suit lands, as no partition had taken place till date, and also to separate the revenue records so that the Plaintiff may avail agricultural loan facilities. However, Defendant No. 1 refused and stated that he would neither allow partition nor permit separation of revenue records, nor allow the Plaintiff to obtain any loan

on the suit lands. He further threatened that the Plaintiff should continue cultivating only the portion already given, failing which even that portion would be taken away, and challenged the Plaintiff to take recourse to legal proceedings. Thus, Defendant No. 1 has denied the lawful rights and share of the Plaintiff in the suit land. Under these circumstances, it is not feasible for the Plaintiff to allow the suit land to remain under the control of the Defendants, and the Plaintiff is therefore constrained to file the present suit for partition. Although the Plaintiff has an undivided share in the suit land, the Defendants are unlawfully denying the same. Therefore, the Plaintiff has been compelled to institute the present suit seeking reliefs of declaration that the subject lands are ancestral and undivided property of the Plaintiff and the Defendants, Partition of the suit land by metes and bounds and thereby delivery of separate and vacant possession of the Plaintiff's share.

3. **Reply/Written statement of the Defendants:-**

A. The Defendant Nos. 1.1 to 1.8 have submitted their reply/W.S at Exh-14 wherein they have denied the averment made in the plaint and submitted that the Plaintiff, along with Defendants are in joint ownership

and possession of several undivided properties. The Plaintiff, however, has disclosed only those properties mentioned in Paragraph No. 1 of the plaint, while there exist other joint family properties which continue to stand in the joint names of the parties in the revenue records. It is submitted that all such joint properties are liable to be partitioned by metes and bounds. In the present circumstances, the Plaintiff has filed the suit by suppressing material facts and has failed to disclose the existence of other joint properties. The said undisclosed properties have not been included in the present suit, and therefore, the suit is bad for partial partition and is liable to be dismissed.

**4. Final Arguments:-**

**For Plaintiff:-**

The Ld. Advocate Mr. N. B. Chauhan submitted on behalf of the Plaintiff that the relationship between the parties has been admitted by the Defendants. Further, the Defendants have not produced any evidence in their support to support their pleadings. Further, the Defendants have not adduced any evidence to show any other land which is jointly owned and for which no relief of partition is sought. Therefore there is no case of partial

partition. Therefore the Ld. Adv. for the Plaintiff has requested to allow the present suit.

**For Defendant:-**

The Defendants did not appear to adduce final arguments and therefore the Ld. Advocate for the Plaintiff had filed an application at Exh-30 to close the right of the Defendants to adduce final arguments. This Court vide order dated 30.03.2026 closed the right of the Defendants to adduce final arguments.

**5. Evidence of the Plaintiff:-**

**A. Oral Evidence:-**

Sr. No.	Description	Exhibit
PW-1	Affidavit in examination in chief of Sikandarmiyan Abdulmiyan Malek	21

**B. Documentary Evidence:-**

Sr. No.	Description	Exhibit
1	Certified copy of Village Form No. 8-A of Khata No. 112	25
2	Certified copy of Village Form No. 7 of Survey No. 22	26

3	Certified copy of Village Form No. 12 of Survey No. 22	27
4	Certified copy of Village Form No. 7 of Survey No. 23	28
5	Certified copy of Village Form No. 12 of Survey No. 23	29
6	Certified copy of Village Form No. 7 of Survey No. 30	30
7	Certified copy of Village Form No. 12 of Survey No. 30	31
8	Certified copy of Village Form No. 8-A of Khata No. 197	32
9	Certified copy of Village Form No. 07 of Survey No. 351	33
10	Certified copy of Village Form No. 12 of Survey No. 351	34
11	Certified copy of Village Form No. 7 of Survey No. 405	35
12	Certified copy of Village Form No. 12 of Survey No. 405	36
13	Copy of Village Form No. 8-A of Khata No. 97	Mark-3/1
14	Copy of Village Form No. 7/12 of Survey No. 222	Mark-3/2
15	Copy of Village Form No. 7/12 of Survey No. 263	Mark-3/3
16	Copy of Village Form No. 8-A of Khata No. 12	Mark-3/4

17	Copy of Village Form No. 7/12 of Survey No. 25	Mark-3/5
18	Copy of Village Form No. 7/12 of Survey No. 19	Mark-3/6

**C. Electronic Evidence:-**

**Not adduced any Electronic Evidence:-**

**6. Evidence of the Defendants:-**

**Not adduced any evidence.**

7. After completion of pleading my learned predecessor court had framed the following issues at Exh-19:-

1. શું વાદી પુરવાર કરે છે કે, દાવાવાળી જમીન વાદી તથા પ્રતિવાદીઓની વડીલો પાર્જીત વણવહેંચાયેલી જમીન છે ?
2. શું વાદી પુરવાર કરે છે કે દાવાવાળી જમીનમાં પ્રતિવાદી નંબર ૧ નો વણવહેંચાયેલો ૧/૨ હિસ્સો, પ્રતિવાદી નંબર ૨.૧ નો વણવહેંચાયેલો ૧/૨ હિસ્સામાંથી ૧/૨ હિસ્સો અને વાદી તથા પ્રતિવાદી નંબર ૨.૨ નો વણવહેંચાયેલો ૧/૨ હિસ્સામાંથી ૧/૨ હિસ્સો સમાયેલ છે ?
3. શું પ્રતિવાદી પુરવાર કરે છે કે વાદીના દાવાને સમય મર્યાદા અને પક્ષકારોની ખામીનો બાધ નડે છે ?

4. શું પ્રતિવાદી પુરવાર કરે છે કે વાદીએ જે મિલકતો દાવામાં જણાવેલ છે તે સીવાય પણ વાદીઓ અને પ્રતિવાદીઓની સંયુક્ત માલિકીની મિલકતો આવેલી છે અને વાદીએ દાવા અરજીમાં આ હકીકત છુપાવેલ છે ?
5. શું વાદી દાવામાં જણાવેલ દાદ મેળવવા હકકદાર છે ?
6. શું હુકમ અને હુકમનામું?

8. After careful consideration of pleadings, oral as well as documentary evidences and final arguments advanced I hereby answer the issues as under:-

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

9. **REASONS**

9.1 **ISSUE NO.1, 2 and 5:-**

A. Since Issue No. 1, 2 and 5 are interconnected and therefore the same are discussed together in order to avoid repetition. To discuss these issues it would be pertinent to look into oral and documentary evidence

filed by the Plaintiff. It appears that the Plaintiff in his oral evidence vide Exh-21 reiterated the facts stated in the plaint and submitted that subject lands are ancestral property belonging to the predecessors of the Plaintiff and Defendant Nos. 1 to 2. The land originally stood in the name of the Plaintiff's grandfather, namely Bhulamian Rajubhai. Upon his demise, the property devolved by way of inheritance upon the Plaintiff's father and the father of Defendant No. 1. Thereafter, upon their demise, the property has continued in the names of the Plaintiff and the present Defendants by succession. The subject lands are thus ancestral, undivided property, and no partition by metes and bounds has taken place till date. Defendant No. 1 holds an undivided 1/2 share in the suit land. Similarly, Defendant No. 2.1 holds 1/2 share out of the undivided 1/2 portion, and the Plaintiff along with Defendant No. 2.2 holds 1/2 share out of the remaining undivided 1/2 portion. Accordingly, as stated above, the suit land remains joint, ancestral, and undivided property of the parties. The Plaintiff and the Defendant are close relatives and members of the same family. Defendant No. 1 is the paternal uncle of the Plaintiff, Defendant No. 2.1 is the paternal aunt, and Defendant No. 2.2 are the real siblings of the Plaintiff. Thus, all parties are legal heirs of late Bhulabhai Rajubhai.

Despite the lands being ancestral and undivided, no formal partition has been effected. However, for convenience, Defendant No. 1.1 had given approximately seven vighas of lands to the Plaintiff, which is currently under the possession and enjoyment of the Plaintiff and Defendant Nos. 2.1 to 2.2. Nevertheless, no lawful partition by metes and bounds has been carried out till date. Considering the reply/W.S filed by the Defendants, the Defendants have categorically admitted the relationship between the parties that they all were coparceners. Further is also an admitted position between the parties that the subject lands are ancestral agricultural lands. Further as far as the share in concerned, the Plaintiff has submitted that the Defendant No. 1 has  $\frac{1}{2}$  share in the subject lands whereas the Defendant No. 2.1 has  $\frac{1}{4}$  share in the subject lands, further the Plaintiff and the Defendant No. 2.2 have joint share of  $\frac{1}{4}$  of subject lands. However the same is not denied by the Defendant Nos. 1.1 to 1.8 in their written statement. Further the Defendants have also not led any evidence to show share of respective parties in the subject lands in question and which is contrary to the pleadings of the Plaintiff. Therefore when there is no dispute with regard to share of the respective parties therefore the share has to be devolved as per the pleadings of Plaintiff. Therefore in

view of the same the Issue No. 1, 2 and 5 is answered in **AFFIRMATIVE**.

**Issue No. 3 and 4:-**

B. Now, considering the other issues, the burden to prove the fact is on the Defendants. Further the Defendants have not adduced any evidence to show that any other lands are also there which for which partition is not sought by the Plaintiff. The Defendants have merely stated in the W.S. that other lands are not sought to be partitioned by the Plaintiff. However no evidence is adduced by the Defendants in that regard. Therefore it can not be believed merely by pleading that the Plaintiff has sought partial partition of the ancestral lands. If the Defendants would have produced evidence and proved the same, then the suit filed by the Plaintiff could have held bad in view of partial partition which can lead to multiplicity of proceedings. Therefore, when the relationship is not in dispute and all the agricultural lands are required to be partitioned equally amongst the coparcener. Further the Defendants have also failed to examine any witness in their support to substantiate the fact whether the other ancestral lands are also there to be partitioned. Under the principle of **Burden of Proof**, the party who asserts a fact generally has the responsibility to

prove it. If the Defendants claim something, the Defendant should present supporting evidence. Further as per Section 114(g) of the Evidence Act which is as under:-

**Section 114(g):-** that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it;

-Therefore since the Defendant Nos. 1.1 to 1.8 have failed to produce evidence in their support therefore an adverse inference can be drawn in such circumstances. Accordingly the Defendant Nos. 1.1 to 1.8 have utterly failed to prove that other ancestral lands are also yet to be partitioned. Therefore Issue No. 3 and 4 are answered in **NEGATIVE**.

-Now the question comes that is it mandatory in a partition suit to draw a preliminary decree and then only the final decree can be drawn ? To discuss this aspect the following provision of Code of Civil Procedure is required to be discussed:

**Order XX: Rule 18.**

Decree in suit for partition of property or separate possession of a share therein. – Where the Court passes a decree for the partition of property or for the separate

possession of a share therein, then,— (1) if and in so far as the decree relates to an estate assessed to the payment of revenue to the Government, the decree shall declare the rights of the several parties interested in the property, but shall direct such partition or separation to be made by the Collector, or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with such declaration and with the provisions of section 54; (2) if and in so far as such decree relates to any other immovable property or to movable property, the Court may, if the partition or separation cannot be conveniently made without further inquiry, pass a preliminary decree declaring the rights of the several parties interested in the property and giving such further directions as may be required.

-Therefore in view of the aforesaid provision of law, when the plaintiff has sought partition of the subject lands which are agricultural lands for which the District Collector being revenue authority would be appropriate authority to divide the separate share of the subject lands. Further in this case, since the agricultural lands are to be partitioned, therefore further inquiry of share and mode of separation does not seem necessary to this Court and therefore the present suit can be disposed of without

keeping the same pending for drawing final decree by appropriate directions.

-Accordingly, in view of the fact and circumstances as well as the legal position as stated above I pass the following order pursuant to Issue No. 6 as under:-

**FINAL ORDER**

1. The present suit filed by the Plaintiff is hereby partly allowed.
2. It is held that the Plaintiff and the Defendant No. 2.2 (From Defendant Nos. 2.1.11 to 2.2.5) are jointly entitled for  $\frac{1}{4}$  share, the Defendant No. 2.1 (From Defendant Nos. 2.1.1 to 2.1.10) is entitled for  $\frac{1}{4}$  share and Defendant No.1 (Defendant No. 1.1 to 1.8) is entitled for  $\frac{1}{2}$  share in the subject lands mentioned in Para 2(A) above.
3. The Ld. District Collector, Kheda is hereby directed to partition the subject lands mentioned in Para 2(A) above among the Plaintiff and Defendants and give them separate possession of share. This exercise can be done by the Ld. District Collector, Kheda himself or any gazetted subordinate as per Order 20 Rule 18 of the Code of Civil Procedure.
4. If the Ld. District Collector, Kheda comes to the conclusion that the subject agricultural lands mentioned in Para 2(A) cannot be partitioned between the parties for

a valid reason, the Ld. District Collector, Kheda is directed to convey the same to the parties by written notice and thereafter comply with this order by following the provisions of The Partition Act, 1893.

5. Final Decree to be drawn accordingly.
6. No order as to cost. Both parties bear their own cost.
7. The expense for the partition proceedings is ordered to be borne by the Plaintiff.
8. The present suit is disposed of accordingly.

Signed, Pronounced and Declared in open court today on this 30th day of March, 2026.

Place: Mahudha

Date:- 30.03.2026

Kishankumar R. Maurya

Principal Civil Judge,

Mahudha, Dist: Kheda

Judge Code: GJ01723