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**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. 42-2019
EXH- _____**

1. Chandubhai Mangalbai Sodha
Age: 52 Years, Occupation: Agriculture
2. Chanchalben D/o Mangalbai Sodha
Age: 50 Years, Occupation: Homemaker
3. Ishwarbhai Mangalbai Sodha
Age: 48 Years, Occupation: Agriculture
4. Lakshmanbhai Mangalbai Sodha
Age: 45 Years, Occupation: Agriculture
5. Dahyabhai Mangalbai Sodha
Age: 42 Years, Occupation: Agriculture
6. Vajabhai Mangalbai Sodha
Age: 40 Years, Occupation: Agriculture

All are R/o: Nr. High School, Village: Minawada

Taluka: Mahudha, Dist: Kheda

....Plaintiffs

V/S

1. Chhotabhai Punabhai Sodha

Age: Adult, Occupation: Agriculture

2. Abhesinh Punabhai Sodha

Age: Adult, Occupation: Agriculture

3. Mangalbai Budhabhai Sodha

Age: Adult, Occupation: Agriculture

All are R/o: Dashama Mandir Road, In farm,

Village: Minawada, Ta: Mahudha, Dist: Kheda.

...Defendants

Suit for Declaration and Permanent Injunction.

Appearance:-

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

Ld. Adv. Shri Y. V. Thakor for the Defendants.

JUDGEMENT

1. The Plaintiffs have filed the present suit against the Defendants for declaration, permanent injunction.

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

A. The Plaintiffs have submitted that the agricultural land situated within the revenue limits of Village Minawada, Taluka Mahudha, District Kheda, bearing Old Block/Survey No. 17, New Block/Survey No. 28, admeasuring 0-54-01 hectares, assessed at Rs. 3.79, and bearing Khata No. 318, bounded as under:

East : Public Road.

West : Agricultural land of Chandubhai Amarabhai.

North : Public Road.

South : Public Road.

B. It is further submitted that the original owners of the subject land were Atulkumar Prafullchandra and others. From them, the Plaintiffs' predecessor Shanabhai Hothabhai had purchased the said land for a purchase price of Rs. 2,000/- pursuant to a tenancy case. A corresponding mutation entry No. 1422 dated 30-08-1969 was recorded in the revenue record. Since then, the subject land remained in the ownership, possession and enjoyment of the Plaintiffs' predecessor. After his demise, the names of the Plaintiffs were entered in the revenue record as legal heirs by Mutation Entry No. 432 dated 22-09-2008. Thereafter, the subject land has continuously remained in the lawful ownership and actual possession of the Plaintiffs, and the Plaintiffs have been cultivating the said land and taking the agricultural produce

therefrom. In the revenue record, the name of Shantaben Mangalbai Shanabhai, widow of Shanabhai, was entered as holder of the land; however, she has since expired. The Defendants, or their predecessors, have no right, title, share, interest or concern whatsoever in the subject land. Nevertheless, the predecessors of the present Defendants, namely Punabhai Dahyabhai and Budhabhai Dahyabhai, in collusion with the Talati, illegally caused their names to be entered in the revenue record during the year 1985-86 without any lawful mutation entry.

C. It is further submitted that thereafter, in the year 2016, when the Plaintiffs required a certified copy of the 7/12 extract of the subject land and obtained the revenue record, they came to know that the predecessors of the Defendants had illegally got their names entered in the revenue record without any valid mutation entry. Consequently, the Plaintiffs filed an application before the Mamlatdar, Mahudha, being Application No. Jaman/Kshati/Sudhar/ Vashi/758, seeking correction of the erroneous entry. Upon hearing the matter, the Mamlatdar passed an order dated 22-09-2017, directing the deletion of the names of the Defendants' predecessors from the revenue record. Pursuant to the said order, the

names of the Defendants' predecessors were removed from the revenue record. Thus, the revenue record presently stands in the name of the Plaintiffs, and the Plaintiffs are the lawful owners and possessors of the subject land. The Defendants have no right, title, share, interest or concern whatsoever in the suit land. Despite having no legal right, title or interest in the suit land, the Defendants are attempting to create unlawful claims over the suit property. With the intention of dispossessing the Plaintiffs without any just or lawful cause, the Defendants lodged a false police complaint at Mahudha Police Station on 19-11-2019 against the Plaintiffs. After filing the said complaint, the Defendants threatened the Plaintiffs stating that they would forcibly take possession of the suit land and that they would continue to file false complaints and harass the Plaintiffs until the Plaintiffs handed over the land to them. Therefore, the Plaintiffs have been compelled to file the present suit seeking a declaration and permanent injunction against the Defendants.

3. Written statement of the Defendants:-

A. The Defendants have filed Written statement at Exh-12 wherein the Defendants have submitted that the land bearing Old Survey No. 8, Old Block No. 17 and after re-survey New Block No. 28, situated within the revenue

limits of Village: Minavada, Taluka: Mahudha, District Kheda, admeasuring Hectare 0-54-01 with assessment of Rs. 3.79, bearing Khata No. 318, is the ancestral property of the Plaintiffs as well as the Defendants. The said property had been allotted to the forefathers of the Plaintiffs as well as the Defendants under Ganot (tenancy) rights, and since the time it was so allotted, the forefathers of the parties had been cultivating the suit land and enjoying the agricultural produce therefrom. The Plaintiffs and the Defendants are close relatives belonging to the same family. The aforesaid suit property had been mutually partitioned by the forefathers of the Plaintiffs and the Defendants by way of family arrangement, whereby half share, namely the northern portion admeasuring H.R. 0-27-00, came to the share of the Plaintiffs, whereas the southern portion came to the share of the Defendants. The original owners and occupants of the subject land were the forefathers of the Plaintiffs as well as the Defendants, and the said land had been obtained by them under Ganot(Tenancy) rights. Therefore, the Plaintiffs as well as the Defendants became the lawful owners and occupants of the said property. Since the land was being cultivated under Ganot rights and as the father of the Plaintiffs, namely Vidhyashanabhai Hothabhai, being the elder member of

the family and the family manager (Karta), had been managing the affairs of the ancestral properties of the family, the sale consideration of the land was paid from the joint family income, and the revenue payment was also made in his name. Therefore, his name came to be entered in the 7/12 revenue record.

- B. It is further submitted that since half portion of the subject land had fallen to the share and possession of the forefathers of the Defendants, the elders of the family had subsequently caused the name of the forefathers of the Defendants to be entered in the 7/12 revenue record during the year 1985-86. Since then, the name of the father of the Defendants had continued to appear in the 7/12 revenue record. Similarly, in other ancestral properties belonging to the family, the name of the father of the Defendants had also been entered in the revenue records. Since that time, the actual possession and enjoyment of the ancestral properties including the present suit land had remained with the forefathers of the Defendants, and after their demise, the properties were partitioned and the respective boundaries of each share were demarcated on the spot. The portion which fell to the share of the Defendants has been in their actual possession and enjoyment, and the Defendants have been

cultivating the same and taking seasonal agricultural crops therefrom. The names of the forefathers of the Defendants had been entered in the 7/12 revenue record since the year 1985-86 in respect of the subject land. As stated earlier, though the land had been obtained by the forefathers under Ganot rights, the name of the father of the Plaintiffs had originally been entered as he was the elder head of the family. Subsequently, the names of the forefathers of the Defendants were also entered in the 7/12 record, and such entry continued up to the year 2017. However, about one month ago, when the Defendants obtained certified copies of the revenue record, they came to know that the names of their forefathers had been removed from the 7/12 record. Upon obtaining the necessary revenue extracts and after making inquiries with knowledgeable persons, the Defendants came to know that the Plaintiffs had colluded with the Mamlatdar, Mahudha, and had filed a so-called application for correction of error, and without issuing any notice to the Defendants, the names of the forefathers of the Defendants had been illegally deleted from the 7/12 revenue record. Therefore, the plaint as well as the application for injunction filed by the Plaintiffs deserve to be dismissed.

4. Court proceedings:-

A. After pleadings were over, my predecessor Court framed issues at Exh-17. Thereafter the Plaintiffs and the Defendants have led their oral as well as documentary evidence in their support. Thereafter the Plaintiffs filed closing pursis at Exh-30 and the Defendants' right to further lead evidence was closed on 03.02.2026 vide Exh-45. Thereafter the Ld. Advocates for the Plaintiffs and Defendants were heard at length.

5. Final Arguments:-

For Plaintiff:-

A. Ld. Adv. Mr. N. B. Chauhan has argued on behalf of the Plaintiffs and submitted that the agricultural land situated within the revenue limits of Village Minawada, Taluka Mahudha, District Kheda, bearing Old Block/Survey No. 17, New Block/Survey No. 28, admeasuring 0-54-01 hectares was owned and occupied by Atulkumar Prafullchandra and others. From them, the Plaintiffs' predecessor Shanabhai Hothabhai had purchased the said land for a purchase price of Rs. 2,000/- pursuant to a tenancy case. A corresponding mutation entry No. 1422 dated 30-08-1969 was recorded in the revenue record. Since then, the subject land remained in the ownership, possession and enjoyment of the Plaintiffs' predecessor. After his demise, the names of the Plaintiffs

were entered in the revenue record as legal heirs by Mutation Entry No. 432 dated 22-09-2008. The Defendants, or their predecessors, have no right, title, share, interest or concern whatsoever in the subject land. The predecessors of the present Defendants, namely Punabhai Dahyabhai and Budhabhai Dahyabhai, in collusion with the Talati, illegally caused their names to be entered in the revenue record during the year 1985-86 without any lawful mutation entry. It is further submitted that thereafter, in the year 2016, when the Plaintiffs required a certified copy of the 7/12 extract of the subject land and obtained the revenue record, they came to know that the predecessors of the Defendants had illegally got their names entered in the revenue record without any valid mutation entry. Consequently, the Plaintiffs filed an application before the Mamlatdar, Mahudha, being Application No. Jaman/Kshati/Sudhar/Vashi/758, seeking correction of the erroneous entry. Upon hearing the matter, the Mamlatdar passed an order dated 22-09-2017, directing the deletion of the names of the Defendants' predecessors from the revenue record. Pursuant to the said order, the names of the Defendants' predecessors were removed from the revenue record. Further the Plaintiffs have placed on record the Entry No. 1422 at Exh-27 from which it is proved that the subject

land was purchased by the Plaintiff's predecessor under the Tenancy Act. Further during cross examination of the Defendant, he admitted that he has not produced pedigree, any evidence to show that land was allotted to late Punabhai Sodha too and he had paid any amount in the consideration for purchase price. Therefore the Plaintiffs have successfully proved that the predecessor of the Plaintiffs acquired the subject land in the tenancy proceedings after paying the purchase price. Therefore the Ld. Adv. for the Plaintiffs has requested to grant the relief prayed by them.

For Defendants:-

B. Ld. Adv. Y. V. Thakor has argued on behalf of the Defendants wherein he has submitted that the subject property had been allotted to the forefathers of the Plaintiffs as well as the Defendants under Ganot (tenancy) rights, and since the time it was so allotted, the forefathers of the parties had been cultivating the subject land and enjoying the agricultural produce therefrom. The Plaintiffs and the Defendants are close relatives belonging to the same family. The aforesaid suit property had been mutually partitioned by the forefathers of the Plaintiffs and the Defendants by way of family arrangement, whereby half share, namely the northern

portion admeasuring H.R. 0-27-00, came to the share of the Plaintiffs, whereas the southern portion came to the share of the Defendants. The original owners and occupants of the subject land were the forefathers of the Plaintiffs as well as the Defendants, and the said land had been obtained by them under Ganot(Tenancy) rights. Therefore, the Plaintiffs as well as the Defendants became the lawful owners and occupants of the said property. Since the land was being cultivated under Ganot rights and as the father of the Plaintiffs, namely Vidhyashanabhai Hothabhai, being the elder member of the family and the family manager (Karta), had been managing the affairs of the ancestral properties of the family, the sale consideration of the land was paid from the joint family income, and the revenue payment was also made in his name. Therefore, his name came to be entered in the 7/12 revenue record. Thereafter the name of the predecessor of the Defendants was removed upon the application filed by the Plaintiffs. Therefore the name of the predecessor of the Defendants continued for a long time which itself proves the long possession of the Defendants. Further the name of the predecessor was mutated in the year 1985-86 therefore cause of action to file suit arose in the year 1986. Therefore the suit is also

barred by limitation. Therefore the Ld. Adv. for the Defendants requested to dismiss the suit.

6. Evidence of the Plaintiffs:-

A. Oral Evidence:-

Sr. No.	Description	Exhibit
PW-1	Deposition of Chandubhai Mangalbai Sodha-Plaintiff	29

B. Documentary Evidence:-

Sr. No.	Description	Exhibit
1	Certified copy of Village Form No. 7 of Survey No. 28	22
2	Certified copy of Village Form No. 8-A of Khata No. 318	23
3	Certified copy of Entry No. 432	24
4	Certified copy of Village Form No. 7/12 of Survey No. 17	25
5	Certified copy of order dated 22.09.2017 passed by Mamlatdar, Mahudha	26
6	Certified copy of Entry No. 1422	27
7	Certified copy of order dated 16.12.2020 passed by Dy. Collector, Nadiad	28

C. Electronic Evidence:-

Not adduced any Electronic Evidence:-

7. Evidence of the Defendants:-**A. Oral Evidence:-**

Sr. No.	Description	Exhibit
DW-1	Deposition of Chhotabhai Punabhai Parmar-Defendant No. 1	40

B. Documentary Evidence:-

Sr. No.	Description	Exhibit
1	Certified copy of Village Form No. 7/12 of Old Survey No. 17	37
2	Certified copy of Village Form No. 7/12 of Old Survey No. 17	38
3	Certified copy of Village Form No. 7/12 of New Survey No. 28	39
10	Amalgamation sheet of Survey No. 1340/2 (Block No. 1324)	136

C. Electronic Evidence:-

Not adduced any electronic evidence.

8. After completion of pleading my learned predecessor court had framed the following issues at Exh- 17:-

1. શુ વાદી પુરવાર કરે છે કે મોજે- મીનાવાળા, તા. મહુધા, જી. ખેડા ની સીમ નો જુનો બ્લોક નંબર/સર્વે નંબર-૧૭, નવો બ્લોક/ સર્વે નંબર-૨૮, જેનુ શ્રેત્રફળ

૦-૫૪-૦૧, જેનો આકાર રૂ.૩.૭૯ જેનો ખાતા નંબર-૩૧૮ વાળી દાવાવાળી જમીન તેઓ વાદી ના વડીલ શનાભાઈ હોથાભાઈ ના ઓ એ ટેનન્સી કેસ ના આધારે રૂ. ૨૦૦૦/- માં વેચાણ રાખેલ હતી અને ત્યાર બાદ તેઓ વાદી ઓ ના વડીલો ના અવસાન બાદ તેઓ વાદી ઓ આ દાવાવાળી જમીન ના તેઓ માલીક કબજા ભોગવટદાર છે ?

2. શુ પ્રતિવાદી પુસ્તક કરે છે કે દાવાવાળી જમીન ની વાદીઓ તથા પ્રતિવાદીઓ ના વડીલો વખત થી ઘરમેળે વહેચાણી થતા આ દાવાવાળી જમીન નો દક્ષિણ તરફ નો અડધો હીસ્સો તેઓ પ્રતિવાદી ઓ ના હીસ્સે આવેલ છે અને ત્યાર થી તેઓ આ તેઓના હીસ્સે આવેલ જમીન નો કબજો ભોગવટો ધરાવે છે ?
3. શુ વાદી માગ્યા મુજબ ની દાદ મેળવવા માટે હકદાર છે ?
4. શું હુકમ અને હુકમનામું?

09. 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. Negative.
3. Affirmative.
4. As per final order

10.

REASONS

ISSUE NO.1:-

A. It is a settled law that in a suit for declaration of title, the burden heavily lies on the Plaintiffs, the Plaintiffs are not supposed to depend upon the weakness in the case set up by Defendants. To discuss these issues it would be pertinent to look into oral and documentary evidence filed by the Plaintiffs and the Defendants. The Plaintiff No. 1- Chandubhai Mangalbai Sodha filed affidavit in examination in chief at Exh-29 wherein he has reiterated the facts narrated in the plaint and submitted that the subject land was received by the deceased Shanabhai Hothabhai under the provisions of the Tenancy Act through purchase from the Government. The said land was granted to the deceased Shanabhai Hothabhai, who was the ancestor of the Plaintiffs. The full purchase price of the land was duly paid. Since then, the said land has remained under the independent ownership, possession, and cultivation of the deceased Shivabhai Bapubhai Bhoi. The Plaintiffs used to assist him in agricultural activities. After the death of Shanabhai Hothabhai, the Plaintiffs became the lawful owners and possessors of the suit land. In order to substantiate his claim, the Plaintiffs have filed a certified copy of Entry No. 1422 at Exh-27. Perusing the Entry No. 1422, it clearly appears that the ALT, Mamlatdar accepted the deceased Shanabhai Hothabhai as tenant of the said agricultural land and the deceased Shanabhai Hothabhai

purchased the said land after paying the purchase amount of Rs. 2000/-. Accordingly the Entry No. 1591 was mutated in the revenue record. Further perusing the order dated 22.09.2017 it appears that when the Plaintiffs filed an application for rectification in the revenue record, the Mamlatdar, Mahudha after considering the record held that the deceased Shanabhai Hothabhai received the subject land in the tenancy proceeding and Entry No. 1422 was effected in the revenue record. After the purchase price was paid Entry No. 1591 was mutated in the revenue record on 22.02.1977 and the subject land was acquired by the deceased Shanabhai Hothabhai. Therefore the Ld. Mamlatdar gave subject land under Section 32M of the Gujarat Tenancy and Agricultural Lands Act after paying the purchase price. Thereafter the name of the deceased Shanabhai Hothabhai was mutated in the revenue record. Therefore, Section 32M of the Gujarat Tenancy and Agricultural Lands Act is required to be considered which is as under:-

Section 32M: (1) On the deposit of the price in lump sum or of the last instalment of such price, the Tribunal shall issue a certificate of purchase in the prescribed form, to the tenant in respect of the land. Such certificate shall be conclusive evidence of purchase. If a tenant fails to pay lump

sum within the period fixed under clause (ii) of sub-section (1) of section 32K, or is at any time in arrears of four instalments the purchase shall be ineffective and the land shall be at the disposal of the Collector under section 32P and any amount deposited by such tenant towards the price of the land shall be refunded to him.

-Therefore in view of the aforesaid provision the purchase certificate is not produced but Entry No. 1422 has been produced which supports the case of the Plaintiffs and once the Mamlatdar ALT has held that the subject land was purchased by the deceased Shanabhai Hothabhai in the Tenancy proceeding the same cannot be challenged before this Court and this court ceases to have jurisdiction to declare the purchase U/s 32M invalid even if it is. It is the admitted position between the parties that the subject land was granted to deceased Shanabhai Hothabhai. Therefore once the purchase is conclusive proof then unless and until the same is challenged or set aside, the ownership of the ancestor of the Plaintiffs-Late Shanabhai Hothabhai cannot be doubted. Therefore the same has attained finality. Therefore the deceased Shanabhai Hothabhai is held to be a rightful owner of the subject land. Therefore once the deceased Shanabhai Hothabhai is held to be the rightful owner of the subject land and therefore the Plaintiffs being

legal representatives can be said to have inherited the subject land validly when the Defendants have not led any evidence to prove that they were co-sharer or the late Shanabhai Hothabhai was only karta of the family of the Defendants. The Defendants have also not led any evidence to show the relationship with deceased Shanabhai Hothabhai and have also failed to prove that their predecessor contributed to the purchase price of Rs. 2000/- paid by late Shanabhai Hothabhai. Therefore Issue No. 1 is answered in **AFFIRMATIVE**.

ISSUE No. 2:-

B. Considering Issue No. 2, The Defendants' claim that the deceased Shanabhai Hothabhai received the subject land under Tenancy Act as Karta of family and the late Punabhai Sodha was also sharer of the subject land. Therefore the name of deceased Punabhai Sodha was also entered in the revenue record. It is their further claim that the deceased Punabhai Sodha also contributed to the purchase price. Further the Defendants' claim is that the subject land was demarcated into two parts and the Defendants are also having possession of the subject land. However the Defendant No. 1 during his cross examination at Exh-40 admitted as under:-

એ વાત ખરી છે કે મારા વડવાઓએ આ દાવાવાળી જમીન બાબતે કોઈ ગણોત કેસ કરેલ હોય તે દર્શાવવા આ કામે મે કોઈ દસ્તાવેજી પુરાવો આ કામે રજુ કરેલ નથી. એ વાત ખરી છે કે અમારા વડવાઓને દાવાવાળી જમીન કઈ તારીખ અને કયા મહીને કયા વર્ષમાં મળેલી તેની કોઈ ચોકકસ તારીખ જવાબ કે મારી સરતપાસમાં જણાવેલ નથી. એ વાત ખરી છે કે દાવાવાળી જમીનમાં અમોના વડવાઓ ગણોતીયા હોય તે દર્શાવતો કોઈ આધાર પુરાવો આ દાવાના કામે અમોએ રજુ કરેલ નથી. એ વાત ખરી છે કે આ દાવાના કામે અમોના વડવા અને વાદીઓના વડવાઓ એક સમાન હોય તે દર્શાવવા કોઈ પેઢીનામુ આ કામે રજુ કરેલ નથી. એ વાત ખરી છે કે અમો વાદીઓ અને પ્રતિવાદીઓ તેમજ બંત્રના વડવાઓ વચ્ચે દાવાવાળી મિલકત બાબતે કોઈ વહેંચણી થયેલ હોય તે દર્શાવતો કોઈ લેખિત આધાર પુરાવો આ કામે રજુ કરેલ નથી. એ વાત ખરી છે કે આવી કોઈ વહેંચણી કોઈક વ્યક્તિની હાજરીમાં થયેલ હોય તેવું પણ મે મારા જવાબ અને સરતપાસમાં જણાવેલ નથી. એ વાત ખરી છે કે વાદીઓ અને પ્રતિવાદીઓ વચ્ચે દાવાવાળી મિલકત ઉતર દક્ષિણ દિશામાં વહેંચાયેલ હોય જેમાં ઉતર તરફની જમીન વાદીઓ તેમજ દક્ષિણ તરફની જમીન પ્રતિવાદીઓ ને મળેલ હોય તે દર્શાવતો પણ લેખિત આધાર પુરાવો આ કામે રજુ કરેલ નથી. એ વાત ખરી છે કે વાદી તથા પ્રતિવાદીઓનું કુટુંબ સંયુક્ત કુટુંબ હોય તે દર્શાવતો લેખિત આધાર પુરાવો આ કામે રજુ કરેલ નથી. એ વાત ખરી છે કે આ દાવાવાળી જમીનની ગણોત અંગેની ખરીદ કિંમતના રૂપીયા વાદીએ સંયુક્ત કુટુંબની આવકમાંથી ભરેલ હોય તે દર્શાવતો લેખિત આધાર પુરાવો આ દાવાના કામે રજુ કરેલ નથી. એ વાત ખરી છે કે દાવાવાળી મિલકતનો વહીવટ

આ કામના વાદીના વડીલ કરતા હતા તે દર્શાવતો લેખિત આધાર પુરાવો આ કામે રજુ કરેલ નથી. એ વાત ખરી છે કે દાવાવાળી જમીનમાં અમારા વડીલનું નામ આ કામના વાદીના વડીલે દાખલ કરાવ્યું હોય તે દર્શાવતો લેખિત આધાર પુરાવો આ કામે રજુ કરેલ નથી. એ વાત ખરી છે કે દાવાવાળી જમીનમાં અમારા વડીલનું કોઈ પણ જાતની ફેરફાર નોંધ સિવાય દાખલ થયેલું. એ વાત ખરી છે કે અમારા વડીલનું નામ કોઈ પણ ફેરફાર નોંધ વિના રેવન્યું રેકર્ડમાં દાખલ થયેલ હોય આ કામના વાદીએ અમારું નામ રેવન્યું રેકર્ડમાંથી કમી કરાવવા માટે ક્ષતિ સુધારો કરવાની અરજી કરેલી. એ વાત ખરી છે કે આ કામના વાદીએ રેવન્યું રેકર્ડમાંથી અમારા નામ કમી કરાવવા અરજી કરેલી જુના આધારે મામલતદાર મહુધાનાઓએ અમારા નામ રેવન્યું રેકર્ડમાંથી કમી કરવાનો હુકમ કરેલો. એ વાત ખરી છે કે મામલતદારશ્રીનાએ ક્ષતિ સુધારાનો હુકમ કરેલ હોય તે હુકમની સામે અમોએ નાયબ કલે.શ્રી સમક્ષ આર.ટી.એસ અપીલ નં.૪૩૧/૧૯ નંબરની દાખલ કરેલ કે અમારી અપીલ નાયબ કલેશ્રીનાઓએ તા.૧૬/૧૨/૨૦ ના રોજ નામંજુર કરેલી. એ વાત ખરી છે કે નાયબ કલેશ્રીના હુકમ સામે અમોએ કોઈ રીવીજન દાખલ કરેલ નથી. એ વાત ખરી છે કે દાવાવાળી જમીન અમોએ ક્યારેય ખેડી હોય તેમાંથી ઉપજ મેળવી હોય અને તે ઉપજ વેચી હોય તે બતાવતો લેખિત આધાર પુરાવો આ કામે રજુ કરેલ છે. એ વાત ખરી છે કે હાલની તારીખે મારું કે મારા વડવાઓનું નામ ચાલતું નથી. એ વાત ખરી છે કે આ કામના વાદીના વડીલને ટેનન્સી કેસ નં.૨૮૫ થી તા.૩૦/૦૪/૬૯ ના રોજ દાવાવાળી જમીન ગણોત હકે મળેલ તે હુકમ સામે અમોએ કોઈ અપીલ દાખલ કરેલ નથી.

-Therefore from the perusal of the aforesaid cross examination in detail, it appears that the Defendant No. 1 had admitted that he has not led any evidence to show that his predecessor Late Punabhai Sodha had been ever shown as tenant in the subject land. He has also admitted that he has not led any evidence to show any family distribution between the brothers. He has also not produced any pedigree. Further he has also admitted that he has not led any evidence to show that the purchase price was also paid by his predecessor. Therefore, considering the cross examination of the Defendant No. 1 it is crystal clear that the Defendants have made their claim merely on the basis of pleading without there being any cogent evidence. Therefore the Defendants have utterly failed to prove that the Plaintiffs and the Defendants' elders had divided the disputed land mutually within the family long ago and in that division, the southern half portion of the disputed land came to the share of the Defendants and Since then, the Defendants have been in possession and enjoyment of the land that fell into their share. Accordingly Issue No. 2 is answered in **Negative**.

ISSUE No. 3:-

C. Perusing the plaint, it appears that the Plaintiffs have sought relief to declare that Plaintiffs have title of the suit property and the Defendants are not having any right or interest over

the subject property. Therefore from perusal of **Section 34** of the Specific Relief Act which is as follows:-

Discretion of court as to declaration of status or right.—

Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

-Therefore, to obtain the relief of declaration: the plaintiff must establish that:-

(1) the plaintiff is at the time of the suit entitled to any legal character or any right to any property, (2) The defendant has denied or is interested in denying the character or title of the plaintiff, (3) The declaration asked for is a declaration that the plaintiff is entitled to a legal character or to a right to property, (4) **The plaintiff is not in a position to claim a further relief from a bare declaration of his title.**

-Discussing the aforesaid provision of law in the light of the facts of the present case, it appears that the relief sought by the Plaintiffs to declare that Plaintiffs have right of inheritance on the subject properties and the Defendants are not having right or interest over the subject properties. Therefore when the Plaintiffs' right is denied by the Defendants and therefore the suit for declaration is maintainable. Further, this Court has already held that the Plaintiffs have proved that they are owners and occupiers of the land in question, therefore when the Plaintiffs have proved the title of the land in question, they have the legal right to protect their property as well as possession.

-Further Section 38 of the Specific Relief Act which is as follows:-

38. Perpetual injunction when granted.—(1) Subject to the other provisions contained in or referred to by this Chapter, a perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour, whether expressly or by implication. (2) When any such obligation arises from contract, the court shall be guided by the rules and provisions contained in Chapter II. **(3) When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the court may grant a perpetual injunction in the following cases, namely:— (a)**

where the defendant is trustee of the property for the plaintiff; **(b) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;** (c) where the invasion is such that compensation in money would not afford adequate relief; **(d) where the injunction is necessary to prevent a multiplicity of judicial proceedings.**

-Therefore when the Plaintiffs have proved their title on the subject land in question and they have apprehension that the Defendants would interfere in their possession and in such circumstances, they are entitled to get an injunction in their favor. Therefore I answer Issue No. 3 in **AFFIRMATIVE**.

-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. 4 as under:-

FINAL ORDER

1. The present suit filed by the Plaintiffs is hereby allowed.
2. It is hereby declared that the Plaintiffs are the lawful owners and occupiers of the agricultural land situated at Village Minawada, Taluka Mahudha, District Kheda, bearing Old Block/Survey No. 17, New Block/Survey

No. 28, admeasuring 0-54-01 hectares, assessed at Rs. 3.79, and bearing Khata No. 318.

3. The Defendants and their agents are hereby restrained from alienating and interfering in the possession of the Plaintiffs in the agricultural land situated at Village Minawada, Taluka Mahudha, District Kheda, bearing Old Block/Survey No. 17, New Block/Survey No. 28, admeasuring 0-54-01 hectares, assessed at Rs. 3.79, and bearing Khata No. 318.
4. Decree to be drawn accordingly.
5. No order as to cost. Both parties bear their own cost.
6. The present suit is disposed of accordingly.

Signed, Pronounced and Declared in open court today on this 13th day of March, 2026.

Place: Mahudha
Date:- 13.03.2026

Kishankumar R. Maurya
Principal Civil Judge,
Mahudha, Dist: Kheda
Judge Code: GJ01723