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Decided on : 01/01/2026
Duration : YY-MM-DD

**IN THE COURT OF HONOURABLE ADDITIONAL SENIOR
CIVIL JUDGE AT KHEDA**

Regular Civil Suit No. 7 of 2012

Exh-

1. Budhabhai Dahyabhai Chauhan

Residing at 101-102, Bapod Jakatnaka, Vaghodiya Road,
B/h. Indrapuri Society, Hiraba Nagar, Vadodara.

2. Rameshbhai Dahyabhai Chauhan,

Residing at : 20, Shaileshpark, Nr. Chirag Parking,
Vaghodiya Road, Vadodara.

3. Gajrabhai Dahyabhai Chauhan,

Residing at : Vavvadu Fadiyu, Mu. Petli,
Ta. Sojitra, Dist. Anand.

4. Shilaben daughter of Natubhai Chauhan

Residing at : Vavvadu Fadiyu, Mu. Petli,
Ta. Sojitra, Dist. Anand.

5. Savitaben daughter of Dahyabhai Chauhan

Residing at Matar, Ta.Matar, Dist. Kheda

6. Manojbhai Bijalbhai Chauhan,

Residing at : 20, Shaileshpark, Nr. Chirag Parking,
Vaghodiya Road, Vadodara.

... Plaintiffs

v/s

1. Bababhai Jenabhai Chauhan

2. Keshabhai Jenabhai Chauhan

3. Baluben Jenabhai Chauhan

4. Paliben Jenabhai Chauhan

5. **Hiraben Jenabhai Chauhan (Abated)**
6. **Budhabhai Jenabhai Chauhan**
7. **Mafatbhai Jenabhai Chauhan**
8. **Raymalbhai urfe Ramabhai Shanabhai Chauhan**
9. **Pratapbhai Shanabhai Chauhan**
10. **Kamuben Shanabhai Chauhan**
11. **Gajraben Shanabhai Chauhan**
12. **Rameshbhai Shanabhai Chauhan**

All residing at : Shetra, Ta.&Dist. Kheda.

... **Defendants**

SUBJECT : SUIT FOR DECLARATION AND PARTITION

J U D G E M E N T

- 1) The short facts of the present case in nutshell is that plaintiff have claimed 1/3rd share in the land bearing block No. 521,261,533,306,534,426,188,429,343,183 and the plaintiff have also prayed for 1/3rd share in the Gram Panchayat property No. 39 and Grampanchayat property No. 58. All the above block numbers and two houses are hereinafter will be referred to as disputed properties. It is the case of the plaintiff that the original owner of the disputed properties were their grate grand father Jusabhai Chauhan and after his death the disputed properties have come in the name of Nathabhai Chauhan and after the death of Nathabhai the disputed properties have come in the name of his five sons Icchabhai Nathabhai, Chaturbhai Nathabhai, Mathurbhai Nathabhuai, Raijibhai Nathabhai and Jinabhai Nathabhai of which Chaturbhai Nathabhai and Raijibhai Nathabhai were unmarried and have died. Icchabhai Nathabhai had two sons Mohanbhai Icchabhai and Dahyabhai Icchabhai and after the death of Icchabhai Nathabhai

the name of Dahyabhai Icchabhai have come on record vide mutation entry No. 688. It is pertinent to note that the second son of Icchabhai Nathabhai Mr. Mohanbhai Icchabhai died unmarried. After the death of Dahyabhai Icchabhai the name of Budhabhai Dahyabhai, Rameshbhai Dahyabhai, Gajrabhai Dahyabhai, Savitaben Dahyabhai have come in revenue record by mutation entry No. 732 and these legal heirs of Dahyabhai Icchabhai are the present plaintiff in the present suit.

As stated earlier Nathabhai Chauhan had five sons Icchabhai Nathabhai, Chaturbhai Nathabhai, Mathurbhai Nathabhai, Rajibhai Nathabhai and Jinabhai Nathabhai out of which two sons Chaturbhai Nathabhai and Rajibhai Nathabhai have died unmarried and Mathurbhai Nathabhai's legal heirs and Jinabhai Nathabhai's legal heirs are contesting the present suit as defendants. This is the third generation who are contesting the present suit.

- 2) The short facts of the present case in nutshell is that the plaintiff have filed the present suit for partition of the land bearing block No.521,261,533,306,534,426,188,429,343,183 and the plaintiff have also prayed for 1/3rd share in the Gram Panchayat property No. 39 and Grampanchayat property No. 58 which are the disputed properties in the present suit. The plaintiffs are claiming 1/3rd share in the disputed properties which share is to be divided between Icchabhai Nathabhai, Mathurbhai Nathabhai and Jinabhai Nathabhai. The plaintiff have stated in his plaint that they are living in Vadodara. The plaintiff have stated in his plaint that they have given notice to the defendant that they have 1/3rd share in the disputed properties but the defendants have not given their share in the disputed property and hence this has led the cause of action to file the present suit.

PRAYER OF THE PLAINTIFF

3) **The plaintiff have prayed the following prayers in the suit which is reproduced herein below.**

(અ) દાવા પેરા-૧ માં બતાવેલ તથા રહી જતી અમારા હિસ્સાની મિલકતો ઉપરાંત વરાડે પડતી અમારી જે કોઈ મકાન, જમીન કે ઘરથારની જમીન મોજે શેત્રા તા.ખેડાની મિલકતની અરસ નરસ વહેચણી કરી આપી અમો વાદીના ભાગમાં આવતી ત્રીજા (૧/૩) હિસ્સાનો અમો વાદીને સ્થળ ઉપર કબજો અપાવવા યોગ્ય હુકમ ફરમાવશોજી અને જો તેઓ તેમ ન કરે તો નામ. કોર્ટથી કોર્ટ કમિશ્નર નીમી અમારા હિસ્સાનો કબજો અપાવો.

(બ) અમો પક્ષકારોના સહિયારી દાવાવાળી મિલકતમાં અમારા હિસ્સાનો પ્રતિવાદીઓ કોઈપણ રીતે નિકાલ કરે કરાવે નહી તબદીલ કરે કરાવે નહી કે અમારા હિતને કોઈ નુકસાન કરે કરાવે નહી તેવો કાયમી મનાઈ હુકમ આપવા મે. કરશોજી.

(ક) આ દાવાના સંજોગો જોતા નામદાર કોર્ટને બીજી યોગ્ય અને વ્યાજબી ન્યાયી લાગે તે હરકોઈ દાદ અપાવશોજી.

(ડ) આ દાવાનું તમામ ખર્ચ પ્રતિવાદીઓ પાસેથી વસુલ અપાવશોજી.

4) The summons was duly served to all the defendants and the defendants have filed their reply vide Exh- 12 in which they have denied all the contentions and allegation stated by the plaintiff in her plaint except specifically admitted. The defendants have stated in their reply that the suit is not maintainable, suit is contrary to the well settled principles of law, suit is not filed bonafidely. The

defendants have stated in their reply that the plaintiffs have no right and share in the disputed properties and hence the suit is required to be dismissed. The defendants have stated in their reply that the plaintiff have not come with clean hands. The defendants have stated in their reply that suit is hit by Section 6 of the Court Fees and hit by Section 4 of the Suit Valuation Act. The defendants have stated in their reply that third generation is claiming partition of the disputed properties and hence suit is hit by delay, laches and acquince and hence required to be dismissed. The defendants have stated in their reply that defendants are in possession of the disputed properties and plaintiffs have no right in the disputed properties. The defendants have stated in their reply that the plaintiff have filed earlier suit RCS No. 10/2008 which is pending and inspite of that they have filed present suit contrary to the provisions of law. The defendants have stated in their reply that the plaintiff is not entitle for any prayer prayed for.

- 5) The plaintiff have filed counter affidavit vide Exh-16 and have denied all the allegations and contentions stated by the defendants in their reply and have reiterated the contentions of the plaint.

ARGUMENT OF THE PLAINTIFF

- 6) The Ld. Advocate for the plaintiff have argued that disputed properties are the joint properties of the plaintiffs and defendants and the name of the plaintiff and the defendants appeared in the village form No. 7 of all the disputed properties and hence they have right and share in the disputed property. The Ld. Advocate for the plaintiff have argued that as family partition has never taken place and they have 1/3rd share in the disputed properties. The

plaintiff has filed his written argument vide Exh-64. The plaintiff have brought on record the pedigree of late Jusabhai. The plaintiff have brought on record mutation entry No. 1138, 688, 734 vide Exh-68, 69 and 70. The defendants have not filed any evidence and the right of the defendants to file evidence and defendant's argument was closed.

EVIDENCE OF THE PLAINTIFF

- 7) The plaintiff have produced oral and documentary evidence in support of their case.

ORAL EVIDENCE OF PLAINTIFFS

Sr. No	Particulars	Exhibit
1	Affidavit of plaintiff No. 1 Budhabhai Dahyabhai Chauhan	32
2	Affidavit of Plaintiff No. 2 Rameshbhai Dahyabhai Chauhan	54
3	Affidavit of Plaintiff No. 3 Gajraben Dahyabhai Chauhan	55
4	Affidavit of Plaintiff No. 4 Shilaben Natubhai Chauhan	56
5	Affidavit of Plaintiff No. 5 Savitaben Dahyabhai Chauhan	57
6	Affidavit of Plaintiff No. 6 Manojbhai Bijalbhai Chauhan	58

DOCUMENTARY EVIDENCE OF PLAINTIFFS

Sr. No	Particulars	Exhibit
1	Pedigree of late Jusabhai	35
2	Village form No. 8/A of the Khata No. 112	36
3	Village form No. 7 of block No. 261	37
4	Village form No. 7 of block No. 306	38
5	Village form No. 7 of block No. 521	39
6	Village form No. 7 of block No. 533	40
7	Village form No. 8/A of khata No. 314	41

8	Village form No. 7 of block No. 534	42
9	Village form No. 7 of block No. 694	43
10	Village form No. 7 of block No. 426	44
11	Village form No. 7 of block No.429	45
12	Village form No. 7 of block No. 343	46
13	Village form No. 7 of block No. 180	47
14	Village form No. 7 of block No. 377	48
15	Panchayat House Receipt and assessment register of house No. 39	49
16	Amalgamation	50
17	Application given to land acquisition officer	51
18	Copy of RTS Appeal No. 639/2021	52

- 8) Under Order XIV of the Code of Civil Procedure,1908 my predecessor brother judge have framed issues for determination of the real dispute between the parties vide **Ex. 18. The issues which were framed are as under :**

ISSUES

- (૧) શું વાદી પુરવાર કરે છે કે, દાવાવાળી મિલકત વણવહેચાયેલી વડીલોપાજીત છે અને તેમા વાદીનો ૧/૩ હિસ્સો આવેલો છે ?
- (૨) શું વાદી માંગ્યા મુજબની દાદ મેળવવા હકકદાર છે ?
- (૩) શું હુકમ અને હુકમનામું ?

- 9) My reply to the above issues are as under :-

1. **Partly Affirmative**
2. **Partly Affirmative**
3. **As per Final Order**

Looking to the facts and circumstances and documents on record in order to avoid repetition some of the issues are being dealt jointly as they are closely related to each other.

REASONS FOR THE DETERMINATION OF THE ISSUES

Issue No. 1

- 10) Before perusing the pleadings and oral as well as documentary evidence produced by the parties it is required to go through the section 101 of the Indian Evidence Act, 1872. The said section reads as under :

Section 101 Burden of Proof -- Whoever desires any Court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts, must prove the facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person

In **Law of Evidence by Sarkar 16th Edition Volume 2 at page 1584** it is stated as under : - "principle and scope - This section is based on the rule, **ie incumbit probatio qui dicit, non qui negat** - the burden of proving a fact rests on the party who substantially asserts the affirmative of the issue and not upon the party who denies it; for a negative is usually incapable of proof." It is an ancient rule founded on consideration of good sense and should not be departed from without strong reasons." [per Hon'ble LORD MAUGHAM in **Constantine Line v/s I S Corpn. (1941) 2 All ER 165 at 179**] This rule is derived from the Roman law and is supportable not only upon the ground of fairness, but also upon that of the greater practical difficulty which is involved in proving a negative

than in proving an affirmative". In view of the above provision of the Indian Evidence Act, 1872, in the present case, the burden lies on the plaintiffs to prove his own case.

- 11) The plaintiff No. 1 Budhabhai Dahyabhai Chauhan have filed his affidavit vide Exh-32. The plaintiff No. 2 Rameshbhai Dahyabhai Chauhan have filed his affidavit vide Exh-54. The plaintiff No. 3 Gajraben Dahyabhai Chauhan have filed her affidavit vide Exh-55. The plaintiff No. 4 Shilaben Natubhai Chauhan have filed her affidavit vide Exh-56. The plaintiff No. 5 Savitaben Dahyabhai Chauhan have filed her affidavit vide Exh-57. The plaintiff No. 6 Manojbhai Bijalbhai Chauhan have filed his affidavit vide Exh-58. The defendants or their Ld. Advocate have not cross examined the above witnesses and hence the right of cross examination of defendants of all the above plaintiffs were closed.

PARTITION OF THE BELOW DISPUTED PROPERTIES IS NOT GRANTED

- 12) The plaintiff have prayed for partition of the disputed property block No. 521, 261,533,506,534,426,188,429,343. The plaintiff have brought on record village form No. 7 of block No. 694 but it is not the disputed property in the present suit and the plaintiff have not prayed for partition of block No. 694 which is on record vide Exh-43. The plaintiff have brought on record village form No. 7 of block No. 426 and 429 and 343 and on careful perusal of the block No. 426 and 429 and 343 it is not in the name of plaintiff which is on record vide Exh-44,45,46. The plaintiff have brought on record village form No. 7 of block No. 188 which is on record vide Exh-47 and it is not in the name of plaintiff. The plaintiff

have brought on record village form No. 7/12 of block No. 88 which is old 7/12 and which is in the name of their father Dahyabhai Icchabhai but recent 7/12 are not in their name. The plaintiff have brought on record village form No. 7 of block NO. 377 which is not the disputed property in the present suit and it is not in the name of plaintiff which is on record vide Exh-48. The plaintiff have brought on record tax receipt of house No. 39 and assessment register of house No. 39 which is on record vide Exh-49 but the plaintiff have not stated the area of their house or how many rooms are their in the house. **The plaintiff is not entitle for partition of block No. 426, 188,429,343 and 183.** In absence of exact areas and absence of how many rooms the plaintiff is not entitle for partition of the house No. 39. So far as house No. 58 is concerned there is no documentary evidence with regard to house No. 58. Hence, the plaintiff is not entitle for partition of House No. 39 and 58 and on careful perusal of the block No. 426 and 429 and 343 it is not in the name of plaintiff which is on record vide Exh-44,45,46.

PARTITION OF THE BELOW PROPERTIES IS GRANTED

- 13)** On careful perusal of the pedigree of the plaintiff and defendant Nathabhai has five sons (1) Icchabhai Nathabhai, (2) Chaturbhai Nathabhai (Died unmarried) (3) Mathurbhai Nathabhai, (4) Raijibhai Nathabhai (Died unmarried) (5) Jenabhai Nathabhai. As Chaturbhai Nathabhai and Raijibhai Nathabhai have died unmarried they have no legal heirs. The partition in the present suit has been carried out between late Icchabhai Nathabhai, Mathurbhai Nathabhai and Jenabhai Nathabhai.

The plaintiff have brought on record village form No. 8/A of Khata No. 112 in which the name of the plaintiff and defendants appears which shows that the plaintiff and defendants are joint owner of the above land which is on record vide Exh-36. The plaintiff have brought on record village Form No. 7 of block No. 261,306, 521, 533 in which the name of the plaintiff and defendants which shows that the plaintiff and defendants are joint owner of the said land which is on record vide Exh-37, 38, 39,40.

The plaintiff have brought on record village form No. 8/A of the block No. 534 which is in the name of plaintiffs and defendants which is on record vide Exh-41. The plaintiff have brought on record village form No. 7 of block No. 534 which is in the name of plaintiff and defendants which shows that the plaintiff and defendants are joint owner of the above land which is on record vide Exh-42.

It is the case of the plaintiff that the original owner of the disputed properties were their great grand father Jusabhai Chauhan and after his death the disputed properties have come in the name of Nathabhai Chauhan and after the death of Nathabhai the disputed properties have come in the name of his five sons Nathabhai Chauhan had five sons Icchabhai Nathabhai, Chaturbhai Nathabhai, Mathurbhai Nathabhuai, Raijibhai Nathabhai and Jinabhai Nathabhai of which Chaturbhai Nathabhai and Raijibhai Nathabhai were unmarried and have died and they were having no legal heirs. Icchabhai Nathabhai had two sons Mohanbhai Icchabhai and Dahyabhai Icchabhai and after the death of Icchabhai Nathabhai the name of Dahyabhai Icchabhai have come on record vide mutation entry No. 688. It is pertinent to note that the second son of Icchabhai Nathabhai, Mr. Mohanbhai Icchabhai died unmarried.

Dahyabhai Icchabhai have four sons and two daughters namely Budhabhai Dahyabhai, Bijalbhai Dahyabhai, Natubhai Dahyabhai, Rameshbhai Dahyabhai and two daughter Gajraben Dahyabhai and Savitaben Dahyabhai. After the death of Dahyabhai Icchabhai the name of Budhabhai Dahyabhai, Rameshbhai Dahyabhai, Gajraben Dahyabhai, Savitaben Dahyabhai and Natubhai Dahyabhai have come in revenue record by mutation entry No. 732. Icchabhai Dahyabhai had one son Bijalbhai Dahyabhai who has died and hence his legal heirs Manojbhai Bijalbhai is contesting the present suit. The partition of the disputed property has to be taken place between three brothers late Icchabhai Nathabhai, late Mathurbhai Nathabhai and late Jinabhai Nathabhai and their legal heirs who are the present plaintiffs and defendants in the present suit will get the share which their father gets. As late Icchabhai Nathabhai, late Mathurbhai Nathabhai and late Jinabhai Nathabhai are legal heirs of late Nathabhai they 1/3rd share in the disputed property. The above disputed properties are the joint properties of the plaintiffs and the defendants. The above disputed properties were in the name of late Jusabhai and hence the above disputed property is an ancestral properties in which the plaintiffs have 1/3rd share. The plaintiffs have succeeded to prove that the disputed properties are the joint properties of the plaintiff and defendants and the disputed properties are ancestral properties. As the plaintiffs have succeeded in proving that the disputed properties is an ancestral properties and joint properties the legal heirs of late Icchabhai Nathabhai, late Mathurbhai Nathabhai and late Jinabhai Nathabhai have 1/3rd share in the disputed properties. Hence, my reply to Issue No. 1 is in Partly affirmative.

Issue No. 2.

- 14) The plaintiffs have succeeded to prove that the block No. 521, 261,532, 533, 306,534 disputed properties are the joint properties of the plaintiff and defendants and the disputed properties are ancestral properties. As the plaintiffs have succeeded in proving that the disputed properties is an ancestral properties and joint properties the legal heirs of late Icchabhai Nathabhai, late Mathurbhai Nathabhai and late Jinabhai Nathabhai have 1/3rd share in the disputed properties. The defendants are hereby restrained from transferring the disputed properties block No. 521, 261,532, 533, 306,534 in which the plaintiffs are having share.

So far as block No. 426,188, 429,343,183 are concerned the name of the plaintiffs does not appeared and hence the plaintiff is not entitled for partition in block No. 426,188, 429,343,183. In absence of exact areas and absence of how many rooms the plaintiff is not entitle for partition of the house No. 39. So far as house No. 58 is concerned there is no documentary evidence with regard to house No. 58. Hence, the plaintiff is not entitle for partition of House No. 39 and 58 and on careful perusal of the block No. 426 and 429 and 343 it is not in the name of plaintiff which is on record vide Exh-44,45,46. Hence, my reply to **Issue No. 2 is in partly affirmative** and to answer the Issue N. 3 following order is passed.

ORDER

1. The plaintiff suit is partly allowed.

2. It is order that plaintiffs predecessor Icchabhai Nathabhai Chauhan, Mathurbhai Nathabhai Chauhan, Jinabhai Nathabhai Chauhan have 1/3rd share in the disputed properties. (1) land bearing block No 521 admeasuring 0-43-50 H. Are. Sq mt, (2) Block No 261 admeasuring 0-04-05 H. Are. Sq mt and (3) Block No 533 admeasuring 1-33-52 H. Are. Sq mt (4) Block No. 306 admeasuring 0-24-28 H. Are. Sq.mt and (5) Block No 534 admeasuring 0-26-30 H. Are. Sq mt located in the precinct of village Shetra, Tal. Kheda and Dist Kheda.
3. As per the O. XX R. 18 (2) of Civil Procedure Code 1908 the said 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 said declaration and with the provisions of section 54 of Civil Procedure Code 1908 in accordance with the law if any for the time being in force relating to the partition for the (1) land bearing block No 521 admeasuring 0-43-50 H. Are. Sq mt, (2) Block No 261 admeasuring 0-04-05 H. Are. Sq mt and (3) Block No 533 admeasuring 1-33-52 H. Are. Sq mt (4) Block No. 306 admeasuring 0-24-28 H. Are. Sq.mt and (5) Block No 534 admeasuring 0-26-30 H. Are. Sq mt make severance as per order and allotted independent possession of the suit land by metes and bounds to the plaintiff and the defendants
- 4 For the enforcement of this order the certified copy of this order is to be send to Collector of Nadiad, Kheda.

- 5 The Hon'ble Collector or any gazetted subordinate of the Collector deputed by him in this behalf has to make implementation of this order at the location of the suit land and take the possession receipt from rival parties and done rojkama accordingly and send all concerned papers to this Court within 90 days from this order.
- 6 The order of cost of this suit will be decided as per the final decree of this suit
- 7 The preliminary decree will be drawn as per the order.

Pronounced in open Court today.

Date: 01/01/2026
Place: Kheda

Nikhil Chandrasen Jadhav
Additional Senior Civil Judge
Kheda
GJ01215

R.J. Jadeja