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Exhibit-27

IN THE COURT OF 6TH ADDITIONAL DISTRICT JUDGE,

KACHCHH – BHUJ.

Regular Civil Appeal No. 41/2023

APPELLANT/ ORI. PLAINTIFF:-

SURESHBHAI BHIKHABHAI JANGAM,

Aged: 54, Occu. Agriculturist,

R/o. Dhanji, Sukhpar,

Tal. Bhuj-Kachchh

Through Power of Attorney Holder,

Rajesh Manmohansinh Gohil,

Aged: 66, Occu. Agriculturist cum Business,

R/o. Bhuj-Kachchh

Vs.

RESPONDENTS/ ORIGINAL DEFENDANTS :-

1. BABUDERU SUDARDERU JANGAM,

Aged: 58, Occu. Agriculturist,

R/o. Dhanani, Sukhpar

Tal. Bhuj-Kachchh

2. RAMJI MAVJI PADHARA,

Aged: 74, Occu. Agriculturist,

R/o. Dhanani, Sukhpar

Tal. Bhuj-Kachchh

Appeal U/s. 96 read with Order XLI, R. 1 & 2 of Code of Civil Procedure, 1908.

A P P E A R A N C E :

1. L.A. **Mr. D.H.Thakker** for the Appellant.
2. Learned Adv. **Mr. M.H.Lodhia** for Respondent No. 1 & 2

-: J U D G M E N T :-

[1] The Appellant has preferred the present Regular Civil Appeal under Section 96 read with Order XLI, R. 1 & 2 of Code of Civil Procedure, 1908 (for short hereinafter referred as “*the Code*”) against the Judgment and decree Dtd. 27.12.2022 passed by Learned Principal Senior Civil Judge, Bhuj-Kachchh [in Short, referred as “ the **Learned Trial Court**”] in Regular Civil Suit No. 106 of 2018 whereby Learned Trial Court has rejected the suit filed by the Plaintiff and according the decree was drawn.

[2] The Appellant herein was original Plaintiff whereas Respondents were original Defendants in the Regular Civil Suit No. 106 of 2018, thus, for sake of brevity and convenience, hereinafter, they are referred as to their original status as Plaintiff and Defendants.

[3] Before entering into the merits of the case, at this juncture, it is imperative to refer brief facts of the Plaintiff’s Complaint and written statements submitted by the Defendants and also record and proceedings of the Learned Trial Court which reads as under :-

Brief Facts :-

The brief facts of the Plaintiff's suit are as under :-

a) In filing the suit, the plaintiff seeks a declaration and an injunction, claiming her share in the suit property. She states that the suit land bearing R.S. No. 86/1/paiki 7, named 'Sarvaro Moro,' and measuring 1-39-00 Hectares was owned and possessed by her father. Defendant No. 1 is the plaintiff's brother. According to the plaintiff, her father held the land under Section 7(1) of the Inam Abolition Act, as per revenue entry No. 317. After her father's death on 03.08.1964, the land was recorded in the names of the plaintiff, Defendant No. 1, and their mother, Valbai, via revenue entry No. 600. The plaintiff alleges that her brother, in collusion with revenue officers, later recorded the land solely in his own name. She claims a 50% share in the property, explaining that due to her age (70 years) and the fact that her brother managed all property matters, she was unaware of the changes to the revenue records. However, upon the recent issuance of a public notice for the sale of the property, she objected. Because the defendant attempted to sell the entire property without the legal right to do so, the plaintiff filed this suit to declare her 50% share, cancel the registered sale deed (No. 5356, dated May 23, 2018) executed in favor of Defendant No. 2, and obtain an injunction against any further transfer of the land.

b) Summons and notice were duly served upon the Defendants. Defendant No. 1 filed a written statement at Exhibit-22, asserting that the suit is baseless and barred by the statute of limitations. He denied the plaintiff's rights in the suit land,

claiming the suit was filed only due to rising land prices. Furthermore, Defendant No. 1 stated that a family settlement was reached vide revenue entry No. 600. He alleged that the plaintiff received a cash payment from him and his mother in exchange for relinquishing her rights to the property. He characterized the lawsuit as a 'money-grabbing tactic' and requested that the suit be dismissed. Defendant No. 2 filed a written statement at Exhibit-32, also denying the plaintiff's claims. He asserted that he is a *bona fide* purchaser for value without notice and sought the rejection of the suit. Additionally, he raised a preliminary objection regarding the improper valuation of the suit.

c) Learned Trial Court has upon going through the pleadings of both the parties under XIV of the Code framed issues at Exhibit- 38 which are as under :-

- (1) Whether the Plaintiff proves that she has 50% share in the suit property ? If yes, whether she is entitled to get possession of her share in the suit property ?
- (2) Whether the Defendants prove that there was family arrangement and Defendant No. 1 had given the share of the Plaintiff in the suit property in cash to the Plaintiff and therefore, she has no right now in the suit property ?
- (3) Whether the Plaintiff proves that the suit is filed within period of limitation ?
- (4) Whether the Plaintiff proves that the suit is valued properly and has paid the requisite Court Fee ?
- (5) Whether the Defendant No. 2 proves that he is bonafide purchaser against payment of full sale consideration without notice ?

(6) Whether the Plaintiff is entitled to get relief as prayed for ?

(7) What's order and Decree ?

d) Learned Trial Court has also accordingly replied the above issues after appreciating the evidence produced on the record.

(1) In Negative.

(2) In Affirmative.

(3) In Negative.

(4) In Negative.

(5) In Affirmative.

(6) In Negative.

(7) As per final order.

e) The Plaintiff has produced the following oral as well as documentary evidence.

ORAL EVIDENCE :-

Sr. No.	Ex. No.	Particulars / Name of Witness
1	55	Deposition of Power of Attorney of Plaintiff, Rajesh Manmohansinh Gohil

DOCUMENTARY EVIDENCE

Sr. No	Ex. No.	Description of Document
1	59	Village Form No. 7, S.N. 86/1/p7
2	60	Village Form No. 6, Entry No. 337
3	61	Village Form No. 6, Entry No. 2823

Sr. No	Ex. No.	Description of Document
4	62	Hazi Mazi Patrak
5	63	Village Form No. 6, Entry No. 94
6	64	Village Form No.6, Entry No. 602
7	65	Village Form No.7, Survey No. 86/1
8	66	Public Notice on 09.05.2018
9	67	Public Notice on 12.05.2018
10	68	Notice through Learned Adv. on 14.05.2018
11	69	Appeal No. 211/2020 under the Land Revenue Code, 2003 before the Collector, Bhuj
12	70	Agreement to Sell on Dtd.23.05.2018
13	76	General Power of Attorney of Plaintiff

DEFENDANT'S ORAL EVIDENCE :-

Sr. No.	Ex. No.	Particulars / Name of Witness
1	73	Deposition of Ramji Mavji Padhara

f) The Learned Trial Court has, after perusing the evidence of both the parties and upon hearing of the Learned Advocates for the respective parties, come to the conclusion and rejected the suit on 27.12.2022. Thus, being aggrieved and dissatisfied with the impugned judgment and decree of Learned Trial Court, the Appellant has preferred the present appeal before the District Court and subsequently transferred to this Court for disposal in accordance with law.

[4] Learned Advocate for the Appellant has filed written arguments at Exhibit- 25 and argued that, Learned Trial Court has not taken into consideration of the evidence produced by the Plaintiff. It is argued that, the present appeal is filed against the judgment and decree passed by Learned Trial Court which is ex-facie erroneous, contrary to the settled principles of law and based on the total misreading of the evidence on record. It is argued that, Learned Trial Court has failed to appreciate the burden of proof, as per Section 101 of the Indian Evidence Act, lay squarely upon the Plaintiff to prove their case yet the Court erroneously shifted this burden onto the Appellant. It is argued that, Learned Trial Court has not taken into consideration of material evidence at Exhibit- 60 & 63 which conclusively proves the rights over the suit property of Appellant. Learned Trial Court has committed a jurisdictional error by failing to the address the issue of Limitation. It is further argued that, Learned Trial Court relied upon the witnesses whose testimonies were riddled with material contradictions during the cross examination. It is argued that, the impugned judgment is based more on conjectures and surmises rather than on the strict legal proof required in civil litigation. It is therefore prayed to allow the present appeal and impugned judgment and decree deserves to be set aside.

[5] Per contra, Learned Advocate for the Respondent Mr. M.H.Lodhia has filed written arguments at Exhibit- 20 and argued that, the Plaintiff Hemlataben had already received her legal share in the form of a cash settlement at the time of her

marriage in 1960. It is argued that, the suit is legally unsustainable as it has been filed after an unreasonable delay of nearly 58 years. It is argued that, Respondent No. 2 is the bonafide purchaser. It is argued that, the Plaintiff's power of Attorney Rajesh Gohil lacks personal knowledge of the material facts. The respondents have been in open, continuous and peaceful possession of the property for over 60 years. It is argued that, the Plaintiff has not come before the court with clean hand. It is therefore submitted that, the suit is devoid of merit and thus, the present appeal requires to be dismissed with cost.

[6] Heard the arguments advanced by the rival parties, the following issues are required to be framed :

- I. Whether the the suit property is ancestral property and Appellant has half share in the suit property ?
- II. Whether the suit is filed within the period of limitation ?
- III. Whether the Plaintiff is entitled to get relief as prayed for ?
- IV. Whether the judgment and decree passed by Learned Trial Court is requires to be interfered ?
- V. What order?

[7] **Reply of above issues are as under :-**

- I. In Negative.
- II. In Negative.
- III. In Negative.
- IV. As per final Order.

// R E A S O N S //

[8] Before dwelling into the merits of the case, it is profitable to refer power of the Appellate Court under Order XLI, Rule 33 of the Code of Civil Procedure, 1908, which reads as under :-

33. Power of Court of Appeal.

The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees:

***Provided** that the Appellate Court shall not make any order under section 35A, in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order.*

[9] The jurisdiction of the first appellate Court while hearing the first appeal is very wide like that of the Trial Court and it is open to the appellant to attack all findings of fact or/and of law in first appeal. It is the duty of the first appellate Court to appreciate the entire evidence and may come to a conclusion different from that of the Trial Court. It is settled law that the first appellate court is the last fact finding court. **In the case of Jagannath v. Arulappa & Anr., (2005) 12 SCC 303**, while considering the scope of Section 96 of the Code, the Hon'ble Supreme Court in para 2 observed as follows:

"2. A court of first appeal can reappreciate the entire evidence and come to a different conclusion....."

The appellate court has jurisdiction to reverse or affirm the findings of the trial court. The first appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate court.

[10] Considering the above provisions and settled legal position, it appears that, the First Appellant Court has power to re-appreciate evidence recorded by the Trial Court and also empowered to reversing, varying and confirming the Judgment and decree of the Trial Court. Further, the first appellate Court is duty bound to deal with all issues framed by the Trial Court as well as framed by the first Appellate Court, but for that not necessary to restate the effect of evidence or reiterated reasons given by the trial Court when agrees with the view express by the trial Court. In view of the above, let us dwell into the merits of the case.

[11] Let me glance to the judgment delivered by the Hon'ble Apex Court in Janki Vashdeo Bhojwani and another Vs. Indusind Bank Ltd and ors reported in AIR 2005 SC 439 wherein it is held that, even power of attorney holder cannot depose in place and in stead of principal as only the principal can have a

personal knowledge and instead of which the principal is entitled to be cross examined. Herein the present suit, the Plaintiff's power of Attorney holder filed his evidence at Exhibit- 55. He cannot depose in place and in stead of the principal can have a personal knowledge. Further, it is settled principle of law that, in civil litigation, a plaintiff must prove their case based on their own evidence and cannot succeed solely by highlighting weaknesses in the defendant's case. The burden of proof lies entirely on the plaintiff to establish their title or claim, and they must stand on their own legs to win.

[12] Kept in mind the aforesaid principle, in order to prove the issues, the Plaintiff has relied upon the deposition of Power of Attorney Holder, Rajesh Manmohansinh Gohil, at Exhibit- 55. This witness has reiterated the facts as stated in the plaint. During the cross examination, he has stated that, he has come as a Power of Attorney holder of Suresh Bhikhalal Jangam. He stated that, Sadru Devu has a property located at Survey No. 86/1/p7. The land is in the Bhuj Sim. He has admitted that, he was not aware that 86/1/p7 and 86/1p5 are located at the same place. He was not aware how many pieces there are in 86/1/p7. It is admitted that, 86/1 paikie 1 has a total 7 pieces. It is admitted that, 86/1 pakiee 5 belong to him. He has admitted that he was not aware when Sunder Devu passed away and when Valbai passed away and also not known when Hemkuba passed away. It is admitted that, he filed the suit in the capacity of POA holder. He has denied the fact that, he had prepared a sale agreement/POA regarding the said land for Hemkuba. The Power of Attorney was given to him approximately one year ago. It is

admitted the fact that, it is true that Suresh Bhikhalal Jangam, as the POA holder of Hemlata Bhikhalal Jangam, filed the suit on 22/5/18. It is true that from the date of filing the suit on 22/05/2018 until 25/10/2020, Suresh Bhikhalal Jangam was conducting this suit. It is true that Suresh Bhikhalal Jangam is aware of all the proceedings of the Honorable Court for conducting the suit. It is true that Suresh Bhikhalal Jangam is 10 years younger than him. It is true that he only has information that this land is located in one place; he has no other information besides that. He has no information about where this land is or any other details. It is true that he cannot state the four boundaries (surroundings) of 86/1 Paiki 7, nor can he state whose fields are around it. It is admitted that he has never been visited to the land of R.S. No. 86/1. Therefore, he cannot say exactly where this land is located. It is true that Babu Devu, Sunder Devu, Jangam Ramji Mavji Padra sold this land; now he states, he do not know to whom it was soLearned It is true that the document has been presented after looking into this case. In that, the name of the buyer is Ramji Mavji Padra, but he does not remember the date. It is admitted fact that, name Babu Deru Sunder Deru Jangam is recorded in Entry No. 317. It is true that in the Entry, it is writen that the heirs of Unad Deru Jangam, Babu Deru Sunder Deru Jangam hold the land under Section 5(1) of Inam Abolition Act and in that old survey No. 42, measuring 3 Acres and 08 Gunthas, is mentioned as Entry No. 394. In the new Survey No. 831, it is measures 1-27 Are totaling 3 Acres and 6 Gunthas and Entry No. 600, old Survey No. 149, measuring 3 Acres and 17 Gunthas in its new survey No. 86 paikee 1, it is 1 Hectare and 39 Are. It is admitted that, Sunder Deru is the son of

Babu Deru. It is admitted that, he has met Sunder Deru. He do not know if Sunder Deru passed away in 1998. He has not purchased the land. It is not true that his land is situated adjacent to this land. He does not know that Survey No. 86/1 is a block of 7 pieces, in which his land is situated at 86/1 paikee 5. It is true that 86/1 paikee 7 belongs to Babu Deru Jangam. It is denied that, land 86/1 paikee 7 does not belong to Hemlataben Jangam. He has seen the revenue record of 86/1 paikee 7 but he does not remember the details right now. In response to the question that Hemlataben's name was removed from 86/1 paikee 7, he stated that the name was removed. He does not know when this name was removed. It is denied that, Hemlataben's name has not been in the revenue record from 1965 until today. It is denied that, he has given false testimony to help Sureshbhai despite not having knowledge of any facts.

[13] The Defendant has examined at Exhibit- 73 and he has reiterated the facts as stated in reply. During the cross examination, he has admitted that, he holds the agricultural land but he does not know exactly how many acres of agricultural land he owned. He does not have any land in Sukhpar area, he is the registered farmer in Sukhpar. He holds land in Bhuj area under Revenue Survey No. 46/2 which measures 3 Acres and 14 Gunthas. He was aware that Entry No. 600 in the old records was an inheritance entry. It is not true that, he was aware this was ancestral land. He does not know the relationship of the plaintiff, Hemlataben from whom he purchased the land. He does not know that, Plaintiff got the share by way of cash and on this ground, he has no any right over the suit property. He has

admitted that, he checked the entry No. 617. He has admitted that, he holds agricultural electricity connection in the disputed land and one room is there however, he does not remember the electricity connection number. He holds the land of 3 Acre and 17 Gunthas. He does not know about filling of any appeal before Mamlatdar, Dy. Collector etc in respect of the suit property. He has admitted that he has not obtained the bills of purchasing seeds or pesticide.

[14] At this stage, Learned Advocate for the Appellant has vehemently argued that, the suit property was the ancestral property. However, ancestral property refers to property that has been passed down through generations of a family without being divided or sold. It must have been inherited by the father from his father (grandfather), who inherited it from his father (great-grandfather), and so on. The lineage must remain unbroken whereas the self acquired property means, an individual gains a right to ancestral property by birth. Herein the present case, the Plaintiff claims that the suit property is ancestral property but it has not been inherited four generation. As per the case of the Plaintiff, she got the suit property from her father, Sundarbhai Deru. The revenue record vide Entry No. 600 reflects that after death of her father, she got the suit property inheritance. Hence, the Plaintiff has failed to prove that the suit property is the ancestral property.

[15] Furthermore, in the present suit, the Plaintiff filed the suit through Power of Attorney holder and during the cross examination, he replied most of the questions as not having

knowledge of the facts. The revenue records Exhibit- 60 shows that, Defendant No. 1 has sole owner and in possession of the suit property and he sold the suit property to Defendant No. 2 by receiving consideration. It also shows from this document that, the suit property was hold by the Defendant No. 1 in view of the Entry No. 600 made on 03.08.1964. Both the documents at Exhibit- 60 and Exhibit- 64 are more than 30-40 years. It means, the Defendant No. 1 enjoyed the suit property without any claim or interruption from the Plaintiff.

[16] The Defendant No. 1 raised the issue of oral partition and relinquishment of right by the Plaintiff before a years and years. However, it is well settled that, the oral partition is prevailed in Hindu Law and there is no need to execute registered relinquishment deed at each and every occasions. Hence, I answer the Issue No. 1 in Negative. Upon gone through the judgment of Learned Trial Court, Learned Trial Court has also held that, Defendant No. 1 holds the suit property since more then 30-40 years and the person who appeared before the Court is the power of attorney holder of Plaintiff and during his cross examination, he has stated that, he has no knowledge about the facts. Most of the questions, he replied that he was not aware about the facts. Hence, the issue rendered by the Learned Trial Court does not required any interference by this Court.

(17) ISSUE NO. 2 :-

In order to prove the issue No. 2 is concerned, it is the issue of period of Limitation. It is reflects from the record, more particularly, Revenue Entry No. 600 executed in 03.08.1964

which is produced on record at Exhibit- 60 whereas the Plaintiff has filed the suit in the year 2018. Thus, it can be said that, the Plaintiff has filed the suit after so long time. However, it is kept in mind that, in case of partition suit, no limitation is fixed but it does not mean that, the person who is claiming the right has liberty to file the suit after 30-40 years from the date of absolute use of one person. It is not the case of the Plaintiff that she was getting the mesne profit from the suit property during that period. Thus, the suit is clearly barred by law of limitation. Upon going through the order passed by Learned Trial Court on this issue, Learned Trial Court has also observed that, the Plaintiff has filed the suit in the year 2018 and claiming the right on the basis of the revenue record vide Entry No. 600 made on 1964 and thus, it clearly appears that the suit is filed after long period of 30-40 years. Hence, I answer the issue No. 2 in the Affirmative.

[18] ISSUE NO. 3:-

In order to prove the said issue, since the Defendant No. 1 was holding sole ownership and possession of the suit property since a years and years and the Plaintiff has not appeared personally in witness-box, the person who appeared in the witness box is the Power of Attorney holder of Plaintiff, he was not within knowledge about the facts of the suit matter. The Plaintiff has failed to prove his case on his own footing, he cannot get benefit of weakness of other side. Hence, the Plaintiff is not entitled to get any relief as prayed for.

[19] So far as the other issues observed by the Learned Trial Court is concerned, Learned Trial Court has held that, the suit

property was running on the name of the Defendant No. 1 in the revenue record since a long period and during that period, the Plaintiff has not taken any objections or claims. The Defendant No. 2 has purchased the suit property by paying consideration. Against that, the Plaintiff had taken objections but without having any proper documents in her favour. Hence, Learned Trial Court has held that, Defendant No. 2 is the bonafide purchaser against payment of full sale consideration without notice and answer the issue No. 5 accordingly.

[20] Therefore, considering the oral as well as documentary evidences produced by the parties before the Learned Trial Court, it transpires that the Learned Trial Court has assigned cogent and convincing reasons for arriving at the conclusion and to decide the right of the parties, in the present suit. There is no misconception of facts and law, in the judgment passed by the learned Trial Judge and the same is not required to be interfered and set aside. Therefore, I answer the above issues accordingly, and as the present appeal is required to dismiss, I pass the following order in the interest of the justice.

:- ORDER :-

- [1] The present appeal filed by appellants is hereby rejected.
- [2] The judgment and decree passed in Regular Civil Suit No. 106 of 2018 by Learned Principal Senior Civil Judge, Bhuj-Kachchh on 27.12.2022 is hereby confirmed.

[3] Record and proceeding of Regular Civil Suit No. 106 of 2018 is sent back along with present order to Learned Trial Court.

[4] No order as to costs.

Signed and pronounced in the open Court today 28th Day of April, 2026.

Date: 28.04.2026
Place: Bhuj

**[Veerat Ashok Buddha]
6th Additional District Judge,
Bhuj.
(GJ00702)**

/Rajesh Vaghela/