

Received on : 19-08-2015.

Registered on : 19-08-2015.

Decided on : 08-05-2026.

Duration : Y. M. D.

**IN THE COURT OF ADDITIONAL CIVIL JUDGE,  
KHAVDA AT KACHCHH.**

R.C.S No - 28/2024

Exhibit - 80

**1) NODE BAMBHANIYA ALANA**

Age : 55, Occupation : Farmer,

**2) LATE KARIMABAI D/O ALANA NODE**

(Through legal heirs)

2.1) NODE HUSEN ISMAIL

Age : 42, Occupation : Farmer,

2.2) NODE HAJRABAI ISMAIL

Age : 40, Occupation : Housewife,

2.3) NODE ABDULLA ISMAIL

Age : 38, Occupation : Farmer,

2.4) NODE MAMAD ISMAIL

Age : 27, Occupation : Farmer,

2.5) NODE DOSABAI ISMAIL

Age : 25, Occupation : Housewife,

2.6) NODE RESHMABAI ISMAIL

Age : 22, Occupation : Housewife,

**3) PURBAI D/O ALAN NODE**

Age : 52, Occupation : Housewife,

**4) MIRA ALANA BAMBHANIYA NODE**

(Through legal heirs)

4.1) MIYABAI W/O MIRA NODE

Age : 42, Occupation : Farmer,

4.2) HANIF MIRA NODE

Age : 18, Occupation : Farmer,

4.3) RASHIDA MIRA NODE T/H MIYABAI W/O

MIRA NODE

Age : 16, Occupation : Not Mentioned,

4.4) RASHID MIRA NODE T/H MIYABAI W/O

MIRA NODE

Age : 5, Occupation : Not Mentioned,

4.5) FATMABAI MIRA NODE T/H MIYABAI

W/O MIRA NODE

Age : 5, Occupation : Not Mentioned,

R./o. Dadhar Moti,

Presently R./o. Kharivav (Andhau)

Bhuj - Kachchh

..... **Plaintiffs**

V/s

**1) VALIYANIBAI MAMAD NODE**

Age : 70, Occupation : Housewife,

**2) AASHIYATBAI DINA NODE**

Age : 50, Occupation : Housewife,

**3) HAVABAI TAMACHI NODE**

Age : 45, Occupation : Housewife,

**4) MUKIMABAI TAMACHI NODE**

Age : 35, Occupation : Housewife,

R./o. Moti Dadhhar

Bhuj - Kachchh

..... **Defendants**

**SUIT FOR THE DECLARATION &**  
**PERMENANT INJUNCTION**

Advocate for Plaintiffs : Mr. M H RATHOD  
Advocate for Defendants : Mr. A H LODHIA

## **J U D G E M E N T**

### **1. SUMMARY OF PLAINTIFF'S CASE :**

- a. The brief facts of the plaintiff's case are that the agricultural land bearing Revenue Survey No. 266, admeasuring Hectare 1-85-00 Are, known as "Bandhi," situated within the revenue limits of Village Andhau, Taluka Bhuj, and recorded under Khata No. 4, presently stands recorded in the joint names of Plaintiff Nos. 1, 2, and 3, along with their deceased mother Humerabai Alana Bambhaniya, and in the names of the husband of Plaintiff No. 4/1 and father of Plaintiff Nos. 4/2 to 4/5, namely deceased Mira Alana Bambhaniya Node.
- b. The suit agricultural land was originally granted and vested in possession of the plaintiffs' predecessor, late Alana Bambhaniya Node, as an Inamdar under Section 7(1) of the Inam Abolition Act as "Gharkhed" land under old tenure rights, pursuant to Entry No. 20 in the Record of Rights concerning old Survey Nos. 1 and 2 (new Revenue Survey No. 266). On the basis of the said Entry No. 20, another mutation entry bearing No. 13 in respect of the new Revenue Survey No. 266 also came to be recorded in the name of late Alana Bambhaniya Node.
- c. Upon the demise of late Alana Bambhaniya Node, succession entries bearing Nos. 455 and 482 were mutated in respect of the said agricultural land. In

the proceedings relating to Entry No. 455, an endorsement was made directing submission of a fresh entry due to incomplete particulars, whereas Entry No. 482 came to be duly certified in the names of the legal heirs of deceased Alana Bambhaniya Node, being heirs Nos. 1 to 6.

- d. It is further stated that the plaintiffs had obtained an agricultural loan of Rs. 4,64,000/- from Bank of Baroda under the Gujarat Agricultural Credit Scheme on 14/10/2008 against the said agricultural land. Thus, according to the plaintiffs, the land bearing the aforesaid survey number, area, and description is ancestral property belonging to the plaintiffs, over which they are in lawful ownership, possession, and cultivation.
- e. The plaintiffs contend that the defendants have no right, title, or interest whatsoever in the suit land. However, the defendants falsely asserted rights over the suit land and created disputes with a view to unlawfully dispossessing the poor and illiterate agriculturist plaintiffs from their land.
- f. In furtherance thereof, the defendants instituted Regular Civil Suit No. 229 of 2014 before the Civil Court at Bhuj against Plaintiff Nos. 1 to 3 by making false averments and claiming ownership rights over the suit agricultural land.
- g. Upon receipt of summons/notices in the said suit, the plaintiffs, being persons of weak financial background and belonging to the agriculturist class, approached members of the community and

complained regarding the false litigation. Thereafter, it was decided that the dispute concerning the suit land should be resolved by religious leaders in accordance with Shariat law, and it was agreed that the plaintiffs in the said suit would unconditionally withdraw the proceedings.

- h. Accordingly, Plaintiff Nos. 1 to 3 accompanied the plaintiffs of the said suit to the Bhuj Court for the purpose of withdrawal of the suit. Since the understanding was that the suit was only to be withdrawn, the present plaintiffs did not engage any advocate or legal advisor. The advocate representing the plaintiffs in the earlier suit obtained signatures from them on a compromise writing on the representation that the same was required merely for withdrawal of the suit. Thereafter, all parties were taken before the Court by the said advocate.
- i. Before the Court, the plaintiffs were merely asked whether a compromise had been arrived at, to which they answered in the affirmative. Thereafter, all parties left the Court premises. The advocate also informed them that the matter had concluded and there was no need to appear again. Prior to withdrawal of the suit, a compromise deed on stamp paper had also been executed providing that the dispute would be decided in accordance with Shariat law.
- j. It is further averred that, due to good rainfall during the relevant period, approximately thirty days prior to filing of the present suit, the defendants and their

associates came upon the suit land with agricultural implements and attempted to cultivate the same, asserting that the land belonged to them pursuant to a decree passed in the civil suit. The defendants thereby obstructed the plaintiffs from carrying out agricultural activities and claimed ownership and possession over the land.

- k. The plaintiffs contended that no decision had yet been rendered by the religious authority under Shariat law. They had already produced documents evidencing their ownership before the religious authority and had requested the defendants to produce their documents as well so that a decision could thereafter be made in accordance with Shariat law. However, the defendants refused to heed the plaintiffs' request and attempted to forcibly enter the land. Upon the plaintiffs threatening to lodge a police complaint, the defendants left the place.
- l. Thereafter, on 05/08/2015, the plaintiffs obtained certified copies of the plaint, compromise pursis, orders, and decree passed in Regular Civil Suit No. 229 of 2014, and came to know that the defendants had taken undue advantage of their illiteracy and ignorance. Instead of obtaining unconditional withdrawal of the suit, the defendants had, by misrepresentation and fraud in the guise of compromise, procured a consent decree conferring ownership rights over the suit land in their favour.
- m. It is further alleged that, despite being aware of all material facts, the parties in Regular Civil Suit No.

229 of 2014 obtained the decree without impleading or consulting Mira Alana Node or his legal heirs, rendering the decree improper, illegal, and liable to be declared void and set aside.

- n. According to the plaintiffs, they never executed any document transferring ownership rights in favour of the defendants nor consented to such transfer. The defendants, by fraud and collusion and through improper joinder of parties, procured an unlawful decree in respect of the suit property.
- o. It is further contended that on 24/12/2014, an application at Exh. 9 was submitted before the Court of the learned 3rd Joint Civil Judge (Adhoc), Bhuj, stating that the suit was to be unconditionally withdrawn. However, on that date, the Court only passed an order permitting filing of the compromise and did not pass any order directing decree in terms thereof. Subsequently, on 03/01/2015, in the absence of the plaintiffs and without hearing them, a decree came to be passed. Hence, the said judgment and decree are alleged to be ex parte, irregular, unjust, and liable to be quashed and set aside.
- p. The plaintiffs have therefore prayed for setting aside the judgment and decree dated 03/01/2015 passed in Regular Civil Suit No. 229 of 2014 and for grant of declaration regarding ownership and possessory rights over the suit property along with permanent injunction.

**2. SUMMARY OF DEFENDANT'S DEFENCE :**

- a. Upon service of summons, the defendants appeared through their learned advocate and filed their written statement at Exh. 8. The defendants stated that, in Regular Civil Suit No. 229 of 2014 before the learned 3rd Adhoc Civil Judge, Bhuj, both parties were personally present before the Court on 24/12/2014 and jointly submitted a compromise application at Exh. 9 seeking a consent decree.
- b. It is stated that the Court personally verified each party, explained the implications of the consent decree, and obtained signatures of both plaintiffs and defendants. One community elder, Hasam Mamad, was also present. After hearing both parties, the Court accepted the compromise application.
- c. The defendants further contend that both parties reaffirmed their consent before the Lok Adalat on 03/02/2014, and accordingly, the Court passed a consent decree on 03/01/2015.
- d. According to the defendants, the disputed land bearing Survey No. 266 situated at Village Andhau, Taluka Bhuj, in fact belongs to the defendants, and the plaintiffs' names had been entered in the revenue records only due to inadvertence and mistake, which came to be rectified through the consent decree.
- e. The defendants assert that the plaintiffs had admitted in Regular Civil Suit No. 229 of 2014 that they had no ownership rights over the suit property. Therefore, according to the defendants, they possess

a prima facie case and lawful possession over the suit land.

- f. The defendants further contend that if they are restrained from exercising their rights over the land, they would suffer irreparable loss as they are carrying out agricultural activities and deriving livelihood therefrom. Hence, the defendants prayed for dismissal of the plaintiffs' application for injunction and dismissal of the suit with costs.

### 3. PRODUCTION OF EVIDENCE BY THE PARTIES:

- a. To prove the facts of this suit, the plaintiff has submitted the following oral as well as documentary evidence on record.

#### ORAL EVIDENCE:

Sr. No	Particulars	Exh.
1	Affidavit-in-evidence of Plaintiff No. 1, Node Bambhaniya Alana	37
2	Affidavit-in-evidence of Plaintiff No. 4/1, Miyabai W/o Mira Node	38
3	Affidavit-in-evidence of Husen Ismail Node	59
4	Affidavit-in-evidence of Plaintiff No. 3, Purbai Alana Node	62A
5	Affidavit-in-evidence of witness Hajikala Musa Node	66

## DOCUMENTARY EVIDENCES:

Sr.No	Particulars	Exh.
1	Certified copy of compromise deed	38
2	Copy of plaint in Regular Civil Suit No. 229/2014	39
3	Copy of application for drawing decree in Regular Civil Suit No. 229/2014	40
4	Certified copy of decree	41
5	Village Form Nos. 7 and 12	45
6	Certified copy of death certificate of Node Mira Alana	47
7	Succession Affidavit	48
8	Panchanama	49
9	Copy of mutation entries	50 to 53
10	Village Form No. 6 – Record of Rights	54 to 56

Thereafter, the plaintiffs closed their evidence vide pursis at Exh. 72. Pursuant to the order passed below Exh. 76, the defendants' right to lead evidence came to be closed.

#### 4. ISSUES FOR DETERMINATION :

My predecessor has framed the following issues, as outlined in Exhibit 30.

1. Whether the plaintiffs prove that they are the owners and in actual possession of the suit property?

2. Whether the plaintiffs prove that the defendants have no right, title, or interest in the suit property?
3. Whether the plaintiffs prove that the defendants fraudulently obtained the compromise regarding the suit property by taking advantage of the plaintiffs' ignorance?
4. Whether the plaintiffs prove that the defendants are attempting to dispossess them from the suit property without following due process of law?
5. Whether the suit is bad for non-joinder of necessary parties?
6. Whether the suit is barred by limitation?
7. Whether the plaintiffs are entitled to the reliefs prayed for?
8. What order and decree?

## **5. DISCUSSION :**

This Court deems it necessary to discuss Issue No. 7, at the outset since, if the suit itself is found to be barred by law and not maintainable, the plaintiffs would not be legally entitled to any of the reliefs claimed in the suit. Therefore, before entering into the merits of the dispute relating to title, possession, or alleged fraud, it becomes necessary to examine whether the present suit is maintainable in view of the statutory bar contained under Order XXIII Rule 3A of the Code of Civil Procedure, 1908.

### **ISSUE NO. 7:**

*(Whether the plaintiff is entitled to the reliefs claimed?)*

- I. In the present matter, the plaintiffs have prayed for setting aside the judgment and decree dated 03/01/2015 passed in Regular Civil Suit No. 229 of 2014 and have further sought declaration of ownership and possessory rights along with permanent injunction in respect of the suit property. The principal allegation of the plaintiffs is that the earlier compromise decree was obtained by fraud, misrepresentation, and by taking undue advantage of their illiteracy and ignorance.
- II. At this juncture, this Court deems it appropriate to consider the provisions contained in Rule 3A of Order XXIII of the Code of Civil Procedure, 1908, which specifically bars institution of a separate suit for setting aside a decree on the ground that the compromise on which such decree is based was not lawful. The legislative intent behind the said provision is to ensure finality of compromise decrees and to avoid multiplicity of proceedings by requiring a party challenging the validity of a compromise to approach the very Court which recorded the compromise.
- III. In this regard, this Court also takes into consideration the principles laid down by the Hon'ble Apex Court in *M/s. Sree Surya Developers and Promoters Vs. N. Sailesh Prasad and Others*<sup>1</sup>, wherein it has been held in Paragraph 8 as under:

“A party to a consent decree based on a compromise to challenge the compromise decree on the ground that the decree was not lawful i.e., it was void or voidable has to approach the same court, which recorded the compromise and a separate suit challenging the consent decree has

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<sup>1</sup> 2022 LiveLaw SC 143

been held to be not maintainable.”

- IV. Further, in Paragraph 10, the Hon’ble Supreme Court has observed as under:

“A mere clever drafting would not permit the plaintiff to make the suit maintainable which otherwise would not be maintainable and/or barred by law. It has been consistently held by this Court that if clever drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage.”

- V. Keeping the aforesaid statutory provision and settled principles of law in mind, this Court has carefully examined the pleadings of the plaintiffs as well as the evidence emerging from the cross-examination of the plaintiffs and their witnesses.
- VI. The plaintiffs have pleaded that in the earlier Regular Civil Suit No. 229 of 2014, community elders and religious leaders intervened and it was decided that the matter would be settled in accordance with Shariat law and that the earlier suit would merely be withdrawn. According to the plaintiffs, believing that only withdrawal proceedings were being undertaken, they did not engage any advocate and signed documents without understanding their contents. It is their case that the defendants, by taking undue advantage of their illiteracy and ignorance, procured a compromise decree in their favour instead of unconditional withdrawal of the suit.
- VII. However, the admissions made during cross-examination materially affect the case of the plaintiffs. Plaintiff No. 1, namely Node Bambhaniya Alana, has categorically admitted that community elders had assembled for

discussions regarding the earlier suit and that thereafter all parties had gone to the Court. He has further admitted that before appearing before the Court all parties had met the elders. Most importantly, he has admitted that the learned Judge had obtained consent of the parties regarding the compromise before the Court.

- VIII. Plaintiff No. 1 has also admitted that the document shown at Mark 3/17 bears his signature and photograph. Though he attempted to state that he did not know the contents thereof, the execution of the document itself has not been denied. He has also admitted the involvement of community elders and religious persons including Node Juma Isha, Hasanbhai, and Maulvi Abubakar in the settlement process.
- IX. Further, the said witness voluntarily stated that a compromise had indeed taken place, though according to him it was not stated that the same pertained to the suit land. Thus, participation in compromise proceedings and existence of compromise documents stand substantially admitted.
- X. Similarly, Plaintiff Witness Hajikala Musa Node has admitted that meetings had taken place in the presence of religious leaders for settlement purposes and further admitted that compromise proceedings had taken place before the Lok Adalat, though he attempted to contend that certain parties were kept uninformed.
- XI. Likewise, Plaintiff No. 3, namely Purbai Alana Node, has admitted that the decree passed in Regular Civil Suit No. 229 of 2014 was never challenged before the District Court.

- XII. Thus, from the cumulative effect of the pleadings and evidence on record, it clearly emerges that the plaintiffs are essentially seeking to avoid and nullify the compromise decree passed in Regular Civil Suit No. 229 of 2014 by alleging that the compromise was unlawful and obtained by fraud and misrepresentation. However, such challenge, in view of the express bar contained under Order XXIII Rule 3A of the CPC, could only have been raised before the same Court which recorded the compromise.
- XIII. This Court is of the considered opinion that the plaintiffs, by artful drafting of the plaint, have attempted to create an independent cause of action by couching the reliefs in the form of declaration of ownership and permanent injunction, though in substance the entire suit is founded upon challenge to the earlier compromise decree. The real grievance of the plaintiffs is against the compromise decree itself and the alleged invalidity of the consent recorded therein. Therefore, merely because the plaint is drafted in the form of a declaratory suit would not take the matter outside the statutory bar contained in Order XXIII Rule 3A of the CPC.
- XIV. In view of the clear admissions of the plaintiffs regarding their participation in the earlier compromise proceedings, their appearance before the Court, existence of compromise documents bearing their signatures, and recording of consent by the Court, this Court finds that the present suit is, in substance, a challenge to the earlier compromise decree. Consequently, in light of the statutory bar under Order XXIII Rule 3A of the CPC and the law laid down by the Hon'ble Apex Court in *M/s. Sree Surya*

*Developers and Promoters Vs. N. Sailesh Prasad and Others*, the present suit is not maintainable in law.

- XV. Accordingly, this Court is of the considered opinion that the plaintiffs are not entitled to the reliefs prayed for in the present suit.

**Hence, Issue No. 7 is answered in the Negative.**

Since Issue No. 7 has been decided in the negative and this Court has already held that the suit itself is not maintainable in view of the statutory bar under Order XXIII Rule 3A of the Code of Civil Procedure, 1908, it necessarily follows that no further adjudication on the remaining issues is required. Once the suit is found to be not maintainable, all other issues framed in the matter become redundant and academic in nature, and therefore do not call for any separate findings. Accordingly, the suit deserves to be dismissed on this ground itself.

**FINAL ORDER**

1. The present suit of the plaintiffs is hereby dismissed.
2. The interim relief, if any granted earlier, stands vacated forthwith.
3. Parties shall bear their own costs.
4. Decree be drawn accordingly.

Pronounced in open court today on 08<sup>th</sup> May, 2026.

Dated : 08/05/2026

Bhuj

**Bhavyesh Navinchandra Trivedi**

Additional Civil Judge,

Khavda at Kachchh

(GJ 01763)