

GJLV010012812026



Received on : 27 / 05 / 2026

Registered on : 27 / 05 / 2026

Decided on : 30 / 07 / 2026

Duration : YY MM DD
01 02 03

**BEFORE THE HON'BLE ADDITIONAL DISTRICT JUDGE,
MAHISAGAR AT LUNAWADA.**

Regular Civil Appeal No. 24 of 2026

Exh. :-

Appellants :-

1. Legal heirs of Decd. Zalubhai Bhurabhai Khant

1/1. Laliben Wd/o. Zalubhai Bhurabhai Khant	70	Agriculture
1/2. Kankuben D/o. Zalubhai Bhurabhai Khant	40	– " –
2. Virabhai Zalubhai Khant	45	– " –
3. Maheshbhai Virabhai Khant	28	– " –
4. Arvindbhai Virabhai Khant	25	– " –

5. Legal heirs of Decd. Laxmanbhai Bhurabhai Khant

5/1. Dhuliben Wd/o. Laxmanbhai Bhurabhai Khant	80	– " –
5/2. Ambaben D/o. Laxmanbhai Bhurabhai Khant	50	– " –
5/3. Pratapbhai Laxmanbhai Khant	45	– " –
6. Shiviben Wd/o. Chhatrabhai Bhurabhai Khant	70	– " –
7. Salambhai Chhatabhai Khant	45	– " –
8. Lilaben D/o. Chhatrabhai Bhurabhai Khant	35	– " –
9. Savitaben D/o. Chhatrabhai Bhurabhai Khant	35	– " –
10. Ramilaben D/o. Chhatrabhai Bhurabhai Khant	35	– " –

All R/o. Khant Faliyu, Malekpur,
Tal. Lunawada, Dist. Mahisagar.

VERSUS**Respondents :-*****1. Legal heirs of Decd. Nanabhai Bhurabhai Khant***

1/1. Khant Shantaben Wd/o. Nanabhai Bhurabhai	65	HHWork
1/2. Khant Atulbhai Nanabhai	45	Agri.
1/3. Khant Dharmeshbhai Nanbhai	40	– " –
1/4. Khant Lataben D/o. Nanabhai	48	HHWork
1/5. Khant Ashaben D/o. Nanabhai	37	– " –
All R/o. Khant Faliyu, Malekpur, Tal. Lunawada, Dist. Mahisagar.		

2. Legal heirs of Decd. Arjanbhai Bhurabhai Khant

2/1. Shakuben D/o. Arjanbhai Bhurabhai Khant	55	Agri.
2/2. Revaben D/o. Arjanbhai Bhurabhai Khant	50	HHWork
2/3. Babubhai Arjanbhai Khant	50	Agri.
2/4. Daxaben Arjanbhai Bhurabhai Khant	48	– " –
R/o. Bhula Khant ni Muvadi, Po. Malekpur, Tal. Lunawada, Dist. Mahisagar.		

Appearance :-*Ld. Advocate Mr. B. R. Patel for appellants**Ld. Advocate Mr. J. J. Makwana for respondents***-:: J U D G M E N T ::-**

- (1) The present appeal is filed by the appellants under Section 96 of the Code of Civil Procedure (*in short referred as 'CPC'*) challenging the Judgment dated 11.09.2024 passed by Ld. Additional Senior Civil Judge, Lunawada in Regular Civil Suit No.12/2018.

- (2) Here, in this appeal, the appellants are the original defendants Nos.1 to 4 and 6 to 11 whereas the respondents are the original plaintiff and defendant no.5 respectively. But, for the sake of convenience, parties shall be referred as their original status in the suit, hereinafter for the discussion.
- (3) Brief facts of the plaintiff's suit before the Ld. Trial Court are that the plaintiff and defendants no.1, 5, 6 are real brothers whereas defendant nos.2 to 4 and 7 to 11 are legal heirs of plaintiff's brothers. That the plaintiff's father deceased Bhurabhai Ujmabhai Khant was owned and possessed agricultural lands at village Malekpur and Bhula Khant ni Muvadi wherein, during the life time of deceased Bhurabhai, his sons have constructed dwelling houses and living with their family. But after his death, the agricultural land and houses were distributed amongst his legal heirs, in presence of family members and panchas, whereby the house no.387 situated on block survey no.96 of village Malekpur, Tal. Lunawada along with open land on front and back side, came into share of the plaintiff but said distribution was not mutated in the revenue record. It is further submitted that the plaintiff is serving in the irrigation department and living out side the village, and as the defendant no.1 was not having any dwelling house, therefore the plaintiff has given him the house no.387 to live in and the defendant no.1 has also executed a consent agreement on 17.04.2016. That the said house is running under ownership of the plaintiff, in Gram Panchayat. The

plaintiff further submitted that the said house was in dilapidated condition and he repaired that house as make it proper as to live in by spending Rs.50,000/- and the plaintiff is paying all the taxes of the house. But now the defendant no.1 and his sons, defendant nos.2 to 4, were trying to grab the said house from the plaintiff and on 27.02.2018, they threatened the plaintiff that he has no any right, title over the house and told him to leave the house. Therefore the plaintiff has filed the suit for declaration and permanent injunction against the defendants as to suit property bearing house no.387 situated on block survey no.96 of village Malekpur, Tal. Lunawada.

- (4) On being served, the defendants no.1 to 4 and 6 appeared through their advocate before the Ld. Trial Court and filed reply vide Exh.40 *inter alia* denying the facts of the plaint and contended that the plaintiff has suppressed material facts for filing the suit. They have admitted the family partition but the dwelling house of their father, on survey no.96, is came into share of the plaintiff as well as the dwelling houses are running on different names in the panchayat. But they have denied that the plaintiff has given his house to the defendant no.1 as he was not having any dwelling house as well as the house no.387 is owned and possessed by the plaintiff. It is contended that the house no.387 is ancestral property and the defendant no.1 is continuously living therein since before the death of his father. That, after the death of Bhurabhai, the said house is transferred to the defendant no.1 by way of ancestral right

and he is owner and in possession of that house. The plaintiff has tempted the defendant no.1 and deceived him and in connivance with the Talati-cum-Mantri of Malekpur, transferred the suit property in his name. The plaintiff has filed false suit to grab the suit property from the defendant no.1 and therefore requested to dismiss the suit of the plaintiff.

- (4.1) The defendants no.5 to 7 and 11 appeared themselves and filed reply vide Exh.32 wherein they have denied most of the facts of the plaint and further contended that as per family partition dated 17.04.2016, the house no.387 came into share of the plaintiff and he is not having any right, title over other properties.
- (5) After considering the evidence adduced by the parties as well as after hearing both the sides, the Ld. Trial has allowed the suit of the plaintiff vide Judgment dated 11.09.2024. Being aggrieved and dissatisfied with the Judgment passed by the Ld. Trial Court, appellants / defendants have preferred the present appeal under section 96 of the CPC.
- (6) The appellants have filed this appeal on the grounds that Ld. Trial Court has committed grave error in evaluating the evidence produced before him. The Trial Court ought to observe that the original plaintiff, in connivance with the Talati cum Mantri, has transferred the suit property in his name out of the knowledge of the defeating no.1. The Ld. Trial Court has passed only judgment in the suit and not a

decree therefore also the said judgment is required to be set aside. The Trial Court has not considered the facts narrated in written statements as well as affidavits of the defendants and thereby committed a grave error. The defendants have examined Talati cum Mantri, Malekpur who deposed that the resolution as to transfer of the suit property was not passed in the Gram Panchayat but the Trial Court has not considered said facts and passed an erroneous judgment. Therefore, the judgment of the Ld. Trial Court is liable to be is required to be quashed and set aside.

- (7) Summons of this appeal were issued upon the respondents and thereby they appeared through the Ld. Advocate but have not filed reply to this appeal.
- (8) Having regards to the contentions raised by rival parties, it is pertinent to note that, considering the pleadings of the parties to the suit for final adjudication, following points have been arisen for the determination of this appeal.
 1. Whether the plaintiff proves that the suit property is distributed amongst plaintiff and defendants?
 2. Whether the plaintiff proves that, in the partition, the suit property came into his share?
 3. Whether the defendant no.1 proves that the suit property is the ancestral property owned and possessed by him?
 4. Whether the defendant no.1 proves that he is living in the disputed house since the time of his forefathers till today?
 5. Whether the defendant no.1 to 4 prove that the plaintiff has illegally transferred the disputed house in his name?

6. Whether the plaintiff is entitled to get relief as prayed for in the plaint?
 7. Whether the judgment passed by Ld. Additional Senior Civil Judge, Lunawada in RCS No.12/2018 on 11.09.2024 is perverse, erroneous, arbitrary and against the provision of law?
 8. What order?
- (9) Reply of the above points for the reasons recorded herein are as under.
1. In affirmative,
 2. In affirmative,
 3. In negative.
 4. In negative.
 5. In negative.
 6. In affirmative,
 7. In negative.
 8. As per final order.

-:: REASONS ::-

- (10) I have heard Ld. Advocates appearing for the respective parties and perused the appeal memo as well as the documents adduced on record. I have also gone through the impugned Judgment passed by the Ld. Trial Court.
- (11) The ratio laid down by the Hon'ble Apex Court in **Civil Appeal No.670-671 of 2011 in case of C. Venkata Swamy vs. H. N. Shivanna (D)** are required to be considered and it is held that:-

"11. It is a settled principle of law that a right to file first appeal against the decree under Section 96 of the Code is a valuable legal right of the litigant. 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 arrive at its own independent conclusion, for reasons assigned, either of affirmance or difference.

12. Similarly, the powers of the first Appellate Court while deciding the first appeal are indeed well defined by various judicial pronouncements of this Court and are, therefore, no more res integra. It is apposite to take note of the law on this issue.

13. As far back in 1969, the learned Judge – **V.R. Krishna Iyer, J (as His Lordship then was the judge of Kerala High Court) while deciding the first appeal under Section 96 of the Code in Kurian Chacko vs. Varkey Ouseph, AIR 1969 Kerala 316**, reminded the first Appellate Court of its duty to decide the first appeal. In his distinctive style of writing with subtle power of expression, the learned judge held as under:

“1. The plaintiff, unsuccessful in two Courts, has come up here aggrieved by the dismissal of his suit which was one for declaration of title and recovery of possession. The defendant disputed the plaintiff's title to the property as also his possession and claimed both in himself. The learned Munsif, who tried the suit, recorded findings against the plaintiff both on title and possession. But, in appeal, the learned Subordinate Judge disposed of the whole matter glibly and briefly, in a few sentences.

2. An appellate court is the final Court of fact ordinarily and therefore a litigant is entitled to a full and fair and independent consideration of the evidence at the appellate stage. Anything less than this is unjust to him and I have no doubt that in the present case the learned Subordinate Judge has fallen far short of what is expected of him as an appellate Court.

3. Although there is furious contest between the counsel for the appellant and for the respondent, they appear to agree with me in this observation.....” (Emphasis supplied)

14. This Court also in various cases reiterated the aforesaid principle and laid down the powers of the Appellate Court under Section 96 of the Code while deciding the first appeal. We consider it apposite to refer to some of the decisions.

15. In **Santosh Hazari vs. Purushottam Tiwari (Deceased) by L.Rs. (2001) 3 SCC 179**, this Court held (at pages 188-189) as under:

“15.....the appellate court has jurisdiction to reverse or affirm the findings of the trial court. 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.....while reversing a finding of fact the appellate court must come into close quarters with the reasoning assigned by the trial court and then assign its own reasons for arriving at a different finding. This would satisfy the court hearing a further appeal that the first appellate court had discharged the duty expected of it.....”

16. The above view was followed by a three-Judge Bench decision of this Court in **Madhukar & Ors. v. Sangram & Ors., (2001) 4 SCC 756**, wherein it was reiterated that sitting as a Court of first appeal, it is the duty of the High Court to deal with all the issues and the evidence led by the parties before recording its findings.

17. In **H.K.N. Swami v. Irshad Basith, (2005) 10 SCC 243**, this Court (at p. 244) stated as under: (SCC para 3)

“3. The first appeal has to be decided on facts as well as on law. In the first appeal parties have the right to be heard both on questions of law as also on facts and the first appellate court is required to address itself to all issues and decide the case by giving reasons. Unfortunately, the High Court, in the present case has not recorded any finding either on facts or on law. Sitting as the first appellate court it was the duty of the High Court to deal with all the issues and the evidence led by the parties before recording the finding regarding title.”

18. Again in **Jagannath v. Arulappa & Anr., (2005) 12 SCC 303**, while considering the scope of Section 96 of the Code, this Court (at pp. 303-04) observed as follows:

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

19. Again in **B.V Nagesh & Anr. vs. H.V. Sreenivasa Murthy, (2010) 13 SCC 530**, this Court taking note of all the earlier judgments of this Court reiterated the aforementioned principle with these words:

“3. How the regular first appeal is to be disposed of by the appellate court/High Court has been considered by this Court in various decisions. Order 41 CPC deals with appeals from original decrees. Among the various rules, Rule 31 mandates that the judgment of the appellate court shall state:

(a) the points for determination;

- (b) the decision thereon;
- (c) the reasons for the decision; and
- (d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.

4. 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. Sitting as a court of first appeal, it was the duty of the High Court to deal with all the issues and the evidence led by the parties before recording its findings. The first appeal is a valuable right and the parties have a right to be heard both on questions of law and on facts and the judgment in the first appeal must address itself to all the issues of law and fact and decide it by giving reasons in support of the findings. (**Vide Santosh Hazari v. Purushottam Tiwari, (2001) 3 SCC 179** at p. 188, para 15 and **Madhukar v. Sangram, (2001) 4 SCC 756** at p. 758, para 5.)

5. In view of the above salutary principles, on going through the impugned judgment, we feel that the High Court has failed to discharge the obligation placed on it as a first appellate court. In our view, the judgment under appeal is cryptic and none of the relevant aspects have even been noticed. The appeal has been decided in an unsatisfactory manner. Our careful perusal of the judgment in the regular first appeal shows that it falls short of considerations which are expected from the court of first appeal. Accordingly, without going into the merits of the claim of both parties, we set aside the impugned judgment and decree of the High Court and remand the regular first appeal to the High Court for its fresh disposal in accordance with law.”

- (12) The main controversial question between the parties to the suit is that whether the subject material of the suit is ancestral property or not? and second question is whether partition amongst the parties to the suit took place or not? and on behalf of the defendant no.1, counter blast / counter reply submitted and raised the dispute that he is in occupation and possession as to suit property since the ear of their forefather and it is still continue.

(12.1) It is the duty and obligation on the part of the plaintiff to prove the facts that there was partition took place amongst his family members and under the guise of partition he became the owner and occupier of the property in question i.e. house according to partition terms and covenant.

(12.2) Civil right in the civil suit can be decided on applying the principle of preponderance of probability and plaintiff has submitted one affidavit under Order XVIII Rule 4 of the CPC with regards to examination-in-chief vide Exh.48 and, by and large, affidavit of examination-in-chief consist of the facts of the pleadings and the boundaries of the house no.387 are mentioned. Cause of action is very material to determine the rights of the party which is very material and for proving occupation and possession as to house. One assessment abstract vide Exh.50 of Malekpur Gram Panchayat has been adduced. On perusal of the assessment form of house no.387, the property owner's name is denoted as 'Khant Nanabhai Bhurabhai' and said assessment form abstract issued by the Panchayat in the year 2015 – 2016. plaintiff has paid the tax in the panchayat as to property and receipt vide Exh.51, dated 20.06.2016 is adduced and plaintiff has squarely relied upon Exh.50 and Exh.51 as the supporting proof and plaintiff has raised dispute that there was no partition took place amongst the parties to the suit. But preponderance of probability is not a scientific or mathematical formula or it can be decided after considering the pleading, proof and in that support the proving facts and

mere examination-in-chief are not sufficient. After conducting cross-examination of the parties to the suit, the entire evaluation of evidence must be considered and evidences i.e. documentary and oral, must be taken into consideration as a whole. No peak and choose formula can be adopted and admission during the course of recording of evidence which are relevant to the facts of the case are taken into consideration. Any admission made by parties to the suit beyond the pleadings are not a clinching and cogent evidence. In pursuant to that, plaintiff has admitted in his cross-examination that defendant no.1 – Zalubhai was carried on service in irrigation department and he was also doing job in irrigation department. It is further admitted that till the year 2014-15, name of Zalubhai was mentioned in the Panchayat record and most important facts as refused that when the father of plaintiff passed away, the name of Zalubhai entered as a transferee and other facts has also stated that there is other house having by him. Plaintiff has further admitted voluntarily that there was no house in the possession of defendant no.1 therefore the house no.387 has been handed over to defendant no.1 for dwelling house purpose and no question has been asked by the Ld. Advocate for the defendants as to assessment abstract form vide Exh.50 and tax receipt vide Exh.51. To prove ownership, one documentary evidence vide Exh.50 has adduced by the plaintiff and against it defendants have not submitted any evidence.

(13) In the civil suit, pleadings of the parties to the suit are very

important and any party to the suit will not go beyond the pleadings and defendants no.5 to 7 and 11 have submitted the written statement vide Exh.32 and they have unanimously admitted the facts of the plaintiff's suit. But here, in this case, the plaintiff has raised dispute against not only defendants no.5 to 7 and 11 but defendants no.1 to 4 and 6 also. Therefore, to decide the controversial question, each and every part of the written statement are taken into consideration and defendant no.1 to 4 as well as legal heirs of defendant no.6 have submitted the written statement vide Exh.40 before the Ld. Trial Court.

- (14) Ld. Advocate for the defendants no.1 to 4 and 6 has strenuously argued that whatever documents adduced by the defendants showing that the possession of the disputed house is with the plaintiff and amongst the plaintiff there was partition took place is the liability on the shoulder of plaintiff. But plaintiff has not adduced any registration evidence about partition and father of the plaintiff had passed away in the year 1990 and defendant no.1 is residing in the disputed house since long back. The wife and daughter of defendant no.1 have submitted oral evidence as to same and defendant no.1 to 4 and 6 are in the occupation and possession of the property in question and witness on behalf of the defendants has also supported. Talati cum Mantri, Nikitaben, has been examined during the course of trial vide Exh.118 wherein assessment form abstract vide Exh.119 to 121 are adduced and in the year 2010-11 house was on the name of defendant no.1 Zalubhai

and the name of Zalubhai was entered after the death of his father. Thus name of the defendant no.1 was entered into suit property record from 2010 to 2015 and defendants are succeed to prove the occupation and possession and whatever drafting vide Exh.53 has been adduced by the plaintiff is on Rs.100/- stamp paper and it is not proved by the plaintiff. Therefore plaintiff is not an owner and occupier of the suit property.

- (15) On perusal of the stamp paper writing, amongst the family members of the parties to the suit, executed and when family members are entered into family arrangement or amicable settlement as to ancestral property and therefore it is *sine qua non* or condition precedent for family members to register the document of Rs.100/- stamp paper writing before the Office of Sub-Registrar and Exh.53 cannot be discarded as a straight way because writing was executed on Rs.100/- stamp paper on dated 17.04.2016 and it is categorically admitted by defendant no.1 – Zalubhai Bhurabhai that he is not having any house and house no.387 was handed over to him for the purpose of dwelling house. Therefore, he was in the occupation and possession of the disputed house no.387 and considering the preponderance of probability, the unregistered document for family members settlement cannot be ignored and by the consent of defendant, the disputed house is transferred on the name of plaintiff and when consent partition took place and plaintiff is in occupation, possession and ownership of the house no.387 and therefore right, title and interest of the plaintiff

cannot be breached. In the assessment form abstract, name of the plaintiff is mentioned and in the family settlement of family arrangement deed between the family members are not compulsory to register and stamp paper recital are clinching and cogent evidence and it is absolutely supported the pleadings of the plaintiff.

(16) Therefore, from the above discussion, this Court is opined that the judgment passed by the Ld. Trial Court i.e. Ld. Additional Senior Civil Judge, Lunawada in RCS No.12/2018 on dated 11.09.2024 is just and proper. The reasons recorded, observations made, findings given by Ld. Trial Court in its judgment are not erroneous, arbitrary and not perverse, therefore, no need to interfere therein and looking to the findings given by Ld. Trial Court, it is not against the provision of law. However, of course, being an Appellate Court, it is the duty to add some findings and reasons for the adjudication of present appeal, that is why, this Appellate Court has categorically discussed in details hereinabove but this Appellate Court has included some findings additional to the observations made by the Ld. Trial Court. So, considering the merits of the case, judgment passed by the Ld. Trial Court is required to be affirmed and also deserves to be affirmed. Hence, Point No.1 to 7 are decided accordingly and the following Order is passed for Point No.8 in the interest of justice.

:- ORDER :-

1. The present appeal of the appellants is hereby dismissed and the judgment passed on 11.09.2024 by the Ld. Additional

Senior Civil Judge, Lunawada in Regular Civil Suit No.12/2018 is hereby confirmed.

2. The Ld. Trial Court be intimated immediately regarding this judgment.
3. R & P be sent to the Ld. Trial Court.
4. Decree be drawn accordingly.
5. No order as to costs.

Pronounced in the open Court today
on this 30th day of July, 2026.

Date : 30.07.2026
Lunawada.

(Naresh Girikant Dave)
Additional District Judge,
Mahisagar at Lunawada.
[GJ00467]