

GJMH010009282018



Presented on	04.03.2013
Registered on	02.04.2018
Decided on	05.05.2026
Duration	Year-Month-Days
	08-01-03

**IN THE COURT OF PRINCIPAL DISTRICT JUDGE,
MAHESANA.**

[BEFORE A.L.VYAS]

REGULAR CIVIL APPEAL NO.30 OF 2018

Exh.27

APPELLANT (ORIG. PLAINTIFF):-

Patel Babubhai Somnath
(since deceased through his legal heir)
Kusumben W/o. Mahendrabhai Patel &
Daughter in-law of Mahendrabhai Babubhai
Patel, aged about 68 years, R/o. Vamaj,
Tal. Kadi, Dist. Mahesana.
At present at: Uttar Gujarat Society, Civil Road,
Ahmedabad.

VERSUS

RESPONDENT (ORIG. DEFENDANT):-

Heirs of deceased Patel Kantibhai Somnath
1. Patel Vijiba W/o. Kantibhai Somnath.
2. Patel Prakashbhai Kantibhai

Principal District Judge,
Mahesana.

3. Patel Kamleshbhai Kantibhai

All resident of: Vamaj, Tal. Kadi,
Dist. Mahesana.

**SUBJECT:- APPEAL UNDER SECTION 96 OF THE CIVIL
PROCEDURE CODE, 1908.**

APPEARANCE :

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Mr. M.M. Pathan, Ld. Advocate for appellants.
Mr. S.D. Yogi, Ld. Advocate for respondents.

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JUDGMENT

1. The appellant has preferred present appeal u/s.96 of the Code of Civil Procedure, 1908 against the judgment and decree dated 08/11/2012 passed by the learned 2nd Additional Civil Judge, Kadi in Regular Civil Suit No.45 of 2006.
2. The appellant – Patel Babubhai Somnath was the original plaintiff, whereas respondent- Patel Kantibhai Somnath was the original defendant before learned Trial Court. For the sake of brevity and convenience, the parties hereinafter are referred to as in this judgment as per their original status before the trial court. The Code of Civil Procedure, 1908 is hereinafter be referred to as “Code”.
3. The facts leading to the Suit, in nut-shell, as under:-
The plaintiff is resident of village Vamaj, Tal. Kadi and cultivating the land of Survey No.182/2 of Block No.226,

Principal District Judge,
Mahesana.

situated at Mouje: Vamaj, Tal. Kadi (hereinafter referred to as suit land). Initially, the uncle of the plaintiff Shankarbhai Hemdas, during his life tenure and with consent of his daughter Anandiben, equally divided the suit land between the plaintiff and defendant. The suit land is known as “Hirudivalu Khetar”. The northern portion of suit land admeasuring 0 Acre- 27 Gunthas came to the share of defendant Kantibhai Patel and southern portion of suit land admeasuring 0 Acre- 27 Gunthas came to the share of plaintiff Babubhai Patel. A writing was executed on 18/06/1979 with consent of plaintiff, defendant and all four brothers. The uncle of plaintiff Shankardas Hemdas leaving behind his legal heir Anandiben. On 03/08/2005, a consent deed executed by Anandiben in presence of her family elders and thereby the plaintiff and defendant have agreed to do all the social rituals of Anandiben. Thus, since 1979, the plaintiff became an owner. Thereafter, the defendant has deleted the name of plaintiff from the revenue record and tried to obstruct in the possession of the plaintiff. Thus, plaintiff constrained to file present suit and prayed for the relief as sought for in the Suit.

4. The defendant duly served with the summons/ notice issued by the learned Trial Court. The defendant appeared through his learned Advocate and filed Written Statement vide Exh.18 denying the contentions raised in the suit. The defendants have mainly averred that defendant is in

ownership and possession of the suit property and plaintiff has no right, title and interest over the suit property. The defendant has denied the equal distribution of suit property amongst the plaintiff and defendant with consent of Anandiben in the year 1979. The plaintiff is living at Ahmedabad since long and plaintiff is not having his properties at village Vamaj. The defendant is paying all the taxes of suit property since 1963 and in possession of the suit property. Thus, it is requested to dismiss the suit of the plaintiff with cost.

5. Considering oral as well as documentary evidence produced on record and also considering the rival arguments canvassed by both the parties, learned Trial Court was pleased to dismiss the suit of the plaintiff.
6. Being aggrieved by and dissatisfied with the judgment and decree dated 08/11/2012 passed by the learned 2nd Additional Civil Judge, Kadi in Regular Civil Suit No.45 of 2006, present appeal has been preferred on the grounds and facts stated in the memo of the appeal.
7. Heard learned Advocate Mr. M.M. Pathan appearing on behalf of the appellant. Learned Advocate for the appellant has submitted that plaintiff has filed the Regular Civil Suit No.45 of 2006 in the court of Civil Judge, Kadi for declaration and perpetual injunction. After leading the evidence and hearing of both the parties, learned 2nd Additional Civil Judge, Kadi was pleased to dismiss the

suit of the plaintiff. Feeling aggrieved by and dissatisfied with the judgment and decree passed by the learned Trial Court, present appeal preferred by the appellants as being legal heir of orig. plaintiff. Learned Advocate for the appellant has submitted that the suit land originally belonged to Shankarbhai Patel, who is the uncle of the plaintiff and Anandiben is the daughter of said Shankarbhai Patel, has given $\frac{1}{2}$ share of the suit property to the plaintiff and $\frac{1}{2}$ share to the defendant by writing dated 18/06/1979. Not only that, Anandiben has given her consent on 03/08/2005 and since then, the plaintiff is possession and occupation of the suit land. Further, learned Advocate for the plaintiff has submitted that the plaintiff has proved the suit by examining the plaintiff and witness Patel Bhalabhai Somnath vide Exh.36 and witness Patel Natvarbhai Vanmalidas vide Exh.38 and by adducing documentary evidence vide Exh.31 to 33. However, learned Trial Court has not appreciated the oral as well as documentary evidence produced on record. It has been further submitted that the document produced vide Exh.33, which is writing dated 18/06/1979 is legal one and witness Bhalabhai Somnath and Natvarbhai Vanmalidas have signed the said document and also they have given their depositions. However, learned Trial Court has disbelieved the document produced vide Exh.33. Learned Trial Court failed to appreciate the evidence of plaintiff, and therefore,

he requested to allow present appeal and set aside the judgment and decree passed by the learned Trial Court and lastly, he has requested to grant relief as prayed for in the Suit.

8. Per contra, learned Advocate Mr. S.D. Yogi appearing on behalf of the respondents has submitted that learned Trial Court has rightly disallowed the Suit of the plaintiff. It has been further submitted that plaintiff has produced only xerox copy of writing dated 18/06/1979 before the learned Trial Court. The witnesses have not fully supported the said document. The plaintiff failed to prove his suit. After appreciating the oral as well as documentary evidence, learned Trial Court has rightly disallowed the suit of the plaintiff, and hence, it is requested to dismiss the appeal with cost.
9. The following points arise for my determination of this appeal :-

POINTS

- 1) Whether appellants prove that learned Trial Court has erred in coming to the conclusion that, plaintiff is not legal owner and possessor by virtue of inheritance rights over the suit land?
- 2) Whether appellants prove that learned Trial Court has erred in coming to the conclusion

that, the defendant has not illegally restrained the plaintiff from entering into the suit land, which is in ownership and possession of the plaintiff?

- 3) Whether appellants prove that learned Trial Court has erred in coming to the conclusion that, plaintiffs are not entitled to get relief as prayed for in the suit?
- 4) What order and decree?

10. My findings to the above said points is as under:

1. Point No.1 : In negative.
2. Point No.2 : In negative.
3. Point No.3 : In negative.
4. Point No.4 : As per final order.

REASONS

Point Nos. 1 to 3:-

11. As all the points are interconnected to each other and reply of point Nos.1 to 3 are given in negative, and therefore, to avoid repetition and for the sake of convenience and brevity, all the above points are discussed conjointly.
12. I have heard learned advocates appearing on behalf of the parties and also gone through the impugned judgment and decree passed by the learned Trial Court.
13. It is pertinent to note hereby that the present appeal is the first regular civil appeal against the decree. Therefore,

according to the judgments reported in **2011 (2) G.L.H. 432 (S.C.)** in the case of **B. M. Narayana Gowda V/s Shanthamma**, it is settled by the Hon'ble Supreme Court that *the first appeal is a valuable right of the appellant and therein all questions of fact and law decided by the Trial Court are open for reconsideration. In first appeal, the court needs to decide questions of fact and law comprehensively by giving full dressed hearing.*

14. *It is settled by **the Hon'ble Supreme Court** that it is the duty of the Appellate Court to deal with all issues and evidence led by the parties before recording findings. Thus according to the principles, settled by the above cited judgments by the appellant, this first Appellate Court should re-appreciate the evidence and materials on records.*
15. Now, this is the first appeal therefore, this court has to re-appreciate the evidence on record. In the case of **Laliteshwar Prasad Singh & Ors. Vs. S.P.Shrivastave reported in 2016 Scale 902**, Hon'ble Supreme Court held that, *"when the appellate court concurrence with the finding and reasons of the learned trial court, the appellate court does not need to re-write the reasons"*.
16. Now, on reappreciating the appeal memo, judgment and decree passed by the learned Trial Court and allied documents produced along with the appeal memo, it becomes clear that the original plaintiff Patel Babubhai

Somnath has filed the Regular Civil Suit No.45 of 2006 in the Court of Civil Court, Kadi for declaration and injunction regarding land of Survey No.182/2 of Mouje: Vamaj, Tal. Kadi. Further, on reappreciating the impugned judgment and decree passed by the learned Trial Court, it appears that the plaintiff has produced his Examination In Chief on affidavit vide Exh.30 and also examined his witnesses vide Exh.36 and 38 and also documentary evidence produced vide Exh.31 & 33. The defendant has also produced his examination in chief on affidavit vide Exh.52 and produced documentary evidence vide Exh.53 to 68. Now, on reappreciating the oral as well as documentary evidence produced on record, it becomes clear that plaintiff and defendant are the real brothers and as per the evidence of plaintiff, the uncle of the plaintiff, with consent of his daughter Anandiben, executed a Writing dated 18/06/1979 and thereby equally divided the disputed land between the plaintiff and defendant. Thus, plaintiff has $\frac{1}{2}$ share in the suit land. As per the plaintiff, he is cultivating his $\frac{1}{2}$ share land and the defendant is trying to disturb in the possession of the plaintiff. The defendant had filed Regular Civil Suit No.134 of 2005 for partition against the plaintiff and other brothers in the Court of Civil Court, Kadi. Further, on reappreciating the oral evidence of plaintiff, it becomes clear that defendant is cultivating the suit land and the plaintiff has not entered

his name in the revenue record in respect of suit land. The plaintiff has admitted that it is not known to him that in which year the writings of Exh.37 were written and what was written in the document Exh.37. It has been further admitted that land of Survey No.182/2 is cultivating by the defendant and defendant has not given any share from the produce of said land to the plaintiff. Thus, from the admission of the plaintiff, it becomes clear that the plaintiff is not in possession of $\frac{1}{2}$ share in suit land. Further, on reappreciating the oral evidence of witness Bhalabhai Somnath examined vide Exh.36, it reveals that the said witness is examined as witness of writing Exh.33. The said witness is cross-examined by the learned Advocate for the defendant, wherein he has admitted that he has read the writings, but has not been written. At present, the name of Kantibhai is running in the revenue record. He doesn't know that Anandiben Ramanbhai Patel has executed any consent deed. The plaintiff has also examined Natvarbhai Vanmalidas vide Exh.38 as witness of writing Exh.33. In the cross-examination of the said witness, he has admitted that he is residing at Ahmedabad. He doesn't know that when his father has signed the document Exh.33 and also, he doesn't know that his father has signed in his presence. He doesn't know that in which year and who has written the writing of Exh.33. He doesn't know what is written in the document Exh.33. The

suit land is running in the name of Kantilal Somnath since the time of his grandfather. He has not seen any documentary evidence, which shows that Babubhai Somnath is paying taxes of suit land. The evidence of both the witnesses are trustworthy and reliable, and therefore, plaintiff failed to prove Exh.33 according to the law. It is pertinent to note here that in Regular Civil Suit No.45 of 2006, the original writing dated 18/06/1979 has not been produced, but it is a photocopy, which is produced in another suit proceedings. It is also pertinent to note here that the material witness Anandiben Shankarbhai Patel, who is the daughter of uncle of plaintiff and defendant, has not been examined. The defendant has also denied his signature over the writing of Exh.33. On reappreciating the revenue abstract produced vide Exh.53 and tax receipts produced vide Exh.54 to 68, it becomes clear that the name of defendant is running in the revenue record in respect of suit land and the defendant is paying the revenue taxes of disputed land. The plaintiff has relied upon Exh.33 and on the basis of said Exh.33, it is contended by the plaintiff that the suit land is divided between the plaintiff and defendant, but the plaintiff failed to produce either original or certified copy of said writing Exh.33 and thereby failed to prove the same. The plaintiff has examined two witnesses in support of his case, but they have not fully supported the evidence of Exh.33.

Thus, plaintiff failed failed to prove that he is in possession of suit land and he became owner and occupier of suit land by virtue of inherited rights. The plaintiff also failed to prove his ownership and possession over the disputed land. The learned Trial Judge has rightly recorded the reasons and given findings in accordance with the law. Thus, I am fully agree with the reasons recorded and findings given by the learned Trial Court and there is no such legal reason shown in the present appeal and arguments canvassed by the learned Advocate for the appellant. Thus, appellants miserably failed to prove that they are entitled to get relief as sought for in the suit. As per the settled principle of law unless and until gross illegality or perversity is committed by the Trial Court by passing any order, the Appellate Court shall not interfere in the order. As discussed above, there is no perversity or illegality is committed by the Trial Court in passing the judgment and decree. In view of the above discussion, this Court answers Point Nos.1 to 3 in negative accordingly.

17. **POINT No.4 :-**

In view of the above discussions, findings arrived at, reasons recorded and observations made, present appeal is not required to be interfered. To decide Point No.4, I, do hereby pass the following final order in the interest of justice.

ORDER

- (1) Present Regular Civil Appeal is hereby dismissed.
- (2) The judgment and decree dated 08/11/2012 passed by the learned 2nd Additional Civil Judge, Kadi in Regular Civil Suit No.45 of 2006 is hereby confirmed and upheld.
- (3) No order as to costs.
- (4) Decree to be drawn accordingly.
- (5) R & P, if any, be sent back to the concerned Ld. Trial Court.

Signed and pronounced in the open Court on this 5th day of May, 2026 at Mahesana.

Date : 05.05.2026.
Place: Mahesana.

(Ambrish Laljibhai Vyas)
Principal District Judge,
Mahesana.
Code No.GJ00508.

Principal District Judge,
Mahesana.