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**IN THE COURT OF HON'BLE 2<sup>ND</sup> ADDITIONAL SENIOR  
CIVIL JUDGE, KADI, DISTRICT MAHESANA**

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**REGULAR CIVIL SUIT NO.1/2015**

**EXH.54**

**PLAINTIFF:**

THAKOR AMBARAM JAMAJI  
Age about adult,  
Occupation : Agriculture,  
Original resident Bavlu,  
Taluka Kadi, District Mahesana.  
At present residing at Adundara,  
Taluka Kadi, District Mahesana.

**VERSUS**

**DEFENDANTS**

- : 1. THAKOR SHAKARAJI BHAGAJI,  
2. THAKOR KALAJI JAMAJI BHAGAJI,  
3. THAKOR CHHANAJI BABUJI BHAGAJI,  
{4. THAKOR BALDEV BABUJI BHAGAJI},  
**Deleted as per order below  
Exh.17.**  
5. THAKOR CHANDUJI BABUJI BHAGAJI,  
6. THAKOR GANPATJI NANUJI,  
7. THAKOR KANTIJI NANUJI,  
8. THAKOR PRATAPJI NANUJI,  
9. THAKOR VIKRAMJI KACHARAJI,  
GUARDIAN AND CARETAKER KALAJI  
JAMAJI THAKOR,  
10. THAKOR GANPATJI NANUJI,  
GUARDIAN AND CARETAKER KALAJI  
JAMAJI THAKOR,

11. MAHENDRAKUMAR CHANDULAL SHAH,
12. BHAVIK MAHENDRAKUMAR SHAH,
13. HITESH MAHENDRAKUMAR SHAH,
14. KALABEN MAHENDRAKUMAR SHAH  
DAUGHTER OF NATHALAL MOHANLAL,
- {15. PATEL RITUL DASHARATHBHAI},  
**Deleted as per order below  
Exh.17.**

All above defendants No.1 to 10 are adult and having occupation of Agriculture & defendant Nos. 11 to 15 having occupation Business.

Defendants No.1 to 10 residing at Bavlu, Taluka Kadi, District Mahesana & defendants No.11 to 14 are residing at Navkar Bunglows opposite UCO Bank, Naranpura, Ahmedabad.

**SUBJECT :** SUIT FOR LEGAL PARTITION OF SUIT PROPERTIES AND HANDED OVER THE POSSESSION TO EACH SHARE-HOLDER OF THE PROPERTY WITH THEIR RESPECTIVE SHARE.

**APPEARANCE :**

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Learned Advocate **Mr. B.B. Sarode** for plaintiff.

Learned Advocates **Mr. M.T. Patel & Mr. M.K. Desai** for defendants No.11 to 14.

Defendant No.4 & 15 deleted as per order below Exh.17.

Defendants Nos.1 to 3 & 5 to 10 remained absent throughout the proceeding.

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

1. Brief facts of the present suit is that, the plaintiffs and defendants No.1 to 10 having native of moje Bavlu, Taluka Kadi and doing agriculture. Defendants NO.11 to 15 are residing at Ahmedabad and doing business. The lands of grand father of plaintiff and defendants No.1 to 10 named Bhagaji were situated at village Bavlu and after his death names of plaintiffs and defendants No.1 to 10 continued on revenue record. After the death of Bhagaji Thakor, defendants had joined their heirs 1) Thakor Mangaji Bhagaji, 2) Thakor Ramaji Bhagaj & 3) Thakor Babuji Bhagaji and after his death, present defendants entered their names vide entry NO.3144, dated 10-5-1992, but name of plaintiff had not got entered on the record. Further, it is averred that defendants denied to enter the name of plaintiff and survey No.1137 sold to defendant NO.11 to 15 for which plaintiff came to know and filed objection application before the Mamlatdar office, Kadi, but directed to get the claim from the Civil Court, hence present suit is filed.

1.1 To prove the heirship, plaintiff has produced following pedigree of deceased Thakor Jamaji Bhagaji (plaintiff's deceased father);

Thakor Jamaji Bhagaji

 Shantaben First wife died	 Shakariben Second wife died	 Kalaji Son of first wife (def.No.2)	 Ambaram son of second wife
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The above plaintiff and defendant No.2 proved the the legal heirs to get equal share. Following are the ancestral lands of plaintiff and defendants No.1 to 10.

Sr. No.	Survey No.	Hector-ARE-Sq.mt.	Value/ Aakar
1.	62	1-24-86	5.12
2.	68	0-63-03	2.81
3.	1048	0-13-18	0.53
4.	790	2-52-10	11.56
5.	1077	0-29-73	1.62
6.	890/31	1-06-85	6.19
7.	890/9	0-02-38	0.06
8.	1077	0-29-73	1.62
9.	1142	0-24-97	1.81
10.	1073	0-4-97	1.19
11.	1137	0-42-81	2.56
12.	1118	0-78-48	4.06
13.	1136	0-17-84	1.06
14.	840	0-78-48	5.43
15.	834	0-07-13	0.34
16.	1144	1-18-92	5.06
17.	1073	0-24-97	1.15
18.	833	0-10-70	0.47
19.	1308	0-21-40	1.12
20.	801	2-52-10	<u>11.56</u>
			65.35

1.2 Further, it is averred that the above suit lands are the ancestral lands and following are the co-parcners of the suit lands.

- 1) Thakor Shakaraji Bhagaji,
- 2) Heirs of deceased Thakor Jamaji Bhagaji,
- 2/1 Kalaji Jamaji Thakor
- 2/2 Ambaram Jamaji Thakor

- 3) Heirs of deceased Thakor Babuji Bhagaji
  - 3/1 Dhanaji Babuji Thakor
  - 3/2 Baldevji Babuji Thakor
  - 3/3 Chanduji Babuji Thakor
  
- 4) Heirs of deceased Thakor Nanuji Bhagaji
  - 4/1 Thakor Ganpatji Nanuji
  - 4/2 Thakor Kantiji Nanuji
  - 4/3 Thakor Pratapji Nanuji
  
- 5) Heirs of deceased Thakor Mangaji Bhagaji
  - 5/1 Thakor Vikramji Kacharaji Mangaji
  - 5/2 Thakor Rameshji Kacharaji Mangaji  
their caretaker Kalaji Jamaji

1.3 Further, it is averred that partition of the total suit lands divided into five parts, in which there is one share/part of plaintiff and defendant No.2-Kalaji Jamaji Thakor each share/part i.e. out of five part, there 1/2 part is of plaintiff, for which plaintiff has requested to defendants for partition and to give his share, but defendants denied to give or make partition of the suit lands, hence present suit is filed against the defendants. Plaintiff has requested that be ordered and declared that father of plaintiff has 1/5<sup>th</sup> part from the ancestral suit lands and also be declared that there is half part of plaintiff and defendant No.2 Kalaji Thakor each in the suit lands. Further, it is requested that order be passed in respect of partition of the suit properties and be declared the share/part of land as devolved to plaintiff and defendant from the suit properties and ordered to give their respective part/share of the lands as devolved to plaintiff

and defendant No.2. Further, it is requested that cost be awarded from defendants.

2. Service of summons served to defendants. Defendant Nos.11, 12, 13, 14 appeared through Advocate and filed their written statement vide Exh.12. In the written statement at Exh.12, it is submitted that reply produced for the block No.1137. Further, it is contended that facts and averments made in the suit as well as in the injunction application are false and hence denied in toto. Further, it is submitted that plaintiff has not make it clear that his father Thakor Jamaji Bhagaji on which date died and also it is not cleared that upon which right Thakor Jamaji Bhagaji is entitled over the suit land, thus plaintiff is not come with clean hand before the Court. Further, it is submitted that suit of the plaintiff is barred by the law of limitation. Also there is a bar of mis-joinder and non-joinder of the parties to the suit. defendants have produced written statement contended that contents of suit as well as injunction application are not true and denied in toto. Further, it is contended that there is a bar of Order-7, Rule-11 to the suit as well as injunction application of plaintiff. Further, it is contended that contents of para-1 to 4 are not true and and denied the same. But the true fact is that land of bearing block No.1137 it's old survey No. 1076 of area Hector-ARE-Sq.mt. 0-42-81 is situated in the sim moje Bavlu, Taluka

Kadi, District Mahesana and it's original owner was Shah Gopaldas Ujamdas. Further, it is submitted that Shah Gopaldas and Thakor Ramaji Bhagaji were the parties of a case No.39/1958 which was tried on 28/5/1958 before the Taluka Mamlatdar-Krushhi Panch, Kadi. In which Thakor Ramaji Bhagaji hold as tenant-farmer and price of the tenancy was fixed at the rate of Rs.750/- and after payment of Rs.750/- to owner Shah Gopaldas Ujamda, Thakor Ramaji Bhagaji became the owner and occupier through the right of land of tenant and it was ordered that name of Shah Gopaldas Ujamdas be cancelled. Upon the basis of order passed by the Taluka Mamlatdar-Krushhi Panch Court, Kadi mutation entry recorded at village form No.6-haq patrak vide entry No.1612, dated 18.6.1962 and same was certified on 09/01/1963. Since then Thakor Ramaji Bhagaji became the independent owner and occupier through the right of tenancy Act over the suit land of old survey NO.1976.

2.1 Further, it is submitted that as per the plan prepared by the District Inspector, District Mahesana from Visnagar for consolidation of the lands moje Bavlu, Taluka Kadi. In which land of old survey No.1076 given new block NO.1137, in which name of Thakor Ramaji Bhagaji was entered as owner and occupier and on the basis of order, mutation entry No.2921 was registered in the Form No.6/haq patrak.

2.2 Further, it is submitted that in the year 1986 Thakor Ramaji Bhagaji was died, but due to absence of heir/s of deceased, heirs of his brothers namely 1) Thakor Mangaji Bhagaji died in the year 1984 and 2) Thakor Babuji Bhagaji died in the year 1987 names of their heirs namely 1) Thakor Nanuji Bhagaji, 2) Thakor Shakaraji Bhagaji, 3) Thakor Kacharaji Mangaji Bhagaji, 4) Thakor Nathiben Ramaji Bhagaji, 5) Thakor Kalaji Jamaji, 6) Thakor Chhanaji Babuji, 7) Thakor Baldevji Babuji & 8) Thakor Chanduji Babuji were entered through the right of heirship and mutation entry of heirship was recorded at village form No.6/haq patrak as entry NO.3144, dated 10/5/1992 and same was certified on 09/02/1993. Thus, said heirs became the joint owners and occupiers of the land block No.1137. 2.3 Further, it is submitted that name of Thakor Nathiben Ramaji Bhagaji was continued on the revenue record abstract of 7/12 on the land of bearing block No.1137 as co-owner and co-occupier, on 30/4/2000 she died, hence her name from the record of block No.1137 was cancelled for which mutation entry in respect of deletion/cancellation be made vide No.3771, dated 08/02/2002 in the village form No.6/haq patrak and same was certified on 20/08/2002.

2.3 Further, it is submitted that name of Thakor Kacharaji Mangaji was continued on the revenue record abstract of 7/12 on the land of bearing block No.1137 as co-owner and co-occupier, on

12/3/2005 he died, hence names of his heirs namely 1) Thakor Vikramji Kacharaji, 2) Thakor Rameshji Kacharaji were entered on revenue record of land bearing block No.1137 at village form No.6/haq patrak vide entry No.4364, dated 12/10/2007 through the right of heirship and said entry was certified on 19/01/2008.

2.4 Further, it is submitted that the suit land of block No.1137 is the co-ownership and co-occupied of thakor Shakraji Bhagaji and others and they have sold the suit land to defendant No.15-Patel Ritul Dasharathbhai through registered sale deed NO.2615, dated 03/04/2010 and on the basis of said registered said deed, mutation entry No.6188 was registered on 25/7/2013 at village form No.6/haq patrak. Thus, the defendant NO.15 Patel Ritul Dasharathbhai became the independent owner and occupier of the suit land. Further, it is submitted that plaintiff had filed objection application in respect of entry 6188 for which Dispute Case No.92/2013-2014 registered before the Mamlatdar, Kadi and tried on 31/12/2013 and passed an order for certified the mutation entry No.6188.

2.5 Further, it is submitted that defendant No.15, Patel Ritul Dhasharathbhai had sold the suit land to defendants No.11, 12, 13 & 14 through registered sale deed No.2960, dated 15/4/2010 for which mutation entry was recorded at village form No.6/haq patrak vide entry No.6195, dated 29/7/2013. Since then the

defendants No.11, 12, 13 & 14 became the independent owners and occupiers of the suit land. It is submitted that contents of paras, 5, 6, & 11 are not true and denied the same, whereas plaintiff has made prayer in para-12(1) which cannot be admissible. Further, plaintiff has stated averments in para-14 which are not true as there is no right, title or share/part in the suit lands, plaintiff has falsely created facts and filed the suit, hence suit as well as injunction application of the plaintiff be dismissed with cost.

3. My learned predecessor framed issue in the matter vide Exh.18 on 08th January, 2018.

#### I S S U E S

1. શું વાદી સાબિત કેર છે કે મોજે -તકરારી જમીનો વાદી તથા પ્રતિવાદીની વડીલોપાર્ડજીત છે ?
2. શું વાદી સાબિત કરે છે કે,આ તકરારી જમીનમાં વાદીના પિતાનો પાંચમો ભાગ છે અને વાદી તથા પ્રતિવાદી નંબર-૨ કાળાજી ઠાકોરને ૧/૨ ભાગ પોસાય છે ?
3. શું પ્રતિવાદી સાબિત કરે છે કે,વાદીનો હાલનો દાવો સમયમર્યાદા બહારનો છે ?
4. શું પ્રતિવાદી સાબિત કરે છે કે,વાદીના દાવોને જરૂરી પક્ષકાર ન જોડ્યાનો બાધ નડે છે ?
5. શું પ્રતિવાદી સાબિત કરે છે કે,ઠાકોર રામાજી ભગાજી દાવાવાળી જમીનના જુના સર્વે નંબર ૧૦૭૬ ના ગણોત હક્કે એકલા સ્વતંત્ર માલીક અને કબ્જેદાર હતા ?
6. શું પ્રતિવાદી નંબર-૧૧ થી ૧૪ ના ઓ સાબિત કરે છે

કે, તેમણે બ્લોક નંબર ૧૧૩૭ વાળી જમીન કાયદેસર રીતે વેચાણ લીધેલી છે અને આ જમીન તેમના કબ્જા ભોગવટામાં છે. ?

7. શું વાદી માંગ્યા મુજબની દાદ મેળવવા હક્કદાર છે ?
8. શું હુકમ અને હુકમનામું ?

4. My answer towards above mentioned issues as per discussion in reasons are as under:-

1. In the Affirmative.
2. In the Affirmative.
3. In the Negative.
4. In the Negative.
5. In the Affirmative.
6. In the partly Affirmative.
7. In the Affirmative.
8. As per Final Order.

5. To prove the issues, the parties to the matter have tendered their oral as well as documentary evidence as under;

**Oral Evidence of the Plaintiff :**

Sr. No.	Description of Oral Evidence	Exh.
1	Examination in chief of plaintiff named Thakor Ambaram Jamaji.	21
2	Affidavit on oath of witness No.2 of plaintiff named Thakor Amaji Galaji.	28

**Documentary Evidence of the Plaintiff :**

Sr. No.	Description of Documentary Evidence	Exh./ Mark
1	Affidavit of Thakor Ambaram Jamaji in respect of pedigree.	37
2	Pedigree of Thakor Jamaji Bhagaji.	38
3	The copy of village form No.6-haq patrak, mutation entry No.3144, dated 10-05-1991 (heirship).	39
4	The copy of village form No.6-haq patrak, mutation entry No.2925.	40
5	The copy of revenue record of survey No.833, moje Bavlu, Taluka Kadi, District Mahesana.	41
6	The copy of revenue record of survey No.1308, moje Bavlu, Taluka Kadi, District Mahesana.	42
7.	Birth Certificate of plaintiff Thakore Ambaram Jamaji	52

6. After adducing and producing the oral as well as documentary evidence by the plaintiff, plaintiff filed closing pursis vide Exh.44 & 53 and declared that he has no further evidence produced in the matter. Hence, matter is kept for evidence of defendants. But defendants have not led any evidence to the suit, enough opportunity provided to the defendants, but defendants remained absent, hence in the interest of justice, right of evidence of defendants is closed at Exh.45, dated 30.08.2022

and matter is placed for arguments of the learned Advocates for the respective parties. Learned Advocate for the plaintiff side has filed pursis vide Exh.46 stating that neither defendants nor their Advocate/s remained present and proceed with the matter, hence right of the defendants be closed. Considering the pursis at Exh.46, defendants remained continuously absent, hence right of argument of defendants is closed on 16/09/2022 and proceeded further with the suit.

7. I have heard the learned advocates for the plaintiff and defendants.

**: R E A S O N S :**

8. **Issues No. 1, 2 and 7 :-**

To avoid repetition of the facts, the Issue Nos.1, 2 and 7 discussed together as under:-

8.1 Before perusing the pleadings & 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 judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that 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 Sarkar on Law of Evidence 16th Edition Volume 2 at pg. 1584 it is stated as under:- "principle and Scope.- This section is based on the rule, **ie incumbit probation 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 vs. I S Corpn. (1941) 2 All ER 165, 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.

9. In the view of the above provision of the Indian Evidence Act, 1872, in the present case , the burden lies on the plaintiff to prove his own case Id.Advocate Mr. B.B.Sarode for the plaintiff's has argued wherein stated as per the plaint thus not repeated again that ,here in this suit the defendant's no.11 to 14 has only filed the written statement vide Exh.12 but not remained present to make cross-examination of

plaintiff and his witness as well not remains present to produce evidence and not remains present to made any arguments thus their rights are closed one by one after passing the orders. The defendant's no. 1 to 3 and 5 to 10 not remains present after serving the summons thus their right of filing the written statement is closed after passing order below Exh.1 on dated 19/07/2017 and the defendant's no.11 to 14 not remains present to make cross-examination of plaintiff and his witness thus his right of cross-examination are closed after passing the order below Exh.1 and on application vide Exh.43 and the defendant's right of evidence is closed after passing the order below Exh.45 application and their right of arguments are closed after passing the order below Exh.46. Here the defendant's no.11 to 14 has taken the defence regarding the Survey no.1137 which is discussed in other issues thus not discussed here but for issue Nos.1, 2 and 7 if we see than in this suit the plaintiff has raised the claim being a straight line successor of Jamaji Bhagaji he is having right in the suit properties and his brother name who is defendant's no.2 Thakor Kalaji Jamaji Bhagaji is entered in the revenue record being a elder brother but his name is not entered in record of right but being a son of Jamaji Bhagaji he is having the right in the suit properties he submitted in the plaint as well as in the chief examination that Thakor

Jamaji Bhagaji first wife name is Shantiben who died and his son is Kalaji who is defendant's no.2 and plaintiff is a son of second wife of Jamaji who is Shakariben and who is also died to buttress the averments of plaintiff he has presented the document vide Exh.37 which is Affidavit in which the pedigree of Thakor Jamaji Bhagaji is also presented in which also same is mentioned as mentioned in plaint as above mentioned with that the plaintiff has also presented his birth certificate vide Exh.52 in which his father name is shown as Thakore Jamaji Bhagaji and mother name is shown as Thakore Shakariben thus it's fortify the contentions of the plaintiff and being a son of Thakor Jamaji Bhagaji who is died before 40 years he is having the right in suit properties being a son of him to rebut this document not a iota of evidence is presented from defendant's side that he is not a straight line successor of Jamaji or he is not having any right in suit properties or he is not a legitimate son of Jamaji thus by perusing these documents more particularly the birth certificate vide Exh.52 in absence of any rebuttal evidence it's proved from the plaintiff side that he is a son of Thakor Jamaji the defendant Nos.11 to 14 submitted in the written statement that the plaintiff has not shown that when his father was died and how he claimed in the suit properties is also not mentioned thus he is not having any right in the suit

properties but from perusing the document vide Exh.37 and Exh.52 it is manifest that the father of plaintiff Jamaji and who was died before 40 years with that the first wife of Shantiben is also died and at the time of making this document the Second wife is lived but at the time of filing the suit she died also whether after demise of first wife Shantiben Late Thakor Jamaji Bhagaji solemnized the second marriage with Shakriben or in existence of first wife he solemnized the second marriage is not controversial issue thus not discussed here but in absence of any evidence from the defendants side plaintiff proves that he is a son of second wife of Thakor Jamaji Bhagaji thus he is having right in the suit properties with that by perusing the documents vide Exh.38 to 42 along with other defendants the name of defendant no.1 who is brother of plaintiff's Kalaji Jamaji thus in the suit properties he is also having the equal share as Kalaji Jamaji have in the suit properties being a straight line class-I heir of Kalaji Jamaji. To buttress their averments plaintiff had produce the documents vide Exh.37 to Exh. 42 and Exh.52.

While other side from the defendant's side no one remain present for arguments thus their right of argument is closed after passing the order below Exh.46.

10. Thus, Compendiously and concisely, the relevant facts absolutely necessary to discuss for the disposal of this suit, first we have to see the admitted position of this suit, than the suit properties is ancestral properties and being a elder in family the name of defendant No.2 Kalaji Jamaji name was mutated in revenue record.

Now, if we see the settled legal principle on factum of this case than, in the case of **Kale v. Dy. Director of Consolidation AIR 1976 SC 807**, Hon'ble Apex Court has held as under :

(1) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family.

(2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence;

**(3) The family arrangements may be even oral in which case no registration is necessary;**

(4) It is well settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere

memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the Court for making necessary mutation. In such a case, the memorandum itself does not create or extinguish any rights in immoveable properties, and therefore, does not fall within the mischief of Sec. 17(2) (sic.) (Sec. 17(1)(b)) of the Registration Act, and is therefore, not compulsorily registrable;

(5) The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has not title, but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owners, then the antecedent title must be assumed and the family arrangement will be upheld and the Court will find no difficulty in giving assent to the same;

(6) Even if bona fide disputes, present or possible, which may not involve legal claims are settled by a bona fide family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement.

And, Hon'ble Calcutta High Court in the case of **Premlal Seal & Ors. v. Smt. Basanti Seal & Ors.**, **AIR 2004 Cal. 246**, has gone to that extent that

the Courts have taken a very liberal and broad view of the validity of the family settlement and have always tried to uphold it and maintain it. The central idea in the approach made by the Courts is that if by consent of parties a matter has been settled, it should not be allowed to be reopened by the parties to the agreement on frivolous or untenable grounds. At the same time, the family arrangement must be bona fide and effected to resolve family disputes. It must be a fair and equitable division or allotment of properties between the various members of the family. It must be done voluntarily. It is to be made amicably. It should not be induced by fraud, coercion or undue influence. It may be made orally without any registration unless the creation of the family arrangement is reduced to writing. It would not be registrable when it is a memorandum or piece of evidence of the family arrangement already made.

Hon'ble Gujarat High Court in the case of **Shashikant Natvarlal Patel v. Arvindbhai B Gohil 2010(1) G.L.H.302.**

Hon'ble Court laid down the ratio decidendi in said judgment that the family partition matter has been settled, it should not be allowed to be re-opened by the frivolous or untenable grounds, further held that The family arrangement must be bonafide and effected to resolve family disputes-It must be a fair and equitable division or allotment of properties between the

various members of the families-It must be done voluntarily-It is to be made amicably it should not be induced by fraud, coercion or undue influence-it may be made orally without any registration unless the creation of the family arrangement is reduced to writing-It would not be registrable when it is memorandum or a piece of evidence of the family arrangement already made.

11. Now, by this above authoritative pronouncement by Hon'ble Apex Court and High Court's it is crystal clear that the the family arrangement must be bona fide, It must be a fair and equitable division or allotment of properties between the various members of the family, It must be done voluntarily. It is to be made amicably, It should not be induced by fraud, coercion or undue influence.
12. If, we connote the facts of this case with above ratio decidendi than the main plea taken by the plaintiff that the partition of the suit properties was not carried out between the rival parties. The main triable issue of this suit is that as per averements of the plaintiff that he is having right over the suit properties and only to enter the name of defendant no.02 in revenue record he can not became a sole owner of the suit properties of his father share and to buttress his averment he presented the documents vide Exh.38 to 42 and by perusing these documents it's manifest that in all the suit

properties the name of defendant no.2 Kalaji Jamaji is found in village form no.7/12 by perusing the document vide Exh.39 which is successor entry vide no.3144 in which the name of Thakore Kalaji Jamaji Bhagaji is found thus it is manifest that the suit properties except block no.1137 are properties of Bhagaji and after demise of him his successor name was mutated in revenue record likewise after demise of Jamaji Bhagaji the name of defendant no.2 Thakore Kalaji Jamaji name was mutated but the name of plaintiff was not mutated and as per settled principle of law only to mutate the name of the defendant no.2 in the record of right he can not become the sole owner of the properties. Here in this case it is pertinent to note that the plaintiff is a son of the second wife of late Jamaji Bhagaji and to show same he presented his birth certificate vide Exh.52 and as oral argument of the plaintiff his father was married his mother after demise of his first mother or first wife of Jamaji Bhagaji who was a mother of defendant no.2 Kalaji Jamaji and no any defect is taken by defendant's on the record that the plaintiff is a illegitimate child of Jamaji Bhagaji thus the embargo of statutory provision of Section 16(3) of Hindu Marriage Act,1955 is not attracted in the given facts of this case because as per settled legal position after demise of first wife if the second marriage is solemnized than the widow and his

legal heirs are having all rights as per Hindu Succession Act, 1956 and his heirs come in class-1 heirs thus being a son of Jamaji Bhagaji a plaintiff comes in class-1 heir and he is having right in the share of properties of Jamaji Bhagaji as equal right as his other successors have. Thus in the suit probabilities the plaintiff having equal share as defendant no.2 Kalaji Jamaji have in the share of Jamaji Bhagaji.

13. The other issue which is in the suit that the defence which is raised by the defendant Nos. 11 to 14 that they are the bonafide purchaser of the suit property bearing block no.1137 and for same he presented the written statement vide Exh.12 and in which he stated that the suit property which they buy on that property the plaintiff having no right because land of bearing block No.1137 it's old survey No. 1076 whose original owner was Shah Gopaldas Ujamdas. And Shah Gopaldas and Thakor Ramaji Bhagaji were the parties of a case No.39/1958 which was tried on 28/5/1958 before the Taluka Mamlatdar-Krushni Panch, Kadi. In which Thakor Ramaji Bhagaji hold as tenant-farmer and price of the tenancy was fixed at the rate of Rs.750/- and after payment of Rs.750/- to owner Shah Gopaldas Ujamda, Thakor Ramaji Bhagaji became the owner and occupier through the right of land of tenant and it was ordered that name of Shah Gopaldas Ujamdas be cancelled. Thus that property is

comes as tenant-farmer to Ramaji Bhagaji thus this property is not ancestral property and the plaintiff having no right but in written statement further contested defendant's has submitted that the Ramaji Bhagaji had demise issue less they are not having any progeny thus the name of other defendant's are mutated by the entry NO.3144, dated 10/5/1992 and same was certified on 09/02/1993 more particularly the name of defendant no.2 Kalaji Jamaji was mutated through this entry means as a family tenant his name was mutated in this property and it is provided in the Bombay Tenancy and Agricultural Lands Act, 1948 the Section 2 of the Bombay Tenancy and Agricultural Lands Act, 1948 enacts definition clause. The word "person" is defined by Sec. 2 (11) to include joint family. It is inclusive definition. It is, therefore, clear that a joint family being a person can hold land on lease and it can be a tenant within the meaning of Sec. 2 (18) of the said Act. Section 2 (7a) defines "joint family" to mean an undivided Hindu Family. It is true that the certificate of the purchase was issued in the name of Ramaji Bhagaji but due to demise of him and by virtue of successor entry no.3144 the successor name was entered as per their class and succession act and by that the defendant no.2 name was mutated in the revenue record of block no.1137 with other defendant's thus when court come at the conclusion that the property

which is devolved in Kalaji Jamaji as a successor of the Jamaji Ramaji as class-I heir than the plaintiff also class-I heir being a son of Jamaji Ramaji and having equal rights a Kalaji Jamaji have. Thus this submission of the defendant's no.11 to 14 not impressed this court that the purchased property is devolved through the tenancy right thus the plaintiff not having right because it is true that the purchase certificate was issued in the name of Rmaji Bhagaji but after demise of him his successor name was entered and in leiu of that defendant no.1 name is also entered. Now to make more clear on this point if we see the settled legal position than In the case of **Ramdas Versus Sitabai AIR 2009 SC 2735 Hon'ble Supreme Court held that-** In that view of the matter, the High Court was correct and legally justified in declaring the plaintiff-Sitabai as the owner and holder of half of the shares in all the four aforesaid properties which are undivided. The defendant No.1-Sudam being a co-sharer could not have sold by a registered sale deed more than his share nor could he have delivered possession till the said property is partitioned by the parties amicably or through the intervention of the Court according to their share. **It is settled law under the Transfer of Property Act, that a purchaser cannot have a better title than what his vendor had.**

Also, in the case of **M.V.S. Manikayala Rao V/s. M. Narasimhaswami & Ors.** [AIR 1966 SC 470] Hon'ble Supreme Court held that- "Now, it is well settled that the purchaser of a co-parcener's undivided interest in the joint family property is not entitled to possession of what he had purchased. His only right is to sue for partition of the property and ask for allotment to him of that which, on partition, might be found to fall to the share of the co-parcener whose share he had purchased."

Also, in the case of **Sidheshwar Mukherjee V/s. Bhubneshwar Prasad Narain Singh & Ors.** [AIR 1953 SC 487] Hon'ble Supreme Court held that-"All that (vendee) purchased at the execution sale, was the undivided interest of co-parcener in the joint property. He did not acquire title to any defined share in the property and was not entitled to joint possession from the date of his purchase. He could work-out his rights only by a suit for partition and his right to possession would date from the period when a specific allotment was made in his favour.

14. Now, if we connote the facts of this case with above ratio decidendi than the purchaser of the suit property bearing block no.1137 defendant no.11 to 14 are bonafide purchaser up to share of other defendant's no.1 to 10 but in the share of defendant no.2 Kalaji Jamaji the plaintiff

Ambaram Jamaji also having his share thus the sale deed which is made in between defendant's no.1 to 10 and 11 to 14 for the suit property bearing block no.1137 is not binding to him relief on the ground of equity. However, not find any reason to hold in favour of the defendant's no.11 to 14 even on the ground of equity as they herein him -selves are responsible for their act in purchasing undivided share in a part of the suit property without the knowledge and consent of the co-sharer who is plaintiff of thus suit it is true that the defendant's no. 11 to 14 are second purchaser of suit land but due to that reason only the share and right of plaintiff can not be sink thus the said disputed sale deed is not binding on the share of the plaintiff and he having his share in the said suit property bearing block No.1137.

15. It is a run of the mill proposition that in a partition suit, Wherefore, the defendant's who are not remained present to defend the suit, ought to have entered into the box and deposed so as to buttress and fortify their contentions if any, but they did not do so. It is not enough to lay the narrations on with a trowel if any, but the defendant's should prove it. The versions if any cannot be taken for gospel truth in deciding the lis. Virtually, so far this case is concerned, it has to be taken as of now, that the defendants had not at all contested the

matter in stricto sensu during trial. Onus probandi is ambulatory. There is no smidgen or minuscule evidence adduced on the defendants side to establish and demonstrate their case. Hence, I would like to recollect the following decisions of the Honourable Apex Court: Certain excerpts from it, would run thus:

Hon'ble Supreme Court in the case of **Vidhyadhar v. Manikrao and Another, (1999) 3 SCC 573** observed at page 583 SCC that;

"Where a party to the suit does not appear in the witness-box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct as has been held in a series of decisions passed by various High Courts and the Privy Council beginning from the decision in **Sardar Gurbakhsh Singh v. Gurdial Singh**. This was followed by the Lahore High Court in **Kirpa Singh v. Ajaipal Singh** and the Bombay High Court in **Martand Pandharinath Chaudhari v. Radhabai Krishnarao Deshmukh**. The Madhya Pradesh High Court in **Gulla Kharagjit Carpenter v. Narsingh Nandkishore Rawat** also followed the Privy Council decision in **Sardar Gurbakhsh Singh** case. The Allahabad High Court in **Arjun Singh v. Virendra Nath** held that if a party abstains from entering the witness-box, it would give rise to an adverse inference against him. Similarly, a Division

Bench of the Punjab and Haryana High Court in **Bhagwan Dass v. Bhishan Chand** drew a presumption under Section 114 of the Evidence Act, 1872 against a party who did not enter the witness-box.

16. It is, therefore, crystal clear that there is a serious setback and drawback on the part of the defendants in contesting the matter. Defendant's are having a right to put forth and set forth their case by adducing evidence and they ought to have entered into the box and deposed in support of his contention if they raised, even though they are not appeared to made a cross-examination of plaintiff, but without doing so, virtually he is having, in the peculiar facts and circumstances, they fail to show as well as established that the plaintiff case is not true thus it's not seems that the averment of plaintiff is not right or he get his share or previously any partition was made.

Also if we see the law of presumption than, Section 114 of Evidence Act,1872 that is,

Section 114 **Court may presume existence of certain facts** The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

Sec. 114 and other sections of the Evidence Act. Under Sec. 114 of the Evidence Act, "The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case." Illustration (g) to that section shows that the Court may presume that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it.

17. Thus, the presumption draws against the defendant's that previously their is partition was carried out even not a single evidence either orally or documentary is produce by the defendant's side, also defendant's no.1 to 10 have not filed the written statement and only defendant's no. 11 to 14 have filed the written statement even they not remain present to made cross-examination of plaintiff ,and due to abashless of them their rights of cross-examination and right of defence are closed respectively by passing the orders which is on the record, thus the averment of plaintiff seems to be true. Here, it is also admitted position that the suit property is an ancestral property,and late Jamaji Bhagaji having ownership had inherited this suit property as ancestral property,and he died intestate,leaving behind two son plaintiff Amabaram Jamaji and defendant no.2 Kalaji Jamaji and the suit

properties are of Bhagaji and he is having five son thus in the suit properties the late Jamaji Bhagaji having 1/5th share and being a successor of him plaintiff and defendant having 1/5\*2 means 1/10th share plaintiff have and defendant no.2 Kalaji have 1/10th share. Also it is pertinent to note that the suit property which is sold bearing block no.1137 in that property also plaintiff having 1/10th share. Thus in absence of evidence from defendant side plaintiff succeed to show their claim that in past no any partition among the legal heirs of the deceased Jamaji Bhagaji was carried out and if carried out than for same not a iota of evidence is produce from defendant's side more specifically defendant Nos.11 to 14 thus the plaintiff succeed to establish his claim that the suit properties are their ancestral properties and he having share in the suit properties and previously no any kind of partition was carried out. With that it is settled law that only to enter name in revenue record is not enough to established the title of the properties now to make more clear if we see the settled legal position than;

Hon'ble Apex Court in the case of **Sankhalchand Jaychandbhai Patel And Ors vs.Vithalbhai Jaychandbhai Patel And ors.1997(2)GLR 1041 SC**,held that -"It is settled law that mutation entries are only to enable the State to collect revenues from the persons in possession and

enjoyment of the property and that the right, title and interest as to the property should be established de hors the entries. Entries are only one of the modes of proof of the enjoyment of the property. Mutation entries do not create any title or interest therein."

And in the case of **Kantibhai Ishwarbhai Patel vs. Chandrakant Iswarbhai Patel And Ors. 2005(3) GLR 2110** Hon'ble Gujarat High Court held that-"IT is settled proposition of law that the revenue record has no evidentiary value. They are made only for the fiscal purpose and, title to the properties cannot be decided on the basis of the mutation entries effected in the revenue record. Such entries are required to be effected in view of the provisions of Section 135C of the code. Mutation entries have only presumptive value as provided under **Section 135J** of the Code, which reads as under:"135J presumption of correctness of entries in record of rights and register of mutations: an entry in the record of rights and a certified entry in the register of mutations shall be presumed to be true until the entry is proved or a new entry is lawfully substituted therefor."

18. Now, if we connote the facts of this case with above ratio decidendi than only to enter the name of defendant's no.1 to 10 more particularly defendant no.2 Kalaji Jamaji in the revenue record he is not became a sole owner of the suit properties because mutation entries are only to

enable the State to collect revenues from the persons in possession and enjoyment of the property and that the right, title and interest as to the property should be established de hors the entries. Entries are only one of the modes of proof of the enjoyment of the property. Mutation entries do not create any title or interest therein. Thus defendant's fails to established that the suit properties are not ancestral properties and plaintiff not having share in the suit properties.

19. Thus, there is Plaintiff and Defendant's No.2 being a straight line successors of Thakore Jamaji Bhagaji having right and legal share in suit property of the share of Jamaji wjich is  $1/5$  and defendant No.2 and plaintiff are having equal share, which is  $1/5 * 2 = 1/10 - 1/10$  each share. with that when court come at conclusion that the partition had been not carried out than the plaintiff's having  $1/10$  share in the suit properties by metes and bounds.

Also, here in the suit plaintiff has joined all the heirs of Jamaji with that he also joined the legal heirs of Bhagaji thus there is no bar of mis-joinder or non-joinder of parties seems with that the defendant's no.11 to 14 has only filed the written statement vide Exh.12 but they not presented any oral or documentary evidence thus they have failed to show their possession over the suit property bearing block no.1137.

20. One more issue framed by this court whether the plaintiff suit is barred by law of limitation because the defendant Nos.11 to 14 have made pleading in their written statement vide Exh.12 that the plaintiff suit is barred by law of limitation. For this, if we see the statutory provisions and facts of this case than plaintiff filed this suit for partition, so to look the applied law of limitation in partition suit, thus, on this point if see the provision in the Statute book which is Limitation Act,1963 than it reproduce for ready reference-

**Article 110.-** By a person excluded from a joint family property to enforce a right to share therein. Twelve years When the exclusion becomes known to the plaintiff. Under Schedule-I, Part-IX Suits Relating To Miscellaneous matters.

21. On this point if we see the settled legal position by Hon'ble upper Courts than the question relating to proof of exclusion was considered by the Hon'ble Madras High Court in the case of **Marudanayagam v. Sola Pillai reported in AIR 1965 Madras 200**, and the law laid down is as under in para 11 that is:

(11) It is settled law that lapse of time is never in itself a bar to partition and the statute of limitation will operate from the time the plaintiff is excluded from his share and such exclusion became known to him. There can be no exclusion without a denial of the

coparcener's right to a share and such denial may be express or implied. While partition is demanded and refused or if the coparcener is expelled from the joint family, that would be clear exclusion. Once the plaintiff established his claim to a share in the joint family properties by showing that the family was joint and that he was a coparcener entitled to a share in its properties, the onus is on the defendants to establish exclusion to plaintiff's knowledge for over 12 years prior to suit.

Also same view has been taken by Hon'ble Bombay, Calcutta and Madras High Court's in the cases of **Jivanbhat v. Anibhat ILR 22 Bom. 259; Ramnath Chatterjee v. Kusum Kamini Devi 4 Cal LJ 56 and the decision of a Division Bench of Madras High Court in Machiraju v. Simhachala 9 Mad LJ 129."**

Also in the case of **Sri Veerayya Mahantayya Koppad and Others v.Smt. Geetha W/o Gangadhar Hiremath and Others 2008 1 AIR(Kar)(R) 551** Hon'ble Karnataka High Court laid down the law on this point that-Article 110 - Applicability - Exclusion of a co-sharer of joint family properties - When there is no foundation laid to prove factum of exclusion, limitation will not start unless it is shown that a person was excluded to enforce his rights to share such properties. And Period of limitation runs only from the time when exclusion becomes known to such co-sharer.

22. Thus, now if we connote the facts of this case with above ratio decidendi than the plaintiff first known his exclusion from the suit properties when the first sale deed was made in year 2010 on 03/04/2010 and the entry of same was vide entry no.6188 on 25/07/2013 and than subsequently second sale deed was also made in year 2010 on 15/04/2010 and entry of same was made vide entry no.6195 of the block no.1137 and against that entry of sale deed plaintiff immediately filed the case vide Takrari case no.-91/2013-14 against the successor entry no.6195 for block no.1137 thus when the exclusion of the suit properties come in the knowledge of the plaintiff he filed the suit within the statutory limitation.

22.1 The defendant Nos. 11 to 14 has raised the plea in their written statement that the sale deed was made on 03/04/2010 and on 15/04/2010 thus the limitation is started from that period for same plea if we see the settled legal position than-

In the case of **Prem Singh vs. Birbal reported in AIR 2006 SC 3608**, wherein the Supreme Court has observed as under in para no.11 to 18 that:

"11. Limitation is a statute of repose. It ordinarily bars a remedy, but, does not extinguish a right. The only exception to the said rule is to be found in Section 27 of the Limitation Act, 1963 which provides that at the determination of the period prescribed thereby,

limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.

12. An extinction of right, as contemplated by the provisions of the Limitation Act, prima facie would be attracted in all types of suits. The Schedule appended to the Limitation Act, as prescribed by the Articles, provides that upon lapse of the prescribed period, the institution of a suit will be barred. Section 3 of the Limitation Act provides that irrespective of the fact as to whether any defence is set out is raised by the defendant or not, in the event a suit is found to be barred by limitation, every suit instituted, appeal preferred and every application made after the prescribed period shall be dismissed.

13. Article 59 of the Limitation Act applies specially when a relief is claimed on the ground of fraud or mistake. It only encompasses within its fold fraudulent transactions which are voidable transactions.

14. A suit for cancellation of instrument is based on the provisions of Section 31 of the Specific Relief Act, which reads as under :

"31. When cancellation may be ordered.-

(1) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and

the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

(2) If the instrument has been registered under the Indian Registration Act, 1908, the court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation."

15. Section 31 of the Specific Relief Act, 1963 thus, refers to both void and voidable document. It provides for a discretionary relief.

16. When a document is valid, no question arises of its cancellation. When a document is void ab initio, a decree for setting aside the same would not be necessary as the same is non-est in the eye of law, as it would be a nullity.

17. Once, however, a suit is filed by a plaintiff for cancellation of a transaction, it would be governed by Article 59. Even if Article 59 is not attracted, the residuary Article would be.

18. Article 59 would be attracted when coercion, undue influence, misappropriation or fraud which the plaintiff asserts is required to be proved. Article 59 would apply to the case of such instruments. It would, therefore, apply where a document is prima facie valid. It would not apply only to instruments which are presumptively invalid."

23. Thus, now if we connote the facts of this case with above ratio decidendi than here in this suit as per above discussion when court comes at the conclusion the plaintiff also having the share in suit property bearing block no.1137 as defendant no.2 Kalaji Jamaji have and having equal share as Kalaji Jamaji have which is 1/10 share and the disputed registered sale deed was made without plaintiff consent and without showing him as vendor or party thus the sale deed was not binding to him and he having the share in suit property bearing block no.1137 of his share thus those instruments are presumptively invalid for the plaintiff thus the Article 59 is not invoked in the given facts of this case.
24. Thus, after all this above discussion for issues Nos.1, 2, 5 and 7 my answer are in affirmative for issue No.6 my answer is in Partly Affirmative and for issue no.3 and 4 my answer are in Negative.
25. Thus, after all these above discussions, what the partition denotes its magnetism and the eventualities thereof, has been considered by the Apex Court in **Shub Karan Bubna @ Shub Karan Vs. Sita Saran Bubna & Ors reported in (2009)9 SCC 689**, which are describe in para 5,6 and 7 as follows:-
5. 'Partition' is a re-distribution or adjustment of pre-existing rights, among co-

owners/coparceners, resulting in a division of lands or other properties jointly held by them, into different lots or portions and delivery thereof to the respective allottees. The effect of such division is that the joint ownership is terminated and the respective shares vest in them in severally.

6. A partition of a property can be only among those having a share or interest in it. A person who does not have a share in such property cannot obviously be a party to a partition. 'Separation of share' is a species of 'partition'. When all co-owners get separated, it is a partition. Separation of shares/ s refers to a division where only one or only a few among several co-owners/ coparceners get separated, and others continue to be joint or continue to hold the remaining property jointly without division by metes and bounds. For example, where four brothers owning a property divide it among themselves by metes and bounds, it is a partition. But if only one brother wants to get his share separated and other three brothers continue to remain joint, there is only a separation of the share of one brother.

7. In a suit for partition or separation of a share, the prayer is not only for declaration of plaintiff's share in the suit properties, but also division of his share by metes and bounds. This involves three issues:

(i) whether the person seeking division has a

share or interest in the suit property/properties;

(ii) whether he is entitled to the relief of division and separate possession; and

(iii) how and in what manner, the property/properties should be divided by metes and bounds?

26. In a suit for partition or separation of a share, the Court at the first stage decides whether the plaintiff has a share in the suit property and whether he is entitled to division and separate possession. The decision on these two issues is exercise of a judicial function and results in first stage decision termed as 'decree' under Order 20 Rule 18(1) and termed as 'preliminary decree' under Order 20 Rule 18(2) of the Code. The consequential division by metes and bounds, considered to be a ministerial or administrative act requiring the physical inspection, measurements, calculations and considering various permutations/combinations/alternatives of division is referred to the Collector under Rule 18(1) and is the subject matter of the final decree under Rule 18(2).

27. If, we connote with the facts of the case with this ratio decidendi than the plaintiff have fulfilled the all essential requirement which needs for partition, they are having the right over the suit property, this suit property is their ancestral property and they are having 1/8

share over the suit property, the partition had been not carried out, thus as per the O.XX R.18 the partition must be carry, and he must be get their respective share which is 1/8 share and his share must be separated from the suit properties. Thus the preliminary decree must be drawn in favour of plaintiff.

28. In view of the above discussion, Other important thing is that, when there is an ample evidence from both side, the fate of the case is no longer determined by presumption or burden of proof but by careful selection of the correct version based on preponderance of probabilities which has to be so compulsive or overwhelming in the case of a choice in favour of a conviction as to remove all reasonable doubts. Burden of proof and presumption may become decisive only where evidence from both sides are equally balanced or there is a paucity of evidence on either side. In this suit, there is a paucity of evidence from defendant's side, so burden of proof and presumption come in action for taking decision, the substantial evidence having great and major role, and they must be either proved or carefully observe for taking decision.
29. So, it is the duty of Judge to examine thoroughly and minutely all the admitted evidence either orally or documentary from either side. That's why I examine all the documents thoroughly, carefully and minutely for giving a proper, fair and justifiable decision, otherwise

it will lead on the path of miscarriage of Justice and that will result in to the injustice for either side. Hence, reply of Issue No.8 is given by passing final order as under:-

**O R D E R**

1. The present plaintiff suit is hereby Allowed.
2. It is order that the suit properties as shown below:

Sr. No.	Survey No.	Hector-ARE-Sq.mt.	Value/ Aakar
1.	62	1-24-86	5.12
2.	68	0-63-03	2.81
3.	1048	0-13-18	0.53
4.	790	2-52-10	11.5
5.	1077	0-29-73	1.62
6.	890/31	1-06-85	6.19
7.	890/9	0-02-38	0.06
8.	1077	0-29-73	1.62
9.	1142	0-24-97	1.81
10.	1073	0-4-97	1.19
11.	1137	0-42-81	2.56
12.	1118	0-78-48	4.06
13.	1136	0-17-84	1.06
14.	840	0-78-48	5.43
15.	834	0-07-13	0.34
16.	1144	1-18-92	5.06
17.	1073	0-24-97	1.15
18.	833	0-10-70	0.47
19.	1308	0-21-40	1.12
20	801	2-52-10	<u>11.5</u>
			65.35

In all these suit properties the plaintiff Thakor Ambaram Jamaji having equal share as defendant no.2 Kalaji Jamaji having which is share of Jamaji which is 1/5 and plaintiff and defendant no.2 Kalaji Jamaji having 1/5\*2 which is 1/10-1/10 share thus plaintiff having 1/10 share in the above suit properties being a class-I heir of

late Jamaji Bhagaji as per Hindu Succession Act,1956.

3. It is order that per the O.XX R.18(2)of Civil Procedure Code,1908 the said partition or separation to be made by the Hon'ble Collector, or any gazetted subordinate of the Hon'ble 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 suit properties as below

Sr. No.	Survey No.	Hector-ARE-Sq.mt.	Value/ Aakar
1.	62	1-24-86	5.12
2.	68	0-63-03	2.81
3.	1048	0-13-18	0.53
4.	790	2-52-10	11.5
5.	1077	0-29-73	1.62
6.	890/31	1-06-85	6.19
7.	890/9	0-02-38	0.06
8.	1077	0-29-73	1.62
9.	1142	0-24-97	1.81
10.	1073	0-4-97	1.19
11.	1137	0-42-81	2.56
12.	1118	0-78-48	4.06
13.	1136	0-17-84	1.06
14.	840	0-78-48	5.43
15.	834	0-07-13	0.34
16.	1144	1-18-92	5.06
17.	1073	0-24-97	1.15
18.	833	0-10-70	0.47
19.	1308	0-21-40	1.12
20	801	2-52-10	<u>11.5</u>
			65.35

situated in the precinct of village Moje Bavlu, Taluka Kadi, Dist.Mahesana, make severance as per

order and allotted independent possession of the of said suit land means 1/10 share by metes and bounds to the plaintiff Thakore Ambaram Jamaji being a class-I heirs of late Ambaram as per Hindu Succession Act,1956.

4. For the enforcement of this order the certified copy of this order is to be send to Ho'ble Collector of Mahesana.
5. It is order to Hon'ble Collector, or any gazetted subordinate of the Hon'ble Collector deputed by him on his behalf, has make implementation of this order at the location of the suit land, and take the possession receipt from rival parties and done roj-kam accordingly, and send all concerned papers to this Court within the 90 days from this order.
6. The order of cost of this suit is decided as per the final decree of this suit.
7. The preliminary decree will be drawn as per the order.

Pronounced in the open Court on this 25th Day of July, 2023.

Place: Kadi.

Date: 25-07-2023.

(Rajvrat Charan B. Gadhvi)  
2<sup>nd</sup> Addl. Senior Civil Judge,  
Kadi, Dist. Mahesana  
[Code No.-GJ01067]