

GJNV040000172009



Presented on	:	19/02/2009		
Registered on	:	19/02/2009		
Decided on	:	13/03/2026		
Duration	:	<u>Year</u>	<u>Month</u>	<u>Day</u>
		17	00	22

IN THE COURT OF THE HON'BLE (MR.R.R.BARIA)
PRINCIPAL CIVIL JUDGE,
AT – VANSDA, DIST. NAVSARI

REGULAR CIVIL SUIT NO. 16 OF 2009

EXHIBIT:-

Plaintiff	1.0	Heirs of Deceased Ishwarbhai Chhibabhai Solanki
	1.1	Rekhaben Iswarbhai Parmar W/o Iswarbhai Age About : 71, Occupation : Housework
	1.2	Kunal Iswarbhai Parmar Age About: Adult, Occupation: Service
	1.3	Tejal Ishwarbhai Parmar Age About: Adult, Occupation: House work
	1.4	Damyantiben Ishwarbhai Parmar Second w/o Iswarbhai Parmar Age About: Adult, Occupation: House work, All are residing at Singhai, Holimora Faliya, Taluka: Vansda, District: Navsari.

-: V E R S U S :-

Defendants	1.0	Sarpanch of Singhai Gram Panchayat Taluka: Vansda, District: Navsari.
	2.0	Talati cum Mantri, Singhai Gram Panchayat Taluka: Vansda, District: Navsari.
	3.0	Heirs of Deceased Nathubhai Mangabhai Patel
	3.1	Nanuben Nathubhai Patel Age: Adult, Occupation: Farming.
	3.2	Bhanubhai Nathubhai Patel w/o Arvindhbai Age: Adult, Occupation: Farming.
	3.3	Menaben Nathubhai Patel w/o Ishwarbhai Age: Adult, Occupation: Farming.
	3.4	Ashokbhai Nathubhai Patel Age: Adult, Occupation: Farming.
	3.5	Heirs of Deceased Prakashbhai Nathubhai Patel
	3.5.1	Rashmikaben w/o Prakashbhai Patel Age: 49, Occupation: Housework
	3.5.2	Dhaval Kumar Prakashbhai Patel Age: 27, Occupation: Farming,
	3.5.3	Jaikumar Prakashbhai Patel Age: 20, Occupation: Farming
		All are residing at Singhai, Holimora

	<p>3.6</p> <p>Faliyu, Taluka: Vandsa, District: Navsari.</p> <p>Sunilbhai Nathubhai Patel</p> <p>Age: Adult, Occupation: Farming, All defendants from 3/1 to 3/6 are residing at Singhai, Rajputfaliya, Taluka: Vanda, District: Navsari.</p>
	<p>4.0</p> <p>Bhikhubhai Mangalabhai Patel</p> <p>Age: Adult, Occupation: Farming, Residing: Singhai, Dhanchifaliya, Taluka: Vandsa, District: Navsari.</p>
	<p>5.0</p> <p>Govindbhai Chhibabhai Solanki</p> <p>Age: Adult, Occupation: Farming Residing at 49, Gayatri Society, Near Jalaram Mandir, Bardoli Taluka: Bardoli, District: Surat.</p>
	<p>6.0</p> <p>Chanchalben D/o Chhibabhai Hansiyabhai w/o Ketanbhai Parmar</p> <p>Age: Adult, Occupation: Farming, Residing at Bodali, Parmar Street, Taluka: Jalalpore, District: Navsari.</p>

Suit For	Declaration, Perpetual Injunction and recovery of possession..
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-: APPEARANCE :-		
Ld. Advocate for the Plaintiff	:	Mr.M.S. Bhavsar
Ld. Advocate for the Defendants-1	:	Mr.J.A.Patel

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

1. The plaintiff filed the present suit for the relief of declaration, perpetual injunction and for recovery of the possession against the defendants. Originally suit was filed by deceased Ishawarbai Chhibabhai Solanki who passed away *pendentelite* and thus his names was deleted as party of the suit as the legal heirs of Original plaintiff were joined as plaintiff nos.1/1 to 1/4 to the suit. However, in the initially suit had been filed against the defendant nos.1 to 6, wherein defendant no.3 was passed away *pendentelite* and thus his name was deleted as party of the suit as the legal heirs of original defendant no.3 were joined as defendant nos.1/1 to 3/6 to the suit.

-: THE BRIEF FACTS OF THE PLAINTIFF CASE:-

2. (2.0) The plaintiff had brought this suit with the contention that the land bearing revenue survey/block

nos.707/2, admeasuring H.00-13-00. aakar Rs.2-30 paisa and survey/block nos.736/1, admeasuring H.00-20-00 aakar Rs.4-70 paisa and survey/block nos.756/2, admeasuring H.00-13-00, aakar Rs.3-05 paisa, situated at moje village Sindhay, Ta.Vansda, Dist.Navdari (herein after called as '*suit property*') are originally runs in the names of plaintiff's father deceased Chhibabhai Hanshiyabhai Bhaniyabhai, who was died intestate on 07/03/1996 at Sindhay Village, Ta.Vansda, Dist.Navdari. Thus, names of plaintiff & his brother-sister names were entered in revenue records of the above said lands vide entry no.3430, dated 01/05/2004 as a legal heirs of deceased Chhibabhai Hanshiyabhai.

(2.1) As per the say of the plaintiff that plaintiff & defendant nos.5 & 6 have undivided share in the above said lands which are their ancestral property. wherein the defendant nos.3 & 4 have illegal possession. A father of the defendant nos.3 & 4 namely Mangabhai Ramabhai had built a hut ad lived there years ago. At that time, the plaintiff was not even born. However, plaintiff's father didn't objected as the defendant's father lived in a hut of

northern-easterner side of agricultural land bearing block no.736/1, therefore, the Gram Panchayat Record Office has given house no. 141. Wherein, the name of Mangabhai Ramabhai was runs till 1990, But when Mangabhai Ramabhai died, his son Nathubhai Mangabhai Patel was the Sarpanch of the village, so his name and that of his brother Bhikhubhai were entered in that property as heirs, who both are joined herein the suit as defendant nos.3 & 4. The fact that the defendant nos.3 & 4 names were entered was not known as plaintiff traveled up and down the out of town for work.

(2.2) Although defendant nos.3 &4 were not independent owner of the house no.141, they had given a new number to the assessment sheet of house no. 141 by making false resolutions and producing false documents. Because respondent No.3 was a Sarpanch, their names had been entered in the Panchayat records by tampering with the records and they got house building loan as the defendant no.4 who was serving higher post as electrician at Gujarat Electricity board. Accordingly, defendant no. 4, being employed in the Gujarat

Electricity Board, has obtained an electricity connection illegally by misusing his power and authority. It is also alleged by the plaintiff that a luxurious bungalow, two pucca houses and one other house have been illegally built on the land owned by the plaintiff without taking any non-agricultural proceedings.

(2.3) As per the say of the plaintiff that he had issued notice dated 03/10/2008 to the defendant nos.1 & 2 for getting the facts and information mention in notice thereof. The said notice was duly served to the defendant nos.1 & 2, although they didn't give any reply of the notice and didn't act as per notice. Therefore, plaintiff has filed the present suit for the declaration, perpetual injunction & recovery of the possession of the suit property against the defendants.

:- WRITTEN STATEMENTS OF DEFENDANTS :-

3. (3.0) On filling of the present suit, my predecessor has registered it as the regular civil suit and passed the order to issue summons against the defendants. Thus, the summons were issued to the defendants which were duly served to them. The defendant nos.5 & 6 are the brother

and sister of the plaintiff respectively, as the defendant no.5 didn't appeared before the court and didn't filed any reply, thus the present suit proceeds ex-part against the defendant no.5. The defendant no.6 filed her reply vide exhibit-23 wherein she admitted the facts of the plaint and supported plaintiff's suit.

(3.1) The defendant nos.1 & 2 appeared before this court though an Advocate and filed their reply vide exhibit-14, wherein they denied the facts of plaint and stated that the defendant no.1 is an elected official of a public institution - The Gram Panchayat and defendant no.2, who is a public officer of The Gram Panchayat and they raised the objection that the plaintiff suit is not maintainable as the plaintiff didn't served any statutory notice u/s 320 of The Gujarat Panchayat Act, which is mandatory to served before the filing of the suit against the defendant nos.1 & 2. They have also stated in their reply that the house of defendant nos.3 & 4 are situated in survey no.736/1 of village Sindhai Gram Panchayat and which is evident from the assessment sheet that has

been situated there since 1958-59. Thus, they requested this court to dismiss plaintiff suit with cost.

(3.2) The defendant nos.3 & 4 appeared before this court through learned Advocate and filed their reply vide exhibit-19 along with the counter-claim filed vide exhibit-20. Wherein they have negates the facts of the plaint and raised the objection that the suit is bad for miss-joinder of parties and barred by the law of limitation. The defendant nos.3 & 4 have admitted the facts that the suit land bearing survey/block nos.702/2, 736/1, 756/2 are the joint ownership of plaintiff and defendant nos.5 & 6 and the facts that the plaintiff's father deceased Chhibabhai Hanshiyabhai was died on 07/03/1996. As the defendant nos.3 & 4 has submitted that the suit land bearing survey/block no.736/1 had been given to their father deceased Mangabhai Ramabhai through oral agreement by the plaintiff father namely Chhibabhai Hanshiyabhai in the year of 1940, since then, defendant nos.3 & 4's father deceased Mangabhai Ramabhai had acquired possession of the suit land bearing survey/block no.736/1, wherein their father built

a residential home and had physical actual continuous possession without any interruption with the knowledge of plaintiff's father, about 7 gunthas land had been used as residential purpose and farming in remaining land. Further, stated that deceased Mangabhai Ramabhai was died on 02/05/1987, thus, the said house had been mutated in the names of defendant nos.3 & 4.

(3.3) The defendant nos.3 & 4 has stated in their counter-claim that the suit land bearing 736/1 had in possession of their father before the plaintiff is even not born. It is also stated by the defendant nos.3 & 4 that they have physical, continuous possession of the suit land bearing survey no.736/1, into the knowledge of the plaintiff & his father, without any interruption since 1940. Thus, the possession of the suit land bearing survey no.736/1 is hostile against the plaintiff. Thus, defendant nos.3 & 4 filed the counter-claim with the relief to declare they have right. title & interest in the suit land as per the principal of adverse possession. The defendant nos.3 & 4 has requested this court to dismiss

plaintiff suit and allowed the defendant's counter-claim as prayed.

4. On the basis of pleadings following issues were framed by this Court *vide* exhibit-38 in vernacular language which are reproduced herein below after translated in English language whereas the learned Advocate of the plaintiff filed an application under order 14 rule 5 to amendment of the issue no.7, which was allowed after duly heard of the either parties and they passed the pursis and declared that they don't want to produce any further evidence in respect of amended issue ;

// ISSUES //

1. શું વાદી પુરવાર કરે છે કે વાદીના પિતાના નામે સિણધઈ ગામના સર્વે નંબર ૭૩૬/૧ ની ખેતીની જમીન ચાલી આવેલ તેમાં વાદી તથા પ્રતિવાદી નંબર-૫ અને ૬ ના કાયદેસરનો સંયુક્ત માલિકી હકક ધરાવે છે અને તે મિલકતો વણવહેંચાયેલી છે ?

Whether the plaintiff proves that the agricultural land bearing Survey No.736/1 of village Singhai, standing in the name of the plaintiff's father, is jointly owned by the plaintiff and defendants No.5 and 6 as lawful co-owners, and that the said property is as described?

2. શું વાદી પુરવાર કરે છે કે પ્રતિવાદી નં.3 અને જનાએ વાદવાળી જમીનનો ગેરકાયદેસર રીતે કબજો ભોગવટો કરેલ છે ?

Whether the the plaintiff proves that defendants No.3 and 4 have illegally occupied and possessed the suit land ?

3. શું વાદી પુરવાર કરે છે કે પ્રતિવાદી નં.૧ અને ૨ નાએ સત્તાનો દુરપયોગ કરી ગેરકાયદેસર બાંધકામને કાયદેસર કરવાની ખોટી કાર્યવાહી કરેલ છે ?

Whether the plaintiff proves that defendants No.1 and 2 have misused their authority and carried out illegal proceedings to regularize unauthorized construction?

4. શું આ દાવાને સમયમર્યાદાના કાયદાનો બાધ નડે છે ?

Whether the present suit is barred by the law of limitation?

5. શું આ દાવાને ગુજરાત પંચાયત એક્ટની જોગવાઈઓનો બાધ નડે છે ?

Whether the present suit is barred by the provisions of the Gujarat Panchayat Act?

6. શું વાદી તેઓની દાવા અરજીમાં માંગ્યા મુજબની દાદ મેળવવા હકકદાર છે ?

Whether the plaintiff is entitled to the reliefs as prayed for in the plaint?

7. શુ પ્રતિવાદી નંબર-૩ અને ૪ પુરવાર કરે છે કે સર્વે નંબર ૭૩૬/૧ ની જમી તેમના પિતાના કબજે ભોગવટે સને ૧૯૪૦ના અરસાથી સર્વેની જાણમાં આવી આવેલ અને ૧૯૫૮ના અરસામાં વાદીના પિતાશ્રીએ મૌખિક કરારથી પ્રતિવાદી નંબર-૩ અને ૪ ના પિતાને માલિકી હક્કે સુપ્રત કરેલી અને સર્વેની જાણમાં માલિકી હક્કે કબજો ભોગવટો ધરાવતા આવેલ છે અને તે જમીનમાં ૧૯૫૫ના સમયથી તેઓના મકાન આવેલ છે ?

~~Whether defendants No.3 and 4 prove that the land bearing Survey No. 736/1 was in the possession and enjoyment of their father since around the survey year 1940, and that around the year 1958, the plaintiff's father orally transferred ownership rights to the father of defendants No. 3 and 4, and that since then they have been in possession and enjoyment as owners as per the revenue record, and that houses have existed on the said land since around 1955?~~

7[A] : શું પ્રતિવાદી નં.૩ અને ૪ પુરવાર કરે છે કે, સર્વે નં.૭૩૬/૧ ની જમીન તેમના પિતાના કબજે ભોગવટે સને ૧૯૪૦ના અરસાથી સર્વેની જાણમાં અને જાહેરમાં કોઈ પણ જાતની રોકટોક વગર શાંતિમય રીતે કબજો ભોગવટો ધરાવતા આવેલ છે અને એડવર્શ પઝેશનની રૂએ તેઓ દાવાવાળી મિલકતના માલિક બનેલ છે ?

~~Whether defendants No.3 and 4 prove that the land bearing Survey No. 736/1 was in the possession and enjoyment of their father since around the~~

survey year 1940, and they have actual physical, continuous, uninterrupted possession with the knowledge of plaintiff & public at large, and thus they became the owner of the suit land as per the principal of Adverse possession. ?

8. શું પ્રતિવાદી તેમના કાઉન્ટર ક્લેઇમ અંગેની અરજીમાં માંગ્યા મુજબની દાદ મેળવવા હકકદાર છે ?

whether the defendants are entitled to the reliefs claimed in their counter-claim application?

9. શું હુકમ અને હુકમનામું ?

What order & Decree ?

5. The findings of this court to the above issues are as under:

1. In Negative
2. In Negative
3. In Negative
4. In Affirmative
5. In Affirmative
6. In Negative
7. [A] In Affirmative
8. In Partially Affirmative
9. As per final order.

:- EVIDENCE BY PLAINTIFF & DEFENDANTS :-

6. (6.0) After framing of the issues, the evidences of the parties were taken on record. Plaintiff had filed the closing *pursis* vide Exhibit-77 whereas defendant nos.1, 2, 5 & 6 haven't submitted any oral or documentary evidence. The defendant nos. 3 & 4 filed the closing *pursis* vide Exhibit-132. Afterward, the matter was taken for final arguments ;

(6.1) To substantiate their issues and to support their claim, plaintiff & defendant had filed following oral as well as documentary evidence:

ORAL EVIDENCE OF THE PLAINTIFF

Sr. No.	Exhibit	Particulars	Evidence
1.	58	Ishwarbhai Chhibabhai Solanki	Plaintiff-1

DOCUMENTARY EVIDENCE OF THE PLAINTIFF

Sr. No.	Exhibit	Particulars
1.	66	Village Form No.8-A, Khata No.194
2.	67	Village Form No.7/12, Survey No.707/2
3.	68	Village Form No.7/12, Survey No.736/1
4.	69	Village Form No.7/12, Survey No.756/2
5.	70	Assessment Sheet for the year 1975-76

		to 1978-79 (House No.141)
6.	71	Assessment Sheet for the year 1971-72 to 1974-75 (House No.141)
7.	72	Assessment Sheet for the year 2004-05 to 2007-08 (House No.187)
8.	73	Village Form No.6
9.	74	Assessment Sheet for the year 2000-01 to 2003-04 (House No.188)
10.	77	Closing Pursis

ORAL EVIDENCE OF THE DEFENDANT

Sr. No.	Exhibit	Particulars	Evidence
1.	84	Deposition of the Bhikhubhai Mangabhai Patel	Plaintiff no.4

DOCUMENTARY EVIDENCE OF THE DEFENDANT

Sr. No.	Exhibit	Particulars
1	87	Assessment sheet for the year 1954-55 (House No.106)
2	88	Assessment sheet for the year 1955-56 (House No.106)
3	89	Assessment sheet for the year 1956-57 (House No.106)
4	90	Assessment sheet for the year 1957-58 (House No.106)
5	91	Assessment sheet for the year 1958-59 (House No.106)
6	92	Assessment sheet for the year 1959-60 to 1961-62 (House No.120)
7	93	Assessment sheet for the year 1971-72 to 1974-75 (House No.141)

8	94	Assessment sheet for the year 1975-76 to 1977-78 (House No.141)
9	95	Assessment sheet for the year 1979-80 to 1982-83 (House No.141)
10	96	Assessment sheet for the year 1983-84 to 1986-87 (House No.141)
11	97	Assessment sheet for the year 1987-88 to 1988-89 (House No.141)
12	98	Assessment sheet for the year 1989-90 to 1992-93 (House No.141)
13	99	Assessment sheet for the year 1993-94 to 1994-95 (House No.188)
14	100	Assessment sheet for the year 1996-97 to 1999-2000 (House No.188)
15	101	Assessment sheet for the year 2000-01 to 2003-04 (House No.188)
16	102	Farmwise Arrangement
17	103	Village Form No.7/12, Survey No.479 (1949-50 to 1958-59)
18	104	Village Form No.7/12, Survey No.479 (1959-60 to 1970-71)
19	105	Village Form No.7/12, Survey No.479 (1969-70 to 1979-80)
20	106	Village Form No.7/12, Survey No.736/1 (1988-89 to 1997-98)
21	107	Village Form No.7/12, Survey No.736/1 (1998-99 to 2004-05)
22	108	Death Certificate of Mangabhai Ramabhai Patel
23	132	Closing Pursis.

7. (7.0) Afterwards, learned Advocate of both parties had Vehemently argued the matter at length, thus, the content of the arguments from both the sides will be discussed as and when felt necessary for the interest of the justice instead of repeating it again and again.

:- REASONS & FINDINGS:-

WITH REGARD TO ISSUE NUMBER 1, 2, 3 & 7 :-

8. (8.0) As issues nos. 1, 2, 3 and 7 are interconnected with each other and for the sake of avoiding repetition of the facts and the evidence, it seems justified to this court to deal with all above issues together.

(8.1) The plaintiff filed the present suit for the relief of prohibiting injunction against the defendants. It is pertaining to note that plaintiff hasn't sought any declaratory relief as well as any relief of recovery of the possession against the defendant. On perusal of the plaint, plaintiff filed the present suit for an injunction simpliciter. Further, it is also pertaining to note that plaintiff hasn't sought any recovery of the possession of the suit property. On perusal of the pleadings of the

parties, following facts are admitted and undisputed facts that;

- A father of the defendant nos.3 & 4 namely Mangabhai Ramabhai had built a hut and lived in suit land bearing survey no.736/1, years ago. At that time, the plaintiff was not even born.
- However, plaintiff's father didn't object as the defendant's father lived in a hut of northern-easterner side of agricultural land bearing block no.736/1 and the Gram Panchayat Record Office has given house no. 141 to it.
- The possession of the suit land bearing 736/1 has been with the defendant nos.3 & 4 before the year of 1954-55

As the plaintiff stated that the defendants have illegal possession as they fabricated the documents and using that documents they entered their names in the records of The Gram Panchayat, but as per the pleadings and documents, possession of the survey no.736/1 was acquired by the father of the defendant before the period when the plaintiff was even not born. The plaintiff's

father had knowledge that the possession of the survey no.736/1 was with the father of defendant nos.3 & 4 namely Mangabhai Ramabhai, even though he didn't objected. It is also pertaining to note that the plaintiff's father did not give any permission to the defendant's father to live in the suit land nor did he raise any objection to it. Further, it is not a case of the plaintiff that the defendants had snatched away the possession of the suit property. It is well settle principal of the law that illegal possession of immovable property is the unauthorized occupation or encroachment of land, houses, or buildings without the owner's consent, or holding over after a lease expires. Herein the case, defendant no.3 & 4's father had possession over the suit survey no.736/1 which is in the knowledge of the plaintiff's father and who he didn't objected during his life time.

(8.2) As the plaintiff has stated that the defendant no.1 & 2 have misused their authority and carried out illegal proceeding to regularize unauthorized construction of the defendant. To prove this facts, plaintiff deposed in

his examination in chief but plaintiff didn't submitted any single documents to show that the defendant no.1 & 2 have misused their authority and entered names of the defendant no.3 & 4 in records of the gram panchayat by making fabricated documents. Thus, this court is at the view that the plaintiff is fail to prove the contention of the issue no.3.

(8.3) The defendant nos.3 & 4 has filed their reply *vide* exhibit-19 and filed counter-claim *vide* exhibit-20, wherein they have raise the defence that they become the owner of the suit land bearing survey no.736/1 in virtue of the principle of adverse possession. Before, going into the merits of the case, let's discussed the principle of the adverse possession. Recently, while deciding the suit for declaration of the title, the supreme court reiterated some important factors related to the principle of adverse possession in the case of ***Vasantha (Dead) Thr,Lr Vs. Rajalakshmi @ Rajan (dead) Thr, Lrs.. Civil Appeal No.3854 of 2014, Citation 2024 LiveLaw (SC) 117***, wherein hon'ble Supreme Court observed in para.20 & 21 as under ;

Para.20 In Saroop Singh vs. Banto, (2005) 8 SCC 330 (2-Judge Bench), this Court observed that Article 65 states that the starting point of limitation does not commence from the date when the right of ownership arises to the plaintiff but commences from the date the defendant's possession becomes adverse. Further relying on Karnataka Board of Wakf vs. Govt. of India, (2004) 10 SCC 779 (2-Judge Bench), it observed that the physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases related to adverse possession. Plea of adverse possession is not a pure question of law but a blend of fact and law. Therefore, a person who claims adverse possession should show: (a) on what date he came into possession; (b) what was the nature of his possession; (c) whether the factum of possession was known to the other party; (d) how long his possession has continued and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and

establish all facts necessary to prove his adverse possession.

Para.21 This Court in Hemaji Waghaji Jat vs. Bhikhabhai Khengarbhai Harijan, (2009) 16 SCC 517 (2-Judge Bench), reiterating the observations made in P.T. Munichikkanna Reddy vs. Revamma, (2007) 6 SCC 59 (2-Judge Bench) in respect of the concept of adverse possession observed that efficacy of adverse possession law in most jurisdictions depends on strong limitation statutes by operation of which, right to access the court expires through efflux of time. As against the rights of the paper-owner, in the context of adverse possession, there evolves a set of competing rights in favour of the adverse possessor who has, for a long period of time, cared for the land, developed it, as against the owner of the property who has ignored the property. Modern statutes of limitation operate, as a rule, not only to cut off one's right to bring an action for the recovery of property that has been in the adverse possession of another for a specified time but also to vest the possessor with title. The intention of such statutes is not to punish one who neglects to assert rights but to protect those who have maintained the possession of

property for the time specified by the statute under a claim of right or colour of title.

In the light of above well settle principle of the law regarding adverse possession, lets evaluate the evidence on record to adjudicate whether the defendant became the owner of the suit survey no.736/1 in virtue of principle of the adverse possession. In this case, defendant pleaded that they are in the actual and physical possession of the suit land bearing survey no.736/1 since 1940. To substantiate this facts defendant no.3 & 4 has submitted assessment sheets of the House, which is situated in suit land, from 1954-55 to 2004-05 and plaintiff has also submitted documentary list *vide* exhibit-27 wherein, plaintiff produce assessment sheets of defendants' house for the year of 2004-05 to 2007-08. However, defendant no.3 & 4 hasn't submitted any documentary evidence to show that their father was in possession of the suit land from 1940 to 1954, but this facts was admitted by the plaintiff in his deposition that the deceased Mangabhai Ramabhai had possession and he had constructed house in the suit land bearing 736/1

before he was even not born. On perusal of the pleadings of the parties, documents & depositions of the parties, it is clearly reveals that the defendant no.3 & 4 have possession before the plaintiff was even not born and they have long, continued, and their possession was open and undisturbed.

(8.4) The defendant no.3 & 4 has to prove that their possession is hostile (*nec vi, nec clam, nec precario*). Since, perusal of the pleadings & deposition of the plaintiff that the defendant father had possession over the suit land bearing survey no.736/1 before from he was even not bore, and even plaintiff & his father haven't objected regarding possession of the suit land which was with the defendant no.3 & 4 nor given permission to them for residing or using the suit land. As per the pleading of the plaintiff that deceased Mangabhai Ramabhai passed away in 1990 and at that time, respondent No. 3 was the Sarpanch and therefore, on the basis of false & fabricated documents, house No. 141 which situated in the suit land was transferred to their name by inheritance. It is further stated that the

defendant built luxurious house and obtained electricity connection. The plaintiff's rights were defeated as when the defendant's father died, the defendants' names were entered in the Gram Panchayat as heirs, a luxurious bungalow was built and an electricity connection was obtained. As discussed herein above, this court is at the view that the defendant has continuous and uninterrupted, hostile and open and notorious possession as the plaintiff and neighbors reasonably known about it. As the plaintiff neither proved that at the time of the filling the suit, he & the defendant no.5 & 6 were the absolute owner of the suit land nor the contention of the issue no.1, 2 & 3. Thus, this court answered the **Issue No.1, 2 & 3** in "**Negative**" and the defendant has successfully proved the contention of the issue no.7, hence this court answer **issue no.7** in "**Affirmative**".

WITH REGARD TO ISSUE NUMBER 4 :-

(8.5) Now, in the the light of issue no.4, whether the plaintiff suit is barred by law of limitation, in para.8 plaintiff set up cause of action for filling the present suit wherein plaintiff stated that as and when the defendant

were illegally entered in suit property, built luxurious house, entered their names in records of rights & tried to encroach more suit land, the cause of action was arose to filed the preset suit. As plaintiff didn't stated specific incident nor event as well as any date when the cause of action arose, this this court is at the view that plaintiff shows illusive cause of action. However, on perusal of the plait and documentary evidence, initially the defendant had built a hut on the suit land, then a permanent house was built and the defendant had their names entered in the records of the Panchayat, even though plaintiff didn't take any legal action, on this issue plaintiff is completely silent in order to bring his suit in limitation with the help of smart drafting. As per the rules of the pleading, plaintiff must be pleaded clear cause of action how & when he got the right to file the suit. The plaintiff filed the present suit for the relief of perpetual injunction and plaintiff didn't sought any relief for declaration of title or recovery of the possession. Thus, the limitation to filed the present suit is 3 years as per the article of 58 of the Limitation Act, 1963. The

cause of action arose as when the defendant constructed a permanent house and when the defendant's father died in 1990 and their names were entered in the Panchayat. Thus, this court is at the view that the plaintiff suit is barred by law of limitation as believe that the first right to sue occurred in the year of 1990 when deceased Mangabhai Ramabhai died, the plaintiff filed the present suit after the spam of almost 19 years. Thus, this court answer **issue no.4** in "**Affirmatively**".

WITH REGARD TO ISSUE NUMBER 5 :-

(8.6) Now, in the the ligh of issue no.5, whether the suit is barred under the provision of The Gujarat Panchayat Act ? It is well settle law that before instituting a suit against a Gram Panchayat or its officers, a prior notice is mandatory to be served u/s 270 of the Gujarat Panchayat Act, 19963. Herein the case plaintiff admitted in his disposition that he didn't served any to defendant no.1 & 2 who are the officer of the Gram Panchayat, before instituting the present suit as well as on perusal of the record, plaintiff hasn't applied for waiver the period of the notice at the time of instituting the present

suit. Thus, this court is at the view that plaintiff's suit is barred under section 270 of the Gujarat Panchayat Act and answer **issue no.5** in "**Affirmatively**".

WITH REGARD TO ISSUE NUMBER 6, 8 & 9:-

(8.7) Now, in the the light of issue no.6, 8 & 9, lets perused the relief sought by plaintiff in the para.16 of the plaint wherein plaintiff only sought perpetual injunction against the defendants. Plaintiff neither sought declaration of title nor recovery of the possession. The defendant filed counter-claim against the plaintiff with the relief to declared that the defendant nos.3 & 4 are become absolute owner of suit land bearing survey no.736/1 as per the principle of adverse possession. As discussed herein above plaintiff fails to prove the contention of the issue no.1 to 3 and as the answer of the issue no.4 & 5 are given in negative as discussed herein above this court is at the view that the plaintiff is not entiled any relief as prayed. Whereas the defendant has prove the contention of the issue no.7, Thus this court is answer **issue no.6** in "Negative" and

Issue no.8 is in "**Partially Affirmative**" and **Issue No.9** shall follow the final order:

:-O R D E R :-

1. The suit of the plaintiff is hereby accordingly "***Dismissed***".
2. A Counter-Claim of the defendant no.3 & 4 filed *vide* exhibit-20 is hereby "***partially allowed***"
3. It is hereby declared that the defendant no.3 & 4 are become the owner of the suit land bearing survey no.736/1, admeasurig H.00-27-00, situated moje Sindhay, Ta.Vansda, Dist.Navdari as per principle of the adverse possession.
4. No Order as to cost.
5. Decree is to be drawn accordingly.

Signed and Pronounced in this open court on this 13th day of month **March** of year **2026**.

Dated. 13/03/2026 Place : Vansda.	(Rashmikant Ramchandra Baria) Principal Civil Judge At.Vansda, Dist.Navdari UID Code : GJ01609
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