

 सत्यमेव जयते	Presented on : 10-08-2017
	Registered on : 10-08-2017
	Decided on : 08-04-2026
Duration	DD/MM/YY

IN THE COURT OF ADDL. SR. CIVIL JUDGE, CHIKHLI, AT CHIKHLI.

Regular Civil Suit No. 41/2017
Exh.

(1). Babarbhai Radiabhai Patel
Age: 82 Yrs. Occupation: Agriculture.

(2). Chaturbhai Radiabhai Patel
Age; 78 Yrs. Occupation: Agriculture.

(3). Manilal Radiabhai Patel
Age; 75 Yrs. Occupation; Agriculture.
all reside at: Kakadvel, Mandir Faliya,
Tal. Chikhli, Dist. Navsari.

Plaintiffs..

VERSUS

(1). Maheshbhai Dalubhai Patel
Age: 53 Yrs. Occupation : Agriculture.

(2). Balwantbhai Dalubhai Patel
Age; 50 Yrs. Occupation; Agriculture.

(3). Jayeshbhai Chhotubhai Patel
Age; 47 Yrs. Occupation; Agriculture.

(4). Bharatbhai Chhotubhai Patel
Age; 45 Yrs. Occupation; Agriculture.

(5). Jagubhai Vajirbhai Patel
Age; 51 Yrs. Occupation; Agriculture.

All reside at: Kakadvel, Nishal Faliya,
Tal. Chikhli, Dist. Navsari.

Defendants..

Subject: Suit for permanent injunction, possession and declaration.

Appearance:-

Advocate for Plaintiffs:Mr.F.A.Gadiwala.

Advocate for Defendants:Mr.S.A.Parmar.

:-JUDGMENT:-

1. Plaintiff's case:-

The factual matrix of the present case in a nutshell are as under:

It is pleaded by the plaintiff that they own and possesses the land bearing Khata No.167,block no.112 admeasuring 03-36-79 He:Are:Sq.mtrs situated at Kakadvel Village, Mandir Faliya of Chikhli Taluka (Herein after referred as suit property) while the defendants are the owners & occupants of block no.113 situated at Kakadvel Village. Despite that defendants have illegally constructed houses over the plaintiffs' land and trying to encroach over the suit property and also trying to snatch away the possession from the plaintiffs. It is further pleaded by plaintiffs that they have constructed the house bearing no.102, 103, 104 over the suit property and they are living there. It is further pleaded that defendants have also illegally constructed the houses no.106(2),472, and 105 over the suit property. It is further contended that ancestor of the parties of the suit namely Nandiben had wedded with the elder of their family and she kept her previous child namely Shamjibhai. Defendants are lineal descendants of said Shamjibhai. It is further pleaded that their forefathers had given some land to the Shamjibhai, which is block no113, while land bearing block no.112 have given to the plaintiffs. Despite that defendants have constructed illegal house over it and they are trying to dispossess the plaintiffs from the said land and thereby plaintiffs have issued legal notice to the defendants and they have replied the said notice falsely. Thereby, the plaintiffs have constrained to file a present suit for

possession, removal of encroachment and perpetual injunction as well as declaration.

2. Defendants written statement:

After service of summons / notice upon the defendants, they have appeared before this Court and have filed their written statement vide Exh.20. Wherein they have denied all material facts ascertained by the plaintiff in the plaint and inter alia contended that plaintiff's suit is bad by non-joinder of necessary parties as they haven't joined all the relevant parties of the suit. It is further contended that plaintiff's suit is barred by law of limitation as the defendants have settled possession over the suit property from generation to generation. It is further contended that out of total land of the suit property five (05) guntha land have been given to the elders of defendants for construction of houses and from the time of their forefathers they are living in the said houses without any disruption and remaining land of block no. 112 belongs to plaintiffs and defendants have nothing to do with it. Despite that plaintiffs have falsely filed present suit against the defendants, therefore, present suit is required to be dismissed.

3. Plaintiff's rejoinder/Counter claim:-

After perusal of entire record, it appears that plaintiffs haven't filed any counter affidavit or rejoinder against the written statement filed by the defendants.

4. Points for Determination:

After scrutinizing the pleadings of either sides following issues were framed vide Exh. 29 by my learned predecessor for the final determination and adjudication of the present suit.

૧. શું વાદી પુસ્વાર કરે છે કે, આ કામના પ્રતિવાદીઓ ખોટી રીતે દાવાવાળી જમીનમાં કબજો પડાવી લેવા પ્રયત્ન કરી રહેલ છે?
૨. શું વાદી પુસ્વાર કરે છે કે, પ્રતિવાદીઓનો દાવાવાળી જમીન ઉપર કોઈપણ પ્રકારનો હક, હિત, હિસ્સો નથી?
૩. શું વાદી પુસ્વાર કરે છે કે, પ્રતિવાદીઓ ખોટી રીતે દાવાવાળી જમીનમાં ઘૂસણખોરી કરી મકાન ઊભા કરેલા છે?
૪. શું પ્રતિવાદી પુસ્વાર કરે છે કે, વાદીનો દાવો સમયમર્યાદા બહાર છે?
૫. શું પ્રતિવાદી પુસ્વાર કરે છે કે, વાદીનો દાવો કારણ વગરનો છે?
૬. શું પ્રતિવાદી પુસ્વાર કરે છે કે, દાવાવાળી જમીનમાં આશરે ૫ ગૂંઠા જમીન વાદીના વડવાઓ બાપ દાદાના વખતથી પ્રતિવાદીના વડવાઓને ઘર બનાવવા માટે આપેલ?
૭. શું વાદી માંગ્યા મુજબની દાદ મેળવવા હક્કદાર છે?
૮. શું હુકમ અને હુકમનામું?

5. For the reasons stated below, I answer the above issues as under;

- (1). In the Negative.
- (2). In the Negative.
- (3) In the Negative.
- (4) In the Affirmative.
- (5) In the Affirmative.
- (6) In the Negative.
- (7). In the Negative.

(8). As per final order.

6. To substantiate their case, plaintiffs have produced following oral as well as documentary evidence.

ORAL EVIDENCE

Sr. No.	Particulars	Exh.
1	PW-1. Affidavit of examination in chief plaintiff,33 Babarbhai Radiyabhai Patel.	

DOCUMENTARY EVIDENCE

Sr. No.	Particulars	Exh.
1	Village form no.8-A of khata no.167, moje Kakadvel,36 Tal. Chikhli, dist. Navsari.	
2	Village form no. 7/12 of block no. 112, moje37 Kakadvel, Tal. Chikhli, dist. Navsari.	
3	Gram panchayat assessment sheet of property no.102,38-43 103, 104, 106, 472 and 105.	
4	Legal notice issued by plaintiff	44
5	Reply of notice given by defendant	45
6	Village form no.8-A of khata no.220, moje Kakadvel,46 Tal. Chikhli, dist. Navsari.	
7	Village form no. 7/12 of block no. 113, moje47 Kakadvel, Tal. Chikhli, dist. Navsari.	

Out of above stated evidence, plaintiffs haven't produced any further evidence and have filed closing pursis at Exh.62.

7. After completion of evidence of plaintiff side, defendants have produced following oral as well as documentary evidence.

ORAL EVIDENCE

Sr. No.	Particulars	Exh.
1	DW-1. Affidavit of examination in chief of defendant, Maheshbhai Dalubhai Patel.	82

DOCUMENTARY EVIDENCE

Sr. No.	Particulars	Exh.
1	Moje Kakadvel, Gram panchayat assessment sheet of property no.106 for the year 2012-18.	84
2	Moje Kakadvel, Gram panchayat assessment sheet of property no.472 for the year 2017-18.	85
3	Moje Kakadvel, Gram panchayat assessment sheet of property no.102 for the year 2012-18.	86

After completion their evidence, defendants have filed closure pursis at exh.90.

8. Appreciation of Evidence and Reasons thereof:

8.1. Issue No.1, 2, 3 & 6:

As all the issues are inter-connected,same are discussed together to avoid unnecessary repetitions.

In respect to the present issues, learned advocate for the plaintiff has submitted his written argument at exhibit 92. Wherein he has submitted that plaintiffs have produced documentary evidence at exhibit 36 to 47, which clearly proves that suit properties's ownership lies with the plaintiffs. It is also submitted that PW1, Babarbai has submitted his affidavit of examination in chief at exhibit

33. Wherein he has supported the case of plaintiff. It is further argued out that during the cross examination of plaintiff witness, nothing contradictory came on record. While the defendant's witness examined at exhibit 82 have admitted that their names are not on revenue record of the suit property and they have no any evidence to show that elders of their families have given five Guntha land out of this suit property. Thereby, plaintiffs have proved their case. On the other hand, learned advocate for the defendants have argued out that present suit filed by plaintiff is bad because of non-joinder of necessary parties as all the persons whose name are on revenue record haven't made party to the present suit. It is also argued out that out of plaintiffs, remaining persons whose names are on revenue record haven't given any authority to file a present suit to the plaintiff. It is also argued out that plaintiff witness has clearly admitted that defendants are living over the suit property in their houses since long time. Therefore, the present suit is barred by the law of limitation. It is also argued out that plaintiff witness has admitted that as the defendants have filed a criminal complaint against the plaintiff, they have filed present suit. Therefore, it is proved that defendants have settled possession. Therefore, present suit is required to be dismissed.

8.2. In order to decide the controversy between the parties, relevant provisions of law are required to be considered:

Sec.101 of Evidence Act: (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 those 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. Illustration (a) A desires a Court to give judgment that B shall be punished for a crime which A says B has committed. A must prove that B has committed the crime. (b) A desires a Court to give judgment that he is entitled to

certain land in the possession of B, by reason of facts which he asserts, and which B denies, to be true. A must prove the existence of those facts.

Section 35 of Specific Relief Act:

Effect of declaration .-A declaration made under this Chapter is binding only on the parties to the suit, persons claiming through them respectively, and, where any of the parties are trustees, on the persons for whom, if in existence at the date of the declaration, such parties would be trustees.

Section 05 of Specific Relief Act:

Recovery of specific immovable property.—A person entitled to the possession of specific immovable property may recover it in the manner provided by the Code of Civil Procedure, 1908 (5 of 1908).

8.3. Before going further, I would like to take resort of the verdict delivered in Rame Gowda by his LR's versus M. Verdhappa Naidu, Civil Appeal number 7672/1997, wherein Honorable Apex Court has held that,

'The court quoted with approval the law as stated by a Full Bench of Allahabad High Court in [Yar Mohammad Vs. Lakshmi Das](#) (AIR 1959 All. 1,4), "Law respects possession even if there is no title to support it. It will not permit any person to take the law in his own hands and to dispossess a person in actual possession without having recourse to a court. No person can be allowed to become a judge in his own cause." In the oft- quoted case of [Nair Service Society Ltd. Vs. K.C. Alexander and Ors.](#) (1968) 3 SCR 163, this Court held that a person in possession of land in assumed character of owner and exercising peaceably the ordinary rights of ownership has a perfectly

*good title against all the world but the rightful owner. When the facts disclose no title in either party, possession alone decides. The court quoted Loft's maxim 'Possessio contra omnes valet praeter eum cuius sit possessionis (He that hath possession hath right against all but him that hath the very right)' and said, "A defendant in such a case must show in himself or his predecessor a valid legal title, or probably a possession prior to the plaintiff's and thus be able to raise a presumption prior in time". In [M.C. Chockalingam and Ors. Vs. V. Manickavasagam and Ors.](#) (1974) 1 SCC 48, this Court held that the law forbids forcible dispossession, even with the best of title. In *Krishna Ram Mahale (dead) by his Lrs. Vs. Mrs. Shobha Venkat Rao* (1989) 4 SCC 131, it was held that where a person is in settled possession of property, even on the assumption that he had no right to remain on the property, he cannot be dispossessed by the owner of the property except by recourse to law. In [Nagar Palika, Jind Vs. Jagat Singh, Advocate](#) (1995) 3 SCC 426, this Court held that disputed questions of title are to be decided by due process of law, but the peaceful possession is to be protected from the trespasser without regard to the question of the origin of the possession.*

When the defendant fails in proving his title to the suit land the plaintiff can succeed in securing a decree for possession on the basis of his prior possession against the defendant who has dispossessed him. Such a suit will be founded on the averment of previous possession of the plaintiff and dispossession by the defendant. It is thus clear that so far as the Indian law is concerned the person in peaceful possession is entitled to retain his possession and in order to protect such possession he may even use reasonable force to keep out a trespasser. A rightful owner who has been wrongfully dispossessed

of land may retake possession if he can do so peacefully and without the use of unreasonable force. If the trespasser is in settled possession of the property belonging to the rightful owner, the rightful owner shall have to take recourse to law; he cannot take the law in his own hands and evict the trespasser or interfere with his possession. The law will come to the aid of a person in peaceful and settled possession by injuncting even a rightful owner from using force or taking law in his own hands, and also by restoring him in possession even from the rightful owner (of course subject to the law of limitation), if the latter has dispossessed the prior possessor by use of force. In the absence of proof of better title, possession or prior peaceful settled possession is itself evidence of title. Law presumes the possession to go with the title unless rebutted. The owner of any property may prevent even by using reasonable force a trespasser from an attempted trespass, when it is in the process of being committed, or is of a flimsy character, or recurring, intermittent, stray or casual in nature, or has just been committed, while the rightful owner did not have enough time to have recourse to law. In the last of the cases, the possession of the trespasser, just entered into would not be called as one acquiesced to by the true owner. It is the settled possession or effective possession of a person without title which would entitle him to protect his possession even as against the true owner. The concept of settled possession and the right of the possessor to protect his possession against the owner has come to be settled by a catena of decisions. Illustratively, we may refer to [Munshi Ram and Ors. Vs. Delhi Administration](#) (1968) 2 SCR 455, [Puran Singh and Ors. Vs. The State of Punjab](#) (1975) 4 SCC 518 and [Ram Rattan and Ors. Vs. State of Uttar Pradesh](#) (1977) 1 SCC 188. The authorities need not be multiplied. In [Munshi Ram & Ors.'s](#) case

(supra), it was held that no one, including the true owner, has a right to dispossess the trespasser by force if the trespasser is in settled possession of the land and in such a case unless he is evicted in the due course of law, he is entitled to defend his possession even against the rightful owner. But merely stray or even intermittent acts of trespass do not give such a right against the true owner. The possession which a trespasser is entitled to defend against the rightful owner must be settled possession, extending over a sufficiently long period of time and acquiesced to by the true owner. A casual act of possession would not have the effect of interrupting the possession of the rightful owner. The rightful owner may re-enter and re-instate himself provided he does not use more force than is necessary. Such entry will be viewed only as resistance to an intrusion upon his possession which has never been lost. A stray act of trespass, or a possession which has not matured into settled possession, can be obstructed or removed by the true owner even by using necessary force. In *Puran Singh and Ors.'s case (supra)*, the Court clarified that it is difficult to lay down any hard and fast rule as to when the possession of a trespasser can mature into settled possession. The 'settled possession' must be (i) effective, (ii) undisturbed, and (iii) to the knowledge of the owner or without any attempt at concealment by the trespasser. The phrase 'settled possession' does not carry any special charm or magic in it; nor is it a ritualistic formula which can be confined in a strait-jacket. An occupation of the property by a person as an agent or a servant acting at the instance of the owner will not amount to actual physical possession. The court laid down the following tests which may be adopted as a working rule for determining the attributes of 'settled possession' : i) that the trespasser must be in actual physical possession of the property over

a sufficiently long period; ii) that the possession must be to the knowledge (either express or implied) of the owner or without any attempt at concealment by the trespasser and which contains an element of animus possidendi. The nature of possession of the trespasser would, however, be a matter to be decided on the facts and circumstances of each case; iii) the process of dispossession of the true owner by the trespasser must be complete and final and must be acquiesced to by the true owner; and iv) that one of the usual tests to determine the quality of settled possession, in the case of culturable land, would be whether or not the trespasser, after having taken possession, had grown any crop. If the crop had been grown by the trespasser, then even the true owner has no right to destroy the crop grown by the trespasser and take forcible possession. In the cases of Munshi Ram and Ors. (supra) and Puran Singh and Ors. (supra), the Court has approved the statement of law made in Horam Vs. Rex AIR 1949 Allahabad 564, wherein a distinction was drawn between the trespasser in the process of acquiring possession and the trespasser who had already accomplished or completed his possession wherein the true owner may be treated to have acquiesced in; while the former can be obstructed and turned out by the true owner even by using reasonable force, the latter, may be dispossessed by the true owner only by having recourse to the due process of law for re-acquiring possession over his property. In the present case the Court has found the plaintiff as having failed in proving his title. Nevertheless, he has been found to be in settled possession of the property. Even the defendant failed in proving his title over the disputed land so as to substantiate his entitlement to evict the plaintiff. The Trial Court therefore left the question of title open and proceeded to determine the suit on the basis of possession, protecting

the established possession and restraining the attempted interference therewith. The Trial Court and the High Court have rightly decided the suit. It is still open to the defendant-appellant to file a suit based on his title against the plaintiff-respondent and evict the latter on the former establishing his better right to possess the property.'

8.4. Now, before embarking upon the legal issues, first analysis of oral as well as documentary evidence. To prove thier case, P.W-Babarbhai Radiyabhai Patel has filed his affidavit of examination of chief at Exh. 33. Wherein he has supported all the facts ascertained in the plant. while in his cross examination he admitted that his age is 86 years, and prior to his birth, defendants are living in his village. It is further admitted that he has seen that defendants residing at the same place during his lifetime, and they have constructed houses where they are residing, and those houses are situated on the suit land. He also admitted that in the eastern side of road, five (05) guntha land is in the possession of defendants, and remaining land is in the possession of the plaintiff. He also admitted that there are three houses over the five Gutha lands possess by the defendants, and they have obtained electric connection. He also admitted that as their properties have been divided, they have no any disputes, and defendants are living in suit property since so many years and till the filing of the suit plaintiff haven't taken any objection in that respect. It is also admitted that as the defendants have filed police complaint, they have filed present suit. Considering the oral testimony of the plaintiff, it is clear that plaintiff's age is 86 years and he has personally seen defendants residing at the same place throughout his lifetime in the houses situated over the suit land. Thus, it is quite clear that defendants have long and continuous possession which is visible and open and with the knowledge of plaintiff. Now, in respect to the oral evidence, if we peruse documentary evidence produced by plaintiff side, then a document at mark 36 and 37 shows that suit property bearing block number 112 is situated within Khata number 167 of Kakadvel Village. It also includes another block number 173 and there are 11 occupants of said land are on

revenue record. Out of them, three persons who are plaintiffs of the suits have filed present suit. Remaining persons are not a party to the suit. A document at Exh.38 to 40 are assessment certificates given by the Kakadvel Gram Panchayat, Tal. Chikhli, Dist. Navsari, which shows that house no.102 belongs to Babarbai Radiyabhai, house no.104 belongs to Chaturbai Radiyabhai and house no.103 belongs to Manilal Radiyabhai. Further, plaintiff have also produced a document at exhibit 41 to 43, which are also assessment certificate given by Kakadvel Gram Panchayat in respect to house number 106, 472 and 105. Those houses belongs to the defendants. A document at exhibit 44 is the notice given by the plaintiff to the defendants on 25/05/2017. A document at exhibit 45 is reply given by the defendants in response to notice sent by plaintiffs on 05.06.2017. A document at Exh.46 and 47 are village forms no.7/12 and 8-A of block no.113, shows that said land belongs to defendants. It is pertinent to note that along with the present defendants there are so many other names are mentioned on the revenue record of said land, who are not the party of the present suit. Thus, considering the documentary evidence, it is clear that name of plaintiffs along with other persons are on revenue record of block number 112, while the name of defendants along with the other persons are on revenue record of block number 113. The defendants have also filed an affidavit of examination of chief of DW- Maheshbai Dalubhai Patel at exhibit 82. Wherein he has supported the facts of written statement filed by them. In his cross examination, he admitted that plaintiffs have filed present suit in respect to the block number 112 and neither his nor his family members' names are on revenue record of suit property. He also admitted that block number 113 is the own and possess by defendants. He also admitted that he hasn't produced any written document which shows that five (05) Gutha land out of block number 112 has been given to his forefathers. He also admitted that they have constructed the house over the five guntha land, but not produced any construction permission. He also admitted that plaintiffs haven't given any written consent to construct the house over the suit property. He also admitted that facts ascertained by Babarbai in the plaint are true. Thus, considering the oral testimony of this witness,

it is clear that defendant side has not produced any evidence, which shows that they have constructed a house with the permission of Gram Panchayat over the suit property. It is also admitted fact that houses constructed by defendants are on the land of block number 112. Thus, considering the oral as well as documentary evidence, it is proved that defendants illegally constructed the houses over the suit property but as admitted by P.W in his cross examination, they have settled possession over the suit property. It is also pertinent to note that defendants haven't produced any evidence which shows that five Guntha land out of the entire suit property has been given to their forefathers but it seems probable from the testimony of P.W that defendants are living over the suit property with mutual consent. Therefore, this court holds that plaintiffs have failed to prove that defendants have no right over the suit property and they have illegally constructed a house over the suit property. Hence, I answer issue number 1, 2 and 3 in Negative, while the defendants have also failed to prove that five Guntha land has been given to their forefathers. Hence, I answer the Issue No.6 in the Negative.

9. Issue No, 4 & 5:

9.1. It is argued out by the defendant's side that plaintiffs have filed present suit which is barred by law of limitation and they have no any cause of action to file a present suit. Before giving an answer to the present issues, relevant provisions of law are required to be taken into consideration.

Limitation Act:

Part-V Suits relating to immovable property...

Article-65

Description of suit	Period of limitation	Time from which period begins to run
For possession of immovable property or any interest therein based on title	Twelve years	When the possession of the defendant becomes adverse to the plaintiff

9.2. In light of the above referred legal provisions, if we peruse evidence on record, then during his cross-examination plaintiff witness Babarbai Radiyabhai Patel has admitted that I have seen the defendants residing at the same place during my lifetime, and they have constructed houses where they are residing and those houses are situated on the suit land. Considering the age of this witness, it is quite clear that he is 86 years old and during his livelihood he has seen that defendants are living on a same place by constructing the houses. Therefore, it is quite clear that possession of defendants over the suit property in their house is a settled possession, and with the knowledge of plaintiffs and till the filing of the present suit plaintiffs haven't taken any objection. Plaintiff has filed this suit because defendants have lodged police complaint against them. Thus, considering the provision of article 65, it is quite clear that as soon as plaintiff has come to know that defendants have illegally constructed the houses over the suit property, they have to file a suit for recovery of possessions within 12 years. In the present case, defendants have possession over this suit property since 7 to 8 decades. Therefore, it is clearly proved that plaintiff's suit is barred by law of limitation. Further there is no evidence came on record that defendants are trying to encroach over the plaintiff's land and there is no any probable threat which suggest that defendants have encroached any part of plaintiff's land. Thus, plaintiffs have no cause of action to file a present suit. Hence, I answer the Issue no.4 and 5 in the Affirmative.

10. Issue No.7 and 8:

As discussed herein above, it is quite clear from the evidence on record that plaintiffs have not succeeded to prove issues No.1 to 3. On the other side defendants have succeeded to prove that suit filed by the plaintiff is barred by law of limitation, and there is no cause of action to file a present suit. Hence, this court holds that plaintiff is not entitled to get any kind of relief as prayed for. In the circumstance, this court answer issue No.7 in the Negative, and to meet the end of justice and to answer the issue No.8, this court pass the following order.

ORDER

- (1). Suit filed by the plaintiff is here by Dismissed.
- (2). Parties shall bear their own cost of the suit.
- (3). Decree to be drawn accordingly.

Pronounced in open court on the 8th Day of April of 2026.

**Date:08/04/2026
Chikhli**

**Sunilkumar Pranshankar Dave
Addl.Sr.CivilJudge,Chikhli
(Code No.G01390)**