

GJPM020035082023



Instituted On: 20.04.2023

Registered on: 20.04.2023

Decided on: 21.12.2024

Duration: YY MM DD



सत्यमेव जयते

**IN THE HON'BLE COURT OF ADDL. CIVIL JUDGE,
PANCHMAHAL**

AT GODHRA

IN

REGULAR CIVIL SUIT NO. 90 OF 2023

Exhibit:

Plaintiffs:

1. Heirs of Late Babarbhahi Nathabhai Patel
 - 1/1. Vidhyaben w/o Mahendrabhai Patel and D/o Babarbhahi
Aged: 65 years; Occupation: Household Work;
Residing at Patel Faliyu,
Jitpura, Ta. Godhra, Dist. Panchmahal
 - 1/2. Priteshkumar Mahendrabhai Patel
Aged: 45 years; Occupation: Business;
Residing at Patel Faliyu,

Jitpura, Ta. Godhra, Dist. Panchmahal

- 1/3. Dharmishthaben w/o Sanjaykumar Patel and D/o Mahendrabhai Patel
Aged: 45 years;
Occupation: Household Work;
Residing at Kanya School, Timba,
Dist. Panchmahal

VERSUS

Defendant:

1. Heirs of Late Nanabhai Nathabhai Patel
- 1/1. Shobhnaben D/o Nanabhai
Aged: 45 years; Occupation: Household Work;
Residing at Mauje Village Isodiya,
Ta. Godhra, Dist. Panchmahal
- 1/2. Induben D/o Nanabhai
Aged: 50 years; Occupation: Household work
Residing at Mauje Village Isodiya,
Ta. Godhra, Dist. Panchmahal
- 1/3. Rekhaben D/o Nanabhai
Aged: 42 years; Occupation: Household work
Residing at Mauje Village Isodiya,
Ta. Godhra, Dist. Panchmahal
- 1/4. Hinaben D/o Nanabhai
Aged: 36 years; Occupation: Household work
Residing at Mauje Village Isodiya,

Ta. Godhra, Dist. Panchmahal.

1/5. Mukesh Nanabhai Patel

Aged: 39 years; Occupation: Service

Residing at Mauje Village Isodiya,

Ta. Godhra, Dist. Panchmahal

2. Heirs of Late Kamlaben D/o Nathabhai

2/1. Arvinbhai Bhayalabhai Patel

Aged: 52, Occupation: Agricultural Activity,

Residing at Patel Faliyu, Jitpura,

Ta. Godhra, Dist. Panchmahal.

2/2. Sangitaben Bharatbhai Patel

Aged: 45, Occupation: Household work,

Residing at Harkundi,

Ta. Godhra, Dist. Panchmahal

3. Heirs of Late Chanchalben D/o Nathabhai

3/1. Ajaybhai Punambhai Patel

Aged: 50, Occupation: Service,

Residing at Moti Kantadi,

Ta. Godhra, Dist. Panchmahal.

3/2. Dipakbhai Punambhai Patel

Aged: 52, Occupation: Agricultural Activity,

Residing at Moti Kantadi,

Ta. Godhra, Dist. Panchmahal.

3/3. Tinabhai Punambhai Patel

Aged: 54, Occupation: Business,

Residing at Moti Kantadi,
Ta. Godhra, Dist. Panchmahal.

Appearance:

Learned Advocate Mr. S. S. Charkha for the Plaintiffs

Learned Advocate Mr. I. A. Khatuda for the Defendants

**:SUIT FOR DECLARATION OF SHARE AND FOR PERMANENT
INJUNCTION AND FOR PARTITION BY METES AND BOUNDS
OF AGRICULTURAL LAND:**

:: JUDGEMENT ::

***1. The main plank of the present suit can be
summarized as follows:***

- (1) The plaintiffs have filed the present suit for declaration as to the suit property as ancestral and have also prayed for partition by metes and bounds. The plaintiff has also asked for injunction praying that they should not be prevented for making use of the suit property and shall not be obstructed by the defendants and also defendants shall not transfer, mortgage, gift or in any way transfer, the suit property. The plaintiff as and by way of interim relief have also asked for more or less similar reliefs against the defendants not to obstruct the plaintiffs from enjoying the suit property lands

and that till the partition is effected, they shall not transfer in any manner or mortgage or encumber suit property during the pendency of the suit.

- (2) The averments of the plaintiff shows that the parties are the common descendants of common ancestor Nathabhai Madhurbhai Patel and in village Isrodiya, the parties to the suit are having several suit properties as stated in para 2 A. to 2 F. which are agricultural lands and it is the contention of the plaintiff that the said properties i.e. the suit properties are ancestral properties and that the name of plaintiff no. 1/1 Babarbai Patel came to be entered in the revenue record and that 1/2 & 1/3 were also added during the life time of plaintiff no. 1/1 vide entry no. 3321 dated 12.08.2021 which came to be certified on 28.10.2021. It is the say of the plaintiff that defendant no. 1/1 to 1/5 are the heirs of Nanabhai Nathabhai and that 2/1 & 2/2 are the heirs of Kamlaben D/o Nathabhai. Likewise, 3/1 to 3/3 are the heirs of Chanchalben D/o Nathabhai and thus, the common ancestor Nathabhai had four heirs and that all the heirs are having equal share and each branch having 1/4 undivided share. It is also stated that in all suit properties, the names of plaintiff are shown as

successors. However, the defendant no. 1/1 to 1/5 are not allowing the plaintiffs to use the suit properties nor they are ready to give any share or rights from the agricultural produce and on demanding and trying to convince for effecting partition, the defendants are not agreeing and as a matter of fact, they are not ready for partition and are refusing to give any share in the lands or in the produce from the suit properties which led to filing of the present suit. The plaintiffs have produced the revenue record at list Exh.3/1 to 3/5 of all respective suit properties in which the names of the plaintiffs in village form no. 7 &12 are mentioned.

2. In the suit as well as injunction application, this court had issued summons and notice for urgent show cause notice of interim injunction application and the defendants have filed joint written statement and reply to the plaint and injunction application. The defendants have denied that the averments made in the plaint are not true and that plaintiffs are not having any share in the suit properties, and consequently there is no question of any partition and giving any right of share from the suit properties. The defendants have contended that plaintiff no.1's mother had a previous

marriage and from such marriage plaintiff no.1 and Urmilaben were born and thereafter, the second marriage was performed with Babarbai and therefore, plaintiff no.1 is not daughter of Babarbai and therefore, in Babarbai's properties, plaintiffs cannot have any rights whatsoever. It is also stated that the plaintiff no.1 has suppressed the above fact and the fact of plaintiff no.1's sister Urmilaben who has left the house since several years and therefore, the plaintiff has not obtained any succession certificate showing that they are heirs of Babarbai and therefore, plaintiffs are not having any prima facie case and are not entitled to any injunction nor there is any cause of action accrued to the plaintiffs. The defendant has not produced any documentary evidence along with its reply.

3. The injunction application Exh.5 is came to be ordered on 20.10.2023 and by the said order the interim injunction was partly allowed and defendants, their servants and agents were directed to maintain status quo as to the tenure (nature of land), title and possession of the suit property and not to create any encumbrance or transfer in any manner and all in

the suit properties during pendency and final disposal of the suit.

4. *The issues were raised at Exh.12 as follows:*

- (i) Whether the plaintiff proves that she has share in the ancestral property left by Nathabhai Madhurbhai Patel which are described as suit properties?
- (ii) Whether the plaintiff is entitled to preliminary /final decree for partition of the suit properties namely para 2A. to 2F.?
- (iii) Whether the plaintiffs are entitled to the declaration of their 1/4 th share and decree for partition by metes and bounds and permanent injunction prayed in para 11 (b) & 11(c)?
- (iv) Whether the defendants prove that the plaintiffs are not having any rights since they are not the heirs and legal representatives of deceased Babarbai?
- (v) Whether the defendants prove that they alone are the heirs and legal representative entitled to enjoy the suit properties – ancestral properties of Nathabhai Madhurbhai to the exclusion of the plaintiff?
- (vi) What order and decree?

5. Following oral and documentary evidence produced by the plaintiff side:

Oral Evidence of plaintiff side:

Sr. No.	Witness	Exh.
1	Affidavit of Examination-in-Chief in lieu of oral evidence of the plaintiff no.1 Vidhyaben Mahendrabhai Patel and her cross examination	33

Documentary Evidence of plaintiff side:

Sr. No.	Description of Documents	Exh.
1.	The Copy of village form no. 7 & 12 with regard to revenue survey no. 270/2, khata no. 70	25
2.	The Copy of village form no. 7 & 12 with regard to revenue survey no. 272, khata no. 70	26
3.	The Copy of village form no. 7 & 12 with regard to revenue survey no. 325, khata no. 70	27
4.	The Copy of village form no. 7 & 12 with regard to revenue survey no. 35, khata no. 70	28
5.	The Copy of village form no. 7 & 12 with regard to revenue survey no. 10, khata no. 100	29
6.	Notarised copy of School Leaving Certificate of defendant no. 1/1	30
7.	Notarised copy of Aadhar Card of defendant no. 1/1	31

8.	Notarised copy of PAN Card of defendant no. 1/1	32
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6. Following oral and documentary evidence produced by the defendant side:

Oral Evidence of defendant side:

Sr. No.	Witness	Exh.
1	Affidavit of Examination-in-Chief in lieu of oral evidence of the defendant no. 5 Mukeshbhai Nanabhai Patel and his cross examination	35
2	Oral evidence of Talati Cum Mantri Jivanbhai Paragbhai Vanzara before the Court and his cross examination	45
3	Affidavit of Examination-in-Chief in lieu of oral evidence of the defendant's witness Patel Desaibhai Kalidas and his cross examination	52

Documentary Evidence of defendant side (produced by Talati cum Mantri):

Sr. No.	Description of Documents	Exh.
1.	The Tumar produced (bunch of official records with Talati office) list Exh.40 by the Talati Jivanbhai Exh 45 , has remained unexhibited , since it had village form no 7and 12 , pedhinama,	40A

	death certificate of Babarbai, Vijyaben's school leaving certificate and form no. 6 concerning the revenue entry forming part of revenue record, and said tumar produced by Talati exh. 45 is given collective exhibit 40A Colly.	
2.	Closing Pursis	54

7. My findings to the above issues are as follows:

- (i) In affirmative;
- (ii) In Affirmative;
- (iii) In Affirmative;
- (iv) In negative;
- (v) In negative;
- (vi) preliminary decree declaring the plaintiff's 1/4th share in the suit properties and preliminary decree for partition by metes and bounds passed and being agricultural land copy of the judgement send to the collector for submitting his report in accordance with law. So that the final decree can be passed thereafter.

::REASONS::

8. Heard. Taken into consideration written arguments of the plaintiff vide Exh.58 and of the defendants at Exh.60.

Perused record and pleading and evidence lead by both the respective parties.

9. For the sake of brevity and convenience, the issues raised in the matter are dealt with simultaneously and analogously.
10. The plaintiff no.1 is the heirs of Babarbhair Nathabhai and plaintiff no. 2 & 3 are the children of plaintiff no.1 whereas defendant no. 1 is heirs of Nanabhai Nathabhai. Defendant no.2 is heirs of Kamlaben D/o Nathabhai and defendant no. 3 are heirs of Chanchalben D/o Nathabhai. The suit is filed by the plaintiff asserting that Nathabhai Madhurbhai Patel was the common ancestor and the suit properties are ancestral properties. It is also contended that as per the family tree of genealogy there were two sons and two daughters of Late Nathabhai Madhurbhai Patel amongst sons, the plaintiffs are the heirs of Babarbhair Nathabhai and claims that under Hindu Succession Act Babarbhair had 1/4th share in the agricultural lands in question as well as the plaintiffs being the direct descendants have such hereditary rights as co-sharers in the ancestral properties situated at Village Isrodiya which are agricultural lands being revenue survey number 270/2 admeasuring 2630, revenue survey no.

272 admeasuring 506 sq.mtrs. revenue survey no. 325 admeasuring 10016 sq.mtrs. revenue survey no. 35 admeasuring 11432 sq.mtrs. these are the survey numbers of Khata no. 90. Another revenue survey no. 10 admeasuring 0090 sq.mtrs. and revenue survey no. 270/2 of Khata no. 90 admeasuring 2630 sq.mtrs. are the suit properties which are agricultural lands and the subject matter rest around the contention of the defendant that the plaintiff are not the heirs of Babarbai Nathabhai Patel. This being the only contention of the defendant, and therefore, the evidence of the parties have also centred around the aforesaid issue which has direct bearing on the result of rest of the issues and consequential reliefs.

11. ***On behalf of the plaintiff Vidhyaben alias Vijyaben w/o Mahendrabhai and D/o Babarbai has given evidence at Exh.33*** contending that she is the daughter plaintiff no.1 and for getting partition as per the shares in the ancestral property of Nathabhai Madhurbhai Patel. The suit is filed. In the chief Examination she has also referred to the pedhinama and has also stated that in revenue record also the name of Babarbai Patel is entered and after his death the plaintiff

no.1 /1 to 1/3's name are also recorded. It is clarified that first the name of plaintiff no. 1/1 was entered and thereafter, during lifetime of 1/1 names of plaintiff no. 1/2 & 1/3 were got entered vide entry no. 3321 dated 12.08.2021 which entry has been certified on 28.10.2021. Thus, categorically she has stated that plaintiff's names are in the revenue record jointly along with the names of the defendants and having regard to the fact that there are essentially four branches, the Babarbai had 1/4th undivided interest which was percolated in favour of the plaintiffs. She has also make grievance that though this agricultural lands are very fertile, the defendants 1/1 to 1/5 are not allowing plaintiff to till the land and nor giving any share in the produce which are taken in every seasons. The plaintiffs had also requested the said defendants personally and through the eminent person of community. However, the defendants 1/1 to 1/5 are not agreeable for division of the lands and are denying the rights of the plaintiffs and refusing to given any share and that the said defendants are trying to usurp the plaintiff's share in the land and giving threats of going ahead with any remedy and therefore, the suit is filed since there was apprehension that

they are likely to sell away or transfer or encumber the undivided lands as aforesaid, the suit was filed. It is also stated that according to the defendants no. 1/1, the plaintiffs are not the direct descendants of late Babarbai Patel and it is contended by the defendants that the plaintiff 1/1 is the daughter of wife of Babarbai but the plaintiffs are the children of previous marriage of the said lady. The plaintiffs have also produced the School Leaving Certificate, Aadhar Card, PAN Card in which after the plaintiff no.1's name, the name of babarbai Patel is specifically mentioned.

In the cross examination of this witness exh.33, she has stated that she has studied upto 7th standard and can read and write Gujarati language and had signed the plaint after reading the same. She has clearly stated that Nathabhai Mathurbhai is the grandfather and she has stated that pedhinama was prepared which is produced on record and it is stated in the said pedhinama that Dharmishtha is my daughter and the witness Vidhyaben is babarbai's daughter. She has clarified that in the pedhinama Dharmishthaben is shown wrongly as daughter of Babarbai. She has stated that Shantaben is her mother and Shantaben had two daughters

Vidhyaben and Urmilaben. She has denied that Babarbai is not a Biological father of the plaintiff.

12. **Thus, the plaintiff in her evidence has stated that** common ancestor Nathabhai Madhubhai Patel had 4 children therefore, her father Babarbai had 1/4 undivided interest in the suit property of the agricultural land shown as 2A to 2F in the suit as ancestral property and that she is entitled to seek partition as successor of Babarbai's interest under Hindu Succession Act. The plaintiff in support of her evidence has also produced a document Exhibit 25 showing the village form no. 7 & 12 of survey number 270/2 in which her name is shown as Vidyaben as Babarbai's daughter vide entry 2902. The plaintiff has also produced at Exhibit 26, the 7 & 12 records of revenue survey number 272 and at exhibit 22, village form no. 7 & 12 revenue survey number 325 and Exhibit 28 are the 7 & 12 records regarding survey number 35 which shows the plaintiff name in revenue record with necessary village form number 6 entry 2902 and also at Exhibit 29, village form no. 7 & 12 records of survey number 10 of Khata number 100 to corroborate her say that she is the daughter of Babarbai Nathabhai Patel. The plaintiff in

her evidence also produced at exhibit 30 which is her school leaving certificate which record shows that plaintiff is shown as daughter of Babarbai Nathabhai. The plaintiff in her evidence that her Aadhar card at exhibit 31 and PAN Card at exhibit 32 also proves that she is daughter of Babarbai Nathabhai and thus the plaintiff has laid the above evidence and in the cross examination she has shown that she can read and write and that Nathalal Madhubhai was her Grandfather she has also admitted having made the Pedhinama or family tree. She has stated that Shantaben had married Babarbai and she had two daughter namely Vidyaben and Urmilaben and she has denied that Babarbai was not the biological father the school leaving certificate is in the name of Vijyaben and she has clarified that before her marriage she was shown as vijaya ben and after marriage she was known as Vidyaben and both are the one and same individual. She has denied that her mother, Shantaben was already having 2 daughters of previous marriage before marrying Babarbai. She has stated that her mother Shantaben had left the plaintiff and her sister at Babarbai's home since several years and has denied that Babarbai had

only upbringing she asserted that Babarbai was her biological father. She also denied that Babarbai died without any children. She has admitted that she is presently residing at Jeetpura. She admitted that even on the date of her evidence the defendants are tilling the land. on behalf of the plaintiff's no other evidence is produced.

13. ***The defendant no. 5 gave his evidence in the nature of affidavit-in-chief examination vide exhibit 35*** the sale Mukeshbai Nanabhai Patel asserted that he is giving evidence on behalf of the defendants and that the suit filed by the plaintiff is not bonafide and it is contended that revenue entry 2902 and 3321 in favour of the plaintiff are made beyond the knowledge of the defendants and that the entire land according to the defendants belongs to them and they are in possession it is also the say of the defendant that the revenue entries were wrongly made and that the plaintiffs have no share in the property and therefore, there is no question of the partition. The defendants have said that plaintiff has no share in the Babarbai's estate. In the cross examination of the witness at exhibit 35 Mukeshbai has admitted that suit property is the agricultural land and in the

revenue record, the name of the all the plaintiffs and defendants are shown is also admitted. He has also admitted that he has not proved any documentary evidence showing that he has challenged the last succession entry. The witness was also shown the documents exhibit 25, 26 and 27 and looking to the same the witness admitted that his name is shown on serial number 7 at entry number 90 and has denied that in entry number 100 name of Vidyaben figures the witness admitted that he is visiting the Talati office for taking out village form 7 and 12 after every 2 or 3 years and admitted that he is read all entries and village form details regarding subject suit properties. The witness has admitted the exhibit 23 and entry number 90 his name Vidyaben and Priteshbhai and Dharmistaben's name are included the witness also admitted that in exhibit 29 in relation to khata number 100 along with the name of defendant, Vidyaben Priteshbhai and Dharmisthaben are shown in records. The witness says that he has no knowledge of entry 2902 and 3321 and has stated that that in chief examination he has not produced any evidence. In the cross examination he has admitted that because Vidyaben is married he believes that she does not

any right or title in the interest. The witness has also said that because the plaintiff is not residing in the suit property, he is of the believe that plaintiff has not right, he has also admitted that suit lands are having many pits and he has not produced any evidence to show any filings or expenses incurred in that connection. He has also admitted that he has not produced any documents to show that plaintiff mother had got married had two daughter and thereafter got married to Babarbai, as alleged by him. He has also admitted to show as to which Vidyaben is whose daughter nor he is having any evidence to show that Shantaben got second marriage with Babarbai he has also admitted according to him the plaintiff has not got any right title interest therefore not allowing her to enter the suit land. he has denied that other sisters had demanded share. He has also denied any efforts to solve the case by Panch judgments. He has admitted that Vidyaben had studied in Isrodi village and from Isrodi she got marriage to village Jeetpura.

14. **The defendant at exhibit 45 examined Jivanbai Paragbai Vanzara** who is Talati in village Isrodi who has stated that if any person named in revenue record expires

then regarding the succession application, he has to make the necessary Pedhinama and inquiry and has to take the statement of the successors and the panch witnesses. He has also stated that while taking statement in relation the succession entry, the death certificate, village form no. 7 and 12 records as well as affidavit and identity documents are required to be verified before Panch witnesses. The witness had brought relevant papers in connection with the succession entry of Babarbhair and in the Panchnama it is stated that Shardaben Babarbhair died before 40 years he had stated that other co-owners were not given notices and if there is any dispute regarding any entry then Mamlatdar has to enquire into. He has also stated that Vijayaben had come in march 2024 for preparing another pedhinama and that he had read that affidavit in which name of Vijayaben's mother was shown as Shantaben and in the said affidavit three persons were shown as heirs of Babarbhair Shantaben, Vijayaben and Urmilaben. In cross examination he has admitted that he has received court summon regarding entry number 2902 of subject property he admitted that if anybody comes to him inward entry is required to be made. He has

admitted that his statement in chief examination about Vijayaben coming with affidavits and he having PDF of such application given by Vijayaben is not noted anywhere in the inward register. He has admitted that since no pedhinama was prepared no entry was made in inward register. He has also admitted that on basis of PDF he has not done any official act in the application it was shown as Shantaben was binfarjan (without any child) but no such evidence was produced and therefore no further act was done by him. The witness has admitted that regarding 135 D entry number 2902, the jurisdiction is of the Mamlatdar and whether section 135(D)'s procedure was followed or not? That record remains with Mamlatdar office and therefore he is unable to say whether notice of 135 was served or not. He has admitted that in the papers brought by him 135D notice is there not nor he has personally verified from Mamlatdar office he has admitted that entry number 2902 is not challenge in RTS appeal and has admitted that such entry is certified in the year 2014 by the circle inspector and e-dhara office maintains the kind of record. The witness also admitted that exhibit 23 shows that after entry 2902, entry 3321 was made

and by the said entry, name of Pritesh Mahendrabhai were entered he has admitted that the government gives benefit on the basis of form 7 and 12 and he cannot say how many times the applicant got 7 and 12 records.

15. **The said witness produced the documents at exhibit 47**

and the production of which was allowed by the court which also bears the death certificate of Babarbhahi 16.01.2005 and the entry 2902 in village form number 6 also clearly shows that Vidyaben is a daughter of Babarbhahi nathabhahi, and Babarbhahi died on 16.01.2005 and that Shantaben was the wife of Babarbhahi.

16. **Another witness exhibit 52 was examined being Patel**

Desaibhai Kalidas who has stated that he knows plaintiff and defendant and as third party he is bringing true facts before the court as and by the way of notarized affidavit and states that he was knowing Babarbhahi Nathabhahi who had married to Shantaben in 1965 with whom Babarbhahi had relations. He has stated that Shantaben had 2 daughters out of her previous marriage that is Urmila and Vidya and thereafter, Shantaben fled away with her daughter urmila and Vidyaben remained with Babarbhahi who did her

upbringing, got educated, but she is not legal heir of Babarbai. The witness is cross examined by the learned advocate of plaintiff shri H.K. Soni, in which witness admitted that vijayaben is daughter of Babarbai and also admitted that vijayaben is also known as Vidyaben. He has also admitted that Shantaben gave birth of vijayaben undisputedly and also admittedly that Babarbai married to Shantaben and it is also undisputed that pedhinama of Vijayaben is correct. However, denied that his affidavit was prepared at the instance of defendant. The defendant's advocate also produced 4 third parties affidavits whom they wanted to examine as witness and out of which, one witness at exhibit 52 is only examined namely Patel Desaibhai Kalidas. Thereafter, the closing pursis was submitted by the defendants exhibit 54.

17. ***The Tumar produced (bunch of official records with Talati office) list Exh.40 by the Talati Jivanbai Exh 45***, has remained unexhibited, since it had village form no 7 & 12, pedhinama, death certificate of Babarbai, Vijayaben's school leaving certificate and form no. 6 concerning the revenue entry forming part of revenue record, and said tumar

produced by Talati Exh. 45 is given collective exhibit 40A Colly.

18. The learned advocates for the respective parties have made submissions in the line of their respective stance and have also submitted written arguments. According to the learned advocate for the defendant the plaintiff has failed to prove that plaintiff no. 1 is the heir of Late Babarbai and therefore, she has no share in the property of Late Babarbai and that the defendants are exclusively in possession of the suit agricultural land and in absence of any share of plaintiff no.1, no decree much less preliminary decree can be passed for partition by metes and bounds and suit should be dismissed.
19. To collate the oral and documentary evidence produced by respective parties following facts are proved by the plaintiffs, as contemplated under S. 101 of Indian Evidence Act:
 - A) the suit properties are ancestral agricultural lands detailed in para 3 of the plaint, with common ancestor Nathabhai Madhurbhai Patel.
 - B) The agricultural lands of Nathabhai had 4 children each having 1/4 undivided share in property stated in par

2(a) to 2(f) are the fertile lands of block no 90 and 100 of village Isrodia Taluka Godhra

- C) The common ancestor died intestate and property derived by the heirs as and by way of succession mode under Hindu succession act
- D) the plaintiff no 1 is the Daughter of late Babarbai who was admittedly having 1/4 undivided share in above agricultural lands
- E) The plaintiffs name came to be entered as and by way of succession entry no 2902 and 3321 are made and the same is also reflected in village form no. 7 & 12
- F) The plaintiffs have proved that she is the daughter of Babarbai Nathabhai by providing proof by documents Exh. 25 to 32 and oral evidence Exh 33 by producing revenue record and succession entries more particularly entry 2902 which was made in the year 2014 , i.e. 9 years before the date of present suit and that too the said succession entry is not challenged by the defendants.

- G) The say of the defendant that Babarbai had second marriage with Shantaben and at that time Shantaben came at Babarbai home with two daughters of her previous marriage, is not proved by the defendants
- H) the plaintiff has proved that she is the daughter of late Babarbai, by unclenching evidence of school leaving certificate Exh. 30 and Exh 31 is Aadhar Card and Exh 32 is PAN card of plaintiff no 1 to prove that as per pedhinama, she is the daughter of late Babarbai who was having undivided 1/4 share in all agricultural lands and is the daughter of late Babarbai
- I) The defendants have examined himself at Exh. 35 Mukeshbai who has not produced any documentary evidence to prove that the plaintiffs have no right in the ancestral undivided suit properties, nor the defendant though asserted in written statement that plaintiffs has no right to partition as plaintiffs is not lineal descendent of late Babarbai and that Babarbai died leaving no heirs , has failed to prove said assertions and has failed to prove that plaintiff no 1 is not real daughter of the Babarbai.

- J) the defendant's evidence clearly shows that only defendants 1/1 to 1/5 are having possession of the suit properties and are not allowing the plaintiffs and the co-sharers to till the lands nor giving share in produce to the plaintiff and have tried to oust the plaintiffs by creating false excuses in their defence. The plaintiffs have categorically stated how she is being deprived of her rights to till the lands in question and to get her share in produces and right to get partition by metes and bounds
- K) The amended provision of Hindu succession act permits even daughter to claim the partition since she is a coparcener also from the date of birth.
- L) Even if the possession is with the defendants no 1/1 to 1/5 , a co-owner do not have exclusive rights,qua the property and he hold a the property for one and all the co-sharers and can not exclude or oust the plaintiffs co sharers .
- M) Jivanbhai Talati examined by the defendant to dilute the effect of revenue entry in favour of plaintiff no 1 as successors of late Babarbai, in fact in cross

examination broke down and admitted that he is not aware as to whether the Mamlatdar issued notices under s.135 or not and has said that that record is available at Mamlatdar Office and admitted that succession entry In favour of plaintiff no 1 was certified in 2014 and none including defendant challenged such entry at any point of time

N) even the third party witness examined by the defendant, is Exh 52 Patel Desaibhai Kalidas has filed affidavit in which witness has also admitted that Babarbhair's daughter Vijyaben is also known as Vidhyaben and that Shantaben married with Babarbhair and with Shantaben daughter Vijyaben was born and for that there is no dispute and even with respect to pedhinama of Vijyaben also he has no dispute. This shows that plaintiff no.1 is the daughter of Babarbhair and Shantaben.

20. Thus, the overall appreciation of the oral and documentary evidence, taken together, clearly proves that the plaintiff no. 1 and plaintiff no. 2 and 3 whose names are included as successors related by blood, during lifetime of the plaintiff no.1, have proved that they are having 1/4 share in the

ancestral property and that they are entitled to get preliminary decree for partition of suit property and **issue no. 1 and 2 are decided in affirmative.**

21. And resultantly, **issue no 3 is decided in Affirmative** and are entitle to get the partition by metes and bounds and also permanent injunction prayed in the relief clause in the plaint. The defendants 1/1 to 1/5 failed to prove that the plaintiffs have no right title interest in the suit properties and have also failed to prove that they alone have interest in the suit properties, **consequently the issue no 4 and 5 are decided in negative.**

22. Hence, following order:

ORDER

- A. The suit of the plaintiff succeeds, and it is declared that in the suit properties of the plaint, are joint ownership properties of plaintiff no.1 and the defendants and plaintiff is having 1/4 share in the said properties and is entitled to the partition of suit properties by metes and bounds.
- B. The preliminary decree for partition is passed with respect to the said properties and the collector, Godhra is directed to submit his report as to which portion shall go to which of the sharer, within 4 weeks from this

preliminary decree. Such report to be submitted to this court without fail, so that this court can pass final decree in accordance with law thereafter. Yadi to concerned.

- C. The permanent injunction as prayed is also granted as prayed in para 11B & 11C of the plaint, against the defendants and their agents from transferring and/or parting with any/all the properties without the written consent and not to prevent or obstruct the plaintiff from using/cultivating the suit properties.
- D. Preliminary decree be drawn accordingly.
- E. No order as to cost.
- F. All interlocutory applications (if pending) also stands disposed of accordingly as per this order.

Signed and pronounced today in open court on 21st December, 2024.

Date: 21.12.2024

Place: Godhra

(K. S. Modi)
Additional Civil Judge,
Godhra

CODE: GJ01560