

GJPM020035532021



Instituted On: 14.09.2021

Registered on: 14.09.2021

Decided on: 08.07.2023

Duration: YY MM DD



सत्यमेव जयते

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

**AT GODHRA**

**IN**

**REGULAR CIVIL SUIT NO. 200 OF 2021**

Exhibit:

***Plaintiff:***

1. Patel Laxmiben Wd/o Punjabhai Ranchhodbhai  
Aged: 78 years; Occupation: Household work;  
Residing at Ratanpur Kantadi, Ta. Godhra
2. Patel Kusumben D/o Punjabhai Ranchhodbhai and  
W/o Vipulkumar Chunilal Patel  
Aged 51 years; Occupation: Household work;

Residing at 18, Dharnidhar Society;  
Behind Ankur School, Yogeshwar Road;  
Bhuravaav; Godhra;  
Dist. Panchmahal

**VERSUS**

***Defendants:***

1. Patel Pravinbhai Punjabhai  
Aged: 58 years. Occupation: Agricultural activity,  
Residing at Mu. Po. Ratanpur (Kantadi), Ta. Godhra;  
Dist. Panchmahal
2. Patel Rameshbhai Punjabhai  
Aged: 55 years. Occupation: Agricultural Activity,  
Residing at 65/B, Sunrise Bangalow,  
Nr. Ajita Nagar, Sama Savali Road,  
Vadodara
3. Patel Shaileshbhai Punjabahi  
Aged: 53 years. Occupation: Agricultural Activity,  
Residing at Mu. Po. Ratanpur (Kantadi),  
Ta. Godhra, Dist. Panchmahal

**Appearance:**

Learned Advocate Mr. S. K. Purani for the Plaintiffs  
Exparte against the Defendants

***:SUIT FOR PARTITION BY METES AND BOUNDS AND FOR  
PERMANENT INJUNCTION:***

**:: JUDGEMENT ::**

The conspectus of the present suit can be vividly described as follows:

1. The plaintiff has filed the present suit seeking declaration of their share and also partition of the suit properties contending inter alia that the properties mentioned in para 2 of the plaint are the joint family property and they are Hindus so they are HUF properties and had a common ancestor Punjabhai Ranchhodbhai Patel who had died on 21.07.1998. The properties consist of Khata no. 397 and 407 and the different properties are 170/1, 170/2, 170/3, 170/7, 170/5, 190/1, 192, 221/2, 241/6 at village Ratanpur; at village: Kantadi.
2. The plaintiff has also stated that the originally the common ancestor was Ranchhodbhai Dharamdas which properties have succeeded to Punjabhai Ranchhodbhai's family as per the revenue entry 6780 dated 16.08.1978. His daughter Kashiben Ranchhodbhai had relinquished her share on 01.05.1979 vide entry 4688 and thus the entire property had remain the property of Late Punjabhai Ranchhodbhai who had three sons, plaintiff no. 1 wife and plaintiff no. 2 daughter and thus each of them on the demise of Punjabhai Ranchhodbhai had 1/5<sup>th</sup> share in the entire property. Having

regard to the total extent of lands, each of the sharer will get 7 Acres 80 Gunthas of land. It is also pleaded that the plaintiff no. 1 Wd/o Punjabhai is aged 78 years and all agricultural activities are being done by all jointly. However, the defendants who are supposed to take care of plaintiff no. 1 mother are neglecting her, they don't give share in produce recently and even don't allow plaintiff no. 1 to talk to her daughter plaintiff no. 2 and even not allow to meet the plaintiff no. 1. The plaintiffs have also stated that when they demanded the share in produce, the defendants are quarrelling and thereupon in January 2021, the plaintiffs served the registered notice which was not replied and at the agricultural fields, defendants have continued their quarrelling attitude and harassment and therefore, it was necessary to file suit for partition by metes and bounds and also for permanent injunction.

3. The suit was filed on 14.09.2021 and on summons were served on the defendants and was kept for reply. However, in spite of repeated opportunities, they have failed to file the written statement and therefore, the right to file written

statement under O.8 was closed on 03.01.2022. The issues were framed on 23.02.2022 which are at Exh.7.

4. The plaintiffs have sought for production of certain documents vide Exh.8 and they have produced the revenue record of all survey numbers which are the suit properties and also produced the death certificate of Punjabhai Ranchhodbhai dated 21.07.1998. The names of the plaintiffs are figuring in the revenue record, which have been exhibited.
5. Following oral and documentary evidence produced by the plaintiff side:

***Oral Evidence of plaintiff side:***

<b><i>Sr. No.</i></b>	<b><i>Witness</i></b>	<b><i>Exh.</i></b>
1	Affidavit of Examination-in-Chief in lieu of oral evidence of the plaintiff Patel Kusumben Punjabhai	11

***Documentary Evidence of plaintiff side:***

<b><i>Sr. No.</i></b>	<b><i>Description of Documents</i></b>	<b><i>Exh.</i></b>
1.	Original death certificate of Punjabhai Ranchhodbhai showing date of death	16

	21.07.1998	
2.	Certified copy of agricultural land bearing Khata no. 397 Mauje Village Ratanpur (Kantadi)	17
3.	Certified copy of agricultural land bearing Khata no. 407 Mauje Village Ratanpur (Kantadi)	18
4.	Certified copy of Village Form no. 7 of revenue survey no. 170/1	19
5.	Certified copy of Village Form no. 7 of revenue survey no. 170/2	20
6.	Certified copy of Village Form no. 7 of revenue survey no. 170/3	21
7.	Certified copy of Village Form no. 7 of revenue survey no. 170/7	22
8.	Certified copy of Village Form no. 7 of revenue survey no. 170/5	23
9.	Certified copy of Village Form no. 7 of revenue survey no. 190/1	24
10.	Certified copy of Village Form no. 7 of revenue survey no. 192/7	25
11.	Certified copy of Village Form no. 7 of revenue survey no. 221/2	26
12.	Certified copy of Village Form no. 7 of revenue survey no. 241/6	27
13.	Certified copy of Village Form no. 7 of revenue survey no. 255	28
14.	Certified copy of Village Form no. 12 of	29

	revenue survey no. 170/1	
15.	Certified copy of Village Form no. 12 of revenue survey no. 170/2	30
16.	Certified copy of Village Form no. 12 of revenue survey no. 170/3	31
17.	Certified copy of Village Form no. 12 of revenue survey no. 170/7	32
18.	Certified copy of Village Form no. 12 of revenue survey no. 170/5	33
19.	Certified copy of Village Form no. 12 of revenue survey no. 190/1	34
20.	Certified copy of Village Form no. 12 of revenue survey no. 192	35
21.	Certified copy of Village Form no. 12 of revenue survey no. 221/2	36
22.	Certified copy of Village Form no. 12 of revenue survey no. 241/6	37
23.	Certified copy of Village Form no. 12 of revenue survey no. 255	38
24.	Certified copy of entry no. 4688	39
25.	Original Copy of Tax receipt of House No. 76 of Village Ratanpur (Kantadi) of year 2021-2022	40
26.	original receipt of education cess of Khata no. 397 dated 15.03.2022	41
27.	original receipt of education cess of Khata no. 407 dated 15.03.2022	42
28.	Original copy of land revenue of Khata no. 397	43

	dated 15.03.2022	
29.	Original copy of land revenue of Khata no. 407 dated 15.03.2022	44
30.	Closing Pursis	15

6. The issues are framed at Exh.7 on 23.02.2022 are as under:

- (i) Whether the plaintiffs prove that agricultural land bearing Khata no. 397 and 407 at Mauje Ratanpur (Kantadi) are unpartitioned, undivided joint property as pleaded in plaint?
- (ii) Whether the plaintiffs prove that they (plaintiffs) have 1/5<sup>th</sup> share in the suit lands?
- (iii) Whether plaintiffs are entitled to the reliefs claimed?
- (iv) What order and decree?

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

- (i) In Affirmative
- (ii) In Affirmative
- (iii) In Affirmative
- (iv) As per final order and decree

**::REASONS::**

8. Heard learned advocate for the plaintiffs. The evidence of the plaintiff no. 2 is recorded at Exh.11 in which the plaintiff has reiterated the averments made in the pleading.
9. The plaintiff no. 1 is a widow and plaintiff no.2 is the daughter of Late Punjabhai who has died intestate. The property is ancestral joint family property and all three sons (defendants), plaintiff no.1 Wd/o Punjabhai and plaintiff no. 2 daughter are the main sharers and each of them are having 1/5<sup>th</sup> undivided share in the property. It has also come in evidence that defendants-sons of Punjabhai instead of taking care of the mother and the sister, they are trying to usurp and are not giving share in produces, though the agricultural activity are done by all family members and the expenses are also shared and therefore, the plaintiff has filed the suit for partition by metes and bounds. The summons to the defendants were served as can be seen from the bailiff reports and since the evidence of the plaintiff is uncontroverted no written statement is filed and even right to cross examine also closed by the court and there is no cross examination of the plaintiff witness which has gone unchallenged. The court has also taken specific care to see that the copy of the Chief

examination of the plaintiff is served to the defendants though they have not filed any written statement and the vide Exh.12 the plaintiff's learned advocate has filed the pursis that the said evidence of the plaintiff is send to the defendant by Registered post and have also produced, with list Exh.13, the RPAD sent to all defendant concerned together with the registered AD slips produced at Mark 13/3 exhibited as Exh.45 & 13/4 exhibited as Exh.46 and showing the postal delivery record at Mark 13/5 exhibited as Exh.47 & 13/6 exhibited as Exh.48. The same being government record are exhibited.

10. Having regard to the fact, that the common ancestor Punjabhai expired on 21.07.1998, leaving behind five sharers of the suit properties, including two share of the plaintiff and having regard to the evidence of the plaintiff regarding the conduct of the defendants, their harassment and the claim of the plaintiff to have partition by metes and bounds of all the properties, mentioned in the plaint as suit properties, this court is of the confirmed opinion that the plaintiffs (each of the plaintiff) is having 1/5<sup>th</sup> undivided interest in the suit properties and are entitled to 1/5<sup>th</sup> share from the total area of

all the properties, and are entitled to get decree for partition by metes and bounds of the above properties, the plaintiffs are also entitled to the declaration that each of the plaintiffs have 1/5<sup>th</sup> share in the property and suit properties are required to be partitioned equitably and legally by metes and bounds.

11. Since, the suit properties are agricultural lands under S.54 of the Civil Procedure Code, the preliminary decree which this court is passing in the present proceedings is required to send to the Collector, Godhra and till the final report is submitted with the map by the collector the defendants their servants and agents are prevented not to transfer the whole or part of any survey number in any manner nor to encumber the said property in any manner and it is also held that plaintiffs are entitled to the prayers made in para 10 of the plaint and consequently, issue no. 1, 2 & 3 are decided in affirmative and following order is passed.

### **ORDER**

- A. The suit of the plaintiff is allowed and it is declared that each of the plaintiff are having 1/5<sup>th</sup> undivided share in ***all the agricultural lands and survey numbers being the suit properties*** and, preliminary decree for partition

is passed in favour of the plaintiffs against the defendants.

- B. The permanent injunction as prayed is also granted as prayed in para 11(b) of the plaint, against the defendants and their agents from transferring and/or parting with any/all the properties without the written consent till partition is done i.e. till this court passes final decree after report of Collector, as directed is received by this court.
- C. The lands being agricultural lands, this preliminary decree together with relevant record showing the details of the suit properties, be send to the collector under S.54 of CPC for doing necessary physical partition by metes and bounds and to prepare report and map, how each of the plaintiffs are given 1/5<sup>th</sup> share in the subject properties as per law and the said report is sent to this court within three months so that the court can pass final decree.
- 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.

Order is signed & declared today on 8<sup>th</sup> July, 2023.

Date: 08.07.2023

Place: Godhra

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

CODE: GJ01560