

GJSK040034112024



Presented on : 15-10-2024
Registered on : 15-10-2024
Decided on : 20-07-2026
Duration : YY-MM-DD
01 - 09 - 08

IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE
IDAR, DIST. SABARKANTHA
Regular Civil Suit No.47/ 2024
Exh.:

- Plaintiffs :**
- 1. Mukeshbhai Devabhai Vankar**
Aged : 51 Years, Occupation - Labour
 - 2. Dineshbhai Devabhai Vankar**
Aged : 47 years, Occupation - Labour
 - 3. Narayanbhai Devabhai Vankar**
Aged : 44, Occupation - Labour
all residing at Netramali, Ta. Idar,
District Sabarkantha
- Versus*
- Defendants :**
- 1. Shantaben widow of Marsanbhai Amathabhai Vankar,**
 - 2. Anilkumar Karsanbhai Vankar,**
Aged: 33 years, Occupation - Labour
 - 3. Ayushmanbhai Karsanbhai Vankar,**
Aged : 28 Years, Occupation - Labour
All Residing at Netramali, Ta. Idar,
District Sabarkantha

Suit for Declaration & Permanent Injunction

Appearance :-

Ld. Adv. appeared on behalf of plaintiffs **Mr. M. S. Balospura**
Ld. Adv. appeared on behalf of defendants **Mr. A. J. Mistri**

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

- 01.** The plaintiffs have filed the present suit seeking declaration and permanent injunction against the defendants, brief facts of the suit property described as under:
- 02.** Late Shri Sankala Mana Vankar was the great-grandfather of the

plaintiffs. Late Shri Sankala Mana Vankar had only one son, namely Late Shri Jethabhai Sankalabhai Vankar, who was the grandfather of the plaintiffs. Upon the demise of Late Shri Jethabhai Sankalabhai Vankar, he was survived by his three sons, one of whom was Late Shri Devabhai Jethabhai Vankar, the father of the plaintiffs, late Shri Lalabhai Jethabhai Vankar and Late Shri Govabhai Jethabhai Vankar, who were the paternal uncles of the plaintiffs, remained unmarried and died issue-less. Upon the demise of the plaintiffs' father, namely Late Shri Devabhai Jethabhai Vankar, the plaintiffs, being his lineal descendants, are his lawful heirs and legal representatives. Thus, the plaintiffs are also the lawful lineal descendants and legal heirs of Late Shri Sankala Mana Vankar.

3. At village Netramali, Ta. Idar, within the village site area (Gamtal), Thakor Shri Devisinhji Saheb had lawfully granted and issued Permit No. 197 in respect of a house having its entrance towards the northern side, situated on a parcel of land admeasuring 27 feet East-West and 28 feet North-South. Adjacent thereto on the western side, Permit No. 198 was also lawfully granted in respect of a house having its entrance towards the northern side, situated on a parcel of land admeasuring 28 feet East-West and 26 feet North-South both the aforesaid permits were granted by Thakor Shri Devisinhji Saheb in the name of the plaintiffs' great-grandfather, namely Late Shri Sankala Mana Vankar, on 07/07/1939. Since then, the plaintiffs' great-grandfather, grandfather, father and other family members had been residing in the said houses. Further, after leaving an approximately 5 feet wide passage on the northern side of the aforesaid two houses, a parcel of land admeasuring 16 feet East-West and 25 feet North-South was granted by Thakor Shri Devisinhji Saheb to the plaintiffs' great-grandfather, namely Late

Shri Sankalabhai Manabhai by way of a permit conferring ownership rights thereon. Since the date of such grant, the said parcel of land has also remained in the ownership, possession and enjoyment of the plaintiffs and their predecessors-in-title. The plaintiffs are in lawful, continuous and peaceful possession and occupation thereof as owners, and the said land is being utilized by the plaintiffs for tethering their cattle and for storing agricultural produce, fodder and other allied agricultural materials. For the sake of convenience and brevity, the aforesaid open parcel of land admeasuring 16 feet East-West and 25 feet North-South is hereinafter referred to as the “suit land” in the present suit, the detailed boundaries whereof are as under:

at village Netramali, Ta. Idar, situated within the village site area, the detailed boundaries of the disputed land measuring 16 feet East-West and 25 feet North-South are as follows:

- East** : The defendants’ land measuring 27 feet East-West and 28 feet North-South is situated.
- West** : A public passage/road is situated.
- North** : Open land belonging to the Jagiri owner is situated.
- South** : After leaving a 5-foot wide road/passage, the house of us, the plaintiffs, is situated

4. That the disputed land situated within the boundaries described hereinabove is in the exclusive ownership of possession and enjoyment of the Plaintiffs. The Plaintiffs have been using and enjoying the said land by tethering and keeping their cattle thereon as well as by storing fodder, agricultural produce, and other materials thereon. The said disputed land has been recorded in the village records of Netramali in the name of Plaintiff No. 3 under Property No. 760, and the Plaintiffs have been regularly paying, and continue to pay, all taxes and assessments in respect

thereof. Further, the two houses earlier having doors facing the northern direction were demolished about 15 years ago, whereafter the Plaintiffs constructed two new houses of the same area with doors facing the western direction. The Plaintiffs have been residing in the said houses along with their family members and continue to do so. Both the said houses are also recorded in the records of Netramali Gram Panchayat as Property No. 758 in the name of Plaintiff No. 1 and Property No. 759 in the name of Plaintiff No. 2, and the plaintiffs have been regularly paying, and continue to pay, house tax, property tax, and all other applicable taxes in respect thereof.

5. The plaintiffs submit that the suit land is being used by them for tethering their cattle, storing fodder, and for allied purposes, and they are in peaceful possession thereof. The defendants have no right, title, interest, or share whatsoever in the suit land at any point of time. On the eastern side of the suit land lies the property of the defendants measuring 27 feet East–West and 28 feet North–South. The defendants have recently commenced construction activities and, taking advantage of the absence of the plaintiffs, have unlawfully encroached upon the 5 feet wide passage situated on the northern side of the plaintiffs’ house as well as upon the suit land and have illegally constructed a toilet, bathroom, and wall thereon. The defendants have also dug foundation and raised construction in such a manner that it results in encroachment upon the road portion and the plaintiffs’ land. The defendants are further attempting to encroach upon and grab additional portions of the suit land and are continuously issuing threats to the plaintiffs. The defendants are not entitled to carry out any construction over the suit land and have never had and do not have any right, title, or interest in the same. The defendants’ conduct clearly shows that they are habitual

encroachers and are acting in a high-handed manner. Adjacent to their property lies other land belonging to third parties wherein also they have allegedly encroached beyond their lawful boundaries and raised unauthorized construction. The defendants, despite being entitled only to a limited extent of land, have encroached upon excess land and carried out illegal construction thereon, thereby clearly demonstrating their intention to unlawfully grab others' properties including the suit land bearing Panchayat Property No. 760. The defendants have further illegally constructed over the road portion and suit land and, when the plaintiffs requested them to refrain from such illegal acts, the defendants became aggressive and threatened the plaintiffs that there is no land belonging to the plaintiffs on the western side, nor any road on the northern side, and that they would complete construction over the entire property as they wish, asking the plaintiffs to do whatever they can. Thereafter, the plaintiffs made a complaint before the Gram Panchayat, Netramali, pursuant to which the Talati-cum-Mantri and members of the Panchayat visited the site. Even after being orally directed to stop the illegal construction, the defendants misbehaved with the officials and did not comply with their instructions. In view of the aforesaid facts and circumstances, the plaintiffs have a *bona fide* apprehension that the defendants are determined to illegally encroach upon and grab the suit land of the plaintiffs and are also likely to block the 5 feet wide passage situated on the northern side of the plaintiffs' house. If the defendants are not restrained immediately, the plaintiffs will suffer irreparable loss and injury and will be permanently deprived of their lawful rights over the suit land and access to their property. Therefore, it has become absolutely necessary for the plaintiffs to approach this Hon'ble Court urgently and

institute the present suit against the defendants for obtaining a declaration and an order of permanent injunction restraining the defendants from carrying out any illegal construction or encroachment and for removal of the illegal encroachment already made by the defendants over the suit land and the road portion. Accordingly, the present suit is filed for a declaration, permanent injunction, and a mandatory order directing removal of illegal encroachment made by the defendants.

- 5.1 Thereafter the notice has been served to the defendant no. 1, 2 and 3 vide 15/1 and defendant has appeared through their advocate and filed their written statement.
- 5.2 Defendant nos. 1 to 3 has filed their written statement vide Exh.12, in which they have categorically stated that, the plaintiffs had started construction of a foundation. In that regard, the defendants had filed an application in the Panchayat, which was submitted online. In response to that application, the foundation work was stopped. This incident is about 3 years old. Due to their illegal and unlawful possession and occupation, they are facing difficulties in obtaining an electricity connection. Further, the land described in paragraph number 3 is the same disputed land. After measurement, the plots belonging to defendant numbers 1 to 3 were formed, and these plots are currently recorded in the name of Anilbhai Karshanbhai. The possession and occupation of us defendants is legal and lawful as per the Panchayat records. The documents (permits) shown by the plaintiffs and produced before this Hon'ble Court are false and fabricated, bearing forged signatures and seals. The permits allegedly made in 1939 also differ in signatures, seals, and contents, and therefore those permits are also false. Therefore, the relief claimed by the plaintiffs in the suit is not justified. A road has already been kept open by us in the suit property, but the plaintiffs have constructed

a toilet and bathroom in front of their house on the road. During construction work, the defendants had submitted an application to the Panchayat. However, without issuing any notice to them, an oral instruction was given to stop the work. In the disputed land, there were two wells constructed which were being used for drainage purposes. One well belonged to Mukeshbhai Devabhai Vankar and the other to Pravinbhai Valabhai. When Pravinbhai made an application to the Panchayat, the Panchayat filled up the well belonging to Mukeshbhai Devabhai Vankar, who is the present plaintiff number 1. If they were the true owners of the disputed land, then why did the Panchayat take action to fill the well? But according to the original records, the Panchayat had taken action in the past. The land was earlier purchased by Karshanbhai Amthabhai from Pravinbhai Valabhai. The disputed land measures about 400 feet and there is a common plot between the plaintiffs and the defendants. The plaintiffs are trying to take illegal possession of the land by creating false documents and fabricated permits and hence the defendant has mainly requested to reject the suit of the plaintiff and injunction application along with the cost.

It is also to be noted at this juncture, that the plaintiff had filed an application for interim injunction, which came to be allowed by my Learned Predecessor. Furthermore, it is also apposite to note here that the application for appointment of Court Commissioner under Order 26, Rule 9 was also allowed and accordingly the report has been also submitted by the Court Commissioner in respect of the same

6. Considering the rival contentions of the parties, my Ld. Predecessor has framed the issues vide Exh.18 under Order 14 Rule 1 of CPC in the vernacular language which are as under :-

(૧) શું વાદી પુરવાર કરે છે કે, વાદીના દાવાઅરજી ના પારા – ૩ માં

જણાવેલ મિલકત વાદીની માલીકી અને કબજા ભોગવટાની છે?

(૨) શું વાદી પુરવાર કરે છે કે, પ્રતિવાદીએ વાદીના મકાનની ઉત્તર બાજુ એ આવેલ પ કુટના રસ્તા ઉપર અને વાદીઓની માલીકીની જમીન માં દબાણ કરી દક્ષિણ બાજુએ જાજરુ અને બાથરુમનુ બાંધકામ કરેલ છે અને તેની આગળ પાયો ખોદી દબાણ કરી રસ્તા પૈકીની જમીનમાં દબાણ થાય તે રીતે દીવાલનું બાંધકામ કરેલ છે?

(૩) શું પ્રતિવાદી પુરવાર કરે છે કે, પ્રતિવાદીઓનુ જાજરુ અને બાથરુમ વર્ષોથી બનાવેલ છે અને તેમનો ખાળ કુવો પણ હતો?

(૪) શું પ્રતિવાદી પુરવાર કરે છે કે, વાદીઓના પરવાના ખોટા છે?

(૫) શું પ્રતિવાદી પુરવાર કરે છે કે, દાવાવાળી જગ્યામાં બે કુવા કરવામાં આવેલ હતા જે કુવાગટર કામ માટે વપરાતા હતા જેમાં એક કુવો મુકેશભાઈ દેવાભાઈ વણકર તથા બીજો પ્રવિણભાઈ વાલાભાઈ નો હતો જેમાં પ્રવિણભાઈ વાલજીભાઈ પં ચાયતમાં અરજી કરતાં નેત્રામલી પંચાયતે મુકેશભાઈ દેવાભાઈ વણકરનો કુવો હતો જે પુરાવી દીધેલ હતો?

(૬) શું વાદી માંગ્યા મુજબની દાદ મેળવવા હકદાર છે?

(૭) શું હુકમ? શું હુકમનામું?

7. My answers to the above referred issues are as under, for the reasons stated herein below :

1. In affirmative.
2. In affirmative.
3. In Negative.
4. In Negative.
5. In Negative.
6. In Affirmative.
7. As per final order.

8. During the trial of the suit, the plaintiff has produced following oral as well as documentary evidences as procedure laid down in the Order XVIII of the Civil Procedure Code, which are as under:-

Sr. No	ORAL EVIDENCE:	Exh.
--------	----------------	------

1	Affidavit of Examination-in-chief of Plaintiff No.1 Mukeshbhai Devabhai Vankar.	24
2	Affidavit of Examination-in-chief of Dineshbhai Devabhai Vankar.	25

::Documentary Evidence::

Sr. No.	Particular	Ex. No.
01.	Receipt of Netramali Gam Panchayat No. 4	28
02.	Receipt of Netramali Gam Panchayat No. 4	29
03.	Letter of Construction	30
04.	Receipt of Tax	31 to 34
05.	Receipt of Netramali Gram Panchayat	
06.	Original Parwana No. 196 of Thakor Shri Devrajsinh	35
07.	Original Parwana No. 198 of Thakor Shri Devrajsinh	36
08.	Original Parwana No. 197 of Thakor Shri Devrajsinh	37

09. Thereafter, the plaintiff has filed closing pursis vide Exh. 47 dtd 23.01.2026.

10. After recording above referred evidences adduced by the plaintiffs, the Ld. Advocate for the plaintiff has carried out his oral argument and mainly stated as per the plaint and stated that defendants are truing to illegally construct over the disputed property and constructing lavatory and bathroom in the absence of plaintiffs have when plaintiff has requested not to construct and encroached upon the disputed property defendants have abruptly denied the same and continued to illegally constructed property and threatened the plaintiff in order to grab the disputed property and hence plaintiff has mainly stated that the plaintiff has given all the document y evidences which supposed to facts that plaintiff is the owner and possession holder in respect of disputed property further plaintiff has stated that **Panchkias** and Maps also support the facts that defendant are carrying out illegal construction in disputed property and hence defendants have not bothered to take cross examination and stopped to appear before the Court and has

not produced an iota of evidence in their favour and hence the right of the defendant to produce the evidence has been closed vide Exh.42 and the right of the argument of the defendant has also been closed vide Exh.43 and ultimately requested to allow the suit of the plaintiff.

:: REASONS ::

1. It is a well settled rule of law that in civil cases, the burden of proof is upon the Plaintiff through preponderance of probabilities i.e. after considering the evidence lead by the both the parties, the Court has to weigh in whose favour the probabilities lie or in other words whose version seems to be more probable. Further, it is also well established legal principle that, the onus to prove its case is always upon the Plaintiff and the Suit of the Plaintiff has to stand on its own legs.
2. At this juncture it is also to be noted that even if defendants have not produced any documentary evidences and conducted any argument in the matter. The Court is still duty bound to examine the plaint and determine if the plaintiff has a valid cause of action or not. Thus, the Court has to discuss issues as framed by my Learned Predecessor in order to establish that whether the suit to be decided in favour of the plaintiff or not.
3. In this case the plaintiff has filed civil suit seeking declaration and obtain permanent injunction to stop the defendant from constructing illegal activities in the disputed property and to remove the encroachment of illegal construction made by the defendants situated at Netramali, Ta. Idar, Netramali Gram Panchayat Property No. 760, East-West 16 Ft and North-South 25 Ft. mentioned in para no. 3 and further prayed that defendants not to enter in the disputed property and to construct and made encroachment upon the disputed property

not to get the possession from the plaintiff not to interfere with the possession interest, right of the plaintiff in any manner in respect of disputed property.

ISSUE NO. 1 & 2:

11. Looking to the provisions of sec.101 of Evidence Act, the burden lies upon the plaintiff to prove his suit. The plaintiff here-in namely **Mukeshbhai Devabhai Vankar and Dineshbhai Devabhai Vankar**, for discharging the burden, has examined himself vide Exh.24 and 38, who has filed his examination-in-chief under Order 18 Rule 4 of C.P.C. and supported the very facts of the plaint/suit *in toto*. Moreover, the plaintiff has filed documentary evidence vide Exh. 28 to 37 in support of his suit.
- 11.1 Upon perusal of the documentary evidence produced by the petitioner, it prima facie appears that the petitioner has placed on record various Gram Panchayat tax receipts evidencing payment of house tax and other local taxes in respect of the disputed property for different assessment years. The construction permission granted by the Gram Panchayat further indicates that the competent local authority had permitted construction activities on the property subject to statutory rules and conditions. The Panchanama and map produced on record prima facie suggest that a residential house has been constructed over the disputed property and that the petitioner is residing therein along with family members and household articles. The residential certificates, property-related certificates, and other records issued by the Talati-cum-Mantri and Gram Panchayat authorities prima facie support the petitioner's claim regarding residence, possession, and property particulars as reflected in the official village records. The property boundary certificate identifies the location and

boundaries of the property and records verification by the competent authority. The registered sale deed produced on record prima facie evidences transfer of right, title, interest, and possession of the property in favour of the purchaser through a duly registered transaction. The revenue notice issued by the competent authority further reflects recognition of the property in government records for assessment and recovery of dues. Thus, from the aforesaid documentary evidence, it prima facie appears that the petitioner is relying upon the said documents to establish ownership, possession, occupation, residential status, and lawful enjoyment of the disputed property. The evidentiary value and correctness of these documents be transpires to file for our plaintiff on the basis of available record.

- 11.2 The plaintiffs have produced both oral as well as documentary evidence on record. The documentary evidence demonstrates that the defendant has encroached upon the 5 feet wide passage situated on the northern side of the plaintiffs' house and has also encroached upon the land owned and possessed by the plaintiffs. The documents further indicate that the defendant has illegally constructed a latrine and bathroom towards the southern side after making such encroachment. It is also evident from the record that the defendant excavated the foundation and commenced construction of a wall in such a manner that it further extends into the land forming part of the said passage, thereby obstructing and diminishing the plaintiffs' lawful use and enjoyment of the passage. At the outset, in conclusion of the Issue No. 1, so far as question of independent ownership, possession and enjoyment of the plaintiff is concerned, when the other side has not rebutted such facts, and also material documents are adduced by the

plaintiffs, this Court is of the view that the plaintiff has succeeded to prove the same in his favour. The documentary evidence, when read along with the oral testimony, clearly substantiates the plaintiffs' case that the defendant has made unauthorized encroachment over the suit property and the common passage. Hence, this issue no. 1 and 2 are answered in the Affirmative.

ISSUE NO. 3

11.3 The burden of proving this issue lies upon the defendants. The defendants have contended that the lavatory and bathroom in question were constructed many years ago and that a soak pit also existed since long. However, except for making a bare assertion, the defendants have failed to produce any cogent oral or documentary evidence to establish the age or lawful existence of the said construction. No revenue record, Panchayat record, sanctioned plan, tax receipt, or any other reliable document has been produced to prove that the latrine, bathroom, and soak pit were in existence from prior years. The evidence on record is insufficient to substantiate the defendants' plea. Hence, the defendants have failed to discharge the burden of proof cast upon them, and accordingly, answered of issue no.3 in the negative.

ISSUE NO. 4 :

11.4 The burden of proving this issue also rests upon the defendants. The defendants have alleged that the permission (Parwana) relied upon by the plaintiffs is false and fabricated. However, no convincing evidence has been adduced by the defendants to establish that the said permission is forged, invalid, or illegally obtained. The defendants have neither examined any competent authority nor produced any official record to discredit the authenticity of the permission relied

upon by the plaintiffs. Mere allegations, unsupported by reliable evidence, cannot invalidate an official document. Therefore, the defendants have failed to prove that the plaintiffs' permissions are false, and this issue is liable to be answered against the defendants. Hence, this issue no. 4 are answered in the negative.

ISSUE NO. 5:

11.5 The burden of proving this issue lies upon the defendants. The defendants have contended that two soak pits/wells were existing in the suit property for drainage purposes, one belonging to Mukeshbhai Devabhai Vankar and the other to Pravinbhai Valabhai, and that upon an application made by Pravinbhai before the Netramali Gram Panchayat, the Panchayat found that one of the wells belonged to Mukeshbhai Devabhai Vankar and the same was subsequently filled up. However, the defendants have failed to place on record any reliable documentary evidence, Panchayat resolution, official correspondence, or other admissible material to substantiate the said contention. The oral evidence led by the defendants is not sufficient to prove the existence, ownership, or subsequent filling up of the alleged wells. Consequently, the defendants have failed to establish this plea by satisfactory evidence. Hence, answered of issue No. 5 in the negative.

ISSUE NOS. 6 & 7:-

11.6 The plaintiff has successfully established the case through cogent oral as well as documentary evidence produced on record. The evidence adduced by the plaintiff has remained trustworthy and sufficient to prove the material facts pleaded in the plaint. Accordingly, the plaintiff has proved entitlement to the reliefs sought in the suit. Therefore, this issue is answered in the affirmative, holding that the plaintiff is

entitled to the reliefs prayed for, subject to the findings recorded on the other issues. The plaintiff has produced the Panchnama at Exh. 17 and instituted the present suit against the defendants seeking removal of the encroachment made upon the plaintiffs' allotted land measuring 16 feet (East-West) $\times$ 25 feet (North-South) situated in the village site of Netramali, Taluka Idar. The plaintiffs have further sought a declaration that the defendants have no right, title, or interest over the suit property, along with a mandatory injunction directing removal of the encroachment and a permanent injunction restraining the defendants from making any further encroachment. During the pendency of the suit, a Court Commissioner, Shri V.R. Solanki, was appointed to prepare a panchnama and site map. However, the plaintiffs submit that the panchnama and map dated 27.12.2024 are erroneous, inaccurate, and contrary to the actual physical position of the property. The Commissioner has incorrectly described the boundaries of the suit land, failed to measure the plaintiffs' allotted land of 16 $\times$ 25 feet, and instead treated the defendants' adjacent plot measuring 27 $\times$ 28 feet as the disputed property. The plaintiffs further contend that the Commissioner failed to record the defendants' encroachment over the plaintiffs' land as well as the public road, including the construction of a toilet and bathroom, and omitted the actual extent and location of the encroachment. The measurements, boundaries, and site plan prepared by the Commissioner are therefore

misleading and do not reflect the true factual position. Accordingly, the plaintiffs have raised detailed objections to the Commissioner's panchnama and site map, contending that the report has been prepared without proper measurement of the suit property and is contrary to the spot situation. The plaintiffs, therefore, pray that the Hon'ble Court may consider and uphold these objections in the interest of justice.

While appreciating the evidence led by the parties, this Court has carefully examined the oral as well as documentary evidence produced on record. The evidence of each witness has been considered in light of the pleadings, cross-examination and the documents exhibited during the course of trial. It is well settled that the burden lies upon the party who asserts a fact to prove the same by leading cogent, reliable and convincing evidence. The admissions, contradictions, omissions and improvements appearing in the deposition of the witnesses have also been taken into consideration. After careful scrutiny of the entire evidence available on record, this Court finds that the evidence which is supported by documentary proof and remains consistent throughout deserves more weightage, whereas the evidence which is not corroborated or suffers from material contradictions cannot be relied upon. Accordingly, the issues involved in the present suit are required to be decided on the basis of the evidence proved on record.

Upon careful appreciation of the oral as well as documentary evidence produced on record, this Court is

of the considered opinion that the plaintiff has successfully established that the suit property described in the plaint is his lawful property and that he is in lawful possession and enjoyment thereof. The documentary evidence adduced by the plaintiff duly corroborates his claim regarding ownership and possession, and nothing substantial has been brought on record by the defendant to discredit or rebut the said evidence. The evidence led by the plaintiff remains consistent, cogent and trustworthy, and there is no material contradiction affecting the plaintiff's case. Accordingly, this Court holds that the plaintiff has satisfactorily proved that the suit property described in the plaint belongs to the plaintiff and is in his lawful possession and enjoyment. Hence the issue nos. 6 & 7 are answered in the affirmative.

12. Upon careful consideration of the pleadings of both the parties, the oral as well as documentary evidence adduced on record, and the submissions advanced by the learned advocates appearing for the respective parties, this Court is of the considered opinion that the plaintiff has succeeded in proving the case by leading cogent, reliable and satisfactory evidence. The documentary evidence produced by the plaintiff has been duly proved in accordance with law and the same inspires confidence. The oral evidence is consistent with the pleadings and finds due corroboration from the documentary record. On the other hand, the defendant has failed to produce any convincing or reliable evidence to effectively rebut the plaintiff's case or to establish any defence which may

dis-entitle the plaintiff from claiming the reliefs sought in the present suit. Mere denial of the plaintiff's claim, in the absence of substantive evidence, cannot be accepted as sufficient to dislodge the case established by the plaintiff. It is a settled principle of law that in civil proceedings the case is required to be proved on the touchstone of preponderance of probabilities and not beyond reasonable doubt. The evidence placed on record by the plaintiff, when appreciated in its proper perspective, clearly tilts the balance of probabilities in favour of the plaintiff. The documentary evidence is found to be genuine, relevant and duly supports the material averments made in the plaint. There is nothing on record to indicate that the documents relied upon by the plaintiff are fabricated or unreliable. On the contrary, the entire evidence, read as a whole, establishes the plaintiff's lawful entitlement to the reliefs claimed in the suit. This Court has independently examined the entire evidence on record, the relevant provisions of law and the legal principles governing the controversy involved in the present case. Having regard to the totality of the facts and circumstances, this Court finds no legal or factual impediment in granting the relief prayed for by the plaintiff. The plaintiff has successfully discharged the burden cast upon him under law, whereas the defendant has failed to substantiate the defence raised in the written statement. Therefore, all the issues framed by this Court are answered in favour of the plaintiff and against the defendant. Consequently, this Court holds that the plaintiff is entitled to the reliefs claimed in the suit. In

view of the findings recorded on the foregoing issues, the suit of the plaintiff deserves to be decreed. Accordingly, the plaintiff is held entitled to the reliefs prayed for in the plaint. Hence, the suit is decreed with appropriate directions as stated in the operative portion of this judgment. Hence, the suit deserves to be decreed in accordance with law and the following order is passed.

: O R D E R :

1. The suit of the plaintiff is hereby allowed.
2. It is hereby declared that the defendants have no right, title, interest or share in the suit property situated at Moje: Netramali, Taluka: Idar, Gram Panchayat Property No. 760, admeasuring East-West 16 feet and North-South 25 feet, as described in Para No. 3 of the plaint.
3. The defendants are hereby directed to remove the illegal construction of toilet, bathroom and adjoining wall constructed by them on the portion of the 5 feet road situated towards the northern side of the plaintiff's house and towards south-eastern side of the suit property, at their own cost and risk.
4. In case the defendants fail to remove the said illegal construction within the prescribed period, the plaintiff shall be entitled to get the same removed through due process of law at the cost and risk of the defendants.
5. The defendants, their servants, agents or any person claiming through them are hereby

permanently restrained from entering into the suit property, carrying out any excavation, construction, encroachment or causing any obstruction or interference in the plaintiff's peaceful possession and enjoyment of the suit property.

6. The defendants shall pay the cost of the suit to the plaintiff.
7. Decree be drawn accordingly.

Signed & Pronounced in the Open Court today on 20th day of July, 2026.

Place : Idar
Date : 20.07.2026

(Dr. S. D. Kapadia)
Principal Senior Civil Judge
Sabarkantha @ Idar.
Judge Code No.GJ01356