



Received on:	21/11/2013		
Registered on:	21/11/2013		
Decided on:	02/07/2026		
Duration:	Ys	Ms	Ds
	12	07	12

**In the Court of Additional Senior Civil Judge &
Additional Chief Judicial Magistrate, Olpad,
Surat.**

Regular Civil Suit No. 62/2013

Exh.:

Plaintiff :- Naranbhai Gulabbhai Kahar

Age about: 59 yrs, Occupation: Fisherman,

Add.: Moje Village: Olpad, Machhavad,
Tal.Oplad, Dist.Surat.

Versus

Defendants :-

(1) :- Olpad Group Village Panchayat

Add.: Olpad Village Panchayat Office, Olpad,
Dist. Surat.

**(2) :- ~~Satishbhai Mahendrabhai Patel -~~
~~Sarpanchshri of Olpad Village Panchayat~~
~~Office~~**

~~Age about: 42 yrs, Occupation: Service,~~

~~Add.: Moje Village: Olpad, Rudhi Faliyu,
Tal.Oplad, Dist.Surat.~~

**(2) :- Rajeshbhai Narandas Chaudhari -
Sarpanchshri of Olpad Village Panchayat
Office**

(Amended vide
order below
Exh. 39 & 42.)

Age about: 42 yrs, Occupation: Service,

Add.: Moje Nihora Nagar, B/s. Shivam Nagar,

Olpad, Tal.Oplad, Dist.Surat.

Appearance:

Ld. Advocate Mr. P. R. Patel for the plaintiff.

Ld. Advocate Mr. B. R. Patel for the Defendants.

: : Suit for declaration and permanent Injunction : :

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

Facts of the suit :

- 1) The brief facts of the suit are that, the present suit has been filed for the property mentioned in the plaint. The said property will be hereinafter referred to as "the said property" or "the property in question".

Property situated at Olpad, Dist. Surat.

Sr. No.	Property	Area
1	Block no. 1, Pond known as Lalva Talav of Olpad village.	half-property on the western side of the Pond Lalva Talav of Olpad village.

- 1.1) That the plaintiff has been residing in Machhiwad, Olpad for years. The plaintiff is a fisherman and earning his livelihood by breeding and selling fish. The plaintiff entered into a lease agreement regarding the suit property under the management of the defendant, Olpad Gram Panchayat, specifically the pond known as Lalva Talav of

Olpad village, situated in Surat District. That form the half-property on the western side of the said pond, an annual lease of Rs. 5,000/- was fixed starting from 08/08/2009. The lease agreement was executed on 10/08/2010, and it was decided to permanently lease the pond to the plaintiff. However, for convenience, a condition was made to renew the contract after 11 months. The Panchayat has passed resolution No.38 on 31/08/2009, which has been submitted in this case as a separate list. The terms of the said lease agreement is still ongoing. Therefore, without giving any kind of notice or information, it cannot be canceled arbitrarily. That the western side of the said pond has been under the plaintiff's lawful possession and tenancy rights. The plaintiff has cleaned it at a significant expense and developed the pond for fishing purpose. According to the terms of the said lease agreement, the plaintiff has been regularly renewing the lease agreement year after year for the rented property and have paying the rent. The plaintiff has already paid the rent up to the year 2012. subsequently, when the plaintiff went to pay the rent, the defendants refused to accept it. Instead, the defendants issued a false notice to the plaintiff on 08/11/2013 and therefore the very next day the plaintiff went to pay two years worth of rent along with an application as per the notice, the defendants refused to accept the payment, therefore the plaintiff sent Rs. 10,000/- via money order on 18/11/2013. The plaintiff has developed the leased

pond at a very high cost and currently have fish crop worth lacs of rupees growing in the pond, despite of this, the defendants have acting arbitrarily and on 08/11/2013, attempting to snatch away the leased property along with the standing fish crop and issued a public notice for releasing the pond via public auction on 22/11/2013, and a public clarification regarding the notice was issued in daily newspaper on 18/11/2013 and the notice have been served to the defendant. Despite this, the defendants again issued a clarification on 20/11/2013, intending to proceed with the public auction.

- 1.2) The cause of action for the present suit arose that, despite the defendant having leased the western side property of the suit pond to the plaintiff since 2009, and despite having collected rent up to the year 2012, and while the contract remains validly in existence and when the rent for two years was demanded, the plaintiff was ready and willing to pay it, yet the defendants refused to accept it. Instead, the defendants sent a false notice dated 08/11/2013. thereafter, even though the plaintiff personally approached the defendants to pay two years rent along with a written application, the defendants did not accept the rent and instead, they wrongfully published a notice on 16/11/2013 for a public auction held to be on 22/11/2013. Following this, even though a public written clarification/reply was given on 16/11/2013, and an application was submitted to the Taluka Development Officer on 16/11/2013 under Section 249-A of the

Panchayat Act; and when the plaintiff met the defendant in person, the defendants threatened the plaintiff, saying “Do whatever you want, we will rest only after re-auction it.” therefore the cause of action for this lawsuit has arisen.

The plaintiff has made the following prayer in Paragraph 11 of the plaint:

"11. The plaintiff respectfully prays as follows :

- (a) That the Hon’ble Court be pleased to declare, that the plaintiff is a lawful tenant of the western side of the suit property. It is also to declare that the notice given by the Defendants on dated 11-13 as well as the public notice is false, illegal and void.
- (b) issue a permanent injunction against the Defendants of the suit, by themselves or through their agents, restraining them from causing any obstruction or hindrance to the plaintiff’s use of the suit property, and from causing any damage to the plaintiff’s fish harvest, and from auctioning or getting it auctioned publicly, and to make all necessary orders as the Court may deem fit.

WRITTEN STATEMENT ON BEHALF OF THE DEFENDANTS:

- 2) The summons were issued to the defendants and duly served. The defendants appeared before the Court through their Ld. Advocate. The defendants have submitted a Written Statement vide Exh. 31. The defendants have

mainly stated that, the plaintiff's claim is without the cause of action, the suit is barred by the non-joinder and mis-joinder of parties, the suit is barred by law of limitation.

- 2.1) The defendants have further stated that, since the plaintiff's name, possession, or ownership right does not exist over the suit pond, a false claim has been made to misuse governed property. A rent agreement of 11 months, was executed for the half portion towards the western side of the suit pond, which rent agreement has been produced by the plaintiff. Further, in condition No.1 of the same, it is clearly stated that the lease period of the pond is for 11 months. There is no mention in the said rent agreement about giving it on lease permanently; despite this, the plaintiff has misinterpreted the rent agreement and has breached the condition nos. 1, 3 & 8 of the rent agreement, and has not renewed the said rent agreement after its expiry. Further, as per condition No.3, the vegetation of the pond has not been cleaned and despite amount of Rs.10,000/- has not been deposited. The period of the said agreement expired on dated 07/07/2010, and since then, the possession of the pond has remained with the Olpad Village Panchayat. Despite repeatedly instruction give to the plaintiff, to clean the pond given on lease previously, it was not cleaned, and due to the plaintiff's fault, the Panchayat could not get the rent income for two years; for that reason, the rent has been recovered from the plaintiff, the plaintiff was

instructed not to release fish seeds or fish into the pond, and was informed in writing regarding the breach of conditions, through outward letter No.77/2013-14 dated 08/11/2013, the copy of which has been produced by the plaintiff along with the suit. The plaintiff has never renewed the rent agreement since the year 2010. The plaintiff has created false evidence by submitting fake bills to establish possession of the pond. A public auction notice was published in the daily newspaper on behalf of the defendant to lease out the said pond for 11 months, against which the plaintiff has issued a false public clarification and a false warning, which the plaintiff has produced along with the suit. The defendants have the authority to manage all properties of the Panchayat as per the Panchayat Act, and the plaintiff has no right to interfere in it. As the plaintiff has illegal dynamic over the suit property, the defendant put up a lawful board. The Possession of the suit pond is not with the plaintiff, hence the question of damage to possessory rights or forcefully taking away possession does not arise. Further, the Hon'ble Court has rejected the plaintiff's injunction application at Exh.5, and therefore, the public auction of the said pond was held, and it was been leased out to Shaileshbhai Bhagwanbhai for the fish industry for a period of 11 months. The possession of the said pond is not with the plaintiff, and therefore, the public auction cannot be stopped under any circumstances. The Hon'ble Court has not stayed the public auction, and the

possession of the said pond has been handed over to the successful bidder in the auction. Further, no cause of action has arisen for the plaintiff to file the suit. The previous lease agreement and its period ended on dated 07/07/2010 and since then, the peaceful, actual, and physical possession and enjoyment of the suit pond on the spot has remained with the Olpad Village Panchayat. Panchayat did not recovered the rent of the said pond from the year 2010 to 2012 up to today's date. Whereas the plaintiff, in the plaint, has stated the false fact that the rent up to the year 2012 has been recovered. The plaintiff has no documentary evidence to prove that the possession of the suit pond is with the plaintiff. Furthermore, the plaintiff has breached the condition of the previous lease agreement and has not followed any policy or rule of the Panchayat. The application made by the plaintiff regarding the Panchayat's resolution dated 06/11/2013 has been rejected by the Taluka Development Officer, Olpad, under Section 249 of the Panchayat Act. Further in the meeting dated 06/11/2013, a total 23 members were present, and with consent of all those members, a lawful resolution regarding the pond was passed unanimously; despite this, Panchayat member Mangiben Nurmahammad Qureshi and Madhuben Rajubhai Rathod, acting in collusion with the plaintiff and under the plaintiff's pressure, have given a false application and made a false affidavit. Therefore, considering the facts of the written statement and the documents submitted

herewith, it is a humble request to reject the plaintiff's suit application with costs.

COUNTER AFFIDAVIT ON BEHALF OF THE PLAINTIFF:

- 2.2) No counter - affidavit has been filed against the written statement, filed by the defendant on behalf of the plaintiff.
- 3) Based on the above pleadings and facts of the suit, the following issues were have framed in the vernacular language at Exh. 36 by my predecessor as follows.

:: ISSUES ::

- (૧) શું વાદી પુરવાર કરે છે કે, દાવાવાળી મિલકતના તેઓ કાયદેસરના ભાડુઆત છે?
- (૨) શું વાદી સાબિત કરે છે કે, પ્રતિવાદીઓએ આપેલ તા. ૦૮/૧૧/૨૦૧૩ ની નોટીસ તથા પબ્લીક નોટીસ ખોટી, ગેરકાયદેસર તથા રદબાતલ છે?
- (૩) શું વાદી સાબિત કરે છે કે, તેઓ દાવાવાળી લાલવા તળાવવાળી મિલકતની અડધી મિલકતના કાયદેસરના કબજેદાર છે?
- (૪) શું પ્રતિવાદીઓ સાબિત કરે છે કે, વાદીના દાવાને મીસજોઈન્ડર ઓફ પાર્ટીઝ તથા નોન-જોઈન્ડર ઓફ પાર્ટીઝનો બાધ નડે છે?

(પ) શું પ્રતિવાદી સાબિત કરે છે કે, વાદીના દાવાને સમય

મર્યાદાનો બાધ નડે છે?

(જ) શું વાદી માંગ્યા મુજબની દાદ મેળવવા હકકદાર છે?

(ઝ) શું હુકમ અને હુકમનામું?

4) Findings on the above - mentioned issues are as under.

- (1) In negative.
- (2) In negative.
- (3) In negative.
- (4) In affirmative.
- (5) In affirmative.
- (6) In negative.
- (7) As per the final order.

5) To prove the present suit, the plaintiff has produced the following oral as well as documentary evidence.

:: Oral Evidence ::

Nos.	Particulars	Exh.
1	Examination-in-chief of the plaintiff - Naranbhai Gulabbhai Kahar.	50

:: Documentary Evidence ::

Nos.	Particulars	Exh.
1	Original copy of 7/12 for the disputed property.	53
2	A copy of receipt for tax paid by the plaintiff, for the disputed property.	54
3	As above.	55
4	A copy of notice dated 31/05/2013 sent by Olpad Group Village Panchayat, to the Plaintiff.	56
5	Original bill for sumul-dana for fish.	57

6	Original bill dated 01/05/13 to 18/09/13 for the JCB, brought for cleaning of the disputed property.	58
7	Original bill for the purchase of baby fish from Krish Fisheries, by the plaintiff.	59
8	Original copy of public tender, published in Gujarat Mitra newspaper on 14/11/2013, by Sarpanchshri of Olpad Group Village Panchayat for the disputed land.	60
9	Original copy of public explanation and public warning against the said tender, by the plaintiff.	61
10	Original received copy of the reply, given to Olpad Group Village Panchayat, in connection with the notice sent to the plaintiff.	62
11	Original copy of the application submitted before the Taluka Development Officer, received by the plaintiff, u/s. 249 of the Panchayat Act.	63
12	Original received copy of application dated 16/11/13 for the payment of rent, submitted by the plaintiff, in connection with the notice sent to the plaintiff on 08/11/13 vide outward no.77/2013-14.	64
13	A postal copy of rejected money order sent by the plaintiff, for the amount of rent for the disputed land.	65
14	Original copy of the reply dated 2/11/13 for explanation of the said tender.	66
15	Original copy of the notice sent to Balubhai Gulabbhai Kahar - brother of the plaintiff, by Olpad Group Village Panchayat.	67
16	As above.	68
17	A copy of common meeting held on 19/11/11 under the chairmanship of up-sarpanchshri - Satishkumar.	99

18	A copy of resolution no. 60(9) of the common meeting held on 19/11/11.	100
19	A copy of resolution no. 102/2 of the common meeting held on 28/03/13.	101
20	A copy of resolution no. 123/23 of the common meeting held on 18/06/13.	102
21	A copy of application given by the members of Ward nos. 7 & 12, for the forged resolution passed on 06/11/13, by Olpad Group Village Panchayat.	102-A
22	Original received copy of the application given by Balubhai Gulabbhai Kahar - brother of the plaintiff, to the Sarpanchshri, Olpad.	103
23	As above.	104
24	As above.	105
25	Original received copy of the application given by Balubhai Gulabbhai Kahar - brother of the plaintiff and etc., to the Sarpanchshri, Olpad.	106

Following the submission of oral and documentary evidences, the plaintiff has produced a Closing Pursis at Exh. 88.

- 6) the defendants have produced the following oral as well as documentary evidence.

:: Oral Evidence ::

Nos.	Particulars	Exh.
1	Examination-in-chief of the defendant no.2 - Satishbhai Mahendrabhai Patel.	96
2	Examination-in-chief of the witness - Baldevsinh Bapusinh Bariya.	108

:: Documentary Evidence ::

Nos.	Particulars	Exh.
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1	Signed copy of summary for 2012-2013 of Olpad Group Village Panchayat, for the cleaning of the pond.	112
2	Signed copy of summary for 2013-2014 of Olpad Group Village Panchayat, for the cleaning of the pond.	113

Following the submission of oral and documentary evidence, the defendant produced a Closing Pursis at Exh. 114.

ARGUMENT ON BEHALF OF THE PLAINTIFF :

- 7) The plaintiff has submitted detailed written arguments vide Exh.118. Having read the arguments, it has appears that the facts of the suit application, are adhered to and submitted that the plaintiff has continuously held the half-portion on the western side of the said pond since the year 1988 for the purpose of the fisheries industry. Every year the plaintiff release fish fingerlings, feed them, grow them big, catch them daily, sell them in the market, and maintain the livelihood of the family. The plaintiff had taken the half-portion on the western side on lease for the period from 2009 to 07/07/2010. The lease agreement was executed on 08/08/2009 and as per the condition No.1 of the agreement, decided to lease the pond to the plaintiff, specifies the lease tenure of the pond form 08/8/2009 to 07/07/2010 for a period of 11 month will remains. It was explicitly agreed under the condition that upon completion, the lease period would be renewed again for 11 months. Therefore, taking into consideration the cross-examination of the plaintiff conducted by the

defendant in the suit, as well as considering the documentary evidence produced on behalf of the plaintiff, the plaintiff has proved the issues required to be proved. Whereas, the defendants have failed to prove the issues required to be proved by them, and the plaintiff has proved his case prima facie, the defendants have also made admissions during their cross-examination, arguments have been presented to grant the relief as prayed for by the plaintiff and to pass a decree accordingly.

ARGUMENT ON BEHALF OF THE DEFENDANTS

- 8) The defendants have submitted detailed written arguments vide Exh.121. Having read the arguments, it has appears that the facts of the suit written statement are adhered to and submitted that the, hearing of the Exh.5 injunction application took place the very next day, on 22/11/2013, the Hon'ble Court has rejected the plaintiff's injunction application as the plaintiff did not have a prima facie case, against that order, the plaintiff filed an appeal and the plaintiff's appeal was dismissed. A period of 13 years has passed since the plaintiff filed the suit, and under such circumstances, the plaintiff's suit cannot be sustained. During these 13 years, the office bearers of the Panchayat have changed, the ground reality and situational conditions of the pond have also changed, and over these passed 13 years, the plaintiff has had no

possession, enjoyment, right, or authority as a tenant over the suit pond. The plaintiff has no ground or cause of action to file a suit, as the previous lease agreement and its timeline ended on 07/07/2010, thereafter, the peaceful, personal and physical possession of the said pond on the ground has remained with the Olpad Village Panchayat. The Panchayat has not collected rent for the said pond from the year 2010 to 2012 or until today. In no manner is the plaintiff's case proved prima facie. It is established that the defendants have proved their points. The plaintiff has failed to prove any issues. Under no circumstances can the plaintiff's suit or relief be granted. If the plaintiff's suit is allowed, it will cause a serious nature of loss to the defendant, which is a public local-self institution, and to the general public, who will be deprived of financial benefits loss will be caused, and if the suit is allowed, it would mean giving encouragement to a wrongdoer, and it would set a wrong precedent in society. Therefore, in the interest of the general public, it is a humble request to reject the plaintiff's suit and all reliefs with costs.

9) :: FACT DISCLOSED BY THE PLAINTIFF ::

- (a) That the plaintiff is a fisherman and earning his livelihood by breeding and selling fish, the plaintiff entered into a lease agreement regarding the suit property under the management of the defendant, Olpad Gram Panchayat, an annual lease of Rs.5,000/- was fixed and the lease agreement was executed on 10/08/2010.

- (b) That it was decided to permanently lease the pond to the plaintiff and for convenience, a condition was made to renew the contract after 11 months and the Panchayat has passed resolution No.38 on 31/08/2009.
- (c) The terms of the said lease agreement is still ongoing and the western side of the said pond has been under the plaintiff's lawful possession and tenancy rights.
- (d) That the plaintiff has been regularly renewing the lease agreement year after year for the rented property and have paying the rent.
- (e) That the defendants issued a false notice to the plaintiff on 08/11/2013 and therefore the very next day the plaintiff went to pay two years worth of rent along with an application as per the notice, the defendants refused to accept the payment, therefore the plaintiff sent Rs.10,000/- via money order on 18/11/2013.
- (f) That the defendants have acting arbitrarily and on 08/11/2013, attempting to snatch away the leased property along with the standing fish crop and issued a public notice for re-leasing the pond via public auction on 22/11/2013, and a public clarification regarding the notice was issued in daily newspaper on 18/11/2013, despite this, the defendants again issued a clarification on 20/11/2013, intending to proceed with the public auction.

- (g) That an application was submitted to the Taluka Development Officer on 16/11/2013 under Section 249-A of the Panchayat Act; and when the plaintiff met the defendant in person, the defendants threatened the plaintiff, therefore the cause of action for this lawsuit has arisen and the plaintiff has filed the suit for declaration and injunction against the defendants.

9.1) FACT DISCLOSED BY THE DEFENDANTS

- (a) That the plaintiff's claim is without the cause of action, the suit is barred by the non-joinder and mis-joinder of parties, and the suit is barred by law of limitation.
- (b) That the plaintiff's name, possession, or ownership right does not exist over the suit pond, a false claim has been made to misuse governed property.
- (c) That the lease period of the pond as per the lease agreement is for 11 months only and not for the lease permanently, has not renewed the said rent agreement after its expiry.
- (d) That the period of the said agreement expired on dated 07/07/2010, and since then, the possession of the pond has remained with the Olpad Village Panchayat.
- (e) That the public auction notice was published in the daily newspaper on behalf of the Defendant to lease out the said pond for 11 months, against which the

plaintiff has issued a false public clarification and a false warning.

- (f) That the defendants have the authority to manage all properties of the Panchayat as per the Panchayat Act, and the plaintiff has no right to interfere in it, and as the possession of the suit pond is not with the plaintiff, hence the question of damage to possessory rights or forcefully taking away possession does not arise.
- (g) That the Hon'ble Court has rejected the plaintiff's injunction application at Exh.5, and therefore, the public auction of the said pond was held, and it was been leased out to Shaileshbhai Bhagwanbhai for the fish industry for a period of 11 months.
- (h) That the previous lease agreement and its period ended on dated 07/07/2010 and since then, the peaceful, actual, and physical possession and enjoyment of the suit pond on the spot has remained with the Olpad Village Panchayat.
- (I) That an application made by the plaintiff regarding the Panchayat's resolution dated 16/11/2013 has been rejected by the Taluka Development officer, Olpad, under Section 249-A of the Panchayat Act, and request to reject the plaintiff's suit application with costs.

FINDING / REASONING OF THE COURT ON FACTUAL ASPECT

Issue No. 1 :-

- 10) The Ld. Advocate has submitted the examination-in-chief of the plaintiff in the form of Affidavit vide Exh.50 and the documentary evidence has been produced vide Exh.53 to Exh. 68, Exhs. 99 to 102/A to 103 to 104.
- 10.1) Having considered the oral as well as documentary evidence placed on record, the plaintiff has stated on oath that out of the suit disputed village pond property, half for the property on the western side was taken by the plaintiff on lease for a period of 9 years from 13/07/1988, and the entry of has been registered in the 7/12 record, thereafter year after year, resolution were passed by the Gram Panchayat to renew the said western side of the said pond since the year 1988 for the purpose to of the fisheries industry. It further stated that the plaintiff had taken the half-portion on the western side on lease for the period from 2009 to 07/07/2010 and the lease agreement was executed on 08/08/2009 for an annual rent of Rs.5000/-. the said rent agreement was executed on 10/08/2009, and it was decided to lease the pond to the plaintiff, but for the convenience, 11 months afterwords, a condition was agreed upon to renew the contract. The Panchayat has passed resolution No.38 on 31/08/2009.
- 10.2) Now, the plaintiff had declared in examination-in-chief of the plaintiff that, the suit property, a pond was taken on lease from dated 13/07/1988 for 9 years, and an entry regarding has been made in the revenue records of 7/12.

While the plaintiff has declared in his suit application at Exh.1 that the disputed pond was kept on a yearly rent of Rs.5,000/- from the Olpad Gram Panchayat on dated 08/08/2009 and a rent agreement was executed for it on dated 10/08/2009 and for convenience, there was a condition to renew the lease agreement after 11 months. Further, the lease period is still ongoing, and therefore, the plaintiff has declared that he is a tenant of the disputed pond. Taking into consideration the cross-examination of the plaintiff conducted by the Defendant's side, the plaintiff has admitted that, in the appeal filed against the order below Exhibit 5, injunction application, the order of the trial Court remained upheld, and no appeal/revision has been filed against that order in the Hon'ble High Court. The plaintiff had admitted that on dated 22/11/2013, when an auction was held for the disputed pond, the plaintiff did not take part in it. Further, the plaintiff has stated that because there was a Court adjournment on that day, he did not participate. Moreover, it is admitted that disputed pond was given to Shaileshbhai Bhagwanbhai Tagrawala by public auction. Whereas, it is denied that the plaintiff's did not continue possessed after the auction dated 22/11/2012. Further, the plaintiff has declared that he had been in possession of the disputed pond on dated 22/11/2013. While, the plaintiff has admitted that, the plaintiff does not have any order from the Panchayat office, Government office or the Court, regarding the possession of the disputed pond.

Further, the plaintiff has admitted that he has not produced any written existing agreement with the Panchayat, regarding the disputed pond. the plaintiff has produced an 11 month lease agreement of the disputed pond at Exh.77. The plaintiff has admitted in the cross-examination that the said lease agreement was executed on dated 08/08/2009 to dated 07/07/2010. in which the plaintiff has also voluntarily declared that it was to be renewed every year. The plaintiff had admitted that after dated 07/07/2010, the plaintiff does not have a renewal agreement for the contract at Exh.77. Here also, the plaintiff has voluntarily stated that, towards renewal, he pays Rs.5,000/- every year to the Panchayat. The plaintiff has admitted that he has not paid any money on the day the disputed pond was auctioned on dated 22/11/2013 or thereafter.

- 10.3) Therefore, according to the statement of the plaintiff, the plaintiff is a lawful tenant of the disputed pond. on considering the documentary evidence of the plaintiff being a tenant, it is the lease agreement produced by the plaintiff at Exh.77. The plaintiff has declared that the term of the agreement was for 11 months and it was to be renewed every year. Therefore, taking into consideration the meaning of renewal, it means to executed a lease agreement again in writing regarding the lease previously made between the parties from fresh commencement date. The lease agreement produced by the plaintiff at Exh.77 is from dated 08/08/2009 to 07/07/2009.

10.4) The defendants' side has not denied the said lease agreement. Therefore, according to lease agreement at Exh.77, the plaintiff is a lawful tenant of the suit pond for an eleven month term, and the proof of the plaintiff being a tenant of the suit property is that the said agreement was to be renewed every year and if the period of the lease agreement of the said property expires, then according to the Condition No.1 of the said agreement, the plaintiff must have renewed the lease agreement, and if he had in renewed every year and if he were a lawful tenant even as of the date of filing the suit, then, after the expiry of the lease agreement in the year 2010, the plaintiff must have a renewed lease agreement for the subsequent years of 2011, 2012 and the year of 2013 at the time of filing the suit. However, the plaintiff has produced the lease agreement at Exh.77 which expired on dated 07/07/2010. whereas, he has not produced lease agreement executed for the years thereafter. Further, the plaintiff himself has admitted that he does not possess a renewed lease agreement for the disputed pond, and the plaintiff declared that he pay Rs.5,000/- towards renewal, but on that basis, the plaintiff cannot be considered a lawful tenant of the suit pond. Moreover, the disputed pond is a pond under the administrative jurisdiction of the Olpad Gram Panchayat.

10.5) Therefore, merely on the basis of oral testimony or by paying the renewal amount, the lease agreement cannot be believed to be in existence or continuing. Therefore,

when the plaintiff has produced only one lease agreement at Exh.77 whose term expired on dated 07/07/2010, and has admitted that he does not possess a renewal lease agreement for the disputed pond, and the plaintiff has declared that the lease agreement was to be renewed every year, hence, despite the plaintiff declaring the fact of the renewal of the lease agreement on oath, he has not produced the renewal lease agreement. Therefore, merely by the plaintiff declaring on oath, the plaintiff does not automatically become a lawful tenant of the suit pond. Hence, a renewal lease agreement for the period after dated 07/07/2010 for the disputed pond has not been produced by the plaintiff in the present suit. Therefore, the plaintiff has failed to prove that he is a lawful tenant of the suit pond. Therefore, the answer to Issue No.1 is given in negative.

Issue No. 2 :-

- 11) The plaintiff has declared in his suit application and in his testimony that the plaintiff has paid the rent of the suit pond up to the year 2012, and thereafter when the plaintiff went to pay the rent, the defendants did not accept the rent, and the notice dated 08/11/2013 as well as the public notice issued to the plaintiff, which is false, illegal, and are null and void. According to the further statement of the plaintiff, when the defendants did not accept the rent when the plaintiff went to pay two year's rent along with an application the next day after the

notice dated 08/11/2013, the plaintiff sent Rs.10,000/- via money order on dated 18/08/2013. Furthermore, the plaintiff spent a large amount to develop the said pond and has put a fish crop worth lacs of rupees in the pond, yet on the basis of the notice given by the Defendants on dated 08/11/2013, to take away possession of the said leased pond from the plaintiff along with the fish crop, by public auction on dated 22/11/2013 was published in Gujarat Mitra on dated 16/11/2013, and the plaintiff gave a Clarification regarding the said public notice in Gujarat Mitra on dated 18/11/2013, and despite that, the Defendants again gave a clarification on dated 20/08/2013 and gave a public notice for conducting a public auction. Taking into consideration the cross-examination of the plaintiff regarding the said public notice, the plaintiff has admitted in the cross-examination that, “ એ વાત ખરી છે કે, પંચાયતે તળાવની હરાજી અંગે જે જાહેર નોટીસ આપેલી તેનો અમોએ બીજા દિવસે લેખિત જાહેર જવાબ આપેલ, એ વાત ખરી નથી કે, સદરહું જાહેર નોટીસમાં અમોએ જે જવાબ આપેલો તેના અનુસંધાને ઓલપાડ પંચાયતે જાહેર ખુલાસો આપેલો, આંક-૬૬ અમોને બતાવવામાં આવે છે તે જોઈને કહુ છુ કે, તા. ૨૦/૧૧/૨૦૧૩ ના રોજ પંચાયતે જે અમોએ જવાબ જાહેર કરેલ તેનો જાહેર ખુલાસો જાહેર કરેલ હતો જે અમોએ લીસ્ટ થી રજુ કરેલ છે. ” Therefore, the plaintiff himself has declared on oath in his testimony that the public notice given by the Defendants in Gujarat Mitra on

dated 16/11/2013, the public clarification on dated 20/11/2013 stating that they were going to hold a public auction again. Further, upon being shown the document produced at Exh.66 to the plaintiff, the plaintiff state that the response published by the Panchayat on dated 20/11/2013, which was a public clarification. Further, the plaintiff had asked in cross-examination that, whether there was any written existing agreement with Panchayat concerning the suit pond on dated 18/11/2013, the plaintiff has answered that no such written agreement has been produced. While the plaintiff has declared that, he has produced a certified document regarding renewal agreement at mark 48/2 (Exh.77). Therefore, taking into consideration the said document at Exh.77, it is a lease agreement for the suit pond for the period from dated 08/08/2009 to 07/07/2010 for 11 months. According to its condition, after the expiry of the lease agreement, it was to be renewed again for 11 months. Therefore, the plaintiff himself has admitted in the cross-examination that during the period when the public notice was given by the Panchayat on dated 18/11/2013 for the public auction of the said pond, the plaintiff has not produced any written evidence showing that the plaintiff he was a tenant of the suit pond. And the plaintiff himself has produced the document of the lease agreement which he mentioned as the renewal agreement of Exh.77, and therefore the lease period of the said lease is also within the knowledge of the plaintiff.

11.1) Further, it is also within the knowledge of the plaintiff that the said lease agreement is for an 11 month period from dated 08/08/2009 to dated 07/07/2010. The plaintiff has not produced lease agreement for the period thereafter. Further, the plaintiff has not produced the notice given by the Panchayat on dated 08/11/2013. Therefore, taking into consideration the facts declared on oath by the plaintiff and the documentary evidence, it appears that the plaintiff is declaring false facts on the oath. The plaintiff has produced documentary evidence at Exh.77 showing the lease agreement, and from Exhs. 60, 61, onward showing public notices and clarifications, and similarly, the resolution dated 19/11/2011 vide Exhs.100 and 102. However, upon the completion of the lease agreement of Exh.77 in the year 2010, a renewed lease agreement from the side of the plaintiff has not been produced. Similarly, at the time of filing the suit, the plaintiff has not been able to prove that he is a lawful tenant. Therefore, the plaintiff has failed to prove through the evidence produced by him that the notice and public notice given by the Panchayat on dated 08/11/2013 are false, illegal and are null and void. Therefore, taking into consideration the oral testimony on oath, cross-examination, and the documents produced by the plaintiff, the plaintiff has not succeeded in proving issue No.2; hence, the answer to issue is recorded in negative.

Issued No. 3 :-

- 12) The plaintiff has declared in his suit application and in his testimony that, out of the suit pond, the western half portion of the property was taken on lease on dated 08/08/2009 from the defendant, Olpad Gram Panchayat at a yearly rent of Rs.5,000/-, for which a rent agreement was executed on dated 10/08/2009, and it was decided to give the suit pond to the plaintiff permanently on lease, but for convenience, a condition was made to renew the lease agreement after 11 months. Furthermore, the Panchayat passed a resolution regarding this matter at Resolution No.38 on dated 31/08/2009, the term of the said lease agreement is still ongoing and the plaintiff held lawful possession of the western side half portion of the suit pond as a tenant. The plaintiff has declared that after keeping the suit pond on lease, the Olpad Gram Panchayat extended it every year for an 11-month period by passing a resolution, and lastly in the year 2013, the document has been produced at Exhs. 53, 77, 100. Therefore, taking into consideration the said documents, Exh. 53, is a copy of Village Form No. 7/12 in which, the tenure type of the mentioned property is shown as Government waste Land (Sarkari Padtar), and the name of the filed is shown as Lalayu Pond. Furthermore, according to entry Vashi 14-06-88, dated 13/07/66, the lease of the pond was given to Gulab Kahar and Jagdish Kahar for 9 years under the Collector Surat's Office order No.” મે. કલેક્ટર સાહેબ સુરતના હુકમ નં.

ગા.મ.પ/રંઝા/૬૨૦ “ according to the extract at Exh.53, it appears that the lease was given to the plaintiff for a term of 9 years from dated 13/07/1988 based on the Collector’s Order dated 14/06/1988. Now, the plaintiff has declared on oath in his plaint that, out of the suit pond property, the western half of the property was taken on lease on dated 08/08/2009. Whereas, the fact that it was taken on the Collector’s order dated 14/06/1988 has been declared by the plaintiff for the first time in his testimony on oath at Exh.50. furthermore, the plaintiff has declared in his testimony that, after keeping it on lease for a 9 – years term from dated 13/07/1988, the said lease was renewed every year for 1 year by passing resolution in the Gram Panchayat are produced through Resolution Exhs. 53,77,99,100. Now, a note of the Collector’s order is seen in the extract of Exh.53, but the plaintiff has not produced the Collector’s order dated 14/05/1998.

- 12.1) Now, taking into consideration the document at Exh.77, it is an 11-month lease agreement for the suit pond from dated 08/08/2009 to dated 07/07/2010. Now, if the plaintiff had rented the suit pond in the year 1988, then by renewing the lease agreement of dated 1988 every year, the plaintiff should have renewed lease agreements for the 11-month period from the year 1988 to the year 2009, along with the Olpad Gram Panchayat.
- 12.2) Whereas, taking into consideration the document at Exh.99, it appears to be a document of resolution No. 60 (9) of the the general body meeting held on dated

19/11/2011. Regarding the said document, the Talati shri of the Olpad Gram Panchayat, examined at Exh.108, and he has admitted in his cross-examination that, સદર દસ્તાવેજ “ તે મારા કાર્યકાળ દરમ્યાન પસાર થયેલ સામાન્ય સભાનો તા.૧૯/૧૧/૨૦૧૧ નો ઠરાવનં. ૬૦/૯ અનુસાર લાલવા તળાવ વાદીને એક વર્ષની મુદત માટે લંબાવેલ હોવાનો છે” તેમજ આંક-૧૦૨ પંચાયતનો ઠરાવ જણાય છે, જે અનુસાર વાદીને “દાવાતળાવ આપેલ હોય સફાઈ કરાવવા અંગે પંચાયત દ્વારા તા.૧૬/૫/૧૩ થી ૩૧/૫/૧૩ સુધી જણાવેલ છે. જે બાબતે જણાવે છે કે, તળાવની સફાઈ કરાવતા તેમના તરફથી ચાલુ કરેલ તે દરમીયાન તળાવનો પૂર્વ ભાગવાળા તળાવમાં પાણી નાહોય અને નહેરુ પાણી પણ બંધ હોવા થી તળાવની અંદરની વનસ્પતી કાઢી શકાય તેમ નથી., આ બાબતે સભામાં ચર્ચા વિચારણા કરતા આ અંગે જેમ બને તેમ વહેલી તકે તા.૩૦ જુન સુધી તળાવની સફાઈ કરી આપવા નક્કી કરવામાં આવેલ.”

- 12.3) Now, taking into consideration the cross-examination conducted by the plaintiff, at Exh.96 of the Sarpanch shri, who served in the Olpad Panchayat, the witness has stated that upon being shown the lease agreement produced by the plaintiff at Exhibit 77, that “the suit pond property out of Block No.1, namely the western side half portion, was given on lease to the plaintiff, Narayanbhai Kahar, for an 11-month period from dated 08/08/2009 to dated

07/07/2010, it is stated that, upon its completion, the term will have to be renewed again for 11-months according to the terms made therein.”

- 12.4) Therefore, taking into consideration the cross-examination of the defendant, it is admitted that the suit pond was given on lease to the plaintiff for an 11-month period from dated 08/08/2009 to dated 07/07/2010. likewise, the plaintiff has relied upon the lease agreement at Exh.77, and the plaintiff has also declared that, according to the said agreement, upon its completion, the term will have to be renewed again for 11 months according to the terms made therein. Thus, the lease agreement appears to have been executed subject to the terms and condition of the suit pond lease agreement, and both the parties the suit have accepted the lease agreement produced at Exh.77. Now, in this circumstances where the plaintiff claims to have kept the suit pond on lease, if a resolution was passed by the Panchayat to renew it, then the burden of proving the fact that, the lease agreement was renewed for further 11-month periods from the time, the plaintiff first rented it in the year 1988 up to the date of filing the suit lies upon the plaintiff. In this case, other than Exh.77, no other lease agreement showing that the lease agreement was renewed every time the 11-month period expired has been produced from the plaintiff's side. Therefore, in the absence of a lease agreement within the appropriate period, the plaintiff cannot be considered a lawful tenant.

Likewise, taking into consideration the cross-examination conducted by the defendant, the plaintiff has admitted that, “ એ વાત ખરી છે કે, સદરહું દાવાવાળા તકરારી તળાવનો હાલમાં કબજો ઓલપાડ પંચાયતનો છે.” whereas, according to the statement in the plaintiff’s affidavit on oath, the suit pond is declared to be in the possession of the plaintiff. Now, when the plaintiff has declared that he has holding possession form the year 1988 and up to the time the suit was filed in the year 2009, and when the plaintiff has declared on oath that he has possession of this all along, and has also produced rent receipts for all the year, at that time, looking at Exh.54 and Exh. 55, it has been written by hand from the plaintiff’s side, showing receipt of pond rent which appears to be for the year 2009 as well as for the period of the years 2012-13. the defendants have accepted the said document in his cross-examination. However, the condition of the lease agreement that the plaintiff relies upon, which is the lease agreement produced by the plaintiff at Exh.77 executed in the year 2009, upon its completion according to the terms of the said lease agreement, it was to be renewed again; that condition has been accepted by both the parties of the suit. According to which, the defendants have declared that the lease agreement produced by the plaintiff clearly states a term of 11-months, and no mention regarding giving it permanently on lease, and the plaintiff has misinterpreted the said lease agreement. The plaintiff has

not renewed the lease agreement after the completion of the lease agreement according to its condition No.1. At that time, according to the condition of the lease agreement produced at Exh.77 of the suit, upon the completion of the 11-month period, the lease agreement has not been renewed, which the plaintiff has admitted; likewise, the plaintiff has not produced a renewed lease agreement for the period after it expiry on dated 07/07/2010. Therefore, in the absence of the documentary evidence of a renewed lease agreement, the plaintiff is not entitled to be considered as having a lawful possession over the half portion of the suit pond. Further, the plaintiff himself has admitted in his cross-examination, that the, “એ વાત ખરી છે કે, દાવાવાળા તકરારી તળાવનો હાલમાં કબજો ઓલપાડ પંચાયતનો છે. “ તેમજ “ એ વાત ખરી છે કે, તા. ૦૭/૦૭/૨૦૦૮ પછીના આંક-૭૭ વાળા કરાર જેવો રીન્યુ થયેલ કરાર મારી પાસે નથી.” , “ એ વાત ખરી છે કે, તા.૨૨/૧૧/૨૦૧૩ ના રોજ સદરહું તળાવ શૈલેષભાઈ ભગવાનભાઈ ટાંગાવાલાને જાહેર હરાજીથી આપવામાં આવેલ.”

- 12.5) Thus, taking into consideration the facts declared by the plaintiff in the suit application at Exh.1, the oral testimony of the plaintiff, the documentary evidence produced by the plaintiff , and the cross-examination of the plaintiff, since the plaintiff has not proved through acceptable evidence that the plaintiff holds possession of the half portion of the disputed suit pond, therefore, the

answer to the Issue No.3 is in negative.

Issue No.4 :-

13) On behalf of the Defendant, the Sarpanch Shri who served in the Olpad Gram Panchayat in the year 2013 has been examined at Exh.96, and the Talati Shri of the Olpad Gram Panchayat has been examined at Exh.108, they have declared in their testimony that, the plaintiff's suit is barred by non-joinder of parties and mis-joinder of parties. In the cross-examination conducted of the plaintiff, it has been admitted that, “મે રજુ કરેલ ૭/૧૨ ની નકલમાં જે આંક- ૫૩ થી રજુ કરે છે તેમાં મારી સાથે મારાભાઈ જગદીશભાઈ ગુલાબભાઈ કહારનુ નામ બીજા હકકમાં દર્શાવેલ છે. “ એ વાત ખરી છે કે, તા.૨૨/૧૧/૨૦૧૩ ના રોજ સદરહું તળાવ શૈલેષભાઈ ભગવાનભાઈ ટાંગાવાલાને જાહેર હરાજીથી આપવામાં આવેલ.”

13.1) Taking into consideration the 7/12 extract produced by the plaintiff at Exh.53, the name of the Jagdishbhai Gulabbhai Kahar is seen under the other rights and other details column. The plaintiff has not made any clarification regarding this matter. Similarly, the plaintiff has also admitted that on 22/11/2013, the suit pond was given to Shaileshbhai Bhagwanbhai in the public auction held. Therefore, the aforementioned parties appear to be necessary and important parties to the suit application, but the plaintiff has not joined them in the suit

application, and nor has any clarification been made in this behalf. Therefore, taking into consideration the evidence produced on behalf of the parties to the suit, since the suit application is hit by the bar of mis-joinder and non-joinder of parties. Therefore, the answer to the Issue No.4 is recorded in Affirmative.

Issue No.5 :-

- 14) Considering the claim sought by the plaintiff in the present suit, the plaintiff has filed the present suit for declaration and injunction. At this juncture, provision of the Limitation Act 1963 is also required to be considered, which is as under :-

- Relief of Declaration:- Article 58 : governs the time limit for filing declaratory suits. It mandates a strict limitation period of 3 years to obtain any declaration, starting from the date when the right to sue first accrues.
- Time Limit : 3 years.
- Starting Point : when the right to sue first arises or when the cause of action first occurs.
- Application : Applies to purely declaratory suits (e.g. declaring a contract void, challenging a deed/document) where no consequential relief or possession is initially sought.
- Crucial Rulings :-
- (a) Knowledge vs. Full Knowledge : The Hon'ble Supreme Court has clarified that the 3 – years clock

begins ticking the moment a plaintiff becomes aware of the cause of action or dispute. The clock is not delayed simply because the plaintiff claims they needed “full” knowledge of the dispute.

➤ Prior Accrual :

(b) if multiple causes of action arise, the time limit must be calculated from the very first time the right to sue accrual, not a later date.

➤ Relief of Injunction:- Article 113 is a residuary clause. It dictates a limitation period of 3 years for any suit that does not have a specifically designated time period outline elsewhere in the Act.

➤ Time Limit : 3 years.

➤ Start Date : The clock begins ticking from the date “when the right to sue accrues.”

➤ Core Legal Nuances

(a) “Right to Sue” vs. “Right to Sue First” : The Hon’ble Supreme Court has clarified that the limitation period under Article 113 begins when the right to sue accrues, not when it first accrues. This distinction is critical because it allows a plaintiff to pursue remedies based on the primary cause of action without being barred just because a prior, perhaps less concrete, issue occurred earliest.

➤ Bundle of Facts :

(a) Determining exactly when the right to sue accrues is treated as a mixed question of fact and law. Courts generally read the pleadings as a whole rather than

isolating a single line to determine if a suit is time – barred.

➤ Nature of the Right :

(a) The “right to sue” generally signifies the right to seek judicial relief when a person’s right has been infringed or there is a clear, unequivocal threat to it.

14.1) The plaintiff has declared the cause of action in the suit application stating that, despite the Defendants having collected the rent up to the year 2012 for the western side property of the suit pond given to the plaintiff on lease under a lease contract from the year 2009, and despite the contract being in existence and not canceled, they still demanded two years’ rent. Furthermore, despite the plaintiff going in person and showing readiness to pay two years’ rent in advance along with an application, the rent was not accepted, and a public notice regarding a public auction was published on dated 13/11/2013, to which the plaintiff gave a clarification. Similarly, upon submitting an application on dated 16/11/2013 as per Section 249-A of the Panchayat Act, Defendant threatened the plaintiff, and the plaintiff has declared that the cause of action for the suit arose from that time.

14.2) Now, in this context, taking into consideration the suit application and the oral testimony on oath produced at Exh.50, the plaintiff has declared on oath that, out of the suit property located in the village site (Gamtalav), the half portion of the property on the western side was kept

on lease by the plaintiff for a term of 9 years from dated 13/07/1988, an entry of which is recorded in the 7/12 revenue records of the village. The extract of the said 7/12 has been produced by the plaintiff at Exh.53. In which, the name of the plaintiff and his brother are seen; despite this, the plaintiff has declared on oath that he alone had kept the suit property on lease. Similarly, that the said suit pond was kept on lease for 9 year term, this fact has been declared in his testimony for the first time. Whereas, the said fact has not been declared by the plaintiff in his suit application at Exh.1. Therefore, it is the statement of the plaintiff, that he had kept the suit property for 9 years from dated 13/07/1988, and every year a resolution was passed by the Panchayat to renew it for 1 year, and in this manner, the plaintiff has continuously been rearing fish in the suit pond since the year 1988. Furthermore, if the 9 year lease period from the year 1988 is calculated, the lease period expires in the year 1997. The plaintiff has not made any clarification regarding the time period left in between the year 1997 to the year 2009, which is prior to the lease contract period of Exh.77 and the plaintiff has declared that after the 9 year lease from the year 1988, he directly executed a rent agreement in the year 2009. While, the plaintiff has produced only one rent agreement in the suit at Exh.77 and the plaintiff has not produced any renewed rent agreement. Also, according to the statement of the Defendant, the rent agreement of the plaintiff expired on

dated 07/07/2010 and the tenant rights of the plaintiff stood terminated; from that time, the possession of the pond went to the Olpad Gram Panchayat. further, as per Condition No.3 of the rent agreement, cleaning of the ponds vegetation was not done for two years, and the cleaning expenses were to be borne by the plaintiff and because of this, the defendant issued a notice to the plaintiff on dated 08/11/2013.

- 14.3) Therefore, according to the statement of the plaintiff regarding the suit pond property, the possession of the pond has continuously come down to the plaintiff from 9 year lease of the year 1988 and thereafter from the rent agreement of the year 2009. However, it is implied that when the Defendants issued the notice, the cause of action was mentioned at the time of the said notice. The rent agreement at Exh.77 has been produced by the plaintiff, and the plaintiff relies upon the said rent agreement, the rent agreement was executed for an 11-months, it was required to be renewed as per the condition. Now, there is no resolution passed to extend the term of the contract by deciding it in the said lease agreement, or to execute a lease agreement afresh. Therefore, Exh.77 lease agreement expired on dated 07/07/2010 and thereafter, no lease contract has been executed or renewed, and 3 years after dated 07/07/2010 expired on dated 07/07/2013, after which the suit has been filed 4 months later. It also appears as per the copy to 7/12 at Exh.53, that the lease of the pond was given to

the plaintiff Naranbhai Gulabbhai Kahar and plaintiff's brother Jagdishbhai Kahar for a term of 9 years on dated 13/07/1988 and after the expiry of the term of the said lease on dated 12/07/1997, the plaintiff took an objection after 16 years. As per the above mentioned provision of the limitation Act, a suit seeking relief for declaration and injunction must be filed within a limitation period of three years. The plaintiff has not filed the suit within that limitation period. Therefore, as per the above discussion and the evidence presented by the parties, it appears that the, suit is barred by limitation. Therefore, the answer to the Issue No.5 is in Affirmative.

Issue No. 6 :-

Whether the plaintiff is entitled to get relief as prayed for?

FINDING / REASONING OF THE COURT ON LEGAL ASPECT

- 15) At this stage, it seems necessary to take into account the provision of the evidence Act.

BURDEN OF PROOF- ONUS PROBANDI

It is a general rule of burden of proof on a person who asserts a fact must prove that fact. In a case where a person asserts a fact and another person denies such facts, the person asserting the fact must prove that fact. If such a person proves that fact, or if the fact is prima facie admissible, the party who denies that fact must give

evidence rebutting the claim.

15.1) The first fact about the burden of proof is that the person asserting a fact must prove that fact. Negative proof is not always possible in any matter, so when any fact is asserted, positive evidence is expected to prove the existence of that fact.

15.2) Another important fact about the burden of poof is that, the burden of proof never shifts during the judicial proceedings from the party on whom the burden of proving a fact or issue lies, but the responsibility for it shifts. There is a definite difference between the burden of proof and the responsibility of proof. During the Civil proceeding, the party has to show only the probabilities of the facts on the basis of the preponderance of probability. The term evaluation of evidence is not defined anywhere in the Evidence Act nor is there any rule supported by law for it, how to evaluate the evidence depends on the facts and circumstances of each case. The basis of evaluation of evidence is based on the definition of proof and non-proof given in Section-3 of the Evidence Act. Therefore, the burden of proof of the statement made in the suit/claim application is on the plaintiff, in this regard taking into account the provisions of Section- 3, Section- 101, Section- 105 and Section- 106 of the Evidence Act, the following is state.

*"(a) **Section - 3 - " Proved". A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existance to probable that a prudent man ought,under the circumstances of the particular case, to act upon the supposition that it exists.***

- (b) **Section : 101 - 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 fact exists. When a person is bound to prove the existance of any fact, it is said that the burden of proof is lies on that person.*
- (c) **Section : 105 - On whom burden of proof lies :** *The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.*
- (d) **Section : 106 - Burden of proving fact especially within knowledge :-** *When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him."*

15.3) Further, it is also seems necessary to take into account the following provision of the evidence Act.

- "(a) **Section 59 : Proof of facts by oral evidence.** *All fact, except the (contents of document or electronic records), may by proved by oral evidence.*
- (b) **Section 60 : Oral evidence must be direct :** *Oral evidence must, in all cases whatever, be direct; that is to say,*
 - *If it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it;*
 - *If it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it;*
 - *If it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner;*
- (c) **Section 61 : Proof of content of documents.** *The content of document may be proved either by primary or by secondary evidence.*
- (d) **Section 62 : Primary evidence :** *Primary evidence means the document itself produced for the inspection of the court.*
- (e) **Section 63: Secondary evidence :** *Secondary evidence means and includes*
 - a) *certified copies given under the provisions hereinafter contained;*
 - b) *copies made form the original by mechanical processes which in themselves insure the accuracy of the copy, and*

- copies compared with such copies;*
- c) copies made from or compared with the original;*
- d) counterparts of document as against the parties who did not execute them;*
- e) oral account of the contents of a document given by some person who has himself seen it."*

16) Hence, as per the above provision of the evidence Act, it is clear provision that the burden of proof on a person who asserts a fact must prove that fact. In a case where a person asserts a fact and another person denies such facts, the person asserting the fact must prove that fact. It is also clear provision that the content of the document must be proved. The content of document can be proved by oral evidence. However, the contents must be proved by admissible evidence. Hence, mere production and marking of a documents as an Exhibit by the Court cannot be held to be due proof of its contents. It has to be proved in accordance with the law. Furthermore, the Honorable Supreme Court has define the admissibility of document and the Supreme Court summarized principles for examining the admissibility of document, including that the mere production and marking of a documents as an Exhibit by the Court cannot be considered due proof of its contents. Hence, as per above discussion and considering the evidence placed on record it appears that, the plaintiff has prayed in para - 09 of the suit application that, to declare, the plaintiff is a lawful tenant of the western side of the suit property, to declare that the notice given by the Defendants on dated 11-13, as well as the public notice is false, illegal and void, and issue a

permanent injunction against the Defendants to restraining them from causing any obstruction or hindrance to the plaintiff's use of the suit property, and from causing any damage to the plaintiff's fish harvest, and from auctioning or getting it auctioned publicly, and to make all necessary orders as the Court may deem fit.

- 17) Taking into consideration the reliefs sought by the plaintiff and accordingly the oral as well as documentary evidence produced on behalf of the plaintiff, it becomes clear that the plaintiff has declared in his suit application at Exh.1 that the suit pond property was kept on a yearly rent of Rupees 5,000/- from dated 08/08/2009, for which a rent agreement was executed on dated 10/08/2009, and it was given to the plaintiff on lease permanently, and for convenience, a condition was made to renew the contract after 11 months, and a resolution regarding this matter, a resolution No. 38, was passed on dated 31/08/2009, and the lease period is still ongoing. The copy of which has been produced by the plaintiff along with the suit a list of documents at mark 3/15 and mark 3/16. upon reading the same, it is implied that it mentions giving it on lease on a temporary basis for 11 months and carrying out the cleaning of vegetation inside the pond. Now, along with the oral testimony of the plaintiff at Exh.50 and produced list of documentary evidence, the plaintiff has not produced the said resolution No.38 dated 31/08/2009, nor has an Exhibit number been marked on the aforementioned document. Therefore, it becomes clear

that the plaintiff has produced resolution No.38 dated 21/08/2009 only in the necessary document list filed with the suit. And from that resolution, it is clear that the suit pond property was given to the plaintiff not permanently but on lease for 11 months on a temporary basis. Therefore, the plaintiff deliberately not produced resolution No.38 at the stage of presenting his evidence. Furthermore, the plaintiff has declared on oath in his suit application at Exh.1 that he had rented the suit pond in the year 2009. whereas, in his oral testimony on oath produced at Exh.50, the plaintiff has declared for the first time that he had kept the suit pond property on lease for a 9-year term from dated 13/07/1988, an entry of which is recorded in the 7/12 revenue records, and a resolution was passed in the Gram Panchayat to renew the said lease year after year for 1 year.

- 18) Therefore, the fact that the plaintiff had kept the suit pond on lease since the year 1988 has not been declared by him in his suit application, and no clarification has been made in his testimony regarding why this fact was not declared in the suit application. Likewise, no such resolution of the Gram Panchayat regarding this matter has been produced. Therefore, since the fact of the resolution No.39 dated 31/08/2009, which the plaintiff relies upon, clearly establishes that the said pond was given on lease on a temporary basis for 11 months, the plaintiff has not produced the said resolution in his evidence, and despite it being a important resolution,

plaintiff has not made any clarification regarding its non-production.

- 19) Similarly, the plaintiff has declared on oath that a condition was made by the Panchayat to renew the said rent contract after 11 months, and the lease period is still ongoing, the plaintiff has relies upon the agreement produced at Exh.77 and a clear condition has been made in the said rent agreement that it shall be renewed after 11 months, and the plaintiff shall have to get it cleared. Looking at the period of the said rent agreement, it appears to be from dated 08/08/2009 to dated 07/07/2010. when the plaintiff relies upon this rent agreement, it is stated that according to its condition, the rent agreement was made for a temporary period of 11 months and it mentioned a condition to renew it upon expiry. Moreover, the plaintiff has declared on oath that the lease period is currently ongoing. And if at that time, if the plaintiff had renewed the rent contract from time to time according to the terms of the rent contract produced at Exh.77, then the plaintiff may produced any renewed rent contract other than the rent contract at Exh.77, and the resolution were passed by the Panchayat regarding this matter. However, it is necessary to note this fact here that, if a resolution is passed by the Panchayat, then on the basis of that resolution, the rent agreement remains to be renewed, but the plaintiff has not produced a renewed rent agreement on the basis of a resolution No.38, dated 31/08/2009.

- 20) Furthermore, it is a very common matter that, a resolution

to lease out a Government property permanently to a single individual cannot be passed. Similarly, regarding Resolution No.38 dated 31/08/2009 produced by the plaintiff along with the suit application, it clearly establishes that the said pond was given on a temporary basis for 11 months. Therefore, the plaintiff has not been able to prove through necessary documentary evidence the facts that the said pond was given to him on lease permanently and that the lease contract period is currently ongoing. Similarly, the plaintiff has clearly admitted in his cross-examination that the possession of the pond belongs to the Olpad Gram Panchayat. In the same manner, the plaintiff has also admitted that the fact that on dated 22/11/2013, the suit pond was given to Shaileshbhai Bhagwanbhai by public auction. Therefore, when the plaintiff himself has admitted in his cross-examination that the possession of the pond belongs to the Gram Panchayat and that on dated 22/11/2013 the suit pond was given to another person by public auction, then naturally, the relief prayed for by the plaintiff does not remain eligible to be granted to the plaintiff. Because, under the circumstances, where the suit pond has been given to another person by public auction, the plaintiff cannot be considered a lawful tenant of the suit pond, and the plaintiff is not entitled to obtain the relief of injunction against the Defendants as prayed for. Likewise, according to the discussion held above, when the plaintiff has deliberately not produced the resolution No.38 dated

31/08/2009 in his evidence, when the fact that the plaintiff had rented the suit property for a term of 9 years in the year 1988 has not been declared in the suit application at Exh.1, and when the plaintiff has not produced a renewed lease agreement after the completion of the lease agreement executed on the dated 10/08/2009 at Exh.77 according to its terms; under such circumstances as well, the plaintiff does not become entitled to receive the reliefs as prayed for by him. Therefore, the answer to the Issue No.6 in Negative.

FINAL CONCLUSION :-

- 21) The plaintiff has filed the present Suit for declaration and injunction sought against the defendants for the suit pond. The plaintiff has produced documentary evidence at Exhs.53 to 68, 99 to 102 to 103 to 106. The defendants have produced the documentary evidence at Exhs. 112, 113. According to the statement in the plaintiff's suit application and testimony on oath in the aforementioned suit, out of the village site pond property containing Block No.1 of Olpad, the half portion of the property on the western side was taken on lease on dated 10/08/2009 at an annual rent of Rs.5,000/-, for which a lease agreement was executed on dated 10/08/2009, and the said pond was given to the plaintiff permanently on lease and for convenience, a condition was made to renew the contract after 11 months, and regarding this matter, the Panchayat has passed Resolution No.38 on dated

31/08/2009. Similarly, the plaintiff had kept the suit pond on lease for a 9-year term from dated 13/07/1988, an entry of which is recorded in the 7/12 revenue records, and thereafter, resolution were passed by the Panchayat, and from the year 1988, the plaintiff continuously kept the suit pond for fish business. Thus, on one hand, it is the statement of the plaintiff that the pond was kept on lease since the year 1988. Whereas, on the other hand, it was kept on lease for the time period from the year 2009 to dated 07/07/2010, and it was given to the plaintiff permanently on lease, but for convenience, an 11-month rent agreement was executed, and a condition was made to renew the rent agreement after 11 months.

- 22) Therefore, regarding the fact that the suit pond was given on lease to the plaintiff for a 9-year term form the year 1988, the plaintiff has produced a 7/12 extract. In which, along with the plaintiff, his brother's name is also seen. But the plaintiff has not produced any resolution or lease agreement showing that the suit pond was given on lease to the plaintiff for a 9-year term on dated 13/07/1988. Furthermore, the fact that the plaintiff has been rearing fish in the pond since dated 13/07/1988 has not been declared by the plaintiff in his suit application at Exh.1. The plaintiff has not produced Resolution No. 38 passed on dated 31/08/2009 at the stage of evidence. Whereas, according to the document produced with the suit application, which is Resolution No.38 dated 31/08/2009, it clearly appears that the suit pond was given on a

temporary basis for an 11-month term. For this reason, the plaintiff has deliberately not produced the document of the resolution passed on dated 31/08/2009 at resolution No.38 at the stage of evidence. Furthermore, when it is claimed that a resolution was passed to give the suit pond to the plaintiff on lease permanently, then according to the condition of the lease agreement at Exh.77, there is a condition to renew the lease agreement after 11 months. However, the plaintiff has not produced a renewed lease agreement other than the lease agreement produced at Exh.77.

- 23) Furthermore, when the plaintiff himself has admitted in his cross-examination that the possession of the pond belongs to the Gram Panchayat and that on dated 22/11/2013, the suit pond was given to Shaileshbhai Bhagwanbhai in the public auction. Furthermore, taking into consideration the documentary evidence produced by the plaintiff, according to the statements of the plaintiff, the lease of the suit pond given in the year 1988 contains his brother's name as well along with the plaintiff in the 7/12 extract. Similarly, despite having knowledge of the fact that the suit pond was given to Shaileshbhai Bhagwanbhai by the auction of dated 22/11/2013, he has not joined them as a party in the suit work. The plaintiff has not proved through acceptable evidence the facts that he is a lawful tenant of the suit pond remains that of lawful tenant. Therefore, taking into consideration the evidence produced by the parties to the suit and the cross-

examination, as well as the reliefs sought by the plaintiff; under circumstances where the suit pond has been given to another person by public auction, the plaintiff has not proves through acceptable evidence that he is a lawful tenant of the suit pond and that he is entitled to receive the relief of injunction against the Defendant as prayed for. Under such circumstances, the relief sought by the plaintiff does not remain eligible to be granted to the plaintiff.

- 24) Thus, in the present suit, the plaintiff is failed to prove the issues which they have to be proved, and therefore the plaintiff is not entitled to get relief he prayed for. Therefore, looking to the facts and circumstances of the present suit and evidence on record, the following order is pass in respect of Issue No.7, as under:

: : FINAL ORDER : :

- 1) The suit of the plaintiff, is hereby '*Rejected*'.
- 2) The plaintiff shall bear the cost of both the parties of this suit.
- 3) Decree to be drawn accordingly.

Signed and pronounced in the Open Court on, 02nd July 2026, at Olpad, Surat.

Date : 02/07/2026
Place : Olpad

(Dipti Maulik Pandya)
Add. Senior Civil Judge &
ACJM, Olpad, Dist. Surat.
GJ 0 1290