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**IN THE COURT OF ADDITIONAL SENIOR CIVIL JUDGE
MANGROL DIST SURAT,**

Regular Civil suit No. 32 of 2011

Ex-176

Plaintiff: Gulam Husen Karim Rasul

Age 70, Occupation Retired

Resident of near Masjid Noor Koda Faliya,

Hathoda, Tal. Mangrol, Dist Surat.

The Plaintiff has died on 03/08/2016 during the trial, his legal heirs and representatives are as follows

1.1 Akhtarbhai Gulamhusen Abuji

Age: 50 years Occupation : Agriculture

Resident of near Masjid-e-Noor, Koda Faliya

Hathoda, Tal. Mangrol. Dist. Surat.

1.2 Ismail Gulamhusen Abuji

Age 48 years Occupation Agriculture

Residing at the same place

1.3 Sadiq Gulamhusen Abuji

Age: 45 years, Occupation: Agriculture

Residing at the same place

1.4 Abdulrahim Gulamhusen Abuji

Age: 39 years, Occupatio: Agriculture

Residing at the same place

1.5 Said Gulamhusen Abuji

Age: 35 years, Occupation: Agriculture,

Residing at the same place

1.6 Munni D/O Gulamhusen Abuji

Age: 27 years Occupation: Agriculture

Residing at the same place

Vs

Defendants:1 Azizabibi Amir Rasul,

Age: 56 years, Occupation: household work

Residing at: 10 Hajari Sheri, Sgrampura, Surat

The Defendant No. 1 has died on 17/04/2024 during the trial, her legal heirs and representatives are as follows

1.1 Zubeda Abdul Rashid Hafezi

Age: Adult, Occupation: Household work,

Resident of Sagrampura, Luwara Sheri Surat.

Defendant:2 Farzanabanu Mohammad Irfan Hafezi,

adult, occupation: household work/agriculture, residing at

2/3209, Luhar Sheri, Sagrampura, Surat.

Defendant:3 **Iqbal Ibrahim Mirza,**

aged about 55 years, occupation: household work, residing at
10 Hajari Sheri, Sagrampura, Surat.

**Subject: Suit for Partition and possession of half share in the property,
cancellation of sale deed and declaration and Permanent
Injunction**

Appearances

Ld. Advocate I.A. MITHAWALA for the Plaintiff

Ld. Advocate Y.A.LUNAT for the defendant.

JUDGMENT

1. The plaintiff has filed a present suit against the defendant to claim a half-share in the property, for the cancellation of a document, and for a declaration and injunction. The short facts of plaintiff's suit is that the suit land is agricultural land situated in the revenue limits of Village Hathoda, Taluka Mangrol, District Surat, bearing: Revenue Survey No. 234 Block No. 188 Area: Hectare Are Sq. Meter 0-71-35 Assessment: Rs. 9-12 Paise is of old tenure land. The name of defendant no. 1 was in the revenue record (7/12 extract) of suit land. Thereafter, on the basis of a sale deed, temporary mutation entry has been made in the name of defendants no. 2 and 3. The plaintiff has been cultivating the suit land since prior to 1987. In the year 1987, the defendant No. 1 executed a gift deed (Bakshisnama) in favour of the plaintiff and granted him half share (नीमे हिस्सा) in the suit land. Since then the plaintiff has continuously cultivated the suit land. The plaintiff and his family members worked hard and made the land fertile. The plaintiff further stated that the witness on behalf of defendant no. 1 named Abdul Hamid A. Kadar Hafezi, resident at 2/3209 of

Sagrampura, Luhar Street Surat and witness on behalf of the plaintiff named Husen Malek Abuji, resident of Hathoda, Taluka Mangrol, District Surat were present at the time of executing the gift deed and they signed in the gift deed and in the presence of said witnesses, the suit land has been given to the plaintiff. It is further stated that the plaintiff remained cultivating said suit land for many years without objection from anyone and no one demanded said suit land and no one restricted to the plaintiff for cultivating said suit land. However, after the land value increased, the defendant No.1, by keeping the plaintiff and his family in darkness and by breach of trust, sold the suit land to the defendants No.2 and 3 through a registered sale deed. The sale deed was registered before the Sub-Registrar, Mangrol as registration no. 475 Dated: 07/02/2011. The defendant No.1 was fully aware that the suit land had already been gifted to the plaintiff, yet executed the sale deed to defeat the plaintiff's lawful rights. Therefore the sale deed is illegal and void. The defendant No.1 had no authority to sell plaintiff's share in the suit land. However, the defendant no. 1 has sold suit land to defeat the rights of the plaintiff. The plaintiff further stated that on the basis of the said sale deed, no actual possession was handed over to the defendants No.2 and 3. Even today, the plaintiff and his family remain in the possession of the suit land. Hence, the plaintiff has brought this suit for protection of his possession over suit land and for permanent injunction against the defendants that the defendants do not to restrict the plaintiff for cultivating suit land. In paragraph number 7 of the plaint, the plaintiff has prayed for a relief to separate the half-share of the suit land by metes and bounds and to grant direct possession and enjoyment to the plaintiff. Furthermore, the plaintiff has requested a permanent injunction against the defendants, restraining them from causing any obstruction, hindrance, or interference—either personally or through others in collusion—to the plaintiff's

agricultural activities on the suit land. Additionally, the plaintiff has prayed for a declaration that the registered sale deed number 475/2011 is illegal and void.

2. After contesting the suit, the defendants hereby filed their written statement vide Ex- 20 wherein they denied the facts of plaintiff's case in toto. In their written statement, the defendants have stated that the facts stated in the plaint are false and fabricated and are denied. The plaintiff's suit is barred by law of limitation. The defendants further stated that, the plaintiff and the defendant No. 1 are close relatives. The defendant No. 1's father was Amir Rasul Abuji, who passed away on 12/05/1957. Therefore, being direct legal heirs of deceased Amir Rasul Abuji, the names of defendant No. 1 and her mother Ayshabibi were entered in the revenue records as lawful heirs by mutation entry no. 404. Late Amir Rasul owned other properties besides the disputed property, and in all those properties as well, the names of the defendant No. 1 and her widowed mother have continued as legal heirs by succession. After the death of the defendant No. 1's father late Amir Rasul, his widow and the defendant No. 1 lived in Hathoda village for a few years and later moved to Surat to stay at her parental home. From Surat, they used to visit Hathoda from time to time and, by employing daily wage labourers, carried out cultivation work under their own control. It is further stated that around the year 1985, the health of the defendant No. 1's mother was often weak. At that time, the plaintiff came to visit her and told her that she should stop running around to Hathoda and that he would manage the agricultural work of her lands under his supervision and would also give her an account of the produce. Since the plaintiff was the real cousin of the defendant No. 1, complete trust was placed in him, and the defendant No. 1's mother allowed cultivation work to continue through labourers under the plaintiff's supervision. However, the land was never given to the plaintiff. The plaintiff gradually gained the trust of the

defendant No. 1 and her mother, and frequently used to visit them at Surat. The so-called "Gift Deed" (Bakshishnama) produced by the plaintiff was never executed by the defendant No. 1 in favour of the plaintiff or any other person. The defendant No. 1 only knows how to sign her name and does not know how to read or write. The plaintiff, for convenience, had on two or three occasions obtained the defendant No. 1's signatures on blank papers on the pretext of making applications to the Talati and village authorities. The defendant No. 1 came to know from the present suit itself that those blank signed papers were misused by the plaintiff. The defendant No. 1 never executed any gift deed regarding the agricultural land standing in her name. The plaintiff has fabricated such a document and filed the present suit. The same is contrary to the provisions of Muslim law and therefore cannot stand. The defendant No. 1 came to know upon receiving a copy of this suit that the plaintiff had also wrongly entered Block No. 338 land, standing in the defendant No. 1's name, in his own name. Since the said land was also wrongly mutated in the plaintiff's name, the defendant reserves the right to seek cancellation of the same, and without prejudice to such rights, submits this written statement for the present suit. The illegal act committed by the plaintiff in betraying the trust of the defendant No. 1 and her late mother, and attempting to usurp the agricultural land standing in the defendant No. 1's name, is highly condemnable. Further, the so-called "Gift Deed" being contrary to the provisions of Muslim law cannot survive in the law. Therefore, the present suit of the plaintiff deserves to be dismissed with heavy compensatory costs, so that the ends of justice may be served.

3. The plaintiff then filed his Counter Affidavit vide Ex- 33 wherein he denied the facts stated by the defendants in their written statement at Exhibit-20. In his counter affidavit vide ex-33, the plaintiff further stated that the written statement filed by the defendants against the plaintiff's suit and injunction

application is false and not admitted. The defendants' reply is entirely false, fabricated, and concocted, and is liable to be rejected. The defendants have raised objections of delay, laches, acquiescence, and estoppel in the suit, but they have not clearly explained under what circumstances such principles apply. These facts have been invented only for the purpose of replying to the suit. The plaintiff has not filed the suit for causing delay, nor has he concealed any fact from the Hon'ble Court, nor misled the Court. The plaintiff's suit is not barred by limitation. The defendants are stating that the issue of limitation should be heard as a preliminary issue, but they have not clarified how limitation applies in this case. Instead, they have stated false facts. Their demand for immediate rejection of the plaint under Order 7 Rule 11(d) of the Code of Civil Procedure, 1908 is completely false. They have not shown how this provision applies. The plaintiff stands by the facts clearly stated in the plaint. The facts stated in paragraph 15 of the defendants' reply are absolutely false and are specifically denied. Likewise, the facts stated in paragraph 16 are also false, fabricated, and distorted. After the defendant No. 1 left Hathoda, she never came to cultivate the suit land. In fact, the defendant No. 1 does not even know where the suit land is situated. Therefore, the allegation that cultivation work was being carried out through labourers from time to time is completely false and fabricated. After the death of the defendant No. 1's father, Amir Rasul, his wife Ayshabibi remarried. At that time the defendant No. 1 was about 15 years old and was a minor. Therefore, she was kept and resided at her maternal relatives' home, where she resided and started her education. Hence, the allegation that the defendant No. 1 used to come to Hathoda and do farming is completely false. The facts stated in paragraph 17 of the reply are entirely false and denied by the plaintiff. All these facts have been fabricated. The suit property had been gifted from the beginning. The defendant No. 1 had received certain

consideration in lieu of the gift. This fact is known to the defendant No. 1, yet she has concealed the true facts and put forward false statements. All the facts stated in paragraphs 18 and 19 of the reply are false and are specifically denied. A gift deed of the suit property had been executed and all formalities regarding the gift were completed. The defendant No. 1 had read the gift deed and had also given a statement regarding it. The allegation that signatures were obtained only on blank papers is entirely false. All the facts stated in paragraphs 20 and 21 of the reply are false. The allegation that the plaintiff wrongfully entered his name in the revenue record of Block No. 338 is also false and denied. The defendants have stated that the gift deed cannot stand in law as it is against the provisions of Muslim law, but this is false. The gift deed is legal and valid, and on the basis of the lawful gift deed, the plaintiff has acquired the property. The plaintiff is the lawful owner of the property. The defendant No. 1 is fully aware of this fact, yet has filed a false reply. The suit property has already been gifted. Therefore, the defendant No. 1 has no ownership rights remaining in the suit property. Hence, the defendant No. 1 cannot execute any document regarding the suit property nor enter into any transaction concerning it. Any document executed by the defendant No. 1 is false, illegal, void, and liable to be cancelled. When the defendant No. 1 is not the owner of the property, she cannot execute any document concerning it. Therefore, the document executed is required to be cancelled, and an order and decree should be passed in favour of the plaintiff.

4. For determination of this suit, my ld. predecessor has framed the following issued vide ex- 58

- (1) Whether the plaintiff proves that he has been cultivating the suit land since before the year 1987?

- (2) Whether the plaintiff proves that the defendant No. 1 had given half share in the suit land to the plaintiff by way of a gift deed?
- (3) Whether the plaintiff proves that he is entitled to get separate possession of his claimed share by partitioning the property mentioned in the plaint?
- (4) Whether the plaintiff proves that the sale deed registered on 07/02/2011 in the office of the Sub-Registrar, Mangrol, under Document No. 475 is false, illegal, and liable to be cancelled?
- (5) Whether the plaintiff proves that he is entitled to a permanent injunction restraining the defendants, either personally or through others, from causing obstruction, interference, hindrance, or creating any deficiency in the suit land while the plaintiff and his family members are cultivating it?
- (6) Whether the plaintiff proves that he is entitled to a permanent injunction restraining the defendants, either personally or through others, from transferring, alienating, or mortgaging the suit land to any other person in any manner?
- (7) Whether the defendants prove that the plaintiff's suit is without cause of action and has been filed with insufficient court-fee stamp, and therefore liable to be dismissed?
- (8) Whether the plaintiff is entitled to get the relief as prayed for?
- (9) What order and Decree?

5. Reply to the Issues

1. In Negative
2. In Negative
3. In Negative
4. In Negative
5. In Negative
6. In Negative
7. Struck out under order 14 rule 5 of CPC
8. In Negative
9. As per final order

6. The plaintiff has produced the following oral as well as documentary evidence.

Oral Evidence

Sr, No	Exhibit	Particulars
1	69	Affidavit of Examination-in-Chief of plaintiff Syed Gulamhusen Abuji
2	121	Affidavit of Examination-in-Chief of plaintiff's witness Umraobibi Usman
3	122	Affidavit of Examination-in-Chief of plaintiff's witness

		Julekha Yusuf Padaliya
4	123	Affidavit of Examination-in-Chief of plaintiff's witness Rasid Mohamad Pathan

Documentary Evidence

Sr. No.	Exhibit	Particulars
1	80	Copy of Village Form 7/12 extract (cultivation record) of agricultural land bearing Revenue Survey No. 234, Block No. 188, situated at village Hathi Shikhar 23/03/2011
2	81	Copy of Village Form No. 8-A extract of the suit land dated 23/03/2011
3	82	Xerox copy of Entry No. 3650 in Village Form No. 6 (Record of Rights) regarding the suit land dated 21/03/2011
4	83	Copy of objection application submitted by the Plaintiff before the Mamlatdar, Mangrol, against Entry No. 3650 regarding the suit land dated 23/03/2011
5	84	Copy of public notice/warning published by the Plaintiff through Advocate Salim M. Khan in Gujarat Mitra newspaper regarding the suit land
6	85	Revenue receipt of the land 23/03/1981
7	86	Seed subsidy/payment receipt of the land 07/04/1981
8	87	Revenue receipt of the land 02/04/1983
9	88	Revenue receipt of the land
10	89	Revenue receipt of the land 26/03/1991
11	90	Revenue receipt of the land 23/06/1992
12	91	Revenue receipt of the land 08/07/1994

13	92	Revenue receipt of the land 02/11/1998
14	93	Revenue receipt of the land 28/09/1999
15	94	Copy of Education Cess receipt of the land 29/05/1978
16	95	Copy of Education Cess receipt of the land 23/03/1981
17	96	Copy of Education Cess receipt of the land 02/08/1981
18	97	Copy of Education Cess receipt of the land
19	98	Copy of Education Cess receipt of the land 02/04/1983
20	99	Copy of Education Cess receipt of the land 26/03/1991
21	100	Copy of Education Cess receipt of the land 23/06/1991
22	101	Copy of Education Cess receipt of the land 23/06/1992
23	102	Copy of Education Cess receipt of the land 08/07/1994
24	103	Copy of Education Cess receipt of the land 08/07/1994
25	104	Copy of Education Cess receipt of the land 02/11/1998
26	105	Copy of Education Cess receipt of the land 02/11/1998
27	106	Copy of Education Cess receipt of the land 28/09/1999
28	107	Irrigation receipt of the land 15/01/2003
29	108	Copy of revenue receipt of the property
30	109	Copy of Registered Sale Deed No. 475/2011
31	110	Village Form No. 7 and 12 and 8A
32	111	Original Bakhshinama (Gift deed)

Thereafter, the plaintiff_ has filed closing pursis Vide Ex-138. So, No further evidence is produced by the plaintiff.

7. The defendants have produced the following oral as well as documentary evidence.

Oral Evidence

Sr, No	Exhibit	Particulars
1	152	Affidavit of Examination-in-Chief of defendant Jubeda Abdul Rasid Hafezi daughter of Azizabibi Rasul

Documentary Evidence

Sr. No.	Exhibit	Particulars
1	154	Original Copy of Death Certificate
2	155	Copy of Objection application against Mutation Entry No. 3726
3	156	Copy of Village Form No. 8-A
4	157	Copy of Village Form No. 7 and 12
5	158	Mutation Entry No. 298 of Village Form No. 6
6	159	Mutation Entry No. 404 of Village Form No. 6
7	160	Letter of Talati-cum-Mantri of Hathoda Gram Panchayat
8	161	Copy of Notice of 135D
9	162	Mutation Entry No. 2317 of Village Form No. 6
10	163	Xerox copy of letter of Dy Engineer Velachha District
11	164	Copy of Receipt
12	165	Copy of Village Form No 7 and 12
13	166	Copy of Village Form No. 8-A
14	167	Mutation Entry No. 298 of Village Form No. 6
15	168	Map of Hathoda Village

Thereafter, the defendants filed closing pursis Vide Ex-169. So, No further evidence is produced by the defendants.

8. Thereafter the plaintiff has filed his written argument vide ex-171 and the defendants has filed written argument vide ex-175. The written arguments filed by both the parties are part of the record. Hence, not required to be discussed in length. However, as and when required the same is discussed in paragraph herein below.

Evidence of the Plaintiff:

9.1 The plaintiff Said Gulamhusen Abuji filed an affidavit of examination in chief vide exhibit 69. In his deposition, the plaintiff has discussed all the facts as per his pleadings. So, in order to avoid repetition , it is not required to discuss here in brief The plaintiff states that agricultural land situated within the limits of Village Hathoda, Sub-District Mangrol, District Surat, bearing Revenue Survey No. 234, Block No. 188, admeasuring 0-71-35 hectares-ares-square meters, assessed at Rs. 9.12, is the suit land. The said agricultural land is of old tenure. In the current revenue records of the Talati-cum-Mantri, in the 7/12 extract, the name of the defendant No. (1) was recorded. Thereafter, by Sale deed No. 475/A dated 07/02/2011, an entry was made in the names of the defendant Nos. 2 and 3. The said land had been cultivated by the plaintiffs and their predecessors prior to the year 1987, and they had actual possession and management of the land. Since the plaintiffs and their predecessors were cultivating the land, they had been paying land revenue and education cess. They also paid the amount of seeds for the land. Further, irrigation charges of the land were also deposited, and receipts thereof were obtained. The defendant No. 1 has executed a gift deed (Bakshimanu) in favour of the plaintiff on

17/06/1987 and suit land has been given to the plaintiff. The plaintiff is in possession of the suit land on the basis of the said gift deed. No one objected to the plaintiff for cultivating suit land. However, the defendant no. 1 has sold suit land to the defendant nos 2 and 3 executing register sale deed no. 475/2011. Hence, this suit is brought by the plaintiff to protect his right. The plaintiff has produced documents in favour of his suit.

Then the plaintiff is cross-examined by the defendant. In his cross-examination he admitted that he had not read the plaint filed by his father, Gulamhusen. It is admitted that he does not know what facts his father mentioned in the plaint. He stated that the number of sale deed is 475/A. He stated that the signature of witness name Imran Iqbal Mirza is in the document no. 475/A. He does not know the name of the second witness. The sale deed produced at Exhibit 109 is shown to him. After seeing it, he says that the document he referred to as 475/A is this very document. After seeing the sale deed at Exhibit 109, he says that on pages 1 to 8, after the number 475, some unclear mark appears. It is admitted that on pages 9, 10, and 11 of the sale deed at Exhibit 109, after 475 there is no "A" or any other writing. After seeing the plaint at Exhibit 1, he said that his father has written in relation to the suit matter that he seeks "half share in the property." It is admitted that in a suit for share in the property, generally persons of the same family are made parties. It is admitted that the relationship between plaintiff Gulamhusen and the defendant No. 1 Azizabibi is not mentioned in the plaint. It is admitted that he has not produced any genealogy record to show that the plaintiff and the defendant No. 1 are related to each other. It is admitted that he has not produced any village Form No. 6 entry showing that the suit property came to the share of the defendant No. 1. He does not know that, for identifying any property, its four boundaries are usually mentioned in the document or in the plaint. He does

not know that, at the time of partition, it is mentioned which directional portion of the property goes to whose share. In cross-examination, exhibit 111 is shown to said witness. After seeing it, he said that in Survey No. 234, Block No. 188, the direction of the portion allotted to him is not written. It is admitted that he did not see the witnesses signing in Exhibit 111. It is admitted that he did not see the defendant No. 1 signing in the gift deed. It is admitted that he cannot say from looking at Exhibit 111 at which place the gift deed was written. It is admitted that the surname of the defendant No. 1 is not written in the plaint. It is admitted that he does not know what reply the defendant No. 1 gave to the plaint. He does not know his application for cancellation of the mutation entry on the basis of the registered sale deed is rejected by Dy Collector. He denied any other facts in cross-examination.

9.2 The Plaintiff's witness named Umraobibi Usman has filed her examination in chief vide ex-121. In her examination in chief she deposed that her joint ownership agriculture land bearing Survey No. 232, Block No. 190 is situated in the revenue limits of Village Hathoda, Sub-District Mangrol, District Surat. On the south-east side of the said land, there is agricultural land bearing Block No. 188 belonging to the plaintiff Gulam Husen Karim Rasul. He has been cultivating the said land for about more than 50 years. She personally knows that he is cultivating the said land. She knows very well that Gulam Husen Karim Rasul is also a resident of Village Hathoda. She also knew that he grows various crops from the said land. In her cross examination, she admitted that Usmanbhai is the name of her father. It is admitted that she is married and she also has children. It is admitted that both her matrimonial home and her parental home are in village Hathoda. It is admitted that she also has real sisters. It is admitted that when there are many agricultural lands and many fields, it is called a "vago" (group/tract of fields). Her father's land is situated in Valesa

Vago. It is admitted that the lands of Valesa Vago are situated on the Surat-side bank of the Kim River. It is admitted that she does not know the survey number and block number of her father's land situated in Valesa Vago. It is true that Azizabibi was married and settled at Surat and she has passed away. It is admitted that the agricultural land of Azizabibi is situated on the Bharuch-side bank of the Kim River. It is admitted that she does not know the age of the plaintiff, Gulamhusen Karimbhai. It is admitted that she does not know the number of the land belonging to plaintiff Gulambhai. It is admitted that she is unable to identify directions properly. It is admitted that to show that agricultural land stands in her name in village Hathoda, she has not produced Village Form No. 7/12. It is admitted that the village Talati records every year in the village Form No. 7/12 who cultivates the land. It is admitted that the plaintiff Gulamhusenbhai, defendant Azizabibi Amirbhai, Abdul Kadar Chhitubhai, and Yusufbhai Chhitubhai are all members of the same family and are relatives.

9.3. The Plaintiff's witness named Julekha Yusuf Padaliya has filed her examination in chief vide ex-122. In her examination in chief she deposed that in the limits of village Hathoda, Sub-District Mangrol, District Surat, agricultural land bearing Survey No. 233/2, Block No. 191, is under her joint ownership. On the eastern side of the said land, there is agricultural land bearing Block No. 188 belonging to the plaintiff Gulam Husain Karim Rasul. He has been cultivating the said land for more than approximately 50 years. She personally knows that he has been cultivating the said land. She also knows well that Gulam Husain Karim Rasul is a resident of village Hathoda and that he grows various crops from the said land. Then said witnesses cross-examined by the defendant. In her cross-examination she admitted that the plaintiff Gulam Husen is younger than her in age. It is admitted that her age is 61 years. It is

admitted that Zakir Yusuf Padaliya is the son of her elder paternal uncle. It is admitted that the land mentioned in her affidavit was received from her forefathers. She stated that her matrimonial home as well as her parental home are at Hathoda village. The land mentioned in her examination-in-chief has been lying fallow for many years. It is admitted that the minimum age of a person doing farming would be 22 years. It is admitted that she has not produced Village Form No. 7/12 to show that she owns agricultural land at Hathoda village. It is admitted that she cannot identify directions properly. It is admitted that in villages, land is identified by directions such as east side and west side. It is admitted that she does not know the survey number of the land for which plaintiff Gulam Husen has filed the suit. It is admitted that plaintiff Gulam Husen or his advocate did not tell her what she had to say after coming to court. She does not know whether she had not informed the plaintiff or his advocate about what written statement was to be given in court. It is admitted that she is illiterate, and she had not read the statement produced by her.

9.4. The Plaintiff's witness named Rasid Mohamad Pathan has filed his examination in chief vide ex-123. In his examination in chief he deposed that In the revenue district of Surat, sub-district Mangrol, within the boundary of village Hathoda, the agricultural land bearing Survey No. 293, Block No. 193, has been under his joint ownership. On the north east side of the said land, there is agricultural land bearing Block No. 188 belonging to the plaintiff, Gulam Husain Karim Rasul. He has been cultivating the said land for about more than 50 years. He personally knows that he has been cultivating the said land. He knows well that Gulam Husain Karim Rasul is also a resident of village Hathoda. He also knows well that he grows various crops from the said land. He

is cross-examined by the defendant. In his cross-examination he admitted that he has been residing in village Hathoda since birth. It is admitted that the plaintiff, Gulam Husainbhai, is a resident of village Hathoda and he knows him well. It is admitted that he has come to give evidence at the request of the plaintiff, Gulam Husainbhai. It is admitted that in his examination-in-chief affidavit, the number of his land is written. In reply to the question that in your examination-in-chief affidavit you have written your land number as 293, he says that his land number is 193. His land number 193 is the block number. It is admitted that he has not produced the 7/12 extract of his agricultural land. It is admitted that he has not seen the 7/12 extract of the land bearing Block No. 188 of village Hathoda. It is admitted that he does not know in which direction the land bearing Block No. 188 is longer and in which direction it is wider. It is admitted that he has not stated in his examination-in-chief how many fields away his land is situated from Block No. 188. It is admitted that he cannot say whether Block No. 188 is situated towards the north or towards the east. The witness voluntarily states that he does not understand directions. It is admitted that when an agricultural land adjoins another agricultural land with a boundary trench, then that land is divided in two directions. It is admitted that adjoining Block No. 188 on the western side is the land of Jakir Yusuf Padaliya. It is admitted that at present the land bearing Block No. 188 is lying fallow.

Evidence of the defendants:-

10. The defendant Jubeda Abdul Rasid Hafezi has filed an affidavit of examination in chief vide exhibit -152. In her deposition, the defendant has discussed all the facts as per her written statement. So, in order to avoid repetition, it is not required to discuss here in brief. She further deposed that Abdul Kadar Chhatu/Abuji and Yusuf Chhitu Abuji Malek have filed

application at Exh. 36 to be joined as defendants under Order 1 Rule 10 on 11/05/2015. In that application, the original plaintiff of this suit had given consent for joining them and stated on 27/07/2015 that he had no objection if the application was allowed. Thus, it is certain that the plaintiff himself considered it is necessary to join the third-party defendants mentioned in Exh. 36 as parties to the suit. However, those third-party defendants were not joined due to the defence raised by the defendants and as per the decision of the Hon'ble Court. Therefore, when the plaintiff himself had consented to their inclusion, at the present stage the plaintiff's suit clearly suffers from the defect of non-joinder of necessary parties. This is because the plaintiff was fully aware of all the above facts. Even after the application at exh. 36 for joining the third-party was not allowed, the plaintiff himself could have filed an application to join those third parties. So the plaintiff suit is barred by nonjoinder of parties. She further deposed that the plaintiff has filed suit to obtain half share of the property and in relief, the plaintiff prays that the possession of the suit property be given to the plaintiff. Hence, the plaintiff has falsely stated in his examination -in-chief to half of the share of the property. The Bakshismana (Gift Deed) is not fully executed. The gift deed is illegal and void. The plaintiff has not produced any evidence which shows that plaintiff is in the possession of the suit land and cultivating suit land. He further deposed that the defendant no. 1's mother's name Azizabibi was illiterate and she never signed with her father's name. The gift deed is illegal and void; the plaintiff is not entitled to get relief. The defendant has produced documents in support of her defense.

Then the defendant is cross-examined by the plaintiff. In her cross-examination she stated that her age is 48 years. She has studied up to Standard 10. She studied in Gujarati medium, therefore she can read Gujarati properly. Her mother was living with her. She was living with her mother. The house

situated in Sagrampura Wadu belongs to her father. She has been living in that house since her birth. She does household work. Her husband does labor work. She does not know about the application at exhibit 36. The chief examination presented by her was written as per her instruction. The parties were not joined under the application vide exhibit 39. Abdulkadar Chhatu is the son of her mother's uncle. She has read the plaintiff's suit. When asked about which property, the gift deed was executed by your mother, she stated that her mother did not execute any such deed. The plaintiff has filed the suit for taking half share in the suit property No. 188 and for cancellation of the document. She stated that possession of the property remains with her. In her cross examination, she asked the question that she has not produced any document showing that possession is with her. In answer to that question she stated that It is with them. Then she stated that the possession is with Iqbal Mirza, to whom her mother sold the property. It is true that there is no evidence produced to show that possession is with Iqbal Mirza. It is admitted that she has not produced evidence to show that possession of the suit land is with the defendant. She stated that her mother only wrote Aziza A. Rasul, It is admitted that in respect of property Block No. 188, the plaintiff has claimed a half share. She has shown the gift deed at Exhibit 111, in which the executant is written as Azizabibi A. Rashid, and when asked whether her mother had signed it, she stated that this is false. In her cross examination, she admitted that her father was Abdul Rasid. Her Uncle's name was Abdul Karim. She admitted that Abdul Amid Hafezi had signed as a witness in ex-111. She voluntarily stated that she does not know him. She admitted that the property bearing block no. 338 became in the name of Gulam Karim Rasul in village form no. 7/12. She admitted that property bearing no. 188 is not in her possession. She voluntarily stated that her mother sold said property 15 years ago and now it is in possession of the buyer. She

denied any other facts in her cross-examination.

Reasons

11. The phrase “burden of proof” has not been defined in the Indian Evidence Act. This phrase has two distinct meanings. In the first sense, it means the burden of establishing a case and in the second sense, the burden of introducing evidence. The essential distance between these two is that the former never shifts and remains throughout the entire case, while the latter shifts from time to time as the case proceeds. The initial burden of proof would be on the plaintiff in view of section 101 of Evidence Act. The elementary rule is Section 101 is inflexible. In terms of section 102 the initial onus is always on the plaintiff and if he discharges that onus and makes out a case which entitles him to a relief, the onus shifts to the defendant to prove those circumstances, if any, which would disentitle the plaintiff to the same.

The normal rule which governs civil proceedings is that a fact can be said to be established if it is proved by a preponderance of probabilities. This is for the reason that under the Evidence Act, section 3, a fact is said to be proved when the court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of a particular case, to act upon the supposition that it exists. The belief regarding the existence of a fact may thus be founded on a balance of probabilities. A prudent man faced with conflicting probabilities concerning a fact situation will act on the supposition that the fact exists, if on weighing the various probabilities he finds that the preponderance is in favour of the existence of the particular fact. As a prudent man, the court applies this test for finding whether a fact in issue can be said to be proved. The first step in this process is to fix the probabilities, the second

two weigh them, though the two may often intermingle. The impossible is weed out at the first stage, the improbable at the second. Within the wide range of probabilities the court has often a difficult choice to make but it is this choice which ultimately determines where the preponderance of probabilities lies. Keeping in consideration the above discussed principles let me discuss the issues framed in the present suit chronologically.

Issue Nos. 1 to 6

12. Since Issue Nos. 1 to 6 are interconnected with each other, the discussion for all these issues have been conducted together. In this case, the oral and documentary evidence produced by the plaintiff and the defendants have been taken into consideration. The written arguments submitted by both the parties have also been considered. The plaintiff of this case has filed this suit with the facts that the disputed land is agricultural land situated at Village Hathoda, bearing revenue survey No. 234, Block No. 188, admeasuring 0-71-35 (Hectare-Are-Sq.Mtr.), which was an old tenure land (Juni Shart) running in the revenue records in the name of the defendant No. 1. The plaintiff claims that the defendant no. 1 gave half of the suit land to the plaintiff by way of Bakshisnama (Gift Deed) in the year 1987. The plaintiff further claims that the plaintiff has been cultivating the suit land since before 1987. The plaintiff further claims that at the time of Bakshisnama , the witness name Abdul Hamid A. Kadar Hafesji on behalf of the defendant No. 1 and witness name Husen Malek Abuji on behalf of the plaintiff had signed as witnesses in person in Bakishsnama. The plaintiff asserts he has been cultivating the suit land for many years, and the suit land is under the possession and enjoyment of the plaintiff. To prove these facts, Plaintiff No. 1/5, Saiyed Ghulam Husen Abuji, has submitted his affidavit of examination-in-chief vide exhibit 69, and the plaintiff has produced documents

from Exhibit 80 to 111. In support of his suit, the plaintiff has presented oral evidence of his witnesses named Umravbibi Usman vide Exhibit 121, Julekha Yusuf Padaliya vide Exhibit 122, and Rasid Mohammad Pathan vide Exhibit 123. Upon considering the documents produced by the plaintiff, it appears that the name of the defendant no. 1 shows the occupant's column in the revenue record of suit land. Looking to the documents produced on behalf of the plaintiff in this case, the document produced vide Ex- 80 is a copy of Village Form No. 7 and 12 for the land situated at Hathoda, Revenue Survey No. 234, Block No. 188, in which the name of the defendant No. 1 appears in the column of the occupant. The document produced on behalf of the plaintiff at Exhibit 81 is a copy of Village Form No. 8-A for Khata No. 13 of Hathoda, in which the name of the defendant No. 1 appears in the column of the occupant. Thus, this fact establishes that the suit land was originally in the name of the defendant no. 1. Taking into account the document produced on behalf of the plaintiff at Exhibit 109, it is a certified copy of Registered Sale Deed No. 475/2011. Considering this, the fact establishes that the defendant No. 1 in this case has sold the suit land to the defendant Nos. 2 and 3. Considering the document produced at Exhibit 82 on behalf of the plaintiff, it is a copy of the Village Form No. 6 (Register of Mutation/Rights), in which Sale Entry No. 3650 was recorded on 07/02/2011, noting that the suit land was sold by the defendant No. 1 to the defendant Nos. 2 and 3. Considering the document produced at Exhibit 110 on behalf of the plaintiff, it is a copy of Village Form Nos. 7, 12, and 8-A of the suit, in which the name of Iqbal Ibrahim Mirza, i.e., the defendant No. 2, appears in the occupant's column. Thus, taking these documents into account, the suit land was originally in the name of the defendant No. 1, and upon the defendant No. 1 selling the land to the defendant Nos. 2 and 3 via a sale deed, the name of the defendant No. 2 currently stands in the revenue records of the

disputed land. So, the revenue records of suit land currently reflect that the name of defendant no. 2 following the sale by the defendant no. 1.

Furthermore, considering the document produced at Exhibit 83 on behalf of the plaintiff, it is a copy of the objection application filed by the plaintiff before the Mamlatdar, Mangrol, against Entry No. 3650 recorded in respect of the suit land. However, no evidence has been produced by the plaintiff regarding whether the plaintiff's objection was granted/approved by the Mamlatdar or whether the said entry has been cancelled. Thus, according to the revenue records, the suit land currently stands in the name of the defendant No. 2. In this case, the original Gift Deed (Bakshishnama) has been produced by the plaintiff at Exhibit 111. The said Gift Deed is dated 17/06/1987, in which the name of the defendant No. 1 is mentioned as the donor (the person executing the gift) and the plaintiff's name is mentioned as the person in whose favour the gift was made. On page two of the said Gift Deed, the following fact is stated: "I have also given a half-share in the aforementioned Block No. 188. Hereafter, I shall have no right, title, or interest in this land, and I give my consent to transfer this land into their name and agree to provide my signature wherever required." The deed states that the defendant no. 1 relinquished her share in block no. 188 and consented to transfer the name of the plaintiff. However, under Muslim Law, there are three essential elements to prove a Gift (Hiba). That is,

“ Under the Muslim Law, Hiba (Gift) refers to the immediate and unconditional transfer of property from one person to another without any exchange or consideration. For a Hiba to be legally valid, three specific "pillars" or essential elements must be fulfilled. The One element is, The donor (Wahib) must clearly and voluntarily express their intention to give the property to the donee (Mauhub-lahu). The declaration must be made without any coercion or undue influence. The words used must show a clear intention to

transfer ownership immediately, not at a future date. The donor must be of sound mind and have reached the age of majority. The second element is, The person receiving the gift (Donee) must accept it. A gift cannot be forced upon someone against their will. Acceptance can be expressed through words or implied by the donee's conduct (such as taking the keys to a house or using the gifted item). If the donee is a minor or of unsound mind, a legal guardian can accept the gift on their behalf. The third element is delivery of possession. This is the most critical element. The gift is not complete until the donor actually hands over the possession of the property to the donee. For movable property, this involves physically handing over the item. For immovable property (like a house or land), where physical delivery isn't possible, "constructive delivery" is sufficient. This includes: Handing over title deeds. Handing over keys. The donor vacating the property to allow the donee to enter."

But the plaintiff has not proved his possession over the suit land. Looking to the documents produced vide ex-111, there is no acceptance on the plaintiff's side. Further looking to the counter affidavit filed by the plaintiff vide ex-33, the plaintiff stated in para no 3 of said counter affidavit that after the death of defendant no 1's father, his wife Ayashabibi remarried and that time the defendant no. 1 was 15 years old and defendant no. 1 was minor. So if defendant no. 1 was minor at that time how she could execute gift deed. So plaintiff's evidence is weaken. The plaintiff has failed to prove the third element of gift deed which is actual delivery of possession of immovable property (suit land). The plaintiff has failed to prove whether this gift deed was completed. Furthermore, the plaintiff has failed to prove possession of the land based on this gift deed. Under the Muslim Law, Hiba (Gift) refers to the immediate and unconditional transfer of property from one person to another without any exchange or consideration. But the plaintiff in his counter affidavit at Ex-33 stated that, " The suit property had been gifted from the beginning. The defendant No. 1 had received certain consideration in lieu of the gift. This fact is known to the defendant No. 1, yet she has concealed the true facts and put

forward false statements". Hence, the plaintiff in his counter affidavit vide ex-33, clearly stated that the plaintiff had given some consideration in lieu of the gift. Such a fact establishes that the Bakishsnama (gift deed) is not valid in the eyes of Muslim Law. The plaintiff has been unable to prove the fact that he has been possession of the disputed land on the basis of the Gift Deed. According to the revenue records of the disputed land, the name of the defendant No. 3 is recorded. To prove the possession of the disputed land, the plaintiff has produced land revenue receipts and copies of land education cess from Exhibit 85 to 107. However, the plaintiff's name is not mentioned anywhere in any of these land revenue receipts. Furthermore, the name of the defendant No. 1 can be read on these land revenue receipts. Moreover, it is not evident from the said revenue receipts whether these are indeed the revenue receipts for the disputed land, i.e., Block No. 188, Survey No. 234. Additionally, it is not clear whether the Khata number (account number) mentioned in this land revenue receipts actually belongs to the disputed land. The name of the defendant No. 1 appears on all the land revenue receipts produced on behalf of the plaintiff. Apart from this, it is not evident that the education cess receipts produced by the plaintiff pertain to the disputed land, and those also bear the name of the defendant No. 1, the plaintiff's name does not appear anywhere on any of these receipts. The Khata (account) numbers mentioned therein are 9 and 385. Thus, the fact of the plaintiff's possession over the suit land is not established by either the land revenue or education cess receipts. Furthermore, a seed purchase receipt has been produced by the plaintiff at Exhibit 86, but that too is in the name of the defendant No. 1 and does not contain the plaintiff's name. It mentions Khata number 395. Thus, it is not evident that the said seed receipt pertains to the suit land. An irrigation receipt for Survey No. 234, Block No. 188 of Hathoda has been produced at Exhibit 107, but it is also in the name of the defendant No. 1,

and the plaintiff's name is not found therein. At Exhibit 108, the plaintiff has produced land revenue and education cess receipts, but the plaintiff's name is not mentioned in any of them. Moreover, a receipt for payment of land revenue is not, prima facie, evidence of possession. Furthermore, the plaintiff has not taken any action to get his name entered in the revenue records on the basis of the Gift Deed (Bakshishnama) executed in the year 1987. The plaintiff has not examined the witnesses of the Gift Deed. In written argument, the plaintiff states that witnesses of Bakishsnama died but the plaintiff has not produced a death certificate of said witnesses. Thus, the Gift Deed has not been completed, and it does not appear that the possession of the disputed land was handed over to the plaintiff on the basis of said Gift Deed.

Moreover, Plaintiff No. 1/5 has submitted an examination-in-chief affidavit at Exhibit 69, but in the cross-examination conducted by the defendant, he admits that they do not know what facts their father had stated in the suit petition. He admitted in the cross-examination that he did not see the witnesses or the defendant No. 1 signing the Gift Deed at Exhibit 111. During the cross-examination, he was unaware of whether he or his late father had produced any documentary evidence showing who currently holds possession of the property. Thus, considering the oral evidence of the plaintiff, it does not support the plaintiff's claim. Taking into account the evidence of the witnesses produced by the plaintiff, no documentary evidence has been produced to show that their lands are adjacent to the disputed land. These witnesses are the plaintiff's witnesses and are interested witnesses in the plaintiff's case; however, the testimony of these witnesses does not support the plaintiff's case. The plaintiff has not produced evidence of any independent witness. If the defendant no. 1 had executed the Gift Deed of suit land and suit land gifted to the plaintiff in the year 1987, the plaintiff took no steps to enter his name in the revenue records

based on it. Furthermore, the plaintiff has also not stated the facts regarding which crops were cultivated by him on the disputed land. Further looking to the evidence produced by the defendant, the document produce vide ex154 is death certificate of Ashabibi Amir Rasul. Looking to the evidence produced by defendant vide ex-156, it is a copy of Village Form no 8A of survey/block no. 338 of Hathoda village. The name of plaintiff shown in occupant column, but said document is not pertaining to suit land. Further looking to the documents produced vide ex-157, said document is village form no. 7/12 of block survey no. 338 of Hathoda village in which name of plaintiff shown in occupant column. However, said document is not document of suit land i.e. block no. 188 survey no. 234 of Hathoda village. Further document produced vide ex-160 is a letter of Talati-Cum-Mantri of Hathoda village in which the talati has certified that possession of revenue block no 188 remain with Azizabibi and Ayshabibi and they irrigate said land. Looking to the document produced vide ex-166 is a copy of notice of section 135(d) of land revenue court. Looking to the document produced vide ex-165 is a village form no. 7/12 of block survey no. 188 of Hathoda Village in which name of Azizabibi is shown in occupant column. Further the defendant Jubeda Abdul Rasid Hafezi has produced her examination-in-chief vide ex-152 in which she support her defense. The plaintiff has cross-examined the defendant but plaintiff has not been able to bring any material facts on record in support of his suit. In her cross-examination she admitted that the possession of suit land is not remain with her. However, she voluntarily stated that her mother sold suit land before 15 years ago and now the possession of the suit land remain with purchaser of the land. So looking to the evidence on record, it appears that the suit land is currently in the name of defendant no. 2. The plaintiff has failed to prove his possession over the suit property. The plaintiff has failed to prove that Baskhsisnama

completed. So, the Gift Deed has not been completed, and it does not appear that the possession of the disputed land was handed over to the plaintiff on the basis of said Gift Deed. Further the plaintiff has produced Hon'ble Apex Court Judgments 2000(0) GLHEL-HC 203408 Fatmabibi W/d Abdulkarim Haji Kadarbhai Versus Abdulrehman Abdulkarim(Gujarat High Court), 2000 (0) GLHEL-HC 209375 Pathan Talibkhan Abdul R Versus Pathan Husenkhan Abdul R. Gujarat High Court. I have gone thorough the ratio laid down by both Hon'ble High Court Judgment but both these judgments are not helpful to the plaintiff's case. The facts and circumstances mention in above judgments are different from this case. Hence, the plaintiff has failed to prove facts of issues no 1 to 6 . So my answer of issues no. 1 to 6 are in negative.

Issue no. 7

13. The entire suit is decided on merits. Both the parties have lead their evidence. This issue no. 7 is wrongly framed. The issue no. 7 is not related to prove any fact. So issue no. 7 is struck out under order 14 rule 5 of CPC.

Issue no. 8

14. As discussed above, the plaintiff has failed to prove the facts relating issues no. 1 to 6. Hence, the plaintiff is not entitled to get relief as prayed for. So my answer of issue no. 8 is in negative and I passed following final order relating to issue no. 9.

ORDER

The suit of the plaintiff is hereby Rejected.

No order as to costs.

Decree shall be drawn accordingly.

Pronounced in the open court, as on today 30 April 2026 .

Place: Mangrol

(Ketankumar Rameshchandra Trivedi)

Date: 30.04.2026

Additional Senior Civil Judge

Mangrol, Di. Surat

GJ01275