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Decided on: 27.03.2026

Duration : D28 M03 Y16

**In the Court Of Additional Senior Civil Judge Mangrol,**

Regular Civil suit No. 72 of 2009

Ex-204

**Plaintiff: Maganbhai Pohanabhai Chaudhary**

Age Adult, Occupation Agriculture

Resident of Village Zankhvav Tal. Mangrol

District Surat

Vs

**Defendants:1 Lilavati D/o Umedbhai Chaudhary W/O**

Balubhai Chhipabhai Chaudhary

(Deceased on 15/10/2008)

Residents of Ishanpur, Tal. Mangrol

District Surat.

(1/1) Jignaben Balubhai Chaudhary

Age 29 years, Occupation: Housework

Resident of same place

(1/2) Shadulkumar Balubhai Chaudhary

Age 25, Occupation Studies,

Resident of same place

(1/3) Balubhai Chiipabhai Chaudhary,  
Age 50, Occupation Agriculture,  
Resident of same place

**Defendant:2** Ramnabhai S/O Umedbhai Chaudhary  
Age Adult, Occupation: Housework  
Resident of Ishanpur Tal. Mangrol,  
District Surat.

**Defendant:3** Ravindra S/O Umedbhai Chaudhary  
(Deceased on 26/11/2008)  
Resident of Ishanpur, Tal. Mangrol  
District Surat

(3/1) Lilaben Widow of Ravindrabhai Chaudhary  
Age, 40 years, Occupation Housework  
Resident of the same place

(3/2) Hemanginiben Ravindrabhai Chaudhary  
Age, 30 years, Occupation Housework  
Resident of same place,

(3/3) Karishmaben Ravindrabhai Chaudhary,  
Age: 25 years, Occupation: housework,  
Resident of the same place

(3/4) Pravinaben Ravindrabhai Chaudhary  
Age, 20 years, Occupation: Housework  
Resident of the same place

**Defendant:4** Ramiben D/O Umedbhai Chaudhary

W/O of Motibhai Maganbhai Chaudhary,  
Age Adult, Occupation: Housework,  
Resident of Ishar, Tal. Mandvi Dist. Surat

**Subject: Suit for Declaration and Permanent Injunction**

Appearances

Ld. Advocate Mr. Amit P. Shah for the Plaintiff

Ld. Advocate Mr. R M. Shah for the defendant.

**JUDGMENT**

1. The plaintiff has filed a present suit for Declaration and Permanent Injunction against the defendants. The short facts of plaintiff's suit is that the suit land is agricultural land situated at Village Kantvav, Taluka Mangrol, District Surat, bearing Block No. 103, Survey No. 27/52, admeasuring 02-40-21 Hectares, Khata No. 124. The original owner of the land was Late Sevajibhai Ratanbhai Chaudhary. After his death, the land was mutated in the name of Puniben Sevajibhai Chaudhary by Entry No. 355. During her lifetime, Puniben Sevajibhai Chaudhary had executed a registered Will of suit land, dated 28-05-2000, with registration no. 829 in favor of the plaintiff. Puniben had died on 01-09-2001. After her death, revenue Entry No. 595 was made on the basis of the Will, which was duly certified by the Mamladar, Mangrol. The plaintiff has since been in lawful possession of the suit land and the plaintiff become owner and occupier of suit land on basis of said will. The plaintiff further stated that the defendant no. 1 to 4 are children of late Puniben Savjibhai. The defendant No. 1 has died on 15/10/2008. So, the defendant no. 1/1 to 1/3 being legal heirs of defendant no. 1 are joined as parties to the suit. The defendant no. 3 has

died on 26/11/2008. Hence, defendant no. 3/1 to 3/4 are legal heirs of defendant no. 3 . The plaintiff further stated that Late Sevajibhai Ratnabhai Chaudhary had two daughters. Their name was Puniben and Nakhudiben and a son name of Somabhai. The plaintiff is the son of Nakhudiben. Late Puniben Savajibhai Chaudhary was real maternal aunty ( Massi) of plaintiff. The plaintiff had taken proper care and treatment of Puniben in her last stage of life. So, the love and affection, Puniben had executed a Will in favor of the plaintiff. The plaintiff further stated that after the death of defendant Lilavatiben D/o Umadbhai Chaudhary, her legal heirs the defendant no. 1 to 4 having malicious intentions and influenced by the people, they have filed a false RTS Appeal No. 72/2005 before the Deputy Collector, Olpad, challenging the Entry No. 595. The plaintiff appeared in said appeal and put his defense. On 23-07-2009, the Deputy Collector has passed order and cancel Entry No. 595. The Dy. Collector has canceled said entry no. 595 stating wrongly grounds that the land belonging to triable caste, it violated Section 73-AA of the Land Revenue Code. Being aggrieved by this order, the plaintiff has filed RTS Revision Application No. 153/2009 before the Collector, Surat, which is still pending. The plaintiff further stated that the plaintiff is in possession of suit land since his name was entered in revenue record with entry no. 595. After cancellation of the entry, defendants with malicious intention are trying to attempt illegally enter in suit land and attempted to forcibly dispossess the plaintiff, threatened him, and tried to take over the suit land. The defendant was trying to dispossess plaintiff on 10-12-2009 and threatened to the plaintiff. Hence, the present suit is filed to protect his possession and pray in para 9 that court may be pleased to pass order to declare plaintiff become owner and occupier of suit land on basis of registered will and pass permanent injunction against the defendants.

2. After contesting the suit, the defendants hereby filed their written

statement vide Ex- 15 wherein they denied the facts of plaintiff's case in toto. In their written statement, the defendants have stated that the facts stated in paragraph 1 of the plaint are false and fabricated and are denied. The defendants stated that Puniben had no legal right to execute any Will. Under Section 60 of the Hindu Succession Act, 1925, a Hindu widow cannot make a Will of her husband's property. The suit land is ancestral property of her husband; hence the alleged Will is illegal and unenforceable. Entry No. 595 was illegally sanctioned and later cancelled by the Deputy Collector on 23-07-2009. The land is governed by Section 73AA of the Gujarat Land Revenue Code, and without prior permission of the Collector, no transfer or lease is permissible. Mere mutation entries do not legalize an illegal transfer. This Court has no jurisdiction to entertain the suit or grant interim relief due to the statutory bar under Section 73(C) of the Land Revenue Code, as the land belongs to tribal ownership. Under Section 213 of the Indian Succession Act, no right under a Will can be enforced without obtaining Probate. The plaintiff has not obtained any probate; therefore, no legal right is established. The defendants are in lawful, continuous possession for many years, cultivating and enjoying the land. The plaintiff has neither in possession of suit land nor he has any documentary title and the plaintiff is attempting to grab the land through false claims. The defendants stated that the balance of convenience is in favor of defendant, there is prima facie case, and if interim injunction granted to plaintiff, the defendants suffer irreparable loss. Further, the defendants stated that if injunction is granted, defendants will suffer irreparable loss, whereas the plaintiff will suffer none. They have stated that allegations regarding the incident dated 10-12-2009 are false and concocted. There is no any police complaint was filed against the defendants. The plaintiff's entire claim is fabricated only to obtain injunction. The suit is undervalued and insufficient court fees are paid. The value of the

land exceeds ₹5,00,000. Hence the defendants are praying to reject the plaint.

3. The plaintiff then filed his Counter Affidavit vide Ex- 16 wherein he denied the facts stated by the defendants in their written statement at Exhibit-15. In his counter affidavit vide ex-16, the plaintiff further stated that both the parties belonging to the Tribal Chaudhary community, and therefore, provision of Hindu Succession Act do not apply to them. Section 2 of Hindu Succession Act and section 2 to Indian Succession Act do not apply to tribal community unless notified by the Central Government. The plaintiff and defendant no. 1 to 4 belong to Adivasi Chaudhary caste and therefore, they are not Hindu and provision of Hindu Succession Act do not apply to them. The plaintiff stated that The Baroda Hindu Nibandh Law apply to Chaudhary Adivasi community. He stated that Late Puniben Sevajibhai Chudhary belonged to Adivasi community. So, she had not required to obtain probate of will. The defendants had not filed any suit to declare a Will illegal and Void. So, unless and until, a Will declared not invalid, it shall presume that a Will is valid and legal. The Will is registered Will and the plaintiff became owner and occupier of suit land on the basis of said registered Will. The plaintiff further stated that Late Puniben Sevajibhai Chaudhary and the plaintiff both are belonging to same Chaudhary community. In such a case if property is restricted under section 73AA and both parties belonging to same caste, the property cannot be said to be transferred on basis of Will. In such a case transferred is valid if both the parties belonging to same caste. In such case a Will is not a sale, mortgage or gift and nor an agreement but it is a testamentary succession and not transferred. The revenue authority has canceled the mutation entry no.595 mentioning the government circular but the government circular is not a law or ordinance. So the parties belonging to same tribal community, Puniben had right to execute a Will and suit land transferred on basis of said Will is legal and there is no

violation of provision under section 73AA of land revenue court.

4. For determination of this suit, my ld. predecessor has framed the following issued vide ex- 42

(1) Whether the plaintiff proves that on 28/05/2000, at the office of the Mangrol Sub-Registrar, a Will bearing serial no. 829 was executed by Late Puniben Sevjibhai Chaudhary and on the basis of which the plaintiff has become the owner, authorized holder, and occupier of the suit property?

(2) Whether the plaintiff proves that the suit property is in his actual possession?

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

(4) What order and Decree?

(2A) Whether the defendant prove that the plaintiff's suit is barred by provisions of law of land revenue code ?

5. Reply to the Issues

1. In Negative

2. In Negative

3. In Negative

4. As per final order

2A. In Affirmative

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

### **Oral Evidence**

Sr, No	Exhibit	Particulars
1	77	Affidavit of Examination-in-Chief of plaintiff Maganbhai Mohanabhai Chaudhary
2.	133	Affidavit of Examination-in-Chief of plaintiff's witness Motibhai Mansinghbhai Vasava
3.	142	Affidavit of Examination-in-Chief of plaintiff's witness Ramanbhai Raniyabhai Vasava
4	143	Affidavit of Examination-in-Chief of plaintiff's witness Marejibhai Surjibhai Chaudhary
5	147	Affidavit of Examination-in-Chief of plaintiff's witness Navinbhai Gomanbhai Chaudhary
6	148	Affidavit of Examination-in-Chief of plaintiff's witness Chhnabhai Nadiyabhai Chaudhary
7	149	Affidavit of Examination-in-Chief of plaintiff's witness Budiyabhai Chhotubhai Vasava
8	150	Affidavit of Examination-in-Chief of plaintiff's witness Sankarbhai Gorjibhai Chaudhary
9	151	Affidavit of Examination-in-Chief of plaintiff's witness Vinodbhai Vechanbhai Chaudhary
10	156	Deposition of plaintiff's witness Vishal Hasmukhbhai Savaliya

### **Documentary Evidence**

Sr. No.	Exhibit	Particulars
1	82	Copy of Scheduled Tribe Certificate of Shri Chaudhary

		Maganbhai Posanbhai
2	83	True copy of Village form no. 7/12 of Block No. 103 of Kantwav Tal. Mangrol Dist Surat
3	84	True copy of Village form no. 8/A of Block No. 103 of Kantwav Tal. Mangrol Dist Surat
4	85	Original copy of Will dated 29/05/2000
5	86	True copy of Village form no.7/12 of Block No. 103 of Kantwav Tal. Mangrol Dist Surat
6	87	True copy of Village form no. 8/A of Block No. 103 of Kantwav Tal. Mangrol Dist Surat
7	88	Copy of Mutation entry no. 179 of Village form no. 6
8	89	Copy of Mutation entry no. 269 of Village form no. 6
9	90	Copy of Mutation entry no. 327 of Village form no. 6
10	91	Copy of Mutation entry no. 355 of Village form no. 6
11	92	Copy of Mutation entry no. 544 of Village form no. 6
12	93	Copy of Mutation entry no. 595 of Village form no. 6
13	94	Copy of Mutation entry no. 705 of Village form no. 6
14	95	Copy of Mutation entry no. 706 of Village form no. 6
15	96	Copy of Mutation entry no. 727 of Village form no. 6
16	97	Copy of Mutation entry no. 793 of Village form no. 6
17	98	Copy of Mutation entry no. 814 of Village form no. 6
18	99	Copy of Mutation entry no. 894 of Village form no. 6
19	100	True copy of Village form no.7/12 of Block No. 102 of Kantwav Tal. Mangrol Dist Surat
20	101	True copy of Village form no. 8/A of Block No. 102 of Moje Kantwav Tal. Mangrol Dist Surat
21	102	Affidavit of Maganbhai Pohanbhai Chaudhary dated 28/06/2011
22	103	Original certificate issued by the Talati-cum-Mantri, Kantwav dated 22/11/2010
23	104	Original death certificate of Puniben Umedbhai

		Chaudhary
24	105	Original death certificate of Lilavatiben Balubhai Chadhary
25	106	Original death certificate of Ravindrabhai Umedbhai Chaudhary
26	107	pedigree document of Ravindrabhai Umedbhai Chaudhary dated 21/08/2009
27	108	Copy of the order passed in Disputed case No. 25/2009-10
28	109	statement of plaintiff before Talati-cum-Mantri Kantwav dated 24/09/2018
29	110	Local inspection report of suit land by Talati-cum-Mantri Kantwav dated 24/09/2018
30	111	certified copy of the plaint of Regular Civil Suit No.104/2005
31	112	Certified copy of exhibit 5 of R.C.S 104/2005
32	113	Pedigree of Late Savjibhai Ratnabhai Chaudhary
33	114	Copy of Village form no. 7/12 of Block No. 103 of Kantwav Village
34	115	Copy of Village form of no. 7/12 of Block No. 246 of Lavet Village
35	116	Copy of Village form no. 7/12 of Block no. 315 of Lavet Village
36	117	Copy of Village form no. 8/A of Khata no. 124 of Lavet Village
37	118	Copy of Village form no. 7/12 of Block no. 112 of Ishanpur Village
38	119	Copy of Village form no. 7/12 of Block no. 182 of Ishanpur Village
39	120	Copy of Village form no. 7/12 of Block no. 259 of Ishanpur Village
40	121	Copy of Village form no. 7/12 of Block no. 266 of

		Ishanpur Village
41	122	Copy of Village Form no. 7/12 of Block no. 287 of Ishanpur Village
42	123	Copy of Village form no. 8/A of Khata No. 109 of Ishanpur Village
43	124	Mutation Entry no. 1101 of village form no. 6
44	157	Certificate issued by Talati-cum-Mantri Kantwav
45	158	Notice through RPAD
46	161	Affidavit of Shri Merjibhai Surjibhai Chaudhary

Thereafter, the plaintiff has filed closing pursis Vide Ex-162. So, No further evidence is produced by the plaintiff.

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

### **Oral Evidence**

Sr, No	Exhibit	Particulars
1	166	Affidavit of Examination-in-Chief of defendant Ramiben Umedbhai Chaudhary

### **Documentary Evidence**

Sr. No.	Exhibit	Particulars
1	T-168	Certified copy of order of Revenue Secretary dated 08/03/2016
2	T-169	Certified copy of order of RTS/Revision/ application no. 159-09 dated 03/01/2011

3	T-170	copy of order of RTS/appeal no. 72/2005
4	T-171	Original copy of agreement deed regarding sale of land dated 06/10/2004
5	T-172	Original Receipt No. 26 dated 20/02/1985
6	T-173	Original Receipt No. 133 education cess dated 07/01/1985
7	T-174	Original copy of Receipt No. 160 Education cess dated 20/02/1985
8	T-175	Original Receipt No. 47 education cess dated 20/02/1985
9	T-176	Original Receipt No. 50 land revenue paid dated 11/05/1991
10	T-177	Original Receipt No. 51 land revenue paid dated 11/05/1991
11	T-178	Original receipt no. 50 education cess dated 11/01/1991
12	T-179	Original receipt no. 51 education cess dated 11/01/1991
13	T-180	Original receipt no. 90 education cess dated 11/05/1991
14	T-181	Original receipt no. 91 education cess dated 11/05/1991
15	T-182	Original Receipt No. 67 land revenue paid dated 01/04/1992
16	T-183	Original Receipt No. 68 land revenue paid dated 01/04/1992
17	T-184	Original receipt no. 65 education cess dated 01/04/1992
18	T-185	Original receipt no. 64 education cess dated 01/04/1992
19	T-186	Original receipt no. 28 education cess dated 01/04/1992
20	T-187	Original receipt no. 29 education cess dated 01/04/1992
21	T-188	Original Receipt No. 96 land revenue paid dated 01/04/1995
22	T-189	Original Receipt No. 93 land revenue paid dated 21/03/1994
23	T-190	Original Receipt No. 94 land revenue paid dated 21/03/1994

24	T-191	Original receipt no. 193 education cess dated 21/03/1994
25	T-192	Original receipt no. 140 education cess dated 21/03/1994
26	T-193	Original receipt no. 10 education cess dated 21/03/1994
27	T-194	Original receipt no. 11 education cess dated 21/03/1994
28	T-195	Original receipt of no. 106 education cess dated 07/01/1995

Thereafter, the defendants have given reasonable opportunity to produce further evidence but the defendants failed to produce further evidence, their right to produce further evidence is hereby closed.

8. Thereafter argument heard on both the side. The defendants has filed his written argument vide ex-200 which is a part of record not required to discussed in length. However, as and when required the same is discussed in paragraph herein below.

#### **Evidence of the Plaintiff:-**

9.1. The plaintiff Maganbhai Pohanabhai Chaudhary filed an affidavit of examination in chief vide exhibit 77. 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 has referred documents produced vide mark 48/1 to mark 48/32 and mark 74/1 to 74/11, mark 27/4, mark 62/1 and 61/2 and mark 3/11 and mark 72/1 in his examination-in-chief. Then the plaintiff is cross-examined. In his cross-examination, plaintiff states that the suit land was agricultural land on the date of execution of the Will i.e 29.5.2000. The plaintiff

states that the suit land was converted into non-agricultural land around the year 1997–98. It is stated that after Puniben gave him power, he has obtained the non-agricultural permission. It is admitted that an appeal was filed against mutation entry no. 595 which was made on basis of Will and an order was passed against him in that appeal. It is admitted by the plaintiff that after the order was passed against him in the appeal, he has filed a second appeal before the Collector, and the same was also rejected. It is admitted that he filed a revision before the SSRD, Ahmedabad against the order of the Collector, Surat and the same was also rejected. It is denied that his appeal was rejected because he had secretly purchased the suit property. It is admitted by the plaintiff that he has not filed any appeal or revision before the Hon'ble High Court against the order of the SSRD, Ahmedabad. It is not true that Puniben herself applied for conversion of the land into non-agricultural land. It is stated that the plaintiff has not filed any police complaint against the defendants when the defendants came in a group to take possession of the land on 10.12.2009. It is admitted that all the defendants belong to the Adivasi community. It is admitted that the original owner of the land, Sevjibhai Ratanbhai Chaudhary, had three children, out of which two were daughters and one was a son. It is admitted that Puniben's health used to remain poor. It is admitted that Puniben was illiterate and could not read or write. At the time of execution of the Will, Puniben was approximately 70 years old. At the time of execution of the Will, Puniben was residing at Village Ishanpore, Taluka Mangrol. Puniben herself expressed her wish to execute the Will. It is denied by the plaintiff that he himself drafted the Will. It is denied by the plaintiff that despite the suit land being restricted land under Section 73AA, he falsely created the Will. The plaintiff admitted that in the revenue records of the suit property, the suit property is shown as land governed under Section 73AA. He has denied that he has not produced any

evidence showing possession of the suit property with him for more than 12 years. He denied that at the time of execution of the Will on 29.05.2000, he prepared other documents as well. It is denied that though the land was non-agricultural at the time of execution of the Will, false facts were stated and the Will was executed. It is admitted that on 14.11.1996, the Taluka Panchayat, Mangrol, passed an order converting the suit land into non-agricultural land. It is denied that no incident occurred on 10.12.2009 and that a false cause of action was created to file the present false suit. It is denied that the present false suit has been filed despite the defendants being the owners and possessors of the suit land. It is admitted that the Entry No. 595, produced by him, has been canceled as per the order of the SSRD.

9.2. The Plaintiff's witness named Motibhai Mansinghbhai Vasava has filed his examination in chief vide ex-133. In his examination in chief he deposed that the suit property was in name of Puniben Sevajibhai Chaudhary and she executed a Will of suit property in her existence in favor of Maganbhai Pohanabhai Chaudhary on 29/05/2000 before the Sub Registrar Mangrol with entry no. 829/2000. He deposed that Puniben had impressed her left thumb in Will before Kesavbhai Navalbhai Chaudhary. He deposed that he and Sukalbhai Chandiyabhai Chaudhary had signed in Will as witnesses and the possession of the suit property remains with Maganbhai Pohanabhai Chaudhary since the execution of the will. Then, this witness is cross examined. In his cross examination, he admitted that he has been residing at Wadi village since his birth. He admitted that Wadi village is situated on the Jhankhvav–Netrang road. Isanpur village is located on the inner side from Vankal. He knows Puniben Shivajibhai Chaudhary. Puniben lives near him, therefore he knows her. It is admitted that Puniben is Chaudhary by caste and he is Vasava. He stated that Prior to the make of the Will, he had met Puniben. He had read the Will. In the

Will, it is written that the land was agricultural land. At the time making of the Will on 29-05-2000, he had seen the village land records (utara) of the land. It is denied that at the time of execution of the Will the land was not agricultural. Puniben Shivjibhai had other properties apart from the Will property. The witness voluntarily states that those properties belonged to Puniben's husband. He do not know the survey number of Puniben's other property. He is a farmer. He admitted that if they want to sell their land, permission of the Collector is required. He stated that Keshavbhai Navalbhai Chaudhary and Maganbhai Pohanabhai Chaudhary came to him to say that a Will was to be executed. They came to Mangrol to inform him. On 29-05-2000, he was the Sarpanch, therefore he had went to Mangrol for his official work. He stated that he do not remember the approximate age of Puniben at the time of execution of the Will. Puniben was not able to read or write. The thumb impression of Puniben appearing on the Will was taken at the office of the Sub-Registrar, Mangrol. he also signed at the Sub-Registrar's office. It is not true that the suit land was given to Maganbhai by sale. He has stated that on the basis of Puniben's power of attorney, Maganbhai Pohanabhai converted the disputed land into non-agricultural land, and he had seen documentary evidence in that regard. It is admitted that on 29-05-2000 Puniben was a widow. He has not seen any Government order stating that the suit land was allotted to Puniben by the Government. Puniben's husband Shivjibhai Ratnabhai was engaged in farming. It is admitted that the suit land was inherited by Puniben from her father. Keshavbhai signed on the day the Will was executed. It is admitted that Puniben Shivjibhai is not related to him in any way. It is admitted that he has no relationship with Puniben on the basis of caste. The distance between Isanpur and Wadi is about six to seven kilometers. It is denied that he has made a false signature on the disputed Will. It is denied that he is giving false testimony to

support his signature.

9.3. The Plaintiff's witness named Ramanbhai Raniyabhai Vasava has filed his examination in chief vide ex-142. In his examination in chief he deposed that he knows the plaintiff Maganbhai Pohanabhai Chaudhary and the defendants who are heirs of Puniben. He deposed that he was called by Talati-cum Mantri Ishanpur on 03/04/2022 for preparation of the Pedigree(Pedhinama) of Sevajibhai Ratanabhai. He stated that he knows all the heirs of Sevajibhai Ratnabhai and said Pedigree has been prepared in presence of him. He made impression of his thumb in Pedigree as a punch and his presence, other two puchas named Chaudhary Chaturbhai Shekharabhai and Chaudhary Chhotubhai Jhenabhai had signed in Pedigree and in his presence Maganbhai Poshnabhai has signed in Pedigree . He stated that the said original pedhinama, bearing the signature and seal of the Talati-cum-Mantri and the signature of the plaintiff Maganbhai Pohanabhai was prepared in his presence and is produced before this Hon'ble Court at Exh. 72/1 which is duly exhibited. Then said witnesses cross-examined. In his cross-examination he stated that he belongs to the Adivasi (Scheduled Tribe) community. He reside in village Isanpur. He know Puniben Shivjibhai. She used to reside in Isanpur. Puniben also belonged to the Adivasi community. He know Maganbhai Pohanabhai. He is not aware whether Maganbhai Pohanabhai is not a direct lineal heir of Puniben. When the Talati called him and asked him to put his thumb impression on the pedigree (Pedhinama), he put his thumb impression. The pedigree was not read over and explained to him.

9.4. The Plaintiff's witness named Marejibhai Surjibhai Chaudhary has filed his examination in chief vide ex-143. In his examination in chief he deposed that the suit land has been in the continuous and peaceful possession of the Plaintiff

Maganbhai Pohanabhai Chaudhary since last 15 years and he knows the plaintiff for the last 25 years. He stated that suit land is ancestral property originally belonging to Sevajibhai Ratanabhai Chaudhary. He stated that Maganbhai Pohanabhai Chaudhary is son of Nakhkudiben Sevajibhai Chaudhary who was daughter of Sevajibhai Ratnabhai. Puniben Sevajibhai Chaudhary was real sister of Nakhudiben and therefore plaintiff is legal heirs of Sevajibhai Ratnabhai. In support of this facts, he has filed an affidavit dated 13/03/2006 Notarized and registered (Reg. No. 354/2006) before the adv. & Notary. Then said witnesses cross-examined. In his cross examination he stated that he belongs to a tribal community. He reside in Amarkui village, near Jhankhvav. Isanpur village is about five kilometers away from his village. The witness voluntarily states that the disputed land is situated near their area. He do not know Puniben Shivjibhai. He know Maganbhai Pohanabhai. It is admitted that Maganbhai Pohanabhai is not a direct-line legal heir of Puniben. He has seen the disputed land. It is admitted that this land is meant for grazing purposes, and at present Maganbhai is not in possession of the land

9.5. The Plaintiff's witness named Navinbhai Gomanbhi Chaudhary has filed his examination in chief vide ex-147. In his examination in chief he deposed that the agricultural land situated at Village Kantvav, Taluka Mangrol, District Surat, bearing Block No. 103, Survey Nos. 27 and 52, admeasuring 2 Hectares 40 Are 21 Sq. Meters, with assessment value 2.75, has been in the continuous possession and enjoyment of Shri Manganbhai Pohanbhai Chaudhary, resident of Jankhvav, Taluka Mangrol, District Surat, for the last 25 years. He know Shri Manganbhai Pohanbhai Chaudhary personally for the last 25 years. He initially carried out agricultural activities on the said land and later got the land converted into Non-Agricultural (N.A.) land, which is presently used for quarry purposes. On the western side of the said land lies agricultural land bearing

Block No. 134, standing in the name of his mother Vaniben Veliyabhai. He deposed that the possession of suit land remain with Maganbhai. Then said witness is cross-examined. In his cross-examination he stated that he do farming. Kantvav village is about one and a half kilometers away from Isanpur village. It is admitted that he did not have his own agricultural land in Kantvav or Isanpur villages. Maganbhai Pohanbhai received land from Puniben Shivjibhai on the basis of a Will. The number of that land is 103. To the east of land No. 103 there is forest. To the west of land No. 103 is the land of Vaniben Veliyabhai Chaudhary; to the north there is a quarry mine, and to the south also there is a quarry mine. He did not know the area of Block No. 103. About 20 to 25 years ago, Block No. 103 was converted into Non-Agricultural (N.A.) land. Maganbhai Pohanbhai got the land converted into N.A. At present, this land is open land and there is no construction or cultivation on it. It is admitted that he has not produced any document showing that land No. 103 is in the possession of Maganbhai Mohanabhai, nor has he seen any such document. He don't know when Sevjibhai passed away. He has seen Sevjibhai, but he don't know how many years ago he died. It is admitted that the owner of this land was Puniben Sevjibhai. It is admitted that Puniben obtained this land from Sevjibhai Ratnabhai, which is ancestral property. It is denied that he has any documentary proof that he cultivate the land of Vaniben Veliyabhai. It is denied that he is falsely stating the fact that Maganbhai Pohanbhai is in possession of the suit land. When the land was given to Maganbhai Pohanbhai by Will, it was agricultural land. He has not seen the Will. He don't know where, when, or before whom the Will was executed.

9.6. The Plaintiff's witness named Chhanabhai Nadiyabhai Chaudhary has filed his examination in chief vide ex-148. In his examination in chief he deposed that agricultural land situated at village Kantvav, Taluka Mangrol, District Surat,

bearing Block No. 103, Survey Nos. 27 and 52, admeasuring 2 Hectare 40 Are 21 Sq. Meters, assessment Rs. 2.75, has been in the continuous possession and enjoyment of Shri Maganbhai Pohanabhai Chaudhary, resident of Zankhvav, Taluka Mangrol, District Surat, for the last 25 years. He knows Shri Maganbhai Pohanabhai Chaudhary personally for the last 25 years. He deposed that Maganbhai has received the said land from Puniben Sevjibhai and initially Maganbhai carried out agricultural activities. Thereafter, Maganbhai obtained Non-Agricultural (N.A.) permission and converted the land to non-agricultural use, and the land has been used for quarry purposes. The land of Block No. 37 of village Amarkui is owned by him. He deposed that the possession of suit land remains with Maganbhai. He deposed that he regularly see Maganbhai as and when he approached his farm for agriculture purpose. Then said witness is cross-examined. In his cross-examination he stated that he don't know the area of the land of Block No. 103. This land was received by Maganbhai Pohanabhai about 20 to 25 years ago. He stated that he don't know when the will was executed, in whose presence, or where it was executed. It is admitted that he has no any documentary evidence which shows that Maganbhai Pohanabhai has been in possession and enjoyment of the suit land for the last 25 years. He stated that he knows Puniben Sevjibhai. It is admitted that the suit land is ancestral property of Sevjibhai Ratnabhai. He stated that at the time the will was executed, the suit land was non-agricultural. He has not read the will. It is admitted that he don't know what was written in the will. It is admitted that he has not produced copies of Village Form Nos. 7 and 12 pertaining to his land. He don't know who got the land converted to non-agricultural use (N.A.). He stated that he is giving deposition at the instance of Maganbhai.

9.7. The Plaintiff's witness named Budhiyabhai Chhotubhai Vasava has filed his examination in chief vide ex-149. In his examination in chief he deposed that

agricultural land situated at village Kantvav, Taluka Mangrol, District Surat, bearing Block No. 103, Survey Nos. 27 and 52, admeasuring 2 Hectare 40 Are 21 Sq. Meters, assessment Rs. 2.75, has been in the continuous possession and enjoyment of Shri Maganbhai Pohanabhai Chaudhary, resident of Zankhvav, Taluka Mangrol, District Surat, for the last 25 years. He knows Shri Maganbhai Pohanabhai Chaudhary personally for the last 25 years. He deposed that Maganbhai has received the said land from Puniben Sevjibhai and initially Maganbhai carried out agricultural activities. Thereafter, Maganbhai has obtained Non-Agricultural (N.A.) permission and converted the land to non-agricultural use, and the land has been used for quarry purposes. He deposed that his land is situated at eastern side on the suit land and he has regularly seen Maganbhai on suit land as and when said witness go his land for farming purpose. He deposed that the suit land is in possession of Maganbhai. Then, said witness is cross examined. In his cross examination, he stated that he is an agriculturist. He has agricultural land situated in village Amarkui. There is agricultural land in his name. His village is 3 kilometers away from village Kanthvav. It is admitted that he don't have any land in village Kanthavav. he don't know to whom and when the suit land was converted into non-agricultural land. It is admitted that the plaintiff Maganbhai informed him to remain present in court to give his testimony. He stated that he don't know who is in possession of the suit land. It is denied that he is giving false testimony at the instance of the plaintiff.

9.8. The Plaintiff's witness named Sankarbai Gorjibhai Chaudhary has filed his examination in chief vide ex-150. In his examination in chief he deposed that that land bearing Block No. 103, Survey No. 27/52 of village Kantvav, Taluka Mangrol, converted to non-agricultural use for quarry purposes, has been in the exclusive possession and management of the plaintiff, Maganbhai

Pohanbhai Chaudhary. He has regularly paid non-agricultural charges. A panchnama dated 24-09-2018 was prepared after site inspection in his presence along with other panch witnesses and the Talati-cum-Mantri. He deposed that his signature appears on the said panchnama as Panch No. 2. He deposed that the possession of suit land remain with Maganbhai. Then said witness is cross examined. In his cross examination he stated that he is an agriculturist. He has agricultural land situated at village Kantvav. The plaintiff, Maganbhai, had called him to be present for preparing the panchnama. It is admitted that he was not served with any notice to remain present for preparing the panchnama. It is denied that he signed the panchnama without reading it. It is denied that the panchnama was written by Maganbhai and that he merely signed it. It is admitted that the plaintiff, Maganbhai, informed him to remain present in Court to give his deposition. It is denied that he is deposing in the Court as instructed by Maganbhai. It is denied that he did not read the panchnama. It is denied that he is giving false evidence at the instance of the plaintiff.

9.9. The Plaintiff's witness named Vinodbhai Vechanabhai Chaudhary has filed his examination in chief vide ex-151. In his examination in chief he deposed that land bearing Block No. 103, Survey No. 27/Paiki of village Kantvav has been converted to non-agricultural land for quarry purpose and is in the name and exclusive possession of Maganbhai Pohanbhai Chaudhary. He has been paying non-agricultural assessment and managing the land personally. A panchnama dated 24-09-2018 was prepared after site inspection in his presence and other witnesses. He deposed that his signature appears therein as Panch No. 3, along with signatures of other panch witnesses and the Talati-cum-Mantri. He deposed that only Maganbhai Pohanbhai Chaudhary is in possession of the said land till today and no other person has any possession or control over it. Said witness is cross examined. In his cross examination, he stated that he does

agricultural work. He has agricultural land situated in village Kantwava. He denied any other facts in cross examination.

9.10. The Plaintiff's witness named Vishal Masmukhbhai Savaliya has deposed on oath vide ex-156. In his examination in chief he deposed that he is serving as Talati-Cum-Mantri of Village Kanthvav Taluka Mangrol. He deposed that he has received one summons from the Hon'ble Court along with photocopies of the Tumaar (file) of Entry No. 595. He has been serving as Talati-cum-Mantri at Village Kantvav, Taluka Mangrol, for the last one year. As per the summons, he was directed to remain present before the Court along with the original Tumaar documents of Entry No. 595. While searching for the original Tumaar documents of Entry No. 595 in his office records, it was found that the old records are very dilapidated, and despite thorough search of all such records, the original Tumaar documents of Entry No. 595 could not be found. Therefore, he has brought a certificate stating the non-availability of the original Tumaar documents of Entry No. 595. The said certificate bears his signature and official seal, which he identify. The certificate regarding non-availability of the original Tumaar documents of Entry No. 595 is produced and exhibited as Exhibit-157. During the search for the original Tumaar documents of Entry No. 595, they found a letter dated 09-10-2009 issued by the Collector, Surat. In that letter, it is stated that with regard to Entry No. 595, an RTS/Revision application had been filed and that the original documents of Entry No. 595 along with copies of Village Form No. 7/12 from the year 1948-49 till the date of the letter, along with copies of all mutation entries made therein, were required to be produced. He has brought the original letter and its true copy. The true copy bears his signature and official seal. He hereby produce the true copy of the said letter vide ex-158.

**Evidence of the defendants:-**

10. The Defendant Ramiben Umedbhai Chaudhary has filed an affidavit of examination in chief vide exhibit -166. In her examination in chief, she has stated that her father was Sevajibhai Ratanbhai and her mother was Puniben. After her father's death, agricultural land situated at village Kantvav, Taluka Mangrol, Block No. 203, admeasuring 2-40-21 hectares, was mutated in her mother's name by inheritance entry No. 358. The land is ancestral in nature and is restricted tenure land under Section 73AA, as per Entry No. 327 dated 20-04-1981. She has further stated that Puniben had obtained permission to use the land for stone quarry purposes for ten years from 01-08-1996 to 31-07-2006. The effect of said fact was made in revenue record with entry no. 544 in village form no. 6. She has stated that the mutation entry No. 595 regarding a Will was wrongly certified by the Mamlatdar without Collector's permission. In revision, the Deputy Collector held that transfer of 73AA land without Collector's permission is illegal and said entry was cancel. She has stated that the plaintiff challenged the order before the Collector, Surat (Revision No. 159/2009). In said revision the Collector, Surat has passed order observing that it is decided to sale suit land to Maganbhai Mohanabhai amounted of Rs. 3,72,000/- and there is implied sale of suit property and rejected the revision. She further stated that the Revenue Secretary, Ahmedabad also confirmed that the land being restricted tenure, the transfer by Will were illegal, and Entry No. 595 was rightly canceled. The suit land is ancestral property. Puniben had no self-acquired ownership of suit land and therefore Puniben had no legal authority to execute a Will. The Will dated 29-05-2000 is illegal, false, and created only to bypass Section 73AA restrictions. Hence, the plaintiff is not entitled to any relief on the basis of such Will.

Then defendant is cross examined by the plaintiff. In her cross examination, the defendant stated that her mother's name is Puniben, who was the daughter of Sevji Bhai. Her mother had one sister and one brother. It is admitted that her mother's sister name was Nakhudiben and brother's name was Somabhai. It is admitted that she has two brothers and one sister. Her elder sister's name was Leelaben, who has passed away. Her brother Ramanbhai is alive, and her other brother Ravindrabhai has passed away. It is admitted that the children of Nakhudiben are Chhaganbhai, Maganbhai, Shantaben, Mangabhai, Motibhai, Kutaben, Ramjibhai, and Saraswatiben. It is admitted that the disputed property originally belonged to her maternal grandfather SevjiBhai Ratnabhai Chaudhary. It is admitted that after the death of SevjiBhai, only her mother's name was entered in the revenue records as heir, and the names of the other children of SevjiBhai were not entered. It is admitted that after her marriage she went to live at her matrimonial home in village Isar, Taluka Mandvi. It is admitted that agricultural land in village Kantvav in the name of her father Umedbhai. In response to the question whether the land of village Kantvav has been divided among all the brothers and sisters, she state that they are not taken her share. It is admitted that defendant Nos. 1 to 3 have not given depositions in the present suit, and she has been joined in the suit as defendant No. 4. She has been asked in cross examination regarding the inheritance entry made in the disputed property after her mother's death on 01-09-2001, she state that she possess an undertaking letter. She denied her signature in the xerox copy of notice under Section 135-D marked at 4/5 below Ex-27 and the xerox copy of the reply marked as 4/6. She admitted the court has granted interim injunction application in the present suit and they did not prefer any appeal or revision before the higher court to challenge or set aside the injunction order. She admitted that they have not filed any civil suit for

cancellation of the Will. She admitted that possession of the suit property is with Maganbhai Pohanabhai. She admitted that She has not filed any civil suit for recovery of possession. She admitted that the tax receipts produced at tentative Exhibit Nos. 172 to 195 pertain to the years 1985 to 1995. She admitted that she has not produced tax receipts after the year 2001. She admitted that the document produced vide tentative Exhibit No. 171 is not registered document and does not bear the signature or seal of a Notary. She admitted that Maganbhai had obtained permission to excavate minerals from the suit property. She admitted that Maganbhai Pohanabhai is the son of Nakhudiben. She admitted that she and and Maganbhai Pohanabhai belong to the Adivasi community. In her cross-examination the defendant denied any other facts.

11.

### **Reasons**

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.

### **Issues No. 1, 2 & 2A**

Issues no. 1,2 and 2A are connected each others. In order to avoid repetition and for the sake of brevity, reasons for reply to the issues number 1,2,2A are discussed here jointly.

12. Thus, the evidence produced by the parties has been taken into consideration. The arguments of the learned advocates for the parties have been considered. It has been argued on behalf of the plaintiff that the plaintiff and the

defendants are maternal cousins. The original owner of the suit property was Sevajibhai Ratnabhai Chaudhary, who had two daughters and one son. After the death of Sevajibhai Ratnabhai Chaudhary, the suit land was entered in the name of his daughter, Puniben Sevajibhai, by way of heirship. It is further argued that the plaintiff has produced a document showing the inheritance entry. Subsequently, the suit land was held in the name of Puniben in the revenue records. During her lifetime, she bequeathed the suit land to the plaintiff through a registered will. The plaintiff has produced the original will at Exhibit 85. On the basis of said will, the plaintiff's name was entered into the revenue records of the suit land by mutation entry number 595. It is further submitted that the plaintiff has produced a copy of the said entry at Exhibit 93. It is further submitted that the plaintiff is the son of Nakhudiben, the other daughter of Sevajibhai. Thus, the plaintiff is the lineal descendant (heir) of the deceased Puniben. The plaintiff has produced the pedigree table (genealogy) of Sevajibhai Ratnabhai Chaudhary vide ex-113. On the basis of the said registered will, the plaintiff has become the owner of the suit land. It is further submitted that the plaintiff has converted the suit property into Non-Agricultural (NA) land for stone quarrying purposes and the plaintiff has been in possession for many years. However, the defendants filed an appeal before the Revenue Authority against the mutation entry no. 595 which is canceled. It is further submitted that the Revenue Authority has canceled the said entry wrongfully. Both the plaintiff and the defendants belong to the tribal (Adivasi) community. The deceased Puniben also belonged to the tribal community. She was the maternal aunt of the plaintiff. The revenue authority canceled the said revenue entry no. 595 on the grounds that the suit land is restricted under Section 73(AA) of the Gujarat Land Revenue Code, and it was transferred based on the said will without the prior permission of the Collector, thereby attracting a bar under Section 73(AA).

The plaintiff further submitted that a Will constitutes inheritance, and when both parties belong to the same tribal community, prior permission from the Collector is not required to transfer land from one tribal person to another through inheritance. When both parties belong to the same community and a person from that community bequeaths property which is restricted under section 73(AA) to another person of the same community through a Will, it is not considered a "transfer" or "alienation" of property. Thus, a Will is a form of inheritance, where a blood relationship exists, section 73(AA) cannot be applied. The parties are not Hindus, they are governed by the Baroda Hindu Nibandh law. It is also submitted that the defendants had failed to prove that the Will was false. The inheritance entry is genuine. The plaintiff has examined the attesting witnesses of the Will in support of his suit. The plaintiff has also examined witnesses to demonstrate possession of the land. Although the defendants conducted a cross-examination of the plaintiff and the witnesses, the defendants have failed to bring any significant facts on to the record in support of their defense. The possession of the land remains with the plaintiff. It is further argued that the defendants had previously filed a suit against the plaintiff bearing Regular Civil Suit (R.C.S.) No. 104/2005, which was dismissed due to the non-appearance (default) of the defendants. The plaintiff further submitted that both the parties belong to the same tribal community and if any tribal person executes a Will to another tribal, it does not violate section 73 AA of land revenue code and in such a case, Will is not a transfer but inheritance. In the present case, there is no violation of section 73 AA of land revenue code and prior permission of collector is not required. It is further argued that the revenue authority has canceled the mutation entry no. 595 mentions a government circular but the circular is not law or ordinance and basis of such a circular, the revenue authority has wrongly canceled the mutation entry no. 595. It is further

argued that Probate of Will is not required in Gujarat. Therefore, it is requested that the plaintiff's suit be granted. The plaintiff has submitted a Judgment of Hon'ble Supreme court AIR 2019 SC 5556 Kanta Yadav v. Om Prakash Yadav Civil Appeal no. 5823 of 2019 , 2007 (1) GLR 277 Gujarat High Court Minaxiben Shashikantbhai Patel v District collector, Gandhinagar in favour of his argument. I have considered the ratio laid down by Hon'ble Apex Court in said judgements.

13. The defendants have submitted written arguments at exhibit 200. The defendants have stated in their arguments that the suit land is of a restricted tenure nature under section 73(AA) of the Land Revenue Code, and prior permission from the Collector is mandatory before transferring such land. The plaintiff obtained an inheritance entry based on a Will without the prior permission of the Collector. The said entry was challenged by the defendants before the Revenue Authority and the said entry was canceled. As this land falls under the restricted tenure category of section 73(AA), it cannot be transferred even through a Will. The defendants have produced various orders from the revenue authority. Among these orders, the Collector of Surat, on page 3, has clearly stated that it was decided to give the suit land to Maganbhai Ponabhai Chaudhary for a sale consideration of Rs. 3,42,000/-. Out of this, Rs. 1,86,000/- has been paid, with the remaining amount to be paid within two years of executing an undertaking, this implies that an implied sale of the said land has taken place. The land is restricted as per section 73(AA). Additionally, the original owner of the suit land, Sevajibhai, had two daughters and one son. After their demise, the land was entered in the name of his daughter, Puniben, through inheritance. Thus, the said land is the ancestral property of Sevajibhai Ratnabhai. Therefore, Puniben has no authority to execute a Will for the suit property. The possession of the suit land remains with the defendants even today. The plaintiff

has not obtained probate of the Will. Therefore, it is requested that the plaintiff's suit be dismissed. In support of their defense, the defendants have submitted the judgement of Hon'ble Court, State, Through Special Cell, New Delhi Vs. Navjot Sandhu @ Afshan Guru & Ors on 9 May, 2003 which is considered.

14. After considering the evidence on record, it appears that the suit land situated at village- Kantvav, Taluka Mangrol, District Surat, bearing block No. 103, Survey No. 27/52, Khata No. 124, originally belonged to Sevajibhai Ratnabhai Chaudhary. Considering the documents produced at exhibit 88, 89 and 90, it appears that the suit land was in the name of Sevajibhai Ratnabhai on the revenue record and same land was converted to old tenure (Juni Sharat) via a resolution, and this conversion was recorded by entry No. 219. As per the document at exhibit 90, entry No. 327 of Village Form No. 6 (Record of Rights) has been produced. It records that the land shown therein is held by persons belonging to the Scheduled Tribes. Consequently, based on the Gandhinagar Revenue Department Circular No. 1080/34334 dated 18/02/1981 (અદજ 1080/3433, તા. 18/2/1881 તથા કલેક્ટર સુરતના પરિપત્ર નંબર જમીન/41 થી આપવામાં આવેલ સૂચના ને અનુલક્ષીને બાજુમાં બતાવેલી જમીન તારીખ 1 /2/ 81 થી જમીન મહેસુલ સંહિતાની કલમ 73 અઅ હેઠળ નિયંત્રિત સત્તા પ્રકારની બને છે. આ સબવે આ જમીન કલમ 73 અઅ થી નિયંત્રિત સત્તા પ્રમાણની હોવાની નોંધ કરી ), it is noted that the land is of a restricted tenure nature under Section 73(AA) of the Land Revenue Code. Thus, the suit property land was originally in the name of Sevajibhai Ratnabhai Chaudhary and is of a restricted tenure nature under Section 73(AA) of the Land Revenue Code. Furthermore, based on the evidence produced on record, it is an undisputed fact that Sevajibhai Ratnabhai Chaudhary had two daughters and one son. Namely, Puniben Sevajibhai Chaudhary, Nakhudiben Sevajibhai Chaudhary, and Somabhai Sevajibhai Chaudhary are the

children of the deceased Sevajibhai Ratnabhai. The plaintiff is the son of Nakhudiben, whereas defendants Nos. 1 to 4 are the children of Puniben Sevajibhai. Moreover, all parties belong to the Scheduled Tribe (ST) community. The document produced at exhibit-91 is a copy of the village Form No. 6 (Record of Rights) pertaining to Survey No. 27/52. A perusal of the said record reveals that mutation entry No. 355, dtd.15/05/1985, was entered regarding the inheritance of the suit land. The entry states: *"Upon the demise of Sevajibhai Ratanabhai, Puniben Sevajibhai is the daughter and legal heir of the deceased. Since there are no other legal heirs, the name is mutated on the basis of the pedigree (Pedhinama) and statements of the Panchas."* Thus, by virtue of this inheritance entry, the suit land was mutated in the name of Puniben. However, although the deceased Sevajibhai Ratnabhai was also survived by other heirs, namely Nakhudiben and Somabhai, their names were not entered by right of inheritance. Upon considering mutation entry No. 355, it appears that only Puniben was shown as the sole heir of Sevajibhai Ratnabhai. Consequently, as Puniben acquired the said land through inheritance, it cannot be considered her self-acquired property. Furthermore, the Plaintiff has produced the original Will at Exhibit-85. To prove the same, the witness to the Will, Motibhai Mansingbhai Vasava, has been examined on oath at exhibit-133. The said Will was duly registered with the Sub-Registrar, Mangrol, at Serial No. 829 on dtd 29/05/2000. Thus, it appears that Puniben executed a Will in favour of the Plaintiff in respect of the suit property. Looking at the evidence produced at Ex-82, said document pertaining to the caste certificate which indicates that the plaintiff belongs to the Scheduled Tribe category. As per exhibit-83, which is a copy of Village Form No. 7 and 12 of the suit land, the Plaintiff's name is reflected in the occupants' column. Similarly, exhibit-84, a copy of Village Form No. 8-A, also shows the Plaintiff as the occupant. Looking at the documents at

exhibit-86 and exhibit-87, the name of Puniben Savajibhai Chaudhary is shown in the occupants' column of the suit land. Moreover, the document produced vide ex-93 is a copy of the Village Form No. 6 (Record of Rights) for Village Kantvav. A perusal of mutation entry No. 595 therein reveals that the name of the present plaintiff was mutated in the suit land on date 25/09/2001 by way of inheritance based on the Will. So, the name of the plaintiff was entered in the revenue record of suit land through registered Will. Thus, in the revenue records of the suit land, Puniben Sevajibhai was initially recorded as the legal heir of the deceased Sevajibhai Ratnabhai Chaudhary. Subsequently, while Puniben held the title in the revenue records, she executed a registered Will in favor of the plaintiff, on the basis of which the plaintiff's name was later mutated. However, the suit land is of a restricted tenure under section 73AA of the Land Revenue Code, and the parties belong to the Tribal (Scheduled Tribe) community. Consequently, a pivotal question arises as to whether prior permission from the competent authority was mandatory before the execution of such a Will. Furthermore, a significant question arises as to whether Puniben, having acquired the suit land through inheritance, was legally entitled to execute a Will in respect of the said property.

15. Upon a detailed discussion of the evidence produced, it is observed that the defendants challenged mutation entry No. 595 (pertaining to the inheritance by Will) by filing R.T.S. Appeal No. 72/2005 before the Deputy Collector, Olpad, Surat, on 09/05/2005. The Plaintiff has admitted this fact both in the pleading and the examination-in-chief on oath. Although the plaintiff failed to produce the order of the said R.T.S. Appeal, the defendants have produced a certified copy of the same at tentative exhibit-170. Since this is a certified copy and the plaintiff has explicitly admitted the passing of such an order in the pleadings and testimony, the said order is taken into

consideration. Additionally, the defendants have produced certified copies of the order passed by the Secretary, Revenue Department (Appeals), Ahmedabad, in a Revision Application at tentative exhibit-168, and the order in R.T.S./Revision/Application No. 159/09 at exhibit-169. While these documents (exhibits 168 to 170) have been marked tentatively, they are certified copies of orders passed by Revenue Authorities. Furthermore, the plaintiff in his cross-examination at exhibit-77 categorically admitted that an appeal was preferred against the mutation of the Will (entry No. 595) and that the said appeal was decided against the Plaintiff. During the cross-examination, the plaintiff has admitted the fact that, upon an adverse order being passed in the appeal, a second appeal was preferred before the Learned Collector, which was also rejected. The Plaintiff further conceded that a revision application filed before the SSRD, Ahmedabad, against the order of the Collector, Surat, met with the same fate. Notably, the plaintiff admitted that no further appeal or revision has been preferred before the Hon'ble High Court against the said order of the SSRD, Ahmedabad. Consequently, as the plaintiff has admitted the facts pertaining to the orders at tentative exhibits-168 to 170, these documents are taken into consideration as evidence. A perusal of exhibit-170 reveals that the defendants had preferred RTS/Appeal No. 72/05 before the Deputy Collector, Olpad Prant, challenging mutation entry No. 595. The said appeal was allowed, and mutation Entry No. 595, dated 25/09/2001 (recorded on the strength of the Will), was ordered to be cancelled. Thus, the very entry by which the plaintiff's name was mutated in the revenue records stands quashed. Upon reading of order of RTS/Appeal No. 72/2005, the contents of the written reply filed by the present plaintiff in the said RTS Appeal No. 72/05 are significant. It was contended therein that the suit land is ancestral property of their mother, Nakhudiben Sevajibhai

Chaudhary, and that the present defendants (who were then the applicants) had been paid their respective shares to relinquish their rights. The reply explicitly admitted that the suit land is ancestral and governed by section 73AA of the Land Revenue Code. Therefore, the findings in the Revenue Appeal, coupled with the plaintiff's own defense therein, lead to the conclusion that the suit land is ancestral property and remains subject to the restrictions of Section 73AA. Upon reading the order of RTS/Appeal No. 72/2005, it appears that the suit land is ancestral property and restricted under section 73 AA of Land Revenue Code. Upon reading this order it is stated that the owner of suit land belonging to Hindu Chaudhary community, the land is restricted under section 73 AA and without prior permission of the Collector said land cannot be transferred. It is further mentioned in order that " The Government Circular No. ADJ/1079/2645/Z dated 19/10/1979 explicitly mandates that such land cannot be transferred without the prior permission of the Collector. On this basis, the mutation entry recorded without such authorization was quashed". Against the said order, the present plaintiff filed RTS/Revision Application No. 159/09 before the Collector, Surat, the certified copy of which is produced at exhibit-169. A perusal of this order reveals an observation that the disputed land was purportedly agreed to be transferred to Maganbhai Pohanabhai Chaudhary for a sale consideration of Rs. 3,72,000/-, out of which Rs. 1,86,000/- was paid, with the balance due within two years of the undertaking. It was further stipulated that in the event of Puniben's demise, the name should be mutated based on the Will dated 29/05/2000. This implies an implied sale of the disputed land. Consequently, the said Revision Application was also dismissed. In view of the observations made in both the aforementioned orders, the suit land is of restricted tenure under Section 73AA of the Land Revenue Code. Neither Puniben nor the

present plaintiff obtained prior permission from the Collector before executing the Will. Furthermore, there is a reasonable suspicion regarding the existence of a sale agreement concerning the suit land. The Plaintiff has also produced copies of the plaint and the interim application from Civil Suit No. 104/2005 at exhibits 111 and 112, respectively. These documents indicate that the present defendants had previously filed a suit against the plaintiff regarding the same land, citing an unregistered agreement dated 06/10/2004. The defendants have produced the said agreement at tentative exhibit-161 in the present proceedings. During cross-examination, the Plaintiff denied the contention that the appeals were dismissed because the suit property was acquired through a clandestine sale. However, a clear inference arises that some transaction took place between the parties regarding the suit land prior to the execution of the Will. While the Plaintiff produced a copy of the plaint in Civil Suit No. 104/2005, he significantly failed to produce the Written Statement filed therein.

16. Furthermore, although the suit land was mutated in Puniben's name vide mutation entry No. 355, the names of other legal heirs were omitted, and there is no evidence on record to prove that the property fell exclusively to her share. The observations made by the revenue authorities further reinforce the conclusion that the suit property is ancestral. Consequently, serious doubts arise regarding Puniben's legal capacity to execute a Will for the entire property. A further discrepancy is noted at exhibit-92 and mutation entry No. 544, dated 11/01/1997, which indicates that the suit land was converted to Non-Agricultural (NA) use for stone quarrying purposes upon Puniben's request. Despite this conversion in 1997, the Will dated 29/05/2000 describes the property as agricultural land. This material misdescription raises a significant question as to whether the Will truly reflects the testamentary

intention and free will of Puniben, or if it was executed under a clouded understanding of the property's status. The oral evidence provided by the witness at exhibit-133 is pivotal. During cross-examination, the witness admitted that he could not recall Puniben's age at the time the Will was executed and explicitly stated that Puniben was illiterate, being unable to read or write. Furthermore, while the suit land was inherited by Puniben as per mutation entry No. 355, the record does not conclusively establish that the property was exclusively her share, as the names of other legal heirs were notably absent. A significant contradiction exists in the description of the property, although the land was converted to Non-Agricultural (NA) use in 1997, it was incorrectly described as agricultural land in the Will dated 29/05/2000. This discrepancy, combined with the fact that the land is of a restricted tenure under Section 73AA of the Land Revenue Code, creates a strong suspicion regarding Puniben's testamentary capacity and whether the Will was truly executed according to her independent wishes. Moreover, the testimony of witness Ramanbhai Raniyabhai at Exhibit-142 further weakens the Plaintiff's case. As a member of the Panch for the pedigree (*Pedhinama*) of the deceased Sevajibhai Ratnabhai, he admitted that he merely affixed his thumb impression at the instance of the Talati without the document being read over or explained to him. This admission strikes at the very authenticity of the documents used to establish the initial line of inheritance. Thus, it is evident that this witness did not personally know all the legal heirs of Sevajibhai Ratnabhai. The witness examined at exhibit-143, Mareajibhai Surajibhai, stated that he has known Maganbhai for 25 years; however, during cross-examination, he admitted that he did not know Puniben and confirmed that Maganbhai is not a lineal descendant of Puniben. He further conceded that Maganbhai does not currently hold possession of the suit land. Regarding

the other witnesses examined by the Plaintiff at exhibits 147, 148, 149, 150, and 151, their testimonies do not bring forth any significant facts, merely asserting that the Plaintiff is in possession of the suit land. Furthermore, witness Vishal Hasmukhbhai was examined at exhibit-156, who produced a certificate at exhibit-157 stating that despite a diligent search, the original file (*Tumar*) pertaining to mutation Entry No. 595 could not be traced. In light of the evidence produced, it is established that the suit land was mutated in the name of Puniben by right of inheritance. The said land is of restricted tenure under Section 73AA of the Gujarat Land Revenue Code. Since the parties belong to the Tribal (Scheduled Tribe) community, it was mandatory to obtain prior permission from the Collector before transferring the property by way of a Will. Furthermore, despite the suit land having been converted to Non-Agricultural (NA) use prior to the execution of the Will, it was erroneously described as agricultural land therein. This material inconsistency, combined with the lack of statutory permission, goes to the root of the matter. So, discussed above, Late Puniben acquired suit property through inheritance and as a sole heir of deceased Savjibhai but plaintiff failed to prove that Puniben holds the property as an absolute owner. Looking to the observation made by Revenue Authority in their order, it appears that suit property was ancestral property and a clear inference arises that some transaction took place between the parties regarding the suit land prior to the execution of the Will. Puniben name was entered in revenue record of suit property by inheritance entry but revenue entry are for fiscal purpose and do not establish absolute title. If Puniben was not the sole heir she could not legally bequeath the entire property. She can only will away her specific shares. Further, the property already converted into non-agricultural land prior execution of the Will, however the property describe as agriculture land in the Will which fact

become weaken the case of the plaintiff and clear inference arises that whether Will executed by Puniben of her free will. Further both the parties belonging to Schedule Tribes and as per section 73AA of Gujarat Land Revenue Code, land owned/held by Schedule Tribes (Adivasi) cannot be transferred to any person even if they are of the same caste without the prior permission of the Collector. Generally Will is not a transfer but looking to the provision of Gujarat Land Revenue Code transfer includes Will also. Transfer under the GLRSC includes testamentary deposition(Will). Therefore, even if the parties are from the same case, the restriction on transfer without permission usually still applies to ensure the protection of the land. Section 73AA mandates strict restriction on transfer of land to one tribal individual to any other person including other tribal individual without prior permission of the Collector. While Civil Court decides the title, it cannot ignore the statutory bar of section 73AA if the property is categorized as restricted. Further the plaintiff has not produced any documentary evidence to show that he is remain with the possession of the suit land since 25 years. The defendant has admitted in her cross-examination that possession of the suit property is with plaintiff but it is the case of the plaintiff that plaintiff has to prove that he is in possession of the suit property. The suit property already converted into non-agriculture land and use for stone quarrying purposes but the plaintiff has failed to produce any documents such as receipt of taxes of land, royalty pass etc. As discussed above suit land is restricted tenure land under section 73AA of Land Revenue Code and plaintiff has not obtained prior permission of the Collector. Hence Will executed in favor of the plaintiff by Puniben is not

genuine and legal. Puniben was not absolute owner of suit land and hence Puniben is not entitled to execute Will of suit land. So the plaintiff is not proved that Will is legal and genuine and on basis of said illegal Will the possession of the plaintiff become illegal and cannot be protected. The Apex Court Judgment submitted by the plaintiff is not helpful to the plaintiff case because the fact and circumstances of this case is different from the Judgment. Hence plaintiff has failed to prove issues no. 1 to 2 as my answers of issues no. 1 to 2 are negative and suit land is restricted tenure land under section 73AA of Land Revenue Code and plaintiff has not obtained prior permission of the Collector before execution of the Will. So plaintiff's suit is barred by provision of law of Land Revenue Code. So my answer of issue no. 2A is in affirmative.

### **Issues No. 3**

17. As discussed above, the plaintiff has failed to prove issue no. 1 and 2 and there are significance inconsistency in evidence of the plaintiff such as the plaintiff has not obtained prior permission of the Collector before making Will and though the property was already converted into non-agriculture land, it describes as agriculture in Will and many other inconsistency in the evidence of the plaintiff as discussed above, the plaintiff is not entitled to get relief as prayed for. So my answer of issue no 3 in negative and for issue no 4 , I pass following final order.

ORDER

The suit of the plaintiff is hereby rejected.

The statue quo earlier granted below exhibit -5 is hereby vacated

No order as to costs.

Decree shall be drawn accordingly.

Pronounced in the open court, as on today 27 March 2026 .

Place: Mangrol

( Ketankumar Rameshchandra Trivedi )

Date: 27.03.2026

Additional Senior Civil Judge

Mangrol, Di. Surat

GJ01275