



Filed On	22	01	2015
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Decided On	13	03	2026
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	22	01	11

IN THE COURT OF ADDITIONAL SENIOR CIVIL JUDGE KATHOR
SPECIAL CIVIL SUIT No.176 OF 2017 Exh.

Plaintiff No.1	Shardaben D/o Sumanbhai Thakorbbhai Gajjar and W/o Chhaganbhai Kalidas Gajjar. (Deceased) Age about: 63, Occupation: Housewife, Residence: 2088/8, Vallabhnagar Society, Village: Kathor, Tal.-Kamrej, Dist.- Surat
Plaintiff No.1(1)	Legal heirs of Shardaben Sapnaben D/o Chhaganbhai Kalidas Gajjar and W/o Brijesh Jaychandbhai Mewada, Age:40, Occ.:House work, Res.:21, Ashish Society, Nr. Adarsh School Patan North Gujarat 384150
Plaintiff No.1(2)	Havishaben D/o Chhaganbhai Kalidas Gajjar and W/o Manojkumar Bipinchandra Gajjar, Age:36, Occ.:House Work, Res.:M/401, Anjani Residency, Opp. ISKCON Temple, Jahangirpura, Surat
Plaintiff No.2	Mihirkumar Chhaganlal Gajjar, Age:-about:35,Occupation:-Business, Residence:2088/8, Vallabhnagar Society, Village: Kathor, Tal.-Kamrej, Dist.-Surat

Versus

Defendant No.1 1. (1)	Legal heirs of Ishwarbhai Bhikhubhai Gajjar, Pramodbhai Ishwarbhai Gajjar Aged about:51, Occupation: Business, Res.-Vaniya Wad, Village-Kathor, Taluka-Kamrej, Dist.-Surat
Def. No.1(2)	Pushpaben D/o Ishwarbhai Bhikhubhai Gajjar and W/o Sureshchandra Motiram Mistri Aged about: 57, Occupation- House work Residence: 167, Lord Street, Walshall, west midlands, WS1 4DU, U.K.
Def. No.1(3)	Sudhaben D/o Ishwarbhai Bhikhubhai Gajjar and W/o Sannamukhbhai Gandabhai Gajjar, Age-53, Occupation-House work, Res.-378/379, Shriji Row-House, Jokha Road, Vav, Tal. Kamrej, Dist. Surat.
Def. No.2 Def. No.2(1)	Legal heirs of Sumanbhai Thakorbbhai Gajjar, Dhanlaxmiben widow of Sumanbhai Thakorbbhai Gajjar Age-86, Occupation-House work, Res.-Vaniya Wad, Village-Kathor, Taluka-Kamrej, Dist.-Surat
Def. No.2(2)	Devilaben widow of Bharatbhai Sumanbhai Gajjar, Age:-52, Occupation:-Housework, Res.-Vaniya Wad, Village-Kathor, Taluka-Kamrej, Dist.-Surat
Def. No.2(3)	Neerajbhai Bharatbhai Gajjar, Age:-29, Occupation:-, Res.-Vaniya Wad, Village-Kathor, Taluka-Kamrej, Dist.-Surat

Def. No.2(4)	Tejalben D/o Bharatbhai Sumanbhai Gajjar and W/o Ashishbhai Janaklal Gajjar, Age:31, Occupation: House work, Res.: 5, Laxmikripa Society, Near Water Tank Adajan Road, Surat.
Def. No.2(5)	Nimishaben D/o Bharatbhai Sumanbhai Gajjar and W/o Mitesh Manharlal Gajjar, Age:27, Occupation:House Work, Res.: Agriculture Science Centre, Staff Quarters, Ambheti, Tal. Kaprada, Dist. Valsad-396191
Def. No.2(6)	Kusumben D/o Sumanbhai Thakorbbhai Gajjar and W/o Mahendralal Chhotlal Gajjar, Age:64, Occupation:Housework, Res.: Soniwad Adki Faliyu, Vill. Kathor, Tal. Kamrej, Dist. Surat.
Def. No.3	Kirankumar Ramanlal Patel, Age:58, Occupation:Agriculture, Res.:Vill. Choryasi, Tal. Kamrej, Dist. Surat
Def. No.4	Hardikkumar Kirankumar Patel, Age:29, Occupation: Agriculture, Res.:Vill. Choryasi, Tal. Kamrej, Dist. Surat
Def. No.5	Shantilal Mavjibhai Hirpara Age:adult, Occ. Agriculture, Res.:A-1, Urmi Soc., V-2, Nr. Baroda Pristage, Surat City, Surat-395006

Def. No.6	Kanani Praveenbhai Shivabhai Age:Adult, Res. A/50, Radha Krishan Society, Khodiyar Nagar Road, Surat.
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Appearances:-

Ld. Advocate Mr. **M.H. Patel** for the plaintiffs.

Ld. Advocate Mr. **S.H. Shah** for the defendant no.1(1) to 1(3).

Ld. Advocate Mr. **P.P. Devmurari** for the defendant no.2(1) to 2(6).

Ld. Advocate Mr. **N.M. Shah** for the defendant no.3 & 4.

Ld. Advocate Mr. **V.V. Atodariya** for the defendant no.5.

Ld. Advocate Mrs. **M.B. Chauhan** for the defendant no.6.

**SUB: Suit for Declaration, Partition, Cancellation of Registered Sale
Deed and Permanent Injunction**

::: JUDGMENT :::

1. The brief facts of present plaint in nutshell may be stated as under:-

Plaintiff No.2 is the son of plaintiff no.1 and due to his personal knowledge regarding the transactions of the present suit, so he has joined as plaintiff no.2.

Defendant nos.1(1) to 1(3) are the cousin of the plaintiff no.1. Defendant no.2(1) Dhanlaxmiben is the mother of the plaintiff no.1 and grand mother(Nani) of plaintiff no.2. Defendant no.2(2) Devilaben is sister-in-law (Bhabhi) and Defendant nos.2(3) to 2(5) are the nephew and Defendant No.2(6) is sister of the plaintiff no.1. Deceased defendant no.1 late Ishwarbhai is uncle of the plaintiff no.1.

Property is situated at Taluka Kamrej, Moj. Choryasi village. Agriculture land bearing survey no.100, 102, 94 and Block no.85/A.

Survey no.94, which survey no. was converted into survey no.99 at the time of consolidation. Block no.85/A and Block no.92/B, Agriculture lands are in the name of grandfather of plaintiff no.1 Thakorlal Nathubhai. (Said property later known as suit property).

Late Thakorlal Nathubhai had received suit property as Ganotia from Girdharlal Chhagganlal Parekh. Thakorbhai Nathubhai had lived along his elder brother Bhikhubhai Nathubhai, so for that reason and as per circular of the Government, the name of Bhikhubhai was entered in the suit property. Late Thakorbhai Nathubhai and his elder brother Bhikhubhai Nathubhai were resided as joint family.

Bhikhubhai was passed away intestate on 28-03-1962 at Kathor and the name of Ishwarbhai Bhikhubhai was entered in the suit property as successor and its entry had been made vide entry no.197 dtd. 13-03-1963 and thereafter, the name of the Ishwarbhai is continue in revenue records. Suit property was in the name of Thakorbhai Nathubhai, therefore plaintiff has 1/4 share in the suit. Ishwarbhai Bhikhubhai was passed away intestate on 13-04-2014 at Kathor and plaintiff and defendant no.2(1) to 2(6) are legal heirs of Sumanbhai Thakorbhai and Defendant no.1(1) to 1(3) are the legal heirs of Bhikhubhai, so plaintiff no.1 has 1/4 legal share in the suit property and therefore for partition and possession in suit property, present suit has been filed. Late Ishwarbhai Gajjar had illegally sold out suit property i.e. agriculture land Block No.85/A and 92/B (old tenure) to the defendant no.3 & 4 on dtd. 08-07-2004 at the consideration amount of Rs.2,39,999/- through registered sale deed and copy of registered sale deed has been received by plaintiff on 16-01-2014, when plaintiff had applied for.

After receiving amount of consideration from the alleged sale, Ishwarbhai had purchased agriculture land, Block no.221 Survey No.282, area 6 hector 2-78-29 sq.mtr. Rs. Aakar 33.84 paisa, which is situated at Dist. Surat, Tal. Kamrej, Village Moj. Kathor on dtd. 23-07-2004 in the consideration amount of Rs.4,95,000/- from the defendant no.3. Ishwarbhai Bhikhubhai and Sumanbhai Thakorbai were resided as joint family and from the income of joint family, remaining amount of purchased property had paid out by Ishwarbhai from the family income. Though the said property was purchased in the name of Ishwarbhai but on the behalf of Sumanbhai Thakorbai, plaintiff has 1/4 share in said property also. Alleged sale deed was executed in the name of Ishwarbhai and it came to the knowledge of plaintiff on dtd. 12-07-2013, when certified copies has been received by the plaintiff.

Present suit has been filed with the limitation within 12 years. Plaintiff has asked her share and possession in suit property from Ishwarbhai but he avoided plaintiff by false promises. After death of Ishwarbhai on 13-04-14, his son Pramodbhai denied to give share in the suit property. There is no consideration amount has been given to the plaintiff, even there was no consent has been taken from plaintiff at the time of executing sale deed in favour of defendant no.3 & 4. Thereafter in the collusion with the defendant, suit property no. paikki Block no.92/B, New Block no.82 was sold out by defendant Nos.3 & 4 through registered sale deed on dtd. 11-02-2020 at consideration amount of Rs.34,15,100/- to defendant no.5 and thereafter defendant no.5 has sold out same suit property through registered sale deed on dtd.07-11-2020 after received consideration amount of Rs.37,57,000/- and said transactions have been done without consent of the plaintiff, which is illegal and void

abinitio and said transaction is obstructed by the doctrine of lis pendency rule. Therefore the plaintiffs have to file present suit and asked relief as mentioned in the prayer of the plaint.

2. On the other side, after due service of notice, defendants present before the Court through Ld. Advocate and filed their written statement. Vide exh.34-defendant nos. 1(1) to 1(3), vide exh.28-defendant nos.3 & 4, vide exh.151-defendant no.5 have filed their written statement respectively. Even vide exh.190 defendant no.6 has adopted the written statement of def. nos.3 & 4. Right to file written statement of Defendant nos.2(1) to 2(6) is closed by the Court vide exh.32 on 23-07-15.

In written Statement defendants denied the plaint in toto. Defendants No.3 and 4 categorically denied the plaintiff's claims for cancellation of the sale deeds, partition, and possession, asserting that the plaintiff has presented misleading facts contrary to official records. And contended that the agricultural lands in Block Nos.85/A and 92/B of Choryasi village are not ancestral or H.U.F. properties; rather, they were originally held under (tenancy) rights by Bhikhubhai Nathubhai and subsequently his son, Ishwarbhai, as confirmed by revenue records and cultivation entries dating back to April 1, 1956. As a bona fide purchaser, Defendant No.3 & 4 acquired said lands after conducting thorough due diligence of 20 years of certified revenue records and title deeds, which showed no prior objections. Consequently, the sale is legal and valid, as the property was acquired through individual tenancy rights and not through a Hindu Undivided Family structure as falsely alleged. Defendants No.3 and 4 further submitted that the lands were exclusively acquired by Ishwarbhai Bhikhubhai through the statutory

process of the Ganot dhara, rather than through ancestral inheritance. Following a judgment case No. 4/83 declared by the Mamlatdar and Krishi Panchshree Kamrej in the year 1984 and Ishwarbhai was declared and become the entitled purchaser, and upon paying the fixed fee of Rs.9,012/-, was issued a formal Purchase Certificate under Section 32(m) as recorded in Entry No.674 on 20-05-1991. Throughout his tenure, Ishwarbhai exercised full ownership rights, including securing a land-improvement loan from Union Bank of India in 1992 and successfully applying to the Deputy Collector Shri, Olpad, to convert Block Nos.85/A and 92/B from "new tenure" to "old tenure" for agricultural purposes via an official order dated 23-03-2001 (Entry No.940). These certified revenue records and legal proceedings confirm that Ishwarbhai held independent, absolute title to the properties, rendering the plaintiffs claims of property status and the subsequent challenge to the sale deeds legally unsustainable. Defendant Nos.3 and 4 submitted that they are bona fide purchasers of Agriculture land bearing Block Nos.85/A and 92/B, having acquired them via a registered sale deed dated 08-07-2004 (Reg. No.1541) for full consideration after verifying 20 years of clear revenue records. This transaction was witnessed by the plaintiffs own close relatives, and our title was further solidified by Entry No.1047 and a subsequent family partition (Entry No.1123), following have maintained continuous possession and cultivation. Furthermore, Agriculture land bearing Block No.221 in Kathor village was legally sold to Ishwarbhai by a registered deed dated 23-07-2004, witnessed by the plaintiff's maternal uncle, Bharatbhai Sumanbhai. Defendants produced exhaustive documentary evidence, including the Section 32(m) Purchase Certificate, Mamlatdar &

Krishi Panch judgment (Case No.4/83), bank loan records, and the Deputy Collector's conversion order, all of which confirm Ishwarbhai absolute individual ownership and the legality of the subsequent sales. Given that the plaintiffs application for a temporary injunction was already rejected and upheld in appeal (Civil Appeal No. 57/2016), and considering that Block No. 92/B has since been sold to a third party (Defendant No.5), the plaintiff has no legal right, interest, or share in these properties. Accordingly, it is prayed that the suit, being based on misleading facts and suppressed records, be dismissed with costs.

3. In the written statement of Defendant nos. 3 & 4 submitted vide exh.28 has denied the plaint in toto and mentioned in their written statement para 17 as true fact, that defendant no.3 & 4 are bonafide purchaser of the suit property. In both the suit property Ishwarbhai Bhikhubhai was ganotia since long time and it is shown in form 7/12 of the revenue records of suit property and he is shown as cultivator of said property.

Defendant no.5 has filed his written statement vide exh.151 and he denied the plaint in toto. He mentioned that he is bonafide purchaser. There is no ground to add him as party in the present suit.

Defendant no.6 has adopted the written statement of defendant no.3 & 4, vide exh.190.

4. On behalf of plaintiffs. they have given below documentary as well as oral evidence produced before this Court, details of which are as under:-

Plaintiff's oral evidence:-

Sr.No.	Description	Exh.
1.	Examination-in-chief of Mihir Chhaganlal Gajjar	63

Plaintiff's Documentary Evidence:-

Sr.No.	Description	Exh.
1.	Certified copy of index regarding property Block No.85/A, S.No.100, 102, 94 and 105	Exh.65
2.	Death certificate of Bhikhubhai Nathubhai	Exh.66
3.	Copy of the Correction notice no.197 & notice of 135D and reply of Ishwarbhai Bhikhubhai	Exh.67
4.	Photocopy of the entry as certified in Correction Notice no.197.	Exh.68
5.	Copy of Sale Deed of property Block No.85/A and 92/B was sold by late Ishwarbhai Bhikhubhai to Def. No.3 & 4.	Exh.69
6.	Copy of the sale deed Among the claimed land, Block No.221 agricultural land was purchased the defendant No.3 from late Ishwarbhai	Exh.70
7.	Copy of the death certificate of Thakorbbhai Nathubhai	Exh.71
8.	Death certificate of Sumanbhai Thakorbbhai Gajjar	Exh.72
9.	Death certificate of Bharatbhai Sumanbhai Gajjar	Exh.73
10.	Death certificate of Ishwarbhai Bhikhubhai Gajjar	Exh.74
11.	Copy of the form 7/12 of Block No.221	Exh.75
12.	Copy of the form 7/12 of Block No.85-A	Exh.76
13.	Copy of the form 7/12 of Block No.92-B	Exh.77
14.	Copy of Partnership Deed Dtd. 09-06-1966	Exh.85
15.	Government Circular, Dtd.15-03-1996	Exh.133

Then after plaintiffs have produced evidence closing pursis vide Exh. No.92

5. On behalf of defendants oral evidence as well as documentary evidence have been produced before this Court, details of which are as under:

Defendant's Oral Evidence

Sr.No.	Description	Exh.
1.	Examination-in-chief of Pramod Bhai Ishwarbhai Gajjar.	97
2.	Examination-in-chief of Kirankumar Ramanlal Patel	157

Defendant's Documentary Evidence

Sr. No.	Description	Exh.
1.	Certified copy of form no.7/12 property survey no. 105 , block no. 92/B, 1951-52 to 1960-61.	Exh.103
2.	Certified copy of form no.7/12, property survey no. 105 of Block no. 92/B, 1961-62 to 1970-71.	Exh.104
3.	Certified copy of form no.7/12, survey no.105 of Block no.92/B, from the yrs. 1971-72 to 1974-75.	Exh.105
4.	Certified copy of form no.7/12, property Survey No. 105, Block No. 92/B, 1979-80 to 1983-84.	Exh.106
5.	Certified Copy of form no.7/12, property Survey No. 105 and Block No. 92/B, from the years 1983-84 to 1993-94.	Exh.107
6.	Certified copy of property Survey No. 105 and Block No. 92/B with 7/12 from 1993-94 to 2003-04.	Exh.108
7.	Certified copy of form no.7/12, property Survey No. 105 and Block No. 92/B, year 2018.	Exh.109

8.	Certified copy of form no.7/12, property Survey No.99, 100, 102 of Block No. 85/A, from 1951-52 to 1960-61.	Exh.110
9.	Certified copy of form no.7/12, property survey no. 99,100, 102 of Block no.85/A, from 1961-62 to 1970-71.	Exh.111
10.	Certified copy of form no.7/12, property survey no. 99, 100, 102 of Block no.85/A, from 1971-72 to 1974-75.	Exh.112
11.	Certified copy of form no.7/12, property survey no. 99, 100, 102 of Block no.85/A, from 1975-76 to 1983-84.	Exh.113
12.	Certified copy of the property survey no. 99,100, 102 of Block no.85/A with 7/12 from 1983-84 to 1993-94.	Exh.114
13.	Certified copy of the property survey no. 99,100, 102 of Block no.85/A with 7/12 from 1993-94 to 2003-04.	Exh.115
14.	Certified copy of form no.7/12, property survey no. 99, 100, 102 of Block no.85/A, 2018.	Exh.116
15.	Certified copy of entry no.197 in suit property.	Exh.117
16.	Certified copy of the property is provided in Entry No.674.	Exh.118
17.	Certified copy of the property is provided in Entry No.940.	Exh.119
18.	Certified copy of the property is provided in Entry No.1047.	Exh.120
19.	Certified copy of form no.7/12, property Survey No. 282, Block No.221, and 85/A, 2018 .	Exh.121
20.	Certified copy of entry No.3700 of Block No. 221	Exh.122

	of the survey No.282.	
21.	Certified copy of entry No.5140 of Block No. 221 of the survey No. 282.	Exh.123
22.	Certified copy of entry No.6785 of Block No. 221 of the survey No.282.	Exh.124
23.	Certified copy of entry No.7238 of Block No.221 of the survey No.282.	Exh.125
24.	Certified copy of entry No.7676 of Block No.221 of the survey No.282.	Exh.126
25.	Certified copy of entry No.7757 of Block No.221 of the survey No.282.	Exh.127
26.	Certified copy of entry No.7916 of Block No.221 of the survey No.282.	Exh.128
27.	Certified copy of 32(m) certificate dtd.30/05/84	Exh.158
28.	On behalf of Certificate 32(m) registered entry in suit property dtd. 20-05-91	Exh.159
29.	Loan entry in form no.6 certified copy, 31-12-92	Exh.160
30.	Order for change in terms of suit property before deputy collector shri (Olpad). 23-04-2001	Exh.161
31.	Form no.6 of land 85/A, 92/B, entry no.1047 dtd. 16/09/2004	Exh.162
32.	Certified copy of form no.7/12 of Block No. 85/A and Block No. 92/B.	Exh.163
33.	Certified copy of form no.7/12 of Block No. 85/A and Block No.92/B.	Exh.164
34.	Family partition agreement (certified copies) entry 1123	Exh.165
35.	Copy of order passed by Appellate Court for temporary injunction dtd.21-01-2017	Exh.166

36.	Certified copy of cancelled R.T.S. Revision Appl. No.55/2022 dtd. 11-05-2023	Exh.175
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Defendants have submitted evidence closing pursis, defendant no.1(1) to 1(3) vide exh.135, defendant no.2(2) to 2(6) vide exh.152, defendant no.3 & 4 vide Exh.No.176 and defendant no.5 vide Exh.177 have filed their closing pursis respectively on dtd.05-02-2020.

6. On the behalf of plaintiffs, plaintiffs have submitted their written argument vide exh.195 and citations:-

- i. 2018 (0) AIJ EL-HC 239153
- ii. 2014 (0) AIJ EL0HC 231476
- iii. 2013 (2) G.L.H. 613
- iv. 2009 (0) GLHEL-SC 47897

7. On the behalf of the defendants, their Ld. Advocates have orally argued and submitted citations.

- (1.) 2002(2) C.C.C. 73 S.C.

8. On the basis of the pleadings of both the parties and the record of the suit, the learned predecessor judge has framed the following issues vide Ex.42 in English Language.

Issues

1. Whether plaintiffs proves that, suit property of Choryasi Taluka are ancestral and H.U.F property?

2. Whether plaintiffs proves that, because of the Government Circular, the suit property of Choryasi Taluka were kept in the name of deceased Bhibhubhai Nathubhai ?
3. Whether plaintiff proves that, the property of Kamrej Taluka, village Kathor was purchased from the joint income of the family by deceased Ishwarbhai?
4. Whether the suit is filed within limitation?
5. Whether defendants nos.1, 3 & 4 proves that, plaintiffs have done a material suppression of facts?
6. Whether defendants nos.3 & 4 proves that, they are the bonafied purchaser of the Choryasi Taluka properties?
7. Whether plaintiff proves that, he is entitled to get relief as prayed for?
9. **My findings on the above issues are as under:**
 1. In Negative
 2. In Negative
 3. In Negative
 4. In Negative
 5. In Negative
 6. In Affirmative
 7. In Negative

10. Reasons:-

Before discussing the issues, it is important to focus on Section 101 of Indian Evidence Act- as per Section 101 of Indian Evidence Act expressly states so.

The section is as follows:

“Section 101 Burden of proof.—Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.”

The initial burden of proof would be on the plaintiff in view of Section 101 of the Evidence Act.. In terms of the said provision, the burden of proving the fact rests on the party who substantially asserts the affirmative issues and not the party who denies it.

11. Heard the arguments of Ld. Counsels of both sides and perused the documents and statements on records, citations and written arguments of both sides.

12. Issue No.-1 & 2:-

Issue no.1 and 2 are correlated, so discussed jointly. Plaintiffs have mentioned in their plaint that the suit property situated at Choryasi gram, taluka Kamrej i.e. Agriculture land bearing Block No.85/A and 92/B are H.U.F. properties. Plaintiffs have further mentioned that above mentioned lands had been taken by Thakorlal Nathulal from Girdharlal Chhaganlal Parekh as ganotia. It is shown in document submitted vide exh.65, but Thakorbhai and his elder brother Bhikhubhai were lived together in joint family, so, as the Ganotia, elder brother Bhikhubhai name has entered in suit property. Plaintiffs have also mentioned that when such irregularity came into the knowledge of government that after the death of Ganotia, only deceased Ganotia's family name were entered as successors in respective property and other family member did not consider as legal successor, then government passed a resolution/circular dated 15-03-1996 submitted, vide exh.133. As per such resolution/circular, after the death of ganotia, other family member name entered as successor, who are come under such category.

As in present case, Bhikhubhai was passed away on 28-03-1962, intastate at Kathor and thereafter only legal successor of Bhikhubhai, his son, Ishwar bhai name was entered on dated 13-03-1963, vide entry no.197 in suit property, which show submitted

document vide exh.67 and 68, though Bhikhubhai was not sole owner and has absolute right or interest in suit property.

Plaintiffs have stated in their written argument that Pramodbhai Ishwarbhai was cross-examined vide exh.97 and he admitted during his cross examination that since long time they were lived together as joint family.

On the other side defendant no.3 & 4 have mentioned their written statement that in the agriculture lands Block no.85/A and 92/B, father of Ishwarbhai i.e. Bhikhubhai name was entered as Ganotia before 1956, and after the teelor day i.e. 01-04-1956 when Ganotia Dhara Act was enforced, the person who had direct possession of the land treated as Ganotia and therefore Bhikhubhai became Ganotia of suit property. After the death of Bhikhubhai dated 13-03-1963, his son Ishwarbhai name was entered as successor. Even said entry is not challenged or cancelled till today. In the revenue records of suit property, Ishwarbhai's name was entered since 1962-63 as possessor of suit property.

As per section 32(c) Ganotia Dhara Act, Ishwarbhai had filed case 4/83, before Mamlatdar and Krishi panch, Kamrej and order had been passed on 30-05-1984 in that case, because Ishwarbhai was already Ganotia, so he became entitled to purchase agriculture land, which bearing Block no. 85/A, 92/B and 98/A after paying the

amount of Rs.9012/-. Said amount was paid by Ishwarbhai, therefore Ishwarbhai got purchase certificate u/s.32(m) of Ganotia Dhara for agriculture land Block no.85/A, 92/B and 98/A and Ishwarbhai became absolute owner of the said lands. In revenue records of the agriculture land Block no.85/A, 92/B and 98/A vide entry no.674 dtd. 20-05-1991 related entries for section 32(m) have been made. Even loan has been sanctioned by Union Bank of India, Kathor branch, which entry has been made in form-6 of the property vide entry no.702 dtd.31-12-1992 in the name of Ishwarbhai.

There after Ishwarbhai filed an application before Deputy Collector Shri, Olpad to convert the agriculture land Block no.85/A and 92/B into new tenure to old tenure as per section 43 of Ganotia Dhara Act. As per order passed on dtd. 23-03-2001 village form-6, entry no.940 dated 23/04/2001 has been made in revenue records of the suit property. So, the Block no.85/A and 92/B agriculture lands i.e. suit property situated at Choryasi Village taluka Kamrej, are not belonged H.U.F's property of the plaintiff. Ishwarbhai was the sole owner of the suit property. There was no objection has been raised by anyone, when the certificate of section 32(m) has been issued in the name of Ishwarbhai regarding agriculture lands Block no.85/A, 92/B and 98/A in his favour, it is

reflect from the records of the suit.

After go through the record, statement and submitted citations and heard both the sides,

It is mentioned by the plaintiffs that as per submitted document vide exh.65, Thakorlal Nathubhai has received suit lands from Girdharlal Chhaganlal Parekh as Ganotia but due to thakurlal was resided with Bhikubhai and who was elder brother of him and they lived as joint family, therefore Bhikubhai name was entered as Ganotia in suit property. Bhikubhai was passed away on 28-03-1962, intastate and thereafter name of Ishwarbhai, who was son of Bhikubhai has been entered in suit property as successor but as per record of present suit, there is no objection had been raised by anyone at time of entering the name of Ishwarbhai as successor.

Thereafter Ishwarbhai filed a case before the Mamlatdar and Krishi panch, Kamrej, case no.04/83 under section 32'c' Ganotia Dhara Act and which order was passed on 30-05-1984, submitted vide exh.158 and by that order, Ishwarbhai became entitled to purchase agriculture land Block no.85/A, 92/B and 98/A after paying consideration amount and said amount was paid by Ishwar Bhai, its receipt is submitted vide exh.159, after paying said amount, under section 32(m) certificate has been issued by authority on dtd. 22-05-1991 in the favour of Ishwar Bhai, therefore Ishwarbhai became

absolute owner of the agriculture lands Block no.85/A, 92/B and 98/A submitted by vide exh.160. Even no objection has been raised by anyone at the time of issuing under section 32(m) certificate in the favour of Ishwarbhai regarding suit lands. There is no evidence has been put on record, which Shows that the order passed by Mamlatdar and Krishi Panch Kamrej in case no.4/83 has been challenged before any appropriate authority. Submitted documents vide exhi.158 to 160, Ishwarbhai was absolute owner of the Block no.85/A & 92/B agriculture lands i.e. suit property situated at Choryasi gram taluka Kamrej. In the support of that defendant no.3 & 4 has filed a citation:-

2002(2) CCC 73 (SC) SUPREME COURT OF INDIA

"Bombay Tenancy and Agricultural Lands Act, 1948-Sec.4, 32-G-Deemed tenants-Issue of certificate of purchase to tenant purchaser-Whether a decree passed by a Civil Court can be executed if a certificate of ownership has been granted under the provisions of the Act? (No)-Appellant deposited the purchase price-A certificate had been issued to him."

Such a certificate is con-clusive evidence of purchase unless it is set aside in Revision-Decree passed by Civil Court holding appellant to be a tres-passer held not executable.

Under such circumstances, when order passed by Mamlatdar and Krishi Panch Kamrej under case 4/83 dtd. 30-05-1984 submitted vide exh.159 is unchallenged. Ishwarbhai became absolute owner of the suit property.

Plaintiffs have also mentioned that circular/resolution, which has been passed by government dated on 15-03-1996, regarding that entry of other legal successors who have interest/right in the land after the death of Ganotia, but there is any proceeding regarding entry of other successors, who are entitled as successor after death of ganotia has been commenced it by plaintiff, is not come on the record.

Under such circumstances, in the interest of justice my answer for issue no.1 and 2 are in negative.

Issue No.-3:-

Plaintiffs have stated in thier plaint that in suit property Ishwarbhai was not sole owner. Even he had sold out it to defendant no.3 & 4 through registered sale deed on dtd.08-07-2004, and alleged sale deed submitted vide exh.69. After receiving consideration amount from alleged sale dtd.08-07-2004, Ishwarbhai added some income of joint family and he had purchased agriculture land Block no.221 (survey no.282) from defendant no.3 on dtd.23-

07-2004, said alleged sale deed is submitted vide exh.70, their suit property belong to H.U.F.

On the other side, defendant no.3 & 4 have mentioned in their written statement that after paid due consideration to Ishwarbhai, they have purchased suit property through registered sale deed on dtd.08/07/2004, and it was executed before Sub-registrar, Kamrej. Alleged sale deed was duly signed by Ishwarbhai. Even as witness, Bharat bhai Sumanbhai Gajjar, who is son of defendant no.2(1), and husband of defendant no.2(2) had signed. Defendant no.3 & 4 had verified the records of last 30-35 years of suit property and after due diligence, it came in the knowledge of them that Ishwarbhai is the owner of suit property then they have purchased suit property from Ishwarbhai.

Defendant no.3 had agriculture land of old tenure, which block no.221 survey no.282 at Kathor taluka Kamrej. Defendant no.3 had sold out to Ishwarbhai through registered sale deed executed before Sub-registrar on dated 23-07-2004, and in this alleged sale deed Bharatbhai had signed as witness, who is son of defendant no.1.

Defendant no.1(1) to 1(3) have mentioned their written statement that Ishwarbhai had purchased agriculture land Block no.221 from the income received the sale of suit property and some amount he has added from his own income. So, Ishwarbhai

had purchased said land from his own income, and he was owner of suit property as per Ganotia Dhara Act.

After go through the records, statement of the witness, it is already discussed in above mentioned issue no.1 that as per Ganotia Dhara Act, Ishwarbhai became absolute owner of suit property and suit property was sold out to defendant no.3 & 4 through registered sale deed on dtd. 27-04-2004, and thereafter, property situated at Kathor bearing Block no.221 was purchased by Ishwar Bhai from dependent no.3 through registered sale deed. Both registered sale deeds are submitted in present suit vide exh.69 and 70 respectively.

There is no evidence has been produced by plaintiffs which show that Ishwarbhai has added any income of joint family to purchase the land situated at Kathor, Kamrej i.e. agriculture land bearing Block no.221. Mere stated in plaint does not prove itself that said property was purchased from the income of joint family. Under such circumstances, my answer for issue no.3 is in negative.

Issue No.-4:-

As far as concern issue no.4, plaintiffs have stated in their plaint that on dtd. 16-01-2014, copies of registered sale deed of Agriculture lands Block No.85/A and 92/B was issued to plaintiff,

then it came into knowledge of the plaintiffs that Ishwarbhai had sold out suit property to the defendant no.3 & 4 on 08-07-2004, thereafter plaintiffs have filed present suit. So present suit is filed within limitation period and for family.

On the other side, defendants have denied in their written statements, and mentioned that Bharatbhai was the witness of alleged sale deed by which suit property was sold out, so plaintiffs were well aware about the said transactions.

After go through the records, statements and citations, in present issue there is no clarity upon whom burden has to lie to prove it. It is settled principle that plaint has to be proved by the plaintiff so, the burden of proof of present issue lies on the plaintiff. In present suit, Ishwar Bhai received certificate of section 32(m) after depositing the purchase price of the suit property. After receiving the certificate of 32(m), he became absolute owner of the suit property. Such certificate is submitted vide exh.158 and it is conclusive proof of the purchase of suit property dtd.22-05-1991. Regarding that notice u/s.135(D) had been served to the other parties also. Later suit property has been sold out by Ishwarbhai to the defendant no.3 & 4 through registered sale deed on dtd.23-07-2004. Thereafter plaintiff has filed present suit in 2014. It is

settled principle that the registration of the document considered as deemed knowledge of its registration. Under such circumstances, plaintiff has to file present suit within 3 years, but they have filed present suit after 10 years. Even in the case of 4/83 Mamlatdar and Krishi Panch, Kamrej, passing an order in the favour of Ishwarbhai and after paying the amount of purchase, he became the absolute owner in 22-05-1991. There is no objection has been raised by any one at that time, so the present suit is barred by Limitation Act.

Under such circumstances, my answer for issue no.4 is in negative.

Issue No.-5:-

As far as concern issue no.5, defendant no.3 & 4 have stated in their written statement in para 6, and in the written statement of defendant nos.1(1) to 1(3) para 5 that plaintiffs have done a material suppression of fact, but in particular issue defendants have not submitted any relevant and conclusive evidence which show that there is material suppression of facts on behalf of plaintiffs. Under such circumstances in the interest of justice my answer for issue no.5 is in negative.

Issue No.-6:-

As far as concern issue no.6, defendant no.3 & 4 have mentioned in their written statement that before purchasing of the suit property, they have verified the revenue records of suit property of last 30-35 years and after verifying that Ishwarbhai is the sole owner of the suit property. They have purchased it through registered sale deed on dtd.08-07-2004, before Sub-registrar, Kamrej vide entry no.1541 submitted vide exh.69. Defendant Nos.3 & 4 had paid due consideration for said sale, so defendant no.3 & 4 were due diligent at the time of purchasing of suit property.

On the other side, plaintiffs have mere stated in their plaint that defendant no.3 & 4 are not bonafide purchaser of the suit property. But in the support of claim plaintiffs have not submitted any evidence, which show that defendant nos.3 & 4 are not bonafide purchaser of suit property. The defendant no.3 & 4 have purchased suit property through registered sale deed and there is no adverse evidence against said transaction has been produced by plaintiffs. So my answer for issue no.6 is in Affirmative.

Issue No.-7:-

As far as concern issue no.7, It is already discussed in above mentioned issue nos.1 to 6 that as order passed by Mamlatdar and Krishi Panch, Kamrej, in case 4/83 dtd.30-05-1984, in the favour of Ishwarbhai, Ishwarbhai became absolute owner of suit property. Even said order is not challenged by any one till today. After getting 32(m) certificate of Ganotia Dhara Act, Ishwarbhai was absolute owner of the suit property, so he was entitled to transfer the suit property. Ishwarbhai has sold the suit property to defendant no.3 & 4 through registered sale deed, and thereafter Ishwarbhai has purchased Agriculture land Block no.221 from the defendant no.3 through registered sale deeds, hence both the properties has been sold out through the registered sale deed which were executed before the Sub-registrar, Kamrej, in 2004. There is no evidence has been produced by the plaintiff which proves that at the time of purchasing agriculture land situated in Kamrej, Ishwarbhai has added some income from the family income. It is also clear that the Ishwarbhai was the absolute owner of the suit property and he has sold the suit property to the defendant no.3 & 4. Therefore, defendant no.3 & 4 are also bonafide purchaser of the suit property. In present suit plaintiffs go failure to prove their plaint. Under such circumstances plaintiff is not entitled to get any relief

as he prayed.

13. In the light of Above observation and looking into the facts of the present suit and evidence on record. I pass the following order in the interest of justice.

Final Order

1. The present suit of the plaintiffs is hereby rejected.
2. Decree be drawn accordingly.
3. Parties will bear their own cost.

Pronounced in the open Court today on 13th day of March,
2026.

Place:- Kathor.

Date:- 13/03/2026

(Prakher Sharma)

Additional Senior Civil Judge,
Kathor.

GJ 01416