

GJVL010009312023



Presented on : 16-09-2023
Registered on : 16-09-2023
Decided on : 04-06-2026
Duration : 2Y-8M-19D

**IN THE COURT OF PRINCIPAL DISTRICT JUDGE,
AT : VALSAD**

REGULAR CIVIL APPEAL NO. 29 OF 2023

Exhibit:- _____

Anjankumar Alfred Shirohi

Age : 69 Occupation : Retired

**R/o. Chawl of Amarpal, Police Head Quarters Road,
Abrama, Tal. & Dist. Valsad**

**: : : Appellant
(Original Plaintiff)**

V E R S U S

(1) Ajay Anjankumar Shirohi

Age: - Occupation: Job

(2) Aarti Rameshchandra Dubey

Age: - Occupation: Homemaker

**Both are residing at : Plot No. 112 & 113, Dilip
Cooperative Housing Society Ltd. Rajannagar, Abrama,
Tal. & Dist. Valsad**

**: : : Respondents
(Original Defendants)**

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Appearances:-

Ld. Adv. Mr. Z.N. Sanjana for the appellant.

Ld. Adv. Mr. R.J. Desai for the respondents.

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**APPEAL UNDER SECTION 96 R/W. ORDER 41 OF THE
CIVIL PROCEDURE CODE AGAINST THE JUDGMENT
AND DECREE DATED 03.08.2023 PASSED BY COURT OF
LD. 3rd ADDITIONAL SENIOR CIVIL JUDGE, VALSAD,
IN REGULAR CIVIL SUIT NO. 160/2014.**

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

(1) The order is summarised as mentioned below in its sequence. If the matter is examined from the root of the present appeal, it transpires that the respondents/original defendants had filed **Criminal Revision Application No. 23/2005** before this Court, whereby this Court, vide order dated **23.02.2015**, allowed the said Revision Application and set aside the order dated 31.08.2005 passed by the Ld. Executive Magistrate, Valsad in Case No. 1/2005 under Section 145 of the Code of Criminal Procedure. While allowing the Revision Application, the Revisional Court took into consideration the allegations made by the original applicant therein that the respondents had attempted to interfere with and usurp his property and had also instituted several criminal proceedings against him, in which he was ultimately acquitted. Consequently, the proceedings and order passed by the Ld. Executive Magistrate were quashed and the matter stood concluded in favour of the revision applicant. Thus, the aforesaid order attained finality and forms an important part of the background leading to the present proceedings between the parties.

(2) For the sake of convenience and brevity, the parties shall be referred to in their original status in which they were arrayed before Ld. Trial Court, i.e., appellant herein as “Original Plaintiff” and respondents herein as “Original Defendants”.

BRIEF FACTS OF THE PLAINTIFF’S SUIT ARE AS
UNDER

(3) The brief facts of the Plaintiffs’ case are that the Plaintiff

is a senior citizen who was employed at the Railway department and is presently retired. The suit properties described in the schedule originally belonged to one Shri Bharatbhai Chhanabhai Patel, who had become a member of Dilip Co-operative Housing Society. By Resolution No. 4 of the Managing Committee dated 30.06.1986, Plot Nos. 112 and 113 along with Row House No. 1 and Row House No. 2 constructed thereon by the Society were allotted to him. Thereafter, the said houses came to be recorded with Abrama Gram Panchayat under House Nos. 621 and 622. The original allottee had paid to the Society all amounts towards admission fees, share capital, land contribution, construction charges and other dues and thereafter remained in possession and management of the said properties.

(3.1) Subsequently, in the year 2001, the original allottee resigned from the membership of the Society and sold both the row houses to the Plaintiff for a full and valid consideration of Rs.4,00,000/-. The vacant, peaceful and actual possession of both the properties was handed over to the Plaintiff. Thereafter, by Resolution No. 4 of the Managing Committee dated 18.09.2001, the Plaintiff was admitted as a member of the Society. On the same day, the Plaintiff paid all amounts payable to the Society. Accordingly, the Plaintiff became the lawful, absolute and exclusive owner and actual possessor of the suit properties. No other person had or has any right, title, interest, claim or benefit in respect of the suit properties and the Plaintiff is the sole and absolute owner thereof.

(3.2) At the time of purchase of the suit properties, the Plaintiff

was serving in the Railway and intended to reside in the said houses after his retirement from service.

(3.3) Since the Plaintiff was residing in a railway quarter allotted by the Railway at the time of purchase, the suit houses were kept locked by him. Defendant No. 1 is the Plaintiff's biological son. Defendant No. 2 is the female companion (legally wedded wife, against will of the plaintiff) of Defendant No. 1, and both are residing together. However, Plaintiff's knowledge, no marriage has been solemnized between them. Defendant No. 1 had, for a considerable period of time, ceased to remain under the Plaintiff's guidance and control and the Plaintiff had severed all financial and personal relations with him. The Plaintiff had even published a public notice in a daily newspaper declaring that no person should maintain any dealings or transactions with Defendant No. 1 on his behalf.

(3.4) On 19.12.2004, both the Defendants, acting in collusion with each other, unlawfully broke open the locks of the suit properties and forcibly took possession thereof. Upon learning of the incident on the same evening, the Plaintiff visited the suit properties and demanded that the Defendants vacate the premises and hand over possession. However, the Defendants, along with their relatives present there, abused the Plaintiff in filthy and derogatory language, ordered him to leave the premises and threatened that if he did not do so, they would burn all of them alive and kill them. Consequently, the Plaintiff was compelled to leave the premises. Thereafter, the Plaintiff lodged a complaint against the Defendants with the competent police authorities and

the proceedings arising therefrom are pending before the competent Court.

(3.5) Despite being the lawful owner of the suit properties, the Plaintiff was deprived of possession thereof due to the illegal and forcible acts of the Defendants. As a result, the Plaintiff was constrained to reside initially at the house of his brother-in-law situated in a chawl behind Darpan Society, Abrama and thereafter shifted to rented accommodation. Thus, although the Plaintiff is the owner of the suit properties, he has been compelled to reside in a rented premises.

(3.6) The Plaintiff, through his Advocate, also issued a legal notice to the Defendants in the year 2007 calling upon them to hand over vacant, peaceful and actual possession of the suit properties. The said notice was duly served upon the Defendants. Though issuance of such notice was not legally mandatory, the same was issued to avoid any future false disputes or contentions from being raised by the Defendants. However, the Defendants failed to comply with the said notice.

(3.7) Having been left with no other efficacious remedy, the Plaintiff was constrained to institute the present suit seeking recovery of vacant, peaceful and actual possession of the suit properties from the Defendants.

After Registration of the Suit Process was issued to the Defendants

(4) The notice of the suit was issued to the defendants and the same was served upon the defendants. Upon service of summons

in accordance with law, Defendants filed Written Statement at **Ex-11**. They contended in their written statement that consideration amount for the suit property was paid equally by the Plaintiff and Defendant No.1 and that all expenses incurred in relation to the suit property were also borne equally by them. It was further contended that since the year 1999, Defendant No.1 has been in peaceful, open and continuous possession of the suit property and has been carrying on business therein under the name and style of “Nilesh Cables.” Defendant No.2 is the legally wedded wife of Defendant No.1. The Defendants further submitted that in relation to the suit property, the Plaintiff had instituted proceedings under Section 145 of the Code of Criminal Procedure before the Mamlatdar, Valsad, being Application No. 01/2005. Aggrieved by the order dated 30.08.2005 passed therein, the Defendants preferred Criminal Revision Application No. 39/2005 before the Sessions Court at Valsad. By order dated 23.02.2015 passed in the said revision proceedings, it was recorded that the suit property was in the possession and enjoyment of the Defendants. According to the Defendants, the Plaintiff has deliberately suppressed the said material fact from the present proceedings. The Defendants further contended that the Plaintiff has been filing false complaints and applications against them from time to time. It was also submitted that the Plaintiff had issued a notice in the year 2007 calling upon the Defendants to vacate the suit property, to which the Defendants had duly replied. It was further contended that the present suit has been instituted after an inordinate delay of nearly ten years and is therefore barred by limitation. Accordingly, the

Defendants prayed that the suit be dismissed as being time-barred.

(5) On the basis of the above pleadings, issues were framed by Ld. Trial Court at **Ex-14**.

(6) The Ld. Trial Court, after appreciating the evidence on record, dismissed Regular Civil Suit filed by the appellant/Original Plaintiff.

(7) That, dissatisfied with the order passed in Regular Civil Suit No. 160/2014, the appellant/Original Plaintiff has filed this appeal and inter alia prayed that :-

- I. Call for the entire record and proceedings of Regular Civil Suit No.160/2014 decided by the learned 3rd Additional Senior Civil Judge, Valsad, and after proper appreciation of the evidence and settled principles of law, quash and set aside the impugned Judgment and Decree and allow the present Appeal.
- II. Grant such other and further reliefs as may be deemed fit and proper in the interest of justice
- III. Award the costs of the present Appeal in favour of the appellant and against the Respondents.

Grounds of the Appeal (Appeal Memo)

(8) The appellant respectfully submits that the appellant/original plaintiff is a senior citizen who was serving in

the Railways and has now retired from service. The suit properties described hereinbelow originally belonged to one Bharatbhai Chhanabhai Patel, who was a member of Dilip Co-operative Housing Society. By Resolution No. 4 dated 30.06.1986 passed by the Managing Committee of the Society, Row House No. 1 and Row House No. 2 constructed by the Society on Plot Nos. 112 and 113 respectively were allotted to him. Thereafter, the said row houses were registered with Abrama Gram Panchayat under House Nos. 621 and 622. The original allottee had paid all amounts towards share capital, land contribution, construction charges and other dues payable to the Society and remained in possession, management and enjoyment of the said properties. Thereafter, in the year 2001, the original allottee resigned from the membership of the Society and sold both the suit row houses to the appellant/original plaintiff for a total consideration of Rs.4,00,000/-. Vacant, peaceful and actual possession of both the suit properties was delivered to the Plaintiff. Subsequently, by Resolution No. 4 dated 18.09.2001, the Plaintiff was admitted as a member of the Society and on the same day, paid all amounts payable to the Society. Consequently, the Plaintiff became the lawful, absolute and exclusive owner and actual possessor of the suit properties. Since then, the Plaintiff has been the sole owner of the suit properties and no other person has any right, title, interest or claim therein. At the time of purchasing the suit properties, the Plaintiff was serving in the Railways and was residing in the railway quarters allotted to him by his employer. Since he intended to occupy the suit properties after his retirement, he kept the premises locked.

Defendant No.1 is the son of the Plaintiff, whereas Defendant No.2 is residing with Defendant No.1 as his female companion. However, to the knowledge of the Plaintiff, no marriage has been solemnized between them. Defendant No.1 had, for a considerable period, ceased to remain under the guidance and control of the Plaintiff and no cordial relations or financial dealings existed between them. The Plaintiff was, therefore, constrained to publish a public notice in a daily newspaper declaring that no person should enter into any dealings or transactions with Defendant No.1 on his behalf. It is the case of the Plaintiff that on 19.12.2004, the Defendants, acting in collusion with each other, unlawfully broke open the lock of the suit properties and forcibly occupied the same. Upon learning about the said incident, the Plaintiff immediately visited the suit premises and requested the Defendants to vacate the properties and hand over peaceful possession. However, the Defendants abused the Plaintiff and his relatives in filthy language and threatened them with dire consequences, including threats to their lives. The Plaintiff was, therefore, compelled to leave the premises. Thereafter, he lodged a complaint with the police authorities against the Defendants and criminal proceedings arising therefrom are pending before the competent Court. Owing to the illegal occupation of the suit properties by the Defendants, the Plaintiff, despite being the lawful owner thereof, was constrained to reside first with his relatives and thereafter in rented accommodation. Thereafter, in the year 2007, the Plaintiff caused a legal notice to be issued through an Advocate calling upon the Defendants to hand over vacant, peaceful and actual

possession of the suit properties. The said notice was duly served upon the Defendants. Though there was no legal necessity for issuance of such notice, the same was issued in order to avoid any future disputes or false contentions on the part of the Defendants. However, the Defendants failed and neglected to comply with the said notice. Having no other efficacious remedy available, the Plaintiff instituted the suit seeking recovery of vacant, peaceful and actual possession of the suit properties from the Defendants. The Defendants filed their Written Statement at Ex-11 denying the averments made in the plaint and disputing the Plaintiff's claim. Upon appreciation of the oral and documentary evidence produced by both sides, the Ld. Trial Court dismissed the suit of the Plaintiff, directed the parties to bear the costs as stated in the judgment and ordered the decree to be drawn accordingly. Being aggrieved and dissatisfied by the said Judgment and Decree dated 03.08.2023 passed in Regular Civil Suit No.160/2014, the Plaintiff has preferred the present Appeal. The appellant submits that the impugned Judgment and Decree are contrary to law, evidence on record and settled principles governing adjudication of civil disputes. The Ld. Trial Court failed to properly appreciate the documentary evidence produced by the Plaintiff, all of which unequivocally establish his ownership over the suit properties. The Court further failed to consider that the Defendants did not produce any documentary evidence whatsoever to establish either their ownership or any lawful right, title or interest in the suit properties. The appellant further submits that the Ld. Trial Court failed to appreciate the admissions made by Defendant No.1 during his cross-

examination. Defendant No.1 admitted that the Plaintiff is his father and had served in the Railways, that he had resided with the Plaintiff until his marriage, that the suit properties stand in the name of the Plaintiff, and that although he claimed possession since the year 1999 and alleged that he had contributed money towards the purchase of the suit properties, he had neither produced any documentary evidence in support of such contentions nor specified the amount allegedly paid by him. These admissions clearly demolish the defence set up by the Defendants and substantiate the Plaintiff's claim. However, the Ld. Trial Court failed to properly appreciate and consider these material admissions. The appellant further submits that several documentary exhibits including the allotment letter, assessment records, Society resolutions, tax receipts and share capital receipts were produced before the Ld. Trial Court, all of which stand in the name of the Plaintiff and establish his ownership over the suit properties. Despite the existence of such cogent documentary evidence, the Ld. Trial Court failed to accord due weight and consideration thereto. On the contrary, the Defendants did not produce any documentary evidence in support of their alleged rights over the suit properties. The appellant also submits that an allotment letter standing in the name of Bharatkumar Chhaganlal Patel was inadvertently produced during the trial proceedings and marked as Ex-26. The appellant has now produced the correct allotment letter standing in his own name in support of the present Appeal. The appellant, further submits that the occupation of the suit properties by the Defendants is wholly unauthorized, illegal and without any

semblance of lawful right. The findings recorded by the Ld. Trial Court are contrary to the evidence available on record and have resulted in grave miscarriage of justice. The impugned Judgment and Decree are, therefore, liable to be quashed and set aside. The impugned Judgment and Decree were passed on 03.08.2023 and the certified copy thereof was made ready on 24.08.2023. The present Appeal has been filed within the prescribed period of limitation. Both the appellant and the Respondents reside within the territorial jurisdiction of this Court and therefore, this Court has the jurisdiction to entertain, hear and decide the present Appeal. The original suit having been filed for recovery of possession of the suit properties, the same was valued at Rs.4,00,000/- and the requisite court fees were duly paid thereon. In the aforesaid facts and circumstances, the appellant respectfully prays that this Court be pleased to call for the record and proceedings of Regular Civil Suit No.160 of 2014, quash and set aside the impugned Judgment and Decree dated 03.08.2023, allow the present Appeal, grant such other and further reliefs as may be deemed fit in the interest of justice and award the costs of the Appeal in favour of the appellant.

**Arguments Advanced By Ld. Advocate For Appellant –
Original Plaintiff**

(9) On behalf of the appellant, the Ld. Advocate most respectfully submits that the appellant is a senior citizen who was employed with the Indian Railways and has now retired from service. The suit property originally belonged to one Shri Bharatbhai Chhanabhai Patel, who was a member of Dilip Co-

operative Housing Society. By Resolution No. 4 dated 30.06.1986 passed by the Managing Committee of the Society, Row House Nos. 1 and 2, constructed on Plot Nos. 112 and 113 respectively, were allotted to him. Thereafter, the said properties were recorded as Gram Panchayat House Nos. 621 and 622 in the records of Abrama Gram Panchayat. All amounts payable towards admission fees, share capital, land contribution and construction costs were duly paid by the original allottee, who remained in possession and management of the properties.

(9.1) It is the case of the appellant that in the year 2001 the original allottee resigned from the membership of the Society and transferred the aforesaid two row houses to the appellant for a lawful consideration of Rs.4,00,000/-. Vacant, peaceful and actual possession of both properties was handed over to the appellant. Thereafter, by Resolution No. 4 dated 18.09.2001, the appellant was admitted as a member of the Society and all dues payable to the Society were duly paid by him. Consequently, the appellant became the lawful owner and possessor of the suit properties. According to the appellant, no other person had any right, title or interest in the suit properties and he remained the exclusive owner thereof.

(9.2) At the time of purchasing the suit properties, the appellant was serving in the Railways and was residing in the railway quarters allotted to him. As he intended to occupy the suit properties after his retirement, he had kept the suit properties locked. respondent no.1 is the son of the appellant and respondent no..2 was residing with respondent no.1. The

appellant has stated that respondent no.1 had been living separately from him for several years and that he had no financial or personal dealings with him. The appellant had also published a public notice in a daily newspaper declaring that no person should enter into any transaction with respondent no.1 on his behalf.

(9.3) The appellant has further alleged that on 19.12.2004, the Respondents, in collusion with each other, unlawfully broke open the lock of the suit property and forcibly occupied the same. Upon learning of the incident, the appellant visited the property and requested the Respondents to hand over possession thereof. However, the Respondents allegedly abused and threatened him with dire consequences. The appellant thereafter lodged a police complaint against the Respondents and the criminal proceedings arising therefrom are stated to be pending before the competent Court. As a result of the alleged illegal occupation by the Respondents, the appellant was compelled to reside elsewhere despite being the owner of the suit property.

(9.4) The appellant thereafter caused a legal notice to be issued through an Advocate in the year 2007 calling upon the Respondents to hand over vacant and peaceful possession of the suit property. Despite due service of the notice, the Respondents failed to comply with the same. Consequently, the appellant was constrained to institute the suit for recovery of possession of the suit property. In the said suit, the Respondents filed their Written Statement at Exhibit-11 and denied the allegations made in the plaint. Upon conclusion of the trial, the Ld. Trial Court dismissed

the suit. Being aggrieved and dissatisfied with the said judgment and decree, the appellant has preferred the present Appeal. The principal grievance of the appellant is that the Ld. Trial Court failed to properly appreciate the oral and documentary evidence produced on record. It is contended that the Ld. Trial Court ignored the documentary evidence produced by the appellant, including the allotment letter, assessment records, Society resolutions, receipts evidencing payment of share capital and municipal tax receipts, all of which, according to the Appellant, establish his ownership over the suit property. It is further contended that the Respondents failed to produce any documentary evidence whatsoever to establish their alleged ownership or lawful possession of the suit property.

(9.5) The appellant has also relied upon the admissions made by respondent no.1 during his cross-examination. According to the appellant, respondent no.1 admitted that the appellant was employed in the Railways and that he had resided with the Appellant until his marriage. respondent no.1 further admitted that he was residing in the suit property and that the property stood in the name of the appellant. It is also pointed out that although respondent no.1 claimed to be in possession of the suit property since the year 1999 and alleged that he had contributed money towards its purchase, he admitted that he had not produced any documentary evidence in support of such claims. The appellant therefore contends that the Ld. Trial Court failed to consider these material admissions and thereby caused serious prejudice to his case.

(9.6) The Appellant has further contended that all documentary evidence produced before the Ld. Trial Court consistently reflected his name as owner of the suit property. The allotment letter, assessment records, Society resolutions, share capital receipts and municipal tax receipts were all produced and exhibited before the Court. According to the appellant, these documents conclusively establish his ownership, whereas the respondents did not produce any documentary evidence to substantiate their defence. It is therefore submitted that the findings recorded by the Ld. Trial Court are contrary to the evidence available on record and are liable to be set aside.

(9.7) It is further stated that during the pendency of the present Appeal, respondent no.1 filed an affidavit wherein he stated that he and respondent no.2 are residing separately and that he is presently residing with the appellant. respondent no.1 has categorically stated that he has no objection if the present Appeal is allowed. He has further declared on oath that he voluntarily hands over possession of the suit property to the appellant and does not wish to contest the Appeal any further. He has also stated that neither he nor his wife or daughter has any right, title, interest or claim over the suit property.

(9.8) The matter was thereafter referred to mediation with the consent of the parties. During the mediation proceedings, respondent no.1 filed a further affidavit stating that respondent no.2 is residing in the suit property and that she owns another residential property in her own name. A copy of the assessment record relating to the said property was also produced, wherein

the name of respondent no.2 is reflected as the owner. In view of these subsequent developments, coupled with the documentary evidence on record and the admissions made by respondent no.1, the appellant submits that the impugned judgment and decree passed by the Ld. Trial Court are illegal, erroneous and unsustainable in law and therefore deserve to be quashed and set aside by allowing the present Appeal.

**Arguments advanced by Ld. Advocate for Respondents -
Original Defendant**

(10) The respondent/Original Defendant respectfully submit that The respondent no. 1 is the biological and only son of the appellant/Original Plaintiff. respondent no.2 is the legally wedded wife of respondent no.1 and the daughter-in-law of the appellant/Original Plaintiff.

(10.1) As per say of the plaintiff The suit property originally belonged to one Shri Bharatbhai Chhaganbhai Patel, who was a member of Dilip Co-operative Housing Society. Pursuant to Resolution No. 4 passed by the Managing Committee of the Society on 30.06.1986, Plot Nos. 112 and 113 were allotted for construction of row houses. As the head of the family, the Plaintiff/Appellant, Shri Anjankumar Alfred Sirohi, was shown as the member and representative in the records of the Society.

(10.2) The admission fee, share capital contribution, land contribution, and construction costs relating to the said two row houses were paid jointly by the appellant/Original Plaintiff and respondent no.1. The suit property was allegedly acquired for a

total consideration of Rs. 4,00,000/- under joint ownership.

(10.3) The appellant/Original Plaintiff never locked the suit property nor has he established that he was ever in exclusive possession thereof. The witness examined by the appellant/Original Plaintiff, namely Shri Farmud Ahmad Rais Mohammad Siddiqui, resident of Police Headquarters Road, Amar Palni Chawl, Abrama, Valsad, is related to the appellant/Original Plaintiff as his brother-in-law. The said witness, being closely related to the appellant/Original Plaintiff, has been examined as an interested witness and has deposed only to support the case of the appellant/Original Plaintiff. Significantly, he has not disclosed where respondent nos. 1 and 2 were residing at the time the suit property was acquired.

(10.4) The allegation that respondent nos. 1 and 2 broke open the lock of the suit property and illegally took possession thereof on or about 19.12.2004 is wholly false. Proceedings initiated under Section 145 of the Code of Criminal Procedure also did not establish the possession of the Appellant/Original Plaintiff. The Appellant/Original Plaintiff failed in the said proceedings. Even the Plaintiff's witness has admitted that he persuaded the Appellant/Original Plaintiff to stay at his residence and subsequently the Appellant/Original Plaintiff shifted to another rented premises. Thus, it is evident that the Appellant/Original Plaintiff was never in possession of the suit property as alleged.

(10.5) The Appellant/Original Plaintiff has falsely claimed that he alone purchased the property from the Society for a consideration of Rs.4,00,000/-. It is further submitted that

Appellant/Original Plaintiff admitted in his deposition at Ex-15 that he was residing in a rented house at Valsad, although no rent receipts were produced. It has further emerged that he is residing in another property owned by him. The assessment records and property card relating to the said property are annexed herewith.

(10.6) The plaintiff must give a chance to establish his case by examining the previous owner or the office bearer of the society which could not have been done in this court.

(10.7) The real dispute arose because respondent no.1 contracted marriage with respondent no.2, a lady belonging to a Brahmin community, against the wishes of the Appellant/Original Plaintiff. Out of the said wedlock, a daughter named Anshika Sirohi, presently aged about 17 years, was born. Due to his displeasure regarding the marriage, the appellant/Original Plaintiff published a public notice in a daily newspaper cautioning the public not to enter into any transactions with respondent no.1. Acting under such prejudice and resentment, the appellant/Original Plaintiff has filed the present false suit with a view to defame his own son and daughter-in-law and deprive them of their residence.

(10.8) The allegations that the Respondents unlawfully dispossessed the appellant/Original Plaintiff and threatened him are entirely baseless. On the contrary, after gathering his relatives, including his brother-in-law and sister, the appellant/Original Plaintiff attempted to forcibly interfere with the possession of the Respondents and thereafter lodged false complaints. However, he failed to establish his case in

proceedings under Section 145 of the Code of Criminal Procedure. The Respondents are not strangers but are the son and daughter-in-law of the Appellant/Original Plaintiff and the present litigation is clearly motivated by personal prejudice and family discord.

(10.9) The appellant/Original Plaintiff has repeatedly made false allegations against the respondents, which become apparent from his own deposition. respondent no.1 is the sole son of the appellant/Original Plaintiff and the evidence on record clearly demonstrates that the present proceedings have been initiated due to the appellant/Original Plaintiff's dissatisfaction with the inter-caste marriage of respondent no.1. The affidavit of Smt. Kamlaben Maganbhai Patel also supports the said position. In the year 2001, the appellant/Original Plaintiff called upon the respondents to hand over vacant possession of the suit property. The Respondents, however, replied through their advocate stating that they were residing in the suit property as co-owners and family members.

(10.10) It is further submitted that the documentary evidence produced by the appellant/Original Plaintiff does not establish his ownership or exclusive possession of the suit property. The City Survey records and Property Card pertaining to City Survey No. 1255 do not record the appellant/original plaintiff as owner. The allotment letter at Ex-26, the resolution at Ex-25, and the share certificate receipt at Ex-27 do not confer or establish ownership rights in favour of the Plaintiff/appellant. Furthermore, the tax receipts relied upon by him have not been duly proved in

accordance with law.

(10.11) It is further submitted that in relation to Issue No. 1, the appellant/original plaintiff has failed to establish, either through documentary or oral evidence, that he is the lawful, absolute and exclusive owner of the suit property. Accordingly, the issue deserves to be answered in the negative. As regards Issue No. 2, the allegation that the respondents forcibly broke open the lock and dispossessed the appellant/original plaintiff remains unsubstantiated. No independent witness or documentary evidence has been produced in support thereof. On the contrary, the appellant/original plaintiff has admitted that he was residing elsewhere and the judgment in Criminal Case No. 39 of 2005 supports the respondents' possession. Regarding Issue No. 3, the appellant/original plaintiff has not produced any evidence to show that he alone paid the alleged consideration of Rs.4,00,000/-. No registered conveyance or transfer document has been produced. The respondents' case is that respondent no. 1 contributed substantially towards the acquisition of the property from the income generated through his business, "Nilesh Cable", which was being operated from the suit premises.

(10.12) The suit is also barred by limitation. According to the appellant/original plaintiff's own case, the property was purchased in the year 2001, whereas the suit came to be filed only on 02.12.2014 after an unexplained delay of about twelve years. Therefore, the suit is liable to be dismissed as time-barred. The evidence further shows that the appellant/original plaintiff has been residing separately in his own residential premises after

retirement, whereas the respondents have been residing and carrying on their business from the suit property. The Respondents have always been willing to maintain and accommodate the appellant/original plaintiff. The present litigation appears to have arisen out of personal and family disputes, and the appellant/original plaintiff has failed to establish any legal basis for the reliefs claimed in the suit.

(11) After hearing the submissions advanced by both the parties and upon perusal and examination of the record and proceedings of the Ld. Trial Court, as well as the pleadings of the parties and the relevant provisions and principles laid down under the Indian Evidence Act and the Indian Contract Act, this Court has been pleased to frame points for determination. The Court has also given its findings on each of the issues as framed by the Ld. Trial Court, which are as under:

:-:Issues/Points for Determination:-:

Issues framed by Ld. Trial Court :-

- 1) Whether the plaintiff proves that he is the owner of the suit property?
 - 2) Whether the plaintiff proves that the defendant has no right, title or interest in the suit property?
 - 3) Whether the plaintiff proves that the defendant is in illegal possession of the suit property?
 - 4) Whether the defendants prove that the suit is barred by law of limitation?
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- 5) Whether the plaintiff is entitled to get relief as prayed for?

Points for determination framed by this Court :-

- 1) Whether the appellant/original plaintiff can point out that the judgment and decree passed by the Ld. Trial Court on dated 03.08.2023 is erroneous, perverse, passed without appreciating the evidence and contrary to the provisions of law?
- 2) Whether interference in the judgment and decree passed by the Ld. Trial Court is required?
- 3) What order and decree?

(12) Findings to the issues framed by the Ld. Trial Court:-

1. Issue No.1 : **Unproved**
2. Issue No.2 : kept open for fresh adjudication upon remand
3. Issue No.3 : kept open for fresh adjudication upon remand
4. Issue No.4 : kept open for fresh adjudication upon remand
5. Issue No.5 : kept open for fresh adjudication upon remand

(12.1) Reasons to the points for determination framed by this Court:-

1. Issue No.1 In **Affirmative**
2. Issue No.2 In **Affirmative**
3. As per **Final Order**.

(13) General provision as to file first appeal has been provided in Sec.96 of the Code of Civil Procedure, 1908. Sec.96 says that, 'Save where otherwise expressly provided in the body of this

code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorized to hear appeals from the decisions of such Court.'

(13.1) Further, neither decree under challenge has not been passed by the consent of the parties nor it is decree of suit of the nature cognizable by the Courts of Small Cause prescribed in sub-section (2) and (3) of the Section 96 of the Code of Civil Procedure, 1908, and therefore the present appeal is maintainable and under the Gujarat Civil Court Act, 2005 this court is empowered to hear first appeal in present case.

THE POWER OF APPELLATE COURT AS PROVIDED UNDER THE ORDER 41 RULE 33 OF THE CODE OF CIVIL PROCEDURE, 1908:-

Under Order XLI Rule-33 of the Code of Civil Procedure, 1908, the power of Court of appeal has been provided and it is reproduced herein as under-

"33: Power of Court of Appeal- The Appellate Court shall have power to pass any decree and make any the order which ought to have been passed or made and to pass or-make such further or other decree or the order as the case may require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favor of all or any of the respondents or parties, although such respondents or parties, may not have filed any appeal or objection 1.1. Ins. by Act 104 of 1976, Sec. 87 (w.e.f. 1st February, 1977). [and may, where there have been decrees in cross-suits or where two or

more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees]:”

(13.2) Therefore, by reading said provision then it is quite clear that the Court of appeal can pass any order or decree which ought to have been passed and such power can be exercised against any party to the proceedings.

(14) The Evidence Act, 1872 provides as regards how evidence becomes admissible, impact of evidence and how and when any fact can be said to be proved. In interpretation clause of The Evidence Act, 1872, the interpretation of proved has been given as under :-

Proved – “A fact is said to be proved when, after considering the matter before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.”

(14.1) The second part of said clause says as to the standard of prudent man and it is a settled proposition of civil jurisprudence that standard of proof in civil matters is preponderance of probability. It means such a degree of probability as would satisfy the mind of a reasonable man as to the existence of a fact. Thus herein also the court has to keep the said standard in mind while evaluating the evidence.

FINDINGS AND REASONING

(15) Having considered the rival submissions advanced

by the Ld. Advocates for both sides, perused the record of Regular Civil Suit No. 160/2014 and examined the oral as well as documentary evidence produced before the Ld. Trial Court, the following resonating to the findings are recorded issue-wise:

Findings on Issues framed by the Ld. Trial Court :-

ISSUE NO.1

(16) For deciding the present issue, the Ld. Trial Court observed that the documentary evidence produced by the plaintiff as well as the defendants was not sufficient to conclusively determine the ownership of the suit property. In such circumstances, the ownership could have been ascertained by examining the President, Secretary or any other office bearer of Dilip Co-operative Housing Society. Alternatively, the ownership of the property could also have been established by examining Shri Bharatbhai Chhaganbhai Patel, the original owner and predecessor-in-title of the property, from whom, according to the case of the plaintiff, the suit property was purchased. However, no receipt, voucher, bank record, or any other documentary evidence has been produced by the appellant/Original Plaintiff to establish as to who actually paid the said charges. Furthermore, the appellant/Original Plaintiff has failed to produce even an iota of evidence demonstrating that he paid Rs. 4,00,000/- or any part thereof to any person towards the acquisition of the suit property. In the absence of any proof of exclusive financial contribution, the claim of sole ownership is wholly unsupported. Merely because the name of the appellant/Original Plaintiff was entered in the Society records as

the senior-most family member, it cannot be inferred that he became the sole and exclusive owner or exclusive possessor of the suit property. Therefore, the allegation that the appellant/Original Plaintiff alone is the owner and lawful possessor of the suit property is false, incorrect, and devoid of evidentiary support. Consequently, the relief of declaration of exclusive ownership sought by the appellant/Original Plaintiff cannot be granted.

(16.1) However, no such evidence was led by either of the parties before the Ld. Trial Court. The Ld. Trial Court has specifically recorded that the evidence adduced by the plaintiff was not sufficient to establish the ownership of the suit property. Furthermore, at the appellate stage, the defendant has produced documentary evidence at Mark 13/1 indicating that, as on date, the suit property continues to stand in the name of the original owner. The defendant has also produced an affidavit at Mark 6/1 stating that the written statement filed by him in the suit was incorrect and that the ownership of the suit property vests in his father, who had purchased the same from his self-acquired income. However, Defendant No. 2 has not been afforded an opportunity to cross-examine the deponent or to challenge the said evidence. It also appears that, at the appellate stage, the plaintiff and Defendant No. 1 have joined hands with each other. In such circumstances, where a transposed or collusive situation between the parties has arisen, such evidence cannot be safely relied upon by this Court for arriving at a just conclusion. The court can not keep issue of the ownership undecided this

exercises can not be done before this court, It is necessary that the Ld. Trial Court undertake a detailed consideration of the aforesaid issues and evidence. If such evidence is produced before the Ld. Trial Court and the parties are afforded adequate opportunity to lead evidence and challenge the same, it would facilitate a proper adjudication and determination of the ownership of the disputed property.

ISSUE NO. 2 & 3

(17) With regard to Issue Nos. 2, 3 & 4, the Ld. Trial Court was required to consider and adjudicate upon the evidence produced by the parties before it. However, the Ld. Trial Court has answered the said issues as "undecided". In fact, those issues required a definite finding, but the Ld. Trial Court has failed to determine them in a proper and lawful manner, which does not appear to be justified. A proper and lawful determination of these issues is essential for the effective adjudication of the suit. The Ld. Trial Court ought to have undertaken a detailed examination and analysis of the said issues, which has not been done. Therefore, for the purpose of arriving at a proper determination of the aforesaid issues, it appears just, proper and in accordance with law that the impugned judgment and decree be reconsidered after obtaining the necessary evidence. Since adequate and relevant evidence has not been brought on record for the purpose of deciding the suit, it appears necessary and appropriate to remand the matter so that the parties may be afforded an opportunity to produce the requisite evidence and the aforesaid issues may thereafter be decided on their own merits and in

accordance with law. Accordingly, in view of the foregoing discussion, Issue No. 1 is **unproved** and Issue Nos. 2 & 3 are **kept open for fresh adjudication upon remand**.

ISSUE NO. 4

(18) For deciding the present issue, this Court has considered the pleadings of the parties as well as the oral and documentary evidence available on record. However, as discussed while deciding Issue No.1, the ownership and title of the suit property could not be conclusively determined on the basis of the evidence adduced by the parties. This Court has also observed that further evidence is required for proper adjudication of the ownership of the disputed property. Since the determination of the question of limitation is closely connected with the facts relating to the ownership, cause of action and the rights claimed by the parties, and in absence of sufficient and reliable evidence on record, this Court is unable to record a definite finding on the present issue. Therefore, this issue cannot be effectively adjudicated unless the foundational issues are conclusively determined on the basis of adequate evidence.

ISSUE NO. 5

(19) The entitlement of the plaintiff to the reliefs prayed for is dependent upon the adjudication of the material issues involved in the suit, particularly the issue relating to ownership and other connected issues. As discussed hereinabove, the evidence presently available on record is not sufficient to conclusively determine such foundational issues. This Court has also observed

that proper adjudication of the suit requires additional evidence and a fresh consideration of the relevant issues. In these circumstances and in absence of a conclusive finding on the material issues affecting the rights of the parties, this Court is not in a position to finally determine the entitlement of the plaintiff to the reliefs claimed in the suit. Hence, no definite finding can be recorded on this issue at this stage.

Reasons to Points for Determination by this Court:-

Point No. 1:-

(20) For deciding the present point, this Court has carefully examined the impugned judgment and decree dated 03.08.2023 passed by the Ld. Trial Court, the pleadings of the parties, the oral as well as documentary evidence available on record and the submissions advanced by the respective parties. Upon such examination, it appears that the Ld. Trial Court has failed to properly appreciate the material evidence available on record and has not recorded definite findings on the material issues involved in the suit. The Ld. Trial Court has answered certain issues as “undecided”, though such issues required a clear and lawful determination on the basis of the evidence produced by the parties. It further appears that relevant and necessary evidence required for effective adjudication of the dispute has not been properly considered. Consequently, the impugned judgment and decree cannot be said to be in accordance with law and the same suffers from material irregularity in appreciation of evidence and determination of issues. Therefore, the appellant has successfully demonstrated that the impugned judgment and decree passed by

the Ld. Trial Court is erroneous and liable to be interfered with. Hence, this point is answered in the **Affirmative**.

Point No. 2:-

(21) In view of the findings recorded on Point No.1, this Court is of the considered opinion that interference with the impugned judgment and decree is necessary in the interest of justice. Since the material issues involved in the suit have not been properly adjudicated and adequate findings have not been recorded by the Ld. Trial Court, a fresh consideration of the matter after affording sufficient opportunity to the parties to lead necessary evidence is required. Therefore, the impugned judgment and decree deserve to be set aside and the matter deserves to be remanded to the Ld. Trial Court for fresh adjudication in accordance with law. Accordingly, this point is also answered in the Affirmative. Accordingly, Point No.2 is answered in the **Affirmative** and so far as the Point No.3 i.e. “**What order and decree?**” is concerned, the following order is passed :

: : F I N A L O R D E R : :

- I. The present Appeal is hereby **partly allowed**.
 - II. The judgment and decree dated 03.08.2023 passed by the Ld. Trial Court in **Regular Civil Suit No. 160/2014** are **hereby quashed and set aside**.
 - III. Regular Civil Suit No. 160 of 2014 is hereby **remanded** to the Ld. Trial Court for fresh adjudication in accordance with law.
 - IV. The Ld. Trial Court shall afford adequate
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opportunity to all the parties to adduce further evidence, if any and to cross-examine the witnesses produced by the opposite side.

V. The Ld. Trial Court shall decide the suit independently and uninfluenced by any observations made in the impugned judgment and decree.

VI. The parties are directed to remain present before the Ld. Trial Court on 25.06.2026 without waiting for any further notice.

VII. Record & proceedings (R & P) be sent back to the Ld. Trial Court along with the copy of this judgment.

VIII. No order as to cost.

IX. Decree (if any) be drawn accordingly.

Signed & pronounced in the open Court today on **June 04th, 2026.**

Date : 04.06.2026

Place : Valsad

[Nipa Chandrakant Raval]
Principal District Judge,
Valsad
(Code No. GJ00370)