

GJMR020005202010



Received on : 29/03/2010

Registered on : 29/03/2010

Decided on : 19/02/2026

Exhibit :

**IN THE COURT OF 4TH ADDITIONAL SENIOR
CIVIL JUDGE, MORBI**

Special Civil Suit No. 28/2010

PLAINTIFF :-

1. Heirs of deceased Bhanjibhai Lakhmanbhai Odha

1:1 Premilaben Bhanjibhai

Address : Karia Society, Vavdi Road,
In the street of Shankar Mandir, Morbi.

1:2 Mansukhbhai Bhanjibhai

Address : Karia Society, Vavdi Road,
In the street of Shankar Mandir, Morbi.

1:3 Ratilal Bhanjibhai

Address : Karia Society, Vavdi Road,
In the street of Shankar Mandir, Morbi.

1:4 Laxmiben Bhanjibhai

Address : Bypass Canal Chowkdi, Morbi.

1:5 Geetaben Bhanjibhai

Address : Behind Gokaldas Pragji Gin,
Dhood ni vadi, Shakat Sanala, Taluka – Morbi.

1:6 Vanitaben Bhanjibhai

Address : Vaghpara Street No. 14, Morbi.

1:7 Ranjanben Bhanjibhai

Address : At – Kuntalpur, Taluka – Surendranagar.

1:8 Nitaben Bhanjibhai

Address : Kachori ni vadi, Shakatsanala, Taluka – Morbi.

1:9 Hetalben Bhanjibhai

Address : Bypass, Panchasar Chowkdi, Mahavir nagar, Morbi.

1:10 Heirs of deceased Amitbhai Bhanjibhai

1:10:1 Minor Govindbhai Amitbhai

1:10:2 Minor Mansi Amitbhai

Guardian of Minor Shardaben Amitbhai

1:11 Sushilaben Bhanjibhai

Address : 18, Madhapar, Morbi.

2. Naranbhai Navghanbhai

Age : Adult, Address : Sanala Road, Opposite Avanipark
Society, Dula ni vadi, Near Main Canal, Morbi.

3. Heirs of deceased Shantilal Amarshibhai Dabhi

3:1 Hanshaben W/o Shantilal, Age : 53,

3:2 Chirag Shantilal, Age : 20,

3:3 Kalpesh Shantilal, Age : 20,

Address : Panchasar Road, Near Main Canal,
Ramdevpir Temple, Rola Ratadiya ni vadi, Morbi.

3:4 Saraswatiben W/o Hansrajbhai

Age : 29, Address : Panchasar Road, Kainkada ni vadi,
Near Om Party Plot, Nani Canal Road, Morbi.

3:5 Kirtiben W/o Kalubhai

Age : 27, Address : Sanala Road, Behind Sky Mall,
Hadani ni vadi, Morbi.

3:6 Poonamben W/o Mukeshbhai

Age : 25, Address : Panchasar Road, Dhila ni vadi, Morbi.

4. Bhurabhai Becharbhai Dabhi

Age : Adult, Address : Panchasar Road, Rola Ratadiya ni vadi,
Near Main Canal, Morbi.

Vs.

DEFENDANT :-

1. Ukabhai Mavjibhai Koli

Age : Adult, Address : At Hajnali, Taluka – Morbi.
Currently residing at Navlakhi road, Khijadiya Vanadiya Road,
Besides Bharwad Vada, Morbi.

**Subject – Suit for Cancellation of Sale Deed and Declaration
with Permanent Injunction.**

Advocates:-

Learned Advocate for the Plaintiff's: **Mr. G. L. Dabhi.**

Learned Advocate for the Defendant : **Mr. A. R. Vala.**

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

[1] The present suit is filed by the plaintiffs for cancellation of the registered sale deed no.2084 dt.13.10.1964 pertaining to land bearing Revenue Survey No. 146, measuring A. 2-04 Gunthas, and permanent injunction & declaratory relief. As per plaintiff's the said sale deed is illegal, void and not binding upon the plaintiffs. The brief facts of the present case are that the plaintiffs are the lawful owners and are in peaceful possession and enjoyment of agricultural land bearing Revenue Survey No. 207, admeasuring A.2-04 Gunthas, situated at Village - Madhapar, Taluka - Morbi, which was originally allotted to ancestors of the plaintiffs by the erstwhile Morbi State under a buta article. Since the time of such allotment, the plaintiffs and their ancestors have been continuously cultivating the said land and enjoying the produce thereof. The revenue records also reflect the names of the plaintiffs ancestors namely Odhabhai Devsibhai, Khodabhai Jivabhai and Devabhai Bhavanbhai. As per plaintiff's their possession and ownership have never been disputed earlier. On 16.06.2009, the plaintiffs received a notice from the Mamlatdar, Morbi, under Section 135 - D of the Gujarat Land Revenue Act, informing them about an application moved by one Ukabhai Mavjibhai Koli for proposed mutation entry of land bearing revenue survey No. 146 admeasuring H.0-84-98 based on Sale Deed No. 2084 dated 13.10.1964. Upon obtaining certified copies of the said sale deed from the Mamlatdar's office and the Sub-Registrar, Morbi, the plaintiffs were shocked to discover that the suit land had been shown as sold by persons who had already

expired prior to the date of execution of the alleged sale deed. The plaintiffs submit that the said sale deed is forged, fabricated, illegal and void ab initio, and the same has been created with a malafide intention to usurp the plaintiffs land. During the pendency of the revenue proceedings, the defendants attempted to interfere with the plaintiffs possession and also threatened them with dispossession, thereby giving rise to a serious apprehension of irreparable loss. The plaintiffs came to know about the impugned sale deed only upon receipt of the Mamlatdar's notice dated 16.06.2009. As the defendants have no right, title or interest in the suit land and are attempting to rely upon an illegal document, the plaintiffs have been constrained to file the present suit seeking cancellation of the sale deed, declaration of ownership, and permanent injunction.

[2] Notice was issued to the defendant and the same was duly served. The defendant appeared through his learned advocate and filed objections to the present suit at Exhibit 28. It is contended therein that the present suit is false, frivolous, vexatious and not maintainable in law. It is further contended that the plaintiff has no locus standi and has failed to establish any right, title or interest in the suit land. The registered Sale Deed No. 2084 dated 13.10.1964 is stated to be a valid, legal and genuine document executed for valuable consideration and binding upon the parties, and the allegation that the said document was executed by deceased persons is specifically denied. It is also contended that the plaintiff has never been in possession of the suit land and has suppressed material facts regarding the defendant's continuous,

peaceful and lawful possession and cultivation of the land since 1964. It is further submitted that the suit is barred by limitation, does not disclose any cause of action, is not properly framed, and has been filed with malafide intention to harass the defendant and illegally grab the suit land. On these grounds, it is prayed that the suit deserves to be dismissed with costs.

[3] Plaintiff No. 2, namely Naranbhai Navghanbhai, has filed a counter affidavit at Exhibit 19 in reply to the objections raised by the defendant to the present suit, wherein the contents of the objections are formally denied.

[4] It emerges from the record that the plaintiffs filed an application at Exhibit 5 under Order 39 Rules 1 and 2 read with Section 151 of Civil Procedure Code seeking temporary injunction, which came to be rejected vide order dated 03.06.2011. It was observed there in that the plaintiffs claimed ownership of the suit land from their forefathers and challenged registered Sale Deed No. 2084 dated 13.10.1964 as illegal on the ground that the alleged executors had expired prior to its execution. The defendants, however, contended that the suit land was purchased under a registered sale deed and that the document being more than 30 years old carries presumption of genuineness. It was observed that the plaintiffs failed to produce any pedigree certificate to establish succession or any death certificates to prove that the executors had died prior to the sale deed. In absence of such evidence, the plaintiffs failed to establish a prima facie case and, therefore, on that ground the

application for temporary injunction was rejected.

[5] On the basis of the pleading of the parties and documents on record, issues were framed for adjudication of this suit vide Exhibit 29 as under :

- ૧) શું વાદી સાબિત કરે છે કે, વાદી દાવાવાળી મિલકતના કાયદેસરનો માલિકી કબજો ભોગવટો ધરાવે છે ?
- ૨) શું વાદી સાબિત કરે છે કે, દાવાવાળી મિલકતની તકરારી દસ્તાવેજ તા-૧૩.૧૦.૬૪ના રોજનો પ્રતિવાદીની તરફેણનો છે તે બિલકુલ ખોટો બનાવટી અને ગેરકાયદેસરનો છે ?
- ૩) શું વાદી સાબિત કરે છે કે, દાવામાં જણાવ્યા મુજબ સદર વાદગ્રસ્ત દસ્તાવેજ કરી આપનાર ઓઘાભાઈ દેવશીભાઈ, ખોડાભાઈ જીવાભાઈ તથા દેવા ભવાનભાઈ દસ્તાવેજની તારીખ ૧૩.૧૦.૬૪ના પહેલા ઘણા વર્ષો પહેલા ગુજરી ગયેલ છે અને તેમના અં ગુઠાના નિશાન બનાવટી અને ખોટા દસ્તાવેજમાં કરી ખોટો દસ્તાવેજ પ્રતિવાદીઓએ ઉભો કરેલ છે ?
- ૪) શું પ્રતિવાદી સાબિત કરે છે કે, દાવાવાળો તા.૧૩.૧૦.૬૪ વાળો દસ્તાવેજ કાયદેસરનો સાચો અને અમલ થવા પાત્ર છે ?
- ૫) શું વાદી સાબિત કરે છે કે, દાવામાં માગ્યા મુજબની દાદ મેળવવા વાદી હકદાર છે ?
- ૬) શું હુકમ અને હુકમનામું ?

[6] My findings on the above mentioned issues are as under :

- 1) In Negative
- 2) In Negative
- 3) In Negative

- 4) In Affirmative
- 5) In Negative
- 6) As per final order.

[7] To prove their case the plaintiff has produced the following oral as well as documentary evidence.

Oral Evidence		
Sr. No.	Exh.	Description of Document
1	65	Original Affidavit of Examination-in-chief of Devkaran Savjibhai
2	72	Original Affidavit of Examination-in-chief of Naran Navghan
3	106	Original Affidavit of Examination-in-chief of Kanjibhai Malabhai
4	117	Deposition of Kamleshbhai Chamnjibhai Chauhan, Sub Registrar, Morbi
5	129	Deposition of Hasmukhbhai Ramjibhai Sanchla, Mamlatdar, Morbi City
6	148	Deposition of Hiteshkumar Kantilal Kishori, Talati Cum Mantri, Pindara Village, Taluka Kalyanpur, District Jamnagar
Documentary Evidence		
Sr. No.	Exh.	Description of Document
1	66	Copy of Notice under Section 135 D
2	67	Copy of objection letter submitted to Mamlatdar
3	68	Copy of Village Form No. 6
4	69	Copy of Village Form No. 8-A
5	70	Copy of Village Form No. 7 & 12
6	71	Copy of Saled deed
7	118	Original thumb impression register.
8	119	Copy of letter pertains to theft of revenue record

9	120	Copy of complaint of theft
10	130	Copy of Land Measurement Survey Register
11	131	Copy of Village Form No. 6
12	132	Copy of Village Form No. 6
13	133	Copy of Village Form No. 7, 7-A & 12
14	134	Copy of Village Form No. 7 & 12
15	135	Copy of Village Form No. 8 A
16	136	Copy of Village form No. 7 & 12
17	137	Copy of Village Form No. 6
18	138	Copy of Village Form No. 7
19	139	Copy of Village Form No. 8-A
20	140	Copy of Village Form No. 6
21	149	Copy of Application for Duplicate Death Certificate of Khodabhai Jivabhai
22	150	Original Birth Death Register of Pindara Gram Panchyat
23	151	Copy of Death Certificate of Khodabhai Jivabhai
24	158	Closing pursis

[8] The defendant has produced the following oral as well as documentary evidence.

Oral Evidence		
Sr. No.	Exh.	Description of Document
1	159	Original Affidavit of Examination-in-chief of Uka Mavji
Documentary Evidence		
Sr. No.	Exh.	Description of Document
1	121	Copy of Index
2	122	Copy of letter to Prakash K. Raveshiya, Bond Writer

3	123	Copy of Form No. 3
4	162	Closing pursis

Arguments:-

[9] The Ld. Advocate of plaintiff-side has filed written arguments vide Exh.163. Ld. Advocate G.L.Dabhi argued that, their ancestors had died prior to disputed sale deed no.2084, therefore said sale deed is fraudulent and void. Further he argued that the original sale deed isn't produced by the defendant, non production of original document raises adverse inference against defendant. Further he argued that defendant has failed to prove valid execution therefore pray to allow plaintiff's relief.

[10] The Ld. Advocate of defendant-side has filed written arguments vide Exh.164. Ld. Advocate A.R.Vala argued that, the burden to prove fraud lies upon plaintiff's. Plaintiff's haven't prove that their ancestors have died pripor to execution of sale deed. Further he argued that plaintiff's have relied upon fraudulent death certificate of Khodabhai Jivabhai, which creates serious doubt about plaintiff's case. Plaintiff's haven't examined any independent witness from pindara. Further he argued that Registered sale deed no.2084 is more than 30 years old therefore presumption u/s 90 of evidence act is arise for its execution. Further argued that index copy of regarding registered sale deed also supports the execution. Therefore requested to reject plaintiff's suit with costs.

: Reasons :

[11] I have given my thoughtful consideration to respective

arguments raised by the counsels for the parties and also carefully perused the entire record including written submissions and supporting judgments filed by the parties. The above all issues have been taken together as the same are inter-connected and common evidence has been led by the parties on both-side. The onus of proving issues no.1,2,3 and 5 was upon plaintiff. The plaintiff's have filed the present suit seeking declaration that Exhibit 71 registered sale deed No. 2084 dated 13/10/1964 is forged, illegal and not binding upon them. It is case of the plaintiff that, on dt.16/06/2009 plaintiff's received notice u/s 134-D of Bombay Land Revenue Code from Mamlatdar, thereafter they came to know that on dt. 13/10/1964 defendant had purchased the suit property through registered sale deed No. 2084. The plaintiff contend that their ancestors namely Odhabhai Devsibhai, Khodabhai Jivabhai and Devabhai Bhavanbhai had not executed the said sale deed, as they had already expired prior to 13.10.1964. Therefore according to the plaintiffs the said sale deed is forged and fabricated.

The defendant has denied the allegations and contended that the sale deed is genuine, validly executed and duly registered.

Evidence Regarding Registered sale deed no:-2984 dt. 13.10.1964:-

[12] In present suit the entire case of plaintiff's rests upon two grounds.

- That plaintiff's ancestors namely Odhabhai Devsibhai,

Khodabhai Jivabhai and Devabhai Bhavanbhai died prior to execution of the Exhibit 71 registered Sale deed.

- That the thumb impression appearing on the sale deed and Ex. 151 thumb register is forged.

Both these allegation required strict proof. Before appreciation of evidence it is necessary to consider Section 101 to 103 of the Indian Evidence Act, 1872.

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.

102. On whom burden of proof lies. — The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

103. Burden of proof as to particular fact. — The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

[13] As per the provision of Section 101 to 103 of Evidence Act, the burden of proof lies upon the plaintiffs to prove forgery. In present suit it has come on record vide Exhibit 122 that record of register sale deed was lost in Machchhu river flood in 1979. Therefore, certified copy of Exhibit 71 registered

deed is not available to defendant. Loss of document due to natural calamity is a valid ground for admitting secondary evidence. Therefore, in above circumstances in present case Exhibit 71 xerox copy of registered sale deed is consider as secondary evidence and it is admissible as per Section 65(c) of the evidence act. The Hon'ble Supreme Court of India in case of **Prem singh Vs. Birbal MANU/SC/8139/2006** held as under:-

"27. There is a presumption that a registered document is validly executed. The Onus of proof thus would be on a person who leads evidence to rebut the presumption."

Further, the Hon'ble Supreme court of India in the case of **Union of India Vs. M/s Chaturbhai M. Patel & Co., 1976 AIR 712** held as under :-

"It is well settled that fraud like any other charge of a criminal offence whether made in civil or criminal proceedings, must be established beyond reasonable doubt."

[14] Having noticed the aforesaid position of law. It is settled law that a registered documents carries presumption of validity, the burden lies upon the plaintiff to prove forgery regarding Exhibit-71 registered sale deed. The plaintiff have examined Ex.-65 Witness, he has admitted in cross-examination that "ઓઢાભાઈ દેવશીભાઈ, ખોડાભાઈ જીવાભાઈ અને દેવાભાઈ ભવાનભાઈ ના અવસાનના દાખલા આ કામે રજુ નથી. સાહેદ સ્વેચ્છાએ જણાવે છે કે દાખલા મેળવેલા નથી."

Further, plaintiff himself also admitted in Ex-72 Cross Examination that "ઓઢા, ખોડા, દેવાના મરણના દાખલા આ કામમાં રજુ

નથી. એ વાત ખરી છે કે, દાવાવાળી જમીનનું પ્રમોલગેશન ૧૯૭૦માં થયું તે સમયે ત્રણેય જણા હયાત હતા."

Considering above admitted evidence of plaintiff-side it is proved that plaintiffs doesn't possess death certificates of Odhabhai Devsibhai, Khodabhai Jivabhai and Devabhai Bhavanbhai.

[15] In present case plaintiffs pleaded that their ancestors Odhabhai Devsibhai, Khodabhai Jivabhai and Devabhai Bhavanbhai were died prior to dt.13.10.1964. In present case plaintiff never pleaded that deceased Khodabhai Jivabhai was died at pindara vilage Taluka- kalyanpur District- Devbhumi Dwarka and plaintiff's possess death certificate of Khodabhai. But surprisingly, during the evidence of Exhibit-148 Talati Hitehkumar kantilal kishori, the duplicate copy of death certificate of Khodabhai jivabhai is produced. It is necessary to consider evidence of that witness.

"મને કોર્ટનો સમન્સ મળતાં ઉપલબ્ધ દસ્તાવેજો સાથે આજરોજ કોર્ટ રુબરુ હાજર થયેલ છું. હું તલાટી ક્રમ મંત્રી, પીડારા ગામ તરીકે આશરે દોઢ વર્ષથી ફરજ બજાવું છું. મારી ફરજમાં જન્મ, લગ્ન તેમજ મરણની નોંધણી કરવાનું તથા વેરાઓની વસુલાત, ગ્રામ્ય રોડ બનાવવાની કામગીરીનો સમાવેશ થાય છે. હું તલાટી ક્રમ મંત્રી તરીકે પીડારા ગામ ખાતે ફરજ બજાવતો હતો દરમિયાન એક વ્યક્તિ નામે રામજીભાઈ મનજીભાઈ ડાભી, રહે. મોરબીના ઓએ તા. ૨૫/૫/૨૦૨૨ ના રોજ તેઓના દાદા ખોડાભાઈ જીવાભાઈ ડાભીના ઓનો મરણનો દાખલો ડુપ્લીકેટ કાઢી આપવા માટે અરજી કરેલી. આ અરજી અસલ આજરોજ હું મારી સાથે લાવેલ છું જે રજુ દાખલ આંક

– ૧૪૯ આપવામાં આવે છે. આજરોજ હું મારી સાથે પીડારા ગામનું સને ૧૯૬૩-૬૪ નું જન્મ મરણ રજીસ્ટર લઈ આવેલ છું જે અસલ આજરોજ રજુ રાખું છું. જેને રજુ દાખલ આંક – ૧૫૦ આપવામાં આવે છે. અરજદાર રામજીભાઈ મનજીભાઈ ડાભીના ઓની અરજના અનુસંધાને મે ખોડાભાઈ જીવાભાઈના ઓનું મરણનું ડુપ્લીકેટ પ્રમાણપત્ર કાઢી આપેલ. જેમાં મરણની તા. ૮/૧૧/૧૯૬૩ ના રોજની જણાવેલ. આ પ્રમાણપત્રની હકીકતો મે મારા હસ્તાક્ષરમાં લખેલી તેમજ મે મારા હોદાનો સિકકો મારી તેના પર સહી કરેલી. જે પ્રમાણપત્ર હાલના કામે જેને રજુ દાખલ આંક – ૧૫૧ આપવામાં આવે છે.

In above evidence, the defendant has specifically challenged the genuineness of the death certificate of Khodabhai jivabhai. The cross-examination are as under:-

મારી પહેલા પીડારા ગામે તલાટી કમ મંત્રી તરીકે બેલાભાઈ નામના કર્મચારી ફરજ બજાવતા હતા. તલાટી કમ મંત્રી તરીકે હું સને ૨૦૦૭ થી ફરજ બજાવું છું. ગ્રામ પંચાયતની સ્થાપના થઈ ત્યારથી તલાટી કમ મંત્રીને જન્મ તથા મરણના પ્રમાણપત્ર ઈશ્યુ કરવાની સત્તા આપવામાં આવેલ છે. અરજદાર રામજીભાઈ મનજીભાઈને હું અંગત રીતે ઓળખતો ન હતો. મને ખબર નથી કે કોઈપણ વ્યક્તિ ડુપ્લીકેટ જન્મ – મરણ કે લગ્નનું પ્રમાણપત્ર લેવા આવે તો તેનું સોગંદનામું લ'વું જરૂરી છે કે કેમ. એ વાત ખરી છે કે કોઈ વ્યક્તિને ડુપ્લીકેટ જન્મ – મરણનું કે લગ્નનું પ્રમાણપત્ર આપવામાં આવે તો રજીસ્ટરમાં જે હકીકતો જણાવેલ હોય તે હકીકતને સુસંગત પ્રમાણપત્રમાં વિગત દર્શાવવી પડે. એ વાત ખરી છે કે રજીસ્ટરમાં જણાવેલ વિગત કરતાં વધુ વિગત પ્રમાણપત્રમાં જણાવી શકાય નહીં. મને આજરોજ આંક – ૧૫૧ વાળું મે ઈશ્યુ કરેલ પ્રમાણપત્ર બતાવવામાં આવે છે જે જોઈને જણાવું છું કે તેમાં માતાનું નામ જીવીબેન જીવાભાઈ લખેલ છે. એ વાત ખરી છે કે આંક – ૧૫૦ વાળા રજીસ્ટરમાં

જીવીબેન જીવાભાઈનો ઉલ્લેખ નથી. એ વાત ખરી છે કે આંક - ૧૫૦ વાળા રજીસ્ટરમાં પિતાના નામનું અલગ કોલમ નથી. એ વાત ખરી છે કે આંક ૧૫૧ વાળા પ્રમાણપત્રમાં કોલમ નં. ૮ માં જે સરનામું જણાવેલ છે તેવું સરનામું આંક-૧૫૦ ના રજીસ્ટરમાં લખેલ નથી. એ વાત ખરી છે કે આંક ૧૫૧ વાળા પ્રમાણપત્રમાં કોલમ નં. ૭ માં જે સરનામું જણાવેલ છે તેવું સરનામું આંક - ૧૫૦ ના રજીસ્ટરમાં લખેલ નથી. દેવભુમી ધ્વારકા અલગ જુદા તરીકે આશરે ૨૦૧૭-૧૮ માં અસ્તિત્વમાં આવેલ. એ વાત ખરી છે કે આંક- ૧૫૦ ના રજીસ્ટરમાં ખોડાભાઈના નામ પાછળ પિતાનું નામ જીવાભાઈ તરીકે દર્શાવેલ છે. એ વાત ખરી છે કે આંક - ૧૫૦ ના રજીસ્ટરમાં મોતનું કારણ બધા જ ઈશ્મોના નામ સામે બીમારી હોવાનું જણાવેલ છે. એ વાત ખરી નથી કે કોઈપણ વ્યક્તિનું મૃત્યુ નોંધવાનું હોય તો સ્મશાનની ચીઢી આધારે જ નોંધ કરવામાં આવે છે. સાહેદ સ્વેચ્છાએ જણાવે છે કે ગ્રામ્ય વિસ્તારમાં આવી કોઈ પ્રથા નથી. મૃત્યુના કારણમાં કોઈ વ્યક્તિ બીમારી જણાવે તો તે બીમારી અંગે હું યોગ્ય તે પુછપરછ કરું છું. એ વાત ખરી છે કે મારા માનવા પ્રમાણે મૃત્યુનું કારણ બીમારી જણાવેલ હોય તો વેરીફિકેશન કરવું જોઈએ. મને ખ્યાલ નથી કે ડુપ્લીકેટ પ્રમાણપત્ર કઢાવવા માટે જે વ્યક્તિ અરજી આપે તે વ્યક્તિનું સોગંદનામું જરૂરી છે કે કેમ. મારી રુબરુ અરજી કરનાર ઈશ્મ રામજી મનજી ડાભી છે કે કેમ તે બાબતે મે કોઈ ખરાઈ કરેલ નહીં. એ વાત ખરી છે કે કોઈપણ વ્યક્તિ કોઈ અરજી આપે તો ઈન્વર્ડ રજીસ્ટરમાં તેની નોંધ કરવી જરૂરી છે. આજરોજ હું ઈન્વર્ડ રજીસ્ટર લાવેલ નથી. મને આજરોજ પ્રતિવાદીના વિ.વ. શ્રી ની કસ્ટડીમાંથી રામજી મનજી ડાભીએ જે અરજી આપેલ તે અરજીની ઝેરોક્ષ જે મે મારા વકીલશ્રી ને આપેલ તે જ છે. એ વાત ખરી છે કે આ અરજીમાં તારીખ લખેલ નથી. સાહેદ સ્વેચ્છાએ જણાવે છે કે અસલ અરજીમાં તારીખ છે. એ વાત ખરી છે કે આંક - ૧૪૯ વાળી અસલ અરજી આજરોજ મને વકીલ શ્રી ડાભી સાહેબે આપેલ છે. એ વાત ખરી છે કે હાલની પરીસ્થિતિએ જે વ્યક્તિ મરણની જાણ કરતી હોય તે વ્યક્તિનું નામ રજીસ્ટરમાં નોંધવામાં આવે છે અને જે તે વ્યક્તિની સહી પણ

લેવામાં આવે છે. સાહેદ સ્વેચ્છાએ જણાવે છે કે પહેલા આ પદ્ધતિ ન હતી. મરણ જનાર પીડારા ગામે કઈ રીતે આવેલા અને કઈ રીતે બીમારીથી મૃત્યુ પામેલા તેને લગતા કોઈ દસ્તાવેજ મારી પાસે નથી. મને ખ્યાલ નથી કે સરકારના નીતી નિયમ મુજબ જન્મ મરણનું રજીસ્ટર નિયત નમુનામાં અને બાઈન્ડીંગ કરેલું ફરજિયાત પડે કેમ. સાહેદ સ્વેચ્છાએ જણાવે છે કે પુરું ચડાવવામાં આવે છે. એ વાત ખરી છે કે ખોડા જીવા નામની ઘણી બધી વ્યક્તિ હોઈ શકે છે. એ વાત ખરી છે કે હું રેકર્ડ ઉપરથી જણાવી શકું નહીં કે ખોડા જીવા કઈ જ્ઞાતિના હતા. મને ખબર નથી કે ખોડા જીવા સતવારા જ્ઞાતિના હતા કે કેમ.

—:કોર્ટ દ્વારા :—

સવાલ :- તમોને કોઈ વ્યક્તિ ડુપ્લીકેટ જન્મ મરણ પ્રમાણપત્ર મેળવવા માટે અરજી આપે તે પહેલા તમો ડુપ્લીકેટ જન્મ કે મૃત્યુનું પ્રમાણપત્ર આપો છો?

જવાબ :- ના જી. સાહેબ.

સવાલ :- આંક - ૧૪૯ ની અરજીમાં કઈ તારીખ જણાવેલ છે?

જવાબ :- આંક - ૧૪૯ ની અરજી વાંચી જણાવું છું કે તમાં તા. ૨૫/૦૫/૨૦૨૨ લખેલ છે.

સવાલ :- આંક - ૧૫૧ વાંચી જણાવો કે તેમાં પ્રમાણપત્ર કાઢી આપ્યાની કઈ તારીખ લખેલ છે?

જવાબ :- આંક - ૧૫૧ નું પ્રમાણપત્ર ઈશ્યુ કર્યાની તારીખ ૨૦/૦૫/૨૦૨૨ મે મારા હસ્તાંશરે લખેલ છે.

સવાલ :- કય સજગો અરજીની તારીખ પહેલા આ મૃત્યુનું આંક ૧૫૧ વાળું પ્રમાણપત્ર આપવામાં આવેલ છે?

જવાબ :- સાહેદ જણાવે છે કે આંક - ૧૪૯ વાળી અરજી આજરોજ મને પ્રથમવાર આપવામાં આવેલ.

સવાલ :- જો આંક - ૧૪૯ વાળી અરજી આજરોજ સૌ પ્રથમવાર આપવામાં આવી તો આંક - ૧૫૧ નું પ્રમાણપત્ર શેના આધારે ઈશ્યુ કરેલ? જવાબ :- સાહેદ જણાવે છે કે જે તે વખતે અરજી આપેલી તે અરજી

મને ઓફીસમાં મળેલી નહીં તેથી મેં આંક ૧૪૯ વાળી નવી અરજી કરવાનું જણાવેલ.

સવાલ :- ઉપરોક્ત જવાબવાળી હકીકત તમે ક્યારે જણાવેલ?

જવાબ :- આ હકીકત મેં દસેક દિવસ પહેલાં અરજદાર રામજી મનજીને જણાવેલ.

સવાલ :- સૌ પ્રથમવાર તમે કોર્ટમાં આવ્યા ત્યારે આંક - ૧૪૯ વાળી અરજી તમોની પાસે હતી કે કેમ?

જવાબ :- ત્યારે મારી પાસે આ અરજી ન હતી.

સવાલ :- તમોએ કોર્ટને જાણ કરેલ કે અસલ અરજી મળી આવતી નથી?

જવાબ :- મેં કોર્ટને જાણ કરેલ નથી.

સવાલ :- એ વાત ખરી ને કે તમોએ જુબાની આપતા અગાઉ અને સરતપાસ દરમિયાન પણ આંક - ૧૪૯ વાળી અરજી આજરોજ મેળવેલ હોવાની હકીકત જણાવેલ નથી?

જવાબ :- હા જી.

સવાલ :- જુબાની ચાલુ થયા અગાઉ આ હકીકત નહીં જણાવવાનું શું કારણ?

જવાબ :- મને એમ લાગેલ કે હું જે જણાવું છું તે તમામ હકીકત ચાલી જશે જેથી જાણી જોઈને હું સોગંદ ઉપર ખોટું બોલેલ છું.

[16] Upon Careful appreciation of above evidence of Talati's , this court finds that Ex.151 death certificate of Khodabhai was issued in suspicious circumstances, therefore it affect the credibility of said certificate. In so far as the conduct of above talati is concerned, for giving false evidence no proceedings was initiated due to his death after above deposition. His death certificate is produced vide Ex.157.

[17] As per the provision of civil procedure code, the civil litigation is governed by the principle that parties must plead

material facts and can not travel beyond their pleadings. It is necessary to consider provision of order VI rule 2:-

2. Pleading to state material facts and not evidence.

(1) Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved.

(2) Every pleading shall, when necessary, be divided into paragraphs, numbered consecutively, each allegation being, so far as is convenient, contained in a separate paragraph.

(3) Dates, sums and numbers shall be expressed in a pleading in figures as well as in words.

As per the above provision "*Pleading shall contain material facts on which the party relies.*" The Hon'ble Supreme Court of India in the case of **Bachhaj Nahar Vs. Nilima Mandal (2008) 17 SCC 491**, dealt with the issue as to whether court can go beyond what is pleaded in pleadings for adjudication ? In above judgment the Hon'ble Supreme Court of India held that:-

Para 8:- The High Court, in this case, in its obvious zeal to cut delay and hardship that may ensue by relegating the plaintiffs to one more round of litigation, has rendered a judgment which violates several fundamental rules of civil procedure. The rules breached are

:- (i) **No amount of evidence can be looked into, upon a plea which was never put forward in the pleadings.** A question which did arise from the pleadings and which was not the subject matter of

an issue, cannot be decided by the court.

(ii) A Court cannot make out a case not pleaded. The court should confine its decision to the question raised in pleadings. Nor can it grant a relief which is not claimed and which does not flow from the facts and the cause of action alleged in the plaint.

(iii) A factual issue cannot be raised or considered for the first time in a second appeal.

[18] Having noticed the aforesaid position of law, it is a settled and fundamental principal that pleadings are the foundation and new evidence can not improve or substitute them. In present suit, the plaintiff's haven't specifically pleaded that death of deceased Khodabhai occurred at Pindara, Devbhumi Dwarka district and required death entries was recorded at Pindara Gram-panchayat. As per plaint, plaintiff's and their ancestors are from morbi district. There is no record to suggest that deceased Khodabhai resided at pindara at any relevant time. Further death Certificate of khodabhai jivabhai wasn't produced along with suit. Further Plaintiff's Ex.5 Application was also rejected on the ground that plaintiff's have not produced death certificates of their ancestor. In Ex.148 cross-examination the talati has admitted that Ex.151 death certificate was issued prior to the application of Ramjibhai. Further in entry no.4 of Ex.150 original death register it doesn't mention the mother name and address of the deceased. As per the lawfully procedure death certificate must strictly reflect the entry recorded in the original register, it can not contain additional

particulars which are absent in the foundational primary evidence record. The talati could not satisfactorily explained from what source were such details obtained ? This unexplained discrepancy undermines credibility of Exhibit.151 death certificate. As per **Section 35 of the Indian Evidence Act, 1872 only entries actually recorded in official registers are relevant.** Further as per Section 74 and 77 of Evidence Act above certificate must faithfully reproduced the content of original death entry register. From above evidence it is proved that Exhibit.151 death certificate Wasn't issued in the ordinary course of official duty. Hence, it is proved that Exhibit.151 death certificate isn't genuine and it is a fabricated document created for the purpose of litigation. In present suit plaintiff's have relied upon Exh.112 list documents. But said Mark-112/1 to Mark-112/4 were neither exhibited by plaintiff-side nor given any evidence to prove that documents.

Further to prove possession plaintiff's have relied upon Ex.106 witness evidence but said witness has admitted in cross-examination that he doesn't know what was written in his evidence on affidavit. Therefore plaintiff's claim isn't supported by Exh.106 witness. The plaintiff's further relied upon Ex.67 to Ex.70 revenue records. But said revenue records aren't conclusive proof of possession. No other evidence regarding possession is produced by the plaintiff's. Therefore plaintiff's have failed to prove their claim of possession over the suit property.

[19] The plaintiff case rests upon the alleged death of their ancestors prior to sale deed and the only documentary support for such claim has been found fabricated. On the contrary, the plaintiffs have relied upon forged Exhibit. 151 death certificate therefore the entire case of plaintiff becomes doubtful. Above situation seriously affects the credibility of the conduct of plaintiff.

Evidence Regarding Thumb Book Register and copy of index book no.1:-

[20] In present suit plaintiff has examined sub-registrar vide Exh.117. During deposition of the sub-registrar vide Exh. 118. Original thumb book register dated 02/07/1964 to 17/01/1965 is produced. The learned advocate of plaintiff argued that plaintiff's ancestors Odhabhai Devsibhai, Khodabhai Jivabhai and Devabhai Bhavanbhai were died prior to sale deed date 13/10/1964, therefore thumb impression in the Exh.71 registered sale deed and Exh.117 thumb book were forged. Under Section 101 Indian Evidence Act, the burden of proof to prove above fact is upon plaintiff. As per **Section 45 of the Indian evidence act** opinion of fingerprint expert is necessary when thumb impression is disputed. Therefore to prove forgery of thumb impressions the plaintiffs must have produced any reliable thumb impressions of his ancestors Odhabhai Devsibhai, Khodabhai Jivabhai and Devabhai Bhavanbhai.

However, in present suit plaintiff have neither examine

fingerprint expert nor produced any reliable/admitted thumb impression of deceased Odhabhai Devsibhai, Khodabhai Jivabhai and Devabhai Bhavanbhai. As per provision of Section 101 to 103 of Evidence Act the burden of proving forgery lies upon the plaintiffs.

[21] The impugned Exh. 71 document is a registered sale deed executed before a statutory authority in year 1964. Registration carries presumption of regularity and validity. In Exhibit 71 registered sale deed at last page it is mentioned that "૧ નંબરની બુકની નંબર ૨૦૬૧ના પાના નં ૯૧ થી ૯૩ અનુક્રમ ૧૦૬ માં નોંધ્યો."

The sub-registrar has given evidence that, year 1964 original index book no. 1 and index book no. 2 were stolen from sub-registrar office on date 11/09/2016. The copy of FIR and letter to are produced vide Exhibit 119 and 120. Hence, original index book no. 1 was stolen therefore secondary evidence regarding that is admissible as per Section 65(c) of the evidence act. In present suit defendant has produced copy xerox copy of certified Index No. 1 vide Exhibit 121. Considering Exhibit 121 it reflects names of executors Odhabhai Devsibhai, Khodabhai Jivabhai and Devabhai Bhavanbhai and purchaser Ukabhai (defendant), date of registration and place of property. The said index entry corroborates execution and registration of Exhibit 71 registered sale deed. The said copy of public register even if secondary carries stronger evidentiary value than a private document because it is derived from official record. There is presumption of regularity in official acts as per Section 114(e) of

the Indian Evidence Act.

[22] The impugned Exh. 71 Sale deed is of year 1964, more than 43 years old at the time of suit, the said sale deed entries were also supported by Exh.121 index entries. The impugned Exhibit 71 Sale deed is more than 30 year old therefore an additional presumption under **Section 90 of the Evidence Act** also arise regarding its execution.

[23] In present suit learned advocate of plaintiff argued that original sale deed is not produced by the defendant. It is admitted fact from defendant-side that he hasn't produced original sale deed No. 2084. However, **it is settled law that the plaintiff must stand on the strength of his own case. The plaintiff cannot succeed merely on the weakness of defendant's evidence.** The burden of proving fraud was lies upon the plaintiff, but plaintiff have utterly failed to establish fraud. The conduct of the plaintiff in relying upon Exh.151 fabricated death certificate is blame worthy. Accordingly the plaintiff has not approached the court with clean hands. Therefore, mere non-production of the original sale deed does not automatically prove the plaintiff's case. Hence, the plaintiff cannot succeed merely by pointing out alleged weakness in the defendant's evidence because plaintiff's own case is unsupported by reliable evidence.

[23] In above circumstances plaintiff's have utterly failed to establish fraud. Hence, the plaintiff's have failed to discharge the burden under Section 101 to 103 of the Evidence Act. Upon full consideration of pleadings, evidence on record and finding

recorded here in above issues no.1, 2, 3 and 5 are decided against the plaintiffs and issue no. 4 decided in favour of defendant, and for issued no.6 this court passes the following final order.

: Order :

- The suit of the plaintiff's is here by dismissed with costs.
- The plaintiff's shall pay Rs. 25,000/- (Rupees Twenty Five Thousand Only) costs to defendant.
- Decree to be drawn accordingly.

Signed and pronounced in the open Court today on this 19th day of February, 2026 at Morbi.

Date : 19/02/2026

Place : M o r b i

(Mrs. Chandni Yuvrajsinh Jadeja)

4th Additional Senior Civil Judge &
Additional Chief Judicial Magistrate

M o r b i

U. I. C. No. GJ-01345

/HJK/