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**IN THE COURT OF 6th ADDITIONAL SENIOR CIVIL
JUDGE, (D.S.THAKAR), AT SURAT.**

Sp.C.S.No.127/2009

Ex.486

Plaintiffs :-

Legal heirs of D.Jaysukhben D./o. Thakorbbhai Manchharam

(1) Yashvantlal Jagdishbbhai Patel (Husband).

Abated during pendency of suit

(2) Dipak Yashvantlal Patel (Son)

By caste :- Hindu Kanabi, Age :- 44, Occ.: – Business,
Res.: – 13, Aradhana Co. Op. Housing Society,
New Rander Road, Surat.

(3) Chhaya Yashvantlal Patel (Daughter)

By caste :- Hindu Kanabi, Age :- 44, Occ.: – Business,

Resi.:– 13, Aradhana Co. Op. Housing Society,
New Rander Road, Surat.

(4) Asha Yashvantlal Patel (Daughter)

By caste :– Hindu Kanabi, Age :– 44, Occ. :– Business,
Resi.: – 13, Aradhana Co. Op. Housing Society,
New Rander Road, Surat.

***The Plaintiff No.2 to 4 themselves as well as
legal heirs and representative of Plaintiff No.1.***

V/s

Defendants :-

(1) Smt. Leelavati @ Liliben D./o. Thakorbhai Manchhabhai

By Caste: – Hindu Kanabi, Age :– 69 years, Occ. :–Housewife,
Add. :– Saraswati Apartment, Wing-C, 2nd Floor, 202,
Andheri West, Mumbai.

(2) Smt. Urmilaben D./o. of Thakorbhai Manchhabhai

By Caste:– Hindu Kanabi, Age:– 66 years, Occ.:– Housewife,
Add.:– Village Ichhapore, Tal.:– Choryasi, Dist.:– Surat.

***The Defendant No.1, 2 themselves as well as
Legal heirs and representative of Jaysukhben.***

(3) Pushpaben Wid./o. Yogeshchandra Naranji Nagarbhai

Abated during pendency of suit,

Legal Heir has been joined as per order below Exh.146

- (3-A) Bhavnaben D./o. Yogeshbhai Naranji Nagarbhai
and W./o. Harishbhai Patel
Age:– Adult, Occ.:– Agriculture and Housewife,
Add.:– Tulsivan Raw-house, Jahangirpura, Surat.
- (4) Prakashbhai Yogeshbhai
By Caste:– Hindu Kanabi, Age: – 33 years, Occ.:– Housewife,
Add:– Ratneshwar Mahadev Street, Rander, Surat.
***Defendant No.4 himself as well as
Legal heir and representative of Defendant No.3.***
- (5) Kishorchandra Nagarji Patel
By Caste:– Hindu Kanabi, Age:– 50 years, Occ.:– Housewife,
Add.:– Ratneshwar Mahadev Street, Rander, Surat.
- (6) Dipikaben Wife of Kishorchandra Nagarji
By Caste:– Hindu Kanabi, Age:– 33 Years, Occ.: – Housewife,
Add: – As above.
- (7) Jayeshkumar Kishorchandra
By Caste:– Hindu Kanabi, Age:– 33 Years, Occ.:–Agriculture,
Address – As above.
- (8) Maniben Wid./o. Thakorbbhai Mancharam
Abated during pendency of suit.
- (9) Minaxi Yashvantraai Patel (Daughter)
By Caste:– Hindu Kanabi, Age:– 37 Years, Occ.: – Housewife,
Add.: – 192/A, North Street, Velington, Dhimaru,
Center Beuro, New Zeland.

***Defendant No.9 herself and
Legal heir and representative of Plaintiff No.1.***

No.10 Joined as per order below Exh.65 on dt.21/05/16

- (10) Bhavnaben Wife of Prakashbhai Yogeshbhai
By Caste:– Hindu Kanabi, Age:– Major, Occ: – Housewife,
Add.:– Ratneshwar Mahadev Street, Rander, Surat.

No.11 & 12 are Joined as per order below Exh.152 on dt.03/08/22.

- (11) Anilkumar Jayantibhai Patel
Age:– 50 years, Occ.:– Agriculture and Business,
Add.:–10-11-12, Patel Kibuts, B/h Padariya Mohalla,
Adajan, Surat.
- (12) Rohitkumar Jayantibhai Patel
Age:– 48 years, Occ.:– Agriculture and Business,
Add.:– As above.

***No.13. 13/1 to 13.6 are Joined as per order below
Exh.172 on dt.22/11/22.***

- (13) Shri Hari Developers (A Partnership Firm)
Occ.:– Business,
Add.:– Nathabhai's Wadi, Hirabag, Varachha Road, Surat.
Through its Partners.
- (13.1) Jitendrabhai Nathubhai Katargamwala
Age:– 65 years, Occ.:– Business,

Add.:– As above.

(13.2) Virendrabhai Nathubhai Katargamwala

Age:– 62 years, Occ.:– Business,

Add.:– As above.

(13.3) Manishbhai Mahendrabhai Katargamwala

Age:– 47 years, Occ.:– Business,

Add.: – As above.

(13.4) Himanshu Mahendrabhai Katargamwala

Age :– 45 years, Occ.:– Business,

Add.:– As above.

(13.5) Ritesh Madhusudan Katargamwala

Age:– 42 years, Occ.:– Business,

Add.:– As above.

(13.6) Nikhil Dhansukhbhai Patel

Age :– 49 years, Occ.:– Business,

Add.: – 24, Gram Laxmi Society, College Road,
Amroli, Surat.

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**Subject : Suit for partition of share and accounts
and for permanent injunction...**

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Appearances :-

Plaintiff No.1 died during pendency of suit.

Defendant No.8 died during pendency of suit.

Ex-parte against Defendant No.9.

Shri J.J.Gandhi Learned Advocate for Plaintiff No.2.

Shri K.M.Patel Learned Advocate for Plaintiff No.3 & 4.

Shri V.D.Jagirdar Learned Advocate for Defendant
no.1,2,3A,4 to 7 and 10.

Shri M.J.Gandhi Learned Advocate for Defendant No.11 & 12.

Shri Z.M.Shaikh Learned Advocate for Defendant No.13,
13/1 to 13/6.

Note:- As the Facts, Evidences, documents of present suit voluminous and discussion of the case runs into 288 pages, I think it proper to give following Index with proper title for better convenience, understanding and for easy reference for parties and their Ld. Advocates as well reader of this Judgment.

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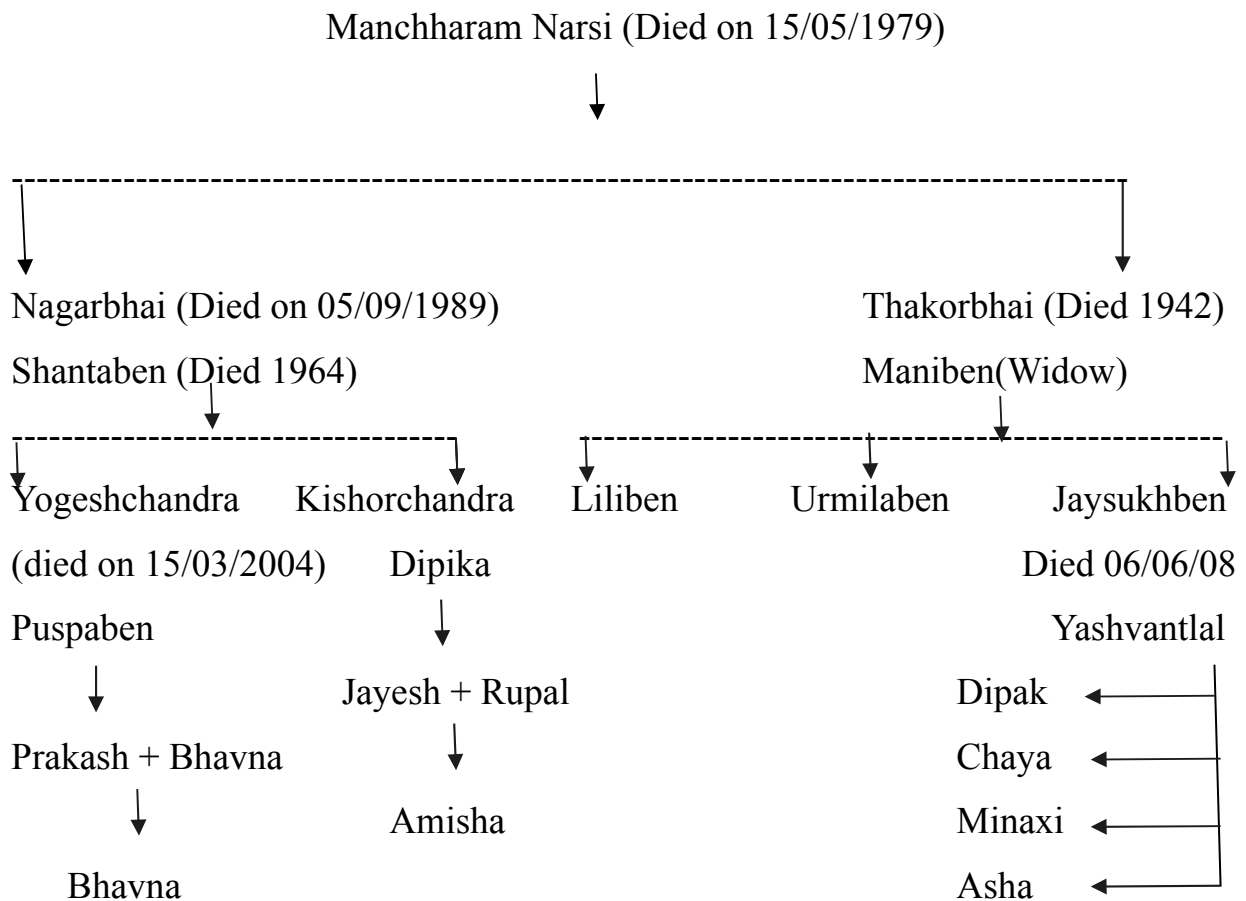
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:: J U D G M E N T ::

1] Brief Case of Plaintiffs:-

(1.1). It is the say of the Plaintiffs that they belong to Hindu Kanabi Patel community, having Indian citizenship and permanent residence at Rander, Surat. It is the say of the Plaintiff that Manchharam Narsibhai Patel was their great grand-father and conman ancestor of their family who died intestate on dt.15/05/1979 and pedigree and genealogy of his family is as follows;



(1.2) D.Manchharam Narsibhai Patel had two sons namely Nagarbhai and Thakorbbhai who died in the **Year 1942** leaving behind him as his legal heirs, Widow Maniben i.e. Defendant No.8 and three daughters namely Liliben i.e. Defendant No.1, Urmilaben i.e. Defendant No.2 and D.Jaysukhben, who died on **dt.06/06/2008** leaving behind her as her legal heirs, her husband Yashvantlal i.e. Plaintiff No.1 and Son Dipakkumar i.e. Plaintiff No.2, and two daughters namely Chhayaben i.e. Plaintiff No.3 and Asha i.e. Plaintiff No.4.

(1.3) D.Manchharam Narsibhai Patel's second son namely D.Nagarbbhai died in the **Year 1989** and his wife Shantaben had died prior to him in the Year 1964, leaving two sons namely Yogeshchandra and Kishorchandra i.e. Defendant No.5. Yogeshchandra had died on dt.15/03/2004 leaving as his legal heirs, his Widow Pushpaben i.e. Defendant No.3, Son Prakashbbhai i.e. Defendant No.4 and legal heirs of D.Nagarbbhai's Son Kishorchandra i.e. Defendant No.5, Kishorchandra's Wife namely Dipikaben i.e. Defendant No.6 and son namely Jayeshbbhai i.e. Defendant No.7, who are proper parties and joined in present suit. It is the say of the Plaintiffs that D.Manchharam Narsibhai Patel's two sons namely Nagarbhai and Thakorbbhai were living in joint undivided family and having joint movable and immovable properties. D.Manchharam Narsibhai Patel died intestate on **dt.15/05/1979** leaving scheduled properties (which are given at the end of the Plaint as Schedule, Schedule-A and Schedule-B) after

order below amendment application of the Plaintiffs' vide Exh.8 and Exh.65, including agriculture and other immovable properties which are as under;

SCHEDULE

Sr. No.	Village	Survey No.	Block No.	Ad-measuring	Akar	Court fee stamp value	Court fee 1/2 portion	Market value
1.	Jahangirabad	148/2B 154/2B 154/1B2B 154/2B 181/1-2 149/B 16/A 153	20/1	11-83-71	181-87	-	1820	-
2.	Jahangirabad		20/2	1-31-52	20-44	408	204	
3.	Jahangirabad		11			191	96	
4.	Jahangirabad		13	0-74-87	16-68	333	166	
5.	Jahangirabad		56	0-16-19	2-31	41	20	
6.	Jahangirabad		69	0-28-33	3-99	80	40	
7.	Jahangirabad		179	0-16-19	3-10	61	30	
8.	Jahangirabad		184/1	1-92-23	32-19	643	321	
9.	Rander	296		1-14-32	34-90	698	349	
10.	Rander	298		1-20-39	35-81	716	4458	
12.	Rander	299		0-03-03	00-90	20	10	
13.	Rander	330		0-03-03	01-00	20	10	
14.	Ratneswar Mahdev Street House bearing Tenement No.16/A-09-0031-001(Rander) having Entry No.2/109					-	Rs.5 lakhs	Rs.10 lakhs
15.	Khadi Fadiya House bearing Tenement No.16/A-09-0031-001(Rander) having Entry No.2/122-123					-	Rs.2 1/2 lakhs	Rs.5 lakhs

SCHEDULE-A

Sr.No.	Village	Old Block/Survey No.	Ad-measuring(H.Ar. Sq.mtr)	Aakar (In Rs.)	New Block/Survey No.
1.	Kachholi	759/Peki 2	0-42-64	17.04	603
2.	Kachholi	759/Peki 3	0-63-42	25.35	604
3.	Dhanori	397	1-58-16	10.81	656

SCHEDULE-B

Sr.No.	Village	Survey No.	Block	Ad-measuring(H.Ar. Sq.mtr)	Aakar (In Rs.)	Court Fee	Court fee 1/2	Market Value
1.	Veluk	191/2 191/3 191/4	279	2-80-25 (6-30)	29.75	1190	10	-
2.	Sarol	25 26 27 28	104	10-66-35	107-00	4280	300	-
3.	Narthana	321/1 318/1	335	1-73-00 (4-11)	17-12	69	10	-

(1.4) It is the say of the Plaintiffs that after death of Manchharam Narsibhai Patel, legal heirs of his two branches of his two sons i.e. Nagarbhai and Thakorbbhai got equal $\frac{1}{2}$ shares in all his properties as per the Hindu Undivided Family. Thakorbbhai Manchharam Patel died intestate and his widow namely Maniben i.e. Defendant No.8 and his three daughters namely Liliben, Urmilaben and Jaysukhben and legal heirs of D.Jaysukhben i.e. Plaintiff No.1 to 4, the Defendant No.9, Defendant No.1 and 2

have joint undivided $\frac{1}{2}$ shares as legal heirs of branch of D.Thakorbhai Manchharam Patel. That as the Defendant No.1 and 2 are married daughters, they are living at their in-laws house out of Rander, Surat and as they are legal heirs of D.Thakorbhai, they are joined as party in the present suit. The Defendant No.8 i.e widow of Thakorbhai is living with Defendant No.3 to 7, but the Defendants are not maintaining her, because she is illiterate lady of old age. The Defendant No.9 is settled in New-Zealand after her marriage. After death of Manchharam Narsibhai Patel, D.Nagarbhai, in capacity of male Karta of joint family, had administered family properties and after his death, his sons namely D.Yogeshbhai and Kishorbhai i.e. Defendant No.5 were administering all the disputed properties. After death of Yogeshbhai, his legal heirs i.e. Defendant No.3 and their son Defendant No.4 have become interested persons. The Defendant No.5 to 7 are legal heirs of D.Nagarbhai's branch.

(1.5) It is the say of the Plaintiffs that the Defendant No.8 Maniben, is widow and illiterate lady living with the Defendant No.3 to 7 in their home and therefore, the Defendant No.5 is represented himself as Male-Karta, an administrator of the properties of his branch and therefore, the Defendant No.8 is dependent on him in respect of income and administration of disputed properties. It is the say of the Plaintiffs that the Defendant No.3 to 7 or any of them, in the guise of agriculture loan, have obtained thumb-impression of the Defendant No.8 and

she was not informed about purpose of such thumb-impression, but no written document was executed by her in favour of the Defendant No.3 to 7 in respect of inheritance right and share or she has not waived her right in their favour. The Defendant No.3 to 7 have started attempt to delete name of the Defendant No.8 any how from the records of the disputed properties. It is the say of the Plaintiffs that there is a change of intentions and behaviour of the Defendant No.5. The Defendant No.5, on behalf of the Defendant No.3 to 7 have not entered names of the Defendant No.8's daughters in the revenue records as legal heirs of branch of D.Thakorbhai Manchharam and deleted name of the Defendant No.8 and thereby they effected Mutation Entry No.1999 based on bogus and forged documents. It is the say of the Plaintiffs that they came to know that the Defendant No.3 to 7 are trying to grab their rights in capacity of legal heirs of their predecessor-in-title of the D.Jaysukhben d/o. Thakorbhai Manchharam and therefore, they have to file the present suit to get their share.

(1.6) The Plaintiffs have alleged that they came to know that the Defendant No.3 to 7 have illegally administrated the disputed properties without informing and without obtaining their consent. They further allege that the Defendant No.3 to 7 have not given account or income of the disputed properties and thereby, they are trying to enter names of third persons and they are giving false and frivolous answers to the Plaintiffs. It is the say of the Plaintiffs that without any rights or title, the Defendants in

collusion of each other have executed registered Sale-deed for **Block No.11** on dt.24/05/2018, which is registered before the Sub-Registrar Office, Surat at **Sr.No.0394**, for **Block No.13** registered at **Sr.No.0393**, for **Block No.20/2** registered at **Sr.No.0392**. It is the say of the Plaintiffs that all the said registered Sale-deeds are false, illegal and *void-ab-initio* and not binding to them. It is the say of the Plaintiffs that the Defendants would not get any right or title based on said Sale-deeds and they have no right to alienate, transfer or change the identity of the disputed properties.

(1.7) The Plaintiffs have alleged that they came to know that though the Defendants have no right or title to transfer Block no.20/1 having Town Planing Scheme No.43 (which will be hereinafter referred as T.P.Scheme) Jahangirabad bearing Final Plot no.8/A and 8/B, they have executed registered **Sale-deed no.18319 for Final Plot no.8/B ad-measuring 10708 Sq.Mtr.** on dt.05/08/2017 illegally and it is null and void document not binding to the Plaintiffs. It is the say of the Plaintiffs that the Defendants would not get any right or title based on said Sale-deed and they have no right to alienate, transfer or change the identity of the disputed properties.

(1.8) It is the say of the Plaintiffs that their names are not there in the revenue records or in schedule properties i.e. disputed properties, but the Defendants names are there and therefore, all the transactions which are done by the Defendant No.3 to 7 without their knowledge and consent and on back of the Plaintiffs, done by

them illegal and unlawful. It is the say of the Plaintiffs that the Defendant No.3 to 7 have no right or title to transfer or to alienate disputed properties particularly in respect of ½ share of the branch of D.Thakorbhai Manchharam Patel and therefore, they have filed present suit. It is the say of the Plaintiffs that as per their knowledge, the Defendant No.3 to 7 are representing the branch of D.Nagarbhai Manchharam Patel and they are falsely denying right of the Plaintiffs.

(1.9) The Plaintiffs have stated the cause of action in Para No.13 of the plaint arisen last on dt.15/12/2008 when the Defendants attempted for mutation entry. The Plaintiffs have claimed their right as legal heirs of 1st schedule of D.Thakorbhai Manchharam Patel as ½ share in disputed properties along with the right of the Defendant No.1, 2, 8 and 9. It is the say of the Plaintiffs that instead of accepting their inheritance right, they are trying to damage the right of Thakorbhai's branch and as they came to know about it lastly on **dt.15/12/2008**, when mutation entry was caused to be done in the record.

(1.10) The Plaintiffs have amended the cause of action as per order below Exh.152, 172. The cause of action has arisen as the Plaintiffs have come to know about collusive Sale-deeds in favour of the Defendant no.11 and 12 for Block no.11, 13, 20/2. As the Plaintiffs have come to know about the collusive Sale-deed in favour of the Defendant no.13 and its partners for Block no.20/1, T.P. Scheme no.43, Final Plot no.8/A and 8/B, whereby 8/B is ad-

measuring 10708 Sq.Mtr. It is the say of the Plaintiffs that present suit is not barred by limitation.

(1.11) The Plaintiffs have filed the present suit for relief of partition of the disputed properties and they have claimed ½ shares of branch of D.Thakorbhai Manchharam Patel. They have prayed declaration that if there is any transaction, sale or mortgage or gift done either the Defendant no.3 to 7 or Branch of D.Nagarbhai Manchharam, they are not binding to the Plaintiffs and it is be declared that they have no right to execute any deed in respect of share of the Plaintiffs. They have prayed partition by metes and bound with possession of their shares.

(1.12) They have prayed cancellation of the Registered Sale-deeds vide No.0394 (for Block no.11), No.0393 (for Block no.13) and No.0392 (Block no.20/2) as null and void. They have prayed relief of declaration to the effect of cancellation of Registered Sale-deed no.18319 for Block no.20/1, T.P. Scheme no.43, Final Plot no.8/A and 8/B, whereby 8/B is ad-measuring 10708. They have prayed relief of declaration with relief of permanent injunction against the Defendant No.3 to 7 and they have also prayed relief that all the transactions of the Defendants are declared as null and void. They have also prayed relief of *mesne* profit and account from the Defendant No.3 to 7. They have also prayed relief of cost from the Defendant No.3 to 7.

(1.13) The Plaintiffs have affixed amount of Rs.8,01,000/- and paid amount of Rs.24,600/- as court-fee stamp and they have

prayed to amend the plaint as per the order below Exh.8 and paid Rs.3,050/- as court- fee stamp.

2] Brief facts of Defenses as under:-

(2.1) The notice was served and the Defendant No.1 to 8 have filed written statement vide Exh.14 wherein they have denied the facts of the suit *in-toto*. They have taken defenses of insufficient court-fee stamp, delay latches, waiver, estoppel, cause of action, suppression of material facts and limitation. They state that the Plaintiffs have filed present suit in collusion of Defendant No.9. They have put their case in para 14 on page 9 and onwards. They state that disputed Block No.20/1 comprised of R.S.No. 148/2-B , 154/1/B, 2/B , 18/1-2, 16/A, 149/B and 153 and Block No.20/2 comprised of 148 peki 1, 154/1-A, 149/A and 154/2-A situated at Jahangirabad. They state that Manchhabhai Narsibhai was original owner of Block No.20/1, 20/2 and R.S.No.299 and 330. They state that Manchhabhai Narsibhai executed **Partition-deed on dt.05/04/1956** whereby except Survey No.153, Property Block No.20/1 and 20/2 were given to Nagarbhai Manchhabhai and Mutation Entry No.623 was done on dt.30/05/1956. They state that Nagarbhai Manchhabhai became independent owner in possession of all land properties included in Block no.20/1 except Survey No.153 and Block No.20/2. They state that Machhabhai Narsibhai gave limited right of maintenance to Maniben Wid./o. Thakorbai Manchharam till her life as per Partition-deed of dt.05/04/1956 in

Survey No.153 and therefore, name of Defendant No.8 was entered in column of other rights of Revenue Entry No.623 and extract 7/12 of said land. They state that Survey No.153 was remained only in name of Manchhabhai Narsibhai. They state that Manchhabhai Narsibhai, during his lifetime, mutated names of Yogeshchandra Nagarji and Kishorchandra Nagarji, Defendant No.5 with the Entry No.803 on dt.12/11/1966. Therefore name of Manchhabhai Narsibhai, Yogeshchandra Nagarji and Defendant No.5 Kishorchandra Nagarji had been there in records as owners and each of them has 1/3 undivided share in it.

(2.2) They further state that Manchhabhai Narsibhai died on **dt.15/05/1979** and for his 1/3 share, name of Defendant No.8 Maniben wid./o Thakorbhai Manchhabhai was mutated with Entry No.1059 on dt.02/08/1979. Therefore Survey No.153 of Jahangirabad is in name of Yogeshchandra Nagarji Patel, Defendant No.5 and Defendant No.8 Maniben. They state that though there was no right, interest or title of D.Jaysukhben d/o. Thakorbhai Manchhabhai and Defendant No.1 and 2, to **avoid chances of probable future disputes, and to maintain family relations, waiver agreements** were executed by D.Jaysukhben d/o. Thakorbhai Manchhabhai w/o. Yashvantbhai and Defendant No.1 and 2 on **dt.05/02/2004** in favour of Kishorchandra Nagarji Patel i.e. Defendant No.5 and Yogeshchandra Nagarji Patel, which were notarized before Notary Shri Bhagwatibhai P. Patel on dt.05/02/2004 at Sr. No.153, 154 and 155. They state that by virtue

of said agreements, the Plaintiffs are not entitled to any share, title or interest.

(2.3) They further state that there was mutual-partition between brothers for the properties of Nagarbhai Manchhabhai whereby Yogeshbhai Nagarbhai got Survey No.16, 18/2 of Block No.20/1 and Kishorchandra Nagarbhai Defendant No.5 got Survey No.18/1 and 154/1 and Mutation Entry No.848 was done on dt.02/11/1969. They state that thereafter there was promulgation effect at Jahangirabad whereby Survey No.148/2-B, 154/1/B, 2/B , 18/1-2, 16/A, 149/B and 153 were promulgated as one Block No.20/1 and in same way Survey No.148 peki 1, 154/1-A, 149/A and 154/2-A were promulgated as one Block No.20/2. They state that Nagarbhai Manchhabhai executed a *Will* on **dt.04/09/1989** for Survey No.299, 330, 296 and 298 and after his death, as per the said *Will*, Defendant No.4 Prakashbhai Yogeshbhai and Defendant No.7 Jayeshkumar Kishorchandra have become owners of said disputed properties.

(2.4) They further state that there was no right, title or interest of D.Thakorbhai Manchhabhai or his widow Maniben in the disputed properties but **due to mistake of Talati in computerizing the records**, name of Maniben wid./o. Thakorbhai Manchhabhai **was mistakenly entered** with name of Defendant No.5 and Defendant No.8. They state that names of Defendant No.3, 4, 6 and 7 were mutated with Entry No.1478 in records of disputed properties. Thereafter Yogeshchandra died on

dt.15/03/2004 and his name was deleted with Entry No.1719 on dt.27/12/2004. They state that as per **Relinquishment-agreement done by Defendant No.8 Maniben wid./o. Thakorbhai Manchhabhai** before Notary on **dt.26/12/2007**, her name was deleted with the **Entry No.1999 on dt.28/12/2007**. They state that in this way the disputed properties are in names of Defendant No.3 to 7 and Bhavnaben w/o. Prakashbhai Yogeshchandra by virtue of owners in possession.

(2.5) They further state that Survey No.16/B was promulgated as Block No.11 in the Year1981. They state that Manchhabhai Narsibhai was original owner of Block No.11, Survey No.14/2, Block No.13, Survey No.87/2 and Block No.179 of Jahangirabad and as per **Partition-deed**, Nagarbhai Manchhabhai got all said properties. They state that Mutation Entry No.623 dt.30/05/1956 was entered in this respect. They state that Nagarbhai Manchhabhai gave said properties to Defendant No.4 Prakashbhai Yogeshbhai and Defendant No.7 Jayeshkumar Kishorchandra through *Will* dt.04/09/1989. They state that Plaintiff No.1 Yashvantlal Jagdishbhai Patel has signed **Panchnama** before Talati and Inheritance Entry No.1272 was done on **dt.10/10/89**.

(2.6) They further state that Block No.56 and 69 of Jahangirabad were independent properties of Nagarbhai Manchhabhai but after his death, the said properties were mutated in names of Defendant No.4 and 7 by virtue of the *Will* with Entry No.1272 dt.10/10/1989, They state that in joint Panchnama for

Block No.11, 13 and 179. The Plaintiff No.1 also signed. They state that the said **Block No.56 and No.59 were acquired by the Gujarat Housing Board** and name of the Board is there in the revenue records. They state that original Block No.184/1 was Survey No.94 and then, it became Survey No.94/B, which was originally belong to owner Manchhabhai Narsibhai, he purchased the said land out of his independent income. They state that Manchhabhai Narsibhai, during his life time mutated names of Yogeshchandra Nagarji and Kishorchandra Nagarji i.e. Defendant No.5 jointly in the revenue records with the Revenue Entry No.803, dt.12/11/1966. Therefore, each of the said three persons have 1/3 shares in the said property. After the death of Machhabhai Narsibhai on dt.15/05/1979, for his 1/3 share name of Defendant No.8 Maniben widow of Thakorbbhai Manchhabhai was mutated with Entry No.1059 on dt.02/08/1979. They state that thereafter the said land was declared as surplus land under provisions of Urban Land Ceiling Act, 1976 (which will be hereinafter referred as 'ULC Act') by the Government and it was taken by the Government on dt.07/03/1996 and the Talati mutated Entry No.1500 on dt.14/09/2000.

(2.7) They further state that Block/Survey No.299 and No.330 were given to Nagarjibhai Manchhabhai by virtue of partition-deed of Manchhabhai Narsibhai on dt.05/04/1956 and Mutation Entry No.128 was done on dt.23/06/1971. They state that Block/Survey No.296 and No.298 were independent property of

Nagarjibhai Manchhabhai and after his death, Defendant No.4 and No.7 have become owner of the said property by virtue of the *Will* and Mutation Entry No.2630 was entered on dt.19/09/1989. They state that out of the said land, certain land was acquired for "*Pada Yojana*" (*A compound wall scheme*) and for the remaining portion of **Survey No.299 and No.330**, the Defendant No.4 and 7 executed Registered Sale-deed in favour of **Ibrahim Haji Usman**. They state that Defendant No.4 and 7 converted Survey No.296 and No.298 into non-agricultural land and after bearing all cost of development and plotting, sold all the plots to different plot holders in the **Year2002** and Registered Sale-deeds for the said plots have already been done in the Year2002.

(2.8) They further state that Defendant No.5 purchased property bearing Entry No.2/109 situated in the Tikka No.2, Rander, City Survey No.109 from owner Madhuben Bhikhalal Trivedi out of his independent income, through Registered Sale-deed No.20848, dt.22/07/1999. They state that the Defendant No.5 further sold said property to Janakbhai Maganbhai and Sadhanaben Janakbhai Patel through Registered Sale-deed No.9967, on dt.12/07/2006 and the said Sale-deed has new registration No.1824. Therefore, the Defendant No.5 is not the owner of said property and neither Jaysukhben nor her daughters have any right in the said property.

(2.9) They further state that there is City Survey No.122 and No.123 situated at *Khadifadiya*, Rander Ward, and after consent

statements of Defendant No.1, 2, 8 and D.Jaysukhben D/o Thakorbbhai Manchhabhai mutated in name of Yogeshbbhai Nagarjibhai Patel and Defendant No.5 Kishorchandra Nagarjibhai Patel. They state that Jaysukhben D/o Thakorbbhai Manchhabhai had waived her rights during her life time in the above mentioned property and therefore, the Plaintiffs have no right or title in the said property.

(2.10) They further state that Block No.279 of Veluk Village, was purchased by the Defendant No.4 out of his independent income from Patel Gangaben Khushalbbhai through the registered Sale-deed on dt.02/11/1999. They state that the Defendant No.4 has executed Registered Sale-deed No.1470 of said land on dt.19/04/2005 in favour of Jayrambbhai @ Balabbhai Mavjibhai Patel. They state that Block No.104 of Sarol Village, was purchased by the Defendant No.3, 4 and Bhavnaben Prakashchandra from Ramroj Bapuji Pastagiya out of their independent income through the Registered Sale-deed No.564 on dt.27/04/2000. They state that Block No.335 of Narthan Village was purchased by the Defendant No.4 from Patel Parshottambhai Jagjivanbbhai out of his independent income through the Registered Sale-deed No.642 on dt.29/05/1998 and the said land is in the name of Defendant No.3, 4 and Bhavnaben Prakashbbhai. They state that the Plaintiffs have no right or share in above mentioned properties.

(2.11) They further state that D.Jaysukhben D/o Thakorbbhai

Manchhabhai and W/o Yashvantbhai executed deed of right-release on dt.05/02/2004 and the said facts within the knowledge of the Plaintiffs, because the Plaintiff No.1 himself has signed as witness in the said-deed. They state that the Defendant No.1 and 2 have also executed such kind of release-deeds in their favour on dt.05/02/2004 and the said fact is also within the knowledge of the Plaintiff No.1 as he himself has signed the deed as witness. They allege that the Plaintiff No.1 is well aware about all the said facts and even then, the present suit is filed **suppressing all** the said facts and the Plaintiffs have misguided the court and obtained false order. They allege that the Plaintiffs have not come with clean hands. They allege that the Plaintiffs have no *prima facie* case, balance of convenience is also not in their favour. They allege that the Plaintiffs have filed false and frivolous suit, just to harass the Defendants. Hence, they have prayed to reject the suit. They have also prayed to refer the matter to the court-fees inspector as the Plaintiffs have paid insufficient court fees stamp.

(2.12) The Defendant No.1, 2, 4 to 7 and 10 have filed their written statement vide **Exh.150** in response to amendment done by the Plaintiffs in the plaint. They have reiterated all the facts which are mentioned in their earlier written statement. They have stated certain new facts on Page No.5 in respect of earlier suit that was filed by Maniben Wid./o. Thakorbbhai bearing **Sp.Civil Suit No.173/1975**. They state that the said suit was compromised and compromise-decree was passed and according to it, lands bearing

Survey No.70, 87/2, 93/2, 97 and 128/1 were agreed to be given to Yogeshchandra Nagarbhai in his independent ownership. In the same way, land bearing Survey No.98, 175/5 of Jahangirabad were agreed to be given in independent ownership of Kishorchandra Nagarbhai and land bearing S.R.No.296, 298 were given to Manchharam. **Maniben who was the Plaintiff of Sp.Civil Suit No.173/1975 were given S.R.No.94 and No.153 of Jahangirabad in her independent ownership.** They allege that the Plaintiffs have suppressed fact of said suit in the plaint. They allege that the Plaintiffs are claiming in present suit, in capacity of legal heirs of Jaysukhben, but present suit is not maintainable as the Plaintiff No.1 himself has identified thumb-impression of Maniben in earlier suit of 1975. They state that Jaysukhben also filed **Sp.Civil Suit No.231/1982** on dt.31/07/1982 and it was withdrawn by the pursis vide Exh.21 on dt.13/12/1984. They state that Jaysukhbhai died on dt.06/06/2008 and she had not filed or taken action or claimed her right during her life time for 24 years. Therefore, legal heirs of Jaysukhben have no right to claim through Jaysukhben.

(2.13) They further state that Registered Sale-deeds are executed in the Year 2019 for the property of Survey No.16/1, Block No.11, T. P. No.42, Final Plot No.19 and Block No.13, T.P.No.42, Final Plot No.20 and Block No.20/2, T.P.No.43, Final Plot No.9/B within the knowledge of the Plaintiffs and Plaintiff No.1 and 2 have executed confirmation-deeds in this respect. They state that as the Plaintiffs have no right in the said property and

they have not challenged the said confirmation-deeds. They state that the Plaintiff No.2 Dipakbhai Yashvantbhai Patel has executed registered Declaration-deed No.15707 in favour of the Defendants on dt.11/06/2018 for the Survey No.148/2B, 154/19, 154/2B, 18/1, 18/2, 16/A, 149/9,153 and Block No.20/1 and Plaintiff No.1 Yashvantbhai Jagdishbhai also executed registered Declaration-deed No.15708 on the same date for the same properties in favour of the Defendants and therefore the Plaintiffs have no right to claim against them in present suit. They state that though the Plaintiffs have no right or interest in disputed property, they have created illegal documents in favour of third parties and therefore, Criminal complaint has been registered in Rander Police Station in which charge-sheet has been filed. They state that it appears that the Plaintiffs have filed suit for partial partition, which is not maintainable.

(2.14) They further state that after decree of the suit of Defendant No.8, she filled form for the **ULC proceeding** in her individual capacity wherein the Plaintiff No.1 had given identification of her thumb impression. They state that other owners of the disputed properties namely, **No.1).Nagarbhai Manchhabhai, 2).Kishorbhai Nagarbhai, 3).Manchhabhai Narsihbhia and 4). Yogeshbhai Nagarbhai** also filled form of ULC in their individual capacity, which means that there was no joint family at all as per say of the Plaintiffs.

(2.15) They further state new facts in para 28 on page 24 in

their written statement vide Exh.150 that Maniben also executed **her last Will** in her conscious state of mind on **dt.01/12/2011** which was registered and she had released her rights and interest in favour of Legal heirs of Kishorchandra Nagarbhai and Yogeshchandra Nagarbhai. They state that she had also mentioned in her *Will* that earlier *Will* which was obtained by her son-in-law Yashvantbhai without convincing her, was canceled by her. They allege that the Plaintiffs have claimed their rights as legal heirs of Jaysukhben but she herself had not filed any suit till 24 years after withdrawal of Sp.Civil Suit No.231/1982 in 1984 and therefore, present suit is time barred. They allege that the Plaintiffs have not valued the suit properly and affixed insufficient court-fee stamp. Hence they have prayed to reject the suit with cost.

(2.16) **The Defendant No.11 and 12** have filed their written statement vide **Exh.168** wherein they have denied the facts of the suit *in-toto*. They have taken defenses of limitation, delay, laches, acquiescence, promissory estoppel. They state that they have been joined as party in present suit by the Plaintiff with delay. They state that they have concerned with only **Block No.20/2,13 and 11 of Jahangirabad** and they have no concern with other land properties. They state that they have purchased said 3 land properties out of total disputed properties after paying huge amount of consideration. They state that legal heirs of D.Thakorbbhai's branch have no right in the properties which are purchased by them and the Plaintiffs have suppressed facts of all

subsequent transactions of said property. They state that Manchhabhai Narsibhai executed partition-deed wherein page-2 shows whole description of the properties which were given to Nagarbhai Manchhabhai and they have purchased properties of Nagarbhai Manchhabhai which includes old Survey No.148 Peki 1, 154/1-A,149/A, 154/2-A comprising in one Block No.20/2 old Survey No.24 having Block No.13 and old Survey No.16/B bearing Block No.11. They state that all the said land properties were mentioned in partition-deed dt.05/04/1956 and its effect was given in the revenue record with Entry No.623 on dt.30/05/1956. They state that Maniben Wid./o. Thakorbbhai Manchhabhai executed a *Will* on dt.01/12/2011 which was registered at Sr.No.21153 on dt.01/12/2011 before office of Sub-Registrar, Katargam Zone, Surat and according to the said *Will*, Neither Maniben nor her daughters had any right share or interest in Block No.20/2. They state that the said *Will* has not been subjected in any proceeding within their knowledge and therefore, the *Will* is binding to all the Plaintiffs. They state that they have paid total Rs.17,46,92,500/- as amount of consideration for their Sale-deeds and the Plaintiffs have no right in said properties. They state that if the Plaintiffs claim accounts of the properties, they may have their share from the above mentioned paid consideration, but the Plaintiffs have no right to challenge their Sale-deed. They state that the Plaintiffs' names were not there in revenue records at the time when they purchased disputed properties. They state that they purchased

above mentioned properties from the Defendants whose name were there in the revenue records.

(2.17) The Defendant No.11 and 12 further state that Plaintiffs' ancestor D.Jaysukhben filed Sp.Civil Suit No.213/1982 which was withdrawn by her on dt.13/12/1984 and after that, she has not filed any suit and the Plaintiff Chhayaben was also party in that suit as Defendant No.19 and the Plaintiff No.2 was Defendant No.18 in that suit. They state that neither Plaintiffs nor their ancestor D.Jaysukhben D/o Thakorbbhai filed any objection against the names of Defendants in revenue records and therefore, title of legal heirs of Nagarbbhai Manchhabhai's branch is established. They state that their Sale-deeds are of the Year2018 and there were revenue litigations between parties and therefore, the Plaintiffs were well in knowledge of all the transactions but they have not filed their objections within limitations. They allege that the Plaintiffs have not affixed sufficient court-fee stamp. They allege that the Plaintiffs have filed false and frivolous suit, hence, they have prayed to reject the suit.

(2.18) The Defendant No.13, 13(1) to 13(6) have filed their written statement **vide Exh.182** wherein they have denied the facts of the suit *in-toto*. They have taken defenses of limitation, cause of action, delay, laches, acquiescence, promissory estoppel. They state that if the Plaintiff's averments about fraudulent thumb impression of Defendant No.8 were true, then they must have taken objection or file complaint in this respect. They state that they

purchased properties of legal heirs of D.Nagarbhai's branch and therefore, the Plaintiffs have no right to take objection. They state that they have purchased disputed properties, Block No.20/1 bearing T.P. Scheme No.43 Jahangirabad and Final Plot No.8/A and 8/B after paying handsome amount of consideration. They state that Final **Plot No.8/B ad-measuring 10708 sq.mtr** is purchased in their name through Registered Sale-deed on dt.10/08/2017. They state that the Plaintiffs have not offered explanation why their names were not there in the revenue records. They reiterate facts of Sp.Civil Suit No.231/1982 filed by Plaintiff's ancestor D.Jaysukhbhai and withdrawal of it by her. They have state same sets of facts which are pleaded by Defendant No.11 and 12 in their written statements. They state that Registered Sale-deed **No.18319** has been executed in their favour on dt.10/08/2017 and they have paid total Rs.10,44,11,000/-. They state that residential units have been constructed on disputed properties by the Developers and identity of the disputed properties has been totally changed within the knowledge of the Plaintiff and public at large and therefore, the Plaintiff's suit is infructuated. They state that the Plaintiffs have filed an application to join them as party in present suit on dt.05/09/2022, but as per Registered Sale-deed No.18319 dt.05/08/2017, the Plaintiffs must have to join them as party within 3 years from registration date i.e. 05/08/2017. They state that the Plaintiffs have knowledge of registration of Sale-deed No.18319 from the beginning as there were revenue litigations between the

parties, but even then, the Plaintiffs have not joined them as party within limitation.

(2.19) They further state that the Plaintiff No.4 Ashaben, D/o Yashvantlal Jagdishbhai and Plaintiff No.2 Dipak Yashvantbhai Patel have filed a complaint before Police Commissioner and Police Inspector on dt.16/12/2017 and 26/12/2017 respectively with their affidavit notarized before Notary Shri Ashokkumar Rana. They state that as per the said complaints and affidavits, it becomes clear that the Plaintiffs have knowledge of their registered Sale-deed from the dt.16/12/2017 and 26/12/2017 respectively, even then they remained silent till 05/09/2022. Therefore, the present suit is time bared so far as their Sale-deed is concerned.

(2.20) They further state that after purchase of above mentioned properties, necessary permission has been obtained for plotting and construction of residences from Revenue Department and Surat Mahanagar Palika and after passing plans and in the said process, crores of rupees have been expended and different units have legally been sold to different persons and they have been residing there in the society. They state that third party's right have been created in disputed properties and they have been living there. They state that they are **bonafide purchaser** of disputed properties with value of crores of rupees and they have bear construction expenditure and government charges. They state that prior to filing an application to join them as parties in present suit

by the Plaintiffs, *Satakhats* and Sale-deeds have been executed. They state that the Plaintiff No.1 and 2 have executed confirmation deed without consideration waiving their rights in favour of Defendants and the said deeds are registered at Sr.No.15709 on dt.12/06/2018 whereby they have confirmed Registered Sale-deed No.18319 dt.10/08/2017. They allege that the Plaintiffs have not paid sufficient court-fee stamp. They allege that the Plaintiffs have filed false and frivolous suit, hence, they have prayed to reject it.

3 j. The Plaintiffs have relied upon following Evidence:--

(A) Oral Evidence:-

<u>Sr.No.</u>	<u>Ex.</u>	<u>Particulars</u>
1.	204	Affidavit-in-lieu of examination-in-chief of Dipak Yashvantbhai Patel, Plaintiff No.2
2.	397	Affidavit-in-lieu of examination-in-chief of Paritoshbhai Mahendrabhai Dave, witness of Plaintiff No.2
3.	403	Affidavit-in-lieu of examination-in-chief of Ashaben D/o. Yashvantlal Patel, Plaintiff No.4
4.	429	Affidavit-in-lieu of examination-in-chief of Manishkumar Mudjibhai Patel, witness of Plaintiff No.3 and 4

(B) Documentary Evidence:-

<u>Sr. No.</u>	<u>Ex.</u>	<u>Particulars</u>	<u>Date</u>
1	206	Revenue Extract 7-12 Of Block No.11 of Moje.Jahangirabad	-

2	207	Revenue Extract 8-A of the above property	-
3	208	Revenue Extract 7-12 Of Block No.13 of Moje.Jahangirabad	-
4	209	Revenue Extract 8-A of the above property	-
5	210	Revenue Extract 7-12 Of Block No.20/1/A of Moje.Jahangirabad	-
6	211	Revenue Extract 7-12 Of Block No.56 of Moje.Jahangirabad	-
7	212	Revenue Extract 7-12 Of Block No.69 of Moje.Jahangirabad	-
8	213	Revenue Extract 7-12 Of Block No.179 of Moje.Jahangirabad	-
9	214	Revenue Extract 8-A of the above property	-
10	215	Revenue Extract 7-12 Of Block No.184/1/A of Moje.Jahangirabad	-
11	216	Revenue Extract 8-A of the above property	-
12	217	Revenue Extract 7-12 Of Block No.184/1/B of Moje.Jahangirabad	-
13	218	Revenue Extract 8-A of the above property	-
14	219	Certified copy of Entry No.124	21/06/1928
15	220	Certified copy of Entry No.136	21/08/1929
16	221	Certified copy of Entry No.137	13/11/1929
17	222	Certified copy of Entry No.142	15/02/1930
18	223	Certified copy of Entry No.155	26/08/1930
19	224	Certified copy of Entry No.165	11/02/1931
20	225	Certified copy of Entry No.171	11/06/1931

21	226	Certified copy of Entry No.179	08/11/1931
22	227	Certified copy of Entry No.196	11/07/1932
23	228	Certified copy of Entry No.231	15/02/1934
24	229	Certified copy of Entry No.232	15/02/1934
25	230	Certified copy of Entry No.233	15/02/1934
26	231	Certified copy of Entry No.246	10/06/1934
27	232	Certified copy of Entry No.262	15/09/1934
28	233	Certified copy of Entry No.263	11/10/1934
29	234	Certified copy of Entry No.269	21/02/1935
30	235	Certified copy of Entry No.273	11/04/1935
31	236	Certified copy of Entry No.275	15/05/1935
32	237	Certified copy of Entry No.276	15/05/1935
33	238	Certified copy of Entry No.288	11/11/1935
34	239	Certified copy of Entry No.345	08/06/1939
35	240	Certified copy of Entry No.623	30/05/1956
36	241	Certified copy of Entry No.734	05/12/1962
37	242	Certified copy of Entry No.735	05/12/1962
38	243	Certified copy of Entry No.802	07/11/1966
39	244	Certified copy of Entry No.803	12/11/1966
40	245	Certified copy of Entry No.848	02/11/1969
41	246	Certified copy of Entry No.990	14/06/1977
42	247	Certified copy of Entry No.1045	-
43	248	Certified copy of Entry No.1047	07/07/1979
44	249	Certified copy of Entry No.1048	07/07/1979
45	250	Certified copy of Entry No.1049	07/07/1979
46	251	Certified copy of Entry No.1059	02/08/1979
47	252	Certified copy of Entry No.1072	-
48	253	Certified copy of Entry No.1086	20/02/1981

49	254	Certified copy of Entry No.1150	26/07/1984
50	255	Certified copy of Entry No.1272	10/10/1989
51	256	Certified copy of Entry No.1288	-
52	257	Certified copy of Entry No.1310	02/01/1992
53	258	Certified copy of Entry No.1311	02/01/1992
54	259	Certified copy of Entry No.1487	15/01/2000
55	260	Certified copy of Entry No.1489	01/06/2000
56	261	Certified copy of Entry No.1500	14/09/2000
57	262	Certified copy of Entry No.1553	06/11/2001
58	263	Certified copy of Entry No.1595	19/09/2002
59	264	Certified copy of Entry No.1719	27/12/2004
60	265	Certified copy of Entry No.1756	04/02/2005
61	266	Certified copy of Entry No.1884	30/11/2006
62	267	Certified copy of Entry No.1991	14/11/2007
63	268	Certified copy of Entry No.1999	28/12/2007
64	269	Certified copy of Entry No.2050	24/06/2008
65	270	Certified copy of Entry No.2056	25/06/2008
66	271	Certified copy of Entry No.2057	25/06/2008
67	272	Certified copy of Entry No.2324	25/03/2011
68	273	Certified copy of Entry No.2405	24/05/2012
69	274	Certified copy of Entry No.2434	06/10/2012
70	275	Certified copy of Entry No.2493	08/07/2013
71	276	Certified copy of Entry No.2494	08/07/2013
72	277	Certified copy of Entry No.2625	18/09/2015
73	278	Certified copy of Entry No.2635	22/10/2015
74	279	Certified copy of Entry No.2643	17/12/2015
75	280	Certified copy of Entry No.2644	18/12/2015
76	281	Certified copy of Entry No.2646	31/12/2015

77	282	Certified copy of Entry No.2667	11/03/2016
78	283	Certified copy of Entry No.2668	19/03/2016
79	284	Certified copy of Entry No.2699	08/08/2016
80	285	Certified copy of Entry No.2719	16/12/2016
81	286	Certified copy of Entry No.2728	03/02/2017
82	287	Certified copy of Entry No.2732	21/02/2017
83	288	Certified copy of Entry No.2733	21/02/2017
84	289	Certified copy of Entry No.2742	16/03/2017
85	290	Certified copy of Entry No.2769	06/08/2017
86	291	Certified copy of Entry No.2780	21/09/2017
87	292	Certified copy of Entry No.2787	11/10/2017
88	293	Certified copy of Entry No.2789	01/11/2017
89	294	Certified copy of Entry No.2791	07/11/2018
90	295	Certified copy of Entry No.2830	23/05/2018
91	296	Certified copy of Entry No.2883	10/08/2018
92	297	Certified copy of Entry No.2972	11/09/2019
93	298	Certified copy of Entry No.2885	10/08/2018
94	299	Certified copy of Entry No.2973	11/09/2019
95	300	Certified copy of Entry No.2892	27/09/2018
96	301	Certified copy of Entry No.2916	04/01/2019
97	302	Certified copy of Entry No.2972	11/09/2019
98	303	Certified copy of Entry No.2688	21/11/2019
99	304	Revenue Extract 7-12 Of Block No.296 of Moje.Rander	-
100	305	Revenue Extract 8-A of the above property	-
101	306	Revenue Extract 7-12 Of Block No.298 of Moje.Rander	-

102	307	Revenue Extract 7-12 Of Block No.299/2 of Moje.Rander	-
103	308	Revenue Extract 8-A of the above property	-
104	309	Revenue Extract 7-12 Of Block No.299/2 Peki-2 of Moje.Rander	-
105	310	Revenue Extract 7-12 Of Block No.299/2 Peki-3 of Moje.Rander	-
106	311	Revenue Extract 7-12 Of Block No.330 of Moje.Rander	-
107	312	Revenue Extract 8-A of the above property	-
108	313	Revenue Extract 7-12 Of Block No.330/Peki/1 of Moje.Rander	-
109	314	Revenue Extract 7-12 Of Block No.299/1 of Moje.Rander	-
110	315	Revenue Extract 8-A of the above property	-
111	316	Revenue Extract 7-12 Of Block No.330/Peki 2 of Moje.Rander	-
112	317	Revenue Extract 8-A of the above property	-
113	318	Certified copy of Entry No.33	16/06/1971
114	319	Certified copy of Entry No.128	23/06/1971
115	320	Certified copy of Entry No.187	26/06/1971
116	321	Certified copy of Entry No.631	06/01/1975
117	322	Certified copy of Entry No.1006	13/08/1979
118	323	Certified copy of Entry No.2135	07/12/1982
119	324	Certified copy of Entry No.2623	19/09/1989
120	325	Certified copy of Entry No.2630	16/10/1989

121	326	Certified copy of Entry No.2893	08/10/1992
122	327	Certified copy of Entry No.3220	05/04/1998
123	328	Certified copy of Entry No.3242	11/08/1998
124	329	Certified copy of Entry No.3417	10/08/2000
125	330	Certified copy of Entry No.3623	09/06/2003
126	331	Certified copy of Entry No.3624	11/06/2003
127	332	Certified copy of Entry No.3645	30/08/2003
128	333	Certified copy of Entry No.3681	18/12/2003
129	334	Certified copy of Entry No.3916	01/05/2006
130	335	Certified copy of Entry No.3917	01/05/2006
131	336	Certified copy of Entry No.4156	12/09/2008
132	337	Certified copy of Entry No.4157	12/09/2008
133	338	Certified copy of Entry No.4583	04/11/2015
134	339	Certified copy of Entry No.4585	04/11/2015
135	340	Certified copy of Entry No.4589	09/12/2015
136	341	Certified copy of Entry No.4590	09/12/2015
137	342	Certified copy of Entry No.4606	11/03/2016
138	343	Certified copy of Entry No.4607	19/03/2016
139	344	Certified copy of Entry No.4627	19/08/2016
140	345	Certified copy of Entry No.4628	19/08/2016
141	346	Certified copy of Entry No.4658	16/03/2017
142	347	Certified copy of Entry No.4694	01/11/2017
143	348	Certified copy of Entry No.4695	07/11/2017
144	349	Certified copy of Registered Sale-deed No.18319 of Block No.20/1, Final Plot No.8/B	10/08/2017
145	350	Certified copy of registered Confirmation-deed No.15709 of Block No.20/1, Final Plot No.8/B	12/06/2018

146	351	Certified copy of registered Confirmation-deed No.397 of Block No.11, Final Plot No.19	24/05/2018
147	352	Certified copy of registered Confirmation-deed No.397 of Block No.13, Final Plot No.20	24/05/2018
148	353	Certified copy of registered Confirmation-deed No.13248 of Block No.20/1	17/05/2018
149	354	Certified copy of registered Confirmation-deed No.392 of Block No.20/2, Final Plot No.9/A	24/05/2018
150	355	Certified copy of registered Confirmation-deed No.393 of Block No.13, Final Plot No.20	24/05/2018
151	356	Certified copy of registered Confirmation-deed No.394 of Block No.11, Final Plot No.19	24/05/2018
152	357	Certified copy of registered Confirmation-deed No.396 of Block No.20/2, Final Plot No.9/A	24/05/2018
153	358	Certified copy of registered Confirmation-deed No.15707 of Block No.20/1, Final Plot No.8/B	12/06/2018
154	359	Certified copy of registered Confirmation-deed No.15708 of Block No.20/1, Final Plot No.8/A	12/06/2018
155	360	Copy of Revenue Extract 7-12 of Block No.20/2, Survey No.148/1 Pike, 154/1A, 149/1 and 154/2	2002/03 to 2004/05
156	361	<i>Registered Will</i> of D.Maniben Wid./o. Thakorbbhai Manchhabhai	11/07/2008
157	362	Copy of Revenue Extract 7-12 of	2002/03 to

		Block No.20/2, Survey No.148/2-B, 154/1-B, 154/2-B, 153, 18/1, 18/2, 16/A, 149/B	2004/05
158	363	Certified copy of Mutation Entry No.1999 of Block No.20/1 and 20/2	03/12/2020
159	364	Death certificate of D.Maniben Wid./o. Thakorbbhai Manchhabhai	27/11/2016
160	365	Death certificate of D.Jaysukhbhai Yashvantlal Patel	06/06/2008
161	366	Death certificate of Yogeshchandra Nagarjibhai Patel	15/03/2004
162	367	Pedigree of D.Maniben Wid./o. Thakorbbhai Manchhabhai	03/01/2009
163	368	News published in newspaper related to death of Plaintiff No.1 Yashvantbhai Jagdishbhai Patel	29/04/2021
164	369	Bill of publishing in the newspaper	29/04/2021
165	396	Certified Copy of passport of Plaintiff No.2	22/08/2016 to 21/08/2026
166	400	Report of Court Commissioner	26/05/2016
167	401	Notice of Court Commissioner	26/05/2016
168	408	Certified copy of Revenue Extract 7-12 of old Block/Survey No.759/Peki 2, New Block/Survey No.603 at Navsari District, Gandevi Sub-district, Moje-Kacholi	-
169	409	Certified copy of Revenue Extract 7-12 of old Block/Survey No.759/Peki 3, New Block/Survey No.604 at Navsari District, Gandevi Sub-district, Moje-Kacholi	-

170	410	Certified copy of Revenue Extract 8-A of above mentioned properties	-
171	411	Certified copy of Registered Sale-deed No.2103/2015	24/09/2015
172	412	Certified copy of Entry No.7957	24/09/2015
173	413	Certified copy of Revenue Extract 7-12 of old Block/Survey No.397, New Block/Survey No.56 at Navsari District, Gandevi Sub-district, Moje-Dhanare	-
174	414	Certified copy of Revenue Extract 8-A of above mentioned property	-
175	415	Certified copy of Registered Sale-deed No.16/2006	04/01/2006
176	416	Certified copy of Entry No.5209	25/03/2006
177	417	Notarized copy of Power of Attorney	08/04/2013
178	431	Attested copy of Page of Notary Register from Sr.No.7634 to 7644	08/04/2013
179	438	Certified copy of Revenue Extract 7-12 of Block No.20/1 and old Survey No.153	1928-29 to 1979-80

The Plaintiffs have filed closing pursis vide Exh.433.

4]. The Defendant No.1, 2, 3A, 4 to 7 and 10 have relied upon following evidence.

(A) Oral Evidence:-

<u>Sr.No.</u>	<u>Ex.</u>	<u>Particulars</u>
1.	435	Affidavit-in-lieu of examination-in-chief of Jayeshkumar Kishorchandra, Defendant No.7

2.	453	Affidavit-in-lieu of examination-in-chief of Prashant Patel, witness
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(B) Documentary Evidence:-

<u>Sr. No.</u>	<u>Ex.</u>	<u>Particulars</u>	<u>Date</u>
1.	370	Certified copy of Complaint of Sp.Civil Suit No.173/1975	-
2.	371	Certified copy of Decree of Sp.Civil Suit No.173/1975	-
3.	372	Certified copy of Complaint of Sp.Civil Suit No.231/1982	-
4.	373	Certified copy of Withdrawal Pursis of Sp.Civil Suit No.231/1982	-
5.	374	Xerox copy of Mutation Entry No.2522 in revenue record of Village:Veluk	12/11/1999
6.	375	Xerox copy of Mutation Entry No.2833 in revenue record of Village:Veluk	28/04/2005
7.	376	Xerox copy of Registered Sale-deed No.564 for Block No.104 of Village:Sarol	27/04/2000
8.	377	Xerox copy of Revenue Extract 7-12 of Block No.104 of Village:Sarol	13/08/2009
9.	378	Xerox copy of Registered Sale-deed No.642 for Block No.335 of Village:Narthan	29/05/1998
10.	379	Xerox copy of Revenue Extract 7-12 of Block No.335 of Village:Narthan	13/08/2009
11.	380	Xerox copy of Waiver-deed executed by Jaysukhben D/o. Thakorbbhai	05/02/2004

		Manchharam and W/o Yashvantlal	
12.	381 to 384	Copy of Information provided under RTI Act by ULC Branch and Mamlatdaar Office	-
13.	386	Declaration-Deed	11/06/2018
14.	387	<i>Registered Will</i> of D.Maniben Wid./o. Thakorbbhai Manchharam	01/12/2011
15.	388	Copy of Information provided under RTI Act by PI, Adajan Police-station, Surat	-
16.	390	Notarized General Power of Attorney No.10249/2013 executed by Yashvantlal Jagdishbhai Patel in favour of Dipakbhai Yashvantlal Patel	11/05/2013
17.	391	Certified copy of Mutation Entry No.1501	20/10/2000
18.	392	Certified copy of Mutation Entry No.1722	-
19.	393	46 Certified copy of Index of Plots designed in the T.P.Scheme No.23, Final Plot No.35 and 38, of Block No.296 and 298, Rander Village, Sub-District: Adajan, District: Surat	-
20.	419	Copy of Letter of PI, Rander police-station to Deputy Commissioner of Police	-
21.	420	Copy of report in FIR No.242/2019 of Rander police-station	01/11/2019
22.	421	Copy of order below "C" Summary report in FIR No.163/2019	24/07/2019
23.	422	Copy of order of District Collector for Block No.11,13 and 20/2 of	15/03/2019

		Jahangirabad	
24.	423	Copy of written arguments filed by Advocate of Plaintiff No.3 and 4 in RTS/Revision No.275/2022	15/03/2023
25.	424	Copy of objections and order and Memo of RTS/Revision No.275/2022	-
26.	425	Copy of Anticipatory Bail Application No.6454/2019 filed before Hon'ble Principal District and Sessions Court, Surat	-
27.	426	Affidavit of Maniben Wid./o. Thakorbhai Manchhabhai	03/10/2011
28.	439	Copy of FIR No.242/2019 registered in Rander police-station	-
29.	440	Copy of General Power of Attorney of Lilavatiben, D/o. Thakorbhai Manchharam Patel in favour of Jayeshkumar Kishorchandra Patel	-
30.	441	Copy of General Power of Attorney of Urmilaben, D/o. Thakorbhai Manchharam Patel in favour of Jayeshkumar Kishorchandra Patel	-
31.	442	Copy of objections filed by legal heirs of D.Maniben, Wid./o. Thakorbhai Manchharam	19/07/2018
32.	443	Copy of order of RTS Dispute Case No.52/2000	-
33.	444	Copy of FIR No.163/2019 registered in Rander police-station	05/08/2017
34.	445	Copy of report filed in FIR No.163/2019 registered in Rander police-station	25/07/2019

35.	446	Copy of order of 'C' Summary	26/02/2021
36.	447	Paper cutting of Public Notice issued on Page-7 in "Sandesh" daily newspaper	17/12/2017
37.	448	Paper cutting of Public Notice issued on Page-12 in "Gujarat Mitra" and "Gujarat Darpan" daily newspapers	30/12/2017
38.	449	Copy of order of Deputy Collector, Choriyasi Pranth in RTS Appeal No.102/2009	14/12/2010
39.	450	Copy of order of Collector, Surat Pranth in RTS/Revision Application No.118/2011	23/04/2012
40.	451	Xerox copy of Waiver-deed executed by Urmilaben d/o. Thakorbbhai Manchharam	05/02/2004
41.	452	Xerox copy of Waiver-deed executed by Liliben d/o. Thakorbbhai Manchharam	05/02/2004

The Defendant No.1, 2, 3A, 4 to 7 and 10 have filed closing pursis at Exh.454.

5.] The Defendant No.11 and 12 have relied upon following evidence.

(A) Oral Evidence:-

<u>Sr.No.</u>	<u>Ex.</u>	<u>Particulars</u>
1.	457	Affidavit-in-lieu of examination-in-chief of Anilkumar Jayantibhai Patel, Defendant No.11

(B) Documentary Evidence:-

<u>Sr. No.</u>	<u>Ex.</u>	<u>Particulars</u>	<u>Date</u>
1.	460 to 462	Certified copy of Revenue Extract 7-12 of Block No.11,13 and 20/2 of Jahangirabad	29/04/2023
2.	463	Certified copy of Mutation Entry No.2884 for Block No.20/2	10/08/2018
3.	464	Certified copy of Mutation Entry No.2885 for Block No.20/2	10/08/2018
4.	465	Certified copy of Mutation Entry No.2883 for Block No.11	10/08/2018
5.	466	Tax receipt for Block No.20/2 in name of Anilbhai Jayantibhai Patel	04/05/2023
6.	467	Certified copy of Form-B of T.P.Scheme No.43, Final Plot No.9/A and 9/B of Block No.20/2	-
7.	468	Certified copy of Map of T.P.Scheme No.43, Final Plot No.9/A and 9/B of Block No.20/2	-
8.	469	Certified copy of Confirmation-deed No.458 for Block No.13	18/06/2018
9.	470	Certified copy of Confirmation-deed No.459 for Block No.13	18/06/2018
10.	471	Certified copy of Confirmation-deed No.460 for Block No.13	18/06/2018

The Defendant No.11 and 12 have filed closing pursis at Exh.473.

6]. The Defendant No.13, 13(1) to 13(6) have relied upon following evidence.

(A) Oral Evidence:-

<u>Sr.No.</u>	<u>Ex.</u>	<u>Particulars</u>
1.	476	Affidavit-in-lieu of examination-in-chief of Manishbhai Mahendrakumar, Defendant No.13(3)

(B) Documentary Evidence:-

<u>Sr. No.</u>	<u>Ex.</u>	<u>Particulars</u>	<u>Date</u>
1.	478	Certified copy of Bank statement of Defendant No.13	01/12/15 to 31/12/15
2.	479	Certified copy of Bank statement of Defendant No.13	01/03/16 to 31/03/16
3.	480	Certified copy of Bank statement of Defendant No.13	01/07/16 to 31/08/16
4.	481	Certified copy of Bank statement of Defendant No.13	01/05/17 to 31/05/17
5.	482	Certified copy of Bank statement of Defendant No.13	01/07/17 to 31/08/17
6.	483	Certified copy of Bank statement of Defendant No.13	01/10/17 to 31/10/17

The Defendant No.13, 13(1) to 13(6) have filed closing pursis at Exh.484.

7]. **Ld. Advocate Mr.J.J.Gandhi**, appearing on behalf of Plaintiff No.2, has submitted oral arguments in detail. He has strongly submitted following submissions in nut shell.

- The Plaintiffs are admittedly legal heirs of branch of D.Thakorbhai Manchhabhai who died intestate long back in the Year 1942. Machhabhai Narsibhai was original owner of disputed property who died intestate on dt.15/05/1979 leaving heirs of his two sons, namely, Branch of Thakorbhai Manchhabhai and Branch Nagarbhai Manchhabhai having equal rights, share and interest in all the properties of D.Manchhabhai Narsibhai.
- The Plaintiffs are claiming their rights through Jaysukhben who was legal heir of D.Maniben Wid./o. Thakorbhai Manchhabhai. As Thakorbhai died prior to his father Manchhabhai, names of his 3 daughters with widow Maniben were not mutated in revenue records as there was tendency to mutate only name of male Karta of the Hindu family. But, it is settled law that revenue records serve only fiscal purpose and they cannot be considered as proof of title.
- It is admitted fact that there is no registered or unregistered Partition-deed produced by the Defendants or decree of competent Court giving actual effect of partition of disputed properties between two brothers namely Thakorbhai Manchhabhai and Nagarbhai Manchhabhai. The Defendants have failed to produce any registered partition-deed which was base of mutation entry no.623. Therefore, all the disputed properties are undivided and joint family properties of Plaintiffs and Defendant No.1 to 10.
- Maniben was living with the Defendants till her death and naturally the Defendants have influence on her and therefore the

Defendants get success in getting fraudulently, her thumb impressions in certain documents in the Year2007 but she was totally unaware of it and Entry No.1999 was fraudulently mutated on dt.28/12/2007. The Plaintiffs came to know about the said document and said revenue entry and then filed present suit in the Year2009 within 3 years and therefore, the suit is within limitation.

- The mutation Entry No.623 which is relied upon by the Defendants does not show shares of all legal heirs of Manchharam. The Revenue Survey No.153 of Jahangirabad is given to Maniben till her death but nothing has been mentioned about the rights of her 3 daughters. Therefore, the said document cannot be termed as Partition-deed.
- The Defendants have relied upon Mutation Entry No.623, Dt.05/04/1956, but copy of so-called Partition-deed which is referred in the said Entry, was not produced before Revenue Authority itself.
- Waiver-agreements of 3 daughters showing Dt.05/02/2004 is unregistered documents. The Defendants have not produced original documents. The Defendants have failed to prove the contents and therefore they should be de-exhibited.
- Confirmation-deed of Plaintiff No.1, Dt.11/06/2018 and Confirmation-deed of Plaintiff No.2, Dt.11/06/2018 are unregistered documents which cannot be considered in favour of Defendants.

- Maniben's *Will* vide Exh.387 is concocted document as she was living in helpless condition with the Defendants. Even if it is considered, it says about joint family properties of the parties. The Defendants have not proved state of mind of Maniben with her education and reading capacity and therefore its contents are not proved by them.
- The Defendants are riding on two horses, on one hand they are submitting that the partition was done in the Year 1956 and on other hand they have relied upon waiver-agreements of Jaysukhben, Maniben, Liliben and Urmilaben with assumptions that they have rights in the properties. The Defendants have not explained if the partition was done then what was the requirement of getting such waiver-agreements from Jaysukhben, Maniben and others.
- Waiver-deed of Jaysukhben vide Exh.380, Urmilaben vide Exh.451, Liliben vide Exh.452 are on Rs.100/- stamp paper, but they are not registered documents. The properties are mentioned as joint properties in the said documents. It is not specified how much amount and when given to them and why the Defendants have not attempted to get registered documents. The Defendants have not specified if the said daughters have no rights in the disputed properties then why they have obtained such documents.
- Agreement of Name Deletion is produced on Page-17 of Record file of Mutation Entry No.1999 vide Exh.363 which clearly suggests that the disputed properties are joint ownership property.

The Defendants have not produced original deed of Maniben before this Court and thereby they have suppressed it.

- Entry no.848 shows Partition-deed of dt.02/11/1969 but the Defendants have not produced it on record and thereby they have suppressed it.
- In Sp.Civil Suit No.173/1975, the daughters of Maniben were not the parties. If the plaint of the said suit is considered, it is specifically mentioned that the disputed properties are joint properties of HUF. There was no Judgment and Decree passed on merits in the said suit and therefore, principle of "*Res-judicata*" would not apply against the Plaintiffs.
- In Sp.Civil Suit No.231/1982, the suit was unconditionally withdrawn by Ld. Advocate and Jaysukhben had not signed it. Therefore, there was no decree passed on merits and hence, principle of "*Res-judicata*" would not be applicable.
- Even for a moment, the Decree of Sp.Civil No.173/1975 and 231/1982 are considered in favour of Defendants, then the Defendants have not explained why they have to obtain new agreement of waiving rights in the Year2004. As per amended Sec.6 of Hindu Succession Act, unregistered document for the waiver of rights cannot be considered.
- As per Sec.17 and 49 of Registration Act, Waiver-deed, Confirmation-deed whereby rights and interest are created or transferred or alienated, must be registered. But all the documents which are relied upon by the Defendants are unregistered

documents and therefore they can not be considered in their favour. If they were in position to get unregistered deed then why they have not get registered-deed.

- The Defendant No.11 and 12 are relatives and community persons of the parties and the Defendants have executed registered Sale-deeds in their collusion just to damage Plaintiffs' right. All the facts of history and origin are mentioned in the said-deeds which prove that the Defendants had knowledge of rights of the Plaintiffs and even then they have not attempted to get signature or confirmation from all the Plaintiffs. The Defendants have acted in active collusion of each other and therefore, the Defendant No.11 to 13 are not *bonafide* purchaser without notice.
- Being legal heirs of D.Thakorbhai Manchhabhai, the Plaintiffs have not been given their rights and share in the disputed properties of D.Manchharam Narsibhai and therefore, their claim should be considered in their favour. Maniben or Jaysukhben has never executed any registered-deed in favour of the Defendants till 2007. Jaysukhben died in the Year2008 through whom the Plaintiffs have claimed rights and denial of their right has been done by effecting mutation Entry no.1999 in the Year2007. Therefore present suit is within limitation. So far as Defendant n.11 to 13.6 are concerned they have purchased disputed properties after registration of lis-pendency and therefore all subsequent transactions are subject matter of final out come and the purchasers can not claim plea of bonafide purchasers.

- He has relied upon cross-examination of the Defendants' witnesses. He has relied upon certain authorities in favour of his submission which are discussed later. He has urged to allow the suit in favour of the Plaintiffs.

8]. **Ld. Advocate Mr.K.M.Patel**, appearing on behalf of Plaintiff No.3 and 4, has submitted oral arguments in detail. He has adopted above mentioned oral submissions of Ld. Advocate Mr.Gandhi and moreover, emphasized on following arguments.

- The Plaintiffs have well pleaded their rights in the plaint. The Defendants have taken mainly two defenses namely (1) Maniben waived her right and (2) Legal heirs of Maniben have no right in the properties. On one hand, the Defendants are submitting that vide Exh.623, the partition of disputed property was taken place in the Year1956 and on other hand, they are submitting that Maniben waived her right in 2007 but if the partition was already taken place long back in 1956, then there is no question of waiver-deed by Maniben in 2007.
- Maniben died after implementation of Codified Hindu law and as per Sec.6, women have equal rights with the men and therefore, Maniben can execute *Will* only for her share and not for her daughters' share. There is no such clear registered document suggesting that Maniben had waived her rights of disputed properties in favour of the Defendants.
- Sp.Civil Suit No.175/1973 and 231/1983 were not disposed off

after meritorious trial and therefore, there is no issue of "*Res-judicata*". The Plaintiffs were not signatory to withdrawal pursis in the suit No.231/1983 which was filed by their mother Jaysukhben and therefore it has no binding effect to the Plaintiffs.

- The Defendants have taken defense that certain properties are sold and the Plaintiffs have not challenged registered documents and not joined parties but the said Sale-deeds were not made within the knowledge of Plaintiffs as the Plaintiff no.3 and 4 are residing at their matrimonial houses. The Defendants have suppressed facts of said registered Sale-deeds.
- The Defendants are well aware about the rights of Jaysukhben from the beginning and therefore, they have obtained Confirmation-deeds from Plaintiff No.1 and 2 during the pendency of present suit. Even though the names of Plaintiff No.1 and 2 were not there in revenue records, they were given huge money amounting to Rs.36,00,000/- + Rs.36,00,000/- which suggests that Plaintiffs have ample rights in the disputed property.
- The Defendants have also paid huge amount to legal heirs of their paternal auntie and obtained confirmation-deeds and declaration-deed even though their names were not in revenue records. Therefore the Defendants can not use revenue record as shield of their own wrong.
- Referring to deposition of Plaintiff, it appears that Maniben lost her husband in the Year 1942 and had responsibility of three minor daughters, being illiterate widow, she was bound to live with

Father-in-law (Manchhabhai) and Brother-in-law (Nagarbhai) in joint family, she was not in a position to have independent decision power, she was total dependent on other family members till her death and the Defendants have taken undue advantage of her situation and obtain fraudulently unregistered Waiver-deed.

- If Maniben had waived her right, then there was no necessity of her *Will* in the Year2011, giving right to her nephew instead of her own daughters and daughters of predeceased daughter. There is no fact at all mentioned in the *Will* about her own daughters. No facts are narrated why she had discarded rights of her own daughters and therefore there is reason to believe that *Will* is not read over to her and executed by her.
- Affidavit of Maniben cannot be considered as her deposition on oath before the Court because, the Plaintiffs do not have right to cross-examine her. There is her thumb-impression and she was illiterate lady and therefore her cross-examination was material for the Plaintiffs to bring veracity on record of this Court. Therefore said affidavit can not be read.
- The daughters were living at their matrimonial houses, naturally not having any knowledge of *malafide* acts of the Defendants.
- Kishorbhai is the best witness having complete and best knowledge of all the facts but the Defendants have not examined him and he has not enter into the witness-box before this Court.
- The Defendants have not offered explanation about the requirement of Waiver-deed in the Year2004 and then again in the

Year2007. If the partition was taken place in the long back in the Year1956, then the Defendants have not offered any explanation for the execution of such agreements without consideration in the Year2007.

- Name of Maniben was there in revenue record till the Year2007 and the Defendants attempted to delete her name with the Entry No.1999 and it is first denial of Plaintiffs' right on record therefore cause of action has arisen in the Year2007 and the present suit is filed in the Year2009 within limitation of 3 years.
- Pedigree of Maniben was not produced at the time of mutation entry No.1999, no notice was served to the Plaintiffs and Revenue Authority did not record statements of Maniben as well as Plaintiffs and therefore it has no binding effect to the Plaintiffs. The Defendants do not bother to plead pedigree of Maniben before Revenue Authority which shows their *malafide* intention.
- The purchasers of disputed properties have purchased said properties during the pendency of present suit and after notice of registered *lis-pendese* therefore, they are not *bonafide* purchaser with notice. The present suit is pending from 2009 and therefore, all subsequent purchasers are bound by the outcome of present suit and the same observation has been made in all the orders of Revenue Litigations.
- The Plaintiff No.3 and 4 have not been given any share. If the partition was already done, what was the requirement for the execution of Waiver-agreements in 2004, agreement in 2007, *Will*

of Maniben and Confirmation-deeds of Plaintiff No.1 and 2 in the Year2018. If the Plaintiffs have no right in the disputed property then the Defendants might not have bothered for getting Waiver-deed, Consent-deed or any kind of Confirmation-deed from the Plaintiffs.

- The Defendants are well aware of Plaintiffs' right in the disputed properties and therefore they have paid money to the Plaintiff no.1 and 2 and obtained confirmation-deed in the Year2018 but at that time also, they intentionally avoided right of the Plaintiff no.3 and 4 who are sisters. The Defendants have adopted divide and rule technique which itself is against said sisters.
- The conduct of the Defendants is *malafide*. The Plaintiffs have well proved their case and therefore, the present suit should be allowed in their favour.
- He has relied upon certain authorities which are discussed later.

9]. **Ld. Advocate Mr.V.D.Jagirdar**, appearing on behalf of Defendant No.1, 2, 3A, 4 to 7 and 10, has submitted oral arguments in detail. He has vehemently submitted following arguments.

- The Plaintiffs have claimed rights of being legal heirs of third degree of D.Manchharam Narsibhai but they have not joined all the legal heirs of D.Manchharam and therefore, the present suit is barred by non-joinder of necessary parties under Order 1 Rule 10 of CPC. They have not drawn correct pedigree of D.Manchharam and therefore, they have claimed wrong share.

- Family-arrangement was done in the Year 1955 which has not been challenged. Mutation Entry No.623 vide Exh.240 was based on the said partition is in favour of Defendant and the Plaintiffs have not challenged till the date. The Plaintiffs have made false drafting about obtaining thumb-impression of Maniben in name of agricultural loan.
- The Plaintiffs have made clever drafting in the plaint by pleading that disputed properties were ancestral and HUF properties of D.Manichharam. The Plaintiffs have not produced any documentary evidence proving that disputed properties were ancestral and HUF properties of D.Manichharam. There is admittedly no revenue record which proves that D.Manichharam got disputed properties from his forefathers of three degrees. Therefore, the disposed properties were his self-acquired properties.
- The Plaintiffs have stated false cause of action in para-13 arisen in 2008. Even for a moment, if the Plaintiffs wished to claim their right, it first accrued on the Dt.15/05/1979 when Manichharam died. But the Plaintiffs have not filed any suit within three years from that date.
- D.Maniben herself filed Sp.C.S.No.173/1975 and compromise decree was passed which is binding to the Plaintiffs. They have not challenged it and therefore present suit is barred by *Res-judicata*.
- The Plaintiffs' mother Jaysukhben herself filed Sp.C.S.No.231/1982 which was unconditionally withdrawn by her in the Year 1984. The Plaintiffs have claimed their right as legal heir of Jaysukhben

but Jaysukhben herself had not filed any suit after withdrawing her Suit No.231/1982 till her death in 2005. Even for a moment, if it is believed that the Plaintiffs were aggrieved by such withdrawal, then they must have file the suit within three years from the withdrawal date of Suit No.231/1982. But, no such action has been taken by them and they have filed present suit after lapse of more than 26 years which is apparently time bared.

- Jaysukhben filed Suit No.231 in the Year1982 and Plaintiffs of present suit were also party in that earlier suit. Maniben was also party with other 56 parties. The Plaintiffs have not challenged withdrawal decree of that suit till the date. Therefore, the Plaintiffs cannot claim right through their mother Jaysukhben.
- Principle of "*Resjudicata*" straight way applies against present suit.
- The Plaintiffs have cunningly suppressed facts of earlier suits namely No.173/1975 and 231/1982. The Plaintiff no.1 Yashvantlal was the person who identified thumb-impression of Maniben in her Suit No.173/1975 and he has suppressed said facts in present suit. Therefore the Plaintiffs have not come with clean hands.
- The Plaintiffs have solely based their claim on equity but the law of equity should be considered with other laws and conduct of Plaintiffs. The Plaintiffs have knowingly not produced Death certificate of Plaintiff No.1 on record of the Court because he was staying at one Old-age Home at Sanand in his last days of life. The Plaintiff No.2 to 4 have not taken care of their father i.e. Plaintiff

No.1. They have also not taken care of their mother Jaysukhben in her last days. They have not even attended Funeral ceremony of their mother Jaysukhben and therefore, the Plaintiffs have no moral right to seek sympathy from this Court.

- It is the say of the Plaintiffs in their plaint that Maniben was living dependent and helpless life, but the Plaintiff No.1 himself has identified thumb impression of D.Maniben in all the proceedings of ULC and Acquisition. The Plaintiffs have suppressed said fact in the plaint. The conduct of the Plaintiffs estopped them from submitting anything contrary to their own documents and therefore, principle of *estoppel* applied against them.
- D.Maniben had three daughters namely (1)Jaysukhben through whom, the Plaintiffs have claimed their right in present suit, (2) Defendant No.2 and (3) Defendant No.3. The Defendant No.2 and 3 have not claimed anything or submitted anything about their share. The Defendant No.1 and 2 have submitted against their own interest and their version should be accepted.
- D.Maniben, D.Jaysukhben and others have executed Waiver-deeds in the Year2004. The Plaintiff no.1 himself has signed said deeds as witness but he has suppressed said facts in the Plaint. Though the said documents are unregistered, the Plaintiffs are not able to establish their rights based on said documents as they have not challenged them.
- D.Maniben also executed an affidavit vide Exh.85 before Notary.

Therefore, it should be accepted under presumption of genuineness.

- The Plaintiff No.1 and 2 have executed Confirmation-deeds in favour of Defendants after accepting handsome amount of Rs.36,00,000/-. They have admitted in the said deeds that they would withdraw present suit but they have not followed their words which proves that they have malafide intention to grab more and more money.
- In good faith of unity of the family and to save relations, the Defendants have voluntarily paid Rs.36,00,000/- Branch-wise i.e. to Plaintiff No.1 and 2 and all other daughters of Thakorbbhai Manchharam. But such payment can not be considered as of right of the Plaintiffs.
- Certain properties were acquired by the authority in Land Acquisition but the Plaintiffs have suppressed said fact. The Plaintiffs have suppressed facts about acquisition proceedings and compensation amount.
- The Defendant No.11 to 13 are *bonafide* purchaser of properties as they have purchased disputed properties through registered Sale-deeds u/s.52 of Transfer of Property Act.
- Block No.184, 237, 179, 125/5, 128/1 were sold to different persons and the Plaintiffs have not challenged any of the Sale-deeds till the date. Therefore, the present suit is bared by non-joinder of necessary parties. The Plaintiffs have not specifically pleaded about the properties which remain in the hands of

D.Manhharam. Therefore, the present suit is also bared as partial partition cannot be allowed.

- Even for a moment if it is believed that Maniben had right in Block no.20/1 and 20/2, the Plaintiffs have to claim their right as legal heirs of Maniben but they have not done so. Therefore they are not entitled to any claim.
- The Plaintiffs have relied upon *Will* of D.Maniben but they have not proved contents of the *Will* by examining attesting witnesses as per provision of Sec.63 and 68 of Indian Evidence Act. It is quite suspicious that all beneficiary of the *Will* were present at time of execution of it. *Will* shows date of 25/06/2008 but no sign and signature was done on that particular date but done on dt.11/08/2008. Witness of the *Will* has deposed in his cross-examination vide Exh.397 that he was helping to Maniben in affixing her thumb-impression in the *Will*. The Plaintiff No.2's deposition of his cross-examination vide Exh.204 suggests that he has played vital role in concocting the *Will* and therefore the said *Will* is suspicious.
- D.Maniben canceled her earlier *Will* and executed her last registered *Will* in favour of Defendants which prevails over her earlier *Will*. Maniben died at the age of 102 years which itself says that she had healthy and long life and as she was living with the Defendants, they have maintained and taken care of her Well therefore, the submission of Plaintiff in respect of helpless and dependent life of Maniben is not believable.

- The burden of proof lies upon Plaintiffs and they cannot submit that the Defendants have not examined any particular Defendant as their witness. The Plaintiffs have failed to prove existence of joint family and joint properties.
- The Plaintiffs have not valued the suit properly and therefore, the suit should be rejected for insufficient court-fee-stamp under Order 7 Rule 11(b)(c).
- Plaintiff Chhayaben has not entered into witness box.
- Plaintiff No.4 is not signatory of Schedule A and plaint and therefore, her deposition cannot be considered. The Plaintiffs have not complied with Order 6 Rule 14 and 15 which are mandatory. The Plaintiffs have made incomplete and vague pleadings in the plaint.
- The Plaintiff No.4 has made baseless and serious allegations against Ld. Advocates. The Plaintiffs lodged baseless complaints against the Defendants in which the police has submitted "C" Summary. The Plaintiffs have misled the Court and her conduct should be taken on record.
- The Defendants have initiated criminal complaint against the Plaintiff no.3 and 4 and in consequences, charge-sheet has already been filed. The Plaintiff no.4 has obtained anticipatory bail.
- The Plaintiffs have miserably failed to prove their case. They have tendency to suppress facts and documents and thereby they have committed fraud with the Court. The suit is apparently time barred. There is no cause of action arisen in the Year2008. The

Plaintiffs are interested only in extortion of money from the Defendants. Therefore, their suit should be rejected with exemplary cost.

10]. **Ld. Advocate Mr.M.J.Gandhi**, appearing on behalf of Defendant No.11 and 12. He has adopted above mentioned oral arguments of Ld.Advocate Mr.Jagirdaar, moreover, he has submitted following arguments.

- The Plaintiffs have not stated complete pedigree of D.Manhharam and in absence of male member in branch of Thakorbhai, the Plaintiffs have no coparcenary right in disputed properties.
- The Defendant No.11 and 12 are *bonafide* purchaser of disputed property, particularly, Survey No.153 and they have paid handsome amount of consideration to the Defendants. They have purchased disputed properties from the owners, whose names are there in revenue records. The Plaintiffs names are not there in revenue records. Therefore, they are *bonafide* purchaser with value without notice.
- The father of the Plaintiff No.2 to 4, i.e the Plaintiff No.1 himself has executed Confirmation-deed in their favour. The Plaintiff No.2 has also executed Confirmation-deed in their favour and both the said Plaintiffs have received handsome amount of Rs.36,00,000/-. The Plaintiffs have not challenged Confirmation-deeds till the date.

- Maniben executed total three *Wills* but her last *Will* prevails over earlier two *Wills*. Her last *Will* is in favour of Defendants as it shows description of disputed property.
- The Defendant No.11 and 12 have bear cost for the process of converting disputed property into NA Land and thereafter, development in it has been done and they have bear huge cost in it.
- Even for a moment, if the Plaintiffs' right is considered, the Plaintiff No.1 and 2 have received Rs.36,00,000/- and the Plaintiff No.3 and 4 may ask their right in the said amount from the Plaintiff No.1 and 2, but they have no right to claim their share against Defendant No.11 and 12.
- The Plaintiffs have full knowledge about their registered deeds and even then they have joined them as a party with delay and therefore, the suit is time bared against them.
- The Plaintiffs have filed present suit only to extort more money from them and therefore, it should be rejected with heaviest cost.

11]. Ld. Advocate Mr.Z.M.Shaikh, appearing on behalf of Defendant No.13, 13.1 to 13.6 has adopted above mentioned oral arguments of Ld.A. Mr.Jagirdaar and Ld.A.Mr.Gandhi, moreover, he has submitted following arguments.

- The Defendant No.13, 13.1 to 13.6 are *bonafide* purchaser with consideration without notice. They have paid handsome amount of consideration for the disputed properties. They have purchased

disputed properties from the owners on the record.

- The disputed properties are converted into NA Land and development has been done. There are plotting in the disputed property and plots have been sold to third parties through registered Sale-deeds. The Plaintiffs have not joined all the said third parties in present suit. The Plaintiffs have not challenged said registered Sale-deeds. The Plaintiffs have not amended the plaint with necessary pleadings. Therefore, the suit is not maintainable.
- The Plaintiffs have joined them as party after delay. Therefore suit is time-barred against them.
- The Plaintiffs have filed false, frivolous and vexatious suit just to extort money from them. Hence, their suit must be rejected with exemplary cost.

12.] Following issues have been framed in regional language at Ex.171 on dt.18.08.2022 and further issues added on dt.20/02/22 for the determination:-

:: I S S U E S ::

- (૧) શું વાદી સાબીત કરે છે કે, શીડયુલમાં જણાવેલ મિલકતો સ્વ.મંછારામનાં હિન્દુ અવિભક્ત એકત્ર કુટુંબની મિલકત આવેલ છે ?
- (૨) શું વાદી સાબીત કરે છે કે, પ્રતિવાદી નં.૩ થી ૭ અગર તે પૈકીના ઓ પ્રતિવાદી નં.૮ કનેથી વારસાઈ કે ખેતીની લોન લેવાના બહાને વાદી નં.૧ નાં અંગુઠાઓ કરાવેલ છે ?

- (૩) શું વાદી સાબીત કરે છે કે, પ્રતિવાદી નં.૩ થી ૭ નાએ સંયુક્ત મિલકતોનો ગેરવહીવટ કરેલો છે ?
- (૪) શું વાદી સાબીત કરે છે કે, પ્રતિવાદી નં.૩ થી ૭ નાએ ગેરકાયદેસર તબદીલ, વેચાણ વ્યવહાર વાદીની જાણ/સંમતિ વિના કરેલા છે ?
- (૫) શું વાદી સાબીત કરે છે કે, પ્રતિવાદીઓએ મેળાપીપણામાં તા.૨૪/૫/૨૦૧૮ નાં રોજ રજીસ્ટર્ડ વેચાણ દસ્તાવેજ નં.૦૩૧૫, નં.૦૩૯૩, નં.૦૩૮૨ કરેલ છે ?
- (૬) શું વાદી સાબીત કરે છે કે, શીડ્યુલ-બી ની મિલકતો પ્રતિવાદી નં.૩-૪ અને તેમના કુટુંબીજનોએ સંયુક્ત કુટુંબની આવક ઉપજ, બચતમાંથી ખરીદેલ છે ?
- (૭) શું વાદી સાબીત કરે છે કે, શીડ્યુલ-બી વાળી મિલકતો મેળાપીપણામાં પ્રતિવાદી નં.૧૧ તથા ૧૨ ને ગેરકાયદેસર રીતે વાદીના હક્કો દુબાડવા માટે વેચવામાં આવેલ છે ?
- (૭/એ) શું વાદી સાબીત કરે છે કે દાવાવાળી મિલકતો ગેરકાયદેસર રીતે પ્રતિવાદી નં.૧૩ થી ૧૩/૬ ને વેચાણ કરવામાં આવેલ છે ?
- (૮) શું પ્રતિવાદી નં.૧ થી ૮ સાબીત કરે છે કે, મંછાભાઈ નરસીભાઈ એ તા.૫/૪/૧૯૫૬ નાં રોજ વહેંચણી લેખ કરેલ જે મુજબ બ્લોક નં.૨૦/૧ અને ૨૦/૨ ના સંપૂર્ણ માલિક, પ્રત્યક્ષ કબજેદાર નાગરભાઈ મંછાભાઈ થયેલા અને મણીબેન તે ઠાકોરભાઈ મંછારામની વિધવાને હયાતી સુધી ફક્ત ખોરાકી, પોષાકીનો હક્ક આપેલો ?

- (૯) શું પ્રતિવાદી નં.૧ થી ૮ સાબીત કરે છે કે મર્હુમ જયસુખબેન તે ઠાકોરભાઈ મંછારામની દીકરીએ તેમની હયાતીમાં તથા પ્રતિવાદી નં.૧ તથા ૨ નાએ તા. ૫/૨/૨૦૦૪ ના રોજ હકક છોડયાનો લેખ નોટરી રૂબરૂ કરેલ છે ? અનુક્રમ નં.૧૫૩, ૧૫૪ તથા ૧૫૫ થી પ્રતિવાદી નં.૫ તથા યોગેશચંદ્ર નાગરજી પટેલ નાં લાભમાં કરેલ છે ?
- (૧૦) શું પ્રતિવાદી નં.૧ થી ૮ સાબીત કરે છે કે રે.સ.નં.૧૮/૧, ૧૮/૨, ૧૬ તથા ૧૫૪ બાબતે ભાઈઓમાં ભાગ વહેંચણી થયેલ ?
- (૧૧) શું પ્રતિવાદી નં.૧ થી ૮ સાબીત કરે છે કે, નાગરભાઈ મંછાભાઈએ તા.૪/૯/૧૯૮૯ ના રોજ રાંદેરનાં રે.સ.નં.૨૯૯,૩૩૦, ૨૯૬, ૨૯૮ તેમજ જહાંગીરાબાદની જમીનો માટે વીલ કરેલ છે ?
- (૧૨) શું પ્રતિવાદી નં.૧ થી ૮ સાબીત કરે છે કે, બ્લોક નં.૫૬, ૬૯ ગુજરાત હાઉસીંગ બોર્ડ માં સંપાદિત થયેલ છે ?
- (૧૩) શું પ્રતિવાદી નં.૧ થી ૮ સાબીત કરે છે કે જહાંગીરાબાદનાં બ્લોક નં.૧ ૮૪/૧/બ મુળ માલિક મંછાભાઈ નરશીભાઈની સ્વતંત્ર કમાણીની મિલકત છે ? જે જમીન ટોચ મર્યાદા અને નિયમો હેઠળ સરકાર ફાજલ જાહેર થયેલ છે ?
- (૧૪) શું પ્રતિવાદી નં.૧૧ તથા ૧૨ સાબીત કરે છે કે, તેઓ બોનાફાઈડ પરચેઝર વીથ વેલ્યુ વીધાઉટ નોટીસ છે ?

- (૧૫) શું પ્રતિવાદી નં.૧, ૨ જ થી ૭ તથા ૧૦ સાબીત કરે છે કે, મણીબેન તે ઠાકોરભાઈ મંછારામની વિધવાએ તા.૧/૧૨/૨૦૧૧ નાં રોજ રજીસ્ટર્ડ વીલ નં.૨૧૧૫૩ કરેલ છે?
- (૧૫/એ) શું પ્રતિવાદી નં.૧૩ થી ૧૩/૬ સાબીત કરે છે કે તેઓ શુદ્ધબુદ્ધિનાં, કિંમતી અવેજ ચુકવી મિલકત ખરીદનાર છે અને સદર જમીન પર રહેણાંક પ્લોટ/ બિલ્ડીંગનું આયોજન કરી સોસાયટી બનાવી ઈસમો રહેતા આવેલ છે ?
- (૧૬) શું દાવાને કારણ, મુદતનો બાધ નડે છે ?
- (૧૭) શું દાવાને ડિલે, લેચીઝ, એકવીએસન્સનો બાધ નડે છે ?
- (૧૮) શું દાવાને સપ્રેશન ઓફ મટેરીયલ ફેક્ટસ તથા પ્રોમીસરી એસ્ટોપલનો બાધ નડે છે ?
- (૧૯) શું વાદી દરમ્યાન ઉપજ, હિસાબ મેળવવા હકકદાર છે ?
- (૨૦) શું વાદી દાવામાં માંગ્યા મુજબની દાદ મેળવવા હકકદાર છે ?
- (૨૧) શું હુકમ અને હુકમનામું ?

13]. Following are my determinations for the above points.

- (1). In Affirmative.
- (2). In Affirmative.
- (3). In Affirmative.
- (4). In Partly Affirmative.
- (5). In Partly Affirmative.

- (6). In Negative.
- (7). In Partly Affirmative.
- (7-A). In Partly Affirmative.
- (8). In Negative.
- (9). In Negative.
- (10). In Negative.
- (11). In Negative.
- (12). In Affirmative.
- (13). In Affirmative.
- (14). In Negative.
- (15). In Negative.
- (15-A). In Negative.
- (16). In Negative.
- (17). In Negative.
- (18). In Negative.
- (19). In Negative.
- (20). In Partly Affirmative.
- (21). **As per final order.**

-. R E A S O N S :-

14]. Issue no.1 to 19:-

The Plaintiffs have filed present suit for reliefs of partition of the disputed properties with metes and bounds, declaration, cancellation of Registered Sale-deeds, permanent injunction, possession and *mesne* profit. They have to satisfy their case is

covered under provision of Hindu Laws, Specific Relief Act and Transfer of Property Act. As per Section 103 of Indian Evidence Act, the burden lies upon Plaintiffs to present case with evidence which lead the court believe their averments. The Plaintiffs have to produce their best evidence to show preponderance of probabilities in their favour. Considering the settled principle, the entire case is hereby evaluated.

Admitted facts:-

15] To avoid overlapping of the facts and for better convenience, certain admitted facts are hereby noted after perusing pleadings and evidence of both the parties:-

1. D.Manchharam Narsibhai was the original owner of disputed properties who died intestate on dt.15/05/1979.
2. D.Manchharam Narsibhai had two sons namely (1). Thakorbhai Manchharam and (2).Nagarbhai Manchharam.
3. Thakorbhai Manchharam died long back in the Year1942 leaving his widow Maniben, Defendant No.8 and she died in the Year2016, during the pendency of present suit.
4. Defendant No.8 Maniben was living with the Defendant No.3 to 7 till her death.
5. Nagarbhai Manchharam died in the Year1989.
6. The Plaintiffs and Defendant No.1, 2 and 8 are legal heirs of branch of D.Thakorbhai Manchharam. The Plaintiffs have claimed their right through daughter of Thakorbhai

Manchhabhai and Maniben namely Jaysukhben

7. The Defendant No.3 to 7 and 10 are legal heirs of branch of D.Nagarbhai Manchharam.
8. Manchhabhai Narshibhai had 4 daughters namely, Laxmiben, Nandiben, Shantaben and Ambaben who are not party in present suit.
9. Daughters of Manchhabhai Narshibhai have never filed any suit or raised dispute for their rights.
10. No Registered Partition-deed or Family-Arrangement-Deed or family-settlement-deed has been executed for disputed properties either between D.Thakorbhai Manchharam and D.Nagarbhai Manchharam or between their legal heirs.
11. The Plaintiffs have registered ***Lis-pendense*** for present suit u/s.52 of Transfer of Property Act which is registered at **No.203/16, Dt.20/02/16 (Exh.193)**.
12. Neither Maniben nor Jaysukhben has executed registered Waiver-deed in favour of Defendants.
13. Sp.Civil Suit **No.173/1975(Exh.370)** was filed by Maniben Thakorbhai for the partition of properties on **dt.15/09/1975** wherein compromise-decree was passed (Exh.371) on dt.30/10/1975.
14. Sp.Civil Suit **No.231/1982 (Exh.372)** was filed by Jaysukhben, D./o. Thakorbhai Manchhabhai against total 45 Defendants. Plaintiff No.2(Dipak Yashvantbhai) of present suit was there as Defendant No.18 and Plaintiff No.3

(Chhayaben Yashvantbhai) of present suit was there as Defendant No.19. The said suit was conditionally withdrawn (Exh.373) on dt.13/12/1984 by her Ld. Advocate.

15. **Survey No.125/5, Block No.56** of Jahagirabad was acquired by the **Gujarat Housing Board** and revenue records are in name of Gujarat Housing Board. The Plaintiffs have not challenged said acquisition and entry of revenue record. The Plaintiffs have not made Gujarat Housing Board as party in present suit.
16. **Survey No.128/1, Block No.69** of Jahagirabad was acquired by the **Gujarat Housing Board** and revenue records are in name of Gujarat Housing Board. The Plaintiffs have not challenged said acquisition and entry of revenue record. The Plaintiffs have not made Gujarat Housing Board as party in present suit.
17. **Survey No.94/B/P, Block No.184/1** of Jahangirabad were sold to **Devenbhai Mafatbhai Patel** and others through **Registered Sale-deed No.26223, dt.02/11/2001(Exh.262)** and revenue records are in his name. The Plaintiffs have not challenged Registered Sale-deeds and revenue records. The Plaintiffs have not joined said person as party in present suit. It is admitted fact that Maniben did not authorize seller of said Sale-deed to sell her property to Devenbhai Mafatbhai Patel. It is admitted fact that Maniben herself was not mentioned as Seller in said Sale-deed and she was not paid

any consideration by Devenbhai Mafatbhai Patel.

18. **Block No.184/2, 184/2/1, 184/2/2, 184/2/3** of Jahangirabad were sold to **Vijayalaxmi Co-operative Housing Society** through Registered Sale-deeds namely, No.8907, No.8908, No.8909 and No.8910 on dt.03/10/1999 and revenue records are in its name. The Plaintiffs have not challenged Registered Sale-deeds and revenue records. The Plaintiffs have not joined said society as party in present suit. It is admitted fact that Maniben did not authorize seller of said Sale-deed to sell her property to Vijayalaxmi Co-operative Housing Society. It is admitted fact that Maniben herself was not mentioned as Seller in said Sale-deed and she was not paid any consideration by Vijayalaxmi Co-operative Housing Society.
19. **Block/Survey No.299/2 Peki 2, 299/2 Peki 3, 330 Peki 1, 299/1, 330/Peki 2 of Rander** village were acquired by the Government of ***Pada Yojna (Compound Wall Scheme)***. The Plaintiffs have not challenged said acquisition till the date. None of the parties have produced documents showing land acquisition proceedings and recovery of the compensation amount thereof.
20. It is admitted fact that Maniben's property Survey no.153 was comprised in new Block no.20/1.
21. It is admitted fact that no waiver-agreement or relinquishment-deed was executed by Maniben from 1975 to 2007 and by Jaysukhben from 1982 to 2004.

22. It is admitted fact that **Survey no.299 peki** sold through registered Sale-deed to **Ibrahim Haji Usman on dt.30/03/2002** (Exh.332). The Plaintiffs have not challenged said Sale-deed and have not joined said person as party in present suit.
23. It is admitted fact that **Survey no.330 peki** sold through registered **Sale-deed No.5161 to Ibrahim Haji Usman** on dt.25/09/2003 (Exh.333). The Plaintiffs have not challenged said Sale-deed and joined purchaser as party in present suit.
24. **Final Plot No.8-B ad-measuring 10708 Sq.Mt. of T.P.Scheme 43 of Block No.20/1** of Jahangirabad has been sold by the Defendant No.3 to 7 and 10 to Defendant No.13 and its partners, Defendant no.13.1 to 13.6, through Registered Sale-deed No.18319, Dt.10/08/2017. The said Sale-deed is under-challenge in present suit.
25. It is admitted fact that revenue records of Block no.20/1 at present shows name of the Defendant no.3 to 7 and 13, 13.1 to 13.6 (Exh.291).
26. The Plaintiff No.1 and 2 have executed Confirmation-deeds in favour of Defendant No.13 for Block No.20/1 after receiving Rs.36,00,000/- (by each of them) on **Dt.11/06/2018** during the pendency of present suit.
27. **Block No.20/2** of Jahangirabad has been sold during pendency of present suit, by the Defendant No.3 to 7 and 10 to Defendant No.11 and 12 through Registered Sale-deed

No.392, dt.24/05/2018. The said Sale-deed is under-challenge in present suit.

28. It is admitted fact that revenue records of Block no.13 at present shows name of the Defendant no.11 and 12 (Exh.462).

29. **Block No.13** of Jahangirabad has been sold during pendency of present suit by the Defendant No.4 and 7 to Defendant No.11 and 12 through Registered Sale-deed **No.393, Dt.24/05/2018.** The said Sale-deed is under-challenge in present suit.

30. It is admitted fact that revenue records of Block no.13 at present shows name of the Defendant no.11 and 12 (Exh.461).

31. **Block No.11** of Jahangirabad has been sold during pendency of present suit by the Defendant No.4 and 7 to Defendant No.11 and 12 through Registered Sale-deed **No.394, Dt.24/05/2018.** The said Sale-deed is under-challenge in present suit.

32. It is admitted fact that revenue records of Block No.13 at present shows name of the Defendant no.11 and 12 (Exh.460).

33. The Plaintiff No.1 and 2 have executed Declaration-cum-Confirmation-deeds in favour of Defendant No.13 on Dt.12/06/2018 during the pendency of present suit.

Date-wise Chronology of events:-

16]. To get clear picture of the case, after going through pleadings of both the parties, certain eventual facts in chronology of dates are

crucial to be noted as follow:-

Sr. No.	Date	Particulars of Event	Relevant Exhibit of Document
1	05/04/1954	Partition-deed	Not Produced
2	30/05/1956	Revenue Entry No.623	240
3	12/11/1966	Revenue Entry No.803, joint name entry.	244
4	02/11/1969	Partition as per Revenue Entry 848, partition done by Nagarbhai Manchhabhai, Partition-deed not produced but it is mentioned in said Entry	245
5	15/09/1975	Sp.Civil Suit No.173/1975 filed by Maniben wid./o. Thakorbhai Machhabhai for Partition	370
6	30/10/1975	Compromise-decree passed by the Civil Court (SD), Surat in Sp.Civil Suit No.173/1975 was	371
7	August 1976	ULC Proceedings started and continued till 2005	381 to 384
8	15/05/1979	Original Owner Machhabhai Narsibhai died, death certificate is not produced but said date is mentioned in Revenue Entry No.1059	251
9	02/08/1979	Revenue Entry No.1059 mutated, Name of Maniben was entered for 1/3 share with other co-owners for all the disputed properties	251
10	07/07/1979	Revenue Entry No.1047, 1048 and 1049 Lands acquired by Land Acquisition Authority	248-249-250
11	31/07/1982	Sp.Civil Suit No.231/1982 filed by Jaysukhben d/o. Thakorbhai Manchhabhai	372
12	26/07/1984	Revenue Entry No.1150 names of 11 members are entered with names of Maniben, Yogeshchandra and Kishorchandra	254
13	13/12/1984	Sp.Civil Suit No.231/1982 was unconditionally	373

		withdrawn by Jaysukhben d/o. Thakorbhai Manchhabhai	
14	04/09/1989	Will of Nagarbhai Manchhabhai is mentioned in Revenue Entry No.1272 but <i>Will</i> itself not produced.	255
15	05/09/1989	Nagarbhai Manchhabhai died, his death certificate is not produced but his death is mentioned in Revenue Entry No.1272	255
16	10/10/1989	Inheritance Entry No.1272 after death of Nagarbhai Manchhabhai	255
17	02/01/1992	Revenue Entry No.1311, disputed properties covered under SUDA	258
18	10/12/1999	Family-partition Agreement on Rs.20/- Stamp paper is mentioned in Revenue Entry no.1478	Not produced
19	15/01/2000	Revenue Entry No.1478 based on Joint Agreement on Rs.20/- Stamp paper (agreement not produced)	259
20	01/06/2000	Revenue Entry No.1489 based on family-partition agreement on Rs.20/- Stamp Paper dt.10/12/1999 (said partition-agreement not produced)	260
21	14/09/2000	Revenue Entry No.1500 based on ULC proceedings, name of Maniben is mentioned as owner, then name of Government entered for 17723 Sq.Mt. of Survey no.94 peki and names of owners entered for remaining 1500 Sq.Mt. of said land	261
22	06/11/2001	Revenue Entry No.1553 based on Registered Sale-deed no.26223 in favour of Shri Devenbhai Mafatbhai Patel by YogeshchandraNagarji and others	262
23	19/09/2002	Revenue Entry No.1595, Supplementary Statements showing names of all co-sharers including Plaintiffs' mother Jaushukhben in last column	262
24	05/02/2004	Notarized waiver-deeds of Jaysukhben, Urmilaben and Liliben	380, 451, 452
25	15/03/2004	Yogeshchandra Nagarji died	366
26	27/12/2004	Inheritance Entry No.1719 entering names of Defendant no.3 to 7	264
27	04/02/2005	Rights Waiver entry No.1756, Bhavnaben Yogeshchandra waived her right based on deed	265

		dt.03/02/05	
28	26/12/2007	Waiver-agreement by Maniben and others on Rs.100/- Stamp paper before Notary Shri Navinchadra G. Patel, which is relied upon by the Defendants but not produced before the Court	----
29	28/12/2007	Revenue Entry No.1999 based on Waiver-agreement of dt.26/12/07 of Maniben on Rs.100/- Stamp Paper	268
30	06/06/2008	Jaysukhben d/o. Thakorbhai Manchhabhai died	365
31	11/07/2008	Registered Will of Maniben No.13492/08 in favour of the Plaintiffs	361
32	05/02/2009	Registered Will No.1023 of Maniben (mentioned in Registered Will No.21153)	Not Produced
33	17/03/2009	Present Suit filed	1
34	01/12/2011	Registered Will No.21153 of Maniben in favour of the Defendant no.3 to 7.	387
35	20/02/2016	Registered Lis-pendese No.203/2016	193
36	26/05/2016	Report of Court Commissioner done in present suit	400
37	27/11/2016	Maniben died	364
38	2017 and onwards	Criminal Proceedings by the parties against each other	388, 419, 420, 421

The above mentioned table says that first event was on dt.05/04/1954 when partition-deed was executed in presence of original Owner Manchharam Narshibhai. Said Partition-deed has not been produced before this Court. The Plaintiff No.1, Yashvantbhai Husband of Jaysukhben died during the pendency of present suit. The Plaintiff No.2 has filed his affidavit-in-lieu of examination-in-chief vide Exh.204 wherein he has reiterated the facts of the plaint. The Plaintiffs have claimed that the disputed properties are joint, undivided HUF properties of D.Manchharam

Narsibhai. The Defendants have averred that there was partition on dt.05/04/1956 done by D.Manhharam Narsibhai whereby Nagarbhai Manchhabhai was allotted disputed properties and Maniben Wid./o. Thakorbhai was given limited rights of maintenance during her life. The Defendants have taken defenses that the Defendant No.3 to 7 have become independent owner of all the disputed properties and for that, they have solely rely upon Revenue Entry No.623. Herein present case certain documentary evidences are crucial to be evaluated first. D.Maniben Wid./o. Thakorbhai Manchhabhai had initiated first litigation in the Year1975 for all disputed properties and therefore, the documentary evidence of said first suit, *being first in time*, are to be considered.

SPECIAL CIVIL SUIT NO.173/1975 :-

17].The Defendant No.1,2 4 to 7 and 10 have produced copy of plaint of Sp.Civil Suit No.173/1975 vide **Exh.370**. They have pleaded that Maniben filed said suit for all disputed properties wherein she had admitted partition-deed dt.05/04/1956 executed by Manchhabhai Narshibhai. They have pleaded that the suit was compromised and decree was passed and therefore the Plaintiffs have no right to re-agitate and claim for same disputed properties. Now the document vide Exh.370 itself is to be considered.

I. It was filed by Maniben Wid./o. Thakorbhai Manchhabhai against four Defendants namely 1)-Manchhabhai Narsibhai, 2)- Nagarbhai

Manchhabhai, 3)-Yogeshchandra Nagarbhai and 4)-Kishorchandra Nagarbhai for the partition of joint family properties (same properties which are subject matter of present suit).

II. It was filed in the court of **Ld. Civil Judge(Sr. Division), Surat**.

III. It was pleaded in Para-1 of the plaint that Manchhabhai Narsibhai had joint Hindu Family and his pedigree was mentioned. It was pleaded in Para-2 by Maniben that she got share of her husband Thakorbhai Manchhabhai. It was pleaded in Para-3 again that the properties were ancestral and belonging to Joint Hindu Family and Manchhabhai was the elder and Karta Male person of the family and therefore, the properties were in his name.

IV. The Plaintiff Maniben pleaded **her 1/3rd share** in the properties with the pleading that she was only given maintenance right in Survey No.153 of Jahagirabad according to Mutation Entry No.623 dt.30/05/1956 which was against law.

V. It was pleaded in Para-4 of the plaint that she by admitting fact that Defendant No.2 Nagarbhai Manchhabhai (Common Ancestor of Defendant No.3 to 7 through whom they have claimed their absolute right in disputed properties in present suit) was given 32 Acre 8 Guthas land of Jahagirabad, was claiming her lawful right and share in remaining properties of the family. The said pleadings suggests that Nagarbhai had already got 32 Acre 8 Gunthas as his share.

VI. It is specifically pleaded in Para-4 of the plaint that the

share of Defendant No.3 and 4 were comprised in share of Defendant No.2 but names of Defendant No.3 and 4 were entered in the records of the properties by the Defendant No.1 with the Revenue Entry No.803 of Dt.12/11/1966.

VII. It was again pleaded in Para-5 that she had **one-third share** in the disputed properties.

VIII. It is to be noted that the Plaintiff No.1 of present suit Yashvantbhai Jagdishbhai Patel had identified Thumb-impression of Maniben Wid./o. Thakorbbhai Manchhabhai in her suit being Sp.Civil Suit No.173/1975. The filing date of the suit was 15/09/1975.

IX. The schedule of disputed properties was given below the plaint as per following.

Sr. No.	Name of Village	Survey No.	Measurement in Acre Gutha	Aakar Rs.
1	Jahagirabad Tal: Choryasi	70	0-24	5-56
2	"	87/2	0-16	3-19
3	"	93/2	0-25	4-44
4	"	94	6-16	43-31
5	"	97	1-31	12-44
6		98	1-28	11-87
7	"	125/5	0-16	2-31
8	"	128/1	0-28	3-94
9	"	153	8-25	52-87
		Total	21-9	139-93
10	Rander, Tal:Choryasi	296	2-33	34-00
11	"	298	2-39	35-81
		Total	27-1	209-74

X. It is to be noted that below above mentioned schedule of properties in the plaint, Thumb-impression of D.Maniben was identified by the Plaintiff No.1 of present suit Yashvantbhai Jagdishbhai Patel.

XI. **Compromise-decree cum partition-decree** of Sp.Civil Suit No.173/1975 is produced vide **Exh.371** which suggests that the suit was amicably compromised between the parties and according to it, Ld. Joint Civil Judge (Sr. Division) had drawn said compromise-decree on **dt.24/11/1975 at Exh.8** of that suit. Said compromise-decree has been under approval and seal of the Court and it has an effect of its enforcement. Each word of the said decree is binding to this Court as well as to the parties more particularly when they themselves agree for that and none of the parties have challenged it till date. Now it is crucial to appreciate who got which properties in the said mutual compromise and at what terms and conditions agreed by them for themselves.

XII. It is stated in Para-1 of the Decree that as the Defendant No.2 (**Nagarbhai Manchhabhai**) was given **32 acre 8 gutha lands of Jahigirabad** as per Mutation Entry No.623 Dt.30/05/1956, nothing was remained to be given to him and all the parties admitted it. It suggests that all parties were aware about the Mutation Entry no.623 and they agreed for the share of Nagarbhai Manchhabhai which was already given to him by the partition of the Year1954.

XIII. The Defendant No.3 (**Yogeshchandra Nagarbhai**) was given

independent ownership in the said partition for following properties and name of Defendant No.1 and 4 were agreed to be deleted from the records of following properties and only name of Defendant No.3 was agreed to be continued according to the said decree (*emphasis supplied*).

Yogeshchandra Nagarbhai (Defendant No.3)

Sr.No.	Survey No.	Acre Gutha	Aakar
1.	70	0-24	5-56
2.	87/2	0-16	3-19
3.	93/2	0-25	4-44
4.	97	1-31	12-44
5.	128/1	0-28	3-94
Total		4-04	29-57

XIV. The Defendant No.4 (**Kishorchandra Nagarbhai**) was given independent ownership in the said partition for following properties and name of Defendant No.1 and 3 were agreed to be deleted from the records of following properties and only name of Defendant No.4 was agreed to be continued according to the said decree. It was also agreed that as he (Kishorchandra Nagarbhai) attained majority, name of **Maniben as Guardian of the Minor** was to be deleted from the record.

Kishorchandra Nagarbhai Manchhabhai (Defendant No.4)

Sr. No.	Survey No.	Acre Gutha	Aakar
1.	98	1-28	11-87
2.	125/5 (New-56)	0-16	2-31

Total	2-04	14-18
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XV. The Plaintiff **Maniben Wid./o. Thakorbhai Manchhabhai** was given independent ownership in the said partition for following properties (*emphasis supplied*).

Maniben wid./o Thakorbhai Manchhabhai (Plaintiff)

Sr. No.	Survey No.	Acre Gutha	Aakar
1.	153	8-25	52-87
2.	94	6-16	43-31
Total		15-01	96-18

XVI. It was also agreed in Para-4 of the said decree that according to Mutation Entry No.623, Dt.30/05/1956, the Plaintiff was given limited right of maintenance during her life, her rights were noted in Column of "Other rights" and **said entry was to be deleted and both the above mentioned properties were given to the Plaintiffs in her absolute ownership (*emphasis supplied*)**. The name of Defendant No.1, 3 and 4 were there in the record which were to be deleted according to the said decree and **Plaintiff's independent ownership was to be mutated (*emphasis supplied*)**. Said part of compromise-cum-partition decree is crystal clear about absolute rights and title of Maniben.

XVII. The Defendant No.1 **Manchhabhai Narsibhai** was given independent ownership in the said partition for following properties.

Manchhabhai Narsibhai (Defendant No.1)

Sr.No.	Survey No.	Acre Gutha	Aakar
1.	296	2-33	34-00
2.	298	2-39	35-81
Total		5-32	69-81

XVIII. Then it was agreed in Para-6 of the said decree that the properties which were given to Defendant No.1 (Manchhabhai Narsibhai) were obtained by him under Tenancy Act as new Tenure Land which were only in his name in the record and the same would to be continued. The properties which were given as independent properties to Defendant No.3 and 4 were in names of Defendant No.1,3 and 4 in Revenue Records and **therefore, the name of the party who got the property was to be continued in the record and the name of other party was to be deleted and in the same way, the properties of the Plaintiff Maniben were to be mutated in her independent ownership (emphasis supplied).**

**CONCLUSION OF WHAT HAS COME ON RECORD AFTER
CONSIDERING COMPROMISE-DECREE DRAWN IN SP.CIVIL
SUIT NO.173/1975**

18]. Maniben Wid./o. Thakorbhai Manchhabhai, was given absolute and exclusive right, title and share in two properties namely Survey No.153 and 94 of Jahigirabad as per the Compromise-cum-partition-decree vide Exh.8 of the said suit. Original owner

Manchhabhai Narsibhai was the Defendant No.1 and his son Nagarbhai Manchhabhai was the Defendant No.2. Both of them agreed to above mentioned compromise-cum-partition. The Defendant No.3 Yogeshchandra Nagarbhai is the common Ancestor of Defendant No.3 and 4 of present suit. The Defendant no.4 Kishorchandra Nagarbhai is Defendant no.5 of present suit. It is admitted that the said compromise-cum-partition-decree has never been challenged by any of the party and therefore, it has binding effect on all the parties of present suit. The Defendants of present suit have emphasized on the fact that there was partition during lifetime of original owner Manchhabhai and Mutation Entry No.623 was effected on dt.30/05/1956. They have further emphasized on fact that the said Mutation Entry was admitted by Maniben Wid./o. Thakorbhai in the compromise-decree of her suit Sp.Civil Suit No.173/1975. Admittedly, all the parties of said suit agreed for the Mutation Entry No.623 subject to above mentioned terms and conditions which apparently proves that Maniben Wid./o. Thakorbhai was given absolute and exclusive right for two properties of Jahigirabad namely Survey No.153 and No.94. Therefore, Mutation Entry No.623 is agreed subject to compromise-cum-partition-decree vide Exh.8 of Sp.Civil Suit No.173/1975. The Defendants have succeeded to prove that the partition was taken place between the parties by producing compromise-cum-partition-decree of Sp.Civil Suit No.173/1975 in present suit at Exh.370. The Plaintiffs have pleaded strongly that

there was no registered Partition-deed of the disputed properties and all the properties are undivided properties of Hindu Family. The Defendants have relied upon compromise-decree of Sp.Civil Suit No.173/1975 vide Exh.371 and further emphasized on fact that the parties filled Form-6 in ULC proceedings which was carried out in the Year1976 after implementation of Urban Land Ceiling Act,1975. Ld. Advocate Mr.Jagirdar has empathetically submitted that Maniben Wid./o. Thakorbbhai Manchhabhai was already given her share and partition has already been done as per the compromise-decree of Sp.Civil Suit No.173/1975. **Now, for the determination of status of Joint Family properties, the question before this Court is whether the actual effect and implementation of compromise-cum-partition-decree passed in said suit was ever been given by the parties or not?** whether the name of Maniben was actually entered as independent owner in the revenue records of Survey no.153 and 94 or not?, for that we have to now appreciate documentary evidence of ULC proceedings.

ULC PROCEEDINGS :-

ULC PROCEEDINGS BY MANIBEN WID./O.THAKORBHAI

MANCHHABHAI (DEFENDANT NO.8 OF PRESENT SUIT)

19] The Defendants have produced records of all proceedings before ULC Branch, Surat vide Exh.382, 383 and 384.

- I. Maniben Wid./o. Thakorbbhai Manchhabhai filled form u/s.6(1) of the said Act which is produced vide Exh.381.

- II. It is to be noted that all the Thumb-impressions of Maniben Wid./o. Thakorbhai Manchhabhai in the said forms were identified by Yashvantbhai Jagdishbhai Patel(Plaintiff No.1 of present suit).
- III. Maniben has mentioned two properties of Jahagirabad namely Survey no.94 and Survey no.153 as her independent properties.
- IV. There is Column No.9 in the Form with the head-name "*How the lands are obtained*" wherein it is mentioned that "***By the partition***" which means Maniben got both the said properties in partition. There is Column No.13 having head-name, "*What is interest in the lands*" and wherein it is mentioned that "***Ownership***" which means Maniben had ownership rights in both the said properties.
- V. The Endorsement of Column No.15 is material to be appreciated here which says that "***Based on Partition-decree on Dt.30/10/1975 in the Sp.Civil Suit No.173/1975 by Ld.Civil Judge (Sr. Division), Surat***". The said Form was filled on dt.13-14/08/1976. All subsequent papers of the said proceedings suggest that Maniben had proceeded as independent owner of both the said properties before competent authority of **ULC Case No.5/1982**.
- VI. Then the said record papers contains one application of Sumanben Nagarji Patel through POA Rameshbhai Narottambhai Patel, dt.07/11/1985 addressing to Additional Collector, ULC, Nanpura,

Surat wherein, it is stated that Survey No.94/B is **Joint Family Partnership Property** and she had right and share and other properties of co-sharer Nagarbhai Manchhabhai Patel and others were declared Surplus and therefore, she prayed to exempt it under 64B for development to SUDA.

VII. It is to be noted that none of the parties in present suit has stated about right of Sumanben Nagarji Patel in disputed properties. The facts of the application of Sumanben Nagarjibhai is totally contradictory to the facts of compromise-decree of Sp. Civil Suit no.173/1975.

VIII. Then the record vide Ex.381 shows Letter of Competent Authority and District Collector, Surat, dt.28/02/1986 addressing to Collector, Surat requesting to consider Mutation Entry No.1150 of Survey No.94/B in revision. It is stated in the said letter that Mutation Entry No.1150, dt.27/08/1984, entering names of heirs, is against provisions of Land Ceiling Act and therefore, it is to be considered for revision u/s.106 of Land Revenue Code.

IX. Then there is another application filed by Sumanben Nagarji Patel through POA Rameshbhai Narottambhai Patel on dt.27/06/1986 requesting Competent Authority and Collector, Surat for considering illegal construction in Survey No.94/B.

X. There is order of Competent Authority and Deputy Collector, Surat, dt.19/04/1986 in ULC Case No.5/1982, Form No.2/1608 holding that Survey No.153 ad-measuring 34904 sq.mtr falls in agricultural zone and therefore, not to be considered for ULC

purpose. It has been further held that Survey No.94, Block No.184 ad-measuring 19223 sq.mtr given to Declarator (Maniben Wid./o. Thakorbhai) as her share by the decree of Sp.Civil Suit No.173/1975 on Dt.24/11/1975 and the property is entered in one-third share of Yogeshchandra Nagarji, Kishorchandra Nagarji and Manimben Wid./o. Thakorbhai Manchhabhai, but **Yogeshchandra Nagarji and Kishorchandra Nagarji have not mentioned said Survey No.153 and 94 in their Form filled u/s.6(1) of the Act (*emphasis supplied*)**. Therefore, Survey No.94 ad-measuring 19223 sq.mtr was counted by the authority as property of Maniben. It was also observed that Mutation Entry No.1150, dt.26/07/1984 was against Sec.42 of ULC Act. It was further observed that there were plotting in certain area of the said land which was unauthorized and therefore, correspondence was made to Competent Authority to restrain the said construction. **It was ordered to keep 1500 sq.mtr for Declarator i.e. Maniben out of total measurement of 19223 sq.mtr of Survey No.94 and remaining 17723 sq.mtr was declared to be surplus land.**

XI. Against the said order of Competent Authority and Deputy Collector, dt.19/04/1986, Maniben filled **Dispute No.81/1986** before ULC Tribunal, Ahmedabad, which was rejected with reasoned order on dt.26/02/1988. It was observed in Issue No.1 on Page-4 by the **Tribunal that Maniben Wid./o. Thakorbhai Manchhabhai got both the said properties i.e Survey No.94 and 153 by the partition-decree of the Court in Sp.Civil Suit**

No.173/1975, dt.30/10/1975. ULC authorities had repeatedly observed absolute ownership of Maniben by virtue of decree of the Court in Sp.Civil Suit No.173/1975 (*emphasis supplied*). Tribunal mentioned two entries namely, Revenue Entry No.803, dt.12/11/1966, mutating name of Yogeshchandra Nagarji and Kishorchandra Nagarji with Manchhabhai Narsibhai, Revenue Entry No.1059, dt.02/08/1979 mutating one-third share of Maniben Wid./o. Thakorbhai Manchhabhai after death of Manchhabhai Narsibhai on dt.15/05/1979.

XII. Then Tribunal further referred Mutation Entry No.1150 dt.26/07/1984 mutating names of 11 persons in the record of Block No.184/1(94-B) with observation that said Survey No.94 was only given to Maniben by partition-decree of Sp.Civil Suit No.173/1975 and she was the only independent owner of said property (*emphasis supplied*).

XIII. It was further observed by the Tribunal in Issue No.4 of its order that as per last situation, **Maniben was the only owner and further it had observed that Yogeshchandra Nagarji and Kishorchandra Nagarji had not mentioned their share in Survey No.94 and 153 in their Form filled u/s.6(1) of ULC Act (*emphasis supplied*).** Tribunal passed an order rejecting the dispute case of Maniben, Wid./o. Thakorbhai Manchhabhai and confirmed order of Competent Authority, ULC, Dt.19/04/1986.

XIV. Thereafter, Notification under provisions of ULC Act was declared in official gazettes for surplus area of 17723 of Survey

No.94 belonging to Maniben Wid./o. Thakorbhai Manchhabhai. Thereafter, correspondences were made by the Competent Authority and Additional Collector with Maniben Wid./o. Thakorbhai for taking vacant possession of 17723 sq.mtr of Survey No.94.

XV. Then Competent Authority **obtained possession of said area on dt.07/03/1996** and made correspondence to Additional Collector, ULC on dt.25/03/1996. There is report of Competent Authority, ULC, dt.13/03/1996 made after Site Inspection wherein it is stated that after promulgation, Survey No.94 was divided into **Block No.184/01 and 184/02, possession of 17723 sq.mtr was obtained on dt.07/03/1996** and original *Panchkyaas* (report of the site) with 4 copies of Map were forwarded, residential construction of Vishwakarma society was there in the land and open plots were also mentioned in the Map.

XVI. Thereafter, there is *Panchkyaas* (report of the site) with the Map which suggest that residential construction was done in the society. Thereafter there are correspondence between Government Offices for the entry of name of Government in the record of said surplus area.

20]. The Documentary evidence of ULC proceedings apparently prove again that Survey No.94 and 153 of Jahigirabad were declared by Maniben Wid./o. Thakorbhai Manchhabhai before ULC Authority as her independent and exclusive properties. The ULC Authority

has also observed and held that both the said properties are her independent properties and she has exclusive title of the said properties and no other person has right and interest in the said properties. It is to be noted that the title of Maniben in both the said properties is remained unchallenged before Revenue Tribunal. It is to be noted that original owner Manchharam Narsibhai was alive and he had also not challenged title of Maniben in respect of both the said properties. It is to be noted that Nagarbhahi Manchhabhai and his legal heirs had also not mentioned said properties as their properties in their forms filled under ULC Act. It is to be noted that neither Nagarbhahi Manchharam nor his legal heirs, more particularly, the Defendant No.3 to 7 of present suit, have challenged finality of Maniben's title in ULC proceedings. Therefore it is crystal clear that Maniben Wid./o. Thakorbhahi Manchhabhai was the only and only person having absolute title in disputed properties Survey No.153 and 94. Now the record of ULC proceedings are to be considered.

ULC PROCEEDINGS BY YOGESHCHANDRA NAGARJIBHAI

21] The Defendant No.1, 2, 4 to 7 and 10 have produced copy of documents of ULC proceedings done by Yogeshchandra Nagarjibhai vide Exh.382 in the Year1976 u/s.6(1) of ULC Act. He mentioned **total 7 properties** of Jahigirabad as his independent properties namely Survey No.16,70, 87/2, 93/52, 97,128/1,18/2. It is to be noted that Column No.9 of the said Form, he has

mentioned "**Partition**" as mode of obtaining said properties. He has mentioned in last Column No.15 that he obtained said properties by the **partition-decree drawn on 30/10/1975 in Sp.Civil Suit No.173/1975 by Ld. Civil Judge (Sr. Division), Surat (emphasis supplied).**

- I. The said ULC papers contain one application of Yogeshchandra Nagarjibhai dt.28/07/1982 addressing to Competent Authority, ULC wherein he has stated that the properties were belonging to his joint family and he was not the only owner but all the members of his family had become owner by inheritance.
- II. He prayed to exempt said properties from the ULC proceedings u/s.20 of ULC Act and after giving him fair opportunities of hearing, Section Officer, Revenue Department, Gujarat Government rejected his prayer vide his Order No.ULC-2086-18456/V-1, Dt.05/04/1988.
- III. Then there is correspondence done by Competent Authority and Additional Collector, ULC, Nanpura, Surat, dt.06/06/1988 to Section Officer, Sachivalay, Gandhinagar. It is stated in the letter that the applicant had not produced proof to get the exemption for agriculture.
- IV. **It is to be noted that Yogeshchandra Nagarji has not mentioned Survey No.94 and 153 as his properties on the contrary he has stated that properties are joint family properties (emphasis supplied).**

ULC PROCEEDINGS UNDER BY KISHORCHANDRA

NAGARJIBHAI (DEFENDANT NO.5 OF PRESENT SUIT)

22] The Defendant No.1, 2, 4 to 7 and 10 have produced copy of documents of ULC proceedings done by Kishorchandra Nagarjibhai vide Exh.383 in the Year1976 u/s.6(1) of ULC Act. He mentioned **total 4 properties** of Jahigirabad as his independent properties namely Survey No.98, 125/5, 18/1 and 154/1.

- I. It is to be noted that Column No.9 of the said Form, he has mentioned "**Partition**" as mode of obtaining said properties.
- II. He has mentioned in last Column No.15 that he obtained said properties by the **partition-decree drawn on 30/10/1975 in Sp.Civil Suit No.173/1975 by Ld. Civil Judge (Sr. Division), Surat (emphasis supplied)**.
- III. The said ULC papers contain one application of Kishorchandra Nagarjibhai dt.28/07/1982 addressing to Competent Authority, ULC wherein he has stated that the properties were belonging to his joint family and he was not the only owner but all the members of his family had become owner by inheritance.
- IV. He prayed to exempt said properties from the ULC proceedings u/s.20 of ULC Act and after giving him fair opportunities of hearing, Section Officer, Revenue Department, Gujarat Government rejected his prayer vide his Order No.ULC-2086-18456/V-1, Dt.05/04/1988.
- V. Then there are correspondences done by the applicant as well as

Competent Authorities in respect of exemption u/s.20 of ULC Act for agriculture but the Competent Authority had not consider said prayer of Kishorchandra Nagarjibhai.

VI. It is to be noted that Kishorchandra Nagarji has not mentioned Survey No.94 and 153 as his properties on the contrary he has stated that properties are joint family properties (*emphasis supplied*).

**ULC PROCEEDINGS BY NAGARJIBHAI MANCHHARAM
(COMMON ANCESTOR THROUGH WHOM THE DEFENDANT
NO.3 TO 7 HAVE GOT RIGHTS IN DISPUTED PROPERTIES IN
PRESENT SUIT)**

23] The Defendant No.1, 2, 4 to 7 and 10 have produced copy document of ULC proceedings done by Nagarjibhai Manchharam vide Exh.384 in the Year1976 u/s.6(1) of ULC Act.

I. He mentioned **total 7 properties** of Jahigirabad as his independent properties namely Survey No.14/2, 148 Peki, 149, 154/2, 330, 299/2 of Jahigirabad and Rander- T.No.105.

II. It is to be noted that he has mentioned all the said properties as his independent properties.

III. He applied for the exemption of all the said lands u/s.20 of ULC Act. There is order of Revenue Tribunal, dt.08/01/1980 whereby it is stated that Survey no.14/2 was required by Surat Mahanagar Palika for the purpose of township. It is stated that according to Revenue Record 7-12 of 1975-1976, cultivation of

Land Survey No.48 Peki/149 and 154/2 was there.

- IV. It was also observed that the applicant after having 1500 sq.mtr land, exemption was proper and necessary for remaining land ad-measuring 17520 sq.mtr and conditional order was made.
- V. There are last correspondences in respect of ULC proceedings for the Survey No.330 and 299/2/Peki which are continued till dt.11/10/2005, 24/11/2005, 23/12/2005, 22/03/2006.
- VI. **It is to be noted that Nagarbhai Manchhabhai has not mentioned Survey No.94 and 153 as his properties. It is to be noted that the Defendant No.3 to 7 have claimed their title through their ancestor Nagarbhai Manchhabhai (*Emphasis supplied*).**

**COMPARISON OF COMPROMISE-DECREE DRAWN IN
SPECIAL CIVIL SUIT NO.173/1975 AND ULC INFORMATION
IN CONTEXT TO PROPERTIES:-**

24]. Now, the comparison chart of all the properties given to the parties as their share in Sp.Civil Suit No.173/1975 as well as mentioned by themselves in their forms under ULC proceedings are to be noted as follow:

A).Nagarbhai Manchharam:- (Defendant No.2 in Sp.Civil Suit No.173/1975) He got properties by compromise-decree (Exh.371) whereby parties admitted Mutation Entry No.623 in respect of share of Nagarbhai Manchharam for 32 Acre and 8 Gutha land which gives following details:-

Sr.No.	Survey No. (as per Mutation Entry No.623- Exh.240)	ULC information filled by Nagarbhai Manchharam (Exh.384)
1.	14/2 (New Block No.13)	14/2
2.	154/1	299/2
3.	154/2	154/2
4.	148 Peki	148 Peki
5.	149	149
6.	18/2	18/2 ,
7.	18/1,	330
8.	16 (New Block No.11)	105

- Survey no.18/2, 18/1,154/1 were given to Nagarbhai Manchhabha but he had not mentioned it there in ULC form.
- Similarly Survey no. 105, 330 are not given to him in compromise-decree, even then he has mentioned them as his independent property in ULC form.

B).Yogeshchandra Nagarbhai Manchharam:- (Defendant No.3 in Sp.Civil Suit No.173/1975) He got following properties by compromise-decree (Exh.371) :-

Sr. No.	Survey No.	ULC information filled by Yogeshchandra Nagarjibhai (Exh.382)
1.	70	70
2.	87/2 (New Block No.179)	87/2
3.	93/2	93/2
4.	97	97
5.	128/1 (New Block No.69)	128/1
6.	---	16, 18/2

- 16, 18/2 are given to Nagarbhai Manchharam vide Mutation Entry No.623 but mentioned in ULC form by his son Yogeshchandra Nagarbhai.

C). Kishorchandra Nagarbhai Manchhabhai :- (Defendant No.4 in Sp.Civil Suit No.173/1975) He got following properties by way of compromise-decree (Exh.371):-

Sr. No.	Survey No.	ULC information filled by Kishorchandra Nagarjibhai (Exh.383)
1.	98	98
2.	125/5 (New Block No.56)	125/5, 18/1, 154/1

- 18/1, 154/1 are given to Nagarbhai Manchharam vide Mutation Entry No.623 but mentioned as independent property by Kishorchandra Nagarbhai.

D).Maniben Wid./o. Thakorbhai Manchharam (Plaintiff of Sp.Civil Suit No.173/1975) She got following properties by way of compromise-decree (Exh.371):-

Sr. No.	Survey No.	ULC information filled by Maniben Wid./o. Thakorbhai Manchharam (Exh.381)
1.	153	153
2.	94	94

- Maniben wid./o. Thakorbhai Manchharam had filled form of ULC with same properties which were given to her by compromise-decree of the Court.

E).Manchhabhai Narsibhai:- (Defendant No.1 in Sp.Civil Suit No.173/1975) He got following properties by way of compromise-decree (Exh.371) but he did not fill form under ULC Act.

Sr.No	Survey No.	ULC Form not filled by Manchharam Narsibhai
1.	296	-
2.	298	-

CONCLUSION OF ULC PROCEEDINGS

25]. Documentary evidence vide Ex.381 to 384 apparently prove that Maniben Wid./o. Thakorbhai Manchharam filled ULC Form for disputed properties Survey No.153 and 94 in her individual capacity having ownership right. Nagarjibhai Manchharam and his legal heirs namely Yogeshchandra Nagarji and Kishorchandra Nagarji filled ULC Form for the properties which are mentioned by themselves as their independent properties got by them in compromise-decree of Sp.Civil Suit No.173/1975. It is to be noted that original owner Machharam Narsibhai was alive in the Year1976, when above mentioned ULC proceedings were started by his legal heirs showing their respective properties which were given to them after compromise-decree in Sp.Civil Suit No.173/1975, but he did not fill ULC Form. It transpires from the above Tabular Details that Survey No.16 and 18/2 were properties of Nagarbhai Manchharam, but they are mentioned as properties of Yogeshchandra Nagarbhai in ULC Information. In the same way, Survey No.18/1 and 154/1 were properties of Nagarbhai

Manchharam, but they are mentioned as properties of Kishorchandra Nagarjibhai. The Defendants have not offered explanation in this respect. Here in present suit, the Defendants have well accepted by their pleadings that decree was passed in Sp.Civil Suit No.173/1975 whereby, rights of all the parties were crystallized and Maniben Wid./o. Thakorbhai was given Survey No.153 and 94 as her share. Therefore, the Defendants have taken defense of *res-judicata* against the present suit filed by the Plaintiffs who are also legal heirs of Maniben Wid./o. Thakorbhai Manchharam. After considering and evaluating above mentioned details of Sp.Civil Suit No.173/1975 with ULC proceedings, it become crystal clear that the partition of disputed properties was done between the parties whereby Maniben Wid./o. Thakorbhai Manchharam was given Survey No.153 and 94 as her share and the same was filled in by her in ULC proceedings. The other co-owners have not shown these two properties as their properties. Therefore it becomes clear that partition was taken place as per compromise-decree and same was given effect in ULC proceedings in the Year1976. But after that, above mentioned date-wise chronology says that revenue entries have been mutated contradictory to terms and conditions of the Compromise-cum-partition-decree. **It is admitted fact that Compromise-decree of Sp. Civil Suit No.173/1975, though it was specifically admitted by all the parties in that suit to enter only owner's name in their respective shares, has never been given effect in Revenue**

Records. The Revenue records have never been effect of Compromise-cum-partition-decree of Sp. Civil Suit No.173/1975, reasons known best to the parties of that suit. Now the position of revenue records for all above properties from the Year1976 to the date of filing of present suit i.e.24/02/2009 is material to be noted and appreciated. First, I prefer to consider properties of Maniben Wid./o. Thakorbhai Manchharam, namely Survey No.94 and 153 of Jahagirabad.

SURVEY NO.94

26]. The plaintiffs have produced certified copy of Revenue Extract 7/12 of Survey No.94/B/p, Block No.184/1/A vide Exh.215 showing status of the said property as on dt.**10/08/2018**.

- I. It shows measurement of **1500 sq.mtr** of the said property and name of Devenbhai Mafatbhai Patel in Column of Occupants.
- II. The Column of "*Entry Numbers and Name of Occupants*" suggests that there are total **32 Revenue Entries** starting from the first Entry 142 to last Entry 2830.
- III. The Column of "*Details of other rights and encumbrances*" suggests that parties have been passed through many revenue litigations for the said property.
- IV. Exh.216 is certified copy of Revenue Extract 8-A of said Block No.184/1/A showing status of said property as "*Non-Agricultural*". Following are the relevant revenue entries of said property.

Sr. No.	Date	Entry No.	Exh. No.	Details
1.	15/02/1934	232	229	Manchharam Narsi purchased total 3 properties including Property No.94 through registered Sale-deed on dt.10/01/1934 for Rs.1951/- from Parshottam Nathubhai.
2.	12/11/1966	803	244	Names of owner Manchharam Narsibhai's two grandsons namely Yogeshchandra Nagarji and Minor Kishorchandra Nagarji were mutated for total 9 properties including Survey No.94.
3.	02/08/1979	1059	251	Inheritance Entry- as Manchharam Narsibhai died on dt.15/05/1979 at Rander, only name of his son's Thakor Manchhabhai's Widow Bai Maniben for 1/3rd share was entered for total 9 properties including Survey No.94.
It is to be noted that though there was compromise-decree passed by the Civil Court (Sr. Division) Surat in Sp.Civil Suit No.173/1975 (Exh.371) and ULC proceedings of 1976 (Exh.381 to 384), no Mutation Entry has been made in the record of Survey No.94. Mutation Entry No.803 was well observed by the competent authority during ULC proceedings and after that, it was specifically contended by all the parties that Survey No.94 and 153 were the properties of Maniben Wid./o. Thakorbhai Manchharam, then, how the said Entry no.1059 has entered name of Maniben only for 1/3 share and not as her absolute independent property. If the partition has given effect as per compromise-decree then there is no explanation on record for entering name of Maniben jointly in records of all the properties by the said entry. The said entry suggests that no effect of partition-decree was ever given in the revenue records and records of all the properties have been continued as joint properties. (Emphasis Supplied)				
4.	20/02/1981	1086	253	Promulgation Entry
5.	26/07/1984	1150	254	Entry of names in joint ownership (Emphasis Supplied) for the Survey No.94/B which is newly numbered as Block No.184/1. It is stated that as the said property is in joint name of Yogeshchandra Nagarji, Kishorchandra Nagarji

				and Maniben Thakorbbhai, following names are mutated, 1. Shantiben Manchhabhai 2. Nandiben Manchhabhai 3. Sumanben Nagarjibhai 4. Manjulaben Nagarjibhai 5. Savitaben Nagarjibhai 6. Ramilaben Nagarjibhai 7. Nirmalaben Nagarjibhai 8. Nagarjibhai Manchhabhai 9. Liliben Thakorbbhai 10. Urmilaben Thakorbbhai 11. Jaysukhben Thakorbbhai. The said entry certified on dt.27/08/1984 after notice, recording of statements, considering pedigree and Panchkyaas. The measurement of properties mentioned as 19223 sq.mtr.								
It is to be noted that even in the said entry, no effect has been given about sole, absolute and exclusive property right of Maniben as per compromise-decree of Sp.Civil Suit No.173/1975. On the contrary, names of all parties of the said suit are entered in common. The said entry proves that Survey No.94/B was thrown again in hotchpotch of joint family against the compromise-decree of Sp.Civil Suit No.173/1975 (Emphasis Supplied).												
6.	01/06/2000	1489	260	Family partition- it is again stated that the property Block No.184/1 is <u>in joint name</u> of Maniben Wid./o. Thakorbbhai Manchharam, Yogeshchandra Nagarjibhai and Kishorchandra Nagarjibhai, as the said area is covered by SUDA under TP Scheme and as the parties have made <u>family partition on dt.10/12/1999 on Rs.20/- stamp paper</u> and the said entry is made based on said family partition agreement as follows: <table><tr><td>Block No.</td><td>Survey No.</td><td>Measureme nt</td><td>Name of Co-Sharer</td></tr><tr><td>184/1 Peki</td><td>94/B Peki</td><td>17723</td><td>1. Yogeshchandra Nagarjibhai 2. Kishorchandra Nagarjibhai, in joint</td></tr></table>	Block No.	Survey No.	Measureme nt	Name of Co-Sharer	184/1 Peki	94/B Peki	17723	1. Yogeshchandra Nagarjibhai 2. Kishorchandra Nagarjibhai, in joint
Block No.	Survey No.	Measureme nt	Name of Co-Sharer									
184/1 Peki	94/B Peki	17723	1. Yogeshchandra Nagarjibhai 2. Kishorchandra Nagarjibhai, in joint									

				<table><tr><td></td><td></td><td></td><td>name, Portion of eastern side</td></tr><tr><td>184/1 Peki</td><td>94/B Peki</td><td>1500</td><td>1.Kishorchandra Nagarjibhai, Portion of western side, open land</td></tr></table>				name, Portion of eastern side	184/1 Peki	94/B Peki	1500	1.Kishorchandra Nagarjibhai, Portion of western side, open land
			name, Portion of eastern side									
184/1 Peki	94/B Peki	1500	1.Kishorchandra Nagarjibhai, Portion of western side, open land									
	The last column of the said entry says that the said entry was rejected by Mamlatdaar, Surat for prior permission of competent authority. It is to be noted that it is specifically stated that Maniben is one of the joint owner and even then, her share is not mentioned in above tabular form. It is to be noted that the Defendants have not pleaded any fact about the family partition agreement on Rs.20/- stamp paper carried out on Dt.10/12/1999. They have not produced said document in present suit, reason best known to them. It is to be noted that the said entry is against the compromise-decree drawn in Sp.Civil Suit No.173/1975. All the parties have acted against the said decree of the Court. Most surprising fact is name of Maniben is not there in table of co-sharer. When she is declared absolute owner then there is no question of co-sharer but her name is disappeared and name of other co-sharers are entered without any document or application of Maniben. The said entry is illegal itself. (emphasis supplied).											
7.	14/09/2000	1500	261	Entering name of Government as there is surplus land declared under Urban Land Ceiling Act and the possession was obtained by the Government. It is stated that Survey No.94/B, Block No.184/1 Peki ad-measuring 17723 sq.mtr is in name of Maniben Wid./o. Thakorbbhai Manchharam and others and it is declared as surplus land as per order in declaratory statement u/s.6(1) of the said Act, Order No.5-82, Form No.2/1608, Dt.19/04/1986 and as the direct possession as been obtained by the Government on dt.07/03/1996, the said entry is mutated. It is stated that application of land owner (who gave the application?) through POA (Who was the POA) was received for the separation of records for Survey No.94 Peki 17723 sq.mtr in name of Government and remaining 1500 sq.mtr in name								

				of Land owners. The said entry has been certified on dt.15/12/2000. There is observation of Malmadaar noted on dt.16/01/2001 in first column of the said entry that there was order of Collector, Choryasi, Surat No.2838/2000, dt.15/01/2001 allowing Block partition . The Defendants have not produced said order before this Court.
	It is to be noted that the defendants have not specified when Maniben has already been declared as absolute owner by the Court by virtue of compromise-decree of Sp. Civil Suit No.173/1975 then how the application for the separation of revenue record of Survey No.94 was given by POA of other co-owner Maniben. The Defendants have not specified who gave above mentioned application and who was POA and who gave POA to whom. (<i>emphasis supplied</i>). The conduct of land owners again comes on record contrary to the compromise-decree of Sp.Civil Suit No.173/1975.			
8.	06/11/2001	1553	262	Entry for registered Sale-deed:- Block No.184/1 Peki ad-measuring 1500 sq.mtr land, which runs in name of Yogeshchandra Nagarjibhai and others, is sold to agriculturist of Jahigirabad, Shri Devenbhai Mafatbhai Patel for Rs.1,00,000/- on Dt.02/11/2001 through registered Sale-deed No.26223.
	The name of exclusive owner Maniben Wid./o. Thakorbhair Manchharam is not there in the said entry, reason best known to seller Yogeshchandra Nagarbhair. There is no entry of deleting name of Maniben from the records and the said fact itself makes the record dubious. The defendants have not offered any explanation about the fact that if Maniben was the exclusive owner of Survey No.94 by virtue of Compromise-decree passed in Sp.Civil Suit No.173/1975, then how and why Yogeshchandra Nagarjibhai has executed registered Sale-deed for the property of Maniben. The said Sale-deed is illegal and contrary to partition cum compromise-decree of the Court. The seller had no right or title at all in the said property. Admittedly neither Maniben nor her legal heirs have objected it however the conduct of the parties are contrary to their bindings of Compromise-cum-partition-decree of Sp. Civil Suit No.173/1975. It suggests nothing but doctrine of throwing of all properties to common hotchpotch of the joint family properties (<i>emphasis supplied</i>).			

9.	19/09/2002	1595	263	Effect of Supplementary Statement No.2 implementing order of District Inspector Land Records, Surat vide No.KJP/SR/18/2001-02, Dt.14/03/2002 and City Mamladaar, Surat vide Order No.1111/02, Dt.19/03/2002 was given in the Block no.184/1/A and 184/1/B. For the Block No.184//A ad-measuring 1500 sq.mtr, last column of the said entry shows name of occupants namely "Kishorchandra, Yogeshchandra, Sumanben, Manjulaben, Savitaben, Ramilaben, Nirmalaben, Maniben, Urmilaben, Jaysukhben (through whom plaintiffs are claiming their right in present suit)". The Defendants have not offered any explanation for the name of all the said persons in last column other than exclusive owner Maniben wid./o. Tahkorbhai. It is also an indication of throwing properties to common stocks of family.
10.	30/11/2006	1884	266	Effect of amendment of Block No.184/1/A is given.
11.	25/06/2008	2057	271	Promulgation entry covering area in city survey
12.	18/09/2015	2625	277	Entry noting order below Exh.5 dt.26/04/2013 of present suit i.e. Sp.Civil Suit No.127/09 for all disputed properties including Survey No.184/1/A.
13.	22/10/2015	2635	277 278	Entry noting order of Collector, Surat in RTS/ Revision application No.118/2011 dt.23/4/2012 for all disputed properties including Survey No.184/1/A.
14.	17/12/2015	2643	279	Entry noting order of Hon'ble High Court of Gujarat in Sp.C.A.No.3937/2013, dt.21/10/2013 for all disputed properties including Survey No.184/1/A.
15.	18/12/2015	2644	280	Entry noting order of Hon'ble High Court of Gujarat in Sp.C.A.No.3937/2013, dt.24/03/2014

				for all disputed properties including Survey No.184/1/A.
16.	11/03/2016	2667	282	Entry noting order of Hon'ble High Court of Gujarat in C.A.(for condonation of delay) No.12151/2013, dt.26/11/2015 for all disputed properties including Survey No.184/1/A.
17.	26/05/2016	2668	283	Entry noting order of Hon'ble High Court of Gujarat in Sp.C.A.No.809/2014, dt.25/02/2016 for all disputed properties including Survey No.184/1/A.
18.	08/08/2016	2699	284	Entry noting order of Revenue Tribunal, Ahmedabaad in 44/2013, dt.08/07/2016 for all disputed properties including Survey No.184/1/A.
19.	16/12/2016	2719	285	Entry noting order of Deputy Collector, City Pranth Surat in RTS/Appeal No.412/2015 dt.20/10/2016 for all disputed properties including Survey No.184/1/A.
20.	21/02/2017	2732	287	Entry noting order of Hon'ble High Court of Gujarat in Appeal from Order No.451/2013, with C.A. No.809/2014, dt.29/12/2016 for all disputed properties including Survey No.184/1/A.
21.	21/02/2017	2733	288	Entry noting order of Hon'ble High Court of Gujarat in Sp.C.A.No.9316/2016, with Sp.C.A. No.3937/2013 dt.31/01/2017 for all disputed properties including Survey No.184/1/A.
22.	16/03/2017	2742	289	Entry noting order of Hon'ble High Court of Gujarat in Sp.C.A.No.17190/2016, dt.26/12/2016 for all disputed properties including Survey No.184/1/A.
23.	11/10/2017	2787	289	Entry noting order of Deputy Collector, City Pranth, Surat in RTS/Appeal No.73/2016, dt.26/09/2017 for all disputed properties including Survey No.184/1/A.

24.	01/11/2017	2789	293	Entry noting Lis-pendency of present suit registered at Sr.No.203/2016 on dt.20/02/2016 before the Sub-Registrar, Surat- 8, Rander for all disputed properties including Survey No.184/1/A.
25.	07/11/2017	2791	293	Entry noting order of Hon'ble High Court of Gujarat in Sp.C.A.No.17190/2016, dt.25/02/2016 for all disputed properties including Survey No.184/1/A.
26.	23/05/2018	2830	295	Entry noting Order of Collector converting Block No.184/1/A for 1500 sq.mtr in the Non-agricultural land on dt.17/05/2018 under TP Scheme No.42(Jahagirabad) Final Plot No.94 ad-measuring 1050 sq.mtr.
27.	27/09/2018	2892	300	Entry noting Order of In-charge Mamladaar (ULC), Adajan, Surat, Order No.ULC/Adajan/ Vishwakarma Society/Sanad/Hukam/Vasi/18, dt.27/09/2018 for regularizing possession of all residents of Vishwakarma Society in Survey No.94, Block No.184/1/B, TP Scheme No.42 Final Plot No.61,62 falling into surplus land of Government obtained under ULC Act, 1976. Possession of total 49 residents of Vishwakarma society has been regularized.

CONCLUSION IN RESPECT OF SURVEY NO.94

27] After going through all above revenue entries, it become crystal clear that though the Survey No.94 was given to Maniben, Wid./o. Thakorbbhai Manchharam as her independent and exclusive absolute property after Compromise-cum-partition-decree by the **Civil Court (Sr. Division), Surat in Sp.Civil Suit No.173/1975**, it has never been given effect in the revenue records. On the contrary, the

said property has been constantly remained in hands of family members under status of "**Joint Family Property**". The Defendant No.5 as well as Yogeshchandra Nagarji and all other family members, other then owner Maniben herself, have entered into transaction of the said property as co-sharers. Neither Maniben nor Jaysukhben nor the Plaintiffs have dealt with said survey number, who are supposed to be real owners of the said properties by virtue of compromise-decree passed by the Court in Sp.Civil Suit no.173/1975. The Defendant No.5 has dealt with the property believing it as his property as Maniben was living with all family members in joint family and Maniben's acquiescence suggests that the property was believed to be their joint properties. Survey No.94 was thrown in common pool of the family properties as and when **Mutation Entry No.1059 was effected on dt.02/08/1979**. Though the Defendants have succeeded to prove that there was partition by the compromise-decree of the Court in Sp. Civil Suit No.173/1975 but they have measurably failed to prove that the Parties actually intended to implement the said partition. Admittedly the Parties filled information in ULC form as per compromise-decree but they have not complied with all terms and agreements which they themselves made before the Court of Senior Division in that suit. They have not separated revenue records on the contrary they have conducted as co-owners of the properties. Maniben had not objected said conduct which apparently proves that she consented for status of joint family properties. The

Plaintiffs have succeeded to prove that the said property with other disputed properties have status of joint properties belonging to Hindu Family. The Defendants have failed to prove that the partition has been given effect or implemented by all the parties in its true sense. Now, let us consider status of other property i.e. Survey No.153.

SURVEY NO.153

28] It is admitted fact that Survey No.153 having largest measurement, is comprised in Block No.20/1. The plaintiffs have produced certified copy of Revenue Extract 7/12 of Survey No.153 vide Exh.438 running into total 8 pages starting from the Year1928-29 to 1979-80.

- I. The said record shows name of Manchharam Narsibhai with the Entry No.345 and then, name of Bai Mani, Wid./o. Thakorbhai Manchharam with the Entry No.623 and 1059.
- II. It also shows names of Yogeshchandra Nagarji and Kishorchandra Nagarji with Entry No.803.
- III. The Plaintiffs have produced recent Revenue Extract 7/12 of Block No.20/1/A at Exh.210 showing status of the said property on dt.23/01/2020. It shows measurement of 107663 sq.mtr of the said property and names of Kishorchandra Nagarji, Prakashbhai Yogeshbhai, Bhavnaben w/o. Prakashbhai Yogeshbhai, Dipikaben w/o. Kishorchandra Nagarji and Jayeshkumar Kishorchandra in Column of Occupants.

IV. The Column of "*Entry Numbers and Name of Occupants*" suggests that there are **total 47 Revenue Entries** starting from the first Entry No.124 to last Entry No.2988.

V. The kind of the properties is mentioned as Non-agricultural land. Following are the relevant revenue entries of said property.

Sr. No.	Date	Entry No.	Exh. No.	Details																														
1.	08/06/1939	345	239	Manchharam Narsi purchased said property through registered Sale-deed, dt.23/05/1939 for Rs.2925/- from Popatlal Chunilal Patel																														
2.	30/05/1956	623	240	Partition Entry:- Total 10 Properties including Survey No.153 running names of Manchharam Narsibhai have been partitioned amongst following persons based on Partition-deed dt.05/04/1956. 1. Nagarbhai Manchhabhai <table><tr><th>Survey No.</th><th>Acre</th><th>Aakar</th></tr><tr><td>14/2</td><td>1-34</td><td>16-11</td></tr><tr><td>18/2</td><td>4-27</td><td>18-11</td></tr><tr><td>154/2</td><td>1-29</td><td>9-15</td></tr><tr><td>148 Peki</td><td>5-12</td><td>33-04 <i>Encroached in Canal</i></td></tr><tr><td>16</td><td>5-03</td><td>35-04</td></tr><tr><td>154/1</td><td>6-16</td><td>39-12</td></tr><tr><td>18/1</td><td>4-35</td><td>29-14</td></tr><tr><td>149</td><td>2-18</td><td>15-06</td></tr><tr><td>Total</td><td>32-08</td><td>208-13</td></tr></table>	Survey No.	Acre	Aakar	14/2	1-34	16-11	18/2	4-27	18-11	154/2	1-29	9-15	148 Peki	5-12	33-04 <i>Encroached in Canal</i>	16	5-03	35-04	154/1	6-16	39-12	18/1	4-35	29-14	149	2-18	15-06	Total	32-08	208-13
Survey No.	Acre	Aakar																																
14/2	1-34	16-11																																
18/2	4-27	18-11																																
154/2	1-29	9-15																																
148 Peki	5-12	33-04 <i>Encroached in Canal</i>																																
16	5-03	35-04																																
154/1	6-16	39-12																																
18/1	4-35	29-14																																
149	2-18	15-06																																
Total	32-08	208-13																																

				2. Ramanlal Nathubhai <table><tr><td>Survey No.</td><td>Acre</td><td>Aakar</td></tr><tr><td>118 Peki</td><td>5-27</td><td>35-09</td></tr></table> 3. Bai Mani, Wid./o. Thakorbhai Manchhabhai is given maintenance right for her lifetime in following properties to be entered in Column of " <i>Other rights</i> " <table><tr><td>Survey No.</td><td>Acre</td><td>Aakar</td></tr><tr><td>153</td><td>8-25</td><td>52-14</td></tr></table>	Survey No.	Acre	Aakar	118 Peki	5-27	35-09	Survey No.	Acre	Aakar	153	8-25	52-14
Survey No.	Acre	Aakar														
118 Peki	5-27	35-09														
Survey No.	Acre	Aakar														
153	8-25	52-14														
	It is admitted that partition-deed Dt.05/04/1956 is not produced by the defendants before this Court. It is to be noted that while certifying said entry, it is nowhere mentioned in last column of the entry that whether the partition-deed dt.05/04/1956 was produced before the Revenue Authority or not. Above mentioned entry suggests that Nagarbhai Manchhabhai got total 8 land properties ad-measuring total 32 acre 8 gutha. There is name of Maniben with limited right of maintenance in Survey No.153 for her life. There is name of Ramanlal Nathubhai in second position and he was given 148 Peki ad-measuring 5 acre 27 gutha, but the parties have not specified who is the said person and why he was given share in partition of Manchhabhai Narsibhai's family (<i>emphasis supplied</i>).															
3.	12/11/1966	803	244	Names of owner Manchharam Narsibhai's two grandsons namely Yogeshchandra Nagarji and Minor Kishorchandra Nagarji were mutated for total 9 properties including Survey No.153.												
4.	02/08/1979	1059	251	Inheritance Entry- as Manchharam Narsibhai died on dt.15/05/1979 at Rander, only name of his son's Thakor Manchhabhai's widow Bai Maniben for 1/3rd share was entered for total 9 properties including Survey No.153.												
	It is to be noted that though there was compromise-decree passed by the Civil Court (Sr. Division) Surat in Sp.Civil Suit No.173/1975 (Exh.371) and ULC proceedings of 1976 (Exh.381 to 384), no Mutation Entry has been made in the record of Survey No.153. Mutation Entry															

	No.803 was well observed by the competent authority during ULC proceedings and after that, it was specifically contended by all the parties in ULC proceedings that Survey No.94 and 153 were the properties of Maniben Wid./o. Thakorbhai Manchharam, then, how the said Entry No.1059 has no effect of showing independent properties of parties. There is no explanation on record for entering name of Maniben jointly in records of all the properties by the said entry. The said entry suggests that no effect of partition-decree was ever given in the revenue records and records of all the properties have been continued as joint properties (Emphasis Supplied)			
5.	15/01/2000	1478	259	Entry of names <u>in joint ownership</u>- Block No.20/1 and 20/2 running in the name of Yogeshchandra Nagarji and others and they executed 1 joint ownership agreement on Rs.20/- stamp paper and handed over direct possession of undivided share, they are <u>joint members of united family</u> and name of following persons are mutated in joint ownership based on one <u>joint ownership agreement on Rs.20/- stamp paper</u>, pedigree and consent statements of parties:- 1. Pushpaben w/o. Yogeshchandra Nagarjibhai 2. Prakashbhai Yogeshbhai Patel 3. Bhavnaben w/o. Prakashbhai Yogeshbhai 4. Dipikaben w/o. Kishorchandra Nagarjibhai 5. Jayeshkumar Kishorchandra
	It is to be noted that even in the said entry, no effect has been given about sole, absolute and exclusive property right of Maniben as per compromise-decree of Sp.Civil Suit No.173/1975. On the contrary, except name of Maniben, names of all parties of the said suit are entered in common. The said entry proves that Survey No.153 was thrown again in hotchpotch of joint family against the compromise-decree of Sp.Civil Suit No.173/1975. It is surprising to note that name of Maniben is disappeared without any order of the Court, Entry, statement of Maniben or waiver-deed or Will of Maniben. The Defendants have not explained How the name of Maniben is eclipsed (Emphasis Supplied).			
6.	27/12/2004	1719	264	Inheritance Entry:- Names of legal heirs of owner Yogeshchandra Nagarji are mutated after his death on 15/03/2004

				for total 3 properties including Block no.20/1. It is again to be noted that name of owner Maniben is not there. As the name of legal heirs of Yogeshchandra are mutated, they have to explain how and why name of Maniben is removed from the record of her independent property (emphasis supplied).
7.	04/05/2005	1756	265	Entry for the waiver of right:- Bhavnaben Yogeshchandra Patel through one agreement dt.03/02/2005, has waived her right without any kind of consideration in favour of Pushpaben, w/o Yogeshchandra Nagarji, Prakashbhai Yogeshchandra as the properties have come in their share. The said entry is done for 2 properties including Block No.20/1. Name of Maniben, who is declared absolute owner of Survey no.153 is not there in the said entry. The said entry nowhere suggests whether Maniben or Jaysukhben or plaintiffs have waived their right in favour of Defendant No.3 to 7 (Emphasis supplied).
8.	28/12/2007	1999	268	It is stated that disputed properties including Block No.20/1 are in names of Pushpaben w/o. Yogeshchandra Nagarjibhai, Kishorchandra Nagarji, Maniben Wid./o. Thakorbhai Manchharam, Prakashbhai Yogeshbhai Patel, Bhavnaben w/o. Prakashbhai Yogeshbhai, Dipikaben w/o. Kishorchandra Nagarjibhai and Jayeshkumar Kishorchandra. Maniben Wid./o. Thakorbhai Manchharam waived her right through Waiver-agreement on Rs.100/- Stamp-paper on dt.26/12/2007 before Notary Shri Navinchandraji Patel, her name as occupant is to be deleted based on an application and her waiver-agreement. The last column of the said entry does not mention whether Pedigree of Maniben was produced or not, whether notice u/s.135D of Bombay Land Revenue Code was served to all

				interested persons or legal heirs of Maniben or not, whether statement of Maniben was recorded or not, whether statements of Maniben's legal heirs, including plaintiffs were recorded or not.
	The said entry is itself against the compromise-decree of Sp.Civil Suit No.173/1975. The parties have not complied with the compromise-decree at all. The Defendants have not pleaded how and in which capacity they have deleted name of absolute owner Maniben more particularly when she was declared absolute owner by the Court of Senior Division, Surat. (<i>Emphasis supplied</i>).			
9.	26/04/2008	2050	269	Promulgation entry for name of Pushpaben Wid./o. Yogeshchandra Nagarji.
10.	25/03/2011	2324	272	Entry noting order of Deputy Collector, Choryasi Prant, Surat in RTS/Appeal No.102/2009 dt.14/12/2010 rejecting it wherein the Plaintiffs have challenged Entry No.1999.
11.	24/05/2012	2405	273	Entry noting order of Collector, Surat in RTS/ Revision/ no.118/2011 dt.23/04/2012 rejecting it wherein the Plaintiffs have challenged order of Deputy Collector as per above .
12.	06/10/2012	2434	274	" "
13.	18/09/2015	2625	277	Entry noting order below Exh.5 dt.26/04/2013 of present suit i.e. Sp.Civil Suit No.127/09 for all disputed properties including Survey/Block No.2-/1 and 20/2.
14.	17/12/2015	2643	279	Entry noting order of Hon'ble High Court of Gujarat in Sp.C.A.No.3937/2013, dt.21/10/2013 for all disputed properties including Survey /Block No.2-/1 and 20/2.
15.	18/12/2015	2644	280	Entry noting order of Hon'ble High Court of Gujarat in Sp.C.A.No.3937/2013, dt.24/03/2014 for all disputed properties including Survey /Block No.2-/1 and 20/2.

16.	11/03/2016	2667	282	Entry noting order of Hon'ble High Court of Gujarat in C.A.(for condonation of delay) No.12151/2013, dt.26/11/2015 for all disputed properties including Survey/Block No.2-/1 and 20/2.
17.	26/05/2016	2668	283	Entry noting order of Hon'ble High Court of Gujarat in Sp.C.A.No.809/2014, Dt.25/02/2016 for all disputed properties including Survey /Block No.2-/1 and 20/2.
18.	08/08/2016	2699	284	Entry noting order of Revenue Tribunal, Ahmedabaad in 44/2013, dt.08/07/2016 for all disputed properties including Survey No./Block No.2-/1 and 20/2.
19.	16/12/2016	2719	285	Entry noting order of Deputy Collector, City Pranth Surat in RTS/Appeal No.412/2015 dt.20/10/2016 for all disputed properties including Survey /Block No.2-/1 and 20/2.
20.	03/02/2017	2728	286	Entry noting rejection of objection of Plaintiff No.2 Dipakbhai Yashvantbhai.
21.	21/02/2017	2732	287	Entry noting order of Hon'ble High Court of Gujarat in Appeal from Order No.451/2013, with C.A. No.809/2014, dt.29/12/2016 for all disputed properties including Survey No./Block No.2-/1 and 20/2.
22.	21/02/2017	2733	288	Entry noting order of Hon'ble High Court of Gujarat in Sp.C.A.No.9316/2016, with Sp.C.A. No.3937/2013 dt.31/01/2017 for all disputed properties including Survey No./Block No.2-/1 and 20/2.
23.	16/03/2017	2742	289	Entry noting order of Hon'ble High Court of Gujarat in Sp.C.A.No.17190/2016, dt.26/12/2016 for all disputed properties including Survey

				/Block No.2-/1 and 20/2.
24.	11/10/2017	2787	289	Entry noting order of Deputy Collector, City Pranth, Surat in RTS/Appeal No.73/2016, dt.26/09/2017 for all disputed properties including Survey No.184/1/A.
25.	06/08/2017	2769	290	Entry noting Non-agricultural permission given by the Collector, Surat fr Block no.20/1, TPS No.43, F.P.No.8/A ad-measuring 85921 Sq.Mt. and F.P.No.8/B ad-measuring 10708 Sq.Mt. It is to be noted that Block no.20/1 has total measurement of 118371 Sq.Mt. and after deduction of F.P.No.8/A and 8/B, land ad-measuring 21742 Sq.Mt. remains there intact. The Defendants have not submitted anything about change of any kind in said remaining portion. Therefore it is deemed to be joint portion in hands of the Defendant No.3 to 7.
26.	21/09/2017	2780	290	Entry noting registered sale transaction between Defendant No.3 to 7 and Defendant No.13, 13.1 to 13.6 for 10708 Sq.Mt., F.P.No.8/B, TPS No.43, Block no.20/1 for Rs.10,44,11,000/-. It is to be noted that Maniben's Survey no.153 is there included in said Block no.20/1 but her legal heirs are not the party in said sale-transaction. The other notable fact is that F.P.No.8/A is still in joint ownership of Defendant no.3 to 7 as joint properties of the Plaintiffs also (<i>Emphasis supplied</i>).
27.	01/11/2017	2789	293	Entry noting <i>Lis-pendency</i> of present suit registered at Sr.No.203/2016 on dt.20/02/2016 before the Sub-Registrar, Surat- 8, Rander for all disputed properties including Survey No.184/1/A.
28.	04/01/2019	2916	301	Entry noting total 64 plots in Block no.20/1/A by the order of D.I.L.R. Letter No.KJPSR/23/18-19 dt.04/01/2019. Said entry suggests that there are plotting of 64 plots. But the Defendants have not

				pleaded anything about it though they are bound to put correct picture of the property on record. They have entered into transaction during pendency of suit, more particularly after registration of Lis-pendency by the Plaintiffs, the Defendants are bound to declare facts of further alienation by them.
29.	21/11/2019	2988	303	Entry noting Release-deed by Pushpaben W/o.Yogeshchandra Nagarji for F.P.No.8/A, TPS No.43, Block No.20/1. It is to be noted that there is no such kind of Release-deed by original Owner Maniben then by her daughter Jaysukhben and then by the present Plaintiffs taken on record of revenue authorities, reason best known to the Defendants.

CONCLUSION IN RESPECT OF SURVEY NO.153

29]. After going through all above revenue entries, it become crystal clear that though the Survey No.153 was given to Maniben, Wid./o. Thakorbbhai Manchharam as her independent and exclusive absolute property after Compromise-cum-partition-decree in Sp.Civil Suit No.173/1975, it has never been given effect in the revenue records. On the contrary, the said property has been constantly remained in hands of family members under status of "Joint Family Property" and Defendant No.5 as well as Yogeshchandra Nagarji and all other family members have entered into transaction of the said property as co-sharer. The Plaintiffs have succeeded to prove that the said property with other disputed properties have status of joint properties belonging to Hindu Family. The Defendants have failed to prove that the partition has been given actual effect or

implementation by the parties. As all the properties are proved to be joint properties of the D.Manchharam Narsibhai's Family, Defendant no.3 to 7 have dealt with properties of Maniben without her consensus statement then in that case it is proved by the Plaintiffs that all legal heirs including Plaintiffs are entitled to have share in said properties.

REGISTERED WILLS :-

30] Above mentioned date-wise chronology suggests that there are total 3 *Wills* executed by Maniben Wid./o. Thakorbhai Manchhabhai and one *Will* executed by Nagarbhai Manchhabhai. Appreciation of said *Wills* are now to be considered.

A). *Will* of Maniben dt.25/06/2008 produced by the Plaintiffs vide Exh.361:-

31] The Plaintiffs have produced one Registered *Will* of Maniben Wid./o. Thakorbhai Manchhabhai vide Exh.361. It is executed on dt.26/06/08 and registered before Sub-Registrar, Surat-4, Katargam on **dt.11/07/08 at serial No.13492.**

- I. To prove contents of the *Will*, the Plaintiffs have examined attesting witness of the said *Will* Shri Paritoshbhai Mahendrabhai Dave vide Exh.397. He has stated that he had friendly relation with Yashvantlal (Plaintiff No.1) and his son Dipak (Plaintiff No.2). He also knew Jaysukhben as wife of Yasvantlal and Maniben as Mother of Jaysukhben. He has averred that Jaysukhben got sick in the Year 2008 and Maniben was used to

visit her home and stayed there for 1-2 days and went back.

- II. He has averred that Jaysukhben died on dt.06/06/08 and Maniben stayed at her home for 2-4 days. He has averred that after one month from the death of Jaysukhben on dt.10/07/08, Maniben Wid./o. Thakorbbhai Manchhabhai, through Dipakbbhai Yashvantlal Patel call him at Jaysukhben's home. He has averred that he reached there in evening at around 5 to 6 and at that time Maniben Wid./o. Thakorbbhai Manchhabhai told him that she has prepared one *Will* through Advocate Shri K.C.Desai for her properties and would he like to be witness for it? and therefore he replied in affirmative. Then for the registration of the *Will*, he was informed to be present in the Office of Sub-Registrar in the morning at 11.00 'o clock and he replied in affirmative.
- III. He has further averred that he went to Sub-Registrar office, Nanpura, Bahumali Building, Building No.A Surat on dt.11/07/08. According to his memory, he went to 4th floor and Maniben was present there. He has averred that Dipakbbhai Yasavantlal was also present with Maniben. Rakeshbha Modi, who was serving in the shop of Yashvantlal Jagdishbbhai Patel, was also present there. Nayanbbhai Balvantbbhai Patel was also present there and Dipakbbhai Yasvantlal acknowledged him as his cousin brother. Lady Assistant of Advocate Shri K.C.Desai was also present there but he did not ask her name but she was in wardrobe of Advocate.
- IV. He has averred that Photograph and thumb-impression of Maniben was there on first page and 5th page of the *Will* and her thumb-

impression was identified by Rakeshbhai Modi. He has identified his signature as second witness on page no.4. He has averred that thumb-impression Maniben was there on page no.4 which was identified by Rakeshbhai Modi. He has averred that all thumb-impressions and signatures were made in his presence at office of Sub-Registrar and then thumb-impression and photograph of Maniben was obtain in computer and Sub-Registrar made his signature in his presence. He has identified his signatures in the *Will* vide Exh.361.

- V. L.Ad.Mr.Jagirdar, on behalf of Defendant no.1,2,3A, 4 to 7 and 10, has cross-examined him wherein he has admitted that he has relation with Yasvantbhai and Dipak since 1981. He has deposed that Jaysukhben had skin-disease before her death. He has deposed that when he went there on dt.10/07/08, the talk of the *Will* was done for the first time. He has deposed that no other than Dipakbhai, Yashvantbhai, Ashaben, Chhayaben, Maniben and he himself was present during the said talk. He has deposed that he has not done attestation in month of June. *Will* was not there on dt.10/07/08 when he visited the home. Junior of Advocate Shri K.C.Desai brought the *Will* on dt.11/07/08 in the office of Sub-Registrar. He has admitted that no writings, seal and signatures were done on dt.25/06/08 and he has not read such *Will*. He does not know details of survey numbers which are claimed by Dipakbhai and Yashvantbhai. He has deposed that he went to Bahumali Building on dt.11/07/08 separately, Dipakbhai and

Yashvantbhai were present there. He has deposed that Rakeshbhai Modi was doing job with Yashvantbhai and Dipakbhai. He has deposed that Dipakbhai and Yasvantbhai were helping Maniben for pasting her thumb-impressions. He has deposed that during the process, Maniben had not happened to talk with anybody. He has deposed that Maniben was not literate person. He has admitted that it was not happened that Maniben told witnesses about what she has mentioned in the *Will*.

VI. The witness is attesting witness of the *Will* of Maniben which was registered on dt.11/07/2008 and he has remained affirmed on his deposition in his cross-examination. But he has not stated whether Maniben had read her *Will* herself or any body had read over to her as she was unable to read. It is not come out on record that Maniben was conscious state of mind and fit and healthy and she herself dictated her wish to execute *Will* and the *Will* contains same facts which are her words.

VII. Now the *Will* and it's contents are to be considered. Maniben's photograph and thumb-impressions are there on first page and 5th page. Her thumb-impression is there on page 4 with the signatures of two witnesses. Her thumb-impression was identified by Rakesh Modi. But Maniben's thumb-impression is not there on each page.

VIII. Maniben's age is noted on first page as 90 years and therefore the Plaintiffs have to prove her health, vision and memory function working well. Her address is the same which is

address of the Defendant no.3 to 7. Details of family members are there on second page and it is stated on page 2 that she has been living in joint family with heirs of her brother-in-law (*Diyar*-brother of Husband i.e. the Defendants). Details of properties are given on page 3 that her father-in-law D.Manchharam Narsi died in the Year1979 leaving two houses and more than 100 Bigha lands at Jahagirabad and Gorat, Rander and as she was illiterate, her brother-in-law and his sons have been maintaining said properties. It is stated in last para on page 3 that she wishes to give all her properties, whichever received by her from her father-in-law in capacity of legal heir, to Yashvantlal (Bachubhai) Husband of her Deceased daughter Jaysukhben and MInaxiben, Chhayaben. Ashaben and son Dipakbhai. It is to be noted that details of land properties like Survey numbers or Block number or description is not given in the said para.

- IX. It is stated on page 4 that she has not received her share from two Sons of D.Nagarbhai namely, Yogeshchandra and Kishorchandra and if even then, any one disputes fraudulently about her share, her legal heirs would take whole share based on said *Will*.
- X. The said *Will* is silent about the disputed properties. Therefore even if the Will is considered as per say of the Plaintiffs, it does not say specifically about disputed properties and hence not in favour of the Plaintiffs. The Plaintiffs have failed to prove its contents in their favour.

B).Will of Maniben dt.05/02/2009 mentioned in Will vide Exh.387:-

32]. The Defendant no.1,2,3A,4 to 7 and 10 have produced one registered *Will* of Maniben Wid./o. Thakorbbhai Manchhabhai vide Exh.387. It is executed on dt.01/12/11 and registered before Sub-Registrar, Surat-4, Katargam on dt.01/12/11 at serial No.21153. It is stated on page 2 that executrix Maniben executed one ***Will on dt.05/02/2009*** which was registered before the Sub-Registrar, Surat-4 (Katargam) on dt.10/02/2009 in Book no.3 at **Serial no.1023**. Neither the Plaintiffs nor the Defendants have produced said registered *Will* No.1023 on record of this Court, reason best known to them. Here suppression of said *Will* is done by both the parties.

C).Will of Maniben dt.01/12/2011 produced by the Defendants vide Exh.387:-

33]. As noted in above mentioned last para the Defendant no.1,2,3A,4 to 7 and 10 have produced Registered *Will* of Maniben Wid./o. Thakorbbhai Manchhabhai vide Exh.387 which is executed on dt.01/12/11 and registered before Sub-Registrar, Surat-4, Katargam on dt.01/12/11 at serial No.21153. **It is to be noted that the said Will is executed during the pendency of present suit. Maniben died in the Year2016 i.e. after 5 years from the execution of her last Will. It is to be noted that the Defendant no.1,2,3A,4 to 7 and 10 have not amended their written statement vide Exh.14 just after registration of said Will by Maniben i.e. Defendant**

no.8 on dt.01/12/2011. The Defendants have not offered any explanation for not filing an amendment application about averments of their right based on such Will (*emphasis supplied*).

I. Before appreciating the evidential value of said *Will*, it is to be noted that if the Defendants relied upon said *Will*, it becomes an admission on their part that D.Maniben had some legal right, title or interest in the disputed properties and therefore she had executed said *Will* of her share. As and when the Defendants propound to believe contents of the said document, they must be precluded from denying legal rights of D.Maniben in the properties. In their written statement vide Exh.150 they have repeatedly denied rights of the Plaintiffs who claimed their rights through Jaysukhben being legal heir of Maniben and Thakobhai. **If there is no right and title of Maniben then there was no requirement of execution and registrations of her *Will*. But by relying said *Will* of Maniben, the Defendants have admitted existence of her rights and title. The Defendants can not ride on two horses (*Emphasis supplied*).**

II. Now the said *Will* vide Exh.387 is to be considered. The Defendants have examined attesting witness of said *Will*, Prashant Kantibhai Patel vide Exh.453. He has averred that he knows Maniben as they reside nearby at Ratneswar Mhadev Street. He has averred that Maniben wished to execute a *Will* and asked him to be the Witness and he took Maniben in his four wheel car at 10.00 'o clock in the morning on dt.01/12/2011 to the Office of

Sub-Registrar, Bahumali Building, Nanpura. At that time Alpeshbhai Jayantibhai Patel, Shilpesh Shankerbhai Patel were also with him. When they reached to 4th floor, one Advocate met them who brought typed *Will* and thumb-impression of Maniben was obtained on each page and said thumb-impression was identified by Alpesh J. Patel. On the say of Maniben, Shilpesh Shakerbhai Patel signed the *Will* first as witness and then he signed. Then the *Will* was produced in the Office of Sub-Registrar and then proceeding of pasting photograph, thumb-impression and signatures was done.

- III. He has further identified Photograph and thumb-impression of Maniben, Signature of Alpeshbhai and Shilpeshbhai and his signature in the *Will* vide Exh.387. He has averred that Maniben was in conscious state of mind and healthy and did her *Will* as per her wish. He has averred that proceeding was done in between 11 to 12 'o clock and then he dropped Maniben at her home.
- IV. L.A.Mr.J.J.Gandhi has cross-examined him wherein he has admitted that he has friendship with Jayeshbhai since school-time. He has denied that Maniben was illiterate. He has deposed that he does not know about education of Maniben. He has deposed that Maniben died after age of 100 years. He has denied that Maniben was not able to move outside the house without help. Then he has deposed that Maniben was able to move herself. He has admitted that he does not know where the *Will* was prepared. Then specific question has been put to him that, "*When*

he did see the Will for the first time?" wherein he has replied that, *"after death of Maniben, Prakashbhai and Kishorbhai found the Will and they called and asked him, whether he went with Maniba, at that time he saw the Will for the first time"*. He has denied that Jayeshbhai brought the *Will* of Maniben. He has denied that *Will* is concocted subsequently.

- V. Now the contents of the *Will* is hereby appreciated. It contains thumb-impression of Maniben on each page which is identified by Alpesh J. Patel. Maniben's photograph is pasted on first page. On second page, she has declared all here previous *Will* as canceled. She has alleged that Yashvantbhai had obtained registered *Will* no.13492 from her without making her understand it. It is to be noted that Maniben has admittedly not filed any proceeding challenging her previous *Will*. She has admittedly not filed any police complaint against her Son-in-law Yashvantbhai for obtaining false *Will*.
- VI. Then on second and third page in the *Will* Maniben has declared her legal heirs of first schedule namely, her daughter Liliben Thakorbhai W./o. Navnitbhai Karshanbhai, Urmilaben Thakorbhai W./o. Arvindbhai Bhaskarbhai, Jaysukhben Thakorbhai W./o. Yashvantlal Patel, who died. It is stated in second para on page no.2 that after death of her husband, she has been living with her brother-in-law Nagarbhai Manchhabhai and after his death, with his sons and they have been maintaining her.
- VII. There is title in para 2 on page No.3 that, "**She has**

following immovable properties..". After the said title Block No.20/1 of Jahagirabad is mentioned including Survey no.148/2-B, 154/1/B, 154/2/B, 18/1-2, 16/A, 149/B and 153. It is further stated that she has **1/3 share in Survey no.153 as co-owner** and she has waived her share by the waiver-agreement on dt.26/12/2007 in favour of Kishorchandra Nagarji Patel and his legal heirs and D.Yogeshchandra Nagarji Patel and his heirs and Talati has made Revenue Entry No.1999 accordingly and her name is deleted even then if, her share would be counted for Survey no.153, then it would be 1/3 undivided share. **It is to be noted that the Defendants have not produced original waiver-agreement of Maniben Dt.26/12/2007. It is to be noted that if waiver-agreement is executed then Maniben has no right to execute Will for the property which is waived by her. Surprisingly Maniben has not mentioned anything about her previous suit Sp.Civil Suit No.173/1975 and compromise-decree and then ULC proceedings whereby she has been declared as absolute owner of Survey No.153 and 94. If she was able to read herself, she might have not stated in the Will only about Survey No.153. When she has fought for her rights in the Year1975 against her Father-in-law and Borthor-in-law and then during ULC proceedings then she must have not waived her rights so simply leaving her own children out of the Will. It is also not believable that She had chosen to give her properties to the Defendants only, who are already in**

possession of so many land properties and she has not given any share to her predeceased daughter's legal heirs, who have not been given any land. She has stated contradictory facts than compromise-decree of her Sp. Civil Suit No.173/1975 (*emphasis supplied*).

VIII. It is further stated on page 4 that Pushpaben Yogeshbhai and others (Defendant no.3 to 7) are owners of Block no.20/2 and neither she nor her daughters have right, share or interest and in that circumstances, her daughters namely Liliben, Urmilaben and Jaysukhben, to **avoid probabilities of future dispute (What kind of future disputes?)** and for family relationship, executed waiver-agreements before Notary on dt.05/02/2004. The said waiver-agreements are registered in the register of Notary Shri Bhagwati P. Patel at Serial no.153, 154 and 155. She herself and her daughters have signed in the said waiver-agreements and her son-in-law Yashvantlal jagdishbhai Patel has signed as witness. The said original waiver-agreements are lying with Yashvantlal and he took them for getting copies and then he has not returned them to her. **It is again to be noted that if there was no right and share and interest of Maniben's daughters then there was no question to have waiver-agreements executed by them. Again it becomes dubious, if Maniben waived her rights in on dt.05/02/04 then why she executed another waiver-agreement on dt.26/12/2007 and then present Will assuming her rights in the property. If she has already waived rights by executing two**

documents then she must have not executed *Will* for properties that are already waived by her (*Emphasis supplied*).

IX. Then on page 5 in second para of the said *Will*, it is stated that executrix Maniben has given **all things (which kind of things)** to her daughters during her life time and therefore she is not giving them anything. Then it is stated that present suit 127/2009 is falsely filed by Yashvantlal and she has filed her affidavit before Collector, Surat in RTS Appeal no.118/11. **It is to be noted that Maniben has not specified what things or properties were given by her to her daughters that would lead her to state in the *Will* that she has given all things to her daughters. It is to be noted that though Maniben has stated facts about present suit and RTS Appeal in her *Will*, she has not appeared before this Court and filed amendment application producing her *Will* and affidavit before this Court just after executing her *Will* which was lawfully supposed from her. She has not declared before this Court that she has executed a *Will* during pendency of present suit. If She was able to appear before Sub-registrar for excuting *Will*, she could have appear before this Court at least to file her written statements instead of giving Power of Attorney to the Defendant No.7. The Defendants also have suppressed Power of Attorney of Maniben before this Court because, it must have been executed stating reason of her ill-health (due to age of 90 years) which would come in way of the Defendants for relying**

upon her *Will* with submission that the *Will* was executed by her in fit health and conscious state of mind (*emphasis supplied*).

- X. Maniben herself is not sure about her rights and she has executed *Will* on probabilities. She has not stated her explanation for breaching terms and conditions of compromise-decree passed in her previous suit Sp.Civil Suit No.173/1975. The *Will* is executed during pendency of present suit and therefore it becomes subject matter of the suit.
- XI. The crucial fact is that the Defendants' ancestor Nagarjibhai himself has executed one *Will* just before one day of his death i.e. he died on dt.5/09/89 and *Will* was made on dt.04/09/89. The Defendants have produced zerox copy of said *Will* with their initial list of document vide Exh.15 at serial No.40. But during the trial, they have not produced original *Will* of their ancestor Nagarjibhai and pressed upon the said document. His *Will* is best evidence to prove rights and title of Defendants' ancestor through whom they have got inheritance right in disputed properties. The Defendants have not produced best evidence available with them. Maniben's *Will* must be read with the *Will* of co-owner D.Nagarjibhai. Maniben has stated probabilities of her ownership for Survey no.153 in her *Will* then in that case the affirmative statement of Nagarjibhai in his *Will* about his properties is best evidence to be produced by the Defendants to prove that Nagrjibhai was the only owner of disputed properties. But the

Defendants have suppressed said *Will*, reason best known to them. Therefore production of Maniben's *Will*, more particularly when she has remained silent in present suit after execution of *Will* till her death in the Year2016, can not be considered as favorable to the Defendants.

XII. The facts of *Will* of Maniben in the Year2011 comes for the first time on record in written statement vide Exh.150 in the Year2022 i.e. after lapse of 10 years. Maniben was party in present suit and she could have declared the same facts just after executing registered *Will* in the Year2011 but she had not done so. The other crucial fact is that Maniben herself has not signed in the written statement vide Exh.14. The Defendant No.7 has based on power of attorney of Maniben.

XIII. The other crucial fact is that both the parties have produced documents bearing thumb-impressions of Maniben, there is not a single document bearing signature of Maniben. It is speaking evidence of the fact that Maniben was illiterate lady and therefore the burden on both the parties are heavy to prove the contents of the documents which bear thumb-impression of Maniben.

CONCLUSION OF WILLS:-

34]. The *Will* vide Exh.361 which is relied upon by the Plaintiffs, does not specify disputed properties and therefore it is not in help of the Plaintiffs. The *Will* vide Exh.387 which is relied upon by the Defendants, is executed during pendency of present suit and the

executrix Maniben had not declared its facts before this Court with prayer of necessary amendment in her initial written statement vide Exh.14. The other notable fact is that the Plaintiffs have proved that the disputed properties are joint family properties then in that case, Maniben had right to execute *Will* of her share but not for the share of her legal heirs in undivided properties. The Defendants submit on one hand that Maniben had no title in disputed properties as partition was done in the Year 1956 and on other hand they are relying upon said *Will* which says about ownership of Maniben for Survey no.153. The Defendants are not permitted to aver total contradictory facts. Therefore the said *Will* is not in help of the Defendants. Suppression of Nagarjibhai's *Will* by the Defendants leads this Court to draw adverse inference against them. Therefore also, *Will* of Maniben must not be considered in favour of the Defendants, more particularly when Maniben was illiterate lady. When once the compromise-decree is passed with seal and signatures of the Court wherein Maniben was declared absolute owner of Survey no.153 then by executing the *Will* vide Exh.387, it is not believable that she might have declared her 1/3 share in said properties. At the cost of repetition, I like to note here surprising fact that Maniben had not stated single word in her *Will* about compromise-decree passed in her previous suit SP. Civil Suit No.173/1975 and ULC proceedings. Therefore said *Will* can not be considered in isolation to other documents, facts and circumstances. The Defendants have failed to prove fit and healthy

condition at age of 94 of Maniben, vision and memory capacity of her to execute, read, heard and understand the nature of the document what she has executed. The Defendants have not named the person who scribed the Will. The Defendants have measurably failed to prove that the *Will* is executed as per her wish. The Defendants have not proved the contents of the *Will* of Maniben in their favour.

WAIVER AGREEMENTS :-

35]. Above mentioned date-wise chronology says about the next category of documents that are waiver-agreements which are relied upon by the Defendants and produced vide Exh.380, 451 and 452. The Defendants have submitted that three daughters of Maniben and Thakorbbhai namely, Jaysukhben, Liliben and Urmilaben, have waived their rights in their favour. The said waiver-agreements are crucial to be appreciated

- I. **Exh.380:-** The said waiver-agreement is unregistered document named as '**waiver-agreement**' of **Jaysukhben**, through whom the Plaintiffs have claimed their inheritance right in present suit. It is on Rs.100/- Stamp paper dt.05/02/2004 notarized before Notary **Shri Bhagwati P. Patel**. There is no signature of Jaysukhben on each page but her signature is only on last page. Kishorchandra Nagarji (Defendant no.5) and Yogeshchandra Nagarji are first party and Jaysukhben is mentioned as second party i.e. who is executing the document in favour of the first party.

- II. It is specifically stated on 2nd page that there are agricultural lands and *Gamtal* properties belonging to **joint family** of Nagarbhai Manchhabhai and Thakorbbhai Manchhabhai and both the parties have **undivided share** and the second party is waving her undivided share in favour of first party.
- III. **Total 15 properties are mentioned as undivided properties on 3rd page which are stated as disputed properties in present suit.** It is again stated below the description of 15 properties that both the parties are owners in possession by virtue of inheritance and all the said properties are subjected to inheritance rights of their fathers.
- IV. It is further stated that the second party has waived her right **unconditionally after receiving consideration** of her share and **she accepted money for her share through said receipt** and waived rights on terms and conditions mentioned therein. Then total 8 terms are mentioned. Then schedule of properties is given stating total 15 properties. Then on last page there are signatures of Jaysukhben and her husband Yashvantlal as witness.
- V. Jaysukhben, Yashvantlal and Yogeshbbhai are dead persons and therefore their evidence, being party of said waiver-agreement, is not on record. Kishorchadnra, i.e. the Defendant no.5, who is party of said waiver-agreement, is alive however he has not entered into witness-box, reason best known to him. His son, the Defendant no.7 Jayeshbbhai Kishorchandra has deposed in his cross-examination on page 14 vide Exh.435 that his father attends

social functions. The said deposition is relied upon by the Plaintiffs in respect of physical health of Defendant no.5 to attend this Court for evidence and it is apparent that he is able to attend the Court but he has not come to the Court for evidence. The Defendant no.7 is not party to said waiver-agreements and therefore his oral evidence is not admissible for the contents of the said waiver-agreements. The Defendants have not produced their best available evidence.

VI. The Defendants have pleaded from the beginning that partition was taken place in the Year 1956 as per Revenue Entry no.623 and then Maniben has accepted said partition in compromise-decree passed in Sp.Civil Suit no.173/1975. But it is stated in the said waiver-agreement that all the properties are properties of joint family and Jaysukhben has undivided share in it. Though the said document is relied upon by the Defendants but it is in favour of the Plaintiffs' averment about undivided joint family properties.

VII. The other crucial notable fact is that it is stated in the said agreement that Jaysukhben received consideration for her share but the Defendants have not stated in their written statements vide Exh.14 and 150 that they have paid consideration to Jaysukhben for waiving her right in disputed properties. If the amount of consideration is paid then it must be a registered document and proper Stamp-duty must be paid by the parties but it is not so done. The Defendants have not offered any explanation about non

mentioning of specific amount which was paid to Jaysukhben as consideration against her share.

- VIII. It is to be noted that on one hand it is stated on page 3 that Jaysukhben has waived right unconditionally and then just after said para, total 8 terms are stated. The Defendants have not offered any explanation that if she waived rights unconditionally then why the terms and conditions are narrated in the agreement.
- IX. It is quite surprising to note that though **Block no.56 and 69 are acquired by Gujarat Housing Board, both the said properties are mentioned as undivided joint family properties on 3rd page and on 6th page of the said document.** The Defendants have not offered any explanation in this respect.
- X. It is also surprising that nothing has been mentioned in said agreement about Sp.Civil Suit no.173/1975 and about Sp.Civil Suit No.231/1982 which was filed by Jaysukhben herself.
- XI. Nothing has been mentioned about ULC proceedings in the said waiver-agreement. It is to be noted that all co-owners filled form of ULC proceedings separately with their individual properties but in this waiver-agreement, all that properties are mentioned as joint undivided family properties. The Defendants have not offered any explanation in this respect.
- XII. The Defendants have not examined Notary Bhagwati P. Patel to prove contents of the said deed in their favour.
- XIII. There is no mutation Entry effected in the Records of Rights of disputed properties based on such waiver-agreement. Exh.265

is certified copy of Revenue Entry no.1756 dt.04/02/05 which says that Bhavnaben Yogeshchandra Patel has waived her rights through waiver-agreement on dt.03/-2/05 without any consideration. But there is no entry of waiver-agreement of Jaysukhben, reason best known to the Defendants.

XIV. Exh.451 :- It is also an unregistered document on Rs.100/- Stamp-Paper dt.05/02/2004 bearing signature of Urmilaben and Yashvatbhai only on last page. The said deed is with all identical facts like above mentioned deed of Jaysukhben. Therefore all above observation are applicable to this document vide Exh.451._

XV. Exh.452 :- It is also an unregistered document on Rs.100/- Stamp-Paper dt.05/02/2004 bearing signature of Liliaben and Yashvatbhai only on last page. The said deed is with all identical facts like above mentioned deeds of Jaysukhben and Urmilaben. Therefore all above observations are also correct for Exh.452.

XVI. Liliben is defendant no.1 and Urmilaben is defendant no.2 but they have not entered into witness-box in present suit in support of the Defendants' submission.

XVII. The Defendants have not explained, if the Defendants are in position to obtain notarized waiver-agreements then why they have not obtained registered deeds.

XVIII. The Defendants have relied upon Execution of said waiver-agreements but they are speaking evidence of the fact that the executants have undivided shares in undivided joint family properties. The Defendants have pleaded in the written statement

vide Exh.14 that, "*for the avoidance of future dispute and to maintain healthy relations in the family, said waiver-agreements were executed*", but the same fact is nowhere stated in the said deeds. On the contrary it is specifically stated and reiterated that the executants have undivided share in joint family properties and they are waiving their rights for consideration. Said documents reveal total contradictory facts then the written statements of the Defendants vide Exh.14. The Defendants have not offered any explanation.

XIX. The Defendant no.1, 2 and 8 have never appeared before this Court personally. Written statement vide Exh.14 is also signed by the Defendant no.3 to 7 wherein the Defendant no.7 has acted in capacity of Power of Attorney Holder of the Defendant no.1, 2 and 8. It is to be noted that if the Defendant no.8 was able to visit office of Sub-Registrar for execution of the Registered *Will* No.21153/11 then she could have appear before this Court for producing her written statements. The Defendant no.3 to 7 have an opportunity to examine the Defendant no.1 and 2 as their witness but it has not been done so.

XX. It is crucial to note that there is one relinquishment-deed submitted to be executed by Maniben on dt.27/08/2004 which is notarized before Notary Shri Arvindbhai L. Patel at Serial no.1637/2004. The Defendants have produced documentary evidence vide Exh.388 which contains complaint of Dipakbhai, Plaintiff no.1 on dt.26/12/17 and the fact of **Maniben's notarized**

waiver-deed of dt.27/08/2004 has come on record. The said complaint was on affidavit by the Plaintiff no.1 and xerox copy of said waiver-deed of Maniben was attached with his complaint. But the Defendants have not produced such document before this Court. They have not even averred that such document is executed by **Maniben on dt.27/08/2004. The Defendants have made clear cut suppression of said relinquishment-deed, reason best know to them (*Emphasis supplied*)**.

XXI. After compromise-cum-partition-decree passed by the L. Senior Civil Court in Sp. Civil Suit No.173/1975 declaring Maniben's absolute title for Survey no.94 and 153, the fact of first relinquishment-deed of Maniben is come on to be on dt.27/08/2004, which is not produced by the Defendants. The Defendant no.3 to 7 and 10 have already entered into transaction of disputed property Block No.184/1 Peki i.e. Survey No.94 of Maniben ad-measuring 1500 sq.mtr land by executing registered Sale-deed no.26223 to Shri Devenbhai Mafatbhai Patel (Revenue Entry No.1553 Exh.262 dt.06/11/2001) for Rs.1,00,000/- on dt.02/11/2001. The said Sale-deed is itself null and void as the original owner Maniben has not executed it or has given authority to the Defendants to sell it.

XXII. The Defendant no.3 to 7 and 10 have already entered their names as owners (by revenue entry no.1719 dt.27/12/2004 Exh.264) after death of Yogeshchandra Nagarji total 3 properties including Block no.20/1, which includes Survey no.153 of

Maniben. It is again to be noted that there is no relinquishment-deed produced by the Defendants before revenue authority for entry of their names and even then **Maniben's name is deleted**. The said revenue entry itself is null and void as it is against order of the L. Court passed in compromise-decree in Sp.Civil Suit No.173/1975. The Defendants have not offered any explanation for non-production of relinquishment-deed of Maniben on dt.27/08/2004 before Revenue Authority. It is quite surprising too that Revenue Authority has not asked for pedigree of Maniben and personal presence of Maniben for recording of her statement. Maniben herself has never been appeared anytime before Revenue Authority for mutation entry.

CONCLUSION OF WAIVER-AGREEMENTS :-

36]. All the said waiver-agreements are unregistered documents wherein it is stated that the executants have received consideration and then waived their rights. The Defendants have not specified what amount was paid to them for waiver of their rights. On the contrary they have denied the payment of the consideration. As per Sec.17 and 49 of Registration Act, all the document which purport to be transferring or alienating rights more than Rs.100/- must be registered and therefore these documents must be registered as they are creating rights in favour of the Defendant no.3 to 7. In absence compliance of the said provisions, these documents are not

admissible as evidence. They must not be considered in favour of the Defendants. The other notable fact is that relying upon the said documents, the Defendants are admitting share, rights and interest of the excutants in the disputed properties with the fact that the disputed properties are joint properties. The third crucial fact is that the Defendant no.3 to 7 were well aware about the Sp.Civil Suit No.231/1982 which was filed by Jaysukhben then they must have been cautious and preferred to have Registered-deed in place of notarized waiver-agreements, if they really wanted to avoid future dispute (which is pleaded by them in written statement). The fourth crucial fact is that if Jaysukhben herself has waived her rights then why the Defendants have preferred to obtain declaration and confirmation-deeds from Plaintiff no.1 and 2 in the Year2018. Considering all the said facts and circumstances, these waiver-agreements are not proved in favour of the Defendants' case.

RELINQUISHMENT-DEED OF MANIBEN :-

37]. Date wise chronology says about Relinquishment-deed of Maniben. The Plaintiffs have pleaded cause of action arisen from the mutation Entry No.1999 on dt.28/12/2007 which is based on Relinquishment-deed of Maniben dt.26/12/2007 on Rs.100/- Stamp Paper notarized before Shri Navinchandra G. Patel in favour of the Defendant no.3 to 7. **The Defendants have not produced original deed before this Court, reason best known to them.**

- I. The Plaintiffs have produced certified copy of record-file of Mutation Entry No.1999 vide Exh.363 which contains said relinquishment-deed. The said record-file contains copy of an application filed by the Defendant No.7 Jayeshkumar Kishorchandra dt.28/12/07 to City Mamlatdar, E-dhara, City Taluka Surat for deletion of Maniben's name as she has relinquished her rights in both the disputed properties, i.e. Block no.20/1 and 20/2.
- II. Then the Record-file shows copy of Revenue Extract 8-A of account No.95 showing disputed properties in name of Defendant No.3 to 8. Then there is copy of Revenue Extract 7/12 of disputed properties showing names of said Defendants.
- III. Then there is copy of **unregistered relinquishment-deed** executed on two Stamp Papers, each of Rs.50/-, by Maniben (Second Party) in favour of the Defendant no.3 to 7 (First Party). Title of the deed itself suggests that the properties are in joint ownership of parties.
- IV. Description of disputed properties is given in 2nd para on page 4 with specific words of "**joint ownership of parties**". It is specifically stated in same para that the second party i.e. Maniben has waived her **unconditionally** right in favour of the first party for "***the security***". It is not specified that which kind of security is required for the execution of said deed.
- V. Then in total 8 terms and conditions are mentioned though it is stated that Maniben is executing said document unconditionally.

- VI. Then schedule of disputed properties are again given on page 6 which includes Block no.20/1 and 20/2.
- VII. Documents contains thumb-impression of Maniben on each page which is identified by Harivadan Maganbhai Patel. It is stated in first para on page 4 and on page 7 that the deed is binding to legal heirs too of the parties.
- VIII. Then there are signatures of the Defendant no.3 to 7 with two witnesses. Then photographs of parties with their signatures are done and on last page, there is thumb-impression of Maniben.
- IX. It is notarized before Shri Navinchandra G. Patel. The Defendants have not examined him as his witness to prove contents of the said document.
- X. The said document purports to be creating rights in favour of the Defendant No.3 to 7 for the properties which might have Market value of crores of rupees and therefore, it must be Registered under Sec.17 of the Registration Act. But it is unregistered deed and therefore it also attracts bar under Sec.17 and 49 of Registration Act.
- XI. The Defendants have not offered any explanation, if partition has already taken place in the Year 1956, then 1966 and if Maniben was only owner of Survey Block no.153 and 94 then why the said document shows all properties as joint undivided property.
- XII. The said document is silent for partition-deed of 1956, partition of 1966, UCL proceedings, Sp.Civil Suit No.173/1975

(which was filed by Maniben herself) and Sp.Civil Suit No.231/1982 and partition of 10/12/1999.

XIII. Maniben has stated that said deed would bind her legal heirs (Urmilaben, Liliben, Jaysukhben) but no fact is mentioned about unregistered waiver-agreements of dt.05/02/2004 which are submitted by the Defendants to be executed by Maniben's legal heirs.

XIV. It crucial to note that Survey no.94 (ad-measuring 1500 Sq. Mt. after ULC deduction) is not mentioned in the said deed. The Defendant no.3 to 7 have already sold it in the Year 2001 for by executing registered Sale-deed no.26223 which was absolute property of Maniben without any authority or waiver-agreement.

XV. Then the record-file of Entry no.1999 further contains rough entry of Relinquishment-deed. In last column it is stated by Circle Officer on dt.28/02/08 that "Application, verified by the Relinquishment-deed, notice sent through UPC (**whom notice were sent**), no objection received". Then notice under Sec.135D is produced which shows names of Defendant no.3 to 7 and Maniben. It is to be noted that no notices were served to legal heirs of Maniben including Jaysukhben's legal heirs, who are interested persons. Maniben has given bidding for her legal heirs too in the said deed and therefore Revenue Authority ought to have serve notice to them also.

XVI. Then there is objections filed the Plaintiffs in capacity of legal heirs of Jaysukhben dt.17/12/2008. It is specifically stated

in para 4 of said objections that pedigree of Maniben was not produced and said entry is mutated during life-time of Maniben. The Defendant no.7 applied for the mutation entry no.1999 then he must have produced pedigree of Maniben and waiver-agreements of Maniben's daughters executed on dt.05/02/2004. But he has not done so, reasons best known to him.

XVII. The Defendants have not offered any explanations for non-production of pedigree of Maniben as well as waiver-agreements of Jaysukhben (Exh.380), Urmilaben (Exh.451) and Liliben (Exh.451). If all the said waiver-agreements are true and correct and without any ill-motive, then they ought to have been produced before the Revenue Authority with submission that strengthen the relinquishment-deed of Maniben dt.26/12/2007.

XVIII. It is quite surprising to note that Maniben has nowhere mentioned in her Relinquishment-deed that her daughters, Jaysukhben, Urmilaben and Liliben have already waived their rights accepting amount of consideration (which is mentioned in the waiver-agreements) on dt.05/02/04.

XIX. It is also surprising that Maniben has not stated that she herself has executed one earlier Relinquishment-deed on dt.27/08/2004 which was notarized before Notary Arvind L. Patel at Serial NO.1637/2004 on Rs.100/- Stamp Paper.

XX. The Defendants have not proved contents of the Relinquishment-deed of Maniben in their favour. If they were in position to get Notarized-deed then they must have obtained

Registered-deed but it is not so done. By avoiding registration, they have also avoid payment of stamp-duty which shows their *malafide* conduct. Maniben's legal heirs were totally ignored at the time of Relinquishment-deed and her pedigree was knowingly suppressed at the time of mutation entry no.1999. Therefore the said entry must not taken as snatching legal rights of Plaintiffs.

XXI. So far revenue litigations about mutation Entry no.1999 upto Hon'ble High Court of Gujarat are concerned, it is specifically ordered by the Honble Court that this Court can decided present suit without being influenced by their order on Revenue Side. Therefore this Court is permitted by the Hon'ble Court to decided civil rights of party being influenced by the Revenue Entry no.1999 which must not be considered against rights and interest of the Plaintiffs being legal heirs of Jaysukhben. The Defendants have pathetically failed to prove contents of Relinquishment-deed of Maniben.

OTHER DISPUTED PROPERTIES OF SCHEDULE A AND B :-

38]. The Plaintiffs have amended the Plaint and added following properties of Kachholi, Dhanori, Sarol, Veluk and Narthan Villages with pleadings that said properties are purchased by the Defendant No.3 to 7 out of the family funds of agricultural income:-

Sr. No.	Village	Old Block/ Survey No.	New Block/ Survey No.	Measurement (Hec.Are.Sq. Mt.)	Akar (Rs.)	Details of Purchase
1	Kachholi	759/ peki 2	603	0-42-64	17.04	Prakashbhai Yogeshbhai Patel purchased from Harshadbhai

						Pratapbhai Desai through Registered Sale-deed no.2103/15, dt.24/09/15 for Rs.8,90,000/- (Exh.411)
2	Kachholi	759/peki 3	604	0-63-42	25.35	" "
3	Dhanori	397	56	1-58-16	10.81	Prakshbhai Yogeshbhai Patel purchased from Rameshchandra Manibhai Nayak & Kantaben Rameshchandra Nayak through Registered Sale-deed no.16/2000, dt.04/01/2006 for Rs.4,00,000/- (Exh.415)
4	Veluk	191/2 191/3 191/4	279	2-80-25 (6-37)	29.75	No document produced by the Plaintiffs.
5	Sarol	25 26 27 28	104	10-66-35	107	" "
6	Narthan	321/1 318/1	335	1-37-00 (4-11)	17-12	" "

I. The Plaintiff no.2 Dipak Yashvantlal has not averred in his affidavit-in-lieu of examination-in-chief vide Exh.204 about details the above mentioned properties i.e. when they were purchased, by whom they were purchased, how the consideration was paid and by whom it was so paid. He has not specifically deposed that how the said properties are purchased from family funds of agricultural income. In cross-examination on page 38 he has admitted that he has not seen evidence of payment of consideration for properties of Kachholi, Veluk, Sarol and Narthan made from income of disputed properties. He has admitted that disputed properties are sold in the Year2018. It is to

be noted that above mentioned properties are purchased prior to 2018 and therefore it is crystal clear that they are not purchased from the income of sale of disputed properties.

II. The Plaintiff No.4 Ashaben has filed her affidavit-in-lieu examination-in-chief vide Exh.403. She has averred on page 23 that Defendant no.4 purchased above mentioned properties out of income of family properties. In cross-examination on page 43 she has admitted that she has not produced evidence of payment of consideration for properties of Kachholi, Veluk, Sarol, Narthan and Dhanori made from income of disputed properties. She has admitted that disputed properties are sold in the Year 2018. It is to be noted that above mentioned properties are purchased prior to 2018 and therefore it is crystal clear that they are not purchased from the income of sale of disputed properties.

III. The Plaintiffs have not proved through documentary evidence that above mentioned Scheduled properties are purchased out of joint family income and family funds. **Therefore Plaintiffs claim in respect of properties mentioned in Schedule-A and B are not proved by them (*Emphasis supplied*).**

REGISTERED SALE-DEED IN FAVOUR OF THE DEFENDANT

NO.11 & 12 :-

391. The Plaintiffs have challenged registered Sale-deed No.392, 393 and 394 executed in favour of the Defendant no.11 and 12 for Block No.20/2, 13 and 11, respectively. The Plaintiffs have alleged

that said Sale-deeds are executed to damage their rights. The Defendants have taken two prime defenses namely 1). *Bonafide* purchaser and 2).limitation. Now the said documents are to be considered first.

- I. **Exh.354 Registered Sale-deed No.392:-** It is executed by the Defendant no.3,4,6,7 and Bhavnaben in favour of the Defendant no.11 and 12 on dt.16/05/18 i.e. during pendency of present suit and after registration *Lis-pendency* by the Plaintiff on dt.20/02/16 (Exh.193). Therefore the purchaser are bound by the final outcome of present suit.
- II. The said Sale-deed shows amount of Rs.8,99,00,000/- (Rs.Eight Crore Ninety Nine Lacs only) which is huge amount and therefore it is apparent that the Defendant no.11 and 12 have purchased disputed property Block No.20/2 for valuable consideration.
- III. Then the said Sale-deed conveys about the origin and history of the Block no.13 from para 2(a) to 2(g). Revenue Entry No.623 is mentioned. Then Entry no.848, 1086, 1478, 1719 are mentioned. Then Entry no.1999 dt.28/12/2007 is mentioned which says that Maniben Wid./o. Tahkorbhai Manchhabhai's name was deleted. But surprisingly **Entry 2794 dt.01/11/17 is not mentioned or rather suppressed. The sellers i.e. Defendant no.4 and 7 are well aware about the pendency of present suit even then they have not mentioned it in the said Sale-deed (*Emphasis supplied*)**. The said facts apparently proves that though the Defendant no.11 and 12 are purchaser with handsome value but

they are not *bonafide* purchasers without notice of present litigation and claim of the Plaintiffs.

IV. **Exh.355 Registered Sale-deed No.393:-** It is executed by the Defendant no.4 Prakashchandra Yogeshbhai and Defendant no.7 Jayeshkumar KIshorchandra in favour of the Defendant no.11 and 12 on dt.16/05/18 i.e. during pendency of present suit and after registration *Lis-pendecy* by the Plaintiff on dt.20/02/16 (Exh.193). Therefore the purchaser are bound by the final outcome of present suit.

V. The said Sale-deed shows amount of Rs.5,07,50,000/- (Rs. Five Crore Seven Lacs Fifty Thousands only) which is huge amount and therefore it is apparent that the Defendant no.11 and 12 have purchased disputed property Block No.13 for valuable consideration.

VI. Then the said Sale-deed conveys about the origin and history of the Block no.13 from para 2(a) to 2(g). Revenue Entry No.623 is mentioned and promulgation Entry no.1086 is mentioned. Then fact of *Will* of Nagarbhai Manchhabhai dt.04/09/1989 is mentioned but the said *Will* is not produced by the Defendants before this Court. Then Entry no.1991 certified on dt.04/03/2008 is mentioned but there is no such entry effected in the record of said property. Then Entry no.2056 comprising City Survey area is mentioned. **But surprisingly Entry 2794 dt.01/11/17 is not mentioned or rather suppressed. The sellers i.e. Defendant no.4 and 7 are well aware about the pendency of present suit**

even then they have not mentioned it in the said reiterated Sale-deed (*Emphasis supplied*). The said facts apparently proves that though the Defendant no.11 and 12 are purchaser with handsome value but they are not *bonafide* purchasers without notice of present litigation and claim of the Plaintiffs.

VII. **Exh.356 Registered Sale-deed No.394:-** It is executed by the Defendant no.4 Prakashchandra Yogeshbhai and Defendant no.7 Jayeshkumar KIshorchandra in favour of the Defendant no.11 and 12 on dt.16/05/18 i.e. during pendency of present suit and after registration *Lis-pendecy* by the Plaintiff on dt.20/02/16 (Exh.193). Therefore the purchaser are bound by the final outcome of present suit.

VIII. The said Sale-deed shows amount of Rs.3,40,42,500/- (Rs.Three Crore Forty Lacs Forty Two Thousands Five Hundred only) which is huge amount and therefore it is apparent that the Defendant no.11 and 12 have purchased disputed property Block No.13 for valuable consideration.

IX. Then the said Sale-deed conveys about the origin and history of the Block no.11 from para 2(a) to 2(h). Revenue Entry No.623 is mentioned and promulgation Entry no.1086 is mentioned. Then fact of *Will* of Nagarbhai Manchhabhai dt.04/09/1989 is mentioned but the said *Will* is not produced by the Defendants before this Court. Then Entry no.1991 certified on dt.04/03/2008 is mentioned but there is no such entry effected in the record of said property. Then Entry no.2056 comprising City Survey area is

mentioned. But surprisingly Entry 2794 dt.01/11/17 is not mentioned or rather suppressed. The sellers i.e. Defendant no.4 and 7 are well aware about the pendency of present suit even then they have not mentioned it in the said reiterated Sale-deed (*Emphasis supplied*). The said facts apparently proves that though the Defendant no.11 and 12 are purchaser with handsome value but they are not *bonafide* purchasers without notice of present litigation and claim of the Plaintiffs.

CONCLUSION OF REGISTERED SALE-DEED NO.392, 393 and 394 :-

40] All the said Sale-deeds are executed during pendency of present suit and after registration of *lis-pendecy* by the Plaintiffs. Therefore they are subjected to final out come of present suit. The Defendant no.11 and 12 have taken defense of *bonafide* purchasers with consideration without notice. Admittedly they are purchasers with valuable consideration but they have not proved that they did not have notice or knowledge about present suit and claim of the Plaintiffs. The writings, style and contents of above mentioned registered Sale-deeds are identical. The origin of title of properties is mentioned in chronology but except the revenue entries which high-lights rights and interest of the Plaintiffs. **The omission of said entries in the said Sale-deeds is *res-ipsa-loqitor* of the fact that the purchasers are not bonafide purchasers without notice or knowledge of interest of Plaintiffs. Rather they are**

purchasers with knowledge and notice (Emphasis supplied). So far as issue of limitation is concerned, it is discussed later.

REGISTERED SALE-DEED IN FAVOUR OF THE DEFENDANT

NO.13, 13.1 to 13.6 :-

41] The Plaintiffs have challenged registered Sale-deed No.18319/17 executed in favour of the Defendant no.13, 13.1 to 13.6 for Final Plot No.8B ad-measuring 10708 Sq.Mt. non-agricultural land, T.P.Scheme 43, Block No.20/1. The Plaintiffs have alleged that said Sale-deeds are executed to damage their rights. The Defendants have taken two prime defenses namely 1). Plea of *Bonafide* purchaser and 2).limitation. Now the said document is to be considered first.

- I. **Exh.349 Registered Sale-deed No.18319/17:-** It is executed by the Defendant No.3 to 7 and 10 in favour of the Defendant No.13, 13.1 to 13.6 and registered on dt.04/08/17 i.e. during pendency of present suit and registration of *Lis-pendency* of present suit by the Plaintiffs on dt.20/02/16. Therefore the purchasers are bound by the final out come of present suit.
- II. The said Sale-deed shows amount of Rs.10,44,11,000/- (Rs.Ten Crore Forty Four Lacs Eleven Thousands only) which is huge amount and therefore it is apparent that the Defendant No.13, 13.1 to 13.6 have purchased disputed property Final Plot No.8B of block No.20/1 for valuable consideration.
- III. From para 1, on page 7 the origin i.e. history of the said

property is stated which shows original survey No.148/3B, 154/1B,2B, 18/1,2, 16/A, 149/B and 153 which promulgated as one Block No.20/1. It is to be noted that Survey No.153 was given in absolute ownership of Maniben by the compromise-decree of the L. Court in Sp.Civil Suit No.173/1975.

- IV. It is stated in para 1 that as per partition dt.05/04/1956, Maniben Wid./o. Thakorbhai was given maintenance right for life and Revenue Entry 623 was mutated. Then Names of Yogeshchandra Nagarji and Kishorchandra Nagarji were mutated with Entry No.803 dt.12/11/1966. Then it is stated that Manchhabhai Narsibhai, Yogeshchandra Nagarji and Kishorchandra Nagarji Patel became owner of Survey No.153. Then Manchhabhai Narsibhai died on dt.15/05/1979 and Maniben Wid./o. Thakorbhai Manchharam became owner of 1/3 share and Entry No.1059 was mutated. Then it is stated that Yogeshchandra Nagarji, Kishorchandra Nagarji and Maniben Wid./o. Maniben Thakorbhai Manchharam became owners. **It is quite surprising that no fact is mentioned about compromise-decree of Sp. Civil Suit No.173/1975 or UCL proceedings.** Survey No.153 was given as sole and independent property of Maniben by the said compromise-decree but the said property is mentioned as joint properties, reason best known to the Defendant No.3 to 7 and 10.
- V. Then on page 8, it is further stated that 18/1, 18/2, 16 and 154 were properties of Nagarbhai Manchharam. Then Entry No.623, 848, 1086 are mentioned. Then it is stated that after promulgation

new Block No.20/1, comprising all above survey numbers, is made in joint names of Yogeshchandra Nagarji, Kishorchandra Nagarji and Maniben Wid./o. Maniben Thakorbhai Manchharam.

VI. Then on page 9 it is stated that though Jaysukhben D./o. Thakorbhai Manchhabhai, Urmilaben D./o. Thakorbhai Manchhabhai and Liliben D./o. Thakorbhai Manchhabhai had no right, they have executed waiver-agreements for said Block No.20/1 and other lands before Notary on dt.05/02/2004 in favour of Kishorchandra Nagarji and Yogeshchandra Nagarji. **Now it is to be noted that there is no mutation entry of said waiver-agreements and even then they are referred in the said Sale-deeds. But it is surprising that there is decree of the Court passed in Sp.Civil Suit No.173/1975 which is not mentioned in the said deed (emphasis supplied).**

VII. The other notable fact is that the purchasers are paying handsome amount to the sellers and even then they have not asked for the registered deeds of said 3 daughters or their legal heirs.

VIII. The third notable fact is that the said Sale-deed No.18319 is executed in the Year 2017 and said Waiver-agreements were notarized in the Year 2005, i.e. Jaysukhben was not alive on date of execution of said Registered-deed in the Year 2017, then the parties have inquired about the consent of Jaysukhben's heirs, more particularly when Jaysukhben's Waiver-agreement is not registered document.

IX. It is to be noted that if Jaysukhben, Urmilaben and Liliben

had no right then they might not have executed Waiver-agreements and even if they have executed so, then the same fact might not have been inserted in the said Sale-deed of the Defendant no.13 in the Year 2017. But it is not so. After considering the origin mentioned in the said Sale-deed itself, the purchasers are well aware about the rights and title of Maniben and after her death naturally rights of her legal heirs, i.e. Jaysukhben, Urmilaben and Liliben. Therefore it transpires from the deed that the fact of Waiver-agreements are smartly or rather cunningly inserted in the deed.

- X. The other notable fact is that the fact of *Will* of Nagarbhai Manchhabhai is smartly suppressed in the said document. The same *Will* is suppressed by the Defendants in present suit also.
- XI. On page 9 of the deed, the fact of Entry No.1999 is mentioned based on registered Relinquishment-deed of Maniben dt.28/12/2007. Then registered *Will* of Maniben dt.01/12/11 is mentioned. Then fact of death of Maniben dt.27/11/16 is also mentioned. But the fact of registered ***Lis-pendency* dt.20/02/16** is omitted. It is quite surprising that the parties have mentioned selected Revenue facts in the deed. The revenue entries which are showing names of Jaysukhben and compromise-decree passed by the Court in Sp.Civil Suit no.173/1975 are suppressed. The said intentional omission proves that the purchasers are not entered into *bonafide* transaction.
- XII. Then in para 2, page 10 it is mentioned that Urban Land

Ceiling Act was operated in the Year 1976 and original land Owners filled 4 forms under Section 6(1) separately. With the mentioning of said fact, it becomes crystal clear that both the parties have full knowledge of the 4 forms filled in by original Owners including Maniben who declared Survey No.153 and 94 as her independent and sole properties. Then it is not believable that the purchasers have no knowledge of Plaintiffs rights.

XIII. Then details of consideration is given which again proves that the purchasers have paid huge money to the Defendant no.3 to 7 and 10. But nothing has been paid to the legal heirs of original owner Maniben. It is to be noted that out of above mentioned survey numbers, Survey No.153 had largest measurement then other survey number of Block No.20/1. Naturally, Maniben and her legal heirs might have more monetary benefits then the Defendant no.3 to 7 and 10. But it is hard realty in present suit that the original owner Maniben and her legal heirs, except the Plaintiff no.1 and 2, are negligently and cunningly discarded. The Plaintiff No.1 and 2 have executed confirmation-deeds which are now to be appreciated.

REGISTERED CONFIRMATION-DEEDS IN FAVOUR OF THE DEFENDANT NO.11,12,13, 13.1 to 13.6 :-

42]. Exh.350:- The Plaintiffs have produced certified copies of Confirmation and Declaration-deeds vide Exh.350, 358 and 359. Exh.350 is registered **Confirmation-deed No.15708/18** executed

on Rs.100/- Stamp paper on dt.11/06/18 by the Plaintiff No.1 and 2 in favour of the Defendant No.13, 13.1 to 13.6. It shows signatures of the Plaintiff No.1 and 2 on each page. It is executed during pendency of present suit. Facts of origin of Block No.20/1 is mentioned identical to the facts of registered Sale-deed No.18319/18. It is stated in para 21 that the Plaintiff No.1 and 2 have no right in disputed block No.20/1 and it is stated in para 23 that they have to withdraw litigations for their share pending in Civil Court or Revenue Courts. **By the said confirmation-deed, the Plaintiff No.1 and 2 have admitted registered Sale-deed no.18319/18 in favour of the Defendant no.13, 13.1 to 13.6. Nothing has been mentioned for the share of Plaintiff no.3 and 4.**

I. **Exh.359 & 358** :- Declaration-deeds of Plaintiff No.1 and 2 are produced vide Exh.359 and 358 respectively. Both the said deeds are executed on Rs.1,76,500/- Stamp-paper on dt.11/06/18 i.e. on same date of Confirmation-deeds in favour of the Defendant No.3 to 7 and 10. Facts of both the said Declaration-deeds are identical. It is to be noted that fact of UCL form filled in individual capacity of independent properties including Maniben is specifically mentioned in para 9 on page 16 but thereafter rights of Defendants are mentioned. Then in para 20 on page 20 ratification of Defendant No.13's Sale-deed No.18319 is declared. Then it is stated in para 21 that said deed is executed for family understanding and in bonafide interest of family relationship.

Then crucial fact is that as per para 23 "**though the Plaintiff No.1 and 2 have not demanded money, Rs.36 lacs are paid to them through Cheques**". If the family relationship was matter a lot for the Plaintiffs and Defendants then there was no requirement of payment of such huge money for execution of said deed. The words are smartly arranged stating that though the Plaintiff No.1 and 2 have not demanded Money. The present suit filed by the Plaintiff No.1 and 2 for their share and therefore it is not believable that they have not demanded money and even then such huge money is paid to them *ex-Gratia*.

- II. It is to be noted that no money is paid to the Plaintiff no.3 and 4. Nothing has been mentioned about rights of the Plaintiff No.3 and 4. Nothing has been mentioned about the proceeding of present case. There is no explanation in the deed by the Defendants that why they have not paid money to the Plaintiff no.3 and 4 who are their relatives.
- III. It is quite surprising that nothing has been mentioned about the Compromise-decree passed by L. Senior Court in Sp. Civil Suit No.173/1875. UCL proceedings are mentioned with statement of independent properties of parties but **even then properties are mentioned in joint common ownership (*Emphasis supplied*)**.
- IV. It is to be noted that even after execution of Confirmation-deed and Declaration-deeds by the Plaintiff no.1 and 2, they have not withdrawn present suit for their share in disputed property Block no.20/1.

V. The Defendants have submitted that though there was no right of the Plaintiffs, they have, for the sake of family relationship, they have paid handsome amount of Rs.36 lacs + Rs.36 lacs to the Plaintiff No.1 and 2. It is the submission of the Plaintiffs that the Defendants are well aware about the rights of the Plaintiffs from the beginning and therefore they have paid the amount. It is to be noted that if there was wish to save family relationship, then same amount or share was already paid by the Defendants in the Year 2009 when the suit was instituted or prior to that, instead of deleting name of Maniben from the record by mutation Entry No.1999. It is not convincing argument that after receiving Rs.36 + 36 lacs from the Defendants, the Plaintiff No.1 and 2 have confirmed the transaction of the Defendant no.3 to 7 and 10 with the Defendant no.13 and 13.1 to 13.6 **just for the sake of family relations and that too after lapse of 9 years** from the institution of present suit.

VI. After perusing Confirmation-deed with the Declaration-deeds, it becomes crystal clear that the Plaintiff No.1 and 2 have received their share in sale-income of the disputed property **F.P. No.8B, ad-measuring 10708 Sq.Mt. of Block No.20/1. Therefore they have no right or share in said properties and against the Defendant no.13, 13.1 to 13.6 (*Emphasis supplied*)**.

VII. **Exh.469:-** The Plaintiff no.1 and 2 have also executed Confirmation-deeds on dt.11/06/18 in favour the Defendant No.11 and 12 for the Block No.11, 13 and 20/2 which are suppressed by

the Plaintiff No.2 in his affidavit-in-lieu examination-in-chief vide Exh.204. The Defendant No.11 and 12 have produced registered Confirmation-deed No.458 vide Exh.469 for Block No.13 executed by the Plaintiff no.1 and 2 in their favour. It is stated in para 3 that transaction of Registered Sale-deed No.393 dt.16/05/18 is within their knowledge and consent. It is stated in para 5 that they have not received amount of consideration in cash or in other way. It is stated in para 8 that the Plaintiff No.1 and 2 have to withdraw pending suit for their share i.e they agreed to withdraw present suit but they have not done so.

VIII. **Exh.470:-** The Plaintiff No.1 and 2 have also executed Confirmation-deeds in favour the Defendant No.11 and 12 for the Block No.20/2 which are suppressed by the Plaintiff No.2 in his affidavit-in-lieu examination-in-chief vide Exh.204. The Defendant No.11 and 12 have produced registered Confirmation-deed No.459 vide Exh.470 for Block No.20/2 executed by the Plaintiff No.1 and 2 in their favour. It is stated in para 2 that transaction of Registered Sale-deed No.392 dt.16/05/18 is within their knowledge and consent. It is stated in para 5 that they have not received amount of consideration in cash or in other way. It is stated in para 8 that the Plaintiff No.1 and 2 have to withdraw pending suit for their share i.e they agreed to withdraw present suit but they have not done so.

IX. **Exh.471:-** The Plaintiff No.1 and 2 have also executed Confirmation-deeds in favour the Defendant no.11 and 12 for the

Block No.11 which are suppressed by the Plaintiff No.2 in his affidavit-in-lieu examination-in-chief vide Exh.204. The Defendant No.11 and 12 have produced registered Confirmation-deed No.460 vide Exh.471 for Block No.11 executed by the Plaintiff No.1 and 2 in their favour. It is stated in para 2 that transaction of Registered Sale-deed No.394 dt.16/05/18 is within their knowledge and consent. It is stated in para 5 that they have not received amount of consideration in cash or in other way. It is stated in para 8 that the Plaintiff No.1 and 2 have to withdraw pending suit for their share i.e they agreed to withdraw present suit but they have not done so.

X. It is to be noted that drafting and style of all above Confirmation-deeds and Declaration-deeds is identical. The Plaintiff No.1 and 2 have not amended the Plaint considering said deeds and withdrawn their claim as per agreed by them in the above mentioned deeds. It is to be noted that the Plaintiff No.1 and 2 have not challenged said deeds till the date and therefore they are binding to them.

XI. Said deeds are against claim of the Plaintiff No.1 and 2 and they are not entitled to any relief in present suit so far as disputed properties namely, F.P. No.8-B, ad-measuring 10708 Sq.Mt. of Block no.20/1, Block No.11, Block No.13 and Block No.20/2 are concerned. They have not challenged said deeds. (*Emphasis supplied*).

**CONFIRMATION-DEEDS WITH DECLARATION-DEEDS BY
OTHER PERSONS:-**

43] The Plaintiffs have produced certified copies of Confirmation-deeds vide Exh.351, 352 and 353. Exh.351 is registered Confirmation-deed No.397 on Rs.100/- Stamp-paper dt.16/05/18 in favour of Defendant no.11 and 12 for disputed block No.11 by 4 persons namely, 1).Darshnaben D./o. Arvindbhai Nathubhai Ranodariya W./o. Chetanbhai Hashmukhbhai Patel, 2). Alpaben D./o. Arvindbhai Nathubhai Ranodariya and W./o. Ashokbhai Manubhai Patel, 3). Jigneshbhai Arvindbhai Ranodariya and 4). Sonalben D./o. Naginbha Jayantibhai Patel and W./o. Sukhdevbhai Patel. They have confirmed registered Sale-deed No.394 dt.16/05/18.

I. Exh.352 is registered Confirmation-deed No.398 on Rs.100/- Stamp-paper in favour of Defendant No.11 and 12 for disputed block No.13 by above mentioned 4 persons. They have confirmed registered Sale-deed No.393 dt.16/05/18.

II. Exh.353 is registered Declaration-deed No.13248 dt.16/05/18 executed in favour of the Defendant No.3 to 7 and 10 by above mentioned 4 persons after receiving handsome amount of **Rs.1,44,00,000/- for F.P. No.8-B of disputed block no.20/1. The said amount suggesting real market value of the property assessed by the parties themselves (*Emphasis supplied*).**

III. The Plaintiff No.2 has averred in his affidavit-in-lieu examination-in-chief vide Exh.204 para 40 to 43 that

Darshanaben, Alpaben, Jigneshbhai and Sonalben are children of real sister of Kishorchandra Nagarji Patel and D.Yogehschandra Nagarji Patel, who have executed above mentioned registered Confirmation-deeds in favour of the Defendant no.11 and 12 during pendency of present suit.

IV. The Defendants have not offered explanation that the said persons have what kind of rights and interest in disputed properties and why they have executed above mentioned deeds for disputed properties. It is to be noted that their names are not there in revenue records and even then they have executed said deeds for disputed properties (Emphasis supplied).

REPORT OF COURT COMMISSIONER DT.26/05/16:-

44] The Plaintiffs applied for court-commission which was allowed by my L. Predecessor and report of Court-commissioner is produced at **Exh.400**. Notice of court-commission is produced at Exh.401. It was done on dt.26/05/16 for Block No.20/1 and 20/2 of Jahangirabad in presence of parties and panchas. It is stated by the Court-commissioner that there is crop of paddy in Block No.20/2 and Sugar-cane in Block No.20/1. There is board of "Beyond Villa" in Block No.20/1 and construction of one cabin. Then there is garden ad-measuring 40 X 50 Feet and then Wall. Then there is iron-shade and gate and there are construction material lying there. The land had compound wall of RCC. Neither party has challenged said report of Court-commissioner. **It says that the disputed**

properties were open land with construction of one cabin but there is no commercial construction in the Year 2016 i.e. before execution of Registered Sale-deeds in favour of the Defendant No.11 to 13.6 (Emphasis supplied).

CRIMINAL PROCEEDINGS BETWEEN THE PARTIES:-

45]. The Defendants have produced certain documents to show that both the parties have filed criminal proceedings against each other during pendency of present suit.

- I. **Exh.388 :-** The Defendant No.7 got copies under RTI Act from Adajan Police Station in respect of L.A.Applcation No.942/17 containing total page number 93. It suggests that Ashaben, the Plaintiff No.4 filed one complaint on dt.16/12/17 to PI, Adajan Surat and Police Commissioner against 3 and other persons namely, 1).Vinubhai Haribhai Malvia, 2).Ramilaben W./o. Vinubhai Malavia and 3).Umesh jashvantbhai Patel under Sec.384, 406, 420, 465, 467, 468, 504, 114, 120(b) and 34 of Indian Penal Code alleging that said persons had obtained her signatures fraudulently in Power of Attorney and development agreement and then threatening her for extortion of money.
- II. Further there is complaint filed by Dipakbhai, Plaintiff No.2 on dt.26/12/2007 against the Defendant No.3 to 7 and 10 and other 4 persons under Sec.406, 420, 465, 467, 468, 471, 114, 120(b) and 34 of Indian Penal code alleging that the Accused had forged documents to grab disputed properties.

- III. Then Statements of Plaintiff No.4 dt.27/12/17, Plaintiff No.2 dt.27/12/17, Defendant No.5 Kishorchandra Nagarbhai dt.28/12/17 were recorded by the Police Inspector, Adajan Police Station. Then Police Inspector filed said complaint on dt.05/04/18 observing that the facts of the complaint are of civil nature and complainant has civil remedy available against the said persons.
- IV. The Plaintiff No.4 filed Special Criminal Application No.3831/2018 before Hon'ble High Court of Gujarat and the Hon'ble Court passed order on dt.08/05/18 directing Police to register FIR and if no case is made out, the Petitioner be informed in writing.
- V. Then there is report of Police Inspection, Adajan Police Station to Deputy Commissioner of Police, dt.30/05/18 stating his observation about the complaint of the complainant that it is civil nature of dispute and the same facts are informed to the complainant through R.P.A.D.
- VI. After perusing above mentioned documents and report of Police it is to be appreciated that origin and history of the disputed properties are repeatedly mentioned by the parties as well as Police. The fact of Sp. Civil Suit No.173/1975 is mentioned with subsequent revenue entries. **Relinquishment-deed of Maniben dt.25/08/2004 is not produced by the parties before this Court, reason best known to them.** The Defendants have not even averred about the said Relinquishment-deed of Maniben in their pleadings vide Exh.14 or Exh.150, reasons best

known to them.

VII. It is to be noted that Police has not recorded the statement of Yashvantbhai who could be the best person to submit about all the facts.

VIII. Statement of Kishorbhai Nagarbhai dt.28/12/17 shows certain glaring facts about Relinquishment-deed of Maniben dt.27/08/2004 that his brother **Yogeshchandra Nagarjibhai Patel's name was there in the said deed as he was legal heir of the property but as he died on dt.15/03//2004, the said deed was not produced anywhere (*Emphasis supplied*)**. The said fact suggests that the Relinquishment-deed was executed in favour of dead person i.e. Yogeshchandra Nagarjibhai. It seems the possible reason for non-production of it by the Defendants in present suit. If Maniben herself has executed the document then it was not convincing that she waived her rights in favour of dead person. The Defendants have suppressed material facts as well as document.

IX. **Exh.419:-** It is report of Police Inspector, Rander Police Station to Deputy Commissioner of Police dt.17/04/19 in matter of complaint filed by the Plaintiff No.4 against the Defendant No.5 and others. Fact of Sp. Civil Suit No.173/1975 is mentioned with absolute right of Maniben. Facts of Declaration-deed by the Plaintiff No.1 and 2 are mentioned. Fact of pendency of present suit is mentioned. **It is opined by the Officer that it appears that dispute is of civil nature and as present suit is pending**

between the parties, no action is required to be taken by him.

- X. **Exh.420:-** It is copy of FIR No.242/19 filed in Rander Police Station by the Defendant no.7 against the Plaintiff No.3 and 4 and 2 other persons namely, 1).Vinubhai Haribhai Malvia and 2).Ramilaben Vinubhai Malvia. The fact of Sp. Civil Suit No.173/1975 is mentioned with specification that Survey No.153 and 94 of Jahagirabas was agreed to be given to Maniben.
- XI. It is further stated on page 4 of said FIR that Maniben declared said two properties as her independent properties. But it is nowhere specified whether the said properties were actually dealt with by absolute owner Maniben herself and whether the revenue Entries are mutated deleting names of all other and entering only name of Maniben as absolute, sole and exclusive owner or not.
- XII. It is further alleged by the complainant, Defendant No.7 in his FIR that the Plaintiff No.3 and 4 have created bogus and fraudulent documents like power of attorney and development agreements and threatening him for extortion of Rs.10 Crore. It is to be noted that on one hand the Defendants themselves have executed Registered Sale-deeds even though there is *lis-pednecy* well registered by the Plaintiffs and on other hands they are challenging unregistered documents of the Plaintiffs. It is not the say of the Defendant No.7 that the Plaintiff No.3 and 4 have forged his signature or signature of Defendants. It is not specified which documents are forged or bogus. It is to be noted that no

competent Court has yet decided the title and rights of the Defendants against the Plaintiffs. Revenue Court have already passed orders that they are considering fiscal purpose only and the parties are bound by final outcome of present suit. Then how the Defendant No.7 can say that the Plaintiff No.3 and 4 have no right in the disputed properties more particularly when they themselves have done transaction of Maniben's properties without any right and title prior to 2004.

XIII. Then Rander Police filed charge-sheet in FIR no.242/19 on dt.22/09/2020 against the Plaintiff No.3 and 4 and above mentioned 2 other persons under Section 384, 389, 406, 420, 465, 467, 468, 474, 120(b) of Indian Penal Code. The Defendant No.3 to 7 and 10 to 12 are the only witnesses. Though the charge is of creating fraudulent documents there is no document shown in column of seized document. There is no description about forged documents. No FSL report is mentioned in the charge-sheet. It is nowhere stated in the charge-sheet that what documents are bogus and fraudulent created by the Plaintiff No.3 and 4 in name of the Defendants. **As stated above in respect of the Plaintiff No.4's criminal complaint vide Exh.388, the Police has opined that the facts are of civil nature and with the same set of facts, the Police has filed charge-sheet on complaint of the Defendant no.7 against the Plaintiff no.3 and 4 which seems to be something fishy and dubious and not tolerable. This Court being Civil Court is not competent to touch the merits of the**

said criminal matter but at the same time it is abundant duty of this Court to put clear picture on record when the real disputes seems to be of only civil nature between both the parties moving round and round to the disputed properties (*Emphasis supplied*).

XIV. **Exh.421:-** This is FIR No.163/19 dt.24/07/19 filed by the Plaintiff No.4 against the Defendants under Section 406, 420, 114 of Indian Penal Code. Rander Police filed final report under Section 173 of Criminal Procedure Code with opinion that there is no crime made out, present suit is pending between parties and it is of civil nature and praying to grant "C" summary. The Plaintiff No.4 filed her objections against the said report. Then L. Additional Chief Judicial Magistrate, Surat granted "C" summary on dt.26/02/21. There is specific observation made by the L. Court on page 2 that decree passed in Sp.Civil Suit No.173/1975 is of highest importance and Granny i.e. Maniben of the complainant i.e. Plaintiff No.4 got survey no.94 and 153 in family partition. It is specifically observed on page 3 also that the partition was taken place as per suit of 1975. Then it is observed on page 6 that there are civil issues to be determined by the Civil Court and then the "C" summary report was granted.

CONCLUSION OF CRIMINAL PROCEEDINGS OF PARTIES:-

46]. Now the crucial fact is that, on criminal complaint of the Plaintiff No.4, Rander Police files "C" summary but on criminal complaint

of the Defendant No.7, same Police files charge-sheet. All the facts of both the said complaints are same and identically starting from the period of Mancharam and then partition in the Year 1954/1956 between original owners and then Revenue Entry No.623 of 1956 then suit by Maniben and decree passed in Sp.Civil Suit no.173/1975 and UCL proceedings and subsequent revenue entries. Both the complaints just wanted to put disputes about all the properties. It is to be noted that Maniben herself has not executed any registered Sale-deeds of disputed properties after receiving money from Defendants. It is to be noted that there is no document whereby Maniben has waived her right after receiving specific amount of money as consideration. She spent her whole life in house of the Defendants. There is no document having signature of Maniben and naturally she was illiterate lady. She had not waived her till 2004 but prior to it certain transactions had already been done by the Defendants in respect of disputed properties like 94/B Block no.184/1/A, 184/2, 184/2/1, 184/2/2, 184/2/3, 299 peki. It is to be noted that there was no criminal complainant till 2016 i.e. criminal complainants are filed just after death of Maniben in the Year 2016. There is no registered document whereby Maniben and all her legal heirs jointly waived their rights in favour of the Defendants. It is not the say of the Defendants that the Plaintiffs' Mother Jaysukhben had waived her rights after receiving specific amount of consideration and it is not the say also of the Defendants that she was paid consideration. Here in present case

all the facts which are repeatedly narrated by the parties in criminal litigations are pure questions of civil nature and nothing more than that. This Court in present civil suit has to decide rights of legal heirs of Maniben in disputed properties. **There is no criminal acts done by both the parties but it clearly appears that they have adopted pressurizing tactics against each other to get their desirous fruits in present suit. It is high time to note that both the parties, who are family members, have fatefully entered into criminal litigations in consequences of pendency of present suit. Both the parties have given criminal colors to the civil disputes. Conduct of both the parties are condemnable (Emphasis supplied).** Therefore above mentioned criminal litigations must not be considered herein present suit for the determination of civil rights of the parties.

ORAL EVIDNCE OF PLAINTIFF NO.2

DIPAKBHAI YASHVANTLAL PATEL:-

47]. The Plaintiff No.2 has filed his affidavit-in-lieu of examination-in-chief vide **Exh.204** wherein he has reiterated facts of the Plaint. He has averred that the Plaintiff No.1 was his father who died during pendency of the suit. He has averred that Manchabhai Narsibhai was the original owner and common ancestor of the parties who died intestate on dt.15/05/1979. He has averred that Thakorabhai Mancharam died in the Year 1942 leaving his widow Maniben and three daughters namely, 1). Lilavtiben @ Liliben,

2).Urmilaben and 3). Jaysukhben (through whom they have claimed their rights in present suit). He has averred that Jasukhben died intestate on dt.06/06/2008 and the Plaintiffs and Defendant No.9 are her legal heirs. He has averred that Nagarbhai Manchharam died intestate on dt.05/09/89 leaving the Defendant No.3 to 7 and 10 as his legal heirs. He has averred that Thakorbbhai Manchhabhai had 1/2 share in disputed properties and his Mother Jaysukhben was entitled to 1/4 share in said half share of Thakorbbhai Manchhabhai and thereby the **Plaintiffs have 1/6 undivided share** in the said properties.

- I. He has further alleged that Maniben was illiterate and therefore the Defendants have taken undue advantage of her illiteracy and obtained her thumb-impressions in name of inheritance entry or agricultural loan. He has averred that name of Maniben i.e. Defendant No.8 was there in revenue records and mutation entry No.1999 was effected to delete her name. He has averred that Block No.20/1 is ad-measuring 118371 Sq.Mt. and out of said measurement, 10708 Sq.Mt. has been sold to the Defendant No.13, 13.1 to 13.6 and remaining **107663 Sq.Mt. of Block no.20/1/A is in name of Defendant no.3 to 7**. He has averred that Block No.20/2 is in name of the Defendant No.3 to 8 till 2005.
- II. He has further averred that Survey No.16/B, Block No.11 is sold to the Defendant No.11 and 12 during pendency of present suit. He has averred that Survey No.14/2, Block No.13 is sold to the Defendant no.11 and 12 during pendency of present suit. He has

averred that Block No.56 and 69 have gone into land acquisition by Gujarat Housing Board. He has averred that name of the Defendant No.4 and 7 are there in Survey No.87/2, Block No.179. He has averred that Survey No.94/B/P Block No.184/a is sold to Devenbhai Mafatbhai Patel and others.

III. He has further averred that *lis-pendense* is registered by them before Sub-registrar, Surat-8 (Rander) at **Serial No.203/16 on dt.20/02/2016** and mutation **Entry No.2789** was effected on **dt.1/11/2017** and certified on dt.31/01/18. He has averred that **Block/Survey No.296, Block/Survey No.298, Block/Survey No.299/2 are in name of the Defendant No.4,6 and 7.** He has averred that Block/Survey No.299/2 peki 2 and 3 and 330/peki 1, 299/1, 330/peki 2 are gone into acquisition by SMC for compound-wall project. He has averred that **Block No.330 peki is in name of Defendant no.3,4 and 6.**

IV. He has further averred that the Defendant No.3 to 7 and 10 executed registered Sale-deed No.18319 on dt.10/08/17 for Block No.20/1 in favour of the Defendant No.13, 13.1 to 13.6 without consent and knowledge of the Plaintiffs. He has averred that there was compromise with the Defendant No.13 and its partner Virendrabhi Nathubhai Katargamvala, who is man of his community and mediator in said compromise. He has averred that amount of his share in Block No.20/1 was determined and Virendrabhai Nahtubhai Katargamvala assured him and his father to give them their share and trusting his words, he (Plaintiff no.2)

and his father executed Confirmation-deed on dt.11/06/18. He has averred that reserving his rights, he has not initiated any civil or criminal litigation against Virendrabhai Nathubhai katargamvala as he belongs to his community and comes from reputed family.

V. He has further averred that Rs.36,00,000/- is mentioned in the confirmation-deed of dt.11/06/18 which is received by him but **whole agreed amount is not paid (how much the whole agreed amount?) to him and only amount as per Jantri value is paid to him.** He has averred in para 55 that no amount other than Rs.36,00,000/- is paid to him. He has averred that the Defendants have admitted Plaintiffs' rights.

VI. He has further averred that the Defendant No.3 to 7 and 10 executed registered Sale-deed No.392 for Block No.20/2, Sale-deed No.393 for Block No.13, Sale-deed No.394 for Block No.11 on dt.24/05/18 in favour of the Defendant No.11 and 12.

VII. He has further averred in para 50 that they are not admitting Defendants' document vide Mark 15/51 waiver-agreement of Jaysukhben dt.05/02/2004 as no amount was paid to jaysukhben for waiving her rights. He has averred that waiver-agreement is to be registered after paying amount of Stamp-duty but it is just notarized deed before Notary.

VIII. He has further averred in para 51 that Maniben Defendant No.8, in conscious state of mind executed one *Will* on dt.26/06/08 which was registered before Sub-registrar, Surat-4 (Katargam) at Serial No.13492 dt.11/07/08 wherein she declared that all

Plaintiffs would get equal share of her properties. He has alleged in para 52 that the fact on page 8 of their Confirmation-deed in favour of the Defendant No.13, it is fraudulently written that Maniben executed registered *Will* on dt.01/12/11.

- IX. He has further averred in para 53 that he does not have personal knowledge about Sp.Civil Suit No.173/1975 by Maniben and Sp.Civil Suit No.231/1982 by Jaysukhben.
- X. He has further averred in para 54 that Survey No.153 and 94 are mentioned in UCL form of Maniben but her name was continued till 2007 in Block No.20/1 and 20/2. He has averred in para 58 that the Defendant No.3 to 7 and 10 have conspired with each other and deleted naem of Maniben from the records based on Relinquishment-deed of dt.26/12/2007 and mutation Entry No.1999 was effected. It is an admission in the said Relinquishment-deed that Maniben had rights in Block No.20/1 and 20/2 till 2007. He has averred that the said Relinquishment-deed is not on sufficient Stamp-paper even then Revenue Authority has considered it against provisions of Law and deleted Maniben's name. He has produced record-file of Entry No.1999.
- XI. Now his cross-examination is to be considered. It is to be noted that the admitted facts are already noted in above mentioned para of "admitted facts" therefore they are not to be repeated herein cross-examination of the Plaintiff No.2. He has deposed on page 33 that he does not know whether any of the disputed properties was received by Manchhabhai Narsibhai from

his forefathers or documentary evidence is produced by them or not.

XII. He has deposed on page 34 that he does not exactly know that when the Defendant No.3 to 7 have obtained thumb-impression of Maniben in name of loan or inheritance. He has admitted that he does not have personal knowledge about receipt of thumb-impression in name of loan and inheritance. Then he has voluntarily deposed that he and Maniben were living separately. He has admitted that his father was not a man who does wrong or supports wrongs. He has deposed on page 35 that he obtained forms of ULC. He has deposed that he obtained papers, by his signatures through advocate, of Sp.Civil Suit No.173/75 and 231/82. He has admitted that record-file of ULC, forms of ULC and plaint, where-ever Maniben's thumb-impression appears, they are identified by his father Yashvantbhai and he has not disputed that identification and signatures are forged and bogus. He does not know whether Yashvantbhai raised any dispute about such identification signatures or not. He has admitted that neither he nor other Plaintiffs have raised dispute about said identification.

XIII. He has admitted that he has executed Confirmation-deed and Declaration-deed in 2018 and he has not challenged them till date. **He has further admitted on page 37 that Rs.36,00,000/- was paid to him through Cheque for said deeds.** He has admitted that it is mentioned in para 23 that said money is paid to him just for family relation. The Defendants have submitted that

the said amount was paid only for sake of family relation and it can not be termed as admission by them about rights of the Plaintiffs. It is to be noted that they have paid Rs.36,00,000/- to Plaintiff No.1 and Rs.36,00,000/- to the Plaintiff No.2. If the money is paid just for the sake of relationship then they might not be such huge amount totaling as Rs.72,00,000/-. If they really wished to maintain relationship then the same amount should have been paid to the Plaintiff No.3 and 4 also as they are also family members of the Defendants. But it is not the case here. Therefore the said argument of the Defendants is not convincing.

XIV. He has admitted that Revenue Entry No.623 is not challenged. He has admitted that his Granny Maniben filed Suit No.173/1975 wherein revenue entry No.623 was admitted and claimed rights for remaining properties. **It is to be noted that the Defendants have put suggestions about filing and disposal of Sp.Civil Suit No.173/1975 but they have not asked single question about the actual implementation of the compromise-decree of said suit by all parties.** As per the decree all parties were bound to enter their names only for their properties and delete their names from the records of other properties of co-owner but the said effect has never been given in the revenue records. **No suggestion has been put by the Defendants in cross-examination of the Plaintiff No.2 about disposal of Survey no.94 and 153 by the absolute owner Maniben herself.**

XV. He has further admitted that her mother Jaysukhben filed Sp.

Civil Suit No.231/1982 and withdrawn in the Year 1984. He has admitted that Jaysukhben has not filed suit again from 13/12/1984 to 06/06/2008 i.e. during her life time of 24 years.

XVI. So far as cross-examination of the Plaintiff No.2 about documentary evidences are concerned in which the said Plaintiff is not party, like *Wills* of Maniben, waiver-agreements etc are already discussed in detail in above mentioned paras. The evidential value of those documents are discussed independently in above paras and therefore they are not repeated here.

ORAL EVIDENCE OF PLATINTIFF NO.4

ASHABEN YASHVANTLAL PATEL:-

48]. The Plaintiff no.4 has filed his affidavit-in-lieu of examination-in-chief vide **Exh.403** wherein she has reiterated facts of the Plaint. She has averred that the Plaintiff No.3 Chhayaben is American Citizen living there and she has appointed her as Power of Attorney holder on dt.05/04/13. She has also claimed her 1/6 share in disputed properties.

I. Now her cross-examination is to be considered. Detail cross-examination is done about Power of Attorney of the Plaintiff no.3, which is not an issue before this Court as the Defendants have not challenged it in their written statement vide Exh.14. It is to be noted that the Defendants themselves have not produced Power of Attorney of Maniben giving power to the Defendant No.7. Such kind of technicalities are not triable issues here.

- II. Thereafter detail cross-examination is done about correspondences of the Plaintiffs with their L. Advocates, which is also not a subject matter and an issue to be discussed by this Court. It is admitted fact that daughters of Macnhharam Narsibhai are not joined in present suit of partition.
- III. So far as cross-examination of the Plaintiff No.2 about documentary evidences are concerned in which the said Plaintiff is not party, like *Wills* of Maniben, waiver-agreements etc are already discussed in detail in above mentioned paras. The evidential value of those documents are discussed independently in above para and therefore they are not repeated here.
- IV. Then in her further cross-examination, affidavit of Maniben dt.03/10/2011 is referred to her and it is exhibited as Exh.426 with burden of proof. It is alleged by Maniben in her Affidavit that Yashvantbhai had misrepresented her and took her in the Bahumali Building and obtained her thumb-impression and Photograph and obtained false and illegal *Will*. It is to be noted that said *Will* was of the Year 2008 and Maniben's affidavit is of the Year 2011 i.e. after lapse of 3 years, for which she had never been cross-examined before this Court. It is to be noted that Maniben herself has not filed any criminal complaint against Yashvatbhai for obtaining her *Will* illegally or by misrepresentation. She has not challenged her said *Will* in present suit. She has not come before this Court to say real facts. Then it is clear that the Defendants have not proved contents of Exh.426.

V. The Plaintiff No.4 has further admitted in cross-examination that Jaysukhben filed suit in the Year 1982 after death of Manchharam on dt.15/05/79. Jaysukhben filed suit because the Defendants denied it and the said suit was withdrawn on dt.13/12/1984. Then she has voluntarily deposed that maternal uncle promised to give her share and therefore suit was conditionally withdrawn. She has deposed that after withdrawal of the suit, promiser changed his behavior. She has deposed that Jaysukhben has not filed suit during her lifetime. The Defendants have strongly relied upon said admission and submitted that Jaysukhben has not filed suit after withdrawal of suit in the Year 1984 and therefore present suit is time barred. It is to be noted that after passing of Compromise-decree by the Court in Sp. Civil Suit No.173/1975 Survey No.94 and 153 were declared absolute and independent properties of Maniben and Jaysukhben is her daughter, naturally she was entitled for her share. There is no need to agitate again and again in the Court for their rights. If both the parties have not complied with terms and condition of Compromise-decree and acted in total contradiction and thrown Survey No.94 and 153 in common pool of joint family properties, which remains in name of Maniben till 2007, then submit that it is for Jaysukhben to file fresh suit for her claim, if she has any objection against revenue entries, then the said argument itself is not lawful.

VI. Once parties have voluntarily agreed for certain terms and conditions and agreed for the settlement of family properties

whereby Maniben was given two properties and then declaring the same properties as her properties in UCL proceedings and then other family members, without registered document merged these two properties again into family properties and then dealt with all the properties without signatures, thumb-impression or consent of Maniben till 2004 and then the same owners i.e. the Defendants submit before this Court that the legal heirs of Maniben ought to have challenge their act, the whole submission itself is illegal.

VII. It is not the submission of the Defendants that Maniben gave them rights and title to dispose of her properties contrary to the Compromise-decree of the L. Court in Sp. Civil Suit No.173/1975. Therefore the above mentioned submission of the Defendants must not be admissible.

VIII. The Plaintiff No.4 has further admitted in cross-examination that no body has challenged registered Declaration-deed No.15707 and 15708 vide Exh.358 and 359 executed by her father and brother. Thereafter questions are asked in respect of criminal proceedings about which I have discussed in above paras. She has admitted on page 44 that they have produced Revenue Entry No.1272 which refers to *Will* of Nagarbhai Manchhabhai and they have not challenged the said entry. It is to be noted that the Defendants have not produced *Will* of Nagarbhai Manchhabhai before this Court, reasons best known to them.

IX. She has admitted in her further cross-examination that she has come for verification at the time of filing suit. She has deposed her ignorance about signature of Chhayaben on behalf of her. The Defendants emphasized on said admission and submit that the Plaintiff No.4 has no locus to deposed before this Court as she has not signed the Plaint. The Defendants have not raised such dispute in their written statement vide Exh.14 and it is not the issue before this Court. This Court is bound to provide fair opportunities to lead evidence to both the parties, leaving these technicalities aside as the real issues between the parties are moving around title of disputed properties and the same must be answered by this Court. More particularly when both the parties are fighting with each other here and there, resulting into criminal proceedings now, since 1975 i.e. first suit Sp.Civil Suit no.173/1975 was filed in that year.

X. Then there are cross-examination of the Plaintiff No.4 about transaction of public notice, dealing with her advocates and filing of criminal complainants. So far as public notice is concerned, it is not evidence of title. So far as criminal proceedings between parties are concerned, I have already discussed in above paras. So far as correspondence between parties and their Advocates are concerned, as per Sec.126 of the Indian Evidence Act, they are protected professional communication.

ORAL EVIDENCE OF WITNESS OF PLAINTIFF

MR.MANISHKUMAR M. PATEL:-

49]. The Plaintiff No.4 has relied upon evidence of Manishkumar M. Patel who has filed his affidavit-in-lieu of examination-in-chief vide Exh.429. He is an advocate by profession. He appeared before this Court on service of witness-summons. He has averred that he has been practicing as an Advocate since 2000 and he was appointed as Notary in the Year 2009 under Notary Act. He has averred after referring General Power of Attorney vide Exh.417 that he notarized said document on dt.08/04/2013 at Serial No.7639. He has averred that Chhayaben Yashvantlal Patel appeared before him, pasted photo and did signatures and thumb-impression of left hand and signed on each page of the said document. Ashaben Yashvatlal Patel accepted the power in his presence and signed on last page, pasted photograph and thumb-impression of left hand and signed on each page in his presence. He has averred that witnesses 1).Rakeshbhai Modi and 2).Sanjaybhai Vaidhya also signed in the deed before him and Advocate Shri Arun G. Patel identified them in his presence. He has averred that after signatures of all parties, he sealed and signed as Notary. He has averred that he notarized the said deed as per provisions of the law and registered the deed in his Register on dt.08/04/2013 at Serial No.7639. He has produced self-attested copy of relevant page of his Register at Exh.431.

I. In cross-examination he has deposed that Arunbhai G. Patel came

for registration. He has not prepared or caused to be prepared said Power. He has deposed that identity proofs executor and recipient of power are attached either with the Power of in his Register. Then he has voluntarily deposed that photographs are pasted in the Power. He has admitted that he does not know executor or recipient of the power personally. He has deposed that he is unable to give description of Rakeshbhai Modi and Sanjaybhai Vaidhya. He has admitted that pasting of the seal of expiry-date of Notary is mandatory at the time of 'Before Me' and 'Attestation'. He has admitted that the said seal is not there in the said deed. He has admitted that thumb-impressions of two persons were obtained in the Register but name of only one person is written.

- II. The said witness has deposed about the procedure of notarization of General Power of Attorney vide Exh.431. The Defendants have tried to shake his creditability but after perusing the cross-examination, the witness has firmly deposed about his lawful procedure. The Plaintiffs have proved contents of General Power of Attorney vide Exh.431.

ORAL EVIDENCE OF DEFENDANT NO.7

JAYESHKUMAR KISHORCHANDRA PATEL:-

50] The Defendant No.7 Jayeshbhai Kishorchandra Patel has filed his affidavit-in-lieu of examination-in-chief vide **Exh.435** wherein he has reiterated facts of the written statements. He has averred that

written statement vide Exh.150 is true and correct. **It is to be noted that he has not referred their first written statement vide Exh.14, reason best known to him.** Then he has deposed about legal defenses of delay, latches, waiver, estoppel, non-joinder and mis-joinder of parties, cause of action, *res-judicata* and suppression of material facts. He has averred that Jaysukhben D./o. Thakorbbhai had no right in properties of Manchhabhai Narshibhai from the beginning. Then he has averred about revenue Entry No.623, 803 and then Sp.Civil Suit No.1975/173 and its decree. **He has averred that Survey No.94 and 153 were agreed to be given to Maniben and said partition was by the decree of the Hon'ble Court and therefore the Plaintiffs have no right to claim their rights about the same properties (admission by the Defendant about absolute right of Maniben).** It is to be noted that he is silent about fact that If Maniben was the owner then why he and other Defendants sold disputed property No.94 ad-measuring 1500 Sq.Mt. to Devenbhai Mafatbbhai in the Year 2001.

I. He has further averred that Jaysukhben filed Sp.Civil Suit No.231/1982 after death of Manchhabhai Narshibhai in the Year 1979 which was withdrawn by her by pursis vide Exh.21 on dt.13/12/1984 and she died on dt.06/06/2008 and she has not claimed for properties during 24 years of her life. He has averred that present suit filed by her legal heirs is not maintainable.

II. He has further averred in para 7 that Maniben and other

members filled declaration form of ULC in 1976 in individual capacity of owner based of partition and there is no status of family property and therefore present suit is not maintainable. He has further averred about the *Will* of Nagarbhai Manchhabhai, which is not produced by him before this Court. He has averred about all subsequent revenue entries which are not challenged by the Plaintiffs.

III. He has further averred in para 7 on page 6 that the Plaintiffs are suppressing facts of Sp. Civil Suit No.231/1982 and decree of Sp. Civil Suit No.173/1975. He have averred that the Plaintiff No.1 made identification of thumb-impression of Maniben in all Government Offices and also in the suit of 1975. The Defendants have emphasized on filing of earlier two suits which are suppressed by the Plaintiffs and therefore they have submitted that present suit is not maintainable.

IV. Now his cross-examination is to be considered. He has deposed that his father has diabetes and blood pressure. He has deposed that his father attends social functions. He has admitted that Survey No.153 comprised in Block No.20/1. He has deposed that his Advocate might have obtained revenue records of Survey No.153 from its origin. Then certified copy of revenue extract 7/12 of Survey No.153 is produced at Exh.438. **He has admitted that they have not produced partition-deed of dt.05/04/1956 which is stated on page 9 of their written statement (Emphasis supplied).** Then he has voluntarily deposed that they

have produced Entry No.623. Then he has deposed his ignorance about Registered-deed which was based of Entry No.623. He has deposed his ignorance about execution of registered Partition-deed in between members of branch of Thakorbhai and Nagarbhai. It is to be noted that there is no registered partition-deed at all executed between the said members of the two brothers.

V. He has further deposed about Entry No.803 dt.12/11/1966. Then he has admitted that no registered or un-registered deed is produced with their evidence which was base of Entry No.803. He has deposed his ignorance that whether Manchhabhai died intestate. Then he has voluntarily deposed that he died after partition of his all properties. He has deposed that he does not know whether Manchhabhai had any property of his ownership at the time of his death. He has denied that Nagarbhai and Maniben were administering all the properties. **Then he has voluntarily deposed that the persons who became owner by way of partition, were administering their properties.** It is to be noted that he has emphasized again and again on fact that partition was done and persons were administering properties in their individual capacity. But there is no sale-deed of Survey No.94 or 153 executed by owner Maniben in capacity of absolute owner. On the contrary said Defendant and other Defendants have dealt with all properties including properties of Maniben.

VI. On specific question about literacy of Maniben, he has

deposed that she was illiterate but she was understanding, practical and able to know good and bad. He has deposed that Maniben was knowing how to read but he does not know whether she knows writing or not. He has deposed his ignorance about the fact that whether it is stated in their written statement or in his affidavit-in-lieu examination-in-chief that Maniben was knowing how to read.

VII. On page 16 of his cross-examination, Pleading of Notarized Waiver-agreements of Jaysukhben, Urmilaben and Liliben in their written statement were referred to him and he has denied that original of said agreements are in their possession. He has voluntarily deposed that facts of maintenance of future good relations were also stated there. Then Relinquishment-deed vide Exh.380 is referred and he has admitted that 'for the sake of future relationship' is stated there. He has He has deposed his ignorance about any deed executed between Jaysukhben and Yogeshchandr and Kishorchandra prior to 2004. He has deposed his ignorance about registered Relinquishment-deed executed by Jaysukhben. **It is fact on record that there is no registered Relinquishment-deed or Waiver-deed executed by Jaysukhben or Maniben till 2004 or rather till 26/12/2007 (*Emphasis supplied*).**

VIII. He has further deposed in his cross-examination on page 16 that he does not know whether stamp-paper of Relinquishment-deed vide Exh.380 was brought by his father. He has denied that

the writings of the said deed was prepared by his uncle. Then he has voluntarily deposed that Jaysukhben executed said writings on say of Yashvantbhai and Yashvantbhai signed it as witness. He has deposed his ignorance about the pleading of said fact in his written statement vide Exh.14.

IX. He has admitted that it is not mentioned in registered Sale-deeds vide Exh.349, 354, 355, 356 that present suit is pending. It is to be noted that though there was lis-pendency registered prior to said registered deeds, the Defendant no.3 to 7 and 10 have entered into sale-transaction without mentioning about pendency of present suit. As I have already observed in above paras of particular said registered Sale-deeds, each and every fact of revenue records and origin are mentioned in the said deeds but nothing has been mentioned about filing of present suit as well as pendency of present suit. If the parties of the Sale-deeds are genuinely and bonafidely entering into transaction, then they must have been fair in their conduct and noted in their Sale-deeds that present suit is filed by Legal Heirs of Jaysukhben D./o. Thakorbbhai and Maniben and it is still pending and as per the order of Hon'ble High Court on revenue side, the Sale-deeds are subject to final out come of present suit and both parties of sale-deeds are agreed for it. But it is not the case here which itself conveys that the Sale-deeds are executed knowingly suppressing material facts.

X. He has deposed on page 19 that he does not have personal

knowledge about UCL papers and suits of 1975 and 1982. Then he has voluntarily deposed that he came to know about it in the Year 2018. Then specific question has been put to him that, "*how much amount was paid to Jaysukhben in the Year 2004 at time of waiver-agreement?*", wherein he has replied that, "*no amount was paid*". Then the said waiver-agreement vide Exh.380 is referred to him and he has deposed that, "*it is stated in the deed that rights, title and interests are waived voluntarily and unconditionally in favour of first party after receiving amount of consideration for her share*". Then he has voluntarily deposed that the deed was executed on say of Yashvantbhai. It is to be noted that when the document is relied upon by the Defendants and they have not produced original of the said waiver-agreements and they are deposing contrary to their own documentary evidence, then the contents of the said documents are not proved by them. He has admitted further that it is not stated either in their written statement vide Exh.14 or in his affidavit-in-lieu examination-in-chief and reply vide Exh.150 or in Exh.380 that "*agreement was executed on say of Yashvantbhai*".

XI. He has deposed that he does not know that how much big ha land is there in disputed properties. He has deposed that he does not know market value of the disputed properties. He has deposed his ignorance whether he applied for revenue entry No.1999. Then Exh.363 is referred to him and he has identified

his signature on the application for Entry No.1999. He has deposed that it is not stated in the Relinquishment-deed of Maniben vide Exh.363 that "*deed was executed by the say and wish of Maniben*". He has denied that Revenue entry No.623 and 803 were only mutated in record but no actual partition has been taken place.

XII. In his further cross-examination, specific question is put to him that, "*if the actual partition was done then what was the requirement to execute relinquishment-deed of Maniben?*", wherein he has replied that, "*Maniben became absolute owner by the suit of 1975 and she filled ULC forms in her individual capacity and therefore her name was there in Block no.20/1, her name was not there in block no.20/2*". **The said deposition has immense importance in present suit to determine the whole suit.** The Defendant no.7 is well aware about the right and title of Maniben given to her by the decree of the L. Court in Sp.Civil Suit no.173/1975 and she became absolute owner. The said defendant is well aware about the fact that Maniben filled UCL form in her individual capacity of owner of her properties. He is also aware about the fact that Maniben's right is there in Block no.20/1 and even then the Defendants are falsely denying rights and title of Maniben and thereby her legal heirs including Jaysukhben and through her, the rights of Plaintiffs in present suit. Though the Defendants are well aware about Maniben's title, they have illegally executed Sale-deed of Survey no.94 ad-

measuring 1500 Sq.Mt. without signature, consent and authority of Maniben in the Year 2001. The Defendants have committed wrong from the beginning. They have knowledge of absolute ownership of Maniben and even then false revenue entries in joint names of the Defendants are mutated with all family properties. The Defendants have committed wrong with full and complete knowledge of their acts.

XIII. He has further admitted in his cross-examination on page 20 that he signed Relinquishment-deed after reading and understanding it. He has deposed his ignorance about any Relinquishment-deed of Maniben prior to 2007 or 2004. It is to be noted that he has knowledge of the revenue entry No.623 which was effected in the Year 1956 based on partition of 1956, he has knowledge of suits filed in the Year 1975 and 1982 and withdrawal of suit in 1984 and ULC proceedings but he does not have knowledge about Waiver-agreement or Relinquishment-deed of Maniben prior to 2004 or 2007. His deposition is not believable. It is to be noted that on question of each and every fact which might be against his case, he has deposed that *he does not know*. He has answered all questions with his complete knowledge and it transpires that which fact is against his interest, he has smartly or rather suppressingly answered that '*he does not know*'. **The other notable fact is that he is the person dealing with the Suvey no.94 (absolute property of Maniben) in the Year 2001 then he must have satisfied himself about his**

right to sell it when Maniben has not executed any waiver-agreement or relinquishment-deed in his favour at that time (Emphasis supplied).

XIV. Then specific question is put to him on page 21 of his cross-examination that, "*how much amount is paid to Maniben by the deed in the Year 2007?*" wherein he has replied that, "*it was mutual understanding agreement and therefore no money was paid*". **He has admitted that there is no documentary evidence to prove payment of any amount to Maniben or Jaysukhben till date.** He has admitted that it is mentioned in Declaration-deed of Dipakbhai that Rs.36 lacs have been paid to him. Then specific question is asked to him that, "*if Dipakbhia's right was not there, then what was the requirement of payment of Rs.36 lacs to him?*" wherein he has replied that, "***Dipakbhai came to (his) home, asked pardon of (his) father and said that all these things are going since long and even though they have no right, they are ready to accept whatever is given to them with affection***". Now the said fact has come on record for the first time in cross-examination of the Defendant No.7. The said fact is not mentioned in the said Declaration-deed itself. The Defendant No.7 has not mentioned said fact in his affidavit-in-lieu examination-in-chief. It is again to be noted that if there was love and affection in the relation then the Defendants had already paid the amount in the Year 2009 when the suti was filed. If they really have affection and love for relationship then

they must have also paid amount to the Plaintiff No.3 and 4 to put the end to the litigation completely. But it is not so done here. **It is also not convincing that huge amount of Rs.36 lac to Dipakbhai + Rs.36 lacs to Yashvantbhai have been paid just for affection of relationship (Emphasis supplied).**

XV. He has admitted in his further cross-examination at bottom of page 21 that Declaration-deeds of his paternal aunties' legal heirs were also executed with the Declaration-deed of Dipakbhai. He has admitted that the amount which was paid to his paternal aunties' legal heirs is mentioned in the Declaration-deed. He has deposed that he does not know whether the drafting of Declaration of Dipakbhai is identical to the drafting of Declaration of his paternal aunties' legal heirs. As I observed in above para, drafting and style of all said Declaration-deeds and confirmation-deeds are identical and it can be seen from very perusal of all said deeds.

XVI. Then on page No.24, specific question is put to him that, *"after death of Manchhabhai, was his ancestor Nagarbhai administering all things?"* wherein he has replied that, *"Nagarbhai, his father, Yogehsbhai and Maniben were administering as per settlement by Manchhabhai"*. As per his say if all the said persons were actually administering only their respective and individual properties, then the names of other co-owners must be deleted and only name of one owner be there for his/her absolute properties as per partition. But there must

not be mingle of names in Revenue Records with each others properties and all the properties must not be thrown in common pool. There must not be a single Revenue Entry in joint name. There must not be Entry mentioning *1/3 share of Maniben* in all properties. But it is not so. Revenue Records are admittedly in joint names of the parties and Maniben has not objected it which proves that her properties again became part of joint family.

XVII. Then in further cross-examination on page 24, he has deposed that he does not know whether there is decree of any Court about partition. He has further deposed on page 25 that Maniben admitted partition of 1956 and 1966 in her suit of 1975 and decree was passed by the Court accordingly. He has admitted that decree was passed by compromise (emphasis supplied). At his moment it is to be noted that the Defendants have come with specific pleadings from the beginning that partition was done in the Year 1956, Revenue Entry No.623 of Partition was mutated in the Year 1956, Maniben admitted said entry as well as partition in the Sp.Civil Suit No.173/1975 and the L. Court also passed a compromise-decree declaring partition wherein Maniben was given Survey No.94 and 153 then all became individual owners of their respective properties which are mentioned by them in ULC forms. The compromise-decree passed in Sp.Civil Suit No.173/1975 is partition-decree declared by the competent Court and nobody has challenged it till the date and it is still

in existence (*Emphasis supplied*).

XVIII. The Defendant No.7 himself has averred about the said decree in his affidavit-in-lieu examination-in-chief and in his cross-examination, he has deposed that he does not know about it. In fact he has knowledge of each and every fact of disputed properties from the beginning with the fact of compromise-decree of suit in 1975 in favour of Maniben. Even then he has deposed on page 25 in his further cross-examination that he does not know whether said decree was mutated in Revenue Record or not. He has deposed his ignorance about any such revenue entry.

XIX. Then in his further cross-examination on page 25, facts of his affidavit-in-lieu examination-in-chief on page 2 para 2 last 4th line was referred to him and then specific question is put to him that, "*for which revenue records, requirement of Maniben's thumb-impression was arisen?*" wherein he has deposed that, "*he does not know*". Then he has voluntarily deposed that, "*may be for the suit of 1975 because Yashvantbhai was witness in it*". He has admitted on page 26 that name of Maniben was continue till 2007. He has admitted that revenue entry was done for the pendency of present suit. He has admitted that they have sold properties during pendency of suit and he is party in said Sale-deeds. Then he has deposed he does not recollect whether he referred revenue records or not. He has deposed he does not recollect whether pendency of present suit is mentioned in the said Sale-deeds or not. He has deposed that he does not recollect

whether he read the Sale-deeds or not. As I have discussed in above para of evaluation of Sale-deeds, that the said Sale-deeds mention each and every revenue entries except revenue entries which are in favour of the Plaintiff and *lis-pendency* of present suit. It is fact on record that there is no reference of present suit in all the said Sale-deeds. He has denied that as there was rights of Plaintiff no.1 and 2 in the disputed properties and therefore confirmation-deeds were obtained from them but not from the Plaintiff no.3 and 4.

ORAL EVIDENCE OF DEFENDANT NO.11

ANILKUMAR JAYANTIBHAI PATL:-

51] The Defendant No.11 Anilkumar Jayantibhai Patel has filed his affidavit-in-lieu of examination-in-chief vide **Exh.457** wherein he has reiterated facts of the written statements. He has averred that disputed Block No.11, 13 and 20/2 are in his independent ownership and possession by virtue of registered Sale-deed No.392, 393 and 394 dt.24/05/18 and their names are mutated in Revenue Records. He has averred that Nagarbhai Manchhabhai got this properties from his father based on Partition-deed and Revenue Entry No.623 was effected on dt.30/05/1956. He has averred that he has paid huge amount of consideration i.e. Rs.17,46,92,500/- and they are *bonafide* purchasers. It is admitted fact that their names are mutated in revenue records with revenue entry No.2883, 2885 and 2884 based on said registered Sale-deeds.

- I. He has further averred that TP (Town Planing) Scheme 43 falls in Block No.20/2 and F.P. (Final Plot) No.9A ad-measuring 6107 Sq.Mt. and 9B ad-measuring 3112 Sq.Mt. are made in it. He has averred that he met to sellers and Yashvantbhai also at the time of purchase of said lands and Yashvantbhai told him that he had no dispute and he gave confirmation that he did not have any rights in past and executed Declaration-cum-Confirmation-deed on dt.12/06/18 which is produced vide Exh.386. He has averred that Dipakbhai Yashvantbhai executed Confirmation-deed for Block No.13 in their favour. He has averred that Dipakbhai and Yashvantbhai executed registered Confirmation-deed No.458 on dt.18/06/18 for Block No.13 and Confirmation-deed No.459 on dt.18/06/18 for Block No.20/2 and Confirmation-deed No.460 on dt.18/06/18 for Block No.11. He has averred that Jaysukhben did not file any other suit during her life time after withdrawal of Sp. Civil Suit no.231/1982.
- II. He has admitted in his cross-examination on page 7 that **he is builder that is he is doing business of sale-purchase of lands since last 25 years**. He has deposed that he knows what is revenue extract 7/12 and title of land. He has deposed his ignorance that prior to purchase of land, search should be made in office of Sub-registrar. Then he has voluntarily deposed that all these things were handled by his L. Advocate. He has admitted that when a person comes to him for sale of land, he is used to demand Revenue Record 7/12 and records of rights. He has

admitted that he gets title report from Advocate prior to purchase of land. Then specific question is asked for public notice in News paper prior to execution of Sale-deed and he has replied that, "*it is not required in all cases*". **He has deposed that seller Jayeshbhai and others are his in-laws relatives.** Then specific question is put to him that, "*whom he had to meet prior to transaction?*" wherein he has replied that, "*Lis-pendency is noticed in 7/12 therefore he aksed Jayeshbhai about it and he told him that they had compromise and so they have to meet Yashvantbhai first and therefore they met*". Said deposition is very much clear that prior to execution of Sale-deed they had knowledge of *lis-pendency* and they met to Yashvantbhai, Plaintiff no.1 of present suit.

- III. He has admitted on page 8 that Yashvantbhai has 1 Son and 3 Daughters and all the said children had attained majority in the Year 2018. He has admitted that they have not issued any paper notice prior to Sale-deed. He has admitted that *lis-pendency* was registered prior to his Sale-deed. He has admitted that they have not made search in Sub-registrar Office and Revenue Office prior to Sale-deed. He has admitted that they came to know prior to Sale-deed that Jaysukhben's legal heirs have filed suit claiming their rights in disputed properties. He has further deposed on page 8 that he does not have information about the origin and entries of disputed properties which are mentioned in their Sale-deed. It is admitted fact that no registered-deed is executed for disputed

properties from time of Macnchhabhai Narsibhai to execution of the said Sale-deeds.

IV. Material specific question is asked to him that, "*what was the reason for not obtaining confirmation-deed from two sisters of Dipakbhai?*", wherein he has replied that, "*confirmation deed was about to execute but family dispute arose, Yashvantbhai told that he got confirmation deed to be executed but he does not know what happened thereafter*". The said deposition is crucial to appreciate a fact that the Defendant No.11 and 12 were ready to obtain confirmation-deed from the Plaintiff no.3 and 4 which proves that they have acknowledged rights of the Plaintiff No.3 and 4. He has not specified further facts about family-dispute, meaning thereby is that between whom the said dispute arose and for what thing it was so arose. He has further admitted on page 9 that he himself has not proceeded about Confirmation-deed from the sisters.

V. He has admitted in further cross-examination that they got execution of Sale-deeds even though pendency of present suit. Then he has voluntarily deposed that Yashvantbhai talked for compromise. He has denied that Yashvantbhai talked for compromise as Maniben and her daughters have half share in said 3 lands and other lands. Then specific question is asked that, "*was it agreed to give amount to Yashvantbhai according to share of his branch?*", wherein he has replied that, "*he does not know*". Therefore here is not a case that Yashvantbhai accepted money for

the Plaintiff no.3 and 4 also and executed declaration-cum-confirmation-deed on behalf of said sistered.

VI. Then in further cross-examination specific question is put to him that, "*which project is placed in said 3 lands?*" wherein he has replied that, "***all three lands are open at present***". He has denied that however they are not *bonafide* purchasers with consideration and without notice, they have falsely purchased disputed properties during pendency of present suit to sunk Plaintiffs' rights.

VII. Then he has been cross-examined by the L. Advocate of the Plaintiff No.3 and 4. A specific question has been put to him that, "*When Yashvantbhai told him that compromise was done, then between whom such compromise was done and what compromise was done?*". wherein he has replied that, "*Yashvantbhai told him that compromise was done between their families and Jayeshbhai was there with him. He does not know what compromise was done. But Yashvantbhai told to continue their Sale-deeds and he assured to get confirmation-deed of his family*". He has deposed that Yashvantbhai and Dipakbhai executed confirmation-deed but daughters did not do so. He has deposed that he asked Yashvantbhai to get confirmation from daughters.

VIII. He has further deposed that he himself did not attempt to obtain confirmation from daughters. He has deposed that he believed say of Yashvantbhai that compromise was done. He has admitted that he did not verify say of Yashvantbhai. **Then he has**

voluntarily deposed that as he was elder and relative, he believed his say. It is to be noted that on one hand he himself has deposed that confirmation-deeds were about to be obtained from daughters and on other hand deposed that Yashvantbhai told that compromise was done then in that case, he must have obtained confirmation-deeds from daughters i.e. Plaintiff No.3 and 4. It is to be noted that it has not been mentioned in the confirmation-deeds or declaration-deeds of Yashvantbhai vide Exh.359 or 386 that Yashvantbhai was agreed to get confirmation from his daughters or he has talk of compromise with them. Yashvatbhai has not bound himself to get confirmation from the Plaintiff No.3 and 4. It is to be noted that the said person is not naive to the family of Yashvantbhai and he had knowledge that the Plaintiff No.3 and 4 are also their as family members but the Defendant No.11 and 12 have not bothered to obtain confirmation-deeds from them, the reasons best known to them.

IX. He has further deposed on page 10 that he told to yashvantbhai that he trusted him and now he has to get confirmation from daughters. Then he has deposed on page 11 that it is not within his knowledge whether Yashvantbhai attempted to get such confirmation-deed or not as per his say. **He has deposed that when Yashvantbhai did not get such confirmation from daughters, he did not think it necessary to get confirmation. Now the said deposition is speaking evidence of his *malafide* conduct of ignoring sisters' rights in disputed properties**

(Emphasis supplied).

- X. The Defendant No.11 and 12 are purchasers with handsome consideration but they are not *bonafide* purchasers without noticing of rights of the Plaintiff No.3 and 4. On the contrary they have purchased disputed properties during pendency of present suit that even too after registration of *lis-pendency*. The Defendant No.11 and 12 have not specified reasons or requirement for getting confirmation-cum-declaration deeds from the Plaintiff No.1 and 2. They have have carelessly neglected rights of the Plaintiff No.3 and 4.
- XI. In case of the Defendant No.3 to 7 and 10, the argument of the Defendants is that they have paid Rs.36 lacs for future family relations and executed registered Confirmation-cum-Declaration-deed from the Plaintiff No.1 and 2, without admitting their rights and title in disputed properties but it is not case with the Defendant No.11 and 12. The said Defendants have not submitted such fact of future relationship with the Plaintiffs as reason of execution of confirmation-deeds from them. Therefore it is not clarified by the Defendant No.11 and 12 that, if there was no right and title of the Plaintiff No.1 and 2 then why they have obtained Confirmation-deeds from them.
- XII. The Defendant No.11 and 12 have purchased disputed properties with knowledge of pendency of present suit and therefore they are not *bonafide* purchasers without knowledge.

ORAL EVIDNCE OF DEFENDANT NO.13.3

MANISHBHAI MAHENDRABHAI KATARGAMWALA:-

52] The Defendant No.13 is a partnership-firm and 13.1 to 13.6 are partners in the said firm. They have relied upon evidence of the Defendant No.13.3 Manishbhai Mahendrabhai Katargamwala who has filed his affidavit-in-lieu of examination-in-chief vide **Exh.476** wherein he has reiterated facts of the written statement. He has averred that they have become owner in possession of **F.P. No.8B ad-measuring 10708 Sq.Mt. of T.P.Scheme 43, Block No.20/1** of Jahangirabad by virtue of Registered Sale-deed No.18319 dt.05/08/17 vide Exh.349. He has averred same set of facts about origin of disputed properties in para 2 starting from revenue entry No.623 dt.30/05/56. He has averred that the Plaintiff No.1 and 2 have executed registered Confirmation-deed No.15709 dt.12/06/18 which is produced vide Exh.350, in their favour. He has averred that both the said Plaintiffs have executed registered Declaration-deed No.15708 (Exh.357) and 15707 (Exh.358) on dt.12/06/18 in favour of the Defendant no.3 to 7 and 10 for F.P. No.8A and 8B of T.P.Scheme 43 (Block no.20/1) of Jahangirabad. He has further averred that they have **planned 54 Bungalows** after getting all necessary permission and sold said Bungalows to **third parties through registered Sale-deeds and people are residing there from 2018-19 and multi-storied building has been constructed in remaining portion of land which is in last stage**. He has averred that the Defendant No.13 has invested crores of rupees for

the construction and development of the said land. He has averred that the deal was done in the Year 2015 and they have started payment from dt.17/12/15 and they have paid Rs.1,48,50,000/- through Cheque and also paid TDS.

- I. He has further averred on page 4 that the sellers informed them about pendency of present suit and they have accepted responsibility of disposal of present suit and having trust on them, they entered into said transaction and then they introduced Yashvantbhai and Dipakbhai, who also convinced him that they had compromise with Jayeshbhai Kishorchadnra Patel and they had no objection if they purchase lands and they themselves also would admit their Sale-deeds. He has averred that he inquired about Yashvantbhai's two daughters namely, Ashaben and Chhayaben and Yashvantbhau told that they also do not have rights in the land because Jaysukhben withdrawn her suit filed long years back. **All the said facts are not pleaded in their written statement vide Exh.182.**
- II. He has further averred in para 7 that to show payment of consideration from the Year 2015, computer generated statement of Bank Account No.00000035290394285, State bank of India is produced. He has averred that he himself obtained said statements in which Bank officer has put seal and his signature.
- III. He has averred in para 8 that the Plaintiffs were never in possession and they have not paid revenues or water-tax. He has averred that he has been in possession of disputed property since

purchase of it through registered Sale-deed. He has averred that as Jaysukhben had withdrawn Sp. Civil Suit no.231/1982 and after that she had not filed any suit,claim or complaint, her legal heirs, who have filed present suit in the Year 2009 i.e. after 27 years, have no right and the suit is time barred. **It is to be noted that the Defendant No.13, 13.1 to13.6 have taken plea of *bonafide* purchasers with consideration without knowledge in their written statement but the Defendant No.13.3 has not averred in his affidavit-in-lieu of examination-in-chief that they are *bonafide* purchaser with consideration and without notice. In absence of his averment in his affidavit, the Defendant No.13 is not permitted to produce documentary evidence (like Bank Account Statements) in respect of plea of *bonafide* purchasers (*Emphasis supplied*).**

- IV. Now his cross-examination is to be considered. He has admitted on page 6 that he and his family is in **business of Builder and Organizers since last 40 years**. He has admitted that he has done other projects except disputed properties. He has admitted that he is used to ask 7/12 and records of rights of last 30 years prior to purchase of the land. He has admitted that he is used to get title verification from advocate prior to purchase of land. He has admitted that in present case, he has not obtained search in record of Sub-registrar or Revenue prior to purchase of lands. He has denied that title report of disputed properties was not obtained. Then he has admitted that such title report is not mentioned in

their written statement or in his affidavit-in-lieu examination-in-chief or he has produced it in his documentary list. He has admitted that he has not issued a public notice prior to Sale-deed. **He has admitted that he was within knowledge of pendency of present suit prior to registration of Sale-deed.**

V. Then specific question is put to him that, "*has he not mentioned about pendency of present suit in their Sale-deed knowingly?*" wherein he has replied that, "*work of Sale-deed was handled by his Advocate and he did not interfere in it but it is not so that, 'knowingly not mentioned'*". Then specific question is put to him that, "*whether he informed Advocate about pendency of present suit?*", wherein he has replied that, "*Advocate was knowing it*". If the said Defendant and his Advocate, both have knowledge of pendency of present suit, they why it is not mentioned in the Registered Sale-deed itself with specific affirmative statement that they are bound by final outcome of present suit. If they are bonafide purchasers then they must have accepted liability of present suit. But it is not so done.

VI. He has further deposed on page 7 that he read all papers of history of disputed property. He has admitted that he executed Sale-deed even though pendency of present suit. He has deposed that NA procedure was done by Jayeshbhai. He proceeded for permission-letter. He has deposed that he does not know whether in procedure of permission-letter, in affidavit of "no suit pending", the fact of pendency of present suit is suppressed or

not. **He has admitted that though the suit was pending, they continued construction.** Then specific question is put to him that, **"whether fact of pendency of present suit is mentioned in the Sale-deeds of Bungalows and Flats of their projects?" wherein he has denied.** Said deposition proves that the Defendant No.13, 13.1 to 13.6 makes it clear that they are bound by the final out come of present suit but third parties i.e. purchasers of said Bunglows, being ignorant of present suit, not bound by it.

VII. He has admitted on page 7 that Yashvantbhai has 1 son and 3 daughters. He has deposed that all the said 4 children were major in the Year2017 when he executed Sale-deed. Then specific question is asked about payment of consideration to Yashvantbhai and Dipakbhai for confirmation-deed in 2018 in his favour and he has replied that no consideration was paid. He has admitted that Yashvantbhai and Dipakbhai are not his relatives. Then he has voluntarily deposed that they are of same community. Then specific question is asked, *"whether he wanted to submit that the confirmation-deed was executed without any reason?"* wherein he has denied it. He has to offer and explanation that if the Plaintiff No.1 and 2 had no right, why the Defendant No.13 to 13.6 have obtained declaration-cum-confirmation-deed from them and why the Plaintiff No.1 and 2, who are not his relatives, got ready to execute deed without payment of consideration.

VIII. He has further admitted on page 9 that Plaintiff No.1 or 2

has not signed in their Sale-deed as confirming party. He has admitted that fact of compromise with the Plaintiff No.1 and 2 is not there in their written statement. He has admitted that he has no personal knowledge about the suit of Jaysukhben. He has admitted that the Plaintiff No.3 and 4 has not executed any deed in their favour. He has admitted that he has not declared names of persons whom they have sold disputed properties.

CONDUCT OF PARTIES AND CONSEQUENCES:-

53]. After considering above mentioned discussion, following *malafide* conducts of all the parties have come on record which can not be overlooked.

I. Original owner Manchhabhai Narshibhai, Nagarbhai Manchhabhai and Yashvantbhai Manchhabhai (Plaintiff No.1 of present suit), Yogeschandra Nagarbhai (Defendant No.3 of present suit) and Kishorchandra Nagarbhai were the parties in first suit filed by Maniben, i.e. Sp.Civil Suit No.173/1975. All the said persons were amicably settled the dispute and partition was accepted with certain terms and conditions including entry of only owner's name in individual capacity and deletion of other owner's name. Maniben was given Survey No.94 and 153. The said compromise-decree was approved under seal and signature of L. Senior Court, Surat which gets finality so far as disputed properties are concerned. All the properties ought to have been mutated in names of their respective owners as per said

compromise-decree but it is not done. **There is no mutation entry caused by all the said 6 person and thereby their conduct is *malafide* from the beginning.**

- II. Based on said compromise-decree, all the said 6 owners filled Form No.6 of ULC proceedings wherein Maniben filled Survey No.94 and 153 as her own, absolute, independent property got in partition. But except such proceedings, there is no entry of Maniben's absolute ownership effected in revenue records.
- III. The Plaintiff No.1 himself has identified thumb-impression of Maniben in her Sp.Civil Suit No.173/1975 and all forms of UCL proceedings but the Plaintiffs have suppressed said facts in present suit.
- IV. Surprisingly except ULC proceedings, Maniben is nowhere mentioned as absolute owner of both the said properties. Other owners have also not applied for entry of only their names in their independent properties got by the compromise-decree of the Court in Sp.Civil Suit No.173/1975. The said decree has remained only on paper and all the parties keep the records in joint name and thereby they have admittedly thrown their independent properties into common pool of family. Throwing of all properties in common hotchpotch of the family makes it crystal clear that they never had an intention to separate the disputed properties but they filled UCL form in individual name just because to save their lands from UCL proceedings. Maniben was shown as independent person so that certain unit could be

asked for her and her family. Both the parties got united when the issue was savings of their land against the Government under UCL Act. It is human conduct that a person does everything to cover maximum of his lands. The same had happened in this case and all the parties put their claim before UCL authority that they had become independent owner of properties which are partitioned by the decree of the Court in Sp.Civil Suit No.173/1975.

- V. All the above mentioned 6 persons had never mutated their single name in their respective properties. On the contrary their joint names in status of "joint properties" is still continued by their legal heirs. Name of Maniben was their with other co-owners in the records till 2007. It proves that effect of so-called partition has never been given by the parties in the revenue records or otherwise by partition actually done on spot. They have not complied with the decree of competent Court.
- VI. Admittedly, the Plaintiff No.1 has suppressed fact of identification of thumb-impression of Maniben in Sp.Civil Suit No.173/1975 and ULC proceedings but the Compromise-decree of said suit is in favour of the Plaintiffs and not against them.
- VII. The Defendants have highly relied on partition entry No.623 which was admitted by Maniben in Sp.Civil Suit No.173/1975 and Compromise-decree of the said suit. But the decree is in favour of Maniben and thereby in favour of the Plaintiffs' claim. The Defendants have failed to prove that actually the partition

was effected and Maniben was given her absolute share i.e. Survey No.94 and 153.

VIII. At the time of filing of Sp. Civil Suit No.231/1982 by Jaysukhben and at the time of withdrawal of the said suit, the decree of Sp. Civil Suit No.173/1975 was in existence. Though Jaysukhben has withdrawn the suit, it has no adverse effect on earlier decree of Sp. Civil Suit No.173/1982 which is still in existence. Maniben has never dealt with her individual properties Survey No.94 and 153. It is admitted fact that she has not executed any registered Sale-deed in favour of any person. It is admitted fact that she has never waived her rights at the time of mutating names of other owners in records of Survey No.153 and 94. She has never been paid consideration for waiving her rights in the said properties. She has never appeared before Revenue Authority to give her statement that she has waived her rights in favour of legal heirs of Nagarbhahi Manchhabhai. Therefore when the Defendants themselves have not complied with the decree of the Court in Sp. Civil Suit No.173/1975, they can not claim that partition has done by the said decree.

IX. Nagarbhahi Manchhabhai made a *Will* on dt.04/09/1979 but the Defendants have suppressed it. They have not offered any explanation for it. The said *Will* is crucial piece of evidence as it contains only those properties which were belonging to Nagarbhahi Manchhabhai. **The said document has crucial evidential value as it was the first conveyance-deed executed**

in the Year 1979 about all disputed properties after Compromise-decree of Sp.Civil Suit No.173/1975. If Maniben was given absolute ownership of Survey no.153 and 94, then Nagarbhai must not have included both the said properties in his Will. But the Defendants have not produced it knowingly and cunningly. Therefore adverse inference is to be drawn against them (Emphasis supplied).

X. It is for the first time in the Year 2004 (dt.05/02/2004) that story of waiver-agreements have come up in picture. Exh.380 Zerox of Waiver-agreement of Jaysukhben, Exh.451 Zerox of Waiver-agreement of Urmilaben Thakorbhai and Exh.452 Zerox of Waiver-agreement of Liliben are relied upon by the Defendants. But all the said documents are unregistered and therefore not admissible in evidence. The Defendants have even not attempted to issue notice of production to the Plaintiff no.1, if he is in custody of the original of said documents. The language of all the said deeds are identical and it is specifically mentioned on page 3 that amount of consideration is received by said person but the Defendants have denied payment of consideration. Therefore even if the said documents are considered for sake of arguments, the Defendants, who are relying upon them, have denied contents of the documents. The Defendants have an option to examine Notary but they have not done so, reason best known to them. Again it is to be noted that the dispute properties are mentioned as joint family properties in the said deeds.

XI. The Defendant No.7 is representing in preset suit as Power of Attorney holder of the Defendant No.1 Lilavatiben @ liliben and Defendant No.2 Urmilaben. He has an option to call both of them as their witness to prove contents of their Waiver-agreements vide Exh.451 and 452. But it is not done so, reason best known to them. If the Defendants were in position to obtain unregistered Waiver-agreements then they must have opted for registered Waiver-agreements to secure their interest permanently. But it is also not done so. It is to be noted that there is no Waiver-agreement of Maniben on dt.05/02/2004.

XII. Now if the conveyance-deeds like *Wills*, Relinquishment-deed, affidavit of Maniben are to be considered, all of them contains thumb-impressions of Maniben which presumably proves that **She was illiterate lady**. Neither the Plaintiffs nor the Defendants have proved educational or literacy status of Maniben knowingly and *malafidely*. Because both the parties have come with story of *Will* executed by Maniben. Exh.361 is registered *Will* No.13492/208 produced and relied upon by the Plaintiffs. It is not written in the *Will* that **executrix is illiterate** and therefore her *Will* written and read over to her by attesting Witness or other person and she admits it as written as per her wish. Rakesh Modi has identified her thumb-impression but the Plaintiffs have not examined him as their witness to prove literacy status of Maniben. The *Will* does not say about all disputed properties with their description. Though the Plaintiffs have examined attesting

witness Paristosh Mahednrakumar Dave, *Will* is not proved to be in help of the Plaintiff.

XIII. In the same Way Registered *Will* No.21153/11 Exh.387 is produced and relied upon by the Defendants wherein it is also not specified that her *Will* written and read over to her by attesting witness or any other person and she admits it as written as per her wish. Apesh K. Modi has identified thumb-impression of Maniben but the Defendants have not examined him as their witness to prove literacy status of Maniben. Registered *Will* No.1023 of dt.05/2/2009 is mentioned but the same is suppressed by the Defendants in their pleadings. The said *Will* is not produced by them on record. The said *Will* is executed by Maniben Defendant No.8 during pendency of present suit but she had not appeared before this Court and declared same facts, reason best known to her and Defendants. Nothing has been mentioned about decree of Court passed in her earlier Sp. Civil Suit No.173/1975. It is not believable that she herself filed suit against her father-in-law, original owner Manchhabhai Narshibhai in the Year 1975 for her share and got Compromise-decree, filled ULC form individual capacity stating her daughters as her liabilities and then she executes *Will* in favour of not her own daughters, but in favour of brother-in-law's children. Her *Will*, though registered during pendency of present suit in the Year 2011, is suppressed by the Defendants till her death in the Year 2016, which also conveys suppressive conduct of the

Defendants.

XIV. *Will* is an instrument for the disposition of properties after death of executrix but herein the said *Will* No.21153/11 Exh.387, there is ratification and admissions of earlier unregistered documents like Waiver-agreements of daughters, which must not be admissible, more particularly when she herself was not party or signatory of that waiver-agreements and she herself had not executed any waiver-agreement on that particular date i.e. 05/02/2004. The other reason for not admitting said *Will* for such admissions-facts is that it is executed during pendency of present suit. The same facts if so true, Maniben could have submit before this Court by her personal appearances and written statement. But she had never been appeared before this Court or even before Revenue Court.

XV. Then if the Relinquishment-deed of Maniben dt.24/12/2007 is considered (part of Exh.363), it is unregistered document and therefore not admissible in evidence. Revenue Entry No.1999 is mutated deleting name of Maniben based on said Relinquishment-deed. It is quite surprising that Revenue Authority has not bothered to look that whether the parties have paid Stamp-duty or nor for the conveyance-deed whereby Maniben is releasing valuable rights of disputed properties. The deed is only on Rs.50/- stamp-paper which itself is *malafide* conduct of the Defendants. It is also not specified that whether said deed was written and read over to her by any of party and whether she had

admitted it as written as per her wish. Harivadan Maganlal Modi has identified thumb-impression of Maniben but the Defendants have not examined him as their witness to prove literacy status of Maniben.

XVI. The Defendants are relying upon said Relinquishment-deed but they have not produced original Relinquishment-deed before this Court, reason best known to them. They have suppressed best available documentary evidence with them. The most glaring fact is that Revenue Authority has not bothered to record statement of Maniben for such Relinquishment-deed. The proceedings and approach of the Revenue Authority is highly condemnable. The revenue Entry No.1999 was certified without compliance of basic rules of Revenue Code. The Revenue Authorities have not considered earlier entries on the records whereby they entered names of Plaintiffs vide Entry No.1150 (Exh.254). The Revenue Authorities have not even bothered to take pedigree of Maniben and issued notice to her legal heirs as interested persons. As the said deed is unregistered document, it must not be admissible in favour of the Defendants. Revenue Entry No.1999 serves only fiscal purpose and it has no effect to take away rights of Plaintiffs.

XVII. Affidavit of Maniben vide Exh.426 dt.03/10/2011 is relied upon by the Defendants. It is also not specified that said deed written and read over to her by any of witness and then she had admitted it as written as per her wish. Harivadan Maganlal Modi

has identified thumb-impression of Maniben but the Defendants have not examined him as their witness to prove literacy status of Maniben. They have not examined Notary advocate to prove the document. The said affidavit is also executed during pendency of present suit wherein she has ratified waiver-agreements of her daughters on dt.05/02/04 but as noted above, she was not the witness of said waiver-agreements. It is to be noted that the date of said affidavit is shown to be 03/10/11 but the Defendant No.1 to 8 have produced it with list on dt.12/04/13. Maniben has not stated in it about any fact of her own suit filed in 1975 and Compromise-decree and therefor the said affidavit is not believable.

XVIII. Non-appearance of Maniben either before this Court or before Revenue Authority and her illiteracy makes it dubious that whether contents of deeds were read over to her and whether she had proper understanding of all the writings of contradictory documents or not. Maniben had lived with the Defendants. If Maniben was in position to execute unregistered Relinquishment-deed and 3 contradictory *Wills* and affidavit on Rs.50/- stamp-papers then she must be able to appear before this Court to file her written statement with her thumb-impression. If the Defendants are in position to get execution of unregistered Relinquishment-deed and *Wills* of Maniben in their favour then they must have obtained registered Relinquishment-deed in their favour. But it is not done so because, they ought to have pay

handsome amount of Stamp-duty considering the market value of disputed properties. Here again malafide conduct comes on record.

XIX. The Defendants relied upon Confirmation-deeds and Declaration-deeds executed by the Plaintiff No.1 and 2 in the Year 2018 ratifying transactions in favour of the Defendant 11 to 13. The Defendant No.1 to 8 and 10 have denied rights, title and interest of the Plaintiffs from the beginning then they have not offered reasonable explanation for requirement of such deeds by the Plaintiff No.1 and 2. They have put story of family relation but looking to the criminal proceedings happened between the parties, relations are already damaged. Therefore the story to save relationship is not lawful, logical and convincing that even too after 10 years of filing of present suit. If the Defendants were really concerned about the relationship, they might have not eclipsed properties of Maniben in their name and they might have given share to the Plaintiffs before filing of present suit.

XX. The Plaintiff No.1 and 2 have also not amended the Plaint with specific submission that they have already received amount of Rs.36 lacs + 36 lacs from the Defendants and therefore as per their Confirmation-deeds and Declaration-deeds, they are abandoning their particular share in particular properties. The Plaintiff No.1 has averred in his affidavit that the Defendants have paid only amount as per Jantri value and not paid amount agreed between them more over than R.36 lacs. Now it is to be

noted that he has suppressed real amount of properties and what amount was agreed between them to be paid. He has also suppressed total received amount other than Rs.36 lacs. Therefore his conduct is not *bonafide*.

XXI. The Defendants No.11, 12, 13, 13.1 to 13.6 have purchased disputed properties during pendency of present suit that even too after registration *lis-pendency* of present suit by the Plaintiffs. They were well in knowledge of pendency of present suit even then they have purchased disputed properties. **It is quite surprising that facts of origin and history are well mentioned in their Sale-deeds but only fact of pendency of present suit and revenue entries (Entry no.1059, 1150, 1500, 1559) which are in favour of the Plaintiffs are smartly or rather cunningly suppressed from the said deeds.** Therefore they are bound by the final out-come of the present suit. They are not to be allowed to take advantage of their own wrong. They have ignored rights of the Plaintiff No.3 and 4 which is also part of their strategy to divide and rule the Plaintiffs. They are purchasers with consideration but **they are not *boanfide* purchaser without notice or knowledge of rights of the Plaintiffs (*Emphasis supplied*).**

XXII. It is fateful to note that parties have entered into criminal proceedings against each other as result of present Civil Matter. But there is no criminal acts by any party at all. It is just height of the grievances between the parties which lead to both of them

to resort criminal action. It shows again *malafide* conduct of both the parties.

XXIII. The Defendants have taken criminal action against the Plaintiff No.3 and 4 because they have entered in some development agreements for the disputed properties but if the same arguments are considered as per their say, then they themselves are also liable for dealing with Survey No.94 ad-measuring 1500 Sq.Mt. without consent and signatures of absolute owner Maniben in the Year 2001 by executing Registered Sale-deed No.26223 in favour of Deven Mafatbhai Patel (Exh.262). There is no revenue entry deleting name of Maniben from the records of Survey no.94 even then her rights are damaged by the Defendants by illegally executing registered Sale-deed No.26223. They are also liable for continuing their names in disputed properties No.56 and 69 which have been gone in acquisition to Gujarat Housing Board. The Defendants are more liable to bear criminal consequences as they have cunningly and smartly removed names of Maniben from the records without paying stamp-duty. When the Defendants themselves are doing wrong and taking advantage of the same, they must restrained from pointing wrong of the Plaintiffs.

XXIV. The Defendants have pleaded partition and therefore they have burden to prove the same. But they have not produced partition-deed of 1954. They have not produced partition-deed dt.05/04/1956 (referred in Exh.240). They have not produced

Will of Nagarbhai dt.04/09/89 (referred in Exh.255). They have not produced joint-ownership-agreement executed on Rs.20/- Stamp-paper on dt.15/01/2000 which is mentioned in Revenue Entry No.1478 (Exh.259). They have not produced joint-ownership-agreement executed on Rs.20/- Stamp-paper on dt.10/12/1999 which is mentioned in Revenue Entry No.01/06/2000 (Exh.260). They have not produced Power of Attorney of Maniben which is mentioned in Revenue Entry No.1500 (Exh.261). They have not produced registered *Will* No.1023 of Maniben dt.05/02/09 (referred in Exh.387). They have not produced original waiver-agreements of Liliben, Urmilaben and Jaysukhben. They have not produced documents to show acquisition proceedings and receipt of Compensation amount of the properties which are gone into acquisition of *Pada Yojna* and by SMC.

XXV. Maniben or her daughters have never been noticed by the Revenue Authorities before deleting her name from revenue records. It is admitted fact that Maniben has not executed any waiver-agreement or relinquishment-deed or *Will* prior to 2004 even then Revenue Authorities have deleted her name by mutating inheritance Revenue Entry No.1719 (Exh.264) disputed properties. The Defendants have not offered any explanation in this respect. Revenue Entry No.1756 dt.04/02/05 shows names of only Defendant no.3 to 7 and Relinquishment-deed of Bhavnaben Yogeshchadra dt.03/02/05 is mentioned but the Defendants have

not produced it. At that time Waiver-agreements of Urmilaben, Liliben and Jaysukhben have not produced by them before Revenue Authorities, reason best known to them. They have not produced Relinquishment-deed of Maniben dt.26/12/2007, reason best known to them. It becomes crystal clear that the Defendants have done all above mentioned malafide conduct just to sunk rights of the Plaintiffs.

ISSUE OF LIMITATION:-

54]. The Defendants have taken strong defense of limitation. The Defendant No.3 to 7 and 10 have submitted that the Plaintiffs have claimed their right through Jaysukhben who was daughter of Maniben and Thakorbhai. Maniben filed suit in the Year 1975 and decree was passed and Jaysukhben filed suit in the Year 1982 which was withdrawn and as Jaysukhben has not filed suit during her lifetime for 27 years, the present suit of Plaintiffs is not maintainable. They have also submitted that the Plaintiffs have not challenged revenue Entry No.623 and 803 till the date. They have submitted that the Plaintiffs have not challenged order of suit in 1982. They have submitted that the Plaintiffs have not challenged registered Sale-deeds executed in favour of Vijayalakshmi Co. Operative Housing Society and Deven Mafatbhai Patel. They have submitted that the Plaintiffs have not challenged their Waiver-agreements of 2004 within 3 years, therefore present suit is barred by limitation.

- I. Now at this juncture Compromise-decree of Sp. Civil Suit No.173/1975 is to be noted again. Maniben was given Survey No.153 and 94 and the decree is not challenged by any party till the date and it has got finality. Then the parties of that suit have not complied with the terms and conditions of the said decree and continued their joint names in records of all disputed properties and thereby all of them have acquiescence to throw all disputed properties into common hotchpotch of the family and in common ownership and therefore name of Maniben was continued joint with other co-owners till 2007. It is for the first time in 2007 that Maniben's name was deleted by the Revenue Authority based on her unregistered Relinquishment-deed. It is to be noted that there is no earlier registered deed executed by Maniben waiving her rights in favour of the Defendants therefore it is crystal clear that her rights were never denied prior to 2007 by the Defendants. Therefore cause of action has aptly arisen in the very Year 2007. The suit is within limitation.
- II. The other notable fact is that though the Plaintiffs have not challenged any of revenue entries in name of Defendants, once their **ancestor Maniben got rights by decree of the Senior Court, Surat and partition has been declared by the Senior Court, Surat in compromise-decree**, no revenue entry or unregistered deed by the party themselves has effect to stanch such rights from the ancestors of the Plaintiffs. Jaysukhben's withdrawal of suit in the Year 1984 would also not damage rights

of Maniben created by the earlier decree of the Senior Court in Sp. Civil Suit no.173/1975.

III. The registered Sale-deeds which are executed in favour Devenbhai Mafatbhai for Survey No.94, though not challenged by the Plaintiffs, are illegal and void deed as it does not bear signature or thumb-impression of absolute owner Maniben. It is settled law that the deed which is voidable at option of one party must be challenged by that effected party but the deed which is *void-ab-initio*, need not to be challenged. They are *void-ab-initio*. Therefore there is no substance in arguments that said registered sale-deed of Devenbhai Mafatbhai is not challenged by the Plaintiffs. The said deed is not executed by Maniben who is the only owner by virtue of Compromise-decree of Sp. Civil Suit no.173/1975.

IV. L.A.Mr.Jagirdar has also relied upon deposition of the Plaintiff No.4 wherein she says that her maternal uncle denied to give her share just after withdrawal of suit by her Mother in 1984. He has submitted that the Plaintiffs were well denied of their rights in the Year 1984 and therefore they have to file suit within 3 years from it i.e. they have filed suit within 1987. Therefore suit is time barred. It is to be noted that name of Maniben is continued till 2008. It is to be noted that effect of Compromise-decree passed in Sp. Civil Suit no.173/1975 is still continued as no body has challenged it and Maniben holds good title for Survey no.153 and 94 against whole world even today. Even the Defendants are well

aware about her title and therefore they have attempted to obtain unregistered Relinquishment-deed, *Wills* and waiver-agreements from her daughters and at last Confirmation-deeds and Declaration-deeds from the Plaintiff No.1 and 2. The Defendants have no submission against existence of Compromise-decree of said suit till date. Therefore there is no substance in submission of L. A. Mr.Jagirdar.

- V. The other notable fact is that even after decree of Sp.Civil Suit no.173/1975, the parties have chosen to keep revenue records in joint names of the family members and the Defendant No.3 to 7 have dealt with the properties of Maniben, which was not challenged by Maniben, and thereby they have thrown the properties into common pool. So here again conduct of parties has revived the status of joint family properties and the Plaintiffs have rights, in capacity of legal heirs of Maniben and Thakorbhai's branch, to ask partition of joint family properties. It is admitted fact that there is no registered Partition-deed executed between legal heirs of two branches, i.e. branch of Thakorbhai and branch of Nagarbhai. There is not a single money payment by the Defendant no.3 to 7 and 10 either to Maniben or Jaysukhben. There is no legal share given to any member of Thakorbhai's branch. **Legal heirs of Nagarbhai's branch have alone dealt with all disputed properties which is highly condemnable conduct on their part (*Emphasis supplied*).** Even in present suit they have not paid single money to the Plaintiff No.3 and 4

though they are legal heirs of Jaysukhben Thakorbbhai. They have right and title to claim partition with their legal share in all disputed properties. There is no substance at all about issue of limitation.

VI. The Defendant No.11 to 13.6 have also submitted that though the Plaintiffs were in knowledge of their registered Sale-deeds they have applied to join them as parties after lapse of 3 years from the date of registration. It is to be noted that all the said defendants were well aware about the pendency of present suit. They were well aware about the registered *lis-pendency* by the Plaintiffs in the Year 2016 even then they have purchased disputed properties. It is to be noted that the origin of disputed properties with right of Maniben is well mentioned in their registered Sale-deeds. It is admitted fact that all the said Defendants are builders who have knowledge of all revenue records even then they have purchased disputed properties. Therefore they have not purchased properties but they have purchased litigations. When they themselves have not followed equity then they must be barred to claim equity. They have purchased disputed properties with full and complete knowledge. Therefore by raising question of limitation, they must not be allowed to take undue advantage of their own wrong.

VII. The other notable fact is that all the said Defendants have relied upon Revenue Entry No.1999 which itself is null and void entry as original owner Maniben has not given statement before

Revenue authority to prove her Relinquishment-deed as genuine deed. Relinquishment-deed is not registered document after paying amount of Stamp-duty. When Maniben holds title by virtue of Compromise-decree of the Court and the sellers i.e. the Defendant No.3 to 7 and 10 do not have exclusive rights to sell disputed properties then the purchasers would not get better title as per settled principle of "*the seller can not give better title then what he himself possess*". Therefore the suit is not time barred and the Defendants have not succeeded to prove said defense. The Defendant no.11 to 13.6 are bound by the final outcome of present suit.

VIII. The Defendants have failed to prove issue of limitation.

CITATIONS RELIED UPON BY THE PLAINTIFFS :-

55]. The Plaintiff no.2 has relied upon following citations:-

1. 2019 (0) AIJEL-HC 240120

Babubhai Makanbhai Patel v/s. State of Gujarat

It has been reiterated that revenue entries in the records of rights are meant only for fiscal purpose and final rights of parties with regard to the land in question to be decided by Civil Court. It is settled position of law and therefore all Revenue Authorities in present case have declared their order with subject to the final outcome of present suit. The said authority is in favour of the Plaintiffs.

2. 2011(0) GLHEL-SC 50474

Ganduri Koteshwaramma v/s. Chakiri Yanadi

3. 2000(0) GLHEL-SC 3191

Bhagwan Das v/s. Girja Shanker

4. 2009(2) GLH 94

Sneh Gupta v/s. Devi Sarup

5. 2007 (1) GLH 788

Radhiben Wd/o. Chtia Mavji v/s. Surtan Vesta Damor

All above authorities are on issue of **Sec.17 and 49 of Registration Act**. It has been held that partition means any partition made before December 20, 2004 duly registered under the said Act or partition effected by decree of the Court. It has been held that unregistered partition-deed is not admissible in evidence. It has been held that any transfer over and above Rs.100/- is required to be registered. All the said authorities are in support of the Plaintiffs' case. It is admitted fact that there is no registered or unregistered partition-deed at all produced by the Defendants before this Court. There is partition-decree of the Court in Sp.Civil Suit no.173/1975 but the parties have not complied with it and thereafter had chosen to make all disputed properties in joint names of the family and more particularly the Defendants No.3 to 7 have dealt with properties of Maniben without her signatures and consent. Therefore the status of family properties has revived as and when the parties have waived to mutated **1/3 share of Maniben** in all properties instead of absolute share of Maniben only in Survey No.94 and 153.

6. 2021 (0) AIJEL-HC 243016

Roshanben Hajibhai Deraiya v/s. State of Gujarat

It has been held by the Hon'ble High Court of Gujarat that if affidavit/ consent letter or relinquishment of rights are not registered as per Sec.49 of the Registration Act, then it can not be treated as relinquishment-deed and the party can not be treated to have extinguished right on basis of unregistered relinquishment-deed. The waiver-agreements of Jaysukhben, Urmilaben and Liliben must be registered. Therefore the said authorities are applicable against submission of the Defendants and in help of the Plaintiffs' case.

7. Appeal from Order no.536/2014

Nevil Ulhasbhai Ghantiwala v/s. Nandaben Atulkumar

L.A.Mr.J.J.Gandhi has relied upon para 3 which says that " Equally the contention of the Counsel for the appellants that the suit was hopelessly barred by limitation also cannot be accepted. In a suit for partition the cause of action certainly would not start to run the moment joint ownership in a property comes into existence. Only when the need for seeking partition arises, the limitation may have to reckon". The said observations are in favour of the Plaintiffs' case. Herein present suit there is Compromise-decree of Sp.Civil Suit No.173/1975 giving absolute rights to the Plaintiffs action within limitation.

56]. The Plaintiff No.3 and 4 have relied upon following citations:-

1. 2021 (0)AIJEL-SC 67318

Rahul S. Shah v/s. Jitendra Kumar Gandhi

L.A.Mr.K.M.Patel has relied upon said authority and submitted that it is the duty of the Defendants to declare names of third parties with whom they have entered into further transactions. The said authority is in favour of the Plaintiffs' submission. Even if the Defendants do not declare such information before this Court, after registration of lis-pendency by the Plaintiffs in the Year 2016, all subsequent purchasers of the disputed properties are bound by the final outcome of the present suit.

CITATIONS RELIED UPON BY THE DEFENDANTS :-

57]. The Defendant No.1, 2, 3(A), 4 to 7 and 10 have relied upon following citations:-

1. 7 G.L.R. - 1123

Pari Kantilal Lalbhai v/s. Devchand Nathalal Patel

The said authority is on issue of Order 6, Rule 2 and 7 which says, "*when a party to a civil suit makes an admission in pleadings or in his evidence at the hearing of th suit, those admissions are conclusive and can not be challenged*". L.A. Mr.Jagirdar has submitted that the Plaintiffs have admitted that there is no evidence to prove that original owner Manchhabhai Narshibhai got all disputed properties from his forefathers and this admission proves that all the said disputed properties are his self-acquired properties and he had right to manage them as per his wish. Even

if the said arguments are believed, it is to be noted that Manchhabhai Narshibhai was also party in the Sp.Civil Suit no.173/1975 filed by Maniben and he himself agreed to have partition and compromise in that matter which resulted into compromise-cum-partition decree passed by the Court in that suit. Therefore after getting partition decree, it must not be allowed to argue that as the disputed properties were self-acquired properties of Manchhabhai Narshibhai, no partition can be asked by the Plaintiffs.

The other notable fact is that being original owner, Manchhabhi himself agreed to have partition between his two real sons' heirs. Herein present suit the Plaintiffs are also legal heirs of common ancestor Manchhabhai Narshibhai and they are not road-sider. Therefore above mentioned authority is not in help of the Defendants' submission.

2. *A.I.R..1968 Supreme Court-1413*

Gopal Krishnaji Ketkar Appellant v/s. Mohamed Haji Latif

The said authority is on issue of Sec.114(g) and Sec.103, which says that, "*A party in possession of best evidence which would throw light on the issue in controversy withholding it, Court ought to draw an adverse inference against him notwithstanding that onus of proof does not lie on him, Party can not rely on abstract doctrine of onus of proof on the fact that he was not called upon to produce it*". So far as this authority is concerned, it is against the case of Defendants. Nagarbhai Manchhabhai's *Will*

dt.04/09/89 is crucial piece of evidence as it is first conveyance-deed executed by Son of original owner Manchhabhai Narshibhai wherein he might have declared all his independent properties which are given to his share after compromise-cum-partition decree of Sp. Civil Suit No.173/1975. But the Defendants have not produced original *Will* before this Court.

The Defendants have initially produced zerox copy of it with their **first D-list vide Exh.15 (Mark 15/40)** but they have suppressed it at the stage of Evidence. Issue no.11 throws burden on the Defendants to prove *Will* of Nagarbhai even then they have suppressed it. Therefore this Court has no option other than drawing adverse inference against them as per said authority.

3. 2015(1) G.L.R.494

Ramanbhai Shamalbhai Patel v/s. Ravjibhai Motibhai Patel

The said authority is on issue of Sec.6, 8 and Article 113 and 110 of Indian Evidence Act which says, "*Considering that suit is filed beyond three years from date plaintiff attained majority, suit time-barred, Further for a suit for partition starting point of limitation is when right to sue accrues*". L.A.Mr.Jagirdar has urged on issue of limitation that Jaysukhben filed suit in the Year 1982 which was withdrawn in the Year 1984 and thereafter if the Plaintiffs wanted to challenge, they have to file suit within 3 years from 1984 or within 3 years after attaining majority. But they have not filed suit within period of 3 years. Therefore present suit time-

barred.

Herein present suit Issue of limitation is not so simple to be determined based on just counting of Years. Present suit has certain peculiar facts like, Manchhabhai Narshibha was the only owner of his self-acquired properties, he had two sons (Thakorbbhai and Nagarbbhai), one died in the Year 1942 leaving his Widow Maniben and 3 daughters, Maniben filed suit in the Year 1975 for partition wherein Manchhabhai and his other Son Nagarbbhai, Maniben, two Sons of Nagarbbhai, all of them voluntarily agreed to have mutual-partition of all properties and then compromise-cum-partition decree passed by the Senior Court, Surat having seal and signature of it. The said decree still exists. **Then parties instead of entry of their individual name in their respective absolute properties as per said Compromise-decree of the Court, had chosen to continue revenue records in joint name.** All of the said parties had thrown disputed properties again in common pool and status of joint family properties gets revived. The Defendant No.3 to 7 have dealt with certain properties including properties of Maniben, which are not challenged either by Maniben or by Plaintiffs. Maniben has best title based on decree of Sp.Civil Suit No.173/1975 till her life and nobody can remove except she herself by executing registered Conveyance-deed. Name of Maniben was there till 2007. It is for the first time when name of Maniben was deleted from joint properties based on her unregistered Relinquishment-deed in the Year 2007 and it is

first denial on record by the Defendants of Plaintiffs' rights and share on record. Therefore, the cause of action has arisen in the Year 2007. Maniben died in the Year 2016 which says about continuous cause of action till 2016. Therefore the suit is filed well within 3 years from the date of specific denial of their rights by the Defendants. Hence the said authority is not help of the Defendants' submission.

4. *A.I.R.2015(Bombay)24*

Paresh damodardas Mahant v. Arun Damodardas Mahant & others.

5. *1995(4) Supreme Court Cases-683*

State of Maharashtra Versus Digambar

6. *2008(3) G.L.H. 706*

Prataprai Ratilal Vyas and Ors. vs. State of Gujarat & Ors.

8. *2001(3) G.L.H.157*

Gujarat Housing Board v/s. Harilal Jethalal

9. *1996(1) G.L.H.65*

Heirs of Vrajlal j. Ganatra v/s. Heirs of Parshottam S. Shah

Above authorities are also in respect of limitation and issue of limitation is already discussed in above paras. Present suit is not time-barred.

10. *A.I.R. 1973 Supreme Court -1299*

SirBhimeshwara Swami Varu Temple v/s. Pedapudi Krishna Murthi

The said authority is in respect of Sec.114 and 32 of Evidence Act which says that, "*The presumption arising from several entries in the revenue records of large number on years in*

respect of ownership and possession of land with certain person does not stand rebutted by mere stray entries in favour of others when the evidence is of uncertain character and is inadequate". This is settled law and it is complied with by this Court. Though the mutation entry of Compromise-cum-partition decree of Sp. Civil Suit No.173/1973 is not given by the Parties in Revenue Records, still it is best evidence to prove absolute title of Maniben for Survey No.94 and 153. However subsequently the parties have chosen to throw the properties in common pool of family again. Therefore the said authority does not throw light in such kind of facts.

11. 2000(7) Supreme Court Cases-702

Dilboo(Smt) (dead) By Lrs. and Others v/s. Dhanraji (Smt)

11. 2013(2) G.L.R.398

Becharbhai Zaverbhai Patel and ANR.V.Jashbhai Shivabhai Patel

Based on above mentioned authorities, L.A.Mr.Jagirdar has submitted that the Plaintiffs have knowledge of registered Sale-deeds of the Defendant No.11 to 13.6 from the date of their registration but even then they have not challenged said registered Sale-deeds within 3 years and they have given amendment application in the Year 2022 which is clearly time-barred. It is to be noted that the Plaintiffs have registered *lis-pendency* in the Year 2016 and its mutation entry is well effected in revenue records. The Defendant No.11 to 13.6 have well mentioned about all revenue entries in their registered Sale-deeds except entries

which are in favour of the Plaintiffs. They have complete knowledge of pendency of present suit prior to execution of registered Sale-deed. The Defendant No.3 to 7 are well aware about the present suit and even then they have knowingly suppressed it in registered Sale-deeds. When the Defendants themselves have purchased disputed properties or rather dispute itself, then they must not be allowed to take undue advantage of their own wrong in name of registered Sale-deeds. There is difference between void and voidable agreements. Void agreements are void itself and does not need any challenge by the Plaintiffs. Maniben has never signed any **registered** Sale-deed or Relinquishment-deed herself therefore all registered Sale-deeds, which includes her right, are null and void *ab-initio*. Therefore said authority is not in help of the Defendants' submission.

12. 2014(1) G.I.H.344

Sebastiao Luis Fernanes v/s. K.V.P. Shastri

The said authority is on issue of Sec.101 and 102 of Indian Evidence Act which says that the burden of proof lies on the person who desires the Court to give judgment on a legal right or law and who would otherwise fail, if no evidence is given. Issues are framed and both the parties have burden to prove issues which are throwing burden on them as per said principles of Law.

13. A.I.R.1959-Supreme Court-443

H. Venkatachala Lyengar v. B.N.Thimmagamma & others.

The said authority is on issue of Sec.67, 45 and 47 of Indian

Evidence Act read with Sec.59 and 63 of Succession Act which says about appreciation of evidence "*Will*". L.A.Mr.Jagirdar has placed strong reliance on para 20, 21, 22 and 39 which are as follow:-

" There may, however be cases in which the execution of the Will may be surrounded by suspicious circumstances. The alleged signature of the testator may be very shaky and doubtful and evidence in support of the propounder's case that the signature in question is the signature of the testator may not remove the doubt created by the appearance of the signature; the condition of the testator's mind may appear to be very feeble and debilitated; and evidence adduced may not succeed in removing the legitimate doubt as to the mental capacity of the testator; the dispositions made in the Will may appear to be unnatural, improbable or unfair in the light of relevant circumstances, or, the Will may otherwise indicate that the said dispositions may not be the result of the testator's free Will and mind. In such cases the Court should be completely removed before the document is accepted as the last Will of testator. The presence of such suspicious circumstances naturally tends to make the initial onus very heavy; and unless it is satisfactorily discharged, Courts would be reluctant to treat the document as the last Will of the testator. It is true that, if a caveat is filed alleging the exercise of execution of the Will propounded, such pleas may have to be proved by the caveators; but, even without such pleas circumstances may raise a

doubt as to whether the testator was acting of his own free will in executing the will, and in such circumstances, it would be part of the initial onus to remove any such legitimate doubts in the matter". (para 20)

"Apart from the suspicious circumstances above referred to in some cases the Wills propounded disclose another infirmity. Propounders themselves take a prominent part in execution of the Will which confer on them substantial benefits. If it is shown that the propounder has taken a prominent part in the execution of the Will and has received substantial benefit under it, that itself is generally treated as a suspicious circumstances attending the execution of the Will and propounder is required to remove the said suspicious by clear and satisfactory evidence. It is in connection with Wills that present such suspicious circumstances that decision of English Courts often mention the test of the satisfaction of judicial conscience, The test merely emphasizes that, in determining the question as to whether an instrument produced before the Court is the last Will of the testator, the Court is deciding a solemn question and it must be fully satisfied that it has been validly executed by testator who is no longer alive." (para 21).

"It is obvious that for deciding material questions of fact which arise in applications for probate or in actions on Wills, no hard and fast or inflexible rules can be laid down for the appreciation of the evidence. It may, however, be started generally

that a propounder of the Will has to prove the due and valid execution of the Will and that if there are any suspicions from the mind of the Court by cogent and satisfactory evidence. It is hardly necessary to add that the result of the application of there two general and broad principles would always depend upon the facts and circumstances of each case and on the nature and quality of the evidence adduced by the parties: AIR 1946 P C 156 Rel.on". (Para 22).

"It is no doubt true that on the proof of the signature of the deceased or his acknowledgment that he has signed the Will he will be presumed to have knwon the provisions of the instrument he has signed; but the said presumption is liable to be rebutted by proof of suspicious circumstances. What circumstances would be regarded as suspicious can not be precisely defined or exhaustively enumerated. That inevitable would be a question of fact in each case: AIR 1929 Cal 484 Ref."(para 39).

L.A.Mr.Jagirdar has submitted that the *Will* of Maniben vide Exh.361 which is relied upon by the Plaintiffs is not proved by them as per principles laid down in above mentioned authority. He has submitted that the Plaintiffs, being beneficiary of the *Will*, played prominent part in execution of the said *Will* and therefore the *Will* becomes suspicious. He has submitted that the Defendants have well proved contents of the *Will* of Maniben which is produced by them vide Exh.387.

A detailed discussion has already been made in above

paras. As I observed in above paras, the Plaintiffs have failed to prove contents of the *Will* of Maniben vide Exh.361 in their favour. So far as *Will* vide Exh.387 of Maniben, which is relied upon by the Defendants, is concerned, first we have to consider written statement of the Defendants filed just after appearing in present suit vide Exh.14. They have specifically pleaded on page 10 that Maniben Wid./o. Thakorbhai Manchhabhai has limited rights of maintenance till her life. Then they have pleaded in bottom of said page and on page 11 that vide Revenue Entry No.1059 dt.02/08/1979, Maniben's name was mutated for 1/3 share. But thereafter on page 12 they have again pleaded that Block No.20/1 was continued in name of Yogeshchandra Nagarji Patel, Defendant no.5 Kishorchandra Nagarji Patel and Defendant No.8 Maniben Wid./o. Thakorbhai Patel but Maniben has no right or share in Block No.20/2 however due to mistake in computerization, her name was mutated. The Defendants have repeatedly denied right of Maniben Wid./o. Thakorbhai in their pleadings. But in the *Will* vide Exh.387 of Maniben, it is stated that she has 1/3 co-ownership share in Survey No.153. By relying upon *Will* of Maniben, the Defendants are admitting her rights and title in disputed properties. The said *Will* is total silent about Sp.Civil Suit No.173/1975 and decree which was passed by the Court in favour of Maniben declaring her absolute owner of two properties, Survey No.94 and Survey No.153. If Maniben was conscious about her properties, she must have mentioned Survey

No.94 also in her Will. Survey No.94 is already sold by the Defendant No.3 to 7 to third party Deven Mafatbhai Patel in the Year 2001 by registered Sale-deed without signature or thumb-impress of Maniben. The said fact itself make the *Will* vide Exh.387 suspicious.

It is to be noted at cost of repetition that Maniben had spent her whole life with the Defendant No.3 to 7 and the Defendants are in dominating position. Maniben died at age of 103 in the Year 2016, which means she was aged about 98-97 in the Year 2011 when *Will* vide Exh.387 was registered. The Defendants have not proved physical and mental fitness and vision capacity of Maniben with literacy status of Maniben and therefore her thumb-impression is there in the *Will* which proves that she herself was unable to read the deed. It is not specifically mentioned in the *Will* that the *Will* was written as per her wish by particular Scribe and after completion of writing, it is read over to Maniben by the Scribe and then she has put her thumb-impression in presence of attesting witnesses. Language of the *Will* is also suspicious as Maniben has not firmly stated in it that she is the only and absolute owner of the properties but it has language of presumptions, i.e. "***if her right is believed, it would be only 1/3 share***". It seems not normal language of *Will*.

The other notable fact is that there are statements about admitting Waiver-agreements of her daughters executed on dt.05/02/2004 but when Maniben was not party or witness of that

Waiver-agreements and she herself was illiterate lady then how she could have admitted that Waiver-agreements in *Will*. More over if her version about waiver-agreements is believed then she could have also stated about the consideration which is mentioned in the Waiver-agreements but she had not stated so. Then it is again stated on page 10 that present suit and injunction application are filed with false facts and written statement is filed with true facts. Now such kind of admission denial is not the language of the routine *Will*. The other notable fact is she herself had not filed written statement in present suit but she gave Power of Attorney to the Defendant No.7 in present suit then it is not clear how she could have knowledge of facts of written statement and when did she read it.

The other notable fact is that she has stated on par 10 of the *Will* that '*she has already given to her daughters whatever were to be given to them*' but it is not specified what she had given to them and when such things were given to them. Maniben died on dt.27/11/16 but the Defendants have not get probate of the *Will* within 3 years. They have not applied for the amendment in their written statement vide Exh.14 to add facts of the *Will* within 3 Years to ask their right based on the said *Will*. They have straight way added facts of said *Will* in their written statement vide Exh.150 without any amendment application. In earlier written statement vide Exh.14 they have thoroughly denied absolute and sole right, title and share of Maniben and then in their subsequent

written statement vide Exh.150, they have pleaded about the *Will* of Maniben in their favour without amending their previous written statement and claiming their right based on the said last *Will* of Maniben. The Defendants have made cross-pleadings and contradictory-pleadings.

The said *Will* Exh.387 itself suggests about another registered *Will* No.1023 by Maniben on dt.10/02/2009 which is not produced by the Defendants. Maniben had never appeared before this Court to put her version before this Court even in form of her written statement, though she was attending office of Sub-Registrar. The language of the said *Will* Exh.387 is more like defenses of the Defendants in present suit to frustrate claim of the Plaintiffs rather than simple and ordinary *Will*. The Defendants have failed to prove contents of the *Will* in their favour. They have failed to satisfy this Court about physical as well mental fitness of Maniben at age of 98-99 on date of registration of the *Will* (dt.01/12/11) with fact that she herself read or scribe had read over the *Will* to her and the *Will* is the last wishes of Maniben. The Defendants have not mentioned the name of the Scribe of the *Will*.

Now at this juncture recent Judgment of the Hon'ble Apex Court in **Dhani Ram v/s. Shiv Singh 2023 INSC 876** is to be noted here. *It has been held in this judgment by the Hon'ble Apex Court that mere registration of a Will would not sanctify a document by attaching to it an irrebuttable presumption of genuineness (Emphasis supplied).*

Therefore here in this case mitigating step to prove the *Will* was annexing a doctor's certificate to a *Will* to establish the physical and mental fitness of the testator at age of 94 or video recording of signing of the *Will*. But no medical certificate was attached at time of registration of the *Will*. There is photography done in the office of Sub-Registrar during registration wherein photograph of witness Shilpesh Shankarbhai Patel is with spectacles on his face but Photograph of Maniben is without such spectacles at age of 94 years which is another fact raising doubt in the said *Will*. **One must not forget the fact that *Will* vide Exh.387 is executed during pendency of present suit wherein Maniben did not appear before this Court in the Year 2007 to sign her written statement vide Exh.14 and gave Power of Attorney to Defendant no.7 to plead but the same person, Maniben has attended office of Sub-Registrar to execute *Will* in the Year 2011. It is to be noted that Original Power of Attorney of Maniben has not been produced by the Defendants in present suit, reason best known to them. It is not satisfactorily proved by the propounder i.e. Defendant No.3 to 7 that registered *Will* of Maniben vide Exh.387 was executed validly by her in fit physical and mental state and after understanding all its consequences and she read it or read over to her by the Scribe or any of the Witness and was her last *Will*. The facts and circumstances of present case makes *Will* suspicious and hence not proved.** Therefore above mentioned authority, which is

relied upon by L.A.Mr.Jagirdar is against both of the parties, i.e. Plaintiffs so far as *Will* vide Exh.361 is concerned and Defendant No.3 to 7 so far as *Will* vide Exh.387 is concerned. Both the said *Wills* are not satisfactorily proved by the respective parties.

14. A.I.R.2009 Supreme Court 1766

Bharpur Singh and Ors. v. Shamsher Singh

It has been held in this Judgment by the Hon'ble Apex Court that, "*A Will must be proved in terms of the provisions of Section 63(c) of the Succession Act,1925 and Section 68 of the Evidence Act, 1872. In case where the Will is surrounded by suspicious circumstances, it would not be treated as the last testamentary disposition of the testator. Suspicious circumstances like the following may be found to be surrounded in the execution of the Will:*

- (i). The signature of the testator may be very shaky and doubtful or not appear to be his usual signature.*
- (ii). The condition of the testator's mind may be very feeble and debilitated at the relevant time.*
- (iii). The disposition may be unnatural improbable or unfair in the light of relevant circumstances like exclusion of or absence of adequate provisions for th natural heirs without any reason.*
- (iv). The disposition may not appear to be the result of the testator's free will and mind.*
- (v). The propounder takes a prominent part in the execution of*

the Will.

(vi). The testator used to, sign blank papers.

(vii). The Will did not see the light of the day for long.

(viii). Incorrect recitals of essential facts.

The circumstances narrated hereinbefore are not exhaustive. Subject to offer of reasonable explanation, existence thereof must be taken into consideration for the purpose of arriving at a finding as to whether the execution of the Will had duly been proved or not".

Said authority is applicable herein present suit against both the parties as both of them have failed to prove *Wills*.

15. A.I.R.2020 (N.O.C) 311 (Gauhati)

Lohit Laloti vs. Puspita Bora and others.

It has been held that beneficiary got his name mutated in place of testator without obtaining probate of *Will* by projecting that he received disputed land as gift. Probate filed after prescribed period, *Will* differs in date and place in oral evidence as well as bearing different types of signatures of testator. In these suspicious circumstances surrounding execution of *Will*, probate can not be granted. Herein present suit, neither Plaintiffs nor Defendant No.3 to 7 and 10 applied for probate of their respective *Wills* within prescribed time limit.

16. A.I.R.2007 Supreme Court-614

Niranjan Umeshchandra Joshi vs. Mrudula Jyoti Rao & Ors.

It is also in respect of suspicious circumstances surrounded

the Will which are discussed in above para. Therefore I do not think it to repeat here.

17. 2006(5) Supreme Court Cases-353

Prem Singh vs. Birbal

It is on issue of limitation which is discussed in above para.

18. 2010(3) G.L.R.2601

Anandiben Jamabhai Patel vs. State of Gujarat & Ors.

The said authority is on issue of Sec.47 of Agricultural Lands ceiling Act 1960 which says that after relinquishing her right in favour of her brother, appellant challenged the final order declaring lands as surplus and then it was held that suit was barred by Sec.47 of the act and it was an abuse of the process of the Court. If the factual aspect of said authority is considered, there was relinquishment statement given by Sister in the Year 1969 before Revenue Authority and on basis of that, mutation Entry was made in the records, brother's name was continued as exclusive owner and possession of disputed land and in the Year 1974 brother died then lands were subjected to provisions of the Gujarat Agricultural Lands Ceiling Act and widow of brother filled necessary forms as required under Sec.10 of the said Act and that time 38 Acres and 33 Gunthas was declared as excess surplus land, widow lost upto the Gujrat Revenue Tribunal and than sister came into picture and filed suit. Then in that case Ld. Trial Court held that the suit was filed with *malafide* intention only to avoid handing over possession of the excess land. Then Hon'ble Apex

Court has held that suit was instituted in collusion with other private defendants only to avoid execution and handing over the possession of the excess land which is declared under the said act and the suit is abuse of process of law.

Now if the facts of case on hand is considered, there is ULC proceedings wherein Maniben as well as Nagarbhai and his sons filled form 6 and they mentioned their individual properties. Maniben mentioned Survey No.94 and 153 and got 1500 Sq.Mt. as her sole unit of Survey No.94 and Survey No.153 was agricultural land and therefore exempted. Subsequently all the Defendants have mutated their joint names in records of said properties. If Maniben and Nagarbhai did not want to keep both the said properties in name of Maniben then in that case, it transpires that the joint family had created rights of Maniben on record with a view to save their lands from ULC proceedings. The said proceedings are abuse of process by Maniben, Nagarbhai and all members of the family. Therefore the said authority is applicable to all family members of D.Manchharam Narshibhai.

19. 2016(1) Supreme Court Cases-332

L.C. Hanumanthappa vs. H.B. Shivakumar

The said authority is on issue of limitation which is already discussed above.

20. 2005(6) Supreme Court Cases-474

P.T.Thomas vs. Thomas Job

The said authority is on issue of Or.23, R.3, Sec.11 and 89

of the Civil Procedure Code 1908. It has been held that a judgment by consent is as effective an estoppel between the parties as a judgment whereby Court exercises its mind on a contested case and Court's attempt should be to give life and enforceability to compromise award and not to defeat it on technical grounds.

Herein present suit the said authority is applicable to both the parties. Disputed properties are to be governed by their respective absolute owners declared by the compromise-cum-partition decree in Sp.Civil Suit no.173/1975. Both the parties have not complied with it and thrown all properties into common stock of the family. Therefore as per the said authority, both the parties have breached decree of the Court, however no party has challenged it and the said conduct of the party supports the doctrine of blending separate properties into family properties. The said authority is not in help of the Defendants' submission.

21. *Special Civil Suit No.51/2008*

1) Chhimiben @Maniben lalabhai nanabhai

2) Rakeshbhai Premabhai

v/s.

1) Pushpaben Ramdas Kanjibhia

2) Yogeshbhai ramdas

3) Bhavnaben Ramdas

L.A.Mr.Jagirdar has produced Judgment of said suit in which partition was asked and the L. Trial Court has discussed issue of limitation and thereafter rejected the suit. He has further

submitted that the Hon'ble High Court has confirmed the said order. He has submitted that the facts of present suit is identical and therefore the said ratio should be applied.

Read the Judgment of the said suit. It is to be noted that the facts of said suit it totally different that the facts of case on hand. Herein case on hand it is not simple partition-suit but there are many factual as well as law issues covered and hidden in pleadings and documents of parties. Earlier suit with compromise-cum-partition decree attaining finality in the long back 1975 and then ULC proceedings in 1976, then blending of separate properties into family properties and then acquisition and then sale-transactions during pendency of suit and declaration-cum-confirmation-deeds by Plaintiffs and so on. Therefore the judgment of above mentioned Special Suit is not any way helping to the submission of the Defendants.

22. 2002(6) Supreme Court Cases-336

Deena (Dead) Through Lrs. v/s. Bharat Singh (Dead) Through Lrs..

The said authority is on issue of limitation which issue is discussed in above para.

23. A.I.R. 1954 - Rajasthan - 46

Madhosing and another Apellants v/s. Jaitpalshingh and other

The said authority is on issue of Or.23 R.2 which says that where a Plaintiff is permitted to withdraw the suit or abandon part of the claim with liberty to bring a fresh suit, the Plaintiff shall be

bound by the law of limitation in the same manner as if the first suit had not been instituted. L.A.Mr.Jagirdar has vehemently submitted that Jaysukhben herself had withdrawn Sp.Civil Suit no.231/1982 in the Year 1984 with permission to file a fresh suit and thereafter she had not filed any suit during her lifetime till 2004 and therefore being her legal heirs, the Plaintiffs have not right to file present suit as it is barred by law of limitation. He has further submitted that Jaysukhben or the Plaintiffs ought to have file suit within 3 years from 1984 i.e. on or before completion of 1987 but they have not right to file suit in the Year 2009. Therefore he has urged that the present suit is hopelessly barred by law of limitation.

The said arguments are really tempting and convincing but it is not the real fact. Because there is compromise-cum-partition decree passed by Court in favour of Mother of Jaysukhben i.e. Maniben which has attained finality. Thereafter by conduct all parties happily deal with all properties taken granted as family properties and then real owner Maniben's relinquishment-deed comes into picture in the Year 2007 and dispute has arisen. For Maniben, Plaintiffs are children of her pre-deceased daughter Jaysukhben and naturally they are entitled to her property and if her properties are merged in disputed properties then they have right to claim partition. Withdrawal of suit by Jaysukhben is not an impediment to absolute title of Maniben got in earlier suit in 1975. Therefore above authority is not in help of the Defendants'

case.

24. A.I.R. 2023 Supreme Court Cases-3425

State of Orissa and another v/s. Laxmi Narayan Das (Dead)

The said authority is on issue of delay and latches in challenging revenue records. Herein present case there is not a simple question of challenge to revenue records. On the contrary it is admitted fact that name of Maniben was there till 2007 and present suit is filed within 3 years from 2007. Hence said authority is not in help of the Defendants' submission.

25. 2020(9) Supreme Court Cases-612

Ravinder Kaur Grewal and others v/s. Manjit Kaur and others.

26. 2018(5) Supreme Court Cases-130

Sita Ram Bhama v/s. Ramvatar Bhama

27. 2018(14) Supreme Court Cases-814

Roshan Singh and others. v/s. Zile Singh and others

Referring above mentioned authorities, L.A.Mr.Jagirdar has submitted that if there is family-arrangement or family-settlement and its effects were given in revenue records then such family-arrangement needs not to be compulsorily registered under Sec17 of the Registration Act 1908. He has submitted that even unregistered deed of such family-arrangement is binding to parties and they are estopped under Sec.115 of Indian Evidence Act from disowning such arrangement already reached, acted upon and so recorded.

Now at the cost of repetition, it is hereby noted that there

is admittedly no registered or unregistered family-arrangement or family-arrangement or partition-deed at all executed between the parties and produced before this Court by them. It is to be noted that there is compromise-cum-partition decree passed by the Court in Sp. Civil Suit no.173/1975 wherein the parties agreed to give effect of their partition in Revenue Records and then they themselves filled ULC form giving effect of said partition-decree but thereafter no other mutation entry has been entered with their specific absolute right and title only for their properties and deleting names of other co-owners. Herein present case, the parties have avoided their binding given to the Court more particularly when their bindings were worded by the Court in its decree having enforcement power of law. Neither party has offered any explanation which is nothing but fraud with the Court by both the parties. The Parties were intended to have separation or partition of disputed properties, more particularly when Maniben and her daughters were residing with the Defendants after death of Maniben's husband. Then what was the reason behind giving effect of said partition-decree only in ULC proceedings? because, the parties wanted to save their lands from going in hands of Government under declaration of excessive and surplus land under ULC proceedings. Both the parties (parties of Sp.Civil Suit no.173/1975) are equally liable for such *malafide* proceedings but none of them are alive right now. Therefore in absence of family-arrangement or family-arrangement at all

between parties which was acted upon by the parties to give permanent effect in revenue records, above mentioned authorities are not in help of the Defendants' submission.

28. C.R.A.136 to 136-139/2019 dt.18/06/2019

Emrald Co-operative Housing Society Ltd v/s. Decd. Gulamkadar S/O Gulam Husain Abdulkadar and Bai Shakarbu & 7 others

29. C.R.A. 354/2017 dt.06/05/2019

Khatunben Mohammedbhai Polara v/s. Shaukathussain Mohanned

L.A.Mr.Jagirdar has relied upon above mentioned judgment of the Hon'ble High Court of Gujarat on issue of limitation. The facts of said cases are totally different than the facts of case on hand. Herein present case there are total new and peculiar facts and there is no simple question of law of limitation. Earlier compromise-cum-partition decree is not followed by parties themselves and therefore the Defendants must not be allowed to take advantage of their own wrong in name of limitation. Maniben and her legal heirs are the real suffers who have in name of partition, have never been given rights, consideration, share or title in properties. The Defendants are well aware from the beginning that Maniben was declared real, absolute owner of Survey No.94 and 153 by the Court in its compromise-cum-partition decree and even then the Defendants have illegally entered into transaction of Sale-deed of Survey No.94 (ad-measuring 1500 Sq.Mt.). There is no issue of limitation at all as Maniben was still as owner in records of Survey no.153, Block

no.20/1 till 2007. The doctrine of blending of properties apply herein present case. Therefore there is cause of action arisen in the Year 2007 and the present suit is apparently within time limit.

30. AIR 2023 S.C 4074

M.Sivadasan (D.) Through Lrs. v/s. A.Soudamini(D.)Through Lrs.

The said authority is on issue of right of daughter as per Hindu in agricultural land. It is to be noted that there was particular community known as "*Thiyaas*" in **Kozhikode, Kerala** wherein ancestral property devolves only on the male children and daughters have a right of maintenance till the time of their marriage. L.A.Mr.Jagirdar has not submitted how the said authority is applicable to Patel community in Surat City of Gujarat State.

31. 2023 (4) G.L.R. 2676

Manubhai Mayabhai Ahir v/s. Hemaben Ashikali Narsi

The said authority is on issue of limitation which is already discussed in above paras.

32. 2018(O) AIJRL - S.C/238706

Jayantibhai Varshabhai Patel v/s. Sarswatiben D/o Joitabhai Vardhabhai

33. 2016(O) AIJRL-A.C.236282

Heirs of Decd.Maniben D/o Naranbhai Ishvarbhai and Wd/o Kantilal Nathalal Patel v/s. Heirs of Decd. Dwarkabhai Naranbhai Ishvarbhai

34. 2019 A.I.R(S.C) 72

Jamila Begum (D) Thr. Lrs. vs. Shami Mohd (D) Thr Lrs &

35. *1977 A.I.R.(S.C) 2421*

T. Arivandandam vs. T.V. Satyapal

All above authorities are on issue of limitation and said issue has already been discussed in detail in above para. Therefore I do not think it to repeat here.

36. *1994 (1) GLH 81*

S.P. Chengalvayraya Naidu v/s. Jagannath

It is on an issue of 'Fraud'. It has been held that fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. A litigant approaching the Court is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the Court as well as on the opposite party. L.A.Mr.Jagirdar has submitted that the Plaintiff No.1 has suppressed facts of earlier two suits i.e. Sp.Civil Suit no.173/1975 (filed by Maniben in which the Plaintiff no.1 had identified her thumb-impression) and 231/1982 (which was filed by Jaysukhben herself through whom the Plaintiffs are claiming their rights in present suit). Therefore he has submitted that the Plaintiff No.1 has done suppression and thereby committed fraud with the Court.

It is to be noted that compromise-cum-partition decree is

rather in favour of the Plaintiffs. Therefore suppression of it is not in any way against the Plaintiffs. Suppression of facts which is going against the parties and withholding of documents which are against the party can be termed as fraud. But the said decree of Sp.Civil Suit no.173/1975 is in support of the Plaintiffs case which is still in existence. Then in that case withdrawal of Sp.Civil Suit no.231/1982 would not come in any way to the claim of the Plaintiffs. Because after compromise-cum-partition decree of Sp.Civil Suit no.173/1975, the parties had chosen not to give effect in revenue records and after that deal with Maniben's properties without any objections, conducted in such way that separate properties are thrown in common pool of the family properties. Then the right of the Plaintiffs to ask for partition has revived. Therefore there is no fraud on part of the Plaintiffs.

If any one is liable for fraud then they are parties of Sp.Civil Suit no.173/1975 i.e. Maniben, Yashvantlal, Manchhabhai Narshibhai, Nagarbhai and his sons for getting compromise-cum-partition decree only on paper for ULC purpose and without any intention of actual partition of all disputed properties in revenue records.

The other notable fact is that the Defendants are liable for playing fraud. They have suppressed so many documents which in their possession like *Will* of Nagarbhai dt.04/09/89 which was produced by them with their initial list vide Exh.15 but then they have suppressed it. The said authority is against the Defendants'

case.

37. 2024 (0) AIJEL-Sc 72994

Kusha Duruka v/s. State of Odisha

The said authority is also on issue of fraud which is already discussed in above para.

38. Defense of non-joinder of parties raised by L.A.Mr.Jagirdar.

He has submitted in his oral arguments that original Owner Manchharam Narshibhai had 4 daughters but the Plaintiffs have not joined them or their legal heirs in present suit. Admittedly said daughters are not joined in present suit. It is not on record that they have raised their objection or filed suit for partition. It is to be noted that Maniben's earlier suit Sp.Civil Suit No.173/1975 was compromised between father (Manchharam Narshibhai), Son (Nagarbhai Manchhabhai and Daughter-in-law (Maniben Wid./o. Thakorbhai Manchhabhai) but there was no share claimed or allotted to the daughters. The said daughters have never challenged the said decree till the date. The said daughters have never challenged Revenue Records. Therefore the present suit is not barred by non-joinder of said daughters.

L.A.Mr.Jagirdar and Mr.Sahikh has submitted further that the Defendant No.13 to 13.6 have executed registered Sale-deeds to total 46 Plot holders and residential building is constructed in disputed properties F.P.No.8A of Block No.20/1 but the Plaintiffs have not joined said third parties in present suit. The Plaintiffs have not challenged their registered sale-deeds in present suit.

Therefore suit is barred by non-joinder of necessary and proper parties. It is to be noted that the Defendant No.13 to 13.6 have purchased disputed properties during pendency of present suit that too after registration of *Lis-pendency* by the Plaintiffs. Therefore all subsequent purchasers are ipso-facto bound by the final outcome of present suit. But the suit is not barred by non-joinder of said new purchasers.

58]. The Defendant No. 11 & 12 have relied upon following citations:

1. AIR 2003 Supreme Court, Page no.578

B.L.Sreedhar v/s. K.M.Munireddy

L.A.Mr.M.J.Gandhi has relied upon said authority for issue of estoppel under Sec.115 of Indian Evidence Act. The said issue is also covered in above discussion and hence I do not repeat here.

DETERMINATION OF ISSUES

ISSUE NO.1 - Whether Plaintiffs prove that Scheduled properties are HUF properties of D.Manchharam? :-

59]. The Plaintiffs have pleaded that the disputed properties are Hindu Undivided Family properties of D.Manchharam. The Defendants have pleaded that partition has already taken place. The Defendants have proved that partition was taken place as per compromise-cum-partition decree by the Court in Sp.Civil Suit No.173/1975. But after that the parties have not complied with terms and conditions of the decree of the Court and they continue

all disputed properties in joint name of all said co-owners. Instead of mutating Name of Maniben as absolute owner only in Survey No.94 and 153, her 1/3 share is mutated in records of all properties. Thereby all the members of family have chosen to throw all disputed properties again in common hotchpotch of the family. Maniben was never given disposal rights of her absolute Survey No.153 and 94. On the contrary the Defendant No.3 to 7 have, assuming their rights over family properties, dealt with Survey No.95 ad-measuring 1500 Sq.Mt. which is not objected by Maniben and Plaintiffs which means acquiescence to status of joint family properties. This is res-ipsa-loquitor that the disputed properties are joint family properties. Here doctrine of blending which is well recognized by the Hon'ble Apex Court for Hindu Family in Judgment of ***Mallesappa Bandeppa Desai v/s. Desai Mallappa and Others, 1961 AIR 1268*** and then ***Lakkireddi Chinna Venkata Reddi v/s. Lakkireddi Lakshmama AIR 1963 SC 1601*** and so on. After amendment in 2005, daughters are considered coparcener by birth just like sons. Therefore doctrine of blending is applicable herein present case.

The above landmark Judgments are reffered by the Hon'ble Karnataka High Court in judgment of **Sri T. Narayana v/s. Smt. Nirmala wherein it has been reiterated that, "Hindu property Law recognizes blending doctrine whereby Property thrown into common stock, individual property merges into joint family, becoming collective asset for the benefit of all members, voluntary**

integration of self-acquired property into joint Hindu Family's common stock results in its conversion to joint family property".

The Plaintiffs have proved that Scheduled properties are joint family properties of HUF properties of D.Manchharam Narshibhai.

Hence I answer issue No.1 as affirmative.

ISSUE NO.2- Whether Plaintiffs prove that Defendant No.3 to 7 or any of them has obtained thumb-impression of Maniben in name of inheritance or loan for agriculture?:-

60] The Plaintiffs have pleaded that the Defendant No.3 to 7 have obtained thumb-impress of Maniben in name of inheritance entry or obtaining loan. As discussed above, there are various documents executed by Maniben but there is no document with her signatures which conveys that she was illiterate lady. Considering contradictory documents produced by both the parties with the fact that Maniben herself had never been appeared either before Revenue Authorities or before this Court. If she was able to appear before office of Sub-registrar for registration of *Wills* and if she was able to go to Notary for registration of deed then she ought to have come before this Court to put her written statement vide Exh.14. But she has not come or rather no party has allowed her to come to the Court. It is admitted fact that she had lived long life of more than 103 years and died in the Year 2016 and she was residing with the Defendant No.3 to 7. If she was able to appear before Sub-registrar for registration of her last *Will* in the Year

2011 then she ought to have appear before this Court with amendment application of written statement adding pleadings of her *Will* in it. But she was never allowed to appear before this Court. Even at the time of entry No.1999 which was based on unregistered Relinquishment-deed of Maniben herself, she was present before revenue authority for her statement. Her pedigree was not produced for sake of relationship with the Defendants, for which relationship, the Defendants have paid Rs.36 lacs + Rs.36 Lacs to Plaintiff No.1 and 2 in the Year 2018. The Defendant no.3 to 7 have succeeded in excuting of her absolute property Survey No.94 ad-measuring 1500 Sq.Mt. in the Year 2001 without her signatures or thumb-impression. Considering all above discussion, it is proved that thumb-impression of Maniben was obtained by the Defendants in guise of any trifle reasons. **Hence I answer issue No.2 as affirmative.**

ISSUE NO.3:- Whether Plaintiffs prove that Defendant no.3 to 7 have done illegal administration of properties?:-

61]. After considering all above discussion it transpires that Maniben was most vulnerable lady whose thumb-impression was obtained by both the parties as and when required by them for their selfish motive. Only difference is that it has not come on record that the Plaintiffs have executed any registered deed of disputed properties of Maniben in favour of third parties. The Plaintiffs have not entered into any transaction of disputed properties with third

parties but the Defendants have entered into many transactions at the time prior to filing of present suit as well during the trial of present suit. The Defendants have dealt with Survey No.94 in the Year 2001 by executing registered Sale-deed No.26223 without signature of Maniben. They have sold disputed property no.330 peki, 331, 299/2 to Ibrahim Haji Usman in the Year 2003. They have also sold disputed property Vijayalakshmi Co-Operative Housing Society. All the said facts themselves prove that the Defendant No.3 to 7 and their common ancestors have dealt with disputed properties without consent, knowledge and thumb-impression of Maniben. The Plaintiffs have succeeded to prove that the Defendant No.3 to 7 have illegally administered disputed properties damaging rights and share of Maniben and her legal heirs. The Defendant No.3 to 7 and 10 have, so far as share of the Plaintiffs are concerned, illegally entered into transaction of disputed properties with the Defendant No.11, 12, 13, 13.1 to 13.6. **Hence I answer issue No.3 and 4 as affirmative.**

ISSUE NO.4 :- Whether Plaintiffs prove that Defendant No.3 to 7 have done illegally transferred and sold without consent and knowledge of the Plaintiffs? :-

62]. As per Issue No.3 above, the Plaintiffs have proved that the Defendant No.3 to 7 have illegally administered disputed properties prior to filing of present suit. But during the pendency of present suit, the Plaintiff No.1 and 2 have ratified registered

Sale-deed No.18319 which is in favour of the Defendant No.13, 13.1 to 13.6 by executing registered declaration-deed No.15707 (Exh.358) and 15708 (Exh.359) for Block No.20/1. Therefore they have consented said Sale-deed in favour of the Defendant No.13. The Plaintiff No.1 and 2 have also ratified Sale-deed No.392, 393 and 394 by executing Registered Confirmation deed No.458, No.459 and No.460 on dt.12/06/18. Therefore they have consented said Sale-deed. But the Defendants have not obtained consent from the Plaintiff No.3 and 4. Therefore the Plaintiff No.3 and 4 prove that the Defendant No.3 to 7 have illegally transferred disputed properties without their consent. **Hence I answer Issue No.4 as partly affirmative only for the share of the Plaintiff No.3 and 4.**

ISSUE NO.5- Whether Plaintiff proves that Defendants have executed registered Sale-deed No.392, 393, 394 on dt.24/05/2018 in conspiracy of each other? :-

63] There is typographical error in framing of said issue and Sale-deed No.0315, 0382 are mentioned in place of No.392 and 394. There is no registered deed having number like 0315 or 0382. Therefore the said issue is in respect of Sale-deed No.392, 392 and 394. As per Issue no.4, the Plaintiff No.3 and 4 have proved that the Defendants have executed registered Sale-deed No.392, 393 and 394 in conspiracy with each other. **Hence I answer Issue No.5 as partly affirmative only in respect of the share of the Plaintiff No.3 and 4.**

ISSUE NO.6- Whether Plaintiff prove that Properties of Schedule B are purchased by the Defendant no.3 and 4 and their family out of joint family Income and savings? -

64] Considering above discussion with admission of the Plaintiff No.2 and 4 in their oral evidence, it is proved that there is no documentary as well as oral evidence produced by the Plaintiffs to prove that Properties of Schedule-B are purchased by the Defendant No.3 and 4 out of family income and savings. **Hence I answer issue No.6 and 7 as negative.**

ISSUE NO.7- Whether Plaintiffs prove that Properties Schedule-B are illegally sold to the Defendant no.11 and 12?"-

65] Herein said issue, there is typographical error in writing Schedule-B. There is no transaction of properties mentioned in Schedule-B with the Defendant No.11 and 12 but, typographically it is written Schedule. There is no transaction in respect of properties of Schedule-B in between the Defendant no.3 to 7, 10 and Defendant no.11 and 12. Therefore the said issue is about Disputed properties, **Block No.11, Block No.13 and Block No.20/2** mentioned in first Schedule.

Considering above discussion, it becomes crystal clear that the Defendant No.3 to 7 and 10 have sold disputed properties Block No.11, 13 and 20/2 illegally. So far as right and share of the Plaintiff No.1 and 2 are concerned, they have ratified the Sale-

deeds of Defendant No.11 and 12 by executing registered Confirmation-deeds and declaration-deeds (Exh.469 to 470). Therefore they are not entitled to get any claim against the Defendant No.11 and 12. But so far as rights and share of the Plaintiff No.3 and 4 are concerned, the said Sale-deeds are illegal. **Hence I answer issue No.7/A as partly affirmative for the share of Plaintiff No.3 and 4.**

ISSUE NO.7/A- Whether Plaintiffs prove that Disputed Properties are illegally sold to the Defendant No.13 to 13.6?"-

66]. Considering above discussion, it becomes crystal clear that the Defendant No.3 to 7 and 10 have sold disputed properties Block No.20/1 F.P.No.8B illegally. So far as rights and share of the Plaintiff No.1 and 2 are concerned, they have ratified the Sale-deeds of Defendant No.13 to 13.6 by executing registered Confirmation-deeds and declaration-deeds (Exh.350, 358 and 359). Therefor they are not entitled to get any claim against the Defendant No.13, 13.1 to 13.6. But so far as rights and share of the Plaintiff No.3 and 4 are concerned, the said Sale-deeds are illegal and void. **But all the Plaintiffs are entitled to get share in remaining property F.P.No.8A of Block no.20/1in hands of the Defendant No.3 to 7 and 10. Hence I answer issue No.7/A as partly affirmative.**

ISSUE NO.8- Whether Defendant No.1 to 8 prove that,

Manchhabhai Narhibhai did partition on dt.05/04/1956 and Nagarbhai Manchhabhai became absolute owner in possession of Block No.20/1 and 20/2 and Maniben Wid./o. Thakorbhai Manchhabhai had only maintenance rights during her lifetime?"-

67] The Defendants have well proved that Partition entry No.623 as admitted by all parties in Decree of Sp. Civil Suit no.173/1975. But they have failed to prove that Maniben Wid./o. Thakorbhai Manchhabhai had limited maintenance rights in Block No.20/1 and 20/2 during her lifetime. The compromise-cum-partition decree of the Court in said suit proves that Maniben became absolute owner of Survey No.94 and 153 and Survey No.153 is comprised in Block No.20/1. There were ULC proceedings by all parties wherein Maniben filled forms in their individual capacity. But Nagarbhai was not declared as absolute owner of Block No.20/1 and 20/2. The Defendants have measurably failed to prove limited rights of Maniben. **Hence I answer issue No.8 as negative.**

ISSUE NO.9- Whether Defendant No.1 to 8 prove that, during lifetime of Jaysukhben D./o. Thakorbhai Manchhabhai, and Defendant No.1 and 2 executed waiver-agreements on dt.05/02/2004 before notary, which were notarized at Serial No.153, 154 and 155 in favour of the Defendant No.5 and Yogeshchandra Nagarjibhai Patel?"-

68] As discussed above, the waiver-agreements are unregistered documents and therefore not admissible as per Sec.17 and 49 of

Registration Act. For a moment if they are taken on record, they suggest that Jaysukhben, Defendant No.1 and 2 have inheritance rights in joint family properties but the Defendants have denied from the beginning that Jaysukhben and Defendant No.1 and 2 have no right at all. The said deeds also suggest that Jaysukhben, Defendant No.1 and 2 were paid amount of consideration but the Defendants submit that they were not so paid and the deeds were executed for the sake of relationship and to avoid future disputes. Therefore it is apparent that the averments of the Defendants are total in contradiction to their documentary evidences i.e. said Waiver-agreements (Exh.380, 451 and 452). The Defendants have an opportunities to examine either Defendant No.1 and 2 or Notary Advocate Bhagwati P. Patel. But it is not so done. **The Defendants have measurably failed to prove contents of said Waiver-agreements and hence they are hereby ordered to DE-exhibit. Hence I answer issue No.9 as negative.**

ISSUE NO.10- Whether Defendant No.1 to 8 prove that, there is mutual partition between brothers for R.S.No.18/1, 18/2, 16 and 154?"-

69] As discussed above, all the parties have not followed terms and conditions of compromise-cum-partition decree of the Court drawn in Sp.Civil Suit No.173/1975. The conduct of the parties prove that they have chosen to throw their individual properties into common hotchpotch of the family and therefore name of Maniben and

Defendants have been continued in all disputed properties till 2007. The other reason is that there is no registered or unregistered partition deed executed between the parties and produced before this Court. Therefore the Defendant No.1 to 8 have failed to prove partition of Survey No.18/1, 18/2, 16 and 154 between them.

Hence I answer issue No.10 as negative.

ISSUE NO.11- Whether Defendant No.1 to 8 prove that, Nagarbhai Manchhabhai executed a Will on dt.04/09/1989 for Survey No.299, 330, 296 and 298 situated at Rander?"-

70]. As discussed above, the Defendants have not produced said *Will* before this Court, reason best known to them. In absence of document itself, no oral evidence is admissible. The Defendants have not produced best available evidence with them. Zerox copy of said document is produced by them (Mark 15/40) with their initial D-list vide Exh.15 but they have not produced original *Will* before this Court. They have suppressed material documents which proves their *malafide* conduct. They have failed to prove that Nagarbhai Manchhabhai have executed *Will* for Survey No.299, 330, 296 and 298 for properties of Rander. **Hence I answer issue No.11 as negative.**

ISSUE NO.12- Whether Defendant No.1 to 8 prove that, Block No.56 and 69 are acquired by Gujarat Housing Borad?"-

71]. The Defendants have proved that Block No.56 and 69 have been

acquired by the Gujarat Housing Board and the Plaintiffs have not challenged said acquisition. **Hence I answer issue No.12 as affirmative.**

ISSUE NO.13- Whether Defendant No.1 to 8 prove that, Block No.184/1/B was originally belonging to independent self-acquired property of Manchhabhai Narshibhai? which has been declared as surplus land under Urban Land Ceiling Act?"-

72]. The Defendants have produced ULC papers from Exh.381 to 384 which proves that Block No.184/1/B i.e. original Survey No.94 was independent property of Manchhabhai Narshibhai but came in share of Maniben by the decree of the Court passed in Sp.Civil Suit No.173/1975. Then Maniben filled form no.6 under ULC act mentioning said property as her independent property. Leaving 1500 Sq.Mt. for Maniben's one Unit, remaining 17723 Sq.Mt. was declared by the Government as surplus land under ULC Act. Exh.217 proves that it is Government land and there is **Viswakarma Society and its residents (total 49 residential houses are there)**. The Defendants have proved that Block No.184/1/B ad-measuring 17723 Sq.Mt. have been acquired by the Government and the Plaintiffs have not challenged said acquisition. **Hence I answer issue No.13 as affirmative.**

ISSUE NO.14- Whether Defendant No.11 and 12 prove that,they are bonafide purchaser with value without notice?"-

73]. The Defendants have purchased disputed properties No.11, 13 and 20/2 after paying handsome amount of consideration. But they are not *bonafide* purchasers with value without notice because they have full and complete knowledge about pendency of present suit and registered *lis-pendency*. They have not purchased disputed properties but they have purchased disputes themselves. Therefore they are bound by the final out come of present suit. Their registered Sale-deeds clearly mention about origin of all said properties but suppressing all revenue entries which are in favour of the Plaintiffs. ULC proceedings and decree of Sp.Civil Suit no.173/1875 and its effect are smartly or rather cunningly suppressed. Most condemnable thing is that they have got Confirmation-deeds from the Plaintiff No.1 and 2 but they have knowingly and cunningly left the Plaintiff No.3 and 4 for which they have to offer better explanation. They have measurably failed to prove plea of *bonafde* purchasers with value and without notice of Plaintiffs' rights and present litigation. **Hence I answer issue No.14 as negative only for share of the Plaintiff No.3 and 4 .**

ISSUE NO.15- Whether Defendant No.1,2, 4 to 7and 10 prove that, Maniben Wid./o. Thakorbhai Manchharam has executed Registered Will No.21153 on dt.01/12/2011?"-

74]. A detailed discussion and observation has already been made by me in above paras of *Will*. But at cost of it is hereby repeated that admittedly normal rule to prove a *Will* (*Exh.387*) is to examine one

of the attesting Witness and the Defendants have also examined Prashant kantibhai Patel as their witness vide Exh.453. He has also deposed his ignorance about the education of Maniben. He has admitted that he does not know where the *Will* was prepared, Which means, it is not so happen that Maniben was dictating *Will* in his presence. The said registered *Will* is silent about the educational qualification and comman understanding of executrix. The most dubious fact about the *Will* is, it is not stated only for disposition of the properties but it mentions about earlier waiver-agreements of her daughters, in which she has never signed or she was never present at the time of execution of those deeds; there are statements which are attempted to be admissions for present suit. The other dubious fact is that though she has executed registered *Will* in the Year 2011, she has not declared a single fact about it before this Court during her lifetime till 2016. As she is Defendant No.16 herein present suit, she must declared it before this Court. If she was able to appear before Sub-registrar Office for registration of her *Will* then she must have appear before this Court for her written statements, rather then giving Power of Attorney to Defendant no.7. It is most important to note that Maniben has never been presented before any Revenue Authorities or before this Court. Once the properties have been subject matter of present suit, registered *Will* by one of the Defendant in favour of the other Defendants becomes more suspicious. The other notable fact is that two *Wills* are referred in said *Will*, 1). which is relied upon by the

Plaintiffs (Exh.361) and 2). Executed on dt.05/02/2009 which was also registered at Serial No.1023 before Sub-registrar, Surat-4, Katargam. The Defendants have suppressed said *Will*, reason best known to them. Considering above discussion, it is crystal clear that Maniben was most vulnerable woman and both the parties have used her thumb-impress for their respective selfish motive. The Defendants have measurably failed to prove contents of the *Will* in their favour. **Hence I answer issue No.15 as Negative.**

ISSUE NO.15/A- Whether Defendant No.13 to 13/6 prove that,they are bonafide purchaser with value without notice and residential polts/buildings are planned in said land and persons have been residing there in Society ?"-

75] The Defendants have purchased disputed properties Final Plot No.8B ad-measuring 10708 Sq.Mt. of TP Scheme 43 of Block No.20/1, Jahagirabad after paying handsome amount of consideration. But they are not *bonafide* purchasers with value without notice because they have full and complete knowledge about pendency of present suit and registered *lis-pendency*. They have not purchased disputed properties but they have purchased disputes themselves. Therefore they are bound by the final outcome of present suit. Most condemnable thing is that they have got Confirmation-deeds from the Plaintiff No.1 and 2 but they have knowingly and cunningly left the Plaintiff No.3 and 4 for which they have to offer better explanation. They have measurably failed

to prove plea of *bonafide* purchasers with value and without notice of Plaintiffs' rights and present litigation. **Hence I answer issue No.15/A as negative only for share of the Plaintiff No.3 and 4 .**

ISSUE NO.16- Whether the suit is barred by cause of action and limitation?"-

76]. As discussed in detail in above para of limitation, present suit is not at all barred by limitation. There is cause of action. **Hence I answer issue No.16 as negative.**

ISSUE NO.17- Whether the suit is barred by delay, laches and acquiescence?"-

77]. The Defendants have failed to prove that present suit attracts bar under delay, laches and acquiescence. **Hence I answer issue No.17 as negative.**

ISSUE NO.18- Whether the suit is barred suppression of material facts and promissory estoppel?"-

78]. The Defendants have satisfied that the Plaintiff No.1, though has identified thumb-impress of Maniben in her earlier suit Sp. Civil Suit No.173/1975 and in ULC papers, the Plaintiffs have suppressed said material facts. They have also proved that the Plaintiffs have suppressed fact of earlier suit of Jaysukhben i.e, Sp.Civil Suit No.231/1982. But the said suppression is not against their case. On the contrary, compromise-cum-partition decree of

Sp. Civil Suit no.173/1975 is the crucial piece of evidence for this Court to determine the whole case. At the cost of petition, it is hereby noted that the rights of the parties were well determined by the parties themselves and compromise-cum-partition decree was passed in earlier suit or rather first-in-time suit of Maniben. According to that decree, all parties filled form 6 of ULC proceedings but other than that, no party has implemented decree and entered their names in revenue records of their respective independent property and deleting name of other co-owners. Herein present case, revenue records were agreed to be separated by them to give actual effect of partition. There was no registered partition-deed and therefore all terms and conditions of decree of said suit ought to have been followed by all parties to prove actual partition. But it was never happened. On the contrary name of Maniben was entered with 1/3 share. When decree of her suit clearly declared her as absolute owner of Survey No.94 and 153 then where was the question to enter her name in all the properties with mentioning of her 1/3 share (Exh.251)?. Thereafter all properties are mentioned as joint properties. No party has challenged said revenue entries. It proves that the family members have chosen to throw their separate properties again into the common hotchpotch of the family. Maniben had lived her whole life with the Defendant No.3 to 7 and this could be the reason to keep all properties in joint ownership. But that does not mean that her legal heirs would have no right and share in disputed

properties. The Defendants have failed to prove that present suit attracts bar under suppression of material facts and promissory estoppel. **Hence I answer issue No.18 as negative.**

ISSUE NO.19- Whether Plaintiffs are entitled to get *mesne profit* and accounts?"-

79]. The Plaintiffs have not lead any oral and documentary evidence to prove accounts of income and Year by Year profit which might be earned by the Defendants. In absence of accounts, the said relief can not be allowed. **Hence I answer issue No.19 as negative.**

ISSUE NO.20 AND 21- Whether Plaintiffs prove that they are entitled to relief claimed by them? What order and decree?

80]. The Plaintiffs have prayed in para-14(1) the plaint that it is be declared that legal heirs of first schedule of D.Thakorbbhai Manchharam's branch have joint undivided 1/2 share and have partition of such share and give independent possession from the Defendant No.3 to 7 or any other responsible Defendants. The Plaintiffs have succeeded to prove issue No.1 to 4 in their favour but they have failed to prove issue No.6. The Plaintiffs have no rights and share in disputed properties of Schedule-A and Schedule-B. The Plaintiffs have prayed relief of permanent injunction against Defendants in para 14(2).

I. The Plaintiff No.1 and 2 have got their share and therefore they have executed Confirmation-cum-declaration-deeds which are not

challenged by them in present suit, so far as disputed property Block No.20/2, 11, 13 and Final Plot No.8-B of Block No.20/1 are concerned. They have no right or share in said disputed properties.

- II. The Plaintiff No.3 and 4 have right and share in Block No.20/2, 11, 13 and Final Plot No.8-B of Block No.20/1 of Jahangirabad and they are entitled to relief of declaration and permanent injunction. But so far as relief of partition by metes and bound and possession is concerned, they have not produced a fresh calculation of particular their share after death of Plaintiff No.1 and deduction of share of Plaintiff No.2. Therefore though they are entitled, the said relief of partition and possession would not be possible.
- III. All the Plaintiffs have proved their rights and share in disputed properties Block No.20/1, Final Plot No.8-A and 179 of Jahangirabad which are still in hands of the Defendant No.3 to 7 and 10.
- IV. All the Plaintiffs have proved their rights and share in disputed properties Block/Survey No.296, 298, 299/2 peki, 330/ peki of Rander which are still in hands of the Defendant No.3 to 7.
- V. Block No.56 and 69 have been acquired by the Gujarat Housing Board as per Issue No.12. Therefore the Plaintiffs are not entitled to any relief in respect of said properties.
- VI. The Plaintiffs have not produced oral and documentary evidence for disputed properties which are mentioned at Serial

No.14 and 15 of 'Scheduled properties'. Therefore they are not entitled to any relief in respect of said properties.

VII. The Defendants have succeeded to prove issue No.13 and therefore the Plaintiffs are not entitled to get any relief in respect of Block No.184/1.

VIII. The Plaintiffs have prayed relief of declaration in para 14 (2/1) against illegal transaction done by the Defendants. The Plaintiffs have prayed relief of declaration in para 14 (2)(A) that registered Sale-deed No.394 for Block No.11, Sale-deed No.393 for Block No.13 and Sale-deed No.392 for Block No.20/2 on dt.25/04/18 executed in favour of the Defendant No.11 and 12 are declared null and void. The Plaintiff No.3 and 4 have proved issue No.7 in their favour. The Defendant No.11 and 12 have failed to prove issue No.14 in their favour. Hence said relief is to be allowed only for share of the Plaintiff No.3 and 4.

IX. The Plaintiffs have prayed relief of declaration in para 14 (2) (B) that registered Sale-deed No.18319 for Final Plot No.8-B, of Block No.20/1 on dt.05/08/17 executed in favour of the Defendant No.13, 13.1 to 13.6 are declared null and void. The Plaintiff No.3 and 4 have proved issue No.7A in their favour. The Defendant No.13, 13.1 to 13.6 have failed to prove issue No.15A in their favour. Hence said relief is to be allowed only for share of the Plaintiff No.3 and 4.

X. The Plaintiffs have prayed relief of *Mesne* profit in para 14(3) but as they have failed to prove issue No.19, said relief is not to be

allowed.

XI. The Plaintiffs have prayed relief of cost. The Plaintiff No.1 and 2 have received money from the Defendants and executed registered Confirmation-cum-declaration deeds and therefore they are not entitled to said relief. But the Plaintiff No.3 and 4 are entitled to said relief. The Defendants have measurably failed to prove issue No.8, 9, 10, 11, 14, 15A, 16 to 18. They have suppressed *Will* of Nagarbhai which is the most important document to determine present suit without going into details of all other documents. Therefore they are liable to pay cost. The Defendant No.11 to 13.6 have not purchased only disputed properties during pendency of the suit but they have purchased litigation itself and therefore they are bound by the final out-come of present suit and therefore they are also liable to pay cost.

81] It is settled law that Plaintiffs have to prove their case independently. Here in present suit, they have proved their case in their favour. The Plaintiffs have succeeded to prove preponderance of probabilities in their favour against the Defendant no.3 to 7 and 10. The Plaintiff No.3 and 4 have succeeded to prove their case against all the Defendants; hence, the Plaintiffs have proved that they are entitled for reliefs which are claimed by them in the plaint as discussed in last preceding paras. Hence, I answer **Issue No.20 as Partly Affirmative** and I believe that following order will serve the purpose of justice:

// O R D E R //

1. The present suit is hereby Partly Allowed in favour of Plaintiffs and against Defendants in following way.
2. It is hereby declared that Plaintiffs have rights and share in disputed properties Block No.20/1, Final Plot No.8-A and 179 of Jahangirabad with the Defendant No.3 to 7 and 10 and therefore the Defendants, their men, agents, POA holders etc. are hereby restrained from any kind of alienation or transfer of said properties in respect of Plaintiffs' share.
3. It is hereby declared that Plaintiffs have rights and share in disputed properties Block/Survey No.296, 298, 299/2 peki, 330/ peki of Rander with the Defendant No.3 to 7 and 10 and therefore the Defendants, their men, agents, POA holders etc. are hereby restrained from any kind of alienation or transfer of said properties in respect of Plaintiffs' share.
4. The Defendant No.3 to 7 and 10 are hereby ordered to pay cost of Rs.10,000/- to the Plaintiff No.3 and 4.
5. It is hereby declared that Registered Sale-deed No.0394 for Block No.11, Sale-deed No.0393 for Block No.13 and Sale-deed No.0392 for Block No.20/2 on dt.25/04/18 executed in favour of the Defendant No.11 and 12 are declared null and void in respect of share of the Plaintiff No.3 and 4.
6. The Defendant No.11 and 12 are hereby ordered to pay cost of Rs.10,000/- to the Plaintiff No.3 and 4.

7. It is hereby declared that Registered Sale-deed No.18319 for Final Plot No.8-B, ad-measuring 10708 Sq.Mt., T.P.Schem 43 of Block No.20/1 on dt.05/08/17 executed in favour of the Defendant No.13, 13.1 to 13.6 is declared null and void in respect of share of the Plaintiff No.3 and 4.
8. The Defendant No.13, 13.1 to 13.6 are hereby ordered to pay cost of Rs.10,000/- to the Plaintiff No.3 and 4.
9. The Plaintiff No.2 and the Defendants will bear their cost of suit.
10. Registered *Wills* of Maniben vide Exh.361 and 387 are not proved and hence hereby impounded in present suit.
11. Interim relief, if any, merges with said final order.
12. Decree shall be drawn accordingly.

Signed and pronounced in the open Court on this 15th day of April,2024.

Date : 15.04.2024

(Miss. Dipa S. Thakar)

Place : Surat

GJ-00943

6th Additional Senior Civil Judge,
Surat