



Received on 27/01/2014
Registered on 27/01/2014
Decided on 24/11/2023
Duration Ys. Ms. Ds.

In The Court Of 8th Additional Senior Civil Judge, Surat.

Special Civil Suit No. 48 of 2014

Exh.No. _____

PLAINTIFFS...

1. Niruben D/o Panchiyabhai Gosaibhai Patel and Wd/o Dhanjibhai Dayalbhai Patel

Aged : 67 years, Religious : Hindu,
Occupation : House-hold work and agricultural work,
Residing at : Rundh Magdalla, Tal. Choryashi, Dist. Surat.

2. Shantiben D/o Panchiyabhai Gosaibhai Patel and W/o Babubhai Shantibhai Patel

Aged : 59 years, Religious : Hindu,
Occupation : House-hold work and agriculturists
Residing at : Rundh Magdalla, Tal. Choryashi, Dist. Surat.

Versus

DEFENDANTS...

1. Kamlaben Wd/o Bhanabhai Panchiyabhai Patel

Aged : 76 years, Religious : Hindu,
Occupation : Farming,
Residing at : Rundh Magdalla, Tal. Choryashi, Dist. Surat.

2. Manharbhai Bhanabhai Patel as Manager of his family branch and as himself

Aged : 53 years, Religious : Hindu,
Occupation : Farming,
Residing at : Rundh Magdalla, Tal. Choryashi, Dist. Surat.

3. Bhupendrabhai Bhanabhai Patel as Manager of his family branch and as himself

Aged : 41 years, Religious : Hindu,
Occupation : Farming,
Residing at : Rundh Magdalla, Tal. Choryashi, Dist. Surat.

4. Kamleshbhai Bhanabhai Patel as Manager of his family branch and as himself

Aged : 39 years, Religious : Hindu,
Occupation : Farming,
Residing at : Rundh Magdalla, Tal. Choryashi, Dist. Surat.

5. Laxmiben Wd/o Babubhai Panchiyabhai Patel

Aged : 73 years, Religious : Hindu,
Occupation : House-hold work and agriculturists
Residing at : Rundh Magdalla, Tal. Choryashi, Dist. Surat.

6. Bipinchandra Babubhai Patel as Manager of his family branch and as himself

Aged : 56 years, Religious : Hindu,
Occupation : Farming,
Residing at : Rundh Magdalla, Tal. Choryashi, Dist. Surat.

7. Daxaben Wd/o Pravinkumar Babubhai Patel

Aged : 44 years, Religious : Hindu,
Occupation : House-hold work and agriculturists
Residing at : Samarth Sai Apartment, Rundh Magdalla, Tal. Choryashi, Dist. Surat.

8. Sahil Pravinkumar Patel as Manager of his family branch and as himself

Aged : 26 years, Religious : Hindu,
Occupation : Farming,
Residing at : Rundh Magdalla, Tal. Choryashi, Dist. Surat.

9. Snehaben Pravinkumar Patel

Aged : 24 years, Religious : Hindu,
Occupation : Farming & House-holding work,
Residing at : Rundh Magdalla, Tal. Choryashi, Dist. Surat.

10. Gaurang Pravinkumar Patel

Aged : 22 years, Religious : Hindu,
Occupation : Farming,
Residing at : Rundh Magdalla, Tal. Choryashi, Dist. Surat.

11. Subhashchandra Babubhai Patel as Manager of his family branch and as himself

Aged : 51 years, Religious : Hindu,
Occupation : Farming,
Residing at : Rundh Magdalla, Tal. Choryashi, Dist. Surat.

12. Maheshkumar Babubhai Patel as Manager of his family branch and as himself

Aged : 47 years, Religious : Hindu,
Occupation : Farming,
Residing at : Rundh Magdalla, Tal. Choryashi, Dist. Surat.

13. Dhirajbhai Babubhai Patel as Manager of his family branch and as himself

Aged : 44 years, Religious : Hindu,
Occupation : Farming,
Residing at : Rundh Magdalla, Tal. Choryashi, Dist. Surat.

14. Valiben Wd/o Tansukhbhai Panchiyabhai Patel

Aged : 65 years, Religious : Hindu,
Occupation : House-hold work and agriculturists
Residing at : Samarth Sai Apartment, Rundh Magdalla, Tal. Choryashi, Dist. Surat.

15. Chandrikaben Wd/o Narendrabhai Tansukhbhai

Aged : 46 years, Religious : Hindu,
Occupation : House-hold work and agriculturists
Residing at : Samarth Sai Apartment, Rundh Magdalla, Tal. Choryashi, Dist. Surat. **And guarding of her son Minor**

Rudhirkumar Narendrabhai Patel

Aged : 16 years, Religious : Hindu,
Occupation : Study
Residing at : Samarth Sai Apartment, Rundh Magdalla, Tal. Choryashi, Dist. Surat.

16. Shirinaben D/o Narendrabhai Tansukhbhai Patel and W/o Umeshbhai Thakorabhai Patel

Aged : 24 years, Religious : Hindu,
Occupation : House-hold work and agriculturists
Residing at : New Magdalla, Opp. Police Staff Quarters,
Surat.

17. Hemashiben D/o Narendrabhai Tansukhbhai Patel and W/o Rishibhai Rameshbhai Patel

Aged : 22 years, Religious : Hindu,
Occupation : House-hold work and agriculturists
Residing at : Karishma Street, at Post Magdalla, Surat.

18. Toralben Narendrabhai Patel

Aged : 20 years, Religious : Hindu,
Occupation : House-hold work and agriculturists
Residing at : Samarth Sai Apartment, Rundh Magdalla, Tal. Choryashi, Dist. Surat.

19. Prakashbhai Tansukhbhai Patel as Manager of his family branch and as himself

Aged : 48 years, Religious : Hindu,
Occupation : Farming,
Residing at : Rundh Magdalla, Tal. Choryashi, Dist. Surat.

20. Nareshbhai Tansukhbhai Patel as Manager of his family branch and as himself

Aged : 45 years, Religious : Hindu,
Occupation : Farming,
Residing at : Rundh Magdalla, Tal. Choryashi, Dist. Surat.

21. Hiteshbhai Tansukhbhai Patel as Manager of his family branch and as himself

Aged : 42 years, Religious : Hindu,
Occupation : Farming,
Residing at : Rundh Magdalla, Tal. Choryashi, Dist. Surat.

22. Hetalbhai Tansukhbhai Patel as Manager of his family branch and as himself

Aged : 32 years, Religious : Hindu,
Occupation : Farming,
Residing at : Rundh Magdalla, Tal. Choryashi, Dist. Surat.

- 23. Jytoshanaben D/o Tansukhbhai Panchiyabhai Patel and W/o Dilipbhai Chimanbhai Patel**
Aged : 35 years, Religious : Hindu,
Occupation : House-hold work and agriculturists
Residing at : New Vashahat, Rundh-Magdalla, Nr. Dummas Resort, Surat.
- 24. Ishwarbhai Dhyabhai Patel as Manager of his family branch and as himself**
Aged : 62 years, Religious : Hindu,
Occupation : Farming,
Residing at : Rundh Magdalla, Tal. Choryashi, Dist. Surat.
- 25. Dahyiben D/o Panchibhai Gosaibhai Patel and W/o Gijubhai Chhaganbhai Patel**
Aged : 64 years, Religious : Hindu,
Occupation : House-hold work and agriculturists
Residing at : "Ishwarkrupa Bungalow" at Bharathana (Vesu) Tal. Surat City, Dist. Surat.
- 26. Bhanuben D/o Bhanabhai Pachiyabhai Patel and Wd/o Navinbhai Patel**
Aged : 58 years, Religious : Hindu,
Occupation : House-hold work and agriculturists
Residing at : Karishma Street, Magdalla, Dumas Road, Surat.
- 27. Hanshaben D/o Bhanabhai Pachiyabhai Patel and Wd/o Bhanabhat N Patel**
Aged : 56 years, Religious : Hindu,
Occupation : House-hold work and agriculturists
Residing at : Karishma Street, Magdalla, Dumas Road, Surat.
- 28. Ramilaben D/o Bhanabhai Pachiyabhai Patel and Wd/o Ishwarbhai Patel**
Aged : 52 years, Religious : Hindu,
Occupation : House-hold work and agriculturists
Residing at : Bhaiyaji Mahollo, Rundh Gam, Magdalla, Dumas Road, Surat.

**29. Indiraben D/o Bhanabhai Pachiyabhai Patel and
Wd/o Dineshbhai Patel**

Aged : 50 years, Religious : Hindu,
Occupation : House-hold work and agriculturists
Residing at : Ghachi Mahollo, Rundh Gam, Magdalla, Dumas
Road, Surat.

**30. Sangeetaben D/o Bhanabhai Pachiyabhai Patel and
Wd/o Pravinbhai Patel**

Aged : 48 years, Religious : Hindu,
Occupation : House-hold work and agriculturists
Residing at : Kumali Mahollo, Rundh, Magdalla, Dumas Road,
Surat.

**31. Narmadaben D/o Bhanabhai Pachiyabhai Patel and W/o
Tansukhbhai Patel**

Aged : 45 years, Religious : Hindu,
Occupation : House-hold work and agriculturists
Residing at : New Vashahat, Rundh, Dumas Road, Surat.

**SUIT : FOR PARTITION, DECLARATION AND PERMANENT
INJUNCTION**

Appearance:

Ld. Advocate Mr. V. S. Kaji, for the plaintiffs.

Ld. Advocate Mr. H. N. Patel, for the defendant No.1 to 4, 7 to 11
and 13 to 24.

Ld. Advocate Mr. S. J. Jariwala, for the defendant No. 26 to 31.

~ J U D G M E N T ~

[1] This suit has been filed by the plaintiffs against the defendants for partition, declaration and permanent injunction. Originally the plaintiffs have filed this suit against 25 defendants ,after that time and again new defendants have been added by the plaintiffs and lastly there are 31 defendants in the suit.

(1) The averments made by the plaintiffs in the suit are that the Plaintiffs are the heirs of late shri Panchiyabhai Gosaibhai. A land bearing old Revenue Survey No. 587 and its new Revenue Survey No. 386 having measurement Hectare-1, AREA-46 and Square Meter 00 i.e. 14600 square meters situated at village Vesu, Dist and Sub-Dist.Surat and after TP Scheme No.28 came into force, Final Plot No.45 has been given to this land. (Hereinafter referred to as the Suit Land) was originally belonging to Paniben who is widow of Jerambhai Nathabhai, Navinbhai Jerambhai and Baubhai Jerambhai and from them Panchiyabhai Gosaibhai had purchased the suit land on dated 26.10.1970 through registered sale deed and by that sale deed Panchiyabhai Gosaibhai become owner and occupier of suit land and his name was mutated in the revenue record as owner and occupier of the suit land and said Panchiyabhai Gosaibhai has been died intestate on dated 05.10.1981. Pedigree of deceased Panchiyabhai Gosaibhai is as under ;

Bhanabhai (Death)	Babubhai (Death)	Tansukhbhai Son Death	Ishwarbhai (Son)	Niruben (Daughter)	Dahiben (Daughter)	Shantiben (Daughter)
Kamlaben (Wd)	Laxmiben (Wd)	Defendant No.14 to 23				
Manharbhai (son)	Bipinchandra (Son)					
Bhupendrabhai (son)	Subhaschandra (Son)					
Kamleshbhai (Son)	Maheshkumar (Son)					
Bhanuben (Daughter)	Dhirajbhai (Son)					
Hanshaben (Daughter)	Pravinbhai (Son) Died					
Ramilben (Daughter)	Defendant No. 7 to 10					
Indiraben (Daughter)						

Sangitaben (Daughter)	
Narmadaben (Daughter)	

(2) Since the plaintiffs are heirs of Panchiyabhai Gosaibhai, their shares are involved in the suit land under the provision of Hindu Succession Act, 1956 and they are entitled for movable and immovable properties left by deceased Panchiyabhai Gosaibhai and the plaintiffs have not transferred their shares either through registered documents or through relinquish deed or transfer or assign in favour of anyone.

(3) The defendant No. 1 to 4 and 26 to 31 are issues of plaintiffs' deceased brother Bhanabhai while defendant No. 5 to 13 are heirs of deceased Babubhai while defendant No. 14 to 23 are heirs of plaintiffs' brother Tansukbhai and defendant No.24 is brother of plaintiffs and defendant No. 25 is sister of the plaintiffs. The plaintiffs undivided shares are involved in the suit land and the defendants were trying to sell out the suit land to someone else hence the plaintiffs had searched about the position of land through son of plaintiff No.1 Harshadbhai and it was come to knowledge of the plaintiffs that the predecessors of defendants namely Pravinbhai Babubhai Patel has created documents for relinquishment of right for mutation entry No. 2777 and on the basis of said relinquishment deed made by the plaintiffs their shares have been relinquished from the suit land and mutation entry No. 2777 has mutated in this regard. Actually, the plaintiffs have not made any relinquished deed for their rights in favor of anyone and Pravinbhai Babubhai Patel had

asked the plaintiffs that their signatures are required for mutation of their name in the property of Panchiyabhai Gosaibhai and hence the plaintiffs had signed in documents but they have not relinquished their rights and by mis representation their signatures have been taken. The defendants are the brothers and uncle of the plaintiffs and therefore the plaintiffs had not cause to suspect on them and therefore without reading document they had signed in the documents but they never relinquished their rights from their father's property and the plaintiffs had asked the defendants to give their rights but the defendants had denied to give share of the plaintiffs and the defendants had asked the plaintiffs that they have relinquished their right from the suit land and therefore their shares has not remain in the suit land and therefore this suit has been filed. Moreover, the plaintiffs have stated that the value of the suit land is more than Rs. 100/- and therefore any relinquish deed is required to be registered as per provision of Registration Act and relinquish deed has not been registered under the said law and therefore there is no value of relinquish deed and as the plaintiffs are heirs of deceased Panchiyabhai Gosaibhai and the plaintiffs shares are involved in the suit land and therefore this suit has been filed to declare that every plaintiffs have 1/7 share in the suit land.

(4) By filing this suit, the plaintiffs have asked for the following reliefs.

- (i) To declare that every plaintiffs have 1/7 share or any proportionate share which the Hon'ble Court deems and comes to the conclusion.
- (ii) And relief of partition of the plaintiffs share from the suit land.

(iii) To declare that revenue entry No. 2777 is false and fabricated and void ab initio and the said entry is not binding to the plaintiffs.

(iv) Permanent injunction restraining the defendants from transfer or alienate the suit land in favour of anyone else.

[2] Regular summons have been served on the defendants. The defendant No. 1 to 4 & 11 to 24 have submitted their written statement by Exh.115 in which they denied the averments of plaint and they raised the contention that the suit is barred by limitation. The defendants have not denied the relationship mentioned by the plaintiffs in their plaint but other facts of the suit have been parawise denied by the defendants ,and the defendants have stated real fact as that the suit land was originally belonging to Paniben widow of Jerambhai Nathabhai, Navinbhai Jerambhai and Babubhai Jerambhai and Panchiyabhai Gosaibhai had purchased the suit land from original owners on dated 26.10.1970 by registered sale deed and revenue entry in this regard was mutated in the mutation register by mutation entry No. 901 and from that day Panchiyabhai Gosaibhai was the absolute owner and occupier of the suit land and after that Panchiyabhai Gosaidbhai was died intestate on dated 05.10.1981 and his heirs names were mutated in mutation register by mutation entry No. 2756 on dated 26.02.2002 and the said entry was certified after that following heirs of Panchiyabhai had relinquished their rights from the suit land.

The names of the heirs of Panchiyabhai who have relinquished their right from the suit land are as under.

- (1) Niruben who is D/o Panchiyabhai Gosaibhai (Present plaintiff No.1)
- (2) Dahiben who is D/o Panchiyabhai Gosaibhai
- (3) Shantiben who is D/o Panchiyabhai Gosaibhai (Present plaintiff No.2)
- (4) Bhanuben who is D/o Bhanabhai Panchiyabhai

- (5) Hanshaben who is D/o Bhanabhai Panchiyabhai
- (6) Ramilben who is D/o Bhanabhai Panchiyabhai
- (7) Indiraben who is D/o Bhanabhai Panchiyabhai
- (8) Sangitaben who is D/o Bhanabhai Panchiyabhai &
- (9) Narmadaben who is D/o Bhanabhai Panchiyabhai.

And they have executed a relinquish deed on dated 25.01.2002 before Public Notary Mr. A. R. Ghantiwala and the said relinquish deed has been registered in Notary Register by Annexure No. 1538/2002 dated 01.02.2002 and on the basis of said relinquish deed entry No. 2777 has been mutated in the mutation register and notices U/s 135 of the Bombay Land Revenue Code have also been served on the persons who relinquished their rights from the suit land and all the persons who had relinquished their rights had signed on the notice under sec. 135 D of Bombay Land Revenue Code and after notice entry No. 2777 has been certified by the competent authority and by the said entry the defendants No.1 to 24 were become the owners and occupiers of the suit land and the suit land is continuously running on the name of the defendant No.1 to 24 and the suit property is in possession of the defendant No.1 to 24 and the plaintiffs had challenged that entry No. 2777 before the City Prant Officer by RTS Appeal No. 212 of 2013 and the said City

Prant Officer has dismissed the said RTS Appeal by his order dated 30.07.2014 by the reason of limitation and the present plaintiffs had challenged that order of City Prant Officer before the Collector of Surat in RTS Revision No. 311 of 2014 and Collector of Surat District has also dismissed the said revision by his order dated 10.08.2019 and against the order of Surat District Collector the plaintiffs have not filed any appeal or revision. As the plaintiffs have already relinquished their rights from the suit land, they have no any share in the suit land. B

y filing this written statement, the defendant No. 1 to 4 and 11 to 24 have prayed to dismissed the suit.

[3] The defendants No.26 to 31 have submitted their written statement by Exh.66 in which they have stated that they have not relinquished their right either in favour of defendant No. 1 to 4 or in favour of the plaintiffs and their rights are also involved in the suit land. The defendants No. 26 to 31 have prayed to declare that they have also 6/10 share in the suit land. By filing this written statement, they prayed to give 6/10 share to them from the suit land.

Along with the suit plaintiffs have filed Ex.5 application for interim injunction and status quo order has been passed on that application.

[4] To prove the suit, plaintiffs have submitted the following oral as well as documentary evidence.

ORAL EVIDENCE OF PLAINTIFFS

Sr.	Exh.	Particulars
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1	84	Deposition of plaintiff No.2 Shantiben D/o Panchiyabhai Gosaibhai by way of affidavit of chief examination
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DOCUMENTARY EVIDENCE OF PLAINTIFFS

Sr.	Exh.	Particulars
1	88	7 & 12 abstract of block No. 386
2	89	Village Form No. 8/A of block No. 386
3	90	Village Form No. 67 of Nondh No. 901
4	91	Mutation entry No. 901
5	92	Mutation entry No. 2756
6	93	Mutation entry No. 2777
7	94	Mutation entry No. 3410
8	95	Copy of released deed
9	96	Copy of order passed in RTS Appeal No. 212/13
10	97	Copy order passed in RTS Revision No. 311/14
11	98	Copy of death certificate of Babubhai @ Balubhai Panchiyabhai
12	99	Copy of death certificate of Panchiyabhai Gosaibhai
13	100	Copy of death certificate of Vijibahen Panchiyabhai
14	101	Copy of death certificate of Bhanabhai Panchiyabhai
15	102	Copy of death certificate of Pravinbhai Babubhai
16	103	Copy of death certificate of Tansukhbhai Panchiyabhai
17	104	Copy of death certificate of Narendrabhai Tansukhbhai
18	105	Copy of lease pendency application
19	106	Copy of order in RTS Appeal No. 353 of 2014

20	107	Village Form No. 6 mentioned entry No. 9309
21	108	Reply filed by the plaintiffs in Sp.C.S. No. 542/05

[5] The defendants have submitted following oral as well as documentary evidence in support of their case.

ORAL EVIDENCE OF DEFENDANTS

Sr.	Exh.	Particulars
1	122	Deposition of Defendant No.27 Hanshaben D/o Bhanabhai Panchiya and W/o Bhanabhai Narshihbhai by way of affidavit of chief examination
2	128	Deposition of Defendant No. 13 Dhirajbhai Babubhai Patel by way of affidavit of chief examination
3	138	Deposition of defendants' witness Mr. A. R. Ghantiwala by way of affidavit of chief examination
4	146	Deposition of defendants' witness S. P. Desai

DOCUMENTARY EVIDENCE OF DEFENDANTS

Sr.	Exh.	Particulars
1	124	Copy of plain in Sp.C.S. No. 542/2015
2	130	Notice U/s 135 (d) of Bombay Land Revenue Code and released deed
3	141	Copy of Notary registered
4	147	Copy of village No. 6 (Haqpatrak)
5	148	Copy of application for delete name before Talati
6	149	Copy of death certificate of Panchiyabhai
7	150	Pedhinam of Panchiyabhai Gosaibhai

8	151	Copy of 135 (d) Notice
9	152	Village form No. 6 (Haqpatrak)
10	153	Copy of notice 135 (d)
11		

Plaintiffs' Arguments

[6] Ld. Advocate Mr. V. S. Kaji for the plaintiffs has filed his written argument by Exh.156 in which he referred the averments of plaint and discussed on the evidence submitted by both the parties. He mainly argued that it is undisputed fact that plaintiffs are the heirs of late Shri Panchiyabhai Gosaibhia, signature of plaintiffs in deed of relinquishment have been taken by misrepresentation and plaintiffs have proved that they have not relinquished their right from suit land and therefore plaintiffs are deserves for prayers as prayed by them. In support of his arguments, Ld. Advocate Mr.V.S.Kazi has relied upon section 8 of the Hindu Succession Act. Moreover, he has relied upon following authorities .

1. AIR 2017 Hyderabad 163, Modurabonia Deepika V/s Kuna Sujatha Devi.
2. 2018 (1) GLH 302, Shashikant N Patel V/s Arvindbhai B Gohil.
3. 2019 (2) GLH 24, SC, Sneha Gupta V/s Devi Sarup and Ors.
4. AIR 1999 Allahabad 167, Bankey Bihari V/s Surya Narian.
5. AIR 1995 Karnataka, 326, Smt. Lakshmamma @ Lakamma V/ s Sombegowda S/o Kodigowda and others.
6. Page of Limitation Act

Authorities have been discussed hereinafter.

Arguments of defendants' Advocate

8th Sr. Civil Judge Surat

[7] On the other hand, Id. Advocate for the defendant No. 1 to 4, 7 to 11 and 13 to 24 has submitted written arguments by Exh.157. He mainly argued that plaintiffs have relinquished their right from the suit property and therefore plaintiffs can not claim their share in the suit land ,and when there is family settlement registration under the provision of Registration Act is not required . In support of his argument, Id. Advocate for the defendants no.1 to 4 7 to 11 and and 13 to 24 has relied upon the following authorities .

1. Circular passed by Government of Gujarat by No. HKP-1083-252-4 on dated 05.04.1983
2. Circular passed by Government of Gujarat by No. 102016-1017-J on dated 14.03.2016 17.10.2017.
3. 2023 (1) CC 330, Shri Dattatray G Survey V/s Heeraben D/o Deceased Bhagvanbhai M Patel.
4. AIR 1966 SC 1836, Maturi Pullaiah & Anr. V/s Maturi Narasimham and Ors.
5. 2010 (I) GLH 302, Shashikant N Patel V/s. Arvindbhai B Gohil and Ors.
6. AIR 1966 SC 323, Ram Charan Das V/s Girja Nandini Devi.
7. (2008) 15 SCC 673, Ranganayakamma and Anr.V/s K.S.Parekh (dead) by heirs & Ors.
8. Sp. Appeal No.109 /2016 passed by High Court of Gujarat in a case of Maniben D/o Naranbhai Ishwarbhai and W/o Kantilal N Patel.
9. LL 2021 SC 530, Korukonda C Rao V/s Korukonda A Sampath Kumar.

10. 1976 (3) SC 119 Kale and others, V/s Deputy Director of Consolidation and others.
11. (2016) & SCC 705 SC, Subraya M. N. V/s Vittala M. N.
12. 1964 Mh. L.J. 376, Ramdas Chimna V/s Pralhadji Deorao.

Authorities cited by both the parties have been discussed hereinafter.

[8] Following issues have been arisen by Ex.70 for determination of this suit.

~ I S S U E S ~

1. Whether the plaintiffs prove that they and the defendants are the legal heirs of original owner late Shri Panchiyabhai Gosaibhai ?
2. Whether the plaintiffs prove that the suit property is undivided?
3. Whether the plaintiffs prove that defendants have taken their consent by false representation and made an agreement dated 25.01.2002 ?
4. Whether the plaintiffs prove that an agreement dated 25.02.2002 is null and void ?
5. Whether the plaintiffs prove that they having rights over suit property ?
6. Whether the plaintiffs prove that they having 1/7 share is in disputed property ?
7. Whether the suit is maintainable ?
8. Whether the plaintiffs prove that the suit property are liable to be partitioned ?

9. What is the share of each property ?
10. What order and decree ?

ANSWER

1. In Negative
2. In Negative
3. In Negative
4. In Negative
5. In Negative
6. In Negative
7. In Negative
8. In Negative
9. In Negative
10. As per the final order.

~ REASONS ~

ISSUE NO.1 & to 5.

[9] All above issues are co related and hence for avoidance of repetition I am discussing all above issues together.

[10] The plaintiff No.2 has submitted her affidavit of chief examination by Exh.84 in which she has stated that she is plaintiff No.2 and plaintiff No.1 is her elder sister , other details have been stated as stated in the plaint and therefore I avoid repetition. Moreover, the plaintiff No.2 has referred the documents submitted by them in the suit and those documents have been discussed hereinafter.

(1) Ld. Advocate Mr. S. J. Jariwala for the defendant No. 26 to 31 has cross-examined the plaintiff No.2 in which she stated that

Panchiyabhai Gosaibhai is her father, she accepted that Bhanabhai Panchiyabha is her real brother and defendant No. 26 to 31 are her niece, she stated that she has no knowledge about the fact that whether the defendant No. 26 to 31 have filed the separate suit for partition of other property except the suit property or not? She stated that no partition has been made out for Panchiyabhai Gosaibhai's property, she stated that she has no knowledge about the fact that Bhanabhai Panchiyabhai's property have been partitioned or not. She has stated that she has not made any writing for relinquishment of her right. She stated that it did not happened that they all assembled for relinquished their right in Bhanabhai Panchiyabhai's property.

(2) Ld. Advocate Mr. H.N. Patel for the defendant No. 1 to 4, 7 to 11 and 13 to 24 has cross-examined the plaintiff No.2 in which she stated that she studied upto 7th standard and she is able to read and sign, she has stated that she has no knowledge about the name of Panchiyabhai Gosaibhai's father, she has stated that Bhanabhai, Babubhai, Tansukhbhai, Ishwarbhai are the sons of Panchiyabhai while Niruben, Dahyiben and Shantiben are the daughters of Panchiyabhai, she stated that she has no knowledge about the name of brothers and sisters of Panchiyabhai, she stated that no other land was belonging to Panchiyabhai except the suit land. She stated that Vijiben was her mother, she stated that Bhanabhai, Babubhai and Tansukhbhai have died while Ishwarbhai is living. She accepted that the defendant No.1 to 4 are the heirs of Bhanabhai and defendant No. 5 to 13 are heirs of Babubhai and defendant No. 14 to 23 are the heirs of Tansukhbhai, she accepted

that all her sisters marriage were took place prior to death of her father, she accepted the facts that in life time of her father, her relation with brothers and sisters were good, she stated that her father has been died in the year 1981. She denied the facts that after the death of her father revenue entry No. 2756 was mutated and names of all the heirs of her father were mutated by that entry. After seeing Exh. 91 entry, she stated that ,that entry is not related to them and has clarified that ,that entry is relating to the transaction through which her father had purchased the land from Bhaniben. After seeing Exh.94 she stated that the signature of her name has not been made by her and she did not know who had signed by her name and after that she accepted that this signature is similar to her signature. She denied the facts that contract submitted by Exh.94 has been made by her and her sisters and by that agreement they relinquished their right in favour of her brothers and by that agreement their rights were relinquished and entry No. 2777 was mutated in that regard. She denied her signature in 135 D's Notice for entry No. 2777, she denied the facts that they have consented for relinquished their right before Talati, she accepted that she has not lodged any complaint regarding false signature of her, she denied the facts that she and her sisters namely Niruben had filed Appeal No. 212 of 2013 before City Prant against Entry No. 2777 and said appeal was dismissed by City Prant due to limitation. She denied the facts that against the order of City Prant, they had filed revision before the Collector and that revision was also dismissed. She has stated that she has not seen the 7/12 abstract of the suit land, she denied the facts that Niruben's son Harshadbhai had asked them ,that their rights are in the suit land and therefore they

filed this suit. She denied the facts that they have relinquished their rights from the suit land but they filed this suit with intention to take money from the defendants. Except this, no material contradiction or new facts have come out in the cross-examination.

(3) Neither the defendant No. 5, 6, 12 & 25 or their Id. Advocate remained present for cross-examination of the plaintiff No.2 and therefore their right of cross-examination of plaintiff No.2 has been closed.

[11] The plaintiffs have submitted copy of 7 & 12 abstract by Exh.88, looking to this copy, it appears that following persons name are mentioned as occupier of the block No. 386

Sr.	Name
1.	Kamlaben is W/do Bhanabhai Panchiyabhai
2.	Manharbhai Bhanabhai
3.	Bhupendrabhai Bhanabhai
4.	Kamlesbhai Bhanabhai
5.	Laxmiben is Wd/o Babubhai Panchiyabhai
6.	Bipinbhai Babubhai
7.	Subhashbhai Babubhai
8.	Maheshbhai Babubhai
9.	Dhirajbhai Babubhai
10.	Valiben is Wd/o Tansukhbhai Panchiyabhai
11.	Ishwarbhai Panchiyabhai
12.	Daxaben Panchiyabhai
13.	Prakashbhai Tansukhbhai
14.	Nareshbhai Tansukhbhai
15.	Snehaben Pravinbhai
16.	Gaurang Pravinbhai

17.	Hiteshbhai Tansukhbhai
18.	Jyotshanaben Tansukhbhai is W/o Dilipbhai Chimanbhai
19.	Sahil Pravinbhai
20.	Hetalbhai Tansukhbhai
21.	Chandrikaben is Wd/o Narendrabhai Tansukhbhai.
22.	Shirinaben is D/o Narendrabhai and W/o Umeshbhai
23.	Hemaxiben is D/o Narendrabhai and W/o Rishibhai
24.	Toralben is D/o Narendrabhai
25.	Rudhirkumar Narendrabhai
26.	Premilaben is W/o Ishwarbhai Panchiyabhai
27.	Kamleshbhai Ishwarbhai.

The plaintiffs have submitted a copy of 8/1 by Exh. 89, looking at this copy, it appears that all the persons who are mentioned as occupier in Exh.88 are mentioned in this copy as account holder No. 782 of Vesu village. The plaintiffs have submitted entry No. 901 by Exh.90 and looking to this entry it appears that this entry of purchase of land by Panchiyabhai Gosaibhai through registered sale deed dated 10.02.1975 and entry has been certified by competent authority. The plaintiffs have submitted entry No. 2756 by Exh. 91, looking to this entry, it appears that it is a heirship entry and name of heirs of late Shri Panchiyabhai Gosaibhai are mutated by this entry in survey No. 386 due to the death of Panchiyabhai Gosaibhai and looking to this entry it appears that the present plaintiffs' name were also mutated in the suit land by this entry and this entry is of dated 26.02.2002 and the said entry has been certified by the competent authority. The plaintiffs have submitted entry No. 2777 by Exh.92 and looking to this entry it appears that the said entry has been mutated on dated 27.10.2003 and by this entry following person

name have been deleted from the suit land because of the reason that they have voluntarily relinquished their right from the suit land and the relinquish deed has been executed on Rs. 50/- stamp paper. Following are the names who have relinquished their rights from the suit land.

- (1) Niruben D/o Panchiybhai Gosaidbhai and Wd/o Dhanjibhai Dayalbhai Patel.
- (2) Dahyben D/o Panchiybhai Gosaidbhai and W/o Gijjubhai Chhaganbhai Patel.
- (3) Shantiben D/o Panchiybhai Gosaidbhai and W/o Babubhai Shantibhai Patel.
- (4) Bhanuben D/o Panchiybhai Gosaidbhai and Wd/o Navnitbhai Lakhubhai.
- (5) Hanshaben D/o Bhanabhai Panchiybhai and W/o Bhanabhai Narshihbhai.
- (6) Ramilaben D/o Bhanabhai Panchiybhai and Wd/o Ishwarbhai Premabhai.
- (7) Indiraben D/o Bhanabhai Panchiybhai and Wd/o Dineshbhai Babarbhai Patel
- (8) Sangitan D/o Bhanabhai Panchiybhai and W/o Pravinbhai Keshabhai Patel.
- (9) Narmadaben D/o Bhanabhai Panchiybhai and W/o Tansukbhai Chhaniyabhai.

Looking to the endorsement of revenue authority it has been mentioned that entry has been certified by verifying notice and relinquished deed executed before public notary entery has been certified and this entry has been certified on dated 29.04.2002. The plaintiffs have submitted heirship entry No. 3410 by Exh.93, looking

to this heirship entry it appears that due to death of (I) Bhanabhai Panchiyabhai (2) Babubhai Panchiyabhai (3) Tansukhbhai Panchiyabhai (4) Ishwarbhai Panchiyabhai have been died and their heir's name are mutated in two lands i.e. 589/a and 386 i.e. suit land and that entry has been certified by the competent authority. The plaintiffs have submitted a relinquishment deed by Exh.94, this deed is a very important document to decide this suit and therefore whole the deed has been reproduce in a nutshell position.

મીલકતમાંથી હકક છોડવાનો કરાર

મીલકતમાંથી હકક છોડવાનો કરાર લખાવી લેનારા ચાને તમો પહેલાપક્ષના :-

૧. કમળાબેન તે ભાણાભાઈ પાંચીયાભાઈ પટેલ ની વિધવા.
 ૨. મનહરભાઈ ભાણાભાઈ પટેલ .
 ૩. ભુપેન્દ્રભાઈ ભાણાભાઈ પટેલ .
 ૪. કમલેશભાઈ ભાણાભાઈ પટેલ .
 ૫. લક્ષ્મીબેન તે બાબુભાઈ પાંચીયાભાઈ પટેલ ની વિધવા.
 ૬. બિપીનચંદ્ર બાબુભાઈ પટેલ .
 ૭. પ્રવિણકુમાર બાબુભાઈ પટેલ.
 ૮. સુભાષચંદ્ર બાબુભાઈ પટેલ.
 ૯. મહેશકુમાર બાબુભાઈ પટેલ .
 ૧૦. ધીરજભાઈ બાબુભાઈ પટેલ ૧૧. ૧૧. તનસુખભાઈ પાંચીયાભાઈ પટેલ.
 ૧૨. ઈશ્વરભાઈ પાંચીયાભાઈ પટેલ.
- તમામ રહેવાસી : મુ. રંઢ મગદલ્લા, તા. ચોર્યાસી, જી. સુરત. ૩૯૫૦૦૭**

મીલકતમાંથી હકક છોડવાનો કરાર લખી આપનારા ચાને હમો બીજાપક્ષના :-

૧. નીરુબેન તે પાંચિયાભાઈ ગોસાઈભાઈ પટેલ ની પુત્રી અને સ્વ. ધનજીભાઈ દયાળભાઈ પટેલની વિધવા.
૨. ડાહીબેન તે પાંચીયાભાઈ ગોસાઈભાઈ પટેલ ની પુત્રી અને ગિજુભાઈ છગનભાઈ પટેલની પત્ની.
૩. શાંતિબેન તે પાંચિયાભાઈ ગોસાઈભાઈ પટેલની પુત્રી અને બાબુભાઈ શાંતિભાઈ પટેલની પત્ની.
૪. ભાનુબેન તે ભાણાભાઈ પાંચીયાભાઈ પટેલની પુત્રી અને સ્વ. નવનીતભાઈ લખુભાઈની વિધવા.
૫. હંસાબેન તે ભાણાભાઈ પાંચીયાભાઈ પટેલ ની પુત્રી અને ભાણાભાઈ નરસિંહભાઈની પત્ની.
૬. રમીલાબેન તે ભાણાભાઈ પાંચીયાભાઈ પટેલ ની પુત્રી અને સ્વ. ઈશ્વરભાઈ પ્રેમાભાઈની વિધવા.
૭. ઇન્દીરાબેન તે ભાણાભાઈ પાંચીયાભાઈ પટેલ ની પુત્રી અને સ્વ. દિનેશભાઈ બાબરભાઈ પટેલની વિધવા.
૮. સંગીતાબેન તે ભાણાભાઈ પાંચીયાભાઈ પટેલની પુત્રી અને પ્રવિણભાઈ કેશાભાઈ પટેલની પત્ની.
૯. નર્મદાબેન તે ભાણાભાઈ પાંચીયા પટેલની પુત્રી અને તનસુખભાઈ છનીયાભાઈની પત્ની.

તમામ રહેવાસી : મુ. રંઢ મગદલ્લા, તા. ચોર્યાસી, જી. સુરત. ૩૯૫૦૦૭

મીલકતમાંથી હકક છોડવાનો કરાર

સંવત - ૨૦૫૮ ના પોષ સુદ ૧૧ ને વાર : શુક્રવાર, તા. ૨૫ મી, માહે- જાન્યુઆરી,
સને - ૨૦૦૨ ના અંગ્રેજી દિને :-

મીલકતમાંથી હકક છોડવાનો કરાર લખાવી લેનારા ચાને તમો પહેલાપક્ષના :-

૧. કમળાબેન તે ભાણાભાઈ પાંચીયાભાઈ પટેલ ની વિધવા. ઉ.આ.વ. ૬૫, જાતના:
હિંદુ, ધંધો : ખેતી અને ગૃહકાર્ય, રહેવાસી : મુ. રંઢ મગદલ્લા, તા. ચોર્યાસી, જી.
સુરત. ૩૯૫ ૦૦૭.

૨. મનહરભાઈ ભાણાભાઈ પટેલ . ઉ.આ.વ. ૪૨, જાતના: હિંદુ, ધંધો : ખેતી,
રહેવાસી : મુ. રંઢ મગદલ્લા, તા. ચોર્યાસી, જી. સુરત. ૩૯૫ ૦૦૭.

૩. ભુપેન્દ્રભાઈ ભાણાભાઈ પટેલ . ઉ.આ.વ. ૩૦, જાતના: હિંદુ, ધંધો : ખેતી,
રહેવાસી : મુ. રંઢ મગદલ્લા, તા. ચોર્યાસી, જી. સુરત. ૩૯૫ ૦૦૭.

૪. કમલેશભાઈ ભાણાભાઈ પટેલ .

ઉ.આ.વ. ૨૮, જાતના: હિંદુ, ધંધો : ખેતી. રહેવાસી : મુ. રંઢ મગદલ્લા, તા.
ચોર્યાસી, જી. સુરત. ૩૯૫ ૦૦૭.

૫. લક્ષ્મીબેન તે બાબુભાઈ પાંચીયાભાઈ પટેલ ની વિધવા. ઉ.આ.વ. ૬૨, જાતના:
હિંદુ, ધંધો : ખેતી તથા ગૃહવ્યવસ્થા. રહેવાસી : મુ. રંઢ મગદલ્લા, તા. ચોર્યાસી,
જી. સુરત. ૩૯૫ ૦૦૭.

૬. બિપીનચંદ્ર બાબુભાઈ પટેલ . ઉ.આ.વ. ૪૫, જાતના: હિંદુ, ધંધો : ખેતી

રહેવાસી : મુ. રંઢ મગદલ્લા, તા. ચોર્યાસી, જી. સુરત. ૩૯૫ ૦૦૭.

૭. પ્રવિણકુમાર બાબુભાઈ પટેલ. ઉ.આ.વ. ૪૨, જાતના: હિંદુ, ધંધો : ખેતી
રહેવાસી : મુ. રંઢ મગદલ્લા, તા. ચોર્યાસી, જી. સુરત. ૩૯૫ ૦૦૭.

૮. સુભાષચંદ્ર બાબુભાઈ પટેલ . ઉ.આ.વ. ૪૦, જાતના: હિંદુ, ધંધો : ખેતી રહેવાસી
: મુ. રંઢ મગદલ્લા, તા. ચોર્યાસી, જી. સુરત. ૩૯૫ ૦૦૭.

૯. મહેશકુમાર બાબુભાઈ પટેલ . ઉ.આ.વ. ૩૬, જાતના: હિંદુ, ધંધો : ખેતી
રહેવાસી : મુ. રંઢ મગદલ્લા, તા. ચોર્યાસી, જી. સુરત. ૩૯૫ ૦૦૭.

૧૦. ધીરજભાઈ બાબુભાઈ પટેલ . ઉ.આ.વ. ૩૩, જાતના: હિંદુ, ધંધો : ખેતી
રહેવાસી : મુ. રંઢ મગદલ્લા, તા. ચોર્યાસી, જી. સુરત. ૩૯૫ ૦૦૭.

૧૧. તનસુખભાઈ પાંચીયાભાઈ પટેલ .

ઉ.આ.વ. ૬૦, જાતના: હિંદુ, ધંધો : ખેતી રહેવાસી : મુ. રંઢ મગદલ્લા, તા.
ચોર્યાસી, જી. સુરત. ૩૯૫ ૦૦૭.

૧૨. ઈશ્વરભાઈ પાંચીયાભાઈ પટેલ. ઉ.આ.વ. ૫૧, જાતના: હિંદુ, ધંધો : ખેતી
રહેવાસી : મુ. રંઢ મગદલ્લા, તા. ચોર્યાસી, જી. સુરત. ૩૯૫ ૦૦૭નાં

(જેમને હવે પછી આ કરારમાં 'હકક લખાવી લેનાર' અગર 'પહેલા પક્ષના' અગર
'તમો' તરીકે સંબોધવામાં આવેલ છે. અને તેઓના સંપૂર્ણ અર્થમાં અન્યથા

વિરોધાભાસ ન હોય ત્યાં હકક લખાવી લેનારા ચાને પહેલાપક્ષના પોતે તથા તેમના વંશ વાલી, વારસો, સકસેસરો, એસાઈનીઓ, ટ્રાન્સફરીઓ, એકઝીક્યુટર્સ, કુલમુખત્યાર ઇત્યાદી તમામનો સમાવેશ થાય છે.)ના જોગ લિ.

મીલકતમાંથી હકક છોડવાનો કરાર લખી આપનારા ચાને હમો બીજાપક્ષના :-

૧. નીરુબેન તે પાંચીયાભાઈ ગોસાઈભાઈ પટેલ ની પુત્રી અને સ્વ. ધનજીભાઈ દયાળભાઈ પટેલની વિધવા. ઉ.આ.વ. ૫૬, જાતના: હિંદુ, ધંધો : ખેતી તથા ગૃહવ્યવસ્થા, રહેવાસી : મુ. રંઢ મગદલ્લા, તા. ચોર્યાસી, જી. સુરત. ૩૯૫ ૦૦૭.

૨. ડાહીબેન તે પાંચીયાભાઈ ગોસાઈભાઈ પટેલ ની પુત્રી અને ગિજુભાઈ છગનભાઈ પટેલની પત્ની. ઉ.આ.વ. ૫૩, જાતના: હિંદુ, ધંધો : ખેતી તથા ગૃહવ્યવસ્થા, - રહેવાસી : મુ.પો. ભરથાણા(વેસુ), તા. ચોર્યાસી, જી. સુરત. ૩૯૫ ૦૦૭.

(જેમને હવે પછી આ કરારમાં 'હકક છોડનારા' અગર 'બીજાપક્ષના' અગર 'હમો' તરીકે સંબોધવામાં આવેલ છે. અને તેઓના સંપૂર્ણ અર્થમાં અન્યથા વિરોધાભાસ ન હોય ત્યાં હકક છોડનારા ચાને બીજાપક્ષના પોતે તથા તેમના વંશ, વાલી, વારસો, સકસેસરો, એસાઈનીઓ, ટ્રાન્સફરીઓ, એકઝીક્યુટર્સ, કુલમુખત્યાર ઇત્યાદી તમામનો સમાવેશ થાય છે.)

જત હમો બીજાપક્ષના નીરુબેન તે પાંચીયાભાઈ ગોસાઈભાઈની પુત્રી અને સ્વ. ધનજીભાઈ દયાળભાઈ પટેલની વિધવા વિગેરે તમો પહેલાપક્ષનાને મીલકતમાંથી હકક છોડવાનો કરાર લખી આપી જણાવીએ છીએ કે :-

સુરત ડીસ્ટ્રીક્ટ, સબ ડીસ્ટ્રીક્ટ ચોર્યાસીના મોજે ગામ વેસુના જુના રે.સ.નં. ૫૮૭ કે જેનો નવો રે.સ.નં. ૩૮૬ છે તે ખેડખાતાની મીલકત કે જેનું ક્ષેત્રફળ સુમારે હેક્ટર -૧, આરે. ૪૬ અને સ.ચો.મીટર : ૦૦ યાને ૧૪,૬૦૦ સ.ચો.મીટરવાળી જુની શરતની ખેડખાતાની જમીન કે જેનો આકાર રા. ૨૨-૭૫ પૈ. છે તે મીલકતનાં મૂળ માલિક આપણે પક્ષકારોના પૂર્વજ પાંચીયાભાઈ ગોસાઈભાઈ પટેલ હતા. તેઓ સને- ૧૯૮૧ના અરસામાં બિનવસિયતી ગુજરી ગયેલા. જેથી તેમના સીધી લીટીના સાત વારસદારો (૧). શ્રી ભાણા ભાઈ પાંચીયાભાઈ પટેલ (પુત્ર) (૨). શ્રી બાબુભાઈ પાંચીયાભાઈ પટેલ (પુત્ર), (૩). શ્રી તનસુખભાઈ પાંચીયાભાઈ (પુત્ર), (૪). શ્રી ઇશ્વરભાઈ પાંચીયાભાઈ (પુત્ર) તથા (૫). નીરુબેન તે પાંચીયાભાઈ ગોસાઈભાઈની પુત્રી અને સ્વ. ધનજીભાઈ દયાળભાઈ પટેલની વિધવા, (૬). ડાહીબેન તે પાંચીયાભાઈ ગોસાઈભાઈની પુત્રી અને ગિજુભાઈ છગનભાઈ પટેલની પત્ની, (૭). શાંતિબેન તે પાંચીયાભાઈ ગોસાઈભાઈની પુત્રી અને બાબુ ભાઈ શાંતિભાઈ પટેલની પત્ની, કાયદેસરના સહ માલિકો થયેલા અને ચાલી આવેલા.

શ્રી ભાણાભાઈ પાંચીયાભાઈ પટેલ તા.૨૮-૪-૮૭ ના રોજ બિનવસીયતી ગુજરી ગયેલા. જેથી મહુમના સીધી લીટીના વારસદારો આપણે પૈકી (૧). કમળાબેન તે ભાણા ભાઈ પાંચીયાની વિધવા, (૨). મનહરભાઈ ભાણાભાઈ, (૩). ભુપેન્દ્રભાઈ ભાણાભાઈ, (૪). કમલેશભાઈ ભાણાભાઈ, (૫). ભાનુબેન તે ભાણાભાઈ પાંચીયાભાઈની પુત્રી અને સ્વ. નવનીતભાઈ લખુભાઈની વિધવા, (૬).. હંસાબેન તે ભાણાભાઈ પાંચીયાની પુત્રી અને ભાણાભાઈ નરસિંહભાઈ ની પત્ની, (૭). રમીલાબેન તે ભાણાભાઈ પાંચીયાની પુત્રી અને સ્વ. ઇશ્વરભાઈ પ્રેમાભાઈની વિધવા. (૮). ઈન્દીરાબેન તે ભાણાભાઈ પાંચીયા ની પુત્રી અને સ્વ. દિનેશભાઈ બાબરભાઈ પટેલની વિધવા.(૯). સંગીતાબેન તે ભાણા ભાઈ પાંચીયાની પુત્રી અને

પ્રવિણભાઈ કેશાભાઈ પટેલની પત્ની. (૧૦). નર્મદાબેન તે ભાણાભાઈ પાંચીયાની પુત્રી અને તનસુખભાઈ છનીયાભાઈની પત્ની થયેલા અને ચાલી આવેલા.

શ્રી બાબુભાઈ પાંચીયાભાઈ પટેલ તા. ૧૨/૦૩/૧૯૭૦નાં રોજ બિનવસીયતી ગુજરી ગયેલા.જેથી મર્હુમના સીધી લીટીના વારસદારો આપણે પક્ષકારો પૈકી (૧). લક્ષ્મીબેન તે બાબુભાઈ પાંચીયાભાઈની વિધવા. (૨). બિપીનભાઈ બાબુભાઈ પટેલ. (૩). પ્રવિણભાઈ બાબુભાઈ પટેલ, (૪). સુભાષચંદ્ર બાબુભાઈ પટેલ, (૫). મહેશભાઈ બાબુભાઈ પટેલ, (૬). ધીરજભાઈ બાબુભાઈ પટેલ થયેલા અને ચાલી આવેલા.

આ સિવાય નીચે દર્શાવેલ પક્ષકારો મર્હુમ પાંચીયાભાઈ ગોસાઈભાઈ પટેલના અન્ય કાયદેસરના સીધી લીટીના વારસદારો છે. (૧).તનસુખભાઈ પાંચીયાભાઈ પટેલ (૨). ઇશ્વરભાઈ પાંચીયાભાઈ પટેલ(૩). નીરુબેન તે પાંચીયાભાઈ ગોસાઈભાઈપટેલની પુત્રી અને સ્વ. ધનજીભાઈ દયાળભાઈ પટેલની વિધવા (૪). ડાહીબેન તે પાંચીયાભાઈ ગોસાઈ ભાઈ પટેલની પુત્રી અને ગિજુભાઈ છગનભાઈ પટેલની પત્ની, (૫). શાંતિબેન તે પાંચીયાભાઈ ગોસાઈભાઈ પટેલની પુત્રી અને બાબુભાઈ શાંતિભાઈ પટેલની પત્ની થયેલા અને ચાલી આવેલા

ઉપર વર્ણવેલ મીલકતમાં આપણે બન્ને પક્ષકારોનો સંયુક્ત હિસ્સો ચાલી આવેલો છે. હમો બીજાપક્ષના સ્વેચ્છાએ હમારો મજકુર મીલકતમાંનો હમારો વણ વહેંચાયેલો હિસ્સો તમો પહેલા પક્ષનાની તરફેણમાં આ કરારથી છોડી દીધો છે. તમો પહેલાપક્ષનાની હયાતી દરમ્યાન કે હયાતી બાદ પણ હમો બીજાપક્ષનાએ કે હમારા વંશવાલી,વારસોએ હવેથી ઉપર વર્ણવેલ તમારી મીલકતમાં હમો બીજાપક્ષનાએ કોઈ હકક હિત હિસ્સો માંગવાનો નથી. તમો મજકુર મીલકત

બાબત જો કોઈ પણ પ્રકારના લખાણો કરો તો તેમાં આ લખાણને કારણે હમારો ઉલ્લેખ થવાનો નથી. આ હકીકતની જાણ છતાં હમો કોઈ તેવી તર-તકરાર કરીએ, કરાવીએ તો તે આ લખાણથી રદબાતલ થાય સહી.

ઉપર વર્ણવેલ તમારી મીલકત બાબત હમો બીજાપક્ષનાના સગીર બાળકો અથવા તો હમારા અન્ય વંશવાલી વારસોએ પણ સદરહુ મીલકતના હમારા હકક હિત હિસ્સા બાબત કોઈ પણ તર-તકરાર કરવાની નથી કે કરી શકશે નહીં. તેઓ જો તેવી કોઈ તર-તકરાર કરશે કરાવશે તો તે અંગે તમો પહેલાપક્ષનાને અથવા તમારા અન્ય વંશ, વાલી, વારસોને જે પણ ખર્ચ થશે તેની સંપૂર્ણ જવાબદારી હમો બીજાપક્ષનાની રહેશે સહી.

ટુંકમાં હમો બીજાપક્ષનાએ તથા હમારા વંશ, વાલી, વારસોએ તમારી મજકુર મીલકતમાંથી તમામ પ્રકારના હકક ઉઠાવી લીધેલ છે.

ભવિષ્યમાં મજકુર મીલકતના હકક છોડવા બાબત તમો રજીસ્ટર્ડ દસ્તાવેજ યા અન્ય લખાણો કરવા માંગતા હોવ તો તે બાબત હમોને કોઈ જ વાંધો નથી.

આ લખાણના ખર્ચની જવાબદારી તથા ભવિષ્યમાં તેવા કોઈ અન્ય લખાણો કરવા પડે તે અંગેની ખર્ચની તમામ જવાબદારી તમો પહેલાપક્ષનાની રાખવામાં આવી છે.

શિડયુલ.

હકક છોડેલ મીલકતની વિગત.

સુરત ડીસ્ટ્રીક્ટ, સબ ડીસ્ટ્રીક્ટ ચોર્યાસીના મોજે ગામ વેસુના જુના રે. સર્વે .નં. ૫૮૭ કે જેનો નવો રે.સ.નં. ૩૮૬ છે તે ખેડખાતાની મીલકત કે જેનું ક્ષેત્રફળ સુમારે હેક્ટર -૧, આરે. ૪૬ અને સ.ચોમીટર : ૦૦ યાને ૧૪,૬૦૦ સ.ચો.મીટરવાળી જુની શરતની ખેડખાતાની જમીન કે જેનો આકાર રા. ૨૨.૭૫ પૈસા છે તે મીલકત તથા તેને લાગતા વળગતા અંદરના તથા બહારના તમામ પ્રકારના હકકો સહિત ઝાંપાબંધી કુલ દરોબસ્ત.

એણે વિગતનો મીલકતમાંથી હકક છોડવાનો કરાર હમો બીજાપક્ષનાએ વાંચી, વંચાવી,સમજી, સાંભળીને હમારા તન અને મનની સંપૂર્ણ સાવધ અવસ્થામાં બિનકેફ અને તંદુરસ્ત હાલતમાં કોઈના કોઈપણ જાતના દાબ દબાણ વિના તમોને લખી આપેલ છે. જે હમોને તથા હમારા વંશ, વાલી, વારસોને કબુલ, મંજુર તથા બંધનકર્તા છે અને રહેશે સહી.

Looking to this deed, it seems that by this relinquishment deed the present plaintiffs as well as defendant No. 25 to 31 have relinquished their rights from the suit land in favour of defendant No. 1 to 6 and 11 to 13 and the said relinquished deed has been executed before Notary Public and the said copy of the deed has been received from Revenue Talati, Vesu Village. The plaintiffs have submitted the order of City Prant (assistant collector) in RTS Appeal No. 212 of 2013 by Exh.95, looking to this order it seems that the plaintiffs had challenged the entry No. 2777 before City Prant Officer Surat by this appeal and the said appeal has been dismissed by City Prant Officer by his order dated 30.07.2014. The plaintiffs have

submitted the order of Collector Surat in RTS / Revision No. 311 of 2014 dated 10.08.2018. Looking to this order it seems that the present plaintiffs had challenged the order of City Prant Surat in RTS Appeal No. 212 of 2013 before the Collector and Collector had been pleased to reject the revision application and thereby confirmed the order passed by City Prant Surat. Looking to Exh. 95 & 96 it appears that the present plaintiffs had challenged the entry No. 2777 by which their rights were relinquished and that RTS Appeal and Revision filed by the plaintiffs were dismissed by competent authority and hence entry No. 2777 has remained in force. The plaintiffs have submitted copy of registered sale deed by Exh. 97 and this sale deed is the same sale deed through which Panchiyabhai Gosaibhai had purchased the land in the year 1970 and this registered sale deed have not been challenged by anyone and there is no question that the plaintiffs had not purchased the suit land through registered sale deed and therefore more discussion on this registered sale deed is not required. The plaintiffs have submitted the death certificate of Balubhai Panchiyabhai Patel by Exh.98, looking to this death certificate it seems that Balubhai Panchiyabhai died on dated 12.03.1970. In this case, the plaintiffs have averred that their father Panchiyabhai has died on 05.10.1981 and other persons that means Balubhai is son of Panchiyabhai and hence it seems that Balubhai has died prior to death of his father. The plaintiffs have submitted the death certificate of their father Panchiyabhai by Exh.99, looking at this death certificate it seems that Panchiyabhai Gosaibhai has died on dated 05.10.1981. The plaintiffs have submitted the death certificate of their mother Vijyben Panchiyabhai by Exh.100 and looking at this death certificate it

seems that the said Vijyben has died on dated 10.03.1986. The plaintiffs have submitted the death certificate of Bhanabhai Panchiyabhai by Exh.101 and looking at this death certificate it seems that the said Bhanabhai has died on dated 28.04.1987. The plaintiffs have submitted the death certificate of Pravinbhai Babubhai Patel by Exh.102 looking at this death certificate it seems that the said Pravinbhai has died on dated 18.01.2003. The plaintiffs have submitted the death certificate of Tansukhbhai Panchiyabhai Patel by Exh. 103, looking at this death certificate it seems that Tansukhbhai has died on dated 28.08.2006. The plaintiffs have submitted the death certificate of Narendrabhai Tansukhbhai Patel by Exh. 104 and looking at this death certificate it seems that the said Narendrabhai has died on dated 06.01.2008. Looking at Exh.105 it seems that the facts and contention of the present suit has been registered before Sub-Registrar by registration No. 701/2014. Looking at Exh.106 it seems that entry No. 3410 was challenged in RTS Appeal No. 353/2014 and that RTS Appeal was dismissed by Assistant Collector City Prant on dated 18.03.2016. The plaintiffs have submitted entry No. 9309 dated 18.05.2019 this entry is of order below Exh.5 in this suit.

[12] The defendant No. 27 has submitted his affidavit of chief-examination by Exh.122. Looking at this affidavit it seems that the defendant No. 27 has averred the same facts which the defendant No. 25 to 31 have mentioned in their written statement by Exh. 66 and therefore I avoid repetition.

(1) Ld. Advocate Mr. S.N. Patel on behalf of the defendant No. 1 to 4, 7 to 11 and 13 to 24 has cross-examined this witness in which she has stated that she has studied upto 7 the standard, she is able to read and understand, she stated that they have filed the suit to get their rights in Panchiyabhai's land, she stated that she does not know the facts that for which survey number's land they filed the suit, she stated that Panchiyabhai is her paternal grandfather and he is not alive and he died in the year 1981, she stated that Panchiyabhai had 4 sons and 3 daughters. The name of sons and daughters of Panchiyabhai are as that (1) Bhanabhai (2) Baubhai (3) Tansukhbhai (4) Ishwarbhai (5) Niruben (6) Dahyben (7) Shantiben, She stated that Bhanabhai has been died in the year 1995 and after that she has stated that Bhanabhai has died in the year 1986, she stated that Bhanabhai is her father and Bhanabhai had six daughters and two sons, she stated that her marriage was solemnized in the year 1975 with Bhanabhai Narshihbhai, she stated that her husband has been retired from the bank, she accepted that Bhanabhai, Babubhai, Tansukhbhai have been died while Ishwarbhai, Niruben, Shantiben and Dahyben are living. She accepted that after the death of Panchiyabhai his heirs' names are mutated by heirship entry No. 2756 and the said entry has been submitted in this suit by Exh.91. After seeing Mark 140/1, she accepted that her signature is there and she has stated that they have not relinquished their rights, she denied the facts that there were entry regarding relinquished of the right and for that entry notice U/s 135 (d) given to her and there is her signature in that notice. She denied the facts that she had given her reply regarding entry before Talati and after that she signed in her reply, she

accepted the facts that she has not received any information for the facts that who has signed in that notice, she accepted the facts that no complaint has been lodge regarding her bogus signature, she accepted the facts that she has not received any opinion of handwriting expert regarding false signature of her. She accepted that she is fully aware about the properties of her in aw's house, she accepted that she has not received any objection against entry No. 2777 yet, she stated that land of Navsari is running on the name of her brother and land of Dumas is running on the name of her mother and she is unaware about the facts that the block No. 71 is running whose name, she accepted the facts that block No. 386 of Vesu has been purchased by Panchiyabhai himself, she accepted that her and her sisters marriage have been solemnized, she accepted that after death of her father they all i.e. brothers and sisters were living separately. She has stated that she filed the suit No. 542 of 2015 for land of vesu village. Except this no any material contradiction or new facts come out in the cross-examination.

[13] The defendant No.27 has submitted a copy of Sp.C.S NO. 524 of 2015 by Exh.124, looking to the copy of Sp.C.S. No. 542 of 2015 it seems that the defendant No. 27 of this suit and another 5 persons have filed the suit against total 47 persons for partition for survey No. 384/1, 386 of village Vesu block No. 71 of Khajod block No. 584 and 585 of village Dumas and block No. 341, 342, 343, 351, 352, 375, 377, 380, 389, 393, 400, 401, 402, 424 and 425 of District Navsair, Jalalpore Sub-District in Village Sandalpore.

[14] The defendant No.13 namely Dhirajbhai Babubhai Patel has submitted his affidavit of chief-examination by Exh.128. Looking to this affidavit it seems that the defendant No.13 has averred the same facts in his affidavit of chief-examination which he has averred in their written statement by Exh.115 and therefore I avoid repetition.

(1) Ld. Advocate Mr. V. S. Kaji for the plaintiffs has cross-examined this witness in which he has accepted that Panchiyabhai Gosaidbhai had purchased new survey land No. 386 from its original owner by registered sale deed on dated 26.10.1970. He accepted that Panchiyabhai had one son namely Bhanabhai and in heirs of Bhanabhai there were three sons and six daughters and widow of Bhanabhai. He accepted the facts that RS No. 589/1 and 25/1 was originally belonging to Panchiabhai's uncle, he accepted that new number of original survey No. 25/1 is 17/1 and new number of old survey No. 589/1 is survey No. 384/1. He accepted the fact that both survey numbers were gifted by Panchiyabhai's uncle to four sons of Panchiyabhai. He accepted that no such gift has been given to Panchiyabhai's daughters, he accepted that entry No. 2756 is regarding death of Panchiyabhai, he accepted that there is one month duration between entry No. 2756 and 2777, he accepted that at the time when signature were made in Exh.95 he was present. He accepted that there is signature in the deed for relinquished of right from the revenue record were taken at the same when signature were put in Exh.94, she denied the facts that signatures were taken by telling that it is required for heirship of sisters, he denied the facts that copy of relinquished deed has not been given to sisters. He has stated that Exh.94 i.e. relinquished deed has been executed before

Notary Advocate Mr. Ashokbhai Ghantiwala and he know the said advocate because of the reason that he is practicing in revenue cases. He has stated that he is unable to say whether the said deed i.e. deed of relinquishment of right has been prepared by Advocate Mr. Kishorbhai T Upadhyaya or not? He accepted that there is the name of advocate K. T. Upadhyaya on the stamp of deed of relinquishment of right . He accepted that there is the name of advocate K. T. Upadhyaya on the first page of Exh.94 as purchaser of the stamp. He has stated that he has no personal knowledge about Ravindra Bharucha and Yogesh Topiwala. Except this, no material contradiction or new facts has come out in the cross-examination.

(2) Ld. Advocate for the defendant No. 26 to 31 had taken adjournment for cross-examination of this defendant and sufficient opportunities had been provided to him but he did not cross-examine this defendant and therefore his right of cross-examination has been close.

[15] The defendants have submitted chief examination of their witness (Notary Advocate) Mr. Ashok R Ghantiwala by Exh.138. This witness is Notary Advocate and this witness in his affidavit of chief-examination has stated that he has been practicing as an advocate since 1987 and he is Notary since 1999 and licence of Notary has been given to him by Government of Gujarat in the year 1999 by licence No. NTR 245/L and expiry date of his licence is 26.07.2027. On dated 01.02.2002 parties of the deed of relinquishment of right were come to him for execution of deed of relinquishment for old survey No. 587 and new survey No.386 of

village Vesu, Sub-dist. Majoora and they were come to him with typed copy of relinquishment deed ,and prior to execution of the deed , he i.e. this witness had asked the parties that ,whether they are aware about the facts which has been mentioned in the deed? and after that, all the parties of deed had signed in this relinquish deed and all the persons mentioned in the deed had signed before him that means present witness and after that he had taken signature of all the persons in his notary register and he had registered the said deed in his notary register by annexure NO. 1538 on dated 01.02.2002 and after that he that means this witness has put his signature in the deed of relinquishment of right and made his seal of Notary and after that he had returned the original deed to the parties . This witness has along with his affidavit of chief-examination submitted copy of his notary register and copy of his licence. Those documents have been discussed hereinafter.

(2) Ld. Advocate Mr. V. S. Kaji for the plaintiffs has cross-examined this witness in which he accepted that at the time when he registered the deed in his notary register, he had completed 15 years experience of advocacy, he accepted that before notarize any document he confirms the thing that for which purpose document has been executed , he accepted that Exh. 94 documents is a deed of relinquishment of right, he accepted that he had not denied to notarize Exh.94 document, he accepted that identification of parties of Exh.94 documents was not perform by any advocate or any person whom he(i.e.this witness) personally knows. He accepted that stamp for Exh.94 document was purchased on the name of advocate Mr. Kishorchandra Upadhyaya, he accepted that at the time of notarize Exh.94 documents, advocate Mr.

Kishorchandra Upadhyaya was not remained present before him. It has been asked to this witness that where signatures were made in Exh.92 documents when said deed was present before him or all the parties had signed in that deed before you ? And he replied that signatures have been made before him, he accepted that he has not received any identity card or photographs of the persons who had signed in the deed. He denied the facts that he had not taken care which he was required to take prior to notarizing any documents. Except this, no material contradiction or new facts has come out in the cross-examination.

[16] Looking to Exh.141 it is a copy of notary register and looking to this document it seems that one contract has been registered in notary register on dated 01.02.2002 by annexure No. 1538 and in that contract name of present plaintiffs are mentioned as executant of contract and all the persons who were executant of the contract had signed in the notary register. Copy of licence of notary public has been submitted by Exh.144. Herein this case, it is not in a dispute that the persons who had registered the deed in Notary register was not Notary and therefore more discussing on this document is not required.

[17] The defendant No. 1 to 4, 7 to 11 and 13 to 24 have cross-examined Shardulkumar Prabhatbhai Desai as their witness by Exh.146. This witness has stated on oath that he is serving as Talati at Vesu since 2020 and he remained present in the Court on service of summons upon him and this witness has submitted a copy of entry No. 2756 from his office record and Exh.147 has been

given to said entry No.2756. This witness has submitted Tumar (required documents for mutation entry) and in this document he has submitted death certificate of deceased Panchiyabhai Gosaibhai and pedigree of deceased Panchiyabhai Gosaibhai and notice U/s 135 of the Bombay Land Revenue Code and those documents are exhibited as Exh. 148 to 151. This witness has also submitted entry No. 2777 from his record and that entry has been exhibited as Exh.152 along with entry No. 2777. This witness has submitted Tumar (necessary document for mutation entry). in which he submitted application for entry No. 2777 and reply taken by Talati for that entry and contract for relinquishment of right and those documents have been exhibited as Exh.153 and documents submitted by this witness are discussed hereinafter.

[18] Ld. Advocate Mr. V. G. Rana for the plaintiffs has cross-examined this witness by transfer given to him by original advocate of the plaintiffs and this witness has accepted that procedure for entry No. 2756 and 2777 has not been carried out in his presence and he has no personal knowledge about those entries. Except this nothing else has come out in his cross-examination.

[19] Looking to Exh.147 it is a revenue entry No. 2756 submitted by Talati of Vesu. This entry is also submitted by the plaintiff by Exh. 92 and therefore more discussion on this entry is not required and along with Exh. 147 other documents which were submitted before Talati at the time of mutation entry No. 2756 have been submitted by Exh. 148 to 151.

[20] But herein the present case, it is not in dispute that Panchiyabhai Gosaibhai has died and after that heirship entry for his heirs was carried out in the year 2002 and therefore detail discussions on those documents are not required.

[21] Looking to Exh.152, it is a mutation entry No. 2777 submitted by Talati Vesu in his deposition and this entry is also submitted by the plaintiffs by Exh.93 and hence further discussion on this entry is not required. Along with this entry No. 2777, notice U/s 135 of Bombay Land Revenue Code has been submitted by Exh.153 and looking to this entry it seems that notices were served on the persons who had relinquished their rights from the suit land and they have consented in the notice and present plaintiffs have also signed in these notices. Questions relating to signature have been asked in cross-examination of plaintiffs but discussion on those questions have already been made earlier and therefore repetition on those questions are not required. Along with notice, consent reply was given the persons who had relinquished their rights from the suit land before Talati of Vesu and consent have been submitted by Exh.153 and looking to this consent reply it seems that the plaintiffs have also given their consent reply before Talati of Vesu and the present plaintiffs have signed in that consent reply contract for relinquishment of right from the suit land has been submitted along with entry No. 2777 by Talati of Vesu and looking to the contract it seems that this contract is the same contract which has been submitted by the plaintiffs by Exh. 95 and this contract has already been discussed in para wise and therefore repetition on the same is not required.

[22] On appreciation of the evidence led by both parties it seems that the present plaintiffs have come before the Court with a case that they are heirs of Panchiyabhai Gosaibhai and they are claiming in the suit as daughters of Panchiyabhai Gosaibhai and the plaintiffs have come before the Court with a case that they are daughters of Panchiyabhai Gosaibhai and therefore their right is involved in the properties left out by Panchiyabhai Gosaibhai and the Panchiyabhai Gosaibhai has been died intestate and therefore under the provision of Hindu Succession Act they have equal share as son of Panchiyabhai Gosaibhai have and they never relinquished their rights from the suit land but the defendants and their predecessors had taken the signature of the plaintiffs by misrepresentation and telling that it is necessary for heirship entry but the plaintiffs have never relinquished their rights from the suit land and the facts that one agreement for relinquishment of their right from the suit land has been executed had come to the knowledge of the plaintiffs when they searched about the suit land through their son Harshadbhai and after that they have filed this suit. Moreover, the plaintiffs have claimed in their plaint that if there is an agreement of relinquishment of their right then registration under the provision of Registration Act is compulsory for that contract and the said contract has not been registered as per provision of Registration Act and therefore that deed for relinquishment of right can not taken into consideration.

[23] For this it is required to check that whether agreement for relinquishment of right by any heir is required to be compulsorily

registered under Registration Act, in this regard Ld. Advocate for the defendant No. 1 to 4, 7 to 11 and 13 to 24 has relied upon the circular passed by the Government of Gujarat dated 05.04.1983 by No. HKP-1083-252-J. Looking to this circular it seems that the Government of Gujarat has made it clear that partition of family property is not compulsory required for registration as per provision of Registration Act. Similarly looking to the circular of Government of Gujarat which is relied upon by the Ld. Advocate for the defendants it seems that stamp duty is not required for partition of family arrangement. Similarly Ld. Advocate for the defendants has submitted circular of Government of Gujarat 10216-1017-K dated 14.03.2016 and 17.10.2017. Looking to this circular it seems that this circular is of 2017 and by this circular by Government of Gujarat has made it clear that when any person relinquished his right from the family property and no money transaction is involved in said transactions then registration of documents is not required when such land is transferred from agricultural land to non-agricultural land.

(1) Ld. Advocate for the defendants has relied upon the judgment of our own Hon'ble High Court of Gujarat in a case of ***Shri Dattatray Ganpatrao Survey V/s Heeraben D/o Deceased Bhagvanbhai M Patel reported in 2023 (1) Cur CC 330***. Looking to this judgment it seems that Hon'ble Gujarat High Court has made it clear that if any person relinquishes his right in immovable property, in a family arrangement, there is no need of registration as per registration act.

(2) Ld. Advocate for the defendants has relied upon the judgment of Hon'ble Apex Court in a case of ***Maturi Pullaiah and Another V/s Maturi Narasimham and others reported in AIR 1996 SC 1836*** wherein it has been held that the Hon'ble Apex Court has guided all the persons of gone that family arrangement will not generally be distributed by Court. I humbly agree to the guideline of Hon'ble Apex Court but looking to the facts of this case this judgment is not applicable in the present case because herein this case there is no question involved for distribution of family properties.

(3) Ld. Advocate for the defendants has relied upon the judgment of Hon'ble High Court of Gujarat in a case of ***2010 (1) GLH 302, Shashikant N Patel and others V/s Arvindbhai B Gohil*** and others wherein it has been observed that family arrangements may be made orally without any registration and it would not be register able when it is a memorandum or a piece of evidence of the family arrangement already made.

(4) Similarly Id. Advocate for the defendant has relied upon the judgment of Hon'ble Apex Court in a case of ***Ram Charan V/s Girja Nandini Devi & Ors. reported in AIR 1966 SC 323*** wherein the Hon'ble Apex Court has held that compromise between parties in a previous suit was family settlement and therefore its registration was not required. I humble agree with a ratio laid down by the Hon'ble Apex Court but looking to the facts of this case this judgment is not applicable in the present case.

(5) Ld. Advocate for the defendants has relied upon the judgment of Hon'ble Apex Court in a case of ***Ranganayakamma V/s K.S. Prakash (D) By L.Rs reported in 2008 (0) GLHEL_SC 41537*** wherein it has been held by the Hon'ble Apex Court that the deed of partition could have also been entered into by way of family arrangement where no registration was required.

(6) Ld. Advocate for the defendants has relied upon the judgment delivered by the Hon'ble High Court of Gujarat in a case of ***Heirs of Deceased Maniben D/o Naranbhai & Wd/o Kantilal N Patel V/s Heirs of deceased Dwarkabhai N Ishvarbhai and others in a second appeal No.109 of 2016 and Civil Application No. 4522 of 2016***. I humbly agree with the judgment of Hon'ble High Court but this judgment on order 7 rule 11 (d) of CPC and herein the case, the present suit is on final decision and therefore more discussion is not required.

(7) Similarly Ld. Advocate for the defendants has relied upon the judgment of Hon'ble Supreme Court in a case of ***Korukonda Chalapathi Rao V/s. Korukonda Annapurna Sampath Kumar, reported in 2021 (0) AIJEL_SC 67801***. Looking to this judgment in this case, the Hon'ble Supreme Court has made it clear that partition of family property is not compulsory deed of registration under the provision of Indian Registration Act.

(8) Ld. Advocate for the defendants has relied upon the judgment of Hon'ble Supreme Court in a case of ***Kale V/s Dy. Director of Consolidation reported in 1976 (0) GLHEL_HC 13690***

wherein the Hon'ble Apex Court has ruled that family settlement is not required to compulsorily register .

(9) Ld. Advocate for the defendants has relied upon the Judgment of Hon'ble Supreme Court in a case of ***Ramdas Chimna V/s Pralhad Deorao, reported in 1964 (0) AIJ-MH 109535*** wherein the Hon'ble Bombay High Court has ruled that oral relinquishment made by Bainabai of her interest in the joint family property in favour of her two sons was valid.

[24] Looking to the circulars submitted by Id. Advocate for the defendants it is clear that the Hon'ble Gujarat Government has issued circulars that when any member of the family relinquished his right from family property then it's registration is not compulsory and even stamp paper is not required on such document. Similarly all the judgments relied upon by the defendants' advocate and in these judgments the Hon'ble Apex Court and Hon'ble High Court has made it clear that family arrangement is not compulsorily required to be registration and when any partition is carried out between member of joint family property then also it's registration is not compulsory under the Registration Act. Looking to all this circulars and authorities cited by the Ld.Advocate for defendants it seems that there is no force in the Plaintiff's contention that without registration a deed of relinquishment of right has no value is against the provision of law and therefore it must be overruled.

[25] Plaintiff's other contention that they have not executed deed of relinquishment of right and their signatures were taken by misrepresentation but Looking to the deposition of Notary Public

,he is an independent witness and he has no relation either with plaintiffs or with defendants and he has clearly stated on oath that at the time when relinquished deed was executed all the parties of the contract was remained present before the Notary and they have signed in the presence of Notary Advocate and all the persons were relinquished deed their rights had signed in notary register. Similarly looking to the deposition of Talati Vesu he has submitted the replies which were taken at the time of mutation entry and those replies have been submitted from the Government record and looking to those replied it seems that the present plaintiffs had also accepted the entry No. 2777 and their replies were taken in the presence of Talati and they had signed before Talati.

[26] At this juncture, I would like to reproduce of **section 35 of the Evidence Act which states that** **Relevancy of entry in public (record or an electronic record) made in performance of duty** :*" An entry in any public or other official book, register of record of an electronic record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book register, or (record or an electronic record) is kept, is itself a relevant fact."*

[27] Looking to this provision when any entry made by a public servant in the discharge of his official duty especially enjoyed by the law of the country in which such a book register or (record of an electronic record) is kept is itself a relevant fact. Herein the present case, it is undisputed facts that Talati of Vesu is a public

servant and he made entry No. 2777 in his official capacity and the notice served by him U/s 135 of the Bombay Land Revenue Code is his public duty and in performance of his public duty he has taken signature of present plaintiffs and he recorded the replies of all the persons effected by entry No. 2777 and those replies have been submitted from public record then there is no question for not believing those replies, and if plaintiffs were aggrieved by such reply then they could have taken action for that ,and if false signature were taken then they could have lodged complaint against those persons who had made false signature of them but the plaintiffs had not made such exercise and this entry No. 2777 has been made out in the year 2002 and the plaintiffs have challenged this entry by this suit in the year 2014 i.e. almost after 12 years, this 12 years is very long span and during this time the plaintiffs had not claimed in this property , even it is not a case of the plaintiffs that they had possession in the suit land. The plaintiffs father had died in the year 1981 and this suit has been filed in the year 2014 so if the plaintiffs' right was involving in the suit land and the defendants who are brothers of plaintiffs had denied the plaintiffs right then immediately the plaintiffs could have raised their objection against that act but the plaintiffs have not done anything till filing of the suit in the year 2014 and in this suit also the plaintiffs are unable to prove that false signature of them were taken ,and the plaintiffs have not denied their signature in the deed of relinquishment of right but they are claiming that their signature were taken on telling that it is required for heirship entry ,but heirship entry was already mutated and the plaintiffs name were already mutated as heirs of deceased

Panchiyabhai Gosaibhai and therefore the plaintiffs contention that their signatures were taken by misrepresentation is not acceptable.

[28] Moreover, the plaintiffs in this case have prayed for declaration that entry No. 2777 is null and void but under the provision of **Section 9 of The Code Of Civil Procedure** , When alternative remedy is available then Civil Court has no jurisdiction and plaintiffs have already challenged the entry No. 2777 before City Prant Officer and Assistant Collector of Surat who are competent authority for decide whether mutation entry was correct or not and that authority has dismissed the plaintiffs appeal and that decision of Assistant Collector Surat has justified by the Collector of Surat in revision application and the plaintiffs have not challenged that decision of Collector before Revenue Tribunal (this competent authority) or in the Hon'ble High Court and without performing the proper procedure the plaintiffs have challenged this entry before the Civil Court and therefore this Court has no right to declare mutation entry as nullity or bogus and under such circumstances, I am of the view that the plaintiffs are unable to prove their case and therefore I reply the Issue No. 1 to 9 are In Negative and I passed the following final order for issue No.10.

:- Order:-

1. The plaintiffs suit is hereby dismissed.
2. Status Quo order passed below Ex.5 is hereby vacated.
3. Both parties shall bear their own cost.
4. Decree be drawn accordingly.

Signed & Pronounced in the open court today on 24th
November, 2023.

Date:-24-11-2023
Surat

(Arafat A. Vayda)
8th Additional Senior Civil Judge,
Surat. UIC No. GJ00986