Received on : 05/11/2022

Registered on : 05/11/2022

Decided on : 04/03/2025

Duration : 2 yrs 3 m 27 days

In the Court of Principal Civil Judge, at Amirgadh. Dist.B.K.

R.C.S.No.42/2022

Exhibit –153

Plaintiff : 1 Babubhai Rajabhai Patel,
Age.65, Occupation. Agriculture

2. Ambalal Rajabhai Patel,
Age.55.Occupation. Agriculture,
Both Residing of farm house, Iqbalgadh,
Tahesil. Amirgadh, Dist. Banaskantha

Defendant : 1. Dahyabhai Rajabhai Patel.
Age. Adult, occupation. Agriculture,
Residing of farm house, Iqbalgadh,
Tahesil. Amirgadh, Dist. Banskantha

2. Mahendrbhai Dahyabhai Patel,
Age. Adult, occupation. Agriculture,

3. Dineshbhai Dahyabhai Patel
Age. Adult, occupation. Agriculture

4. Hasmukhbhai Dahyabhai Patel
Age. Adult, occupation. Agriculture,

5. Vinodbhai Dahyabhai Patel
Age. Adult, occupation. Agricultur

Def.no.2 to 5 Resi of, Iqbalgadh, Dist, Banaskantha

6. Rabari Malabhai Narsingaji
   Res. of Sonvadi, Tahesil. Amirgadh, Dist. Banaskantha.

Ld. Adv. for the Plaintiffs : Mr. R.M.Parmar

Ld. Adv. For the Def. no.1 to 5 : P.R.Eran

Ld. Adv. For the Def. no.6 Mr.S.P.Agrawal

Suit for Declaration and Perpetual Injunction/-

-: J u d g m e n t :-

1. The plaintiffs have filed this suit seeking a declaration that the plaintiffs are the legal owners and occupiers of the land in their possession, and the plaintiffs have also sought a perpetual injunction that the defendants, their servants, and agents shall not interfere with the plaintiffs' possession and cultivating of the suit lands, and the plaintiffs have also sought that the sale deed executed by the defendant no. 1 to 5 in favor of the defendant no. 6 during the pendency of the suit be void ab initio.

2. The fact of the present suit is that the plaintiffs reside at the address mentioned in the suit and the defendant is the elder brother of the plaintiffs and the lands bearing Revenue Survey No. 296, 310 and 312 situated in Iqbalgadh are jointly cultivated by the plaintiffs and the defendant. Survey No. 310. Admeasuring hector 2 - 42 - 65 Sq. m. and Survey No. 312. hector 1 – 86 - 46 Sq. m. had been in the possession and ownership of their father Rajabhai Meghjibhai Patel since he purchased the lands which are hereinafter referred to as the suit Lands. Further, the

plaintiffs have stated that around the year 1990, during his lifetime, his father had verbally divided the suit lands between the plaintiffs and the defendant and assigned the possession of the lands to the plaintiffs and the defendant in separate shares, and accordingly, the plaintiffs and the defendant have been cultivating in their own independent shares. The plaintiffs have further stated that a bore well was constructed for irrigation in the portion of plaintiff no. 2 in the land of survey no. 310. Further, the plaintiffs have stated that their father passed away four years ago, and prior to that, as he was of advanced age, the defendant was managing the administration of the suit lands, and the plaintiffs were handling the agricultural work. Further, the plaintiffs have stated that three months ago, the defendant refused to let the plaintiffs take water from the bore well located in the land belonging to plaintiff No. 2 and started arguing with the plaintiffs about the possession of the land so that the plantation crops were not damaged; the plaintiffs took water for irrigation from the fields of neighbors and continued to irrigate the plantations. Further, the plaintiffs stated that the defendant was trying to sell the suit lands by claiming that he was the sole owner of the suit lands, and different individuals were brought there by the defendant so that the people and agents who came there for the purpose of purchasing the suit lands were informed by the plaintiffs that the suit lands was theirs as well as the defendant jointly. As a result, the defendant began to argue with the plaintiffs. In addition, the plaintiffs have stated that recently the defendant threatened the plaintiffs to leave the possession and leave with the family and stated that I am the sole owner of the suit lands, so I am going to sell the suit lands, and I have made a land deal. The plaintiffs have conducted an inquiry and found that only the name of the defendant alone runs in the revenue records of the suit lands. Further, the plaintiffs have stated that though the suit lands were purchased by their father around the year 1974, the defendant has been trying to sell the suit lands on the basis of false and fabricated revenue records and has been threatening the plaintiffs to vacate the possession and move away; therefore, prayed to allow the suit.

3. The defendant has denied the whole case of the plaintiffs by filing their statement of defense at exh. 19 and further averred that the suit lands were purchased by the defendant from the original owner vide registered sale deed No. PLP/89/2005 on January 10, 2005, as well as registered sale deed no. PLP/721/2007 on February 21, 2007. Thus, since the suit lands have been purchased by the defendant out of his own hard-earned money, the suit lands are the self-acquired property of the defendant, and the plaintiffs have nothing to do with it. Further, the defendant has stated that the name of the defendant alone has been running in the revenue records ever since the suit lands were purchased by him. Further, the defendant has stated that after purchasing the suit lands, he has taken crop loans occasionally, in respect of which entry nos. 1991 and 2852 have also been recorded in the revenue records. The defendant has further stated that the plaintiffs have stated in the plaint that the fact that the father of the plaintiffs and the defendant had purchased the suit lands around 1974, but the plaintiffs have not produced any such registered sale deed, and no entry in the name of the plaintiffs and their father has been recorded in the revenue records from 1956 to date, and no such sale entry has been recorded. Thus, the suit lands do not belong to their father or are not inherited by the defendant or the plaintiffs, but the plaintiffs have

filed a false suit for the purpose of extorting money from the defendant illegally. Further, the defendant stated that the plaintiffs have misled the court by misrepresenting the cardinal direction of the suit lands, and the plaintiffs have deliberately not mentioned the old survey numbers of the suit lands in the plaint. Further, the defendant has stated that the plaintiffs have not constructed any bore well on the suit lands. In fact, the bore well mentioned in the old survey no. 21/1/29/p2 (new survey no. 296) of the suit lands was constructed by the original owner of the land, Mashraji Vanaji Koli, and for that, an electricity connection was obtained from the North Gujarat Electricity Company on May 23, 2001. Thereafter, the land and bore well were purchased by Mohanbhai Khimjibhai Patel from Koli Mashraji Vanaji on June 30, 2004, through a registered sale deed no. 2425/2004, and entry no. 1655 regarding that was recorded in the revenue records, and thereafter the defendant purchased the land and bore well through registered sale deed no. PLP/89/2005 on January 10, 2005, and had the electricity connection transferred in his name, which electricity connection is still running in the name of the defendant. Further, the defendant has stated that he had built three houses on the suit lands, in one of which the defendant lives with his family, and in the remaining two houses, he used to keep cattle in the past, but the defendant's father was old and had no place to live, so the defendant gave a house to the father to live in without any kind of rental agreement and without charging rent, and his father's name was entered in the assessment sheet of that house and the electricity connection was obtained in his father's name; thus, as per the provisions of the law, ownership right cannot be created just because of the name in the assessment register of the Gram Panchayat. Moreover, after the death of the father, the defendant himself has paid the electricity bill. Thus, the plaintiffs do not have any share in the suit lands, and since the suit lands are the self-acquired property of the defendant, the defendant has full right to sell that property. Further, the defendant has not had any quarrel or dispute with the plaintiffs, but in fact, since the plaintiffs live with their families and the defendant is alone and old, the plaintiffs threaten the defendant to leave the suit lands, so the defendant, fed up, has decided to sell the suit lands and move to his sons' house permanently. When the plaintiffs came to know about this, Arvindbhai Babubhai Patel, the son of plaintiff no. 1, told the defendant's son that Dinesh, you and your father want to sell these lands and move away, but we have filed a suit against your father in the Amirgarh court, and even if that suit is dismissed, we have many other ways; we will frame you by filing false cases like rape, molestation, and assault against your father and you, and if you sell the lands, you will have to pay us half of the sale price; otherwise, we will frame you by filing false cases against your father and the land buyer, etc. Regarding the facts, the defendant's son Dineshbhai has given a written complaint to Amirgarh Police Station and Superintendent of Police Palanpur. Further, the defendant has stated that the defendant's name has been mentioned in the revenue records of the suit lands for the last 17 years, and the plaintiffs have never raised any objection to it, and the defendant's wife died on 18/11/2020, and since then the defendant was left alone. The defendant has decided to go to Pune to live, where his sons live, and on 10/08/2022, he received a cheque of Rupees five lakh as earnest money from Babubhai Khemabhai Parmar, a resident of Sarotra, and he has also got a sale agreement executed before a notary regarding the sale of the suit lands, and the plaintiffs are aware of that fact. The plaintiffs have no locus standi, but the plaintiffs have filed a false suit against the defendant. Thus, despite the plaintiffs having no cause of action, the plaintiffs have filed the present suit on the basis of false and non-existent facts to illegally obtain financial benefits from the defendant so that if the suit is granted, the defendant will suffer unbearable loss, and therefore, prayed for dismissal of the suit with costs.

4. The plaintiffs then filed a rejoinder affidavit vide exh. 21 and denied all the facts of the written statement of the defendant and further stated that Rajabhai Meghjibhai Patel, the father of the plaintiffs and the defendants, had purchased 7 acres 26 guntas of land in Survey No. 21/1/13 in Iqbalgadh during 1971-72 from its original owners Koli Raghu Bhagwan, Koli Sitaben Bhagwanbhai, etc. for Rs. 3000/-, and the possession of the land was handed over to Rajabhai Meghjibhai Patel. Thereafter, on June 4, 1974, a sale document was made on stamp paper of Rs. 100/- with serial number 758 and on stamp paper of Rs. 50/- with serial number 759. Furthermore, the land bearing survey no. 21/1/18 in Iqbalgadh was sold by its original owner, Koli Jala Jata Patel, to Dhanjibhai Mavjibhai, and Dhanjibhai Mavjibhai Patel sold that land to the father of the plaintiffs in 1974. Thus, the lands of both survey numbers were in the possession of Rajabhai Meghjibhai, i.e., the father of the plaintiffs and the defendant, since the time of purchase. Further, the plaintiffs have stated that since the said lands belonged to new tenure at that time there was no change of ownership in the revenue records, but the actual possession of both the lands belonged to Rajabhai Meghjibhai Patel father of the plaintiffs and the defendant and as the possession and shares were running contrary to

the DILR records in the Revenue Records and every part of survey no.21/1 was rectified and rectified sheet was made by DILR and survey no.21/1/13 was given new survey no.21/1/30 and its area was decreased acre 6-13 gunthas instead of acre 7-26 gunthas and survey no.21/1/18 was given new survey no.21/1/29 and its area was decreased acre 5 - 02 gunthas instead of acre 14-04 gunthas and entry no.492 was recorded wherein particulars of suit lands has been mentioned. Further, the plaintiffs have stated that to convert the suit lands from the new tenure to the old condition, the defendant obtained power of attorney in his name from the original owners and filed an appeal no. 5793 before the Deputy Collector Palanpur against the order of the Mamlatdar Palanpur, and that appeal was granted on December 31, 1993, and entry no. 1152 regarding that was recorded on December 01, 1994. The defendant then obtained power of attorney in his name from the original owners running in the revenue records and applied for conversion of the suit lands to the old tenure, and the mamlatdar granted that application on December 20, 1996, and entry no. 1292 regarding that was recorded on January 15, 1997. Thereafter, the agricultural land bearing survey no. 21/1/29 out of the suit lands was sold by the defendant on the basis of power of attorney to Mohanbhai Khimjibhai Patel through a registered sale deed on January 20, 1997, so that the names of the original owners were removed from the revenue records, and entry no. 1298 regarding that was recorded on February 3, 1997. Thereafter, acre 0 - 24 gunthas land of the above survey numbers was sold to Mohanbhai Khimjibhai Patel by registered sale deed on January 08, 2001 to Koli Masraji Vanaji, and on June 20, 2004, it was sold back to Patel Mohanbhai Khimjibhai with a three-phase electricity connection by registered sale deed no. 2425, regarding which entry no. 1655 was recorded on June 30, 2004. Thereafter, the land bearing survey no. 21/1/29 was purchased by the defendant from Mohanbhai Khimjibhai by registered sale deed no. 89 on January 10, 2005, and entry no. 1702 regarding that was recorded on March 30, 2005. Further, the plaintiffs have stated that by the order of Mamlatdar Amirgarh dated 29/11/2003, the land bearing survey no. 21/1/30 was converted to old tenure, regarding which entry no. 1618 was recorded on December 01, 2003, after which the defendant purchased the land bearing survey no. 21/1/30 from the original owners of the land on February 21, 2007, through registered deed no. 721, regarding which entry no. 1875 was recorded on March 17, 2007. Further, the plaintiffs have stated that the name of their father could not be entered at that time due to the fact that the father of the plaintiffs and the defendant was residing and doing business at different places and the agricultural land was not being run in the name of their father in the revenue records at that time, and there was a provision in the Tenancy Act that the farmer could buy agricultural land only within the limit of 8 km, and that restriction was removed in 1996; the plaintiffs and the defendant's father did not own any agricultural land within a radius of 8 km from the suit lands. Further, since the defendant was elder than the plaintiffs, the defendant was handling all the administration of the suit land, and to convert the land in old tenure, the defendant obtained power of attorney in his name from the original owners and had the land transferred into the names of different individuals and thereafter had the suit land transferred in his name on the basis of the false certificate of the agriculturist obtained from Mamlatdar Bhiloda.

5. The plaintiffs had filed an application for interim injunction under Order 39, Rule 1, 2 of the Civil Procedure Code, which application was partly allowed considering the fact that the plaintiffs were residing in the suit lands. Thereafter, since the defendant had sold the suit lands, the plaintiffs filed an application to join defendant no. 2 to 6 as parties vide exh. 27, which was allowed by this Court, and vide exh. 54, the plaintiffs filed an application to add a relief in the plaint that the sale of the suit lands made by defendant no. 1 to 5 to defendant no. 6 during the pendency of the suit is void ab initio, which was allowed by this Court. Thereafter, the plaintiffs filed an application vide. Exh. 61 to add an issue, which was partly allowed on December 4, 2024, and the effect of that order was given in Exh. 24. The plaintiff no. 2 has submitted his examination-in-chief vide exh. 62, the plaintiffs also examined the witness Mohanbhai Khimjibhai Patel vide exh. 62, and the Talati-Cum-Mantri and Deputy Mamlatdar have also been examined as witnesses by the plaintiffs vide exh. 80 and 125. The defendants have not produced oral evidence. The plaintiffs have filed their closing pursis vide exh. 141, whereas the defendants have filed their closing pursis vide exh.70 and 71.

6. Since the plaintiffs or their pleader were not present on the day of the final hearing, the plaintiffs' right to argue has been closed, however, I have discussed the contention raised through their pleadings in detail in the judgment. Defendants No. 1 to 5 and 6 have submitted written arguments vide. Exh.151 and 152, in which the details as per their written statements have been mainly shown.

7. The following documentary evidences have been produced by the plaintiffs in support of their case.

Exhibit	**Description**
81	Village form no.7 A/c no. 538, survey no.296,
82	Village form no.7, survey no.312
83	Village form no.6, entry no.79
84-85	Village form no.6, entry no.121
86	Village form no.6, entry no.193
87	Village form no.6, entry no.215
88	Village form no.6, entry no.219
89	Village form no.6, entry no.236
90	Village form no.6, entry no.269
91	Village form no.6, entry no.279
92	Village form no.6, entry no.282
93	Village form no.6, entry no.375
94	Village form no.6, entry no.465
95	Village form no.6, entry no.484
96	Village form no.6, entry no.487
97	Village form no.6, entry no.492
98	Village form no.6, entry no.1086
99	Village form no.6, entry no.1152
100	Village form no.6, entry no.1240
101	Village form no.6, entry no.1241
102	Village form no.6, entry no.1292
103	Village form no.6, entry no.1298
104	Village form no.6, entry no.1340
105	Village form no.6, entry no.1432
106	Village form no.6, entry no.1477
107	Village form no.6, entry no.1479

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108	Village form no.6, entry no.1565
109	Village form no.6, entry no.1617
110	Village form no.6, entry no.1618
111	Village form no.6, entry no.1655
112	Village form no.6, entry no.1702
113	Village form no.6, entry no.1867
114	Village form no.6, entry no.1875
115	Village form no.6, entry no.3363
116	Village form no.6, entry no.3392
117	Village form no.6, entry no.3421
118	Village form no.6, entry no.3441
119	Village form no.6, entry no.3442
120	Village form no.6, entry no.3472
121	Village form no.6, entry no.3473
126	Authority letter issued by Mamlatdar
127	Application form to enter the entry no.1702
128	Certificate of account holder as agriculturist
129	Copy of Sale deed no.89 of 2005, date.10/01/2005
130	Village form no.8A, A/c no.91
131	Notice of Sec.135 D of Land Revenue Code

8. The following documentary evidences have been produced by the defendants in support of their case.

Exhibit	**Description**
134	Sale deed no.89 of 2005, date.10/01/2005

135	SBI, Iqbalgadh Branch, Annexure. A
136	Bill issued by UGVCL of suit lands.
137	Application to Amirgadh Police station

9. The issues have been framed vide exh. 24 on 06/05/2023, and then on the basis of the plaintiff's application No. 63, issue No. 3 has been added.

1. Whether the plaintiffs prove that the suit lands were purchased by their father in 1974. ?

2. Whether the plaintiffs prove that the suit lands were divided verbally by their father and handed over possession of the land to the three brothers by giving them separate shares of land with a verbal division by their father?

3. Whether the defendant proves that he has become an independent owner and occupier of the suit land since the suit lands were purchased with a registered sale deed?

3A.Whether the plaintiffs prove that the defendants Nos. 1 to 5 have sold the suit lands during the pendency of the suit even though they had no right?

4. Whether the plaintiffs are entitled to the relief sought?

5. What order and what decree?

9.1. My decisions upon above issues are;

Issues	findings
1	In Negative
2	In Negative
3	In affirmative
3A	In negative
4	In negative
5	As per order

10. Reasons for the Decision

Issue no.1 and 2

The issues no. 1 and 2 are interconnected with each other; therefore, they are discussed together to avoid repetition. The plaintiff no. 2, Ambalal Rajabhai Patel, has submitted his examination in chief vide exh. 62, wherein he has reproduced the facts of the plaint. In cross-examination by Ld. Adv. for the defendant no. 1 to 5, the plaintiff no. 2 has stated that “My native place is Dajapur Dist. Kutchh, Tehsil. Mandvi. It is true that in my native place, my father and grandfather owned agricultural land and used to cultivate it. We left the cultivation there and came to Sabarkantha for cultivation. From Sabarkantha, we came to Banaskantha for cultivation in the year 1974. It is true that I have not produced any documentary evidence to show that the suit lands were purchased by my father. It is true that there is no entry that has been recorded in the revenue in my father’s name regarding the purchase of suit lands. It is true that we have not produced any document to show that our father divided the property among three brothers and handed over the suit lands to us. It is true that I have not produced any documentary evidence to show that I have constructed a bore well and obtained an electricity connection on the suit lands. It is true that there was no electricity connection of suit lands in the name of the plaintiff in the past and not even today. It is true that the electricity connection of the suit lands is in the name of the defendant Dahyabhai Rajabhai. It is true that the name of the defendant, Dahyabhai Rajabhai, runs as owner and occupant of the suit land in the revenue records. It is true that the defendant, Dahyabhai Rajabhai, had obtained a crop loan from the SBI Iqbalgadh branch in the year 2008. It is true that we were aware of the fact that the defendant, Dahyabhai Rajabhai, had obtained a crop loan. It is true that we did not raise any objection to the bank at the time the defendant obtained the crop loan. It is true that we did not file any police complaint regarding the defendant Dahyabhai Rajabhai not allowing us to take water from the bore well. It is true that we were aware of the fact that the name of Dahyabhai Rajabhai was mentioned in the revenue records of the suit lands at the time when the defendant, Dahyabhai Rajabhai, took the crop loan. It is true that we have not raised any objection or dispute in the government office regarding the fact that only Dahyabhai Rajabhai's name running in the suit lands, nor have we challenged the entry of the name Dahyabhai Rajabhai before the Revenue Authority. It is true that Dahyabhai Rajabhai purchased the land from the original owner Koli Nenunben Somabhai, Koli Manjulaben Somabhai, Koli Rameshbhai Raghubhai, Koli Virumbaben Somabhai, etc., in the year 2005 and in 2007 from Mohanbhai Khimjibhai Patel, through registered sale deed P.L.P. 89/2005 and registered deed no. PLP. 721/2007. It is true that neither my name nor that of the other plaintiffs runs in the revenue records of the suit lands. It is true that we do not have any evidence to prove that we own this land.

10.1 The plaintiffs examined Mohanbhai Khimjibhai Patel vide exh. 68, who stated during his examination-in-chief that during the year 1971-72, the plaintiff and the father of the defendant, Rajabhai Meghjibhai, had purchased the land bearing Survey

No. 21/1/13 admeasuring Acre. 7 - 26 Gunthas situated in Iqbalgadh from its owners Koli Raghu Bhagwan, Koli Sitabai Bhagwan, and four others, and the seller had handed over the possession and enjoyment to Rajabhai Meghjibhai. Thereafter, the registered sale deed was executed on June 4, 1974. Also, the agricultural land bearing survey no. 21/1/18 situated in Iqbalgadh was purchased by Patel Dhanjibhai Mavjibhai from its original owner Koli Jala Jata, and Dhanjibhai Mavjibhai Patel sold that land to Rajabhai Meghjibhai in the year 1974. The agricultural land of these two survey numbers came into the possession, enjoyment, and ownership of Rajabhai Meghjibhai, but the said land was not transferred in the revenue record for some reason, but the actual possession of the above two survey numbers was with Rajabhai Meghjibhai. Thereafter, since the suit lands were running in the name of the original owners, the defendant Dahyabhai took the power of attorney of the original owners and had necessary changes made in the revenue offices. Thereafter, the agricultural land of survey no. 21/1/29 out of the said suit lands was transferred to our name by the defendant Dahyabhai on the basis of the power of attorney of the original owner of the land through the registered sale deed dated 20/01/1997 and entry no. 1298, was recorded on February 3, 1997. Thereafter, acre 0 - 24 gunthas of the said survey number was transferred to Koli Masraji Vanaji through the registered sale deed dated 08/01/2001 to get an electricity connection. Thereafter, the said survey no. 21/1/29 acre.0-24 Gunthas land with a three-phase electricity connection was transferred in my name through registered sale deed no. 2425 dated 30/06/2004, and entry no. 1655 was recorded in the revenue record on June 30, 2004. Thereafter, the land bearing survey no. 21/1/29 was transferred from my name to the defendant's name on the basis of registered sale deed no. 89 dated 10/01/2005, and entry no. 1702 was recorded in the revenue record on March 30, 2005.Thus, agricultural land of three survey nos. 296, 310, and 312 was purchased only by the Rajabhai Meghjibhai Patel, i.e., the father of plaintiffs and the defendant, during the period from 1972 to 1975. But at that time, the ownership of the said suit lands did not transfer in the revenue record. Therefore, the said suit land was running in the name of the original owners in the revenue record. The witness further stated that the defendant Dahyabhai, as the elder brother, was handling all the administration of the suit lands and the plaintiffs Rameshbhai, Ambalal and the defendant Dahyabhai have been cultivating their share of the suit lands separately as per the division made by their father Rajabhai in 1993 among the three brothers in the suit lands.

10.2 During the cross-examination by Ld. Adv. Mr. P.R. Eran for defendant no. 1 to 5, the witness stated that "My native place is Devpura, Kutch-Bhuj. We came to Iqbalgadh in 1965 to cultivate. Since our father purchased the agricultural land at Iqbalgadh in 1965, we have been cultivating at Iqbalgadh. It is true that I know that I am giving testimony today in the dispute over the land bearing new survey numbers 310, 312, and 296 at Iqbalgadh. It is true that on 20 January 1997, I purchased the said suit land vide registered deed no. PLP 110/1997. Which is recorded in the revenue record vide entry no. 1298. It is true that at the time of execution of the above sale deed, Babulal Rajabhai Patel, the plaintiff no. 1 of the present suit, and Dahyabhai Premjibhai Patel were my witnesses. It is not true that the land I purchased was running in the revenue records in the name of the original owner who sold it to me before I purchased it. It is true that I know that the person who deals with any property or immovable property should be the original owner. It is true that I am not aware of whether the original owner of this property has sold it to any other person before selling it to me. It is true that I have sold this land to the present defendant no. 1 by obtaining the full consideration through registered deed no. PLP 89/2005 and given possession. I do not know whether some of the remaining land of this land was purchased by the present defendant no. 1 through registered document no. PLP 721/2007 from the original owners of the land, Koli Nenuben Somabhai, Koli Manjulaben Somabhai, Koli Rameshbhai Raghubhai and Koli Virubaben Somabhai, etc. It is true that the land I purchased on 20th January 1997 through registered deed no. PLP 110/1997 was not sold to the present plaintiffs but only to the defendant no. 1, Dahyabhai Rajabhai Patel. It is true that I have no basis regarding the fact that the plaintiff and defendant's father, Rajabhai Meghbhai, purchased the land around the year 1971-72 from the original owners of the land, Koli Raghu Bhagwan, Koli Sitabai Bhagwan, etc., through a registered deed dated 4/6/1974 mentioned in para.2 of my examination-in-chief. It is true that I have no basis regarding the fact that the land was divided among the three brothers, the plaintiff Rameshbhai, Ambalal, and the defendant Dahyabhai, by their father Rajabhai in the year 1993 mentioned in para.4 of my examination-in-chief. The witness states that the division was made orally. It is not true that I have filed a false affidavit in support of the plaintiff's suit.

10.3 The plaintiffs have examined Talati-Cum-Mantri, Rajubhai Shivabhai Nadoda; vide exh.80. The witness has produced revenue records of suit lands. The witness has submitted copies of 7/12 and 8 A of Revenue Survey No. 296 of Account No. 538 vide exh. 81, copies of 7/12 of Revenue Survey No. 310 of Account No. 538 vide exh. 82, as well as copies of 7/12 of Revenue Survey No. 312 of Account No. 538 vide exh. 83 and the entry no. 79 of the revenue record of the suit lands vide exh. 84. Entry No. 121, which is the order of Mamlatdar Palanpur, vide exh. 85. Then entry No. 193 is of the revision survey, and the entry has been recorded on the basis of the order of the District Officer, Palanpur, which is submitted vide exh. 86. Then entry no. 215, which is recorded on the basis of the order of Mamlatdar Palanpur regarding the classification of land, is submitted vide exh. 87. Then entry no. 219, which is recorded on the basis of the order of Mamlatdar Palanpur as per section 20 of the Forest Act, which is submitted vide exh. 88. Then entry no. 236, which is the entry of the new tenure, is recorded by the order of Collector Banaskantha, in which the names of Koli Jala Jata and Koli Dharma Nanji are entered, which is submitted vide exh. 89. The details of Dharma Nanji and Jala Jata having paid the amount of possession right are shown in entry no. 269, which is submitted vide exh. 90. Entry no. 279 regarding the deposit of 6 pats as per the order of the Collector, which is submitted vide exh. 91. Entry No. 282 regarding the names of the heirs of Bhagvan Hemraj, which is submitted vide exh. 92. For violation of the new condition, as per the order of Deputy Collector Palanpur, the property was registered in the name of the government, and since the original account holder belongs to the backward class, it was returned to them as per the new and restricted tenure and its entry no. 375, which is submitted vide exh. 93. By the order of Collector Banaskantha, entry no. 375 has been cancelled vide entry no. 465, which is submitted vide exh. 94. The entry no. 484 regarding irrigation has been submitted vide exh. 95. By the order of Deputy Collector Palanpur, the entry no.487 to enter the name of the original account holder Koli Jalabhai Jatabhai has been submitted vide exh.96. The entry regarding the correction of the portion of the land record branch is submitted vide exh. 97. The entry no. 1086 regarding entering the names of legal heirs of the deceased Koli Raghu Bhagwan in the revenue record of Old Survey No. 21/1/30 and 21/1/32 is submitted vide exh. 98. As per the order of Collector Banaskatha, the land was transferred from the new tenure to the old tenure, regarding which entry no. 1152 has been recorded, which action has been taken by Dahyabhai Rajabhai Patel as the power of attorney holder of Jalabhai and Sitaben Bhagwan, which is submitted vide exh.

99. The entry no. 1240 regarding entering the names of the heirs of deceased Koli Sitaben Bhagwan, which is submitted vide exh. 100. The entry no. 1241, which is regarding entering the names of the heirs of deceased Jalabhai Jetabhai, is submitted vide exh. 101. Dahyabhai Rajabhai Patel, as the power of attorney holder of Harchandbhai Jalabhai, etc., applied to convert the land to the old tenure, and on payment of the premium amount, the land was converted to the old tenure, regarding which the entry no. 1292 has been recorded, which is submitted vide exh. 102. Dahyabhai Rajabhai Patel, as the power of attorney holder of Harchandbhai Jalabhai, etc., sold the land to Mohanbhai Khimjibhai, regarding which entry no. 1298 is recorded, which is submitted vide exh. 103. Entry no. 1340 is the order of rejecting entry no. 1086, and the legal heirs of Koli Raju Bhagwan were ordered to be entered in the revenue record, which is submitted vide exh. 104. Entry No. 1432 is regarding entering the names of Bhagvan Hemraj by order of Deputy Collector Palanpur, which is submitted vide exh. 105. Entry No. 1477 has been recorded regarding the land sold by Mohanbhai Khimjibhai Patel to Koli Masharaji Vanaji, which is submitted vide exh. 106. Entry No. 1479 has been recorded regarding the order to cancel the order to enter the names of Sitaben's heirs, which is submitted vide exh. 107. Entry No. 1565, which is the order of the Deputy Collector Palanpur to cancel Entry No. 1086 and confirm Entry No. 1432, which is submitted vide Exh. 108. Entry No. 1617, which is about removing the name of Kantaben Somabhai, is submitted

vide exh. 109. Entry No. 1618, which is about the order of the Mamlatdar Amirgarh to convert the land to the old condition, is submitted vide exh. 110. Entry No. In 1655, Koli Mashraji Vanaji sold the land to Patel Mohanbhai Khimjibhai, and according to this entry, at that time the land bearing survey no. 21/1/29 P2 was non-agriculture, is submitted vide exh. 111. Entry No. 1702, which is regarding the land sold by Mohanbhai Khimjibhai Patel to Dahyabhai Rajabhai, was recorded on the basis of the certificate of the farmer's account holder issued by Bhiloda, Ta. Bhiloda, Dist. Aravalli, which is submitted vide exh. 112. Entry No. 1867 is about entering the names of Shobhanaben Somabhai's heirs after her death, is submitted vide exh. 113. Entry No. 1875 of the sale made by Koli Nenunben Somabhai to Dahyabhai Rajabhai Patel which is submitted vide exh.114. Entry No. 3366 regarding the names of the heirs entered by Dahyabhai Rajabhai Patel during his lifetime which is submitted vide exh.115. Entry No. 3392 regarding Dahyabhai Rajabhai Patel sold suit lands, i.e., survey no. 296, 310, and 312, to Malabhai Narsigaji Rabari, which is submitted vide exh. 116. Entry No. 3421 of the order of the Deputy Collector's R.T.S. Appeal No. 78/2023 has been submitted vide exh.117. Entry No. 3441 of the order staying the order of R.T.S. Appeal No. 78/2023 has been recorded, which is submitted vide exh. 118. Entry No. 3442, which has been recorded pursuant to the order of the Collector in R.T.S. Revision. No. 11/2023 which is submitted vide exh. 119. Entry No. 3472 is about the order of Appeal no. 81/2024 of the

Collector Banaskantha Palanpur, which has been submitted vide exh. 120. Entry No. 3473 is about the order made by the Collector Banaskantha in Revision Case No. 97/2024, which is submitted vide exh. 121.

During cross-examination by the Ld. Adv., for the defendant No. 1 to 5, Mr. P.R. Eran, the witness stated that it is true that exh. 79 produced vide exh. 83 is a record regarding the land given by the government to many different farmers of Iqbalgadh village for one year of cultivation. It is true that the total area of this record is much larger than the disputed lands. It is true that the land bearing survey numbers 296, 310, and 312 was purchased by Patel Mohanbhai Khimjibhai from the original owners on the basis of the registered sale deed, and he became the owner. It is true that as per the revenue record, entry number 1702, submitted vide 111, the land bearing survey numbers 296, 310, and 312 was sold by Patel Mohanbhai Khimjibhai to the defendant no.1 of the present suit, Patel Dahyabhai Rajabhai, by registered sale deed no. It is true that entry no. 1702 has been recorded on the basis of the sale deed, and it has not been challenged by any person to date. It is true that on the basis of this sale deed, the present defendant no. 1 became the legal owner of these survey numbers. It is true that the present defendant nos. 1 to 5, being the owners of the said property, sold the land bearing survey numbers 296, 310, and 312 to the present defendant no. 6, Malabhai Narsingabhai Rabari, by the registered sale deed, which is recorded in the revenue record, vide entry no. 3392. It is true that the plaintiffs in this suit had filed an appeal before Deputy Collector Data to reject entry no. 3392, which appeal was rejected, and the sale deed made to the defendant no. 6 was approved, and entry no. 3392 was ordered to be certified, and regarding that order, entry 3421 has been recorded. It is true that present plaintiffs challenged the order of Deputy Collector, Data, before the Collector, Banaskantha, and the Collector, Banaskantha, rejected the revision application of the present plaintiffs and upheld the order of the Deputy Collector, Data, which was entered in the revenue record vide entry 3472. It is true that the name of Malabhai Narsingabhai Rabari runs in the revenue record of the suit lands.

10.4 The plaintiffs have examined Deputy Mamlatdar E-Dhara Amirgarh vide exh.129; the witness remained present along with the relevant record of entry no.1702 of lands bearing survey nos. 296, 310, and 312. It has further been stated by the witness that 1702 is a record of the sale of revenue survey nos. 21/1/29/p1 and 21/1/29/p2 of Iqbalgadh village, which has been recorded by taking into account the registered sale deed as well as the lands' 7/12 and 8A and its relevant entries and the supporting evidence that the seller is a agriculturist. The documents submitted for registration of entry no. 1702 include the application form made by Patel Dahyabhai

Rajabhai. A certified copy of which has been submitted by the witness vide exh.127 and the certificate of Patel Dahyabhai Rajabhai as a agriculturist issued by the Mamlatdar Office Bhiloda has been submitted vide exh.128 and the registered sale deed no. 89/2005 has been submitted the certified copy vide exh,129 as well as the copies of 7/12 and 8 A of the land to be sold, Also, a copy of the notice under Section 135D of the Land Revenue code and a certified copy of the S-Form generated after processing has been submitted vide exh.131 and a certified copy of the blank form of the notice under Section 135 D has been submitted vide exh.132, on the second page of which there are signatures of Mohanbhai Khimjibhai and Dahyabhai Rajabhai. Looking at exh. 128, the witness has stated that there is evidence that Patel Dahyabhai Rajabhai is holding agricultural land bearing survey no.93 at Khiloda, Tehsil. Bhiloda, Dist. Aravalli.

During cross-examined by the learned P.R. Eran, the witness admitted that the transactions regarding the sale of any land are recorded in revenue records by authorize officer, and such entries are entered as temporary entry by the Deputy Mamlatdar e Dhara, and the decision on it is taken by the Circle Officer. It has further been admitted by the witness that whenever such entry is certified, after verifying all the aspects and documents as per the provisions of the Revenue Code, such entry is certified by the authorize officer, and after registering the temporary entry, a notice under Section 135D is served on the concerned parties, and if no objection is filed within thirty days of the service, then the authorize officer can take its decision. At the time of approval of entry no. 1702 submitted in the Hon'ble Court vide exh. 111, a notice under Section 135 D was served on the concerned parties as per the provisions of the law, and no objection or dispute is found to have been raised by any party with respect to the documents of entry no. 1702 in the Revenue Record.

10.5 The Ld. Adv. For the defendant no. 6 neither remained present at the time of examination of the plaintiffs witnesses; therefore, his right to cross-examination was closed.

10.6 It is not disputed that the plaintiffs and the defendant no. 1 are real brothers. The plaintiffs have stated in the plaint that their father, Rajabhai Meghjibhai Patel, purchased the suit lands around 1974, and since then, Rajabhai Meghjibhai Patel has become the independent occupant and owner of the suit lands. In the rejoinder affidavit submitted vide exh. 21, the plaintiffs have specifically stated that their father, Rajabhai Meghjibhai Patel, purchased the land bearing revenue survey No. 21/1/13 (acre 7-26 guthas) in Iqbalgadh during the year 1971-72 from its original owners, Raghu Bhagwan Koli and Sitaben Bhagwanbhai Koli, etc., for a consideration of Rs. 3000/-. From that time, the possession of that land was handed over to Rajabhai Meghjibhai Patel, and thereafter, on June 4, 1974, a sale deed was executed on Rs. 100 stamp paper with serial number 758 and on Rs. 50 stamp with serial number 759.

10.7 On appreciation of evidence, in the cross-examination of plaintiff no. 2 by the Ld. Adv. for the defendant no. 1 to 5, the plaintiff no. 2 has admitted that he has not produced any documentary evidence to show that the suit lands were purchased by his father and there is no entry in the revenue that his father has purchased the suit lands. In addition, plaintiff no. 2 has admitted that no document has been made regarding the distribution mentioned in the plaint or he has not produced any such document. In addition, he has also admitted that he has not produced any evidence regarding the fact that he has constructed a bore well and obtained an electricity connection in the suit lands and that there was no electricity connection in the name of the plaintiffs in the past and there is no electricity connection in the suit lands in the name of the plaintiffs even today. In addition, Plaintiff No. 2 has also admitted that the name of the defendant, Dahyabhai Rajabhai, is mentioned as the owner and occupant of the suit lands in the revenue records, and the electricity connection of the suit lands is in the name of the defendant.

10.8 The witness Mohanbhai Khimjibhai Patel, examined by the plaintiffs vide exh. 68, has admitted during cross-examination that he had purchased the suit lands on 20th January 1997 vide registered deed no. PLP 110/1997, in which the plaintiff no. 1, Babulal Rajabhai Patel, and Dahyabhai Premjibhai Patel were his witnesses, and the entry of that sale deed has been recorded in the revenue records vide entry No. 1298. In addition, the witness has admitted during his cross-examination that he has no supporting evidence regarding the facts stated in para no. 2 of his examination-in-chief that “the fact that a registered deed was executed on June 4, 1974 for the land admeasuring acre 7-26 gunthas of survey no. 21/1/13 and that the land bearing Survey No. 21/1/18 was purchased by Dhanjibhai Mavjibhai Patel from its original owner and Dhanjibhai Mavjibhai Patel sold to Rajabhai Meghjibhai Patel in the year 1974."

10.9 Considering the evidence on record, Plaintiff No. 2 states the fact that the document was registered on stamps of Rs. 50 and Rs. 100, while Mohanbhai Khimjibhai Patel examined vide exh. 68 states the fact that the registered deed of land admeasuring acre 7-26 Gunthas of survey no. 21/1/13 was executed on June 4, 1974. The plaintiffs have stated in their plaint that around the year 1990, their father, Rajabhai Meghjibhai Patel, during his lifetime, made an oral distribution of the suit lands between the plaintiffs and the defendants and handed over the possession of the land in separate shares to the plaintiffs and the defendants, and accordingly, the plaintiffs and the defendants have been cultivating their own independent shares. According to the law, registration of family division is not mandatory, and family division can also be oral, but in such a situation where there is a fact that a property has been divided orally, the person who declares the fact that the oral division has been made has to give clear and convincible evidence to prove that fact. Further, the plaintiffs state in the plaint that the oral division was made around the year 1990, while the witness Mohanbhai Khimjibhai Patel has stated that the oral division was made in the year 1993. Thus, the facts of the plaint and deposition of witness examined by the plaintiffs vide exh.68 regarding oral division of suit lands are inconsistent with each other, so the fact that the suit lands were orally divided by deceased Rajabhai Meghjibhai Patel cannot be accepted. Moreover, the plaintiffs have not produced any evidence that the deceased Rajabhai Meghjibhai Patel purchased the suit lands through a registered document and have not produced any evidence that the possession of the suit lands was handed over to their father, Rajabhai Meghjibhai Patel, on the basis of any unregistered document as well. Moreover, it is clear from the testimony of witness examined vide. 125 that entry no. 1702 was registered through the legal process, and it is also proved that the plaintiffs were aware that the defendant had purchased the suit lands at that time, i.e., in the years 2005 and 2007. In addition, since the fact that plaintiff no. 1 signed as a witness in registered sale deed no. PLP 110/1997 when Mohanbhai Khimjibhai Patel had purchased the land bearing survey no. 21/1/29 (new survey nos.296, 312) on record, it is clear that the fact that late Rajabhai Meghjibhai distributed the suit lands among the plaintiffs and the defendants at a later date is completely unacceptable. Thus, the contentions that “the defendant was handling all the administration of the lands, since the defendant was elder than the plaintiffs, and to convert the land in the old tenure, the defendant obtained a power of attorney in his name from the original owners and transferred the land in the name of different persons, and by producing false evidence that he was a agriculturist of Bhiloda taluka, he illegally obtained a certificate of agriculturist from the Mamlatdar Bhiloda and transferred the land in his name” is not worthy of discussion. Thus, the fact that Rajabhai Meghjibhai Patel purchased the suit lands in about 1974 and orally distributed the suit lands among plaintiffs and the defendant has not been proved, so I answer issues no. 1 and 2 in the negative.

11. Issue no.3

Defendant no.1 has stated in his written statement that he purchased the suit lands from the original owners vide Registered Sale Deed No. PLP/89/2005 dated 10/01/2005 and vide Registered Sale Deed No. PLP/721/2007 dated 21/02/2007 by paying consideration. Plaintiff No. 2 has admitted during cross-examination that defendant Dahyabhai Rajabhai had purchased the land from Mohanbhai Khimjibhai Patel in the years 2005 and 2007 through registered sale deed no.PLP.89/2005 and registered deed no. PLP.721/2007 from Koli Nenunben Somabhai, Koli Manjulaben Somabhai, Koli Rameshbhai Raghubhai and Koli Virumbaben Somabhai, etc. In addition, the plaintiffs' witness Mohanbhai Khimjibhai in examination-in chief has stated that the land bearing survey no. 21/1/29 P1 and P2 (new survey no. 296 and 312) was purchased from him by defendant Dahyabhai Rajabhai through registered deed no. 89 dated 10/01/2005 and during cross-examination it has also been admitted by him that the possession was handed over to the defendant no. 1 by obtaining the consideration from the defendant Dahyabhai Rajabhai Patel further registered sale deed no. PLP 89/2005, whose entry No. 1702 dated 30/03/2005, has been recorded in the revenue record and Talati-Cum-Mantri has also submitted Village Form No. 6 vide exh. 112. during his testimony at exh. 80 wherein above details have been mentioned. In addition, the witness examined by the plaintiffs vide exh. 125, who is a Deputy Mamlatdar, has submitted the revenue record of entry no. 1702 vide exh. 127 to 132 during his cross-examination. In the revenue record submitted by the witness of exh.80 vide. exh. 114, in entry no. 1875, it is mentioned that Koli Nenunben Somabhai sold the land bearing survey no. 21/1/30 P1 (new survey no. 310) admeasuring hector 2-41-65 sq. m. to Dahyabhai Rajabhai Patel through registered sale deed no. 721 on 21/2/2007. In addition, the witness examined vide exh. 80 has admitted during cross-examination that entry no. 1702 has not been challenged by anyone to date, and the Plaintiff No. 2, during his cross-examination, has admitted the fact that the defendant Dahyabhai Rajabhai Patel purchased the land through a registered deed and has also admitted that the name of the defendant Dahyabhai Rajabhai runs as the owner and occupant of the suit lands in the revenue records. Thus, the evidence submitted by the plaintiffs proves that the defendant, Dahyabhai Rajabhai Patel, has become the legal owner and occupant of the suit lands on the basis of the registered sale deeds; therefore, I answer issue no. 3 in the affirmative

12. Issue no.3 A

Considering the record in Village Form No. 6 submitted vide exh.115 by the witness of exh.80, the names of the defendant no.2 to 5 have been entered in the revenue record vide entry No. 3363 during the lifetime of defendant no.1, and in Village Form No. 6 submitted vide exh. 116 it is mentioned that the defendant nos. 1 to 5 have sold the suit lands to the defendant No. 6 through a registered deed and entry no.3392 has also been recorded. Further on perusal entry no.3472 and 3473 mentioned in village form no.6 submitted vide exh.120 and 121 that the appeal and revision filed by the present plaintiffs have been rejected by the collector Banāskantha. Thus, the entry regarding the sale made by the defendant no. 1 to 5 in favor of the defendant no. 6 has been certified, and since the plaintiffs have not submitted evidence that the defendants no. 1 to 5 were not authorized to execute the registered sale deed or that they sold the suit lands without legal right. Resultantly I give the answer to issue no. 3A in the negative.

13. Issue no.4

The plaintiffs have stated in the plaint that before filing the suit, when they inquired, they came to know that only the name of the defendant is mentioned in the revenue record of the suit lands. The plaintiff no. 2, during his cross-examination, has admitted that the defendant, Dahyabhai

Rajabhai, had obtained a crop loan from the SBI Iqbalgadh branch in the year 2008, and he was aware of that fact, and at the time the defendant obtained the crop loan, he did not raise any objection in the bank. Apart from this, plaintiff no. 2 has also admitted that when Dahyabhai Rajabhai took a crop loan, he was aware of the fact that Dahyabhai Rajabhai's name was mentioned in the revenue record of the suit lands. So, since plaintiff no. 2 knew that the defendant's name, Dahyabhai Rajabhai Patel, was in the suit lands' revenue record in 2008, the plaintiffs' claim that they didn't know that the defendant's name was in the revenue record until they looked into it before filing the suit seems completely false and extremely farther from the truth. Thus, despite knowing that the defendant's name was mentioned in the revenue record in the year 2008, the plaintiffs have filed the present suit in the year 2022; therefore, their suit is also barred by the law of limitations. Since the plaintiffs haven't proved the facts by producing the strong evidence or showing preponderance of probabilities in their favor. Therefore, plaintiffs are not entitled to any relief sought by him. Thus I answer issue no.4 in the negative

14. Since the plaintiffs have misled the court by presenting false facts and filing the present suit despite knowing that the defendant's name has been in the revenue records of the suit lands since 2008, further, since the plaintiffs have tried to prolong the court proceedings under one pretext or another and have wasted the precious time of this court. Therefore, I am of the opinion that the purpose of justice will be served if the present suit is dismissed with appropriate costs. Under these circumstances, I pass the following order on issue no. 5.

- : O R D E R : -

- The suit of the plaintiffs is hereby rejected.
- The plaintiffs shall bear their own costs and the costs of the defendant.
- The plaintiffs are also directed to pay the costs ordered earlier at exh.65, 76 and 146 forthwith.
- The plaintiffs are ordered to pay Rs.25000/- towards costs in DLSA, Palanpur, within 10 days from the date of judgment.
- Decree be drawn accordingly.

Pronounced in open court on 04 March 2025.

Date.04/03/2025 **(Shaileshkumar G. Parmar)**

Place. Amirgadh Pri.Civil Judge GJ01146