

Filing No. :
Registered On :
Decided On :
Duration :

Y : M : D

**IN THE COURT OF 3rd ADDL. SENIOR CIVIL JUDGE,
GANDHINAGAR**

Special Civil Suit No. 301/2013

Exhibit -

- 1. Jagdishbhai Vitthalbhai Patel
(As the Power of attorney holder of)
Vishnubhai Vitthalbhai Patel(H.U.F)
Occ:Agriculture,Business,
Add:20,Silver Homes,Science City Road
Sola,Ahmedabad.**
- 2. Vishnubhai Premuhai Patel
Occp:Agriculture,Business,
Add:10,Surmay Bunglows,Science City
Road,Sola,Ahmedabad.**
- 3. SaileshKumar Hiralal Patel
Occ:Agriculture/Business
Add:14-A,Vasudha SOciety,
B.D.Patel House,Near Chandrika Dairy,
Naranpura,Ahmedabad.**
- 4. Hasmukhlal Hiralal Patel
Occ:Agriculture/Business
Add:A/7,Vijay Colony,Near Sardar**

***3rd.Addl. Sr. Civil Judge
Gandhinagar***

Patel Colonyh,Ahmedabad.

5. Bikhabhai Atmarambhai Patel

Occ:Agriculture/Business

Resi:87,Balol Nagar Society,

Ranip,Sabarmati,Ahmedabad.

6. Patel Kuberbhai Somnath

Occ:Agriculture/Business

Add:16,Balol Nagar Society

Ranip,Sabarmati,

Ahmedabad.....PLAINTIFF

-: VERSUS :-

1. Sakariben Babaji Thakor

Occ:Agriculture

Add:420,Mahadev vado Vas,Mehta Pol,

Luhari Sheri,Village Shilaj,

Taluka:Druskoi,

Dist:A Ahmedabad.

2. Kantibhai Babaji Thakor

Occ:Agriculture,

Add:44,Thakor vas,Tarapur,

Taluka:Gandhinagar,Dist:Gandhinagar.

3. Pashiben Babaji Thakor,

Occp:Agriculture/Household,

Village:Shilaj,Taluka:Droskoi,

Dist:A Ahmedabad.

4. Lasiben W/O Savdghanji Babaji

**Occ:Agriculture/Household
Resi:68/Thakor vas,Tarapur
Taluka:Gandhinagar,Dist:Gandhinagar**

- 5. Baluji Savdhanji Thakor,
Occ:Agriculture
Resi:68,Thakorvas,Tarapur,
Taluka:Gandhinagar,
Dist:Gandhinagar.**
- 6. Savitaben Savdhanji Thakor
Occ:Household/Agriculture
Res:584,40 Gharvado Vas,
Village:Shilaj
Taluka:Draskoi,Dist:Ahmedabad.**
- 7. Baldevji Juhaji Thakor
Occ:Agriculture
Res:Sherisa,
Taluka:Kalol,Dist:Gandhinagar**
- 8. Minaxiben D/O Ambaram
and W/O Ajitkukmar Mohanlal.
Occ:Household/Agriculture
Res:Plot No.100/2,Sector 8,
Taluka:Gandhinagar,Dist:Gandhinagar.**
- 9. Rajeshwariben Dahyabhai Makwana
Occ:Household/Agriculture
Res:17,Samta Nagar Soc.
D Cabbins,Sabarmati,Ahmedabad**

[illegible][illegible]

For Defendant no. 8 and 9 : Ld. Adv. Mr. K.G. Parmar

**3rd. Addl. Sr. Civil Judge
Gandhinagar**

ad-measuring 1-33-55 old tenure land, 4000 sq mts was acquired by Government and thereafter 9355 sq mts had remained (Which is now referred in the suit as the suit property). The Plaintiff further submitted that the defendant no.1 to 6 had agreed to sell the said block no.134 to the plaintiff for the consideration of rupees 20,00,000/- and accordingly the plaintiff had paid the defendant no.1 to 6, the said amount and the defendant no.1 to 6 had accepted said amount on 30/07/2010 and executed before Sub Registrar vide Sr. No.14593 sale deed in favour of the plaintiff and that since then the plaintiff has become the owner and possessor of the suit property. The Plaintiff further submitted that the suit property was co-owned by the legal heirs of Babji Dhulaji and that among his heirs his wife Kashiben died and also his son Ishwarji died unmarried. The plaintiff further submitted that the son of the Babaji Dhulaji named Kanaji was married to Reshamben but Kanajo died without having any child and the Reshamben was thereafter married to Thakor Juhaji Abhrajji of Sersa Taluka, and that the sale deed of the suit property has been executed in favour of the plaintiff by the remaining legal heirs of Babaji Dhulaji. The plaintiff further submitted that when Reshamben was

married to Juhaji Abhrajji of Sersa Taluka, from this marriage, she had son named Baldevji ie. present defendant no.7. It is further submitted that the said defendant no.7 is though Son of Juhaji Abhrajji but he got his name mutated in the village form no.6 of suit property vide entry no.2728 by showing himself as the legal heir of Kanaji Babaji and same has been contested before Mamlatdar and a Takrari case no.85/10 was registered and on 21/09/2010 the said entry no.2728 was ordered to be cancelled and thereafter no further proceeding with regard to this entry has taken place. The Plaintiff further submitted that the defendant no.7 by fraudulently misrepresenting himself as the legal heir of Kanaji Babaji got mutation entry of his name and thereafter in collusion with defendant no.8 and 9 without even verifying the revenue record of the suit property executed on 06/03/2010 vide Sr. no.3971 the banakhat karar of 1/5 share in the suit property ie. 2691 sq mts of suit property and 1/5th share of the block no.98 ie.998 sq. mts and thus executed banakhat of total total 3662 sq mts of the suit property in favour of the defendant no.8 and 9, the plaintiff further submitted that the defendant no.7 had no right to execute the said banakhat as he was not the legal heir of the deceased Kanaji and thus the

defendant no.7 to 9 had in collusion got the false and forged irrevocable power of attorney of the suit property executed vide Sr. no.3972 and that the defendant no. 8 and 9 had on the basis of the said irrevocable power of attorney executed sale deed of 1/5 share of the suit property and 1/5 th share of the block no.98 in their favour vide Sr. no.13568 on 16/07/2010, but as the defendant no.7 himself was not legal heir of the Kanaji Babaji and by misrepresentation, fraudulently in collusion with defendant no.8 and 9 executed the banakhat of the suit property in favour of the defendant no.8 and 9, therefore the defendant no.8 and 9 are not entitled to any right, interest in the suit property and Hence prayed for the cancellation, declaration of the said banakhat and the power of attorney as null and void.

The Plaintiff further submitted that the defendant no.7 by misrepresenting himself as the legal heir of deceased Kanaji Babaji, further executed sale deed vide Sr. no.4731 of 1/5 share ie.2671 sq mts of the suit property on 18/03/2010 in favour of defendant no.10 and that on the basis of this sale deed the defendant no.10 got the mutation entry of his name vide entry no.2743 on 03/04/2010 but thereafter the said entry was cancelled vide order passed on 02/10/2010 on the

ground that the revenue entry no.2728 had been cancelled ,therefore the plaintiff prayed for the cancellation and declaration of said sale deed executed by defendant no.7 in favour of defendant no.8 to 10 as null and void.

The plaintiff further submitted that after he purchased the suit property from the defendant no.1 to 6,when the plaintiff began the procedure for the mutation of his name in the revenue record of the block no.134,the plaintiff came to know about the revenue entry no.2743 on 21/01/2012 and about the transaction that the defendant no.7 carried out in collusion with defendant no.8 to 10 and therefore the plaintiff had filed the complaint in police station and thus the plaintiff are the owner and possessor of 9,355 sq mts of block no.134 which has been given new no. as 134(b) after the aquisition,and therefore the plaintiff have through the present suit claimed for the relief of declaration of the plaintiff being owner and possessor of the said land and for the declaration of the banakhat and the sale deed and power of attorney executed by the defendant no.7 in favour of defendant no.8 to 10 as null and void and for restraining the defendant from alienating,transferring the suit property or changing the nature of the suit property.

3. Upon the presentation of the suit, the summons / notices were issued to the defendants and the Defendant wherein the as against the defendant no.7,my Ld. Predecessor Officer had ordered to proceed ex parte on 30/08/2017 and with regard to defendant no.1,2,3,5,6,8,9 and 10 were duly served with the notice but they failed to file their reply,hence their right to file written statement was ordered to be closed.
4. In support of his claim, the plaintiff has lead following oral as well as documentary evidence,but none of the defendant remain present for cross examining the plaintiff,hence right of cross examination was closed.

ORAL EVIDENCE		
Sr. No.	Particular	Exhibit
1	Examination-in-chief of plaintiff Sailesh Kumar Hiralal Patel	49

DOCUMENTARY EVIDENCE		
Sr. No.	Particular	Exhibit
1	Certified copy of the village form no.7/12 of the block/survey no.134	48 A
2	Certified copy of the sale deed no.14593	48 B
3.	Certified copy of revenue entry no.2728	48 C

4	Certified copy of the registered banakhat no.3971	48 D
5	Certified Copy registered power of attorney no.3972	48 E
6.	Certified copy of the registered sale deed no.4731	48 F
7.	Certified copy of the revenue entry no.2743	48 G
8.	Certified copy of the registered sale deed no.13568	48 H
9.	Copy of complaint filed before Adalaj Police station	48 I
10.	Certified Copy of complaint filed in the Gandhinagar court	48 J

- 5 In support of their claim, the Defendant no.1 to 7 and ,10 did not lead any oral or documentary evidence,Hence their right were closed by L d. Predecessor Officer. The defendant no.8 and 9 had lead following oral and documentary evidence:

ORAL EVIDENCE		
Sr. No.	Particular	Exhibit
1	Examination-in-chief of Defendant no.8 Minakshiben d/o Ambalal and W/o of Ajitkumar Mohanlal parmar	67

DOCUMENTARY EVIDENCE		
Sr. No.	Particular	Exhibit

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1	Xerox Copy of the Pedigree	(tentative) 73
2.	Certified Copy of Revenue entry no.2728	74
3.	Certified Copy of Revenue entry no.2568	75
4.	Certified copy of village form no.7/12 of the survey no.158	76
5.	Certified copy of village form no.7/12 of the survey no.184	77
6.	Certified copy of Registered banakhat no.3971	78
7	Certified copy of Registered Power of Attorney no. 3972/10	79
8	Certified copy of Registered Sale deed no. 13568/2010	80

6. Thereafter the arguments lead by the Adv. for both the parties were heard and considered the documents on record and the written arguments submitted by plaintiff vide exhibit. 89 and defendant no.8 vide 93.

7. My learned predecessor has framed the following issues at Exhibit.45 for the proper adjudication of the suit as under ;

1.	શુ વાદી સાબીત કરે છે કે મોજે તારાપુરની સીમમાં આવેલ બ્લોક નં ૧૩૪-બ
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	વાળી જમીનના કાયદેસરના માલિક તથા કબ્જેદાર છે?
2.	શુ વાદી સાબીત કરે છે કે બ્લોક નં ૧૩૪ વાળી જમીન પૈકીની જમીન પરત્વે પ્રતિવાદી નં ૮ અને ૯ ની તરફેણમાં અનુક્રમ નં ૩૯૭૧ થી થયેલ રજીસ્ટર બાનાખતનો કરાર તથા અનુક્રમ નં ૩૯૭૨ થી થયેલ જનરલ પાવર ઓફ એટર્ની તદ્દન ખોટા, ગેરકાયદેસરના અને અન-અધિકૃત છે?
3.	શુ વાદી સાબીત કરે છે કે બ્લોક નં ૧૩૪ વાળી જમીન પૈકીની જમીન પરત્વે પ્રતિવાદી નં ૮ અને ૯ નાઓએ ગેરકાયદેસરના પાવરને આધારે અનુક્રમ નં ૧૩૫૬૮ થી તેમના નામે કરેલ રજીસ્ટર વેચાણ દસ્તાવેજ ખોટો, ગેરકાયદેસરનો અને અન-અધિકૃત છે?
4.	શુ વાદી સાબીત કરે છે કે બ્લોક નં ૧૩૪ વાળી જમીન પૈકીની જમીન પરત્વે પ્રતિવાદી નં ૧૦ની તરફેણમાં અનુક્રમ નં ૪૭૩૧ થી થયેલ રજીસ્ટર વેચાણ દસ્તાવેજ ખોટો, ગેરકાયદેસરનો અને અન અધિકૃત છે?
5.	શુ વાદી માંગ્યા મુજબની દાદ મેળવવા હકદાર છે?
6.	શુ હુકમ અને હુકમનામું?

8. My answers to the above mentioned issues are as under;

1.	In Affirmative.
2.	In Affirmative.
3.	In Affirmative.
4.	In Affirmative.
5.	In Affirmative.
6.	As Per final Order

9.\\ REASONS \\

Now As per the section 101 of Indian Evidence Act "Whoever desires any court to give any judgment as to any legal right and

liability, dependent on the existence of fact which he asserts, must prove that those facts exist. When a person is bound to prove existence of any fact it is said that the burden of proof lies on that person ".Section 102 of Indian Evidence Act provides that "the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side."in terms of the said provisions, the burden of providing the fact lies upon the person who asserts it. In view of the above provision the issues are discussed as under:

9.1.(Issue Nos. 1 to 3)

As the issue no.1 to 3 are inter connected, to avoid repetition, they are discussed together as under:

Now with regard to these issue, the plaintiff has in his examination in chief vide exhibit 49 stated that the defendant no.1 to 6 had inherited the suit property from their ancestor and were the owner and possessor of the suit property, to prove the same the plaintiff have produced vide exhibit 48 A, the copy of the village form no.7/12 of the survey no.134. The plaintiff further stated that the defendant no.1 to 6 had agreed to sell the said block no.134 to the plaintiff for the consideration of rupees 20,00,000/- and accordingly the plaintiff had paid the defendant no.1 to 6, the said amount and the defendant no.1 to 6 had

accepted said amount on 30/07/2010 and executed before Sub Registrar vide Sr. No.14593 sale deed in favour of the plaintiff and that since then the plaintiff has become the owner and possessor of the suit property, to prove the same the plaintiff have produced vide exhibit 48 B, the copy of the registered sale deed no.14593. Now from the copy of the village form no.7/12 produced vide exhibit 48 A, it appears to have the name of the defendant no.1 to 6 as the owner and possessor of the suit property and from the sale deed copy produced vide exhibit 48 B, it appears to have been executed between the plaintiffs and the defendant no.1 to 6 on 30/07/2010 with regard to the suit property.

The Plaintiff further submitted that the suit property was co-owned by the legal heirs of Babji Dhulaji and that among his heirs his wife Kashiben died and also his son Ishwarji died unmarried and that the son of the Babaji Dhulaji named Kanaji was married to Reshamben but Kanaji died without having any child and the Reshamben was thereafter married to Thakor Juhaji Abhrajji of Sersa Taluka, and that the sale deed of the suit property has been executed in favour of the plaintiff by the remaining legal heirs of Babaji Dhulaji. The plaintiff further submitted that when Resham ben was married to Juhaji Abhrajji of Sersa Taluka, from

this marriage ,she had son named Baldevji ie. present defendant no.7.It is further submitted that the said defendant no.7 is though Son of Juhaji Abhrajji but he got his name mutated in the village form no.6 of suit property vide entry no.2728 by showing himself as the legal heir of Kanaji Babaji and same has been contested before Mamlatdar and a Takrari case no.85/10 was registered and on 21/09/2010 the said entry no.2728 was ordered to be cancelled and thereafter no further proceeding with regard to this entry has taken place,to prove the same the plaintiff have produced the copy of the revenue entry no.2728 vide exhibit 48 C ,now if we look into this document,it appears that the name of the defendant no.7 was entered in the revenue record of the suit property on 09/03/2010,but later on, the said entry was ordered to be cancelled by the Circle Office Gandhinagar on the basis of the order passed in case no.85/2010 dated 21/09/2010 .

The Plaintiff further submitted that the defendant no.7 by fraudulently misrepresenting himself as the legal heir of Kanaji Babaji got mutation entry of his name and thereafter in collusion with defendant no.8 and 9 without even verifying the revenue record of the suit property executed on 06/03/2010 vide sr. no.3971 the banakhat karar of 1/5 share in the suit property ie. 2691 sq mts of suit property and 1/5th share of the block no.98

ie.998 sq. mts and thus executed banakhat of total total 3662 sq mts of the suit property in favour of the defendant no.8 and 9,the plaintiff further submitted that the defendant no.7 had no right to execute the said banakhat as he was not the legal heir of the deceased Kanaji and thus the defendant no.7 to 9 had in collusion got the false and forged irrevocable power of attorney of the suit property executed vide Sr. no. 3972 and that the defendant no. 8 and 9 had on the basis of the said irrevocable power of attorney executed sale deed of 1/5 share of the suit property and 1/5 th share of the block no.98 in their favour vide Sr. no.13568 on 16/07/2010,but as the defendant no.7 himself was not legal heir of the Kanaji Babaji and by misrepresentation, fraudulently in collusion with defendant no.8 and 9 executed the banakhat of the suit property in favour of the defendant no.8 and 9,therefore the defendant no.8 and 9 are not entitle to any right,interest in the suit property and Hence prayed for the cancellation,declaration of the said banakhat and the power of attorney as null and void,with regard to this contention of the the plaintiff,the defendant no.8 in her examination in chief vide exhibit 67 stated that the defendant no.7 was the legal heir of the Kanaji Babaji and to prove same the defendant has produced the copy of pedigree of the Babaji vide exhibit 73,but here it is noteworthy that the said pedigree is

merely a xerox copy and the contents of this document have not been proved by the defendant. Further that the defendant no.8 stated that the defendant no.7 had inherited 1/5 th share in the suit property and that his name was mutated in the revenue record vide entry no.2728, but if we look into the copy of revenue entry no.2728 produced vide exhibit 48 C by the plaintiff, it appears that the said entry have been canceled by the order dated 21/09/2010 by the Circle Officer Gandhinagar. The defendant further submitted that they are the bonafide purchaser as the defendant no.7 had the right in the suit property and that they have purchased from him the suit property, as the defendant no.7 had executed a registered banakhat in favour of the defendant no.8 and 9 and thereafter had executed a irrevocable power of attorney in favour of the defendant no.8 and 9 and thus the defendant no.8 and 9 became the bona fide purchaser of the suit property, Now with regard to these assertion of the defendant no.8 if we look into the cross examination of the defendant no.8 it is as under:

"એ વાત ખરી છે કે દાવા વાળી મિલકતના મે રેવેન્યુ રેકૉર્ડ તપાસ કરેલા નથી."

"એ વાત ખરી છે કે દાવવાળી જમીનનો વેચાણ દસ્તાવેજ કરતા અગાઉ દાવાવાળી જમીનના"

"કોણ અને કેટલા માલિક હતા અને તેમનો કેટલો હિસ્સો આવેલો તેની મને ખબર નથી"

એ વાત ખરી છે કે બળદેવજી કાનાજીનો દાવાવાળી જમીન લાગત રેવેન્યુ રેકર્ડમાં નામ ચાલતો હતો કે નહીં તે બાબતનો રેવેન્યુ રેકર્ડમાં નામ ચાલતો હતો કે નહીં તે બાબતનો રેવેન્યુ રેકર્ડમાં તપાસ કરેલી."

Thus from the oral and documentary evidence on record, it is very much clear that there is nothing on record to show that the defendant no.7 was the legal heir of Kanaji Babaji and also from the record it appears that the revenue mutation adding the name of the defendant no.7 as the legal heir of the Kanaji Babaji had been cancelled, and therefore I am of the view that the defendant no.7 had no right, title, interest in the suit property therefore the banakhat executed by the defendant no.7 in favour of defendant no.8 and 9 of the suit property vide Sr. no.3972 and the irrevocable power of attorney Sr. no.3972 are not tenable and are illegal, also from the cross examination of the defendant it appears that the defendant had not verified the revenue record of the suit property and title clearance before purchasing of the suit property which a bonafide purchaser ought to have done, Hence, the defendant no.8 cannot be said to be the bonafide purchaser and therefore the sale deed executed in favour of defendant no.8 and 9 vide Sr .no.13568 is not valid, Therefore considering the above discussion, I answer **issue no.1 to 3 in Affirmative.**

9.2(Issue Nos.4)

With regard to issue no.4, The Plaintiff submitted that the defendant no.7 by misrepresenting himself as the legal heir of deceased Kanaji Babaji, further executed sale deed vide sr. no.4731 ie.2671 sq mts of 1/5 share of the suit property on 18/03/2010 in favour of defendant no.10 to prove the same the plaintiff have produced the copy of the said sale deed vide exhibit 48 F and further stated that on the basis of this sale deed the defendant no.10 got the mutation entry of his name vide entry no.2743 on 03/04/2010 but thereafter the said entry was cancelled vide order passed on 02/10/2010 on the ground that the revenue entry no.2728 had been cancelled to prove the same the plaintiff have produced vide exhibit 48 G, the copy of the village form no.6 of the suit property wherein with regard to the said sale deed, the mutation entry of the name of the defendant no.10 was rejected on the ground that the seller ie. defendant no.7 is not the possessor of the suit land. It is here noteworthy that the said assertion of the plaintiff has not been challenged or disputed by the defendant no.10, Under the circumstance, considering the evidence affidavit and the documents on record, there remains no reason for disbelieving the plaintiff, Hence considering the above discussion, I answer **issue no.4 in Affirmative.**

9.3(Issue Nos. 5)

In Light of the above discussion,with regard to the issue no.3,I am of the view that the plaintiff have successfully proved that the plaintiff are the owner and possessor of the suit property and that the registered banakhat executed by defendant no.7 in favour of defendant no.8 and 9 vide Sr. no. 3971 of the survey no.134 and the Irrevocable power of attorney executed by defendant no.7 in favour of defendant no.8 and 9 vide Sr. no.3972 of the survey no.134 and that the sale deed no.13568 of the survey no.134 executed in favour of defendant no.8 and 9 are null and void and that that the sale deed executed by defendant no.7 in favour of defendant no.10 of the survey no.134 vide Sr. no. 4731 is null and void, Hence,considering the facts and circumstances discussed above the ,I answer **issue no.3 in Affirmative.**

9.4(Issue No. 6)

In view of the above said discussion, reasons recorded , finding arrived , observation made I reply Issue No.6 accordingly and in the interest of justice I passed the following order as under.

|| O R D E R ||

- The plaintiff's present suit is hereby allowed.
- The registered banakhat no.3971 and the irrevocable

power of attorney vide sr. No. 3972 executed by the defendant no.7 in favour of defendant no.8 and 9 and the sale deed no.13568 executed in favour of defendant no.8 and 9 of the suit property is hereby declared as null and void.

- The Registered sale deed no.4731 of the suit property executed by defendant no.7 in favour of defendant no.10 is hereby declared as null and void.
- The defendants are directed not to interfere in any way with the plaintiffs ownership and possession of the suit property.
- Parties to bear their own costs.
- Decree to be drawn accordingly.

Pronounced in the open Court on 14th day of March , 2023.

Date: 14/03/2023
Place: Gandhinagar

(Reena Gyansingh Yadav)
3rd Addl. Sr. Civil Judge
Code : GJ00974

3rd.Addl. Sr. Civil Judge
Gandhinagar