

Reserved On : 29/04/2026
Pronounced On : 08/05/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 1153 of 2003

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BHARATBHAI MAGJIBHAI PATEL & ORS.
Versus
CHUNILAL MERVANBHAI PATEL & ORS.

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Appearance:

MR BS PATEL(602) for the Appellant(s) No. 1,2,4,5,6,7,8,9
MR CHIRAG B PATEL(3679) for the Appellant(s) No. 1,4,5,6,7,8,9
MRS RANJAN B PATEL(646) for the Appellant(s) No. 2
DECEASED LITIGANT THROUGH LEGAL HEIRS/ REPRESENTATIVES
for the Defendant(s) No. 2,4
MR JV JAPTEE(358) for the Defendant(s) No. 1
RULE SERVED for the Defendant(s) No.
2.1,2.2,2.3,2.4.1,2.4.2,2.4.3,2.4.4,2.5,2.6,2.7,3

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CORAM:HONOURABLE MR. JUSTICE J. C. DOSHI

CAV JUDGMENT

The Judgment is being structured in the following conceptual framework to facilitate the discussion:

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THE CHALLENGE:

1. The unsuccessful plaintiffs of Special Civil Suit No.199 of 2000 (old No.127 of 1997), have preferred the

present First Appeal under Section 96 of the Code of Civil Procedure 1908 (For short 'the CPC') assailing the impugned judgment and decree dated 30th April, 2003, whereby, the learned Civil Judge (S.D), Gandevi, dismissed the plaintiffs' suit.

2. For the sake of brevity and convenience, the parties are referred to their original status and position to the learned Trial Court.

THE FACTS:

3. The brief facts borne out of the record are that the plaintiffs filed the suit for permanent injunction against the defendants, *inter alia*, contending that they are the owners and occupiers of the immovable property bearing Block No. 410, Survey No.417, admeasuring 3 acres and 36 gunthas, situated at village Panikhadak, Old Taluka: Chikhli (hereinafter referred to as "the suit property"). The Revenue Entry No.327 dated 10th November 1976, certified on 1st February, 1997, reflects the plaintiffs as the owners and occupiers of the suit property.

3.1 It is further the case of the plaintiffs that a school, hostel, and playground exist on a portion of the land bearing Block No.410, and that the school and hostel were constructed on land given by the plaintiffs. The plaintiffs also stated that they were cutting grass from the open land. Upon apprehending that the defendants intended to trespass upon the suit property and cause damage to the standing crops of tuvar and rice, the plaintiffs filed the suit for declaration as in

negative terms, permanent injunction, seeking the following reliefs in paragraph 9 of the plaint:

- “9(a) Be pleased to declare that the Defendants have no right or authority in the property described hereinbelow.*
- (b) We, the Plaintiff, pray that a permanent injunction may be granted in favour of the Plaintiff and against the Defendant that, the Defendant himself or through his servant, agents, associates, shall not perform or cause to be performed any acts that may cause hindrance, obstruction in the peaceful and the actual possession of the Plaintiff, neither shall he trespass nor cause to be trespassed into the possession thereof and neither shall he damage or cause to be damaged the crop (property) of the Plaintiff.*
- (c) Be pleased to award the entire cost of this suit from the Defendants.*
- (d) Be pleased to grant any such other and further reliefs that may deem appropriate and reasonable to the Honorable Court in view of the evidence on record and merits of this suit.”*

3.2 Upon service of summons, the defendants appeared and filed their written statement at Exhibit 54, raising various contentions, including that the suit is not maintainable; that it is barred by limitation; and that it suffers from non-joinder and misjoinder of necessary parties, as the school, which is being run by a trust, has not been impleaded. It was further contended that one Mr. Nagjibhai and Vasiben had earlier filed Civil Suit in the Court of Civil Judge, Senior Division, Gandevi, in respect of the suit property, which came to be dismissed, and therefore, the present suit is barred by the principles of *res judicata*. The defendants also alleged that the plaintiffs had not approached the Court with clean hands. An important defence raised was that the suit property had been

partitioned among the plaintiffs, defendants, and their ancestors, and defendants hold 1/2 share in Survey No.417, admeasuring 1 acre and 8 gunthas. It was further contended that corresponding revenue entries were mutated and the defendants are in actual possession of the said portion. Therefore, it was contended that the plaintiffs, under the guise of seeking permanent injunction, cannot dispossess the defendants without seeking the relief of possession.

3.3 The learned Trial Court framed issues, upon rival pleading, permitted both parties to lead evidence, and ultimately dismissed the suit. The dismissal was mainly on the ground that the plaintiffs had admitted the defendants' possession over the suit land since 6th December 1996, as reflected in Exhibits 141, 142, and 143, which contained admissions by the plaintiffs. The learned Trial Court further held that the plaintiffs had not initiated any criminal proceedings for alleged trespass and therefore could not subsequently claim that the defendants were in illegal possession. It was also observed that the school and hostel are constructed on the suit land, and the school children use the adjacent ground as a playground. Since the school or the trust running it was not made a party, the suit suffered from non-joinder of necessary parties. The learned Trial Court thus observed that the plaintiffs had failed to prove their actual and peaceful possession of the suit land.

APPEARANCE OF LEARNED ADVOCATES FOR THE RESPECTIVE PARTIES:

4. I have heard learned advocate Mr. Chirag Patel

appearing for the appellants – original plaintiffs and learned advocate Mr. Himanshu Japee appearing for the respondent – No.1. Though served, none appeared for rest of the defendants.

SUBMISSION OF LEARNED ADVOCATE FOR THE APPELLANTS:

5. In addition to his oral submissions, learned advocate Mr. Chirag Patel has tendered written submissions along with the relevant citations. His submissions, in brief, are as follows:

5.1 That the appellants are the original landowners and mainly rely upon four documents on record, namely Village Form Nos.7/12 and 6, and the order dated 1st May, 1999 passed by the Mamlatdar, Chikhli in RTS Case No. 2 of 1999.

5.2 That the aforesaid documents are part of the record and exhaustively deal with the issue of title and possession of the suit land. The revenue records indicate that the names of the defendants or their forefathers were erroneously entered in village form No.6 pursuant to Mutation Entry No.58 dated 28th March, 1957. This error was subsequently corrected by the Mamlatdar in RTS Case No.2 of 1999, and the names of the defendants and their ancestors were removed. The said order has not been challenged and has therefore attained finality, thereby establishing the plaintiffs' ownership and possession.

5.3 That the plaintiffs and defendants are not related,

even remotely, and hence the theory of partition is wholly baseless.

5.4 That the school and hostel were constructed on land voluntarily given by the plaintiffs for the benefit of the village, and the existence of the school on the suit land is not in dispute. It is submitted that the defendants attempted to dispossess the plaintiffs, necessitating the filing of the suit for perpetual injunction. In view of Section 38(3) of the Specific Relief Act, 1963, the plaintiffs are entitled to such injunction where the defendants invade or threaten to invade the plaintiffs' right to enjoyment of the property.

5.5 That the learned Trial Court committed a serious error in dismissing the suit solely on the basis of certain statements made in criminal proceedings. It is therefore prayed that the present First Appeal be allowed and the impugned judgment and decree be quashed and set aside, and decree for perpetual injunction be granted.

5.6 That the learned Trial Court has committed serious and manifest error in dismissing the suit solely on the basis of certain statements made in the criminal proceedings.

5.7 Ultimately, learned advocate Mr.Chirag Patel prayed that present First Appeal be allowed and the impugned judgment and decree be quashed and set aside and that a decree for perpetual injunctions be granted.

5.8 In support of his submissions, he has relied upon the following decisions:-

(i) **State of Haryana & Anr. Vs. Amin Lal (Since Deceased) through his Lrs & Ors.** reported in **(2024) SCC Online SC 3368**, (Para 8.2);

(ii) **Fakirbhai Bhagwandas & Anr. Vs. Maganlal Haribhai & Anr.** reported in **AIR 1951 Bombay 380**, (Para 11);

(iii) **Abdulrahman Vs. Egmah Seikh & Ors.** reported in **(2016)3 Gauhati Law Reporters 760**, (Paras 9 & 10);

(iv) **Agmogimdala Vemlata Ramga Rao Vs. Indukuru Ramchandra Reddy (Dead) by Legal Representatives & Ors.** reported in **(2017)7 SCC 694**, (Paras 25 & 35);

(v) **Seth Ramdayal Jat Vs. Laxmi Prasad** reported in **AIR 2009 Supreme Court 2463**, (Paras 18 & 19);

SUBMISSION OF LEARNED ADVOCATE FOR RESPONDENT NO.1:

6. *Per contra*, learned advocate Mr. Japee mainly submitted that, the entire land bearing Survey No.417 belongs to the school, which comprises the school building, hostel, and open playground used by students. He submitted that this is borne out from the plaintiffs' own pleadings. It is further submitted that, in absence of the school or the trust managing it being impleaded as a party, the suit is not maintainable.

6.1 He further submitted that, in the criminal proceedings, the plaintiffs have unequivocally admitted that the defendants are in possession of the suit land. Such admission establishes that the defendants are in peaceful possession, and therefore a suit for permanent prohibitory

injunction simplicitor is not maintainable. The plaintiffs ought to have sought the relief of possession.

6.2 On these arguments, learned advocate Mr. Japee supported the impugned judgment and decree and prayed for dismissal of the present First Appeal.

THE ANALYSIS:

7. I have heard learned advocates for both the sides and perused the impugned judgment and decree as well as the record and proceedings, before addressing the rival submissions, it would be apposite to refer to the judgment of Hon'ble Supreme Court in the case of **C.Venkat Swamy Vs. H.N.Shivanna** reported in **(2018) 1 SCC 604** regarding the scope of a First Appeal. In paras 11 and 12, the Hon'ble Supreme Court held as under:-

"11. It is a settled principle of law that a right to file first appeal against the decree under Section 96 of the Code is a valuable legal right of the litigant. The jurisdiction of the first Appellate Court while hearing the first appeal is very wide like that of the Trial Court and it is open to the appellant to attack all findings of fact or/and of law in first appeal. It is the duty of the first Appellate Court to appreciate the entire evidence and arrive at its own independent conclusion, for reasons assigned, either of affirmance or difference.

12. Similarly, the powers of the first Appellate Court while deciding the first appeal are indeed well defined by various judicial pronouncements of this Court and are, therefore, no more res integra. It is apposite to take note of the law on this issue.

8. In the earlier judgment in **Santosh Hazari Vs. Purshottam Tiwari (Deceased)** by L.Rs. reported in **(2001)3**

SCC 179, the Hon'ble Supreme Court, with regard to the jurisdiction of the Appellate Court, held (at pages 188-189)as under:--

".....the appellate court has jurisdiction to reverse or affirm the findings of the trial court. First appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate court.....while reversing a finding of fact the appellate court must come into close quarters with the reasoning assigned by the trial court and then assign its own reasons for arriving at a different finding. This would satisfy the court hearing a further appeal that the first appellate court had discharged the duty expected of it....."

9. The aforesaid view was followed by three-Judge Bench decision of this Court in **Madhukar & Ors. Vs. Sangram & Ors.** reported in **(2001) 4 SCC 756**. In the case of **H.K.N. Swami v. Irshad Basith**, reported in **(2005), 10 SCC 243**, the Apex Court observed (at page 244) as under:

(SCC para 3) "3. The first appeal has to be decided on facts as well as on law. In the first appeal parties have the right to be heard both on questions of law as also on facts and the first appellate court is required to address itself to all issues and decide the case by giving reasons. Unfortunately, the High Court, in the present case has not recorded any finding either on facts or on law. Sitting as the first appellate court it was the duty of the High Court to deal with all the issues and the evidence led by the parties before recording the finding regarding title."

10. Thus, a First Appeal is a valuable statutory right of the appellants. The First Appellate Court is required to consider both questions of fact and law, and the parties have a right to be heard on both. The appellate court must deal with

all issues and assign reasons for its findings. In fact, under the jurisdiction of a First Appeal, the factual and legal issues raised before the learned Trial Court are open for reconsideration before the First Appellate Court. In this background, it is the plaintiffs' case that they are the owners and occupiers of land bearing survey No.417, Block No.410, admeasuring 3 acres and 36 gunthas. Out of this land, a portion has been allotted for the construction of a school and hostel, and on the remaining part, plaintiffs have constructed their house. The plaintiffs received threats from the defendants that they might encroach upon the suit property. Therefore, the plaintiffs were constrained to file the suit seeking a perpetual injunction. In this factual backdrop, the learned Trial Court framed the following issues:

- "1. Whether Plaintiff proves that disputed property bearing block number 410 is owner and occupied by plaintiff?*
- 2. Whether Plaintiff Proves that 3 acre 15 guntha land own disputed land is given to school and hostel and plaintiff has right to cut the natural grass from the open land?*
- 3. Whether Plaintiff proves that the defendant are trying to take illegal possession.*
- 4. Whether Suit suffers because of non joinder of parties?*
- 5. Whether Suit is time proved?*
- 6. Whether defendant proves that defendant had possession over 1 acre 8 guntha land from the disputed property ?*
- 7. Whether Plaintiff is entitled to relied asked ?*
- 8. What order and decided?*

11. All the issues are answered in the negative. Thus, the plaintiffs were not held to be the owners and occupiers of the suit land. While dismissing the suit, the learned Trial

Court did not believe the case of the present plaintiffs as owners and occupiers of the suit land. In these circumstances, and considering the rival submissions of both parties, the questions arise for consideration in this appeal are whether the plaintiffs have successfully proved their entitlement to a permanent injunction restraining the defendants from interfering with their possession of the suit land bearing Survey No. 417? and whether they have established their title over the said land? What order?

12. Before advertng to the documents that became instrumental to negate the plaintiffs' claim for relief, reference may be made to Exhibits 126, 104, and 108. All three documentary evidence are revenue entries/orders passed by the Mamlatdar in revenue proceedings. It is true that the names of the defendants' ancestors were recorded in the revenue records of the suit land. However, in RTS Case No.2 of 1999, the Mamlatdar found that the names of the defendants' ancestors had been wrongly mutated in respect of Survey No.417. It was further observed and held by the Mamlatdar that, based on the facts gathered from the District Inspector of Land Records, Jalalpur, and the Sub-Registrar, Chikhli, no valid entry had been made in the name of the defendants, nor did they possess any right, title, or interest in the said land. Therefore, the entries regarding possession of the defendants in the village record appeared to have been made without any supporting evidence and were liable to be cancelled. Accordingly, by judgment and order dated 1st May 1999, the Mamlatdar directed the cancellation of the entry

showing possession of the defendants' ancestors in Survey No.417, Block No.410. The effect of this order was reflected in village form No.6, vide Entry No.951, produced at Ex.104.

13. It is pertinent to note that although the defendants were affected by the said order, they did not challenge it before any higher forum, and thus the order attained finality. Learned advocate Mr.Japee could not produce any evidence or make any submission to show that the order passed by the Mamlatdar had been challenged.

14. In view of the above, it stands established that the plaintiffs are the owners and occupiers of land bearing Survey No.417, Block No.410. The defendants have failed to bring any evidence on record to disprove this title. Needless to state that possession always follow the title unless contrary is proved. In the absence of any contrary evidence, the defence of the defendants that there was a partition and they have a half share in the land is wholly remain unsupported. Learned advocate Mr. Japee could not point out any material on record to show that the plaintiffs and defendants are related or connected in any manner, nor any partition took place between them at any point of time.

15. In the case of **State of Haryana and Anr. Vs. Amin Lal (since deceased) through his Lrs. & Ors.** (*supra*), in para 8.2, the Hon'ble Supreme Court held as under:-

"8.2 The plaintiffs relied on jamabandi entries to establish their ownership. The jamabandi for the year 1969-70 (Exhibit P1) records the name of Shri Amin Lal as owner to the extent of half share. Revenue records are public documents maintained by government officials in the regular

course of duties and carry a presumption of correctness under Section 35 of the Indian Evidence Act, 1872. While it is true that revenue entries do not by themselves confer title, they are admissible as evidence of possession and can support a claim of ownership when corroborated by other evidence."

16. Vide order dated 15th April 2026, this Court called for a report from the Mamlatdar or the concerned Deputy Collector to ascertain who is in possession of the suit land, along with certified copies of the latest revenue entries. Pursuant thereto, the Mamlatdar, Khergam, District Navsari, through the Principal District & Sessions Judge, Navsari, submitted a report dated 19.04.2026, which is taken on record.

17. According to the report, the land is situated in the Phaliya area near Panikhadak High School. Upon physical inspection, it was found that the total land admeasures 4-91-52 Hectares-Ares-Square Meters. Out of this, Sanskar Vidya Mandir Panikhadak High School is constructed on 1-55-52 Hectares-Ares-Square Meters. The co-owners, as per the records, are in possession of the said land. Further inspection of the land admeasuring 3 acres and 36 gunthas revealed the presence of houses belonging to account holders reflected in the 7/12 extract, namely: Thakorbhai Maganbhai, Vallabhbhai Gagjibhai, Ramabhai Maganbhai, Bharatbhai Maganbhai, Ashwinbhai Maganbhai, Satishbhai Maganbhai, Dharmeshbhai Dhirubhai Thakaria, Ratilal Laghubhai Patel, Ishwarbhai Laghubhai Patel, and Ganeshbhai Lallubhai Patel. Agricultural land under their joint occupation is also situated in the said block.

18. Mr. Chunilal Mervanbhai Patel, PW-1 for the defendants, in his examination-in-chief at Exhibit 150, deposed that Survey No.417 admeasures 3 acres and 36 gunthas, and that upon partition, he received 1 acre and 8 gunthas. However, in cross-examination, he admitted that the lands bearing Survey Nos. 400, 412/1, 414, 422/1, and 417 have been recorded in the name of Sukhala Ukadiya (ancestor of the plaintiffs) as owners and occupiers in village records since 1982. He further admitted that there exists no mutation entry evidencing partition and that no revision or appeal was filed against the Mamlatdar's order.

19. To negate the plaintiffs' suit, the learned Trial Court relied upon the judgment at Exhibit 143 passed by the Judicial Magistrate First Class in Criminal Miscellaneous Application No.1762 of 1998. However, the reliance on criminal proceedings to determine possession in civil proceeding is wholly misplaced. Proceedings in criminal matters cannot be treated as conclusive proof in civil disputes where issues of title and possession must be independently established by evidence. Moreover, any statement recorded during criminal investigation, if not duly confronted in civil proceedings, cannot be treated as an admission.

20. In view of the above, according to this Court, the learned Trial Court has committed a manifest error in believing that the defendants are in possession of the suit property. The latest revenue records produced by the plaintiffs establish their title, and the entries stand in their

favour. In the absence of any contrary evidence adduced by the defendants, the presumption of title remains in favour of the plaintiffs. Aspect of possession follows such title. respect of possession follows such title. Accordingly, the plaintiffs are entitled to the relief of permanent injunction restraining the defendants from interfering with their possession or threatening their rights over the suit property.

THE CONCLUSION:

21. In view of the foregoing reasons, the present First Appeal stands allowed. The impugned judgment and order is hereby quashed and set aside. Relief in terms of para 9(a) and 9(b) of the plaint is granted. Accordingly, declaration and perpetual injunction is issued. Decree be drawn accordingly. No order as to costs. R & P, if any, be sent back to the concerned Court.

22. Connected Civil Application, if any, does not survive and stands disposed of accordingly.

MANOJ

(J. C. DOSHI,J)