



R.V.KORAT (Advocate & Notary)

201, Roman Point, Hirabaug, Varachha Road, Surat.



Dt.22/03/2021

TO WHOME SO EVER IT MAY CONCERN

:- ENCUMBRANCE CERTIFICATE:-

This is to certify that, I the undersigned has investigated the title of the immovable property which is more particularly described in herein under in "Schedule of the property" which is owned by M/s.SWAGAT CORPORATION a Partnership Firm (Hereinafter referred as owner)by Pursuing the title deeds relating thereto and taking necessary searches and in my opinion the title of the owner in respect of the said property is clear This is to state that the civil suit is Rejected in the said land having old civil suit No.1132/2012 after new Sp.Civil Suit No.61/2019 in the court of the honorable 2nd addisenior civil judge surat, has been declared judgment in favor of M/s.Swagat Corporation situated bearing Final Plot No.36 In T.P. No.43, Bhimrad, Surat and the suit of Plaintiffs is rejected on date 25.09.2020. being aggrieved by the aforesaid order. one of the @ Induben and Jayeshbhai filed civil application before the High court of Gujarat, Ahmedabad vide No.01/2020, in R/first appeal: 2513/2020 regarding stay for the said land. In turn the High court of Gujarat, Ahmedabad Passed order on dated: 09-02-2021, As per the said order, The said stay application was rejected. and where as the main appela vide No.2513/2020 is pending before the High court of Gujarat, Ahmedabad.

SCHEDULE OF THE PROPERTY

All the piece and parcel of the Non Agricultural land bearing Revenue Survey No.71/2 + 73/1, its Block No.125 and Block No.129 its **Town Planning Scheme Number :-43 (Bhimrad)** allotted **Final Plot No.36** having admesuring **11047 Sq.Mtr** of Village : **Bhimrad**, Sub District : Surat City ,District Surat. land standing in the name of M/S.Swagat Corporation had constructed building for Residential purpose Under name and style as "SWAGAT CLIFTON" PROMOTER NAME PRAVINBHAI ASODARIYA



Your Faithfully,

R.V.KORAT (Advocate & Notary)

(G/1012/1998)

Encl: Copy both of High court order.

R. V. KORAT
Advocate & Notary
201, Roman Point, Hirabaug,
Varachha Road, SURAT.

FIRST APPEAL - No. 2513 of 2020
[CAVEAT/4155/2020 FOUND]

Status : PENDING

(Filing(Stamp) Number : FA/27407/2020)

CNR No : GJHC240581502020

Next Listing

Date:

Coram

- HONOURABLE MR. JUSTICE N.V.ANJARIA and HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

S.NO.Petitioner Name

1 INDUBEN D/O JAYANTIBHAI GANDABHAI PATEL
 2 JAYESHBHAI JAYANTIBHAI PATEL

Advocate On Record

MR ANKIT SHAH(6371) for: Appellant(s) → 1 , 2
 MR. HARSHAD D BAROT(7287) for: Appellant(s) → 1 , 2

S.NO.Respondent Name

1 JAYANTIBHAI GANDABHAI
 2 NARESHBHAI JAYANTIBHAI
 3 PRAKASHBHAI JAYANTIBHAI
 4 LAXMIBEN D/O GANDABHAI RANCHHODBHAI
 5 BEBIBEN D/O GANDABHAI RANCHHODBHAI
 6 MOTLABEN D/O GANDABHAI RANCHHODBHAI
 7 HEIRS OF DECD. KESHAVBHAI HANSAJIBHAI
 7.1 DHANUBEN WD/O KESHAVBHAI HANSAJI
 7.2 HEIRS OF DECD. BHANUBEN D/O KESHAVJIBHAI W/O NAVNITBHAI GOSIA
 7.2.1 BHAVINBHAI NAVNITBHAI
 7.2.2 KAUSHIKBHAI NAVNITBHAI
 7.2.3 ANKITBHAI NAVNITBHAI
 8 HEIRS OF DECD. CHAMPAKBHAI HASJIBHAI PATEL
 8.1 NIRUBEN WD/O CHAMPAKBHAI HANSAJIBHAI PATEL
 8.2 HEMANTBHAI CHAMPAKBHAI PATEL
 8.3 NILESHBHAI CHAMPAKBHAI PATEL
 8.4 TREJALBHAI CHAMPAKBHAI PATEL
 9 HEIRS OF DECD. BALUBHAI HANSAJIBHAI
 9.1 LAXMIBEN WD/O BALUBHAI HANSAJIBHAI
 9.2 PARESHBHAI BALUBHAI PATEL
 9.3 LATABEN D/O BALUBHAI HANSAJIBHAI
 9.4 SARLABEN D/O BALUBHAI HANSAJIBHAI
 9.5 JAGRUTIBEN BALUBHAI PATEL
 9.6 NAYNABEN BALUBHAI PATEL
 10 SWAGAT CORPORATION
 11 ARUNBHAI RASIKLAL, PARTNER OF SWAGAT CORPORATION

Advocate On Record

RULE SERVED(64) for :Defendant(s) → 1 - 2 , 3 - 5 , 6 , 7.1 - 7.2.2 , 7.2.3 - 8.3 , 8.4 - 9.5 , 9.6 - 10 , 11

Presented On : 04/12/2020

Bench Category : DIVISION

Case Originated From : -

Purpose of Listing : 130-FOR REGULAR ADMISSION

Classification

- 826-DB - FIRST APPEAL - CODE OF CIVIL PROCEDURE, 1908 - PARTITION

Registered On

: 04/12/2020

District

: SURAT

Act

- CIVIL PROCEDURE CODE, 1908

Office Objections								
NO DATA FOR OFFICE OBJECTIONS								
Court Proceedings								
S. No.	Notified Date	CourtCode	Board Sr. No.	Stage	Action	Coram		
1	17/12/2020	51	3	130-FOR REGULAR ADMISSION	2-RULE/ADMIT	- HONOURABLE MR. JUSTICE N.V.ANJARIA - HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI		
Available Orders								
S. No.	Case Details	Judge Name	Order Date	CAV	Judgement	Questions	Transferred	Download
1	FA/2513/2020	- HONOURABLE MR. JUSTICE N.V.ANJARIA - HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI	17/12/2020	N	ORDER	-	Y	Download
2	CA/1/2020	- HONOURABLE MR. JUSTICE R.M.CHHAYA - HONOURABLE MR. JUSTICE R.P.DHOLARIA	09/02/2021	N	IA ORDER	-	Y	Download
Connected Matters								
NO DATA FOR CONNECTED MATTERS								
Application / Appeal Matters								
NO DATA FOR APPLICATION / APPEAL MATTERS								
IA Details								
S. No.	CaseDetail	Status	Name	Disposal Date				
1	CA/1/2020(FOR STAY)	DISPOSED		09/02/2021				
Office Details								
S. No.	Filing Date	Document Name	Advocate Name	Court Fee on Document	Document Details			

S. No.	Filing Date	Document Name	Advocate Name	Court Fee on Document	Document Details
1	04/12/2020	VAKALATNAMA	MR. HARSHAD D BAROT(7287) for PETITIONER(s) ➡	0	-INDUBEN D/O JAYANTIBHAI GANDABHAI PATEL
2	04/12/2020	VAKALATNAMA	MR ANKIT SHAH(6371) for PETITIONER(s) ➡	0	-INDUBEN D/O JAYANTIBHAI GANDABHAI PATEL
Certified Copy					
NO DATA FOR CERTIFIED COPY					
Lower Court Detail					
S.No.	Lower Court Case Detail	Lower Court Name	Judge Name	Judgment Date	
1	<u>SPECIAL CIVIL SUIT /61/2019</u>	CIVIL COURT, SURAT CITY	S.M.KANABAR(GJ00814)	25/09/2020	
FIR Details					
NO DATA FOR FIR DETAILS					

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
CIVIL APPLICATION (FOR STAY) NO. 1 of 2020
In R/FIRST APPEAL NO. 2513 of 2020**

=====

INDUBEN D/O JAYANTIBHAI GANDABHAI PATEL

Versus

JAYANTIBHAI GANDABHAI

=====

Appearance:

MR ANKIT SHAH for the PETITIONER(s) No.

MR. HARSHAD D BAROT for the PETITIONER(s) No.

HIREN R PANDYA for the RESPONDENT(s) No.

NOTICE SERVED for the RESPONDENT(s) No.

=====

CORAM: **HONOURABLE MR. JUSTICE R.M.CHHAYA**

and

HONOURABLE MR. JUSTICE R.P.DHOLARIA

Date : 09/02/2021

IA ORDER

(PER : **HONOURABLE MR. JUSTICE R.M.CHHAYA**)

Heard Mr. Ankit Shah, learned advocate appearing for the petitioner, Mr. Amit Thakkar, learned advocate appearing for Mr. H. R. Pandya, learned advocate, caveator on behalf of respondent Nos.10 and 11 and Mr. Harshit Tolia, learned advocate appearing for respondent Nos.7, 8 and 9.

Mr. Ankit Shah, learned advocate for the petitioner has candidly submitted that, no stay was granted during the pendency of the suit. Having heard learned advocates for the parties and in facts of this case, application deserves to be dismissed and the same is dismissed. Notice discharged.

(R.M.CHHAYA, J)

(R.P.DHOLARIA, J)

DRASHTI K. SHUKLA

Date of Institution :- 5/5/2015
Date of Registration:-5/5/2015
Date of Disposal:- 25/9/2020
Duration:-5 year 5 month 21 days

In the Court of 2nd Additional Senior Civil Judge, Surat.

Spl. C. S. No. 61/2019
Old RCS No.1132/2015
Ex.- 208

Plaintiffs

1	Induben D/O Jayantibhai Gandabhai Patel, Age – 47, Occupation – House Hold Work, Religion – Hindu, R/at.Address - Laya Faliyu, Abhwa Gam, Ta- Majura, Surat
2	Jayeshbhai Jayantibhai Patel, Age – 38, Occupation – Agriculture, Religion – Hindu, R/at.New Mohallo, Sarsana, Po- Khajod, Ta- Majura, Di- Surat

V/s.

Defendants

1	Jayantibhai Gandabhai, Age – 65, Occupation Agriculture, Religion – Hindu, R/at. - New Mohallo, Arsana, Po- Khajod, Taluko - Majura, District - Surat
2	Nareshbhai Jayantibhai, Age – 43, Occupation – Service, Religion – Hindu, R/at. New Mohallo, Sarsana, Po- Khajod, Ta- Majura, Di- Surat
3	Prakashbhai Jayantibhai, Age – 40, Occupation – Service, Religion – Hindu, R/at. New Mohallo, Sarsana, Po- Khajod, Ta- Majura, Di- Surat

4	Laxmiben D/O Gandabhai Ranchhodbhai, Age – Adult, Occupation – House Hold Work, Religion – Hindu, R/at. New Mohallo, Sarsana, Po- Khajod, Ta- Majura, Di- Surat DIED ON DTD.18/9/2020
5	Bebiben D/O Gandabhai Ranchhodbhai, Age – Adult, Occupation – House Hold Work, Religion – Hindu, R/at. Navo Mahollo, Sarsana, Po. Khajod, Ta. City Surat
6	Motlaben D/O Gandabhai Ranchhodbhai, Age – Adult, Occupation – House Hold Work, Religion – Hindu, R/at. Navo Mahollo, Sarsana, Po. Khajod, Ta. City Surat
7	Heirs of deceased Keshavbhai Hansajibhai
7/1	Dhanuben Wd/O Keshavbhai Hansaji, Age – Adult, Occupation – House Hold Work, Religion – Hindu, R/at. Bapu Nagar Street, Magdalla, Dumas Road, Surat
7/2	Heirs of deceased Bhanuben D/o. Keshavjibhai W/o. Navnitbhai Gosia.
7/2/1	Bhavinbhai Navnitbhai, Age – 32, Occupation – Service, Religion – Hindu, R/at. Karishma Street, Magdalla, Dumas Road, Surat
7/2/2	Kaushikbhai Navnitbhai, Age – 29, Occupation – Service, Religion – Hindu, R/at. Karishma Street, Magdalla, Dumas Road, Surat
7/3/3	Ankitbhai Navnitbhai, Age – 27, Occupation – Service, Religion – Hindu, R/at. Karishma Street, Magdalla, Dumas Road, Surat
8	Heirs of deceased Champakbhai Hasjibhai Patel, R/at. Bapu Nagar Street, Magdalla, Dumas Road, Surat
8/1	Niruben Wd/O Champakbhai Hansajibhai Patel, Age – Adult,

	Occupation – House Hold Work, Religion – Hindu, R/at. 46, Bapu Nagar Street No. 01, Magdalla, Dumas Road, Surat
8/2	Hemantbhai Champakbhai Patel, Age – Adult, Occupation – Agriculture, Religion – Hindu, Ra/t. 46, Bapu Nagar Street, Magdalla, Dumas Road, Surat
8/3	Nileshbhai Champakbhai Patel, Age – Adult, Occupation – Agriculture, Religion – Hindu, R/at. 46, Bapu Nagar Street, Magdalla, Dumas Road, Surat
8/4	Trejalbhai Champakbhai Patel, Age – Adult, Occupation – Agriculture, Religion – Hindu, R/at. 46, Bapu Nagar Street, Magdalla, Dumas Road, Surat
9	Heirs of deceased balubhai Hansajibhai
9/1	Laxmiben Wd/O Balubhai Hansajibhai, Age – Adult, Occupation – House Hold Work, Religion – Hindu, R/at.Bapu Nagar Street, Magdalla, Dumas Road, Surat.
9/2	Pareshbhai Balubhai Patel, Age – Adult, Occupation – Service, Religion – Hindu, R/at. Bapu Nagar Street, Magdalla, Dumas Road, Surat
9/3	Lataben D/O Balubhai Hansajibhai, Age – Adult, Occupation – House Hold Work, Religion – Hindu, R/at. Nava Magdalla, Dumas Road, Surat
9/4	Sarlaben D/O Balubhai Hansajibhai, Age – Adult, Occupation – House Hold Work, Religion – Hindu, R/at.Darji Mohallo, Magdalla, Dumas Road, Surat
9/5	Jagrutiben Balubhai Patel, Age – Adult, Occupation – House Hold Work, Religion – Hindu, R/at.Gurkha Street, Rundh-Magdalla, Dumas Road, Surat
9/6	21) Naynaben Balubhai Patel, Age – Adult, Occupation –

	House Hold Work, Religion – Hindu, R/at. Near Govind Garagewala, Bhestan Gam, Surat
10	Swagat Corporation, Address - T. P. Sceme- 43, Bhimrad, Final Plot No. 36, B/S Raghuvir Safron, Opp Belakasa, Bhimrad, Surat
11	Arunbhai Rasiklal, Partner Of Swagat Corporation, Address - T. P. Sceme- 43, Bhimrad, Final Plot No. 36, B/S Raghuvir Safron, Opp Belakasa, Bhimrad, Surat

**Subject:- Suit for Partition and
declaration with injunction and
cancellation of registered deeds.**

.....
Advocate for plaintiff – Mr. D.M.Chauhan.
Advocate for defendant No.1 – 6 – Ex Parte.
Advocate for defendant No. 9 – Mr. R.V.Korat.
Advocate for defendant No.7(1) & 8 – Mr. K.M.Patel
Advocate for defendant No.10-11 – Mr. K.S.Banatwala

-: JUDGMENT :-

(a) Observation for Order 22 Rule 6 of the Code of Civil Procedure.

(i) The suit is pending for declaration of Judgment on 25/9/2020 and on Dtd.24/9/2002, the court received a cover from the plaintiffs side stating that defendant No.4 is died on Dtd.18/9/2020. He submitted the pursis for *declaration of death of defendant No.4 caused on Dtd.18/9/2002 and also stated in the pursis that they will submit the*

mane of heirs of defendant No.4 afterwards. The crucial question arose before the court is that suit is pending for declaration of judgment on Dt.25/9/2002 and plaintiffs declared the death of defendant No.4 on Dtd.24/9/2002. What should be done by this court ? The answer was received from the provision of Order 22 Rule 6 of The Code of Civil Procedure. The provision runs as follows:-

(ii) **"Order-22 Rule-6.** - No abatement by reason of death after hearing :--Notwithstanding anything contained in the foregoing rules whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the conclusion of the hearing and the pronouncing of the judgment but judgment may in such case be pronounced notwithstanding the death and shall have the same force and effect as if it had been pronounced before the death took place."

(iii) *The Hon'ble Supreme Court in case of in [N.P. Thirugnanam v. R Jagan Mohan Rao](#) reported in 1996 AIR 116, 1995 SCC (5) 115 is necessary to note here. In this case, the party had died after the arguments had been heard and judgment had been reserved. The Supreme Court while interpreting Rule 6 of Order 22 CPC found : "In the face of the explicit language in Rule 6 of Order 22, there can be no abatement by reason of the death of any party between the conclusion of the hearing and the pronouncement of the judgment. It may be pronounced, notwithstanding the death, and shall have the same force and effect as if judgment had been pronounced before the death took place. Therefore, the contention that the judgment and decree of the appellate Court is a nullity is devoid of substance."*

(iv) The ration laid down by Hon'ble Apex Court in the case in reading with the provision of Order 22 Rule 6 is squarely applicable to the case on hand. In present case, the death of defendant No.4 is caused on Dtd.18/9/2020 after conclusion of final hearing and before 8 days of pronouncement of Judgment, hence, this court is on view to declare judgment and does not find any illegality in non stopping of the trial for the joining of heirs of defendant No.4.

(b) Index.

Sr. No.	Ex. No. old	Re-exhibited	Particulars
1	0		Proceedings
2	0		Check List
3	1	1	Plaint with stamp and 2 amended plaint
4	2	2	Vakalatnama of plaintiff Adv. Mr. D. M. Chauhan
5	3	3	Documentary Evidence List with xerox documents
6	4	4	Address memo
7	5	5	Interim Injunction Application with order
8	6-7	6-7	Summons Notice
9	8	8	Vakalatnama of Adv. Mr. R.V.Korat for defendant No.7/1, 8, 9/1 to 9/6
10	9	9	Application for cancellation of Exparte order
11	10	10	Written Statement of defendant No.7/1, 8, 9/1 to 9/6
12	11	11	Declaration of death of defendant No.7 (2)
13	12-15	12-15	Adjournment Applications

14	16	16	Permission Application
15	17	17	Counter Affidavit
16	18-21	18-21	Adjournment Applications
17	22	22	Delay condon application
18	23	23	Amendment Application
19	24	24	Permission Application
20	25	25	Documentary Evidence List
21	26	26	Vakalatnama of Adv. Mr. K.M.Patel for defendant No.7(1) and 8
22	27	27	Defendants' objection of Ex.22
23	28	28	Application u/O.7 R.11 (d)
24	29	29	Adjournment Application
25	30	30	Plaintiff's reply for Ex.28
26	31	31	Documentary Evidence List
27	32	32	Application for reissuance of notice
28	33	33	Vakalatnama of proposed defendant No.7/2/1 to 7/2/3
29	34	34	Amendment Application
30	35	35	Documentary Evidence List
31	36	36	Vakalatnama of Adv. Mr.P.B.Kapadia for proposed defendant No.10 and No.11
32	37	37	Vakalatnama of Adv. Mr.K.M.Patel for proposed defendant No.8/1 and No.8/4
33	38	38	Permission Application
34	39	39	Documentary Evidence List
35	40	40	Not in record
36	41	41	Application for issuance of summons notice
37	42	42	Permission Application
38	43	43	Documentary Evidence List

39	44-55	44-55	Evidence of service of summons notice
40	56	56	Written Statement Adoption Pursis
41	57	57	Adjournment Application
42	58	58	Amendment Application
43	59	59	Adjournment Application
44	60	60	Documentary Evidence List
45	61	61	Vakalatnama of adv.K.S.Banatwala for defendant No.10 and No.11
46	62	62	Adjournment Application
47	63	63	Notice
48	64	64	Application for production of stamp
49	65	65	Permission to file written statement
50	66	66	Written Statement of defendant No.10 - 11
51	67	67	Address Memo
52	68	68	Documentary Evidence List
53	69	69	Permission Application
54	69	69	Notice
55	70	70	Interim injunction application
56	71	71	Application for court commissioner
57	72	72	Documentary Evidence List
58	73	73	Pursis
59	74	74	Adjournment Application
60	75	75	Reply of defendant No.10-11 for Ex.70
61	76	76	Reply of defendant No.10-11 for Ex.71
62	77	77	Reply of defendant No.9/1-9/6 for Ex.71
63	78	78	Reply for amendment application
64	79	79	Permission Application
65	80	80	Documentary Evidence List

66	81	81	Plaintiff's written argument for interim injunction application
67	82	82	Defendants' written argument for interim injunction application
68	223	83	Issues
69	224	84	Adjournment Application
70	225	85	Adjournment Application
71	226	86	Adjournment Application
72	227	87	Permission Application
73	228	88	Documentary Evidence List
74	229	89	Deposition of plaintiff No.2 Jayeshbhai Jayantibhai Patel
75	230	90	Permission Application
76	231	91	Documentary Evidence List
77	232	92	Permission Application
78	233	93	Application for exhibiting the documents
79	234	94	Documentary Evidence List
80	235	95	Form No.7 & 12
81	236	96	Form No.7 & 12 of land R.S. No.125 of the village Bhimrad
82	237	91	Form No.7 & 12 of land R.S. No.125 of the village Bhimrad
83	238	98	Sale Deed of suit land of the year 1954
84	239	99	Form No.6 Entry No.70
85	240	100	Form No.6 Entry No.94
86	241	101	Form No.6 Entry No.318
87	242	102	Form No.6 Entry No.364
88	243	103	Form No.6 Entry No.561
89	244	104	Form No.7 & 12 of land R.S. No.97

90	245	105	Form No.6 Entry No.660
91	246	106	Registered Sale deed of land R.S. No.71/2 Block No.125
92	247	107	Registered Sale deed of land R.S. No.73/1 Block No.129
93	248	108	Form No.6 Entry No.695
94	249	109	Registered Sale deed of land R.S. No.73/1 Block No.129
95	250	110	Registered Sale deed of land R.S. No.71/2 Block No.125
96	251	111	Notice
91	252	112	Application for issuance of summons
98	253	113	Deposition of plaintiff No.1 Induben D/o. Jayantibhai Patel
99	254	114	Permission Application
100	255	115	Documentary Evidence List
101	256	116	Form No.7 Land R.S. No.97
102	257	117	Form No.7 & 12 Land R.S. No.97
103	258	118	Form No.8 Land R.S. No.97
104	259	119	Form No.6 Entry No.1003
105	260	120	Postal Receipt
106	261	121	Postal Receipt
107	262	122	Postal Receipt
108	263	123	Postal Receipt
109	264	124	Postal Receipt
110	265	125	Postal Receipt
111	266	126	Postal Receipt
112	267	127	Postal Receipt
113	268	128	Postal Receipt
114	269	129	Postal Receipt

115	270	130	Postal Receipt
116	271	131	Postal Receipt
117	272	132	Postal Receipt
118	273	133	Postal Receipt
119	274	134	Acknowledgement Sleep
120	275	135	Acknowledgement Sleep
121	276	136	Acknowledgement Sleep
122	277	137	Acknowledgement Sleep
123	278	138	Acknowledgement Sleep
124	279	139	Acknowledgement Sleep
125	280	140	Acknowledgement Sleep
126	281	141	Cover
127	282	142	Reply of Notice
128	283	143	Reply of Notice
129	284	144	Order of conversion of Non Agriculture
130	285	145	Reply from Collector Surat
131	286	146	Deposition of Plaintiff witness Kishorbhai Buchiyabhai Patel
132	287	147	Deposition of Plaintiff witness Thakorbhai Devjibhai Patel
133	288	148	Deposition of Plaintiff witness Hasmukhbhai Ramubhai Patel
134	289	149	Closing Pursis
135	290	150	Adjournment Application
136	291	151	Not in record
137	292	152	Documentary Evidence List
138	293	153	Deposition of Pareshbhai Balubhai Pate
139	294	154	Form F for land Block No.125 and 129
140	295	155	Part Plan of T.P.No.43 (Bhimrad) Final Plot No.36

141	296	156	Form No.6 Entry No.1565.
142	297	157	Affidavit
143	296	158	Closing
144	297	159	Deposition of defendant No.11 Tusharbhai Bhanubhai Asodariya
145	298	160	Form No.7 & 12 of land Block No.125
146	299	161	Form No.7 & 12 of land Block No.129
147	300	162	Form No.6 Entry No.1600
148	301	163	Form No.6 Entry No.1601
149	302	164	Form No.6 Entry No.1650
150	303	165	Form No.6 Entry No.1651
151	304	166	Registration receipt
152	305	167	Registered sale deed No.2590/2018 for the land R.S. 73/1 Block No.129
153	306	168	Index Form No.2
154	307	169	Registration receipt
155	308	170	Registered sale deed No.2589/2018 for the land R.S. 71/2 Block No.125
156	309	171	Index Form No.2
157	310	172	Registration receipt
158	311	173	Registered sale deed No.2395/2017 for the land R.S. 71/2 Block No.125
159	312	174	Index Form No.2
160	313	175	Registration receipt
161	314	176	Index Form No.2
162	315	177	Registered sale deed No.2397/2017 for the land R.S. 73/1 Block No.129
163	316	178	Proposed Plan
164	317	179	Proposed Plan
165	318	180	Proposed Plan

166	319	181	Proposed Plan
167	320	182	Proposed Plan
168	321	183	Proposed Plan
169	322	184	Proposed Plan
170	323	185	Proposed Plan
171	324	186	Proposed Plan
172	325	187	Development Permission of SMC
173	326	188	Environment clearance
174	327	189	No Objection Certificate for Hight Clearance
175	328	190	N.A. Order
176	329	191	Zoning Certificate
177	330	192	Draft Development Plan
178	331	193	From - C Registration Certificate of Project
179	332	194	Deposition of defendant No.11 Arunbhai Rasiklal Korat (The original was misplaced from records; hence, the second copy is treated as new document, hence, not typed on ledger paper)
180	333	195	Documentary Evidence List
181	334	196	First Partnership Deed
182	335	191	Form G Registrar of Firms
183	336	198	Cosing Pursis
184	337	199	Written Argument of plaintiff
185	338	200	Citations
186	339	201	Written Argument of defendant No.9/1 to 9/6
187	340	202	Written Argument of defendant No.10-11
188	0	203	Application for taking matter on board received on Dtd.24/9/2020
189	0	204	Pursis of death of defendant No.4 received on Dtd.24/9/2020 with the contention that plaintiffs will file application for joining of

			heirs afterwards.
190	0	205	Permission application for the production of documentary evidence list
191	0	206	Documentary Evidence List
192	0	207	Cover in which above mentioned documents were received on Dtd.24/9/2020
193	0	0	Miscellaneous Papers

I, Shilpa Mansukhlal Kanabar, 2nd Addl. Sr. Civil Judge, Surat, hereby certify that when the file placed before me, above mentioned documents were in the original record. Due to some mistake, the documents were directly exhibited as Ex.223 from Ex.83, hence, before the writing of judgment, I rectified the mistakes and renumbered all the documents, but due to not having presence of full staff in court and only one employee was remained present due to Covid – 19 situations, the page numbering on each document was not possible. No other documents were present in original record. After verifying arrangement of the documents in chronological sequence, I have started to write judgment.

(1) While preferring suit, plaintiff claims partition and declaration as well as injunction alleging that plaintiffs and defendants No.1 to 6 are the direct legal heirs of deceased Gandabhai Ranchhodbhai. Deceased Gandabhai Ranchhodbhai died on Dtd.27/9/1984 intestate leaving two lands i.e. S.No.71/2 Block No.125 and S.No.73/1 Block No.129 situated in the village Bhimrad Sub-district - Choryasi (Now Sub-district - Mujara). Such land was purchased by deceased Gandabahi Ranchhodbhai from Gajaraben Gulabbhai Katheji vide registered sale

deed No.948 on Dtd.28-5-1954. Land R.S. No.71/2, Block No.125 was given by Gandabhai to his son defendant No.1 in partition during his lifetime and land R.S. No.73/1, Block No.129 kept with himself. Gandabhai died on Dtd.27/9/1984 and names of his heirs i.e. Lalitaben Gandabhai (Widow), Jayantibhai (Son i.e. defendant No.1) and Motliben (daughter i.e. defendant No.6) and Bebiben (daughter i.e. defendant No.5) and Laxmiben (daughter i.e. defendant No.4) were entered in revenue record vide entry No.561 Dtd.9/1/1977. They alleged the land as ancestral land and they demanded their 1/5 share from the share of defendant No.1. It is further stated that suit land was undivided land and they did not transfer their share in favour of any one. They further claimed that demanded their share from the defendants but they passed time and on Dtd.10/1/2015 they declared the sale of disputed land in the year 1994 and stated that land measuring 405 Sq. M. of Block No.129 and they are ready to give the share from that land. It is further stated that on verifying the revenue record of the land they found the sale of land Block No.125 to defendant No.7 to 9. It is further stated that land Block No.129 was sold out by defendant No.1 and No.4 to 6 to defendant No.8 on Dtd.11/2/1994 vide registered sale deed No.1947. It is further stated that name of defendant No.2 and 3 were not entered in revenue record, even though the document was executed by defendant No.2 and 3 and No.1 as the guardian of plaintiff No.2 as he was minor at that time. Plaintiff No.1 raised the issue of her rights in land and claimed sale without her knowledge and consent as she was major at that time. They both denied any kind of debt or urgent necessity of the money in HUF and filed the suit for their 1/5 the share from the share of defendant No.1 in suit

property and asked cancellation of registered sale deed No.1948 executed on Dtd.11/2/1994 and No.1947 executed on Dtd.11/2/1994.

(2) Defendant No. 10 and 11 filed objection vide Ex.66 and 75 on the ground of Limitation Act S. 3 and article 59 and 60 and 65. They raised the issue of majority of plaintiff No.1 in the year 1988 and plaintiff No.2 in the year 1998 and execution of alleged sale deed in the year 1994 and filling of the suit in the year 2015 and asked to reject the contention on the ground of limitation. He raised the issue of bar of S. 6 and 8 of Hindu Succession Act 1956 and 2005 alleging that suit property was self-acquired property of Gandabhai and one land received by defendant No.1 in partition from his father and second was as the heirs, hence, according to first schedule of Hindu Succession Act, plaintiffs were not the direct linen heirs of Gandabhai. They further raised the issue of delay, laches, acquiescence. It is further stated that plaintiffs do not claim partition in other property and denied their right as it were self-acquired property of Gandabhai not the ancestral property. They denied all the contention of plaintiffs' suit as well as application and asked rejection. They denied the suit property as HUF property as there is no evidence as it was purchased from joint business or from the property of Joint Business. They claimed them self as bonafide purchaser and alleged that they received the permission to use the land as non-agriculture and received the permission of development and stated the filling of the suit as the money grabbing tactics.

Defendant No.9/1 to 9/6 filed objection vide Ex.10 on the ground of S. 34 of Specific Relief Act and Limitation Act Article 59 and 113.

They raised the issue of majority of plaintiff No.1 in the year 1988 and plaintiff No.2 in the year 1998 and execution of alleged sale deed in the year 1994 and filling of the suit in the year 2015 and asked to reject the contention on the ground of limitation. They raised the issue of non payment of proper court fees stamp and filling of the suit after 21 years. They denied the facts of suit as well as application and claimed him self as bonafide purchaser after verifying all the records and asked rejection of the suit as well as application. They denied the right of plaintiff No.1 on relying the judgment of Hon'ble Gujarat High Court as declared in 2009 (3) GLS 324 Viralkumar Natwarlal V/s. State of Gujarat. They alleged the filling of the suit with suppression of material facts and with the collusion of defendant No.1 to 6. They denied any right of succession of plaintiffs during the lifetime of their father and asked rejection.

(3) Plaintiffs Evidence :-

(a) Oral Evidence :-

Sr. No.	Old Ex.	Re-exhibit	Evidence
1	229	89	Deposition of plaintiff No.2 Jayeshbhai Jayantibhai Patel
2	253	113	Deposition of plaintiff No.1 Induben D/o. Jayantibhai Patel
3	286	146	Deposition of Plaintiff witness Kishorbhai Buchiyabhai Patel
4	287	147	Deposition of Plaintiff witness Thakorbbhai Devjibhai Patel
5	288	148	Deposition of Plaintiff witness Hasmukhbhai Ramubhai Patel

(b) Documentary Evidence:-

Sr. No.	Old Ex.	Re-exhibit	Evidence
1	235	95	Form No.7 & 12
2	236	96	Form No.7 & 12 of land R.S. No.125 of the village Bhimrad
3	237	91	Form No.7 & 12 of land R.S. No.125 of the village Bhimrad
4	238	98	Sale Deed of suit land of the year 1954
5	239	99	Form No.6 Entry No.70
6	240	100	Form No.6 Entry No.94
7	241	101	Form No.6 Entry No.318
8	242	102	Form No.6 Entry No.364
9	243	103	Form No.6 Entry No.561
10	244	104	Form No.7 & 12 of land R.S. No.97
11	245	105	Form No.6 Entry No.660
12	246	106	Registered Sale deed of land R.S. No.71/2 Block No.125
13	247	107	Registered Sale deed of land R.S. No.73/1 Block No.129
14	248	108	Form No.6 Entry No.695
15	249	109	Registered Sale deed of land R.S. No.73/1 Block No.129
16	250	110	Registered Sale deed of land R.S. No.71/2 Block No.125
17	251	111	Notice
18	256	116	Form No.7 Land R.S. No.97
19	257	117	Form No.7 & 12 Land R.S. No.97
20	258	118	Form No.8 Land R.S. No.97
21	259	119	Form No.6 Entry No.1003

22	260	120	Postal Receipt
23	261	121	Postal Receipt
24	262	122	Postal Receipt
25	263	123	Postal Receipt
26	264	124	Postal Receipt
27	265	125	Postal Receipt
28	266	126	Postal Receipt
29	267	127	Postal Receipt
30	268	128	Postal Receipt
31	269	129	Postal Receipt
32	270	130	Postal Receipt
33	271	131	Postal Receipt
34	272	132	Postal Receipt
35	273	133	Postal Receipt
36	274	134	Acknowledgement Sleep
37	275	135	Acknowledgement Sleep
38	276	136	Acknowledgement Sleep
39	277	137	Acknowledgement Sleep
40	278	138	Acknowledgement Sleep
41	279	139	Acknowledgement Sleep
42	280	140	Acknowledgement Sleep
43	281	141	Cover
44	282	142	Reply of Notice
45	283	143	Reply of Notice
46	284	144	Order of conversion of Non Agriculture
47	285	145	Reply from Collector Surat
48	297	157	Affidavit

(4) Defendant's Evidence :-**(a) Oral Evidence :-**

Sr. No.	Old Ex.	Re-exhibit	Evidence
1	293	153	Deposition of Pareshbhai Balubhai Pate
2	297	159	Deposition of defendant No.11 Tusharbhai Bhanubhai Asodariya
3	332	194	Deposition of defendant No.11 Arunbhai Rasiklal Korat (The original was misplaced from records; hence, the second copy is treated as new document, hence, not typed on ledger paper)

(b) Documentary Evidence:-

Sr. No.	Old Ex.	Re-exhibit	Evidence
1	294	154	Form F for land Block No.125 and 129
2	295	155	Part Plan of T.P.No.43 (Bhimrad) Final Plot No.36
3	296	156	Form No.6 Entry No.1565.
4	298	160	Form No.7 & 12 of land Block No.125
5	299	161	Form No.7 & 12 of land Block No.129
6	300	162	Form No.6 Entry No.1600
7	301	163	Form No.6 Entry No.1601
8	302	164	Form No.6 Entry No.1650
9	303	165	Form No.6 Entry No.1651
10	304	166	Registration receipt
11	305	167	Registered sale deed No.2590/2018 for the land R.S. 73/1 Block No.129
12	306	168	Index Form No.2
13	307	169	Registration receipt

14	308	170	Registered sale deed No.2589/2018 for the land R.S. 71/2 Block No.125
15	309	171	Index Form No.2
16	310	172	Registration receipt
17	311	173	Registered sale deed No.2395/2017 for the land R.S. 71/2 Block No.125
18	312	174	Index Form No.2
19	313	175	Registration receipt
20	314	176	Index Form No.2
21	315	177	Registered sale deed No.2397/2017 for the land R.S. 73/1 Block No.129
22	316	178	Proposed Plan
23	317	179	Proposed Plan
24	318	180	Proposed Plan
25	319	181	Proposed Plan
26	320	182	Proposed Plan
27	321	183	Proposed Plan
28	322	184	Proposed Plan
29	323	185	Proposed Plan
30	324	186	Proposed Plan
31	325	187	Development Permission of SMC
32	326	188	Environment clearance
33	327	189	No Objection Certificate for Hight Clearance
34	328	190	N.A. Order
35	329	191	Zoning Certificate
36	330	192	Draft Development Plan
37	331	193	From - C Registration Certificate of Project
38	334	196	First Partnership Deed
39	335	191	Form G Registrar of Firms

(5) Arguments: -**i. Written Arguments :-****(A) Argument of Plaintiff :-**

(i) Learned advocate of plaintiff filed written argument vide Ex.337 re-exhibited as Ex.199. He narrated the facts of the suit, evidence filed by both the parties. He argued that from the cross examination of plaintiff No.2, it is cleared that plaintiff No.2 was separated from his father in the year 2009, hence, cause of action to ask partition from ancestral property was arose. He alleged the family of defendant No.1 to 5 with plaintiffs as the HUF of defendant No.1. He argued that plaintiffs and defendants No.2 to 5 were admitted as the HUF by defendant No.1 and he allowed the share from the land R.S. No.28/2 Block No.97 situated in the village Sarsana to plaintiffs and defendants No.2 to 5 through a joint ownership agreement and such entry was made in revenue record vide No.1003 of Dtd.14/6/2009, which was certified on Dtd.10/9/2009. He described the evidence of revenue records filed at Ex.257 (Renumbered as Ex.117) to Ex.259 (Renumbered as Ex.119). It is further argued that fact that plaintiffs are the heirs of defendant No.1 is proved and he allowed the share in his lifetime from the ancestral property is also proved from the documents of Ex.256 (117) to Ex.259 (119). He argued that advocate Mr.R.V.Korat cross-examined the plaintiff No.2 regarding using of physical force on defendant No.1 or any dispute with defendant No.1 but it is not necessary that to have partition one co-owner has to fight with other co-owners. He also raised the issue of giving of notice to defendant No.1 for the share of plaintiffs and

production of it on record vide Ex.251 (111) and 260 (120) to 281 (141). He argued at length on the cross-examination of plaintiff No.2 recorded under Ex.89 and stated that plaintiffs knew the sale of suit property in the year 2015, hence, the suit filed within limitation. He further narrated the cross-examination recorded under deposition of plaintiff No.1 recorded under Ex.253 (113). It is further argued that plaintiff No.1 born before 9/9/2005 and argued to appreciate the decision of Hon'ble Supreme Court given in case of Prakash Vs. Phulvati reported in 2016 92) SCC 36. He argued on the existence of the undivided right of plaintiffs in suit property and alleged that plaintiff No.1 was the major in the year 1990-91 and he also relied on other decision he produced vide Ex.338 (200). He argued on the supportive deposition of plaintiffs' witnesses placed on record vide Ex.146 to 148. He argued on not bring out any contrary material on record through the cross-examination of those witnesses. He argued that plaintiff No.1 was the legal heirs and her name was concealed by the defendant No.1 to 6 and registered sale deed executed in favour of defendant No.7 to 9. He argued that defendant No.7 to 9 did not inquire regarding the how many heirs were entitled for the suit land for malice intention and the registered sale deeds were executed without the consent of plaintiff No.1 and without the payment of consideration to her, hence, denied defendant No.7 to 9 as bonafide purchaser and asked the partition of suit land as her share is still undivided in suit property. He relied on the provisions of section 6, 7 and 58 of the Transfer of Property Act, 1982 and stated that "(a) The chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a

kinsman, or any other mere possibility of a like nature, cannot be transferred;” hence, he alleged the transfer of the land as non est and void. He relied on the decision of GLR 289, SRJ 2009 (8) Page No.335 SC and alleged the registered documents placed at Ex.246 and 247 (renumbered as 106 and Ex.107) as null and void. He described the provisions of section 6, 7, 41 and alleged the sale as illegal. He relied on the decision of Ranga Swami v/s. Sandar Pandey 110 IC 548, AIR 1928 Madras 635 and Vasntlal v/s. Dwarkaprasad AIR 1978 All. 436, 48 CPC 1908 Section 60 (1) Provision (m). He further argued that defendant No.1 sold the share of plaintiffs without having any ownership on the undivided share of plaintiffs, hence, he contested the sale deeds as non-binding to the plaintiffs. He also raised the question on the title of defendant No.10 and No.11 stating that they neither issue public notice nor received any title clearance certificate, hence, their defence as bonafide purchaser is rejected by the learned advocate of plaintiffs. He relied on the deposition of defendant No.11 recorded at Ex.332 (renumbered as Ex.194). He alleged the transfer of suit property during the pendency of the suit and argued to draw the presumption against them under section 4 of Evidence Act and argued to cast the burden to prove bonafide purchaser on them. He further narrated the cross-examination of defendants recorded under their depositions and alleged that property was transferred by defendant No.7 to 9 despite of continuation of this suit and it was purchased by the defendant No.10 and No.11 with the notice of continuation of this proceedings, hence, he denied the status of bonafide purchaser and relied on the decision of [Purnedu Nath Tagore vs. Hanut](#)

[Mull Dogar and others](#), **AIR 1940** Calcutta **565**. It is further stated that plaintiff No.2 was minor, even though his share was purchased from defendant No.1, hence, as per the provisions of section 41, defendants are not entitled for any protection. He further relied on the decision reported in AIR 1984 P & H 127. He further argued that notice was received by defendants, even though, raised the issue of non service and service of notice is proved through the cross-examination as learned advocate of plaintiff asked the writing of true address of defendant No.7 to 9/6 and person deposed has admitted it as true, hence, he argued to raise presumption of service of notice. He further relied on the cross-examination of defendant deposed under Ex.297 (159) and raised the issue of not having knowledge of payment and giving false deposition on oath and he also raised the issue of not payment of tax to government stating that the payment of cash consideration worth of Rs.11,00,000/- is not mentioned in the sale deed, hence, he argued to cancel the registered deeds placed on record vide Ex.305 (167), 308 (170), 311 (173), 315 (177). He raised the issue of giving false identification by defendant deposed at Ex.297 (159) and also drew the attention of the court regarding the note made by this court under his deposition. He further argued that suit was filed in the court on Dtd.5/5/2015 and defendant No.7 to 9 received non agricultural order from collector on Dtd.11/9/2015 and they received the permission on concealing the facts of institution of the suit. He relied on cross-examination of defendants. He raised the issue of suppression of material facts before governments authority and before the court also and asked to reject the contention of defendant No.10 and

No.11 as bonafide purchaser. He argued that defendant No.1 sold the land as the Karta of HUF and without any legal necessity and as the guardian of plaintiff No.2, hence, alleged the transaction as void ab initio, He relied on following decisions. (1) Mohribibi vs. Dharmadas Ghos AIR 30 Cal. 539 (2) Raj Balvantsinh Vs. Ray Maharaj Sinh 39 IA 109 (3) Kamma Vs. Appanna AIR 1973 AP 201 (4) Jaykant Vs. Durgashankar AIR 1970 Gujarat 106 (5) Sadik Ali Vs. Jay Kishor 30 Bom.LR 1346 PC (6) Inri Marshal 1920 (1) CHC 284. He raised the same issue of selling of share of minor without legal necessity and relied on same decisions cited as above and two more decisions cited as (1) Kanti Ishwar Patel V/s. Chndrakant Ishwar, Dahi Jagdish Patel Vs. 357/80 AIR 2003 (Gujarat). He further argued that plaintiff No.2 born on Dtd.10/7/1976 and she was married on Dtd.22/5/1987 and as per established law, she had right in suit property as the property was received in partition from the grand-father and some property was received under succession after the death of grand-father, hence, her right was accrued after her birth and the property was not counted as self-acquired property of father and such principle was established in AIR 2013 SC 3525 and learned advocate relied on it. Learned advocate of plaintiff cited another decision of AIR 1971 SC 312 declared in the case of Chhaturam Bhaiomani Vs. State of Bihar. Learned advocate argued on section 6 of Hindu Succession Act and argued that married daughter is entitled for the share in ancestral property. He relied on the decision of AIR 2012 Karnataka 32 and asked to properly apply the ration of Prakash vs. Phulvati reported in 2016 (2) SCC 36 and plaintiff No.1 claimed her status in suit property as coparcener since her

birth and he discussed the provisions of section 6 with the facts of this case and alleged that registered sale deed Ex.246 (106) and 247 (107) executed without mentioning of the existence of plaintiff No.1, hence, learned advocate of plaintiff contested the status of defendant No.7 to 9 as the bonafide purchaser with consideration. He relied on the decision of AIR 2002 SC 1711. He also argued that in case of purchaser did not make any inquiry of heirs, then he can not be termed as bonafide purchaser. He relied on the decision of AIR 2007 (3) JT 56, 2007 (2) SCC 404 and contested the status of defendant No.7 to 9 as bonafide purchaser. He further relied on the provision of Hindu Minority and Guardianship Act section 8 (2) and alleged that neither amount was placed in fixed deposition nor was given to him after getting maturity and claimed the registered sale deed void ab initio and not binding on plaintiff No.2. He argued that as per section 6 of Hindu Succession Act, it is not a partition but as a procedure of interest and both the plaintiffs had interest in suit property and he asked partition in suit property as per the decision of Ritaben Solanki vs. Kantilal Vyas reported in GLD 2012 (2001) 781 and Vidhnath Pande Vs. D. Lokpanda 1997 AIR Karnataka 32 and asked partition of suit property with the relief of cancellation of registered sale deeds. He alleged the suit property as ancestral property and denied any right before defendant No.1 to sell it and he relied on decision of Vijay Kumar vs. Vinay Kumar 2017 (1) CCC 664 and 2016 (3) MPLH 499. He further relied on following decisions and asked to allow the relief.

1. PRAKASH Vs. PHULAVATHI, (2016) 2 SCC 36

2. Danamma @ Suman Surpur & Anr. v. Amar & Ors., (2018) 3 SCC

343

3. [Rohit Chauhan v. Surinder Singh & Ors.](#), (2013) 9 SCC 419
4. **Karnataka High Court Smt Maritangevva vs Smt Anusuya on 26 March, 2010**
5. Kanchi Kamamma and others v. Yerramsetti Appanna - **AIR 1973 AP 201**
6. Kantibhai Ishwarbhai Patel Through His Heirs and Legal Representatives v/s. Chandrakant Ishwarbhai Patel, reported in **2006(1) GLH page 171**
7. Jaykant Harkishandas Shah Vs. Durgashanker Valji Pandya, **AIR 1970 Gujarat 106**
8. [Vineeta Sharma vs. Rakesh Sharma](#) [2020 SCC Online SC 641]

(B) Argument of Defendant :-

(i) Learned advocate of defendant No.9/1 to 9/6 filed written argument vide Ex.339 (renumbered as Ex.201). He stated the case of plaintiffs as well as short description of evidence filed. He argued that for the issue No.1, plaintiffs has not filed any pedigree or succession certificate to prove themselves as the heirs of Gandabhai Ranchhodbhai. He relied on the deposition of Ex.253 (113). He further argued that plaintiffs are the children of defendant No.1 and they have no right to ask partition during the lifetime of their father without the consent of their father. He relied on the decision of AIR 1978 Gujarat 10 and 1977 (0) GLR 1032 Aher Hamir Dud vs. Aher Dudu Arjan and afterwards, the Hon'ble Supreme court has rejected the right of succession of grand-son

from the property of Grand-father under section 8 of Hindu Succession Act in decision reported in AIR 1986 SC 1753, hence, he denied the right of plaintiffs on suit property as the property was not ancestral property but was self-acquired property of grand-father. He raised the issue of filling of suit on bogus facts. For the issue No.2, learned advocate relied on the cross-examination recorded under Ex.253 (113). He narrated the cross-examination of plaintiffs at length and argued that plaintiffs are filed to prove the HUF and as per the decisions of Hon'ble Supreme Court declared in AIR 2003 SC 3800 and AIR 2006 Karnataka 68, there cannot be presumed regarding the status of property as HUF. He further relied on the decision of 2013 (3) GLH 540 and argued that it is the burden on the person who wants the decision as the property is of HUF. He argued for the issue No.3 that suit property was purchased by the Gandabhai Ranchhodbhai as a separate status not as the Karta of HUF and names of defendants No,1 and 4 to 6 were entered in succession and they sold the land and such particulars were admitted by plaintiffs under their cross-examination. It is further stated that defendant No.1 is alive and there is no decree of determination of share of plaintiffs in suit property, hence asked any right of plaintiffs and relied on the decision of 2015 (1) CCC 476 (Patna) and 2000 (3) CCC 151 (SC). He further argued that suit property was sold out in the year 1994 and it was in the knowledge of plaintiffs, hence, denied the applicability of amended section 6 of Hindu Succession Act as it is clearly mentioned in the provision that it will not be applicable to the property which is already parted or transferred before Dt.20/12/2004 and he relied on the decision

of Virankumar Natvarlal Patel v/s. Kapilaben Manilal Jivanbhai reported in 2009 (3) GLH 324. He further relied on the principles of Evidence Act regarding the burden of proof and onus of proof. He cited the paragraphs of book Law of Evidence edition 1980, Part-3, page No.2097 of the author Woodroffe and Amir Ali and decision reported in 2014 (2) GLR 1689 and 2011 (12) SCC 220 and 2006 (12) SCC 198 and 2011 (3) SCC 545. He further argued that T.P. Scheme was applicable to suit land and the land was allotted to defendants under T.P.Scheme and plaintiffs did not raised any objection regarding it, hence, he argued to reject the suit as this court has not powers to do any act regarding the applicability of T.P.Scheme and he relied on the decision of Hon'ble Gujarat High Court of SCA No.13960/2008. For the issue No.5 he argued the suit as barred by law of limitation and relied on the cross-examination of plaintiffs and asked rejection of the suit, He relied on following decisions.

1. 2013 (1) GLR 398
2. 2013 (1) GLR 51
3. 2010 (1) GLR 852
4. 2005 (1) GLH 735
5. 2006 (4) GLR 3054
6. Article 58 of Limitation Act.
7. Article 110 of Limitation Act.
8. AIR 1977 (1) SC 2421
9. AIR 2010 Patna 189
- 10.2007 (2) GLH 1563
- 11.2004 (2) GLH 1744

(ii) He raised the issue of not having possession of suit land

before plaintiff and the possession of defendant No.10 and No.11 is admitted fact and plaintiffs did not raise any issue before revenue authority and alleged the defendant No.7 to 9 as bonafide purchaser with consideration without notice and sale of land to defendant No.10 and No.11 as legal and asked rejection of the suit. He relied on the decision of 1997 GLH 741 and alleged the possession follows the title in case of open land and asked rejection of the suit. He further argued that plaintiffs did not raise any objection regarding the possession, hence, defendants became owner as having possession as per the provisions of section 25 of Limitation Act. He argued that plaintiffs challenged the order of NA till Hon'ble Gujarat High Court and their application was rejected on dtd.29/6/2017 and defendant No.10 and No.11 are legal owner and possessor, hence, asked rejection of the suit and alleged that decision cited by the learned advocate of plaintiffs are not applicable to the case on hand.

(iii) Learned advocate of defendant No.10 and No.11 filed written argument vide Ex.340 (202). He narrated the case of plaintiffs and procedure going on in the suit. He raised the issue of filing of the suit after the lapse of 21 years and raised the issue of suit is barred by law of limitation as per article 59 and 60 of the Limitation Act. He narrated the sale of land to defendant No.10 and 11 by defendant No.7 to 9 and conversion of land in NA and allowing the construction permission and approval of different plans on suit land and change of identity of suit land. He raised the issue of not discharging of burden by plaintiffs casted on them and raised the issue of legality of asking partition during the lifetime of his father. He denied the right title of plaintiffs in suit property

and denied opening of succession for plaintiff during the existence of their father defendant No.1. He argued that as disposition and alienation of property took place before the 20th day of December, 2004. He denied the status of suit property as ancestral and denied any right of plaintiff in suit property and raised the issue of giving false evidence in court. He denied the importance of questions asked by learned advocate of plaintiffs in cross-examination of defendants. He denied the applicability of decisions cited by the learned advocate of plaintiffs with at length reasons and asked rejection of the suit. He relied on following decisions.

1. [Lalitaben Wd/o Baldevbhai Manibhai Suthar v. Niruben Ramanbhai Suthar & Anr](#), reported in 2007(1) GLH 403;
2. [Bhanwar Singh v. Puran & Ors.](#) (2008) 3 SCC 87
3. Emerald Co Operative Housing Society Ltd Vs. Decd. Gulamkadar s/o. Gulam Husain Abdulkadar and Bai Shakarbu and 7 others, 2019 (2) GLH 559.
4. Marabasappa (dead) by LRs. and [Others vs. Ningappa](#) (dead) by LRs. and Others, (2011) 9 SCC 451
5. Rana Bharatsinh Jasubha Vs. Heirs of Valand Laljibhai Arjanbhai & Ors., reported in 2014 (2) GLR 1688
6. Govindbhai Chhotabhai Patel and others v. Patel Ramanbhai Mathurbhai AIR 2019 SC 4822

(6) For the determination of the suit the following issues have been framed vide **EX.223 (83)**.

1. Whether plaintiffs prove that they are the direct legal heirs of

deceased Gandabhai Ranchhodbhai?

2. Whether plaintiffs prove that they are the coparceners in suit property?
3. Whether plaintiff proves that suit property was sold out without their consent and illegally?
4. Whether plaintiffs are entitled to get relief as prayed for?
5. Whether suit is barred by any law?
6. What is order & decree?

(7) Determination on issues.

1	Issue No.1 is given in negative.
2	Issue No.2 is given in negative.
3	Issue No.3 is given in negative.
4	Issue No.4 is given in negative.
5	Issue No. 5 is given in affirmative.
6	Issue No. 6 is as per final decision.

:- REASONS :-

(8) **Important Legal Provisions :-**

1. Evidence Act.

A. Section 61. Proof of contents of documents.:- The contents of documents may be proved either by primary or by secondary evidence.

B. Section 64. Proof of documents by primary evidence. :- Documents must be proved by primary evidence except in the cases hereinafter mentioned.

C. Section 74. Public documents. - The following documents

are public documents.

(1) Document forming the acts, or records of the acts.

(i) Of the sovereign authority,

(ii) Of official bodies and tribunals, and

(iii) Of public officers, legislative, judicial and executive, [of any part of India or of the Commonwealth], or of a foreign country;

(2) Public records kept [in any State] of private documents.

D. Section 76. Certified copies of public documents - Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefore, together with a certificate written at the foot of such copy that it is true copy of such document or part thereof, as the case may be and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of seal; and such copies so certified shall be called certified copies.

Explanation. Any officer who, by the ordinary course of official duty, is authorized to deliver such copies shall be deemed to have the custody of such documents within the meaning of this section.

E. Section 77. Proof of documents by production of certified copies. - Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.

F. Section 79. Presumption as to genuineness of certified copies. - The court shall presume 1[to be genuine] every document purporting to be a certificate, certified copy or other document, which is by law declared to be admissible as evidence of any particular fact and which purports to be duly certified by an officer 2[of the Central Government or of a State Government, or by any officer 3in the State of Jammu and Kashmir] who is duly authorized thereto by the Central Government]:

If such document is substantially in the form and purports to be executed in the manner directed by law in that behalf.

The court shall also presume that any officer by whom any such document purports to be signed or certified held when he signed it, the official character that he claims in such paper.

G. Section 91. Evidence of terms of contracts, grants and other disposition of property reduced to form of document. :-

When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

Exception 1. When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.

Exception 2. Wills [admitted to probate in [India]] may be proved by the probate.

Explanation 1. This section applies equally to cases in which the contract grants or disposition of property referred to are contained in one document and to cases in which they are contained in more documents than one.

Explanation 2. Where there are more originals than one, one original only need be proved.

Explanation 3. The statement, in any document whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact.

H. Section 92. Exclusion of evidence of oral agreement. :-

When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representative

in interest, for purpose of contradicting, varying, adding to, or subtracting from, its items.

Proviso (1) Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation. Illegality, want of due execution, want of capacity in any contracting party [want or failure] of consideration, or mistake in fact or law.

Proviso (2) The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the court shall have regard to the degree of formality of the document.

Proviso (3) The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved.

Proviso (4) The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

Proviso (5) Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contract of that description, may be proved:

Provided that the annexing of such incident would not be repugnant to, or inconsistent with express terms of the contract.

Proviso (6) Any fact may be proved which shows in what manner the language of a document is related to existing facts.

I. Section 58. Facts admitted need not be proved. - No fact need to be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings:

If the court may, in its discretion, require the facts admitted to be

proved otherwise than by such admission.

2. Hindu Succession Act 1956 with amendment in 2005.

A. Section 6 :-

(a) Prior to amendment Section - 6. Devolution of interest in coparcenary property. - When a male Hindu dies after the commencement of this Act, having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act:

Provided that, if the deceased had left him surviving a female relative specified in class I of the Schedule or a male relative specified in that class who claims through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship.

Explanation 1.- For the purposes of this section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

Explanation 2.- Nothing contained in the proviso to this section shall be construed as enabling a person who has separated himself from the coparcenary before the death of the deceased or any of his heirs to claim on intestacy a share in the interest referred to therein.

(b) After Amendment Section 6. Devolution of interest in coparcenary property. :-

(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,-

- (a) by birth become a coparcener in her own right in the same manner as the son;
- (b) have the same rights in the coparcenary property as she

would have had if she had been a son;

- (c) be subject to the same liabilities in respect of the said coparcenary property as that of a son, and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener:

Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.

(2) Any property to which a female Hindu becomes entitled by virtue of sub-section (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act, or any other law for the time being in force, as property capable of being disposed of by her by testamentary disposition.

(3) Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005, his interest in the property of a Joint Hindu family governed by the Mitakshara law, devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and,-

- (a) the daughter is allotted the same share as is allotted to a son;
- (b) the share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such predeceased son or of such pre-deceased daughter; and
- (c) the share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be.

Explanation.- For the purposes of this sub-section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

(4) After the commencement of the Hindu Succession

(Amendment) Act, 2005, no court shall recognise any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great-grandfather solely on the ground of the pious obligation under the Hindu law, of such son, grandson or great-grandson to discharge any such debt:

Provided that in the case of any debt contracted before the commencement of the Hindu Succession (Amendment) Act, 2005, nothing contained in this sub-section shall affect-

(a) the right of any creditor to proceed against the son, grandson or great-grandson, as the case may be; or

(b) any alienation made in respect of or in satisfaction of, any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as it would have been enforceable as if the Hindu Succession (Amendment) Act, 2005 had not been enacted.

Explanation.-For the purposes of clause (a), the expression "son", "grandson" or "great-grandson" shall be deemed to refer to the son, grandson or great-grandson, as the case may be, who was born or adopted prior to the commencement of the Hindu Succession (Amendment) Act, 2005.

(5) Nothing contained in this section shall apply to a partition, which has been effected before the 20th day of December, 2004.

Explanation.- For the purposes of this section "partition" means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908) or partition effected by a decree of a court.'

B. Section 8 - General rules of succession in the case of males.—The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter—

(a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;

(b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;

(c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and

(d) lastly, if there is no agnate, then upon the cognates of the

deceased.

C. Hindu Succession Act "Heirs in Class I"

- Son;
- daughter;
- widow;
- mother;
- son of a pre-deceased son;
- daughter of a pre-deceased son;
- son of a pre-deceased daughter;
- daughter of a pre-deceased daughter;
- widow of a pre-deceased son;
- son of a pre-deceased son of a pre-deceased son;
- daughter of a pre-deceased son of a pre-deceased son;
- widow of a pre-deceased son of a pre-deceased son.

D. Hindu Succession Act "Heirs in Class II"

I. Father.

II. (1) Son's daughter's son, (2) son's daughter's daughter, (3) brother, (4) sister.

III. (1) Daughter's son's son, (2) daughter's son's daughter, (3) daughter's daughter's son, (4) daughter's daughter's daughter.

IV. (1) Brother's son, (2) sister's son, (3) brother's daughter, (4) sister's daughter.

V. Father's father; father's mother.

VI. Father's widow; brother's widow.

VII. Father's brother; father's sister.

VIII. Mother's father; mother's mother.

IX. Mother's brother; mother's sister.

Explanation : In this Schedule, references to a brother or sister do not include references to a brother or sister by uterine blood.

3. The Code of Civil Procedure

A. "Order-22 Rule-6. -

No abatement by reason of death after hearing :--Notwithstanding anything contained in the foregoing rules whether the cause of

action survives or not, there shall be no abatement by reason of the death of either party between the conclusion of the hearing and the pronouncing of the judgment but judgment may in such case be pronounced notwithstanding the death and shall have the same force and effect as if it had been pronounced before the death took place."

(9) General Principle of Evidence in Civil Cases :-

As per the S.102 of Indian Evidence Act, the burden of proof lies on the plaintiff to produce the facts before the Court regarding his claim, upto satisfaction of the Court then after he will get decision in his favour. He has to lead such evidence as Court draws inference in his favour. He has to establish his case prima facie. Court relies on the principle of Preponderance of Probability at the time of arriving decision in civil matters.

(10) Some Legal Discussion :-

(i) The basic principle of the Civil Suit is that person who wants the decree in his favour, has to prove his case as per the satisfaction of the court. He can not rely on the defect of the other party. '**Burden of proof and 'onus of proof**' are such expressions which are totally distinct from each other. Burden of proof lies upon the person who has to prove a fact and it never shifts, but the onus of proof does shift. Such a shifting of onus is a continuous process in the evaluation of evidence. 'Burden of proof has two distinct meanings, namely, (i) the 'burden of proof as a matter of law and pleadings and (ii) the 'burden of proof as a matter of

adducing evidence. The first remains constant, but the second shifts. The **general principle of onus or burden of proof** in proceedings in the ordinary civil courts of the land was thus explained in 15 Halsbury's Laws of England, 3rd Edn. at p. 267, that "In legal proceedings the general rule is that he who asserts must prove. This proposition is sometimes more technically expressed by saying that the burden of proof rests on the Party who substantially asserts the affirmative of the issue. The rule is derived from the Roman law, and is support-able not only upon the ground of fairness but also upon that of the greater practical difficulty which is involved in proving a negative than in proving an affirmative."

Supreme Court of India Rangammal vs Kuppuswami & Anr. on 13 May, 2011 reported in (2011) 12 SCC 220 held in Para 14. Section 101 of the Indian Evidence Act, 1872 defines **"burden of proof"** which clearly lays down that whosoever desires any court to give judgment as to any legal right or law dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person. Thus, the Evidence Act has clearly laid down that the burden of proving fact always lies upon the person who asserts. Until such burden is discharged, the other party is not required to be called upon to prove his case. The court has to examine as to whether the person upon whom burden lies has been able to discharge his burden. Until he arrives at such conclusion, he cannot

proceed on the basis of weakness of the other party.

It has been further held by the Supreme Court in the case of State of J & K vs. Hindustan Forest Company, 2006 (12) SCC 198, wherein it was held that the **onus** is on the plaintiff to positively establish its case on the basis of material available and it cannot rely on the weakness or absence of defence to discharge onus.

Supreme Court's Judgment in [Parimal v. Veena @ Bharti](#) (2011) 3 SCC 545 which held inter-alia: "15.The provisions of [Section 101](#) of the Evidence Act provide that the burden of proof of the facts rests on the party who substantially asserts it and not on the party who denies it. In fact, burden of proof means that a party has to prove an allegation before he is entitled to a judgment in his favour. [Section 103](#) provides that burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any special law that the proof of that fact shall lie on any particular person. The provision of [Section 103](#) amplifies the general rule of [Section 101](#) that the burden of proof lies on the person, who asserts the affirmative of the facts in issue."

(ii) Importance of pleadings: -

Supreme Court of India in case of Sri Uttam Chand (D)

Th Lrs . vs Nathu Ram (D) Thr. Lrs. Decided on 15 January, 2020 held that “There can be no proof sans pleadings and pleadings without evidence will not establish a case in law.”

(iii) Effect of Admission: -

Supreme Court of India Govindammal (Dead) By Lrs. And ... vs Vaidiyanathan And Ors. on 23 October, 2018 held that “admission is the best piece of evidence”

(11) Important issue involved in case :-

(11-I) Plaintiffs come with the plea of their share in the property of HUF. They alleged themselves as the direct linen heirs of deceased Gandabbhai Ranchhodbhai, who died intestate on Dtd.27/9/1984. The suit property land Block No.125 and 129 of the village Bhimrad alleged as ancestral property and despite of having share of plaintiffs, defendant No.1 in collusion with other defendants sold the land without the consent and permission of the plaintiffs and no share was given to them from the consideration received, hence, plaintiffs filed this suit for their share and cancellation of registered sale deed executed for their share.

(11-II) Some important law point is involved in the case.

1. Whether the suit property was ancestral property?
2. Whether the succession in suit property is governed under section 6 of Hindu Succession Act?
3. Whether the plaintiffs are the Class I heirs of deceased Gandabbhai Ranchhodbhai?

Before going on the evaluation of evidence on factual aspect,

the determination of above mentioned law points are necessary.

1. Whether the suit property was ancestral property?

A. It is the contention of plaintiffs that suit property was purchased by deceased Gandabahi Ranchhodbhai from Gajaraben Gulabbhai Katheji vide registered sale deed No.948 of Dtd.28-5-1954.

(1-i) What is ancestral property :-

Supreme Court of India in case of Madanlal Phulchand Jain vs State Of Maharashtra And Ors on 9 April, 1992 reported in 1992 AIR 1254, 1992 SCR (2) 479 held that "the only property which can be characterised as ancestral property is the property inherited by a person from his father, father's father, or father's father's father. That means property inherited by a person from any other relation becomes his separate property and his male issue does not take any interest therein by birth."

Supreme Court of India in case of U.R.Virupakshaiah vs Sarvamma & Anr on 17 December, 2008 reported in AIR 2009 SC 1481 held that "Property inherited by a Hindu from his father, father's father or father's fathers' father, is ancestral property. Property inherited by him from other relations is his separate property. The essential feature of ancestral property is that if the person inheriting it has sons, grandsons or great-grandsons, they become joint owner's coparceners with him. They become entitled to it due to their

birth. These propositions also must be read in the light of what has been stated in the note at the top of this chapter."

(1-ii) We can simplify the position in following wordings.

" Any property acquired by the Hindu great grand father, which then passes undivided down the next three generations up to the present generation of great grand son/daughter.

1. This property should be four generation old.
2. It should undivided by the users in the joint Hindu family as once it is divided, the share or portion of each Coparcener becomes his or her self acquired property.
3. The right to a share in ancestral or coparcenary property accrues by birth itself, unlike other forms of inheritance, where inheritance opens only on the death of the owner.
4. The rights in ancestral property are determined per stripes and not per capita. Share of each generation is determined first and the successive generations will get sub divide share form the share inherited by their respective predecessor.
5. Properties inherited from mother, grandmother, uncle and even brother is not ancestral property. Property inherited by will and gift are not ancestral properties.

B. Relying on the principles held by Hon'ble Apex Court, the evaluation of the fact of the case on hand is of the nature that the property in question is neither inherited by the Gandabhai Ranchhodbhai from his forefather but he purchased it, hence, it was not the ancestral property of Gandabhai Ranchhodbhai but both the properties were his self-acquired

properties.

C. The property land No.125 was given by Gandabhai Ranchhodbhai to his son Jayantibhai Gandabhai through partition. Hon'ble Supreme Court, in his earlier judgment, discussed the point of partition and effect of partition in Hindu Law.

Supreme Court of India in Kallyani vs Narayanan And Ors on 27 February, 1980 reported in 1980 AIR 1173, 1980 SCC (2)1130 held that " 3. Partition is a word of technical import in Hindu law. Partition in one sense is a severance of joint family status and coparcener of a coparcenary is entitled to claim it as a matter of his individual volition. In this narrow sense all that is necessary to constitute partition is a definite and unequivocal indication of his intention by a member of a joint family to separate himself from the family and enjoy his share in severalty. Such an unequivocal intention to separate brings about a disruption of joint family status, at any rate, in respect of separating member or members and thereby puts an end to the coparcenary with right of survivorship and such separated member holds from the time of disruption of joint family as tenant-in-common. Such partition has an impact on devolution of shares of such members. It goes to his heirs displacing survivorship. Such partition irrespective of whether it is accompanied or followed by division of properties by metes and bounds covers both a division of right and division of property. A

disruption of joint family status by definite and unequivocal indication to separate implies separation in interest and in right, although not immediately followed by a de facto actual division of the subject-matter. This may at any time, be claimed by virtue of the separate right. A physical and actual division of property by metes and bounds follows from disruption of status and would be termed partition in a broader sense. "

Supreme Court of India in case of V. Kalyanaswamy (D)

By Lrs. vs L. Bakthavatsalam (D) Thr. Lrs. Decided on

17 July, 2020 held that "98. We would think that there is

really no conflict as such. We have already noticed what has already been laid down by the Privy Council in Appovier v.

Rama Subba Aiyan [(1886) 11 MIA 75: 2 Sar 218: 8 WR PC

1. The Court has laid down, inter alia, that when members of the Hindu Undivided Family agree among themselves that a particular property shall be thereafter be subject of ownership in certain defined shares, then, the character of the undivided property and joint enjoyment is taken away from it and each member will thereafter have a definite and certain share, even though the property itself has not been severed and divided.

D. On summing up the issue for property of land Block No.125, it can be said that suit properties were purchased by Gandabhai Ranchhodhbhai through the registered sale deed and property No.125 was received to the

father of plaintiffs under partition with his father i.e. grand-father of plaintiffs, thus, land of Block No.125 was neither the property of HUF nor the ancestral property. Plaintiffs' father become sole and absolute owner of land Block No.125 not as the Karta of HUF.

E. Now considering the question of land block No.129, the position of Hindu Succession Act is necessary to consider. The property was self-acquired property of Gandabhai Ranchhodbhai and he died intestate. The property was not ancestral property, hence, there was no question of applicability of Section 6 of Hindu Succession Act, but the distribution of property was governed under section 8 of Hindu Succession Act. The provision is run as: -

Section 8 - The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter—

(a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;

(b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;

F. Here in the case on hand, the heirs of class I of the Schedule were alive, hence, there was no question of devolvement of the property to class II heirs. On perusal of the Class I heirs as mentioned in above paragraph No.(8), it is cleared that son, daughters and widow are included in class I heirs. Thus, land of block No.129 was received by defendant No.1 as the Class I heirs of deceased father.

Supreme Court of India in case of M.Arumugam vs Ammaniammal And Ors. on 8 January, 2020 held that
“12. In Commissioner of Wealth Tax, Kanpur and Ors. vs.

Chander Sen and Ors. Reported in (1986) 3 SCC 567, para 22.... It would be difficult to hold today the property which devolved on a Hindu under Section 8 of the Hindu Succession Act would be HUF in his hand vis-a-vis his own son; that would amount to creating two classes among the heirs mentioned in class I, the male heirs in whose hands it will be joint Hindu family property and vis-a-vis son and female heirs with respect to whom no such concept could be applied or contemplated. It may be mentioned that heirs in class I of Schedule under Section 8 of the Act included widow, mother, daughter of predeceased son etc.” Accordingly, it was directed that the credit balance would be inherited in terms of Section 8 of the Succession Act.

13. In Appropriate Authority (IT Deptt) And Others vs. M. Arifulla And Others (2002) 10 SCC 342 the issue which arose was whether the property inherited in terms of Sections 6 and 8 of the Succession Act was to be treated as the property of coowners or as joint family property. The Court held as follows: “3. ... This Court has held in CWT vs. Chander Sen that a property devolving under Section 8 of the Hindu Succession Act, is the individual property of the person who inherits the same and not that of the HUF. In fact, in the special leave petition, it is admitted that respondents 2 to 5 inherited the property in question from the said T.M. Doraiswami. Hence, they held it as tenants in - common and not as joint tenants.”

G. On relying the principles laid down in above mentioned decisions, it is cleared in case on hand that suit land Block No.129 inherited by defendant No.1 was not the property of HUF as it was inherited under section 8 of Hindu Succession Act.

H. Conclusion :-

The court concludes the discission on the first legal point raised in paragraphs No.11 in the sense that both the properties i.e. land of Block No.125 and Block No.129 were neither the ancestral properties nor the properties of Hindu Undivided Family of defendant No.1 or the plaintiffs but both the lands were self-acquired property of defendant No.1 received under partition and under section 8 of Hindu Succession Act.

2. Whether the succession in suit property is governed under section 6 of Hindu Succession Act?

(2-i) Section 6 in The Hindu Succession Act, 1956 amended in 2005 runs with the wordings as “Devolution of interest in coparcenary property” and section 8 of the Act runs with the wording as “General rules of succession in the case of males.” As the lengthy discussions made with the all decisions of Hon’ble Apex Court in above discussed paragraphs, it is cleared that deceased Gandabhai Ranchhodbhai did not possess any ancestral property and both the disputed properties were of his self-acquired properties, hence, in case of a Hindu died intestate leaving self-acquired property, his succession does not govern under section 6 of Hindu Succession Act, but the provisions of section 8 of Hindu Succession Act is applicable. Thus, the succession of Gandabhai Ranchhodbhai governed under section 8 and not under section 6 of The Hindu Succession.

3. Whether the plaintiffs are the Class I heirs of deceased**Gandabhai Ranchhodbhai?**

(3-i) As per the schedule mentioned in the Hindu Succession Act, 1956, following are the Class I heirs.

Class-I heirs	
i.	Son
ii.	Daughter
iii.	Widow
iv.	Mother
v.	Son of a predeceased son
vi.	Daughter of predeceased son
vii.	Widow of predeceased son
viii.	Son of a predeceased daughter
ix.	Daughter of predeceased daughter
x.	Son of predeceased son of predeceased son
xi.	Daughter of predeceased son of a predeceased son
xii.	Widow of predeceased son of a predeceased son

(3-ii) Plaintiffs are not covered under any head of class I heirs of Gandabhai Ranchhodbhai in any category mentioned as above.

(11-III) Thus, answers of the legal point involved in the case are as under.

Sr. No.	Legal Points	Answers there on
1	Whether the suit property was ancestral property?	No. Suit property was self-acquired property of Jayantibhai Gandabhai.
2	Whether the succession in suit property is governed under section 6 of Hindu Succession Act?	No. Property is governed under section 8 of Hindu Succession Act.
3	Whether the plaintiffs are the	No. As plaintiffs are not

	Class I heirs of deceased Gandabhai Ranchhodbhai?	covered under the category of Class I given in Schedule of Hindu Succession Act.
--	---	--

Issue No.1 :-**1. Whether plaintiffs prove that they are the direct legal heirs of deceased Gandabhai Ranchhodbhai?**

(12) Plaintiff No.1 is the daughter of Jayantibhai Gandabhai i.e. defendant No.1. Defendant No.1 is the son of deceased Gandabhai Ranchhodbhai. Thus, plaintiff No.1 is the grand-daughter of Gandabhai Ranchhodbhai. Plaintiff No.2 is the Son of Jayantibhai Gandabhai i.e. defendant No.1. Defendant No.1 is the son of deceased Gandabhai Ranchhodbhai. Thus, plaintiff No.1 is the grand-son of Gandabhai Ranchhodbhai. As per the schedule mentioned in paragraph No.(8), plaintiffs are not covered as Class I heirs of deceased Gandabhai Ranchhodbhai. Plaintiff raised the issue of direct heirs of Gandabhai Ranchhodbhai. In the legal sense the meaning of direct heirs is Class I heirs and as per the law during the life-time of defendant No.1, plaintiffs are not covered as direct heirs of Gandabhai Ranchhodbhai. Learned advocate narrated the facts of direct heirs of Jayantibhai Gandabhai under the argument he mentioned for issue No.1, but there was some mistake of learned advocate of plaintiff. This court has not framed the issue of direct heirs of Jayantibhai Gandabhai, but as plaintiffs came with the plea of direct heirs of Gandabhai Ranchhodbhai, this court has framed the issue of direct heirs of Gandabhai Ranchhodbhai and as per the law discussed in above discussed paragraphs, plaintiffs are not covered under the head

of direct i.e. Class I heirs of Gandabhai Ranchhodbhai. Thus, decision on issue No.1 is pronounced in negative.

Issue No.2 :-

2. Whether plaintiffs prove that they are the coparceners in suit property?

(13) As the discussion made in length in above paragraphs, it is cleared that suit property was purchased by Gandabhai Ranchhodbhai and it was his self-acquired property, which was received by the defendant No.1 i.e. father of plaintiffs under partition and under succession governed u/s. 8 of Hindu Succession Act, thus, it was neither ancestral property not the property of Hindu Undivided Family. Plaintiffs advocate argued that in other property, plaintiffs father admitted the right of plaintiffs and gave consent to enter the name of plaintiffs in revenue record, but it does not give the right to plaintiffs which was not received as the property of HUF or as of ancestral property and which was already devolved by the person received the property. Another argument was advance by the learned advocate of plaintiff that the registered sale deed was executed as the Karta of the HUF but on perusal of the deed, it was clearly mentioned that there was no right of other person of family, but to prevent any possibility of future dispute, it was mentioned in as such form. (See Ex.246 renumbered as Ex.106 page No.13 Line No.1 to 9 and Ex.247 renumbered as Ex.107 page No.12 and No.13) Thus, the effect of law cannot be overt by the act of parties only mentioned the titles in deed. It is law that any documents can be read as whole not in any specific line

or any specific part. Thus, decision on issue No.2 is pronounced in negative.

Issue No. 3 :-

3. Whether plaintiff proves that suit property was sold out without their consent and illegally?

(14) As it is discussed in length that suit property was neither the ancestral property nor the property of Hindu Undivided Family, thus, there was not the question of plaintiff's consent at the time of its sale. Thus, decision on issue No.3 is pronounced in negative.

Issue No. 5 :-

5. Whether suit is barred by any law?

(15-i) It is cleared from the deposition of plaintiffs that the sale was made in the year 1994. At that time plaintiff No.1 was major and plaintiff No.2 was about of 17 or 18 years. Therefore, the cross-examination of the plaintiffs recorded under their examination in chief is necessary to note here.

(15-ii) Cross-examination of plaintiff No.2 recorded under Ex.229

સ્પે.દિ.મુ. નં. - ૬૧/૨૦૧૯ આંક - ૨૨૯ હેઠળ જયેશભાઈ
જયંતીભાઈ પટેલ
પ્રતિવાદી નં. ૦૧ થી ૦૬ તરફે દાવો અકતરફી ચાલતો હોય
તેથી તેમના તરફે ઉલટ તપાસ નથી.

ઉલટ તપાસણી પ્રતિવાદી નં. ૦૭ અને ૦૮ તરફ વિ.વ.શ્રી
કે.એમ.પટેલ

મારો જન્મ તા. ૧૦/૦૭/૧૯૭૬ ના રોજ થયેલો. ઈન્દુબેન વાદી
નં. ૦૧ ની જન્મ તારીખ મને યાદ નથી. વાદી નં. ૦૧ મારા બહેન
થાય છે. ઈન્દુબેન પરણેલા છે તેમના લગ્ન સને ૧૯૮૬ ના
અરસમાં અને મારા લગ્ન સને ૨૦૦૫ ના અરસામાં થયેલા.
ઈન્દુબેનને આભવા ગામ પરણાવેલા. ઈન્દુબેનને પરણાવેલા
ત્યારથી તેઓ સાસરે જ રહેતા આવેલા. મારુ રહેવાનું સરસાણા
ગામમાં છે હું મીલમાં લેબર કોન્ટ્રાક્ટર તરીકે કામ કરુ છું.
સામાન્ય રીતે કામ બે-ત્રણ મીલોમાં કામકાજ રહે છે. દાવાવાળી
જમીન ભીમરાડ મુકામે આવેલી છે. સરસાણાથી મારા
કામકાજ માટે અવરજવર કરુ ત્યારે રસ્તામાં ભીમરાડ આવે
છે. મે મારા પિતાની મિલકતમાંથી ચોથો હિસ્સો મેળવવા મે
હાલનો દાવો કરેલો છે. દાવાવાળી જમીનના મુળ માલિક
ગજરાબેન ગુલાબભાઈ દેસાઈ હતા. ગજરાબેન મારા સગા કે
કુટુંબી થતા નથી. ગજરાબેન પાસેથી મારા દાદા ગાંડાભાઈ
રણછોડભાઈએ જમીન સને ૧૯૫૪ માં વેચાતી રાખેલી.
ત્યારથી તેઓ એકલા જ તે જમીનના સ્વતંત્ર માલિક
કબજેદાર ચાલી આવેલા. ગાંડાભાઈના કુલ્લે ચાર વારસો છે.
ગાંડાભાઈના ત્રણ ભાઈ ઓ પણ છે અને તેઓનો પણ વસ્તાર
છે. ગાંડાભાઈના ભાઈઓ સાથે કોઈ દાવાદુવી કે પ્રકરણો
ચાલતા નથી. ગાંડાભાઈ સને ૧૯૮૪ માં ગુજરી ગયેલા.
ગાંડાભાઈના બધાજ વારસો હયાત છે. બધા જ વારસો ભેગો

વહીવટ સંભાળે છે. તે લોકો વચ્ચે કોઈ વહેંચણા થયેલી નથી.
ગાંડાભાઈ ગુજરી ગયેલા ત્યારે તેમની વારસાઈ સામે અમે તેની
જાણ ન હોવાથી કોઈ વાંધો ઉઠાવેલો નહીં. હું મારા પિતાથી બધી
જ રીતે જુદો થયેલ છું. મારા પિતા જયંતીભાઈ એ મને સને
૨૦૦૯ માં ગાંડાભાઈની જમીનમાં મારો હિસ્સો નથી તેવું
પહેલી વહેલી વાર જણાવેલું. હવે કહું છું કે મને તેવું કંઈ કહેલું
નથી. હું સને ૨૦૦૯ માં મારી રાજીયુશીથી છૂટો પડેલો.
જયંતીભાઈ સરસાણા ગામમાં જ રહે છે. ગાંડાભાઈ
રણછોડભાઈના સીધી લીટીના વારસો વચ્ચે કોઈ તરતકરાર
નથી. દાવાવાળી જમીનો સને ૧૯૯૪ માં જયંતીભાઈએ વેચી
દીધેલી અને ત્યારથી તે જમીન જે લોકો ખરીદેલી તે લોકો તે
જમીનના માલિક કબજેદાર તરીકે ચાલી આવેલા. જે
લોકોએ જમીન ખરીદેલી તેના નામો રેવન્યુ દફતરે દાખલ
થયેલા. આ એન્ટ્રી સામે મેં કોઈ તકરાર કરેલી નથી.
ખરીદનારાઓ પૈકી પણ કેટલાક ગુજરી ગયેલા અને તેમના
વારસો સામે પણ કોઈ તકરાર લીધેલી નહીં. સને ૧૯૯૪ માં
જયંતીભાઈએ જમીન વેચી દીધ ત્યારથી દાવો કર્યો ત્યાર
સુધી મેં જયંતીભાઈ પાસે દસ્તાવેજના અવેજની કોઈ
માગણી કરેલી નથી. આ જમીન જયંતીભાઈ પાસેથી જે
લોકો એ ખરીદેલી તેમને પણ આગળ વેચાણ કરી દીધેલી. આ
જમીન બેતીની જમીન છે. આ દાવાવાળી જમીનમાં બાંધકામ
ચાલે છે, જે બાંધકામ જયંતીભાઈ કે પૂરણમ ખરીદનારા પણ
નથી કરતા પરંતુ છેવટના ખરીદનારા કરે છે. મેં કોઈ દિવસ

આ જમીનનું મહેસુલ ભરેલું નથી. આ જમીન બાબતે મેં એક માત્ર દાવાવાળું પ્રકરણ થયેલું, તે સિવાય બીજું કંઈ થયેલું નહીં. એ વાત ખરી છે કે પ્રતિવાદીને નોટીસ આપેલાનું જણાવ્યું છે તે નોટીસ આપેલાનો કોઈ પૂરાવો આ કામે રજૂ નથી. એ વાત ખરી છે કે ગાંડાભાઈ રણછોડભાઈએ જયંતીભાઈ ગાંડાભાઈનું કોઈ હિન્દુ અવિભક્ત કુટુંબ હોય તે દર્શાવતો કોઈ પૂરાવો મારી પાસે નથી. એ વાત ખરી નથી કે મારો કોઈ હિસ્સો લાગતો ન હોવા છતાં માત્ર જમીનની કિંમત વધવાને કારણે ખોટી રીતે નાણા પડાવવા માટે હાલનો આ દાવો કરેલો છે. એ વાત ખરી છે કે દાવાવાળી આ બધી જમીનના રેવન્યુ દફતરે કોઈ પણ હેસીયતથી મારું નામ દાખલ થયેલું નથી. આ જમીનને ટીપી સ્કીમ લાગુ પાડવામાં આવેલી છે. ટીપી સ્કીમના દફતરે પણ આ જમીનમાં હિતધારક તરીકે મારું કોઈ નામ ચાલતું નથી.

ઉલટ તપાસ પુરી

વિશેષ ઉલટ તપાસણી પ્રતિવાદી નં. ૦૯/૦૧ થી ૦૯/૦૬ તરફ
વિ.વ.શ્રી આર.વી.ગોરાટ

હું ધોરણ ૧૦ સુધી ભણેલો છું. હું સરસાણા ગામમાં રહું છું. મારા પિતાનું નામ જયંતીભાઈ ગાંડાભાઈ છે. જયંતીભાઈના આ દાવામાં પક્ષકાર બનાવેલા છે. જયંતીભાઈ હયાત છે. જયંતીભાઈ સાથે મારે મારામારી થઈ હોય કે ઝગડો થયો હોય કે બોલાચાલી થઈ હોય તેવું બનેલું નથી. એ વાત ખરી છે કે હું અને જયંતીભાઈ બંન્ને એક જ છત નીચે ઉપર નીચે

રહીએ છીએ.

એ વાત ખરી છે કે કોઈની સાથે ઝગડો થાય કે કોઈ વાહન કે મિલ્કતના સોદા થાય તો આખા ગામમાં થોડા જ દિવસોમાં ખબર પડી જાય છે એ વાત ખરી છે. મારો સમાજ કોની પટેલ છે. એવું જરૂરી નથી કે અમારા સમાજમાં ભાઈ-ભાઈ કે પિતા-પુત્ર વચ્ચે માલ મિલ્કત અંગે જો ઝગડાઓ થાય તો સમાજમાં જાણ કરવામાં આવે છે. આવી કોઈ ફરીયાદ મેં મારા સમાજમાં કરેલી નથી. મારા પિતા સામે મેં કોઈ પોલીસ ફરીયાદ કરેલી નથી. આ મિલ્કતનું વેચાણ થઈ તે અંગે મેં મારા પિતાને નોટીસ આપેલી છે, આ નોટીસ મેં ૨૦૧૫ માં આપેલી પરંતુ ચોક્કસ તારીખ અને મહિનો મને હાલ યાદ નથી. આ નોટીસ મારા બહેને આપેલી. હવે કહું છું કે અમો બંને એ આપેલી. તે નોટીસ આ કામે અમોએ રજૂ કરેલી નથી. મારી બહેન રજૂ કરશે.

એકત્ર કુટુંબના વહીવટકર્તા તરીકે માફા કુટુંબની નોંધણી થયેલી નથી. એ વાત ખરી છે કે રેવન્યુ દફતરે આજદિન સુધી મારું નામ નથી. રેવન્યુ દફતરે મેં કોઈ વાંધો પણ લીધેલો નથી. એ વાત ખરી નથી કે દાવાવાળી મિલ્કતમાં મારો કોઈ હુકમ ન હોય મેં ઓટો દાવો કરેલો છે.

ઉલટ તપાસ પુરી.

વિશેષ ઉલટ તપાસણી પ્રતિવાદી નં. ૧૦ અને ૧૧ તરફ વિ.વ.શ્રી કે.એસ.બનાતવાલા

ગાંડાભાઈ રણછોડભાઈ મારા દાદા થાય છે. એ વાત ખરી છે કે અમો ગાંડાભાઈ રણછોડભાઈના સંતાન નથી. મેં તા. ૨૮/૦૫/૧૯૫૪ ના રોજનો રજીસ્ટર્ડ વેચાણ દસ્તાવેજ વાંચેલ

છે. તેમાં વેચાણ કિંમત ક્રેટલી લખેલી છે તે મને ખબર નથી.
એ વાત ખરી છે કે ગજરાબેનને આ વેચાણ કિંમત ગાંડાભાઈ
રણછોડભાઈએ ચુકવેલી. એ વાત ખરી છે કે બ્લોક નં. ૧૨૯
ની જમીન પણ ગાંડાભાઈ એ રજીસ્ટર દસ્તાવેજથી ખરીદ
કરેલ. એ વાત ખરી છે કે ગાંડાભાઈ રણછોડભાઈએ દાવાવાળી
જમીન બ્લોક નં. ૧૨૫ વહેંચણી પ્રતિવાદી નં. ૦૧ ને
આપેલી અને બ્લોક નં. ૧૨૯ ગાંડાભાઈએ પોતાની પાસે
રાખેલો. મારા કહેવા મુજબ દાવાવાળી જમીનો વડીલોપાર્જીત
નથી, પરંતુ ગાંડાભાઈની સ્વતંત્ર માલિકીની હતી. મારા કહેવા
મુજબ ગાંડાભાઈ રણછોડભાઈની જમીન હતી તેથી પ્રતિવાદી નં.
૦૧ ની હયાતીમાં અમારો હકકહિસ્સો પહોંચે છે. દાવાવાળી
જમીનમાં જે વેચાણ થઈ ગયેલ તેની જાણ મને સને ૨૦૧૫ માં
થયેલી. તે જાણ મને સને ૨૦૧૫ માં મારા પિતાના કહેવાથી
થયેલી. એ વાત ખરી છે કે મારા પિતાને મે આ દાવામાં પક્ષકાર
તરીકે જોડેલા છે પરંતુ, તેઓ હાજર થયેલા નથી. એ વાત ખરી
નથી કે હું મારા પિતા સાથે રહું છું. એ વાત ખરી નથી કે મે મારા
પિતાના મેળાપીપણામાં આ ખોટો દાવો કરેલો છે. આ દાવાવાળી
જમીનોનું વેચાણ મારી જાણકારી મુજબ સને ૧૯૯૪ માં થયેલી,
તે અંગે થયેલ વેચાણ દસ્તાવેજોની જાણકારી મને જે તે
વખતથી હોવાનું ખોટું જણાવું છું. મે આ દાવામાં રેવન્યુ દફતરની
જે નોંધો રજુ કરેલી છે તેની ખરી નકલ સને ૨૦૧૫ ની સાલમાં
મેળવેલી. એ વાત ખરી છે કે રેવન્યુ દફતરે જે નોંધો પ્રમાણીત
થયેલી તેમાંની કોઈ નોંધો રદ થયેલી નથી. આ દાવાના
પ્રતિવાદી નં. ૧૦ અને ૧૧ ને હું ઓળખું છું. પ્રતિવાદી નં. ૧૦

અને ૧૧ એ દાવાવાળી જમીનોમાં જે બાંધકામો કર્યા છે તે બાંધકામો હાલમાં કર્યા સુધી પહોંચેલા છે તે હુ જાણતો નથી. એ વાત ખરી નથી કે અમારો કોઈ હકકહીસ્સો પહોંચતો ન હોવા છતાં અમોએ આ ખોટો દાવો કરેલો છે.

(15-iii) Cross-examination of plaintiff No.1 recorded under Ex.253.

સ્પે.દિ.મુ. નં. - ૬૧/૨૦૧૮ આંક - ૨૫૩ હેઠળ ઈન્દુબેન બી.

પટેલ

નોંધ - પ્રતિવાદી નં. ૧ થી ૬ તરફ દાવો એકસ પાટી હોય તેમના તરફ ઉલટ તપાસ નથી.

ઉલટતપાસણી પ્રતિવાદી પક્ષ નં. ૭ અને ૮ તરફ વિ.વ.શ્રી કે.એમ.પટેલ

આ કામના પ્રતિવાદી નં. ૧ થી ૬ મારા સગા થાય છે. તેઓ સાથે મારા સંબંધો સને ૨૦૧૫ પછી બગડેલ છે. તે લોકો બધા સરસાણા ગામમાં રહે છે અને હુ આબવા ગામે રહુ છું. દાવાવાળી જમીન ભીમરાડ ગામે આવેલી છે. એ વાત ખરી છે કે ભીમરાડ અને સરસાણા બાજુબાજુમાં આવેલા ગામો છે. મારા ઘણી ડ્રાઈવરની નોકરી કરતા હતા પરંતુ હાલમાં તેઓ ઘરે જ છે. અમારે ખેતી હાલમાં નથી. ભીમરાડની જમીન બ્લોક નં. ૧૨૫ અને ૧૨૮ વાળી જમીન માટે દાવો કરેલ છે. તેમાંથી બ્લોક નં. ૧૨૫ અને ૧૨૮ ના સને ૧૯૯૪ ના વેચાણ દસ્તાવેજો જયંતીબાઈ તથા અન્યોએ કરી દીધેલા. તે વખતે મારા લગ્ન થઈ ગયેલા. આ જમીન મારા દાદા ગાંડાબાઈ રણછોડબાઈએ વેચાણ રાખેલી. આ સિવાય સરસાણા ગામની

બ્લોક નં. ૯૭ થી નોંધાયેલી જમીન અમારા બાપદાદાની ચાલી આવેલી. ગાંડાભાઈ રણછોડભાઈએ દસ્તાવેજથી જમીન ખરીદ કરેલી. તેનો દસ્તાવેજ મે જોયેલો નથી. તેમનું નામ માલીક તરીકે રેકર્ડ પર ચઢેલું છે કે કેમ તેની પણ મને ખબર નથી. આ કામના વાદી જયેશભાઈ મારા ભાઈ થાય છે. જયેશભાઈએ આ કામે રજુ કરેલા તમામ કાગળો મે જોયેલા છે, વાંચેલા નથી. આ બધા કાગળો સને ૨૦૧૫ માં જોયેલા. એ વાત ખરી છે કે સદરહુ ૧૨૫ અને ૧૨૯ વાળી જમીનના સને ૧૯૯૪ થી જયંતીભાઈ તથા અન્યો માલીક મટી ગયેલા. ગાંડાભાઈ રણછોડભાઈ એ તેમની માલીકીની જમીન બાબતે વહેંચણા કરેલી કે કેમ તેની મને ખબર નથી. આ વહેંચણાની કોઈ નોંધ રેવન્યુ દફતરે નોંધ જોયેલી નથી. રેવન્યુ દફતરે આ જમીનો બાબતે જે એન્ટ્રીઓ બાબતે મે આ દાવા સિવાય બીજા કોઈ પ્રકરણો કરેલા નથી. આ જમીનો હાલમાં શું ઉપયોગ થાય છે તેની મને ખબર નથી તથા તે જમીન બીનખેતી થયેલાની મને માહિતી નથી. ભીમરાડ વિસ્તારમાં ટીપી સ્કીમ નં. ૪૩ (ભીમરાડ) લાગુ પાડવામાં આવેલ છે કે કેમ તેની મને ખબર નથી. આ જમીનનો ટીપી સ્કીમ અન્વયે ઓરીજીનલ પ્લોટ નં. ૬૫ અને ફા. પ્લોટ નં. ૩૬ પાડવામાં આવેલો તેની મને જાણ નથી. ટીપી દફતરે જમીન કોના નામે ચાલી આવેલ છે તેની મને ખબર નથી. આ જમીનો રેવન્યુ દફતરે કોના નામે ચાલે છે તેની મને ખબર નથી. મે આ જમીનોના રેવન્યુ દફતરે કે ટીપી દફતરે નામ દાખલ કરવા

માટે કોઈ પૂરત્તનો કરેલા નહીં. મારા ભાઈ જયેશભાઈ નોકરી
જેવો ચાલુ ધંધો કરે છે. તેઓ સરસાણા રહે છે. મારા પિતા
જયંતીભાઈ પણ સરસાણા રહે છે. જયંતીભાઈ અને
જયેશભાઈ એક જ ઘરમાં ઉપરનીયે રહે છે. સને ૧૯૮૭ માં
 મારા લગ્ન થયા ત્યારે અમો નાના હતા અને અમો તે જ ઘરમાં
 સાથે રહેતા હતા. મારા દાદા ગાંડાભાઈ સને ૧૯૮૪ ની સાલમાં
 ગુજરી ગયેલા. ગાંડાભાઈ રણોછોડભાઈ ગુજરી ગયા તે બાદ મારા
 લગ્ન થયેલા તે મારા પિતાશ્રી જયંતીભાઈએ કરાવેલા, તે લગ્ન
 સારીરીતે કરાવેલા. ગાંડાભાઈ રણોછોડભાઈ ગુજરી ગયેલા તે બાદ
 તેમની વારસાઈ કરવામાં આવેલી કે કેમ તેની મને ખબર નથી.
 સરસાણાની ૯૭ નંબર વાળી જમીન હાલમાં મારા પિતાના નામે
 જ ચાલે છે, તેમાં અમારા બધાના નામો હતા. હાલમાં પણ ચાલે છે.
અમારા નામો સદરહુ જમીનમાં સને ૨૦૦૦ પછીથી દાખલ
થયેલા. જયંતીભાઈએ જે અમારા નામો સામાયીકપણામાં
દાખલ કરાવેલા કે કેમ તેની મને ખબર નથી. આ જમીનમાં
અમારી દાદી અને કોઈઓના નામો દાખલ થયેલા કે કેમ
તેની મને ખબર નથી. તે અંગેની કોઈ એન્ટ્રી મે જોયેલી
નથી. સને ૨૦૦૦ માં આ તમામ જમીનોમાં આ નામો દાખલ
થયેલા તે પહેલા ભીમરાડવાળી જમીનનો વેચાણ દસ્તાવેજ
પૂરતિવાદીઓના લાભમાં કરી આપવામાં આવેલો. ભીમરાડની
 જમીનમાં જયંતીભાઈએ અમોને હીસ્સો આપવાનું જણાવેલું જ
 નથી. મે મારી રજુ કરેલી એફીડેવીટ મે વાંચેલી નહીં પરંતુ
મારા છોકરાએ વાંચેલી. ભીમરાડવાળી જમીન જે વેચાઈ
ગયેલી તેનો કોઈ સાટાખત થયેલો કે કેમ તે મને ખબર નથી.

કેટલા રૂપીયામાં વેચાઈ ગયેલી તે મને કંઈ ખબર નથી. જે લોકોએ વેચાણ રાખેલી તે લોકોએ તેમણે તેમના નામો રેકર્ડ ઉપર ચઢાવેલા કે કેમ તેની મને ખબર નથી. હાલમાં જયંતીભાઈ પાસે ભીમરાડની જમીનો સિવાય સરસાણાની ૯૭ નંબર વાળી જમીન સિવાય બીજી કોઈ જમીનો નથી. સરસાણાવાળી જમીન કેટલી મોટી છે તે મને ખબર નથી. મારી જુબાનીમાં ખરીદનારાઓએ જમીનને એન.એ. કરાવેલી તે અંગેના કોઈ કાગળીયાઓ કરવામાં આવેલા અને તે બાબતની એફીડેવિટ કરવામાં આવેલ હોવાનું જણાવેલું છે તે હું જાણતી નથી. ગાંડાભાઈ સને ૧૯૮૪ માં ગુજરી ગયેલા. ભીમરાડવાળી જમીનમાં મારું કે મારા ભાઈનું નામ દાખલ થયેલ નથી. ભીમરાડવાળી જમીન જે સને ૧૯૮૪ માં વેચાઈ ગયેલી તે બાદ તેના કોઈ નાણા મે જયંતીભાઈ પાસેથી માંગેલા નહીં. મને તે વખતે જાણ થયેલાની વાત ખરી નથી. આ જમીનમાં મારો હીસ્સો લાગે છે તેવું મને મારા છોકરાએ જણાવેલું, જે તેણે મને તેના ભાઈબંધે કહેલું તેના આધારે જણાવેલું. મારો છોકરાના લગ્ન થઈ ગયેલા છે. તેમને હું તપાસવા માંગતી નથી. મારા છોકરાનું નામ કેતન છે તે અગ્રવાલ સ્કુલમાં ક્લાર્ક તરીકે નોકરી કરે છે, જે નોકરી તે ૩-૪ વર્ષથી કરે છે. આ કામે જે જમીન ખરીદ કરેલી છે તે ભીમરાડવાળી જમીન અંગે પુરાવા જે રજૂ છે તે મે જાતે વાંચેલ છે. તેમાં પ્રતિવાદીઓએ દાવાવાળી જમીનમાં હીસ્સો રાખેલ છે. દાવાવાળી જમીનનું મહેસુલ મે ભરેલું છે.

મહાનગરપાલીકાની હુદમાં આ ભીમરાડ ગામ આવી ગયેલું છે. કોર્પોરેશનના દફતરે કોના નામે ચાલે છે તે મને ખબર નથી કે તેનો વેરો કોણ ભરે છે તે પણ હું જાણતી નથી. દાવાવાળી જમીન વડીલોપાજીત જમીન છે તે દર્શાવતો કોઈ પુરાવો નથી. જયંતીભાઈનું નામ દાવાવાળી જમીનમાં કઈ રીતે ચઢેલું તેની મને કોઈ અંગત માહિતી નથી.

ઉલટ તપાસ પુરી.

વિશેષ ઉલટ તપાસ પ્રતિવાદી પક્ષ નં. ૯/૦૧ થી ૯/૦૬ તરફ
વિ.વ.શ્રી આર.વી.કોરાટ

આ દાવો મેં મારી જમીનમાં મારા હક્ક માટે કરેલો છે. આ દાવો મેં કોની કોની સામે કરેલો છે તેની મને ખબર નથી. પ્રતિવાદી નં. ૧ થી ૬ અને મારા પિતા તથા મારા ભાઈ સિવાય બીજા કોઈને હું ઓળખતી નથી. બાકીના લોકોને મારે ક્યારેય મળવાનું થયેલ નથી. જયંતીભાઈ ગાંડાભાઈ મારા પિતા થાય તે બતાવતો કોઈ પુરાવો મેં આ કામે રજૂ કરેલો નથી. સરસાણાની જમીન પહેલા ભીમરાડની જમીન સને ૧૯૯૪ માં વેચાણ થયેલી એ વાત ખરી છે. ભીમરાડની જમીન વેચાણ થયેલી સરસાણાની જમીનમાં સને ૨૦૦૯ અમારા નામો દાખલ કરેલા એ વાત ખરી છે. હવે જણાવું છું કે મારું નામ કદાચ સને ૨૦૦૦ પછી દાખલ કરેલું.

દાવાવાળી જમીનના કાગળીયાઓ અમોએ ક્યારેય જાતે કઢાવેલા કે કેમ તેના જવાબમાં જણાવું છું કે મારા છોકરાએ કઢાવેલા. મારા છોકરાનું નામ કેતન છે. કેતન ભણેલગણેલ છે

અને કોર્ટ કચેરીનો પણ જાણકાર માણસ છે. કેતને અને મારા નાના ભાઈએ અમોએ કહેલ કે આ જમીનમાં મારો હક્ક લાગે છે એટલે મેં આ દાવો કરેલો. હાલ સુધીમાં સદરહુ દાવાવાળી જમીનના કુલ્લે કેટલા દસ્તાવેજો થયેલા છે તેની મને ખબર નથી. તે અસલ દસ્તાવેજો મેં જોયેલા નથી.

પ્રતિવાદી નં. ૧ થી ૬ ને કચારેય નોટીસ આપેલી કે કેમ તેની મને જાણ નથી. મેં મારા પિતા કે પ્રતિવાદી નં. ૧ થી ૬ સામે કોઈ ફોજદારી કે પોલીસ ફરીયાદ કરેલી નથી. મેં કોઈ ખાનગી કોર્ટમાં ફરીયાદ કરેલ નથી. રેવન્યુ દફતરે જે કંઈ નોંધો પડેલી તેની મને જાત માહિતી નથી. હું એ વાત ખરી છે કે બ્લોક નં. ૧૨૯ અને ૧૨૫ બંને જમીનો મેં જોયેલ નથી કારણકે મારે તે બાજુ વધારે જવાનું થતુ નથી. આ જમીનો હાલમાં કેટલા ક્ષેત્રફળની છે તેની મને ખબર નથી. મામલતદાર , કલેક્ટરમાં કે ડે. કલેક્ટરમાં કોઈ વાંધા આપેલી કે કેમ તેના જવાબમાં જણાવુ છું કે મારા છોકરા ભેગી મેં અરજી આપેલી જ ને. આ અરજી મેં સદરહુ દાવો કર્યા પછી આપેલી કે કેમ તે અંગે મને ખબર નથી. મેં કલેક્ટર કચેરી ના કર્મચારી વિરુદ્ધ કોઈ ફરીયાદ આપેલી કે કેમ તેના જવાબમાં જણાવુ છું કે ફરીયાદ અમોએ આપેલી. જે ફરીયાદ અમોએ કઈ તારીખેએ વાત ખરી છે કે બ્લોક નં. ૧૨૯ અને ૧૨૫ બંને જમીનો મેં જોયેલ નથી કારણકે મારે તે બાજુ વધારે જવાનું થતુ નથી. આ જમીનો હાલમાં કેટલા ક્ષેત્રફળની છે તેની મને ખબર નથી. આપેલી તેના જવાબમાં જણાવુ છું કે કદાચ

સને ૨૦૧૫ પછી આપેલી. સને ૧૯૯૪ ના દસ્તાવેજ બાબતે મે
સને ૨૦૧૫ માં વાંધો ઉઠાવેલો એ વાત ખરી છે. મે સબ
રજીસ્ટ્રાર કચેરીમાં વાંધા અરજી આપેલી. સને ૧૯૯૪ ના
દસ્તાવેજ બાબતે જે તે સમયે કોઈ કાર્યવાહી કરેલી નહીં એ
વાત ખરી છે. સરસાણાની બાજુમાં આશરે ત્રણ કીમી
ભીમરાડ ગામ આવેલું છે. હું આભવા રહું છું. એ વાત ખરી નથી
કે મારે સરસાણા વારંવાર જવાનું રહે છે. અમોને દાવાવાળી
જમીન બાબતે કોઈ જાત માહિતી નથી એ વાત ખરી છે. એ
વાત ખરી નથી કે મારે દાવાવાળી જમીનમાં કોઈ હુકમ લાગતો
નથી તે છતાં અમોએ આ ખોટો દાવો કરેલો છે.

વિશેષ ઉલટ તપાસ પ્રતિવાદી પક્ષ નં. ૧૦ અને ૧૧ તરફ
વિ.વ.શ્રી કે.એસ.બનાતવાલા

મારા ભાઈ જયેશભાઈ એ આ એ વાત ખરી છે કે બ્લોક નં.
૧૨૯ અને ૧૨૫ બંને જમીનો મે જોયેલ નથી કારણકે મારે તે
બાજુ વધારે જવાનું થતું નથી. આ જમીનો હાલમાં ક્રેટલા
ક્ષેત્રફળની છે તેની મને ખબર નથી. કામે આપેલી જુબાની મે
વાંચેલી છે. મારા દાદાનું નામ ગાંડાભાઈ રણછોડભાઈ છે. મારા
દાદાને કુલ્લે ચાર સંતાનો જે પૈકી ત્રણ છોકરી અને એક છોકરો
છે. છોકરાનું નામ જયંતીભાઈ છે, જે મારા પિતા થાય છે. મારા
પિતા હયાત છે. એ વાત ખરી છે કે જે જમીનનો મે દાવો દાખલ
કરેલો છે તેના મુળ માલિક ગાંડાભાઈ રણછોડભાઈ નાઓ છે.
ગાંડાભાઈ રણછોડભાઈ જો હયાત હોય તો કોઈનો હુકમીસો
લાગે નહીં એ વાત ખરી નથી, જે હુકમીસો કેવી રીતે લાગે તે
મને ખબર નથી. મે જે જુબાની મુકેલી છે તે મે વાંચેલી છે.

દાવાવાળી જમીનો સને ૧૯૯૪ માં રજીસ્ટર્ડ વેચાણ દસ્તાવેજથી વેચાણ થયેલ હોય તેનીએ વાત ખરી છે કે બ્લોક નં. ૧૨૯ અને ૧૨૫ બંન્ને જમીનો મે જોયેલ નથી કારણકે મારે તે બાજુ વધારે જવાનું થતુ નથી. આ જમીનો હાલમાં ક્રેટલા ક્ષેત્રકુળની છે તેની મને ખબર નથી. મને કંઈ જાણ નથી કે તેવા કોઈ દસ્તાવેજો મે જોયેલા નથી. આ દાવાવાળી બંન્ને જમીનો હાલમાં બીનખેતીની છે. અગાઉ ખેતીની હતી, બીનખેતીની કોણે કરાવેલી તેની મને કંઈ જાણ નથી. બીનખેતીની જમીન થઈ તે કાર્યવાહીમાં સરકારી ખાતામાં કોઈ પ્રકરણ થયુ હોય તેની મને કંઈ જાણ નથી. પ્રતિવાદી નં. ૭ થી ૯ અને ૧૦ અને ૧૧ ના લાભમાં દાવાવાળી જમીનનોના જે વેચાણ દસ્તાવેજો થયેલા છે તે મે જોયેલા નથી. દાવાવાળી જમીનો બ્લોક નં. ૧૨૯ પૈકી કોઈ પણ જમીન મારા પિતા મને આપવા માટે તૈયાર થયેલા નથી. તા. ૧૧/૦૨/૯૪ ના રોજ મારા લગ્ન થઈ ગયેલા. લગ્ન બાદ હુ મારા પતિને ત્યાં ગયેલી. એ વાત ખરી છે કે હુ ગાંડાભાઈ રણછોડભાઈની દીકરી નથી. મારો જન્મ સને ૧૯૭૦ માં થયેલો. જેથી પુખ્ત વયની હુ સને ૧૯૯૦-૯૧ માં થયેલી. આ હાલના દાવા અગાઉ મે બીજા કોઈ દાવા કરેલા નથી. એ વાત ખરી છે કે બ્લોક નં. ૧૨૯ અને ૧૨૫ બંન્ને જમીનો મે જોયેલ નથી કારણકે મારે તે બાજુ વધારે જવાનું થતુ નથી. આ જમીનો હાલમાં ક્રેટલા ક્ષેત્રકુળની છે તેની મને ખબર નથી. એ વાત ખરી નથી કે દાવાવાળી જમીનોમાં મારા કે મારા ભાઈનો કોઈ હુકમ પહોંચતો

નથી એ વાત બરી નથી કે દાવાવાળી જમીનમાં મારા પિતાના હક્કહીસ્સાનો તેમની હયાતીમાં અંત આવી ગયેલો. એ વાત બરી નથી કે મને સાચી હકીકતની માહિતી હોવા છતાં મુદત બહાર નાણા પડાવવા માટે હાલનો આ બોટો દાવો કરેલો છે.

(15-iv) If we believe the argument of learned advocate of plaintiffs for the sake, then it is cleared from the record that plaintiff No.1 was the major and plaintiff No.2 was near about of the age of 17 or 18 at the time of execution of alleged sale deed. If there was any right of plaintiffs in suit land, then the limitation of filling of the suit was within three years from the date of execution of sale deed or for the plaintiff No.2 within three years from the date of attaining majority. But the suit was filed after 21 years.

Hon'ble Supreme Court in AIR 2019 SC 2696 ([Murugan and others v. Kesava Counder\(Dead\) Thr. LR's and others](#)) make it crystal clear that in case of minor's property, the limitation to challenge the same after he attaining majority is provided under [Article 60](#) of [Limitation Act](#) and under such circumstances, such minor has to challenge the same within three years after he attaining majority.

(15-v) Thus, the suit is clearly barred by law of limitation. Thus, decision on issue No.5 is pronounce in affirmative.

Issue No. 4 :-

4. Whether plaintiffs are entitled to get relief as prayed for?

(16) It is cleared from the law and discussion made out in above

paragraphs that suit property was neither the ancestral property nor the property of Hindu Undivided Family and it was of the self-acquired property of defendant No.1 and he sold it. During the lifetime of father, plaintiffs cannot claim partition of self-acquired property of father and suit is also filed after limitation period. Thus, plaintiffs are not entitled for any relief and decision on issue No.4 is pronounced in negative.

(17) The Summary of decisions on issues :-

Sr. No.	Issues	Pronouncement on issue with summary reasons.
1	Whether plaintiffs prove that they are the direct legal heirs of deceased Gandabhai Ranchhodbhai?	Plaintiffs are the Grand-Daughter and Grand-Son of the deceased Gandabhai and they are not covered under Class I heirs given in schedule.
Ans	Thus, the pronouncement on issue No.1 is given in negative.	
2	Whether plaintiffs prove that they are the coparceners in suit property?	The suit property was not the ancestral property but self-acquired property of plaintiffs' grand-father and one property was given in partition and one was inherited by plaintiff's father under section 8 of Hindu Succession Act, hence, the property was not ancestral, then

		the question of coparceners are out of sight.
Ans	Thus, pronouncement on issue No.2 is given negative.	
3	Whether plaintiff proves that suit property was sold out without their consent and illegally?	The property was received by plaintiffs' father as self-acquired property, hence, he had absolute right to sell it, hence, there was no question of plaintiffs' permission or any illegality in sale without permission.
Ans	Thus, the pronouncement on issue No.3 is in negative.	
4	Whether plaintiffs are entitled to get relief as prayed for?	No. The plaintiffs had no right in suit property during the lifetime of their father.
Ans	Thus, pronouncement on issue No.4 is given in negative.	
5	Whether suit is barred by any law?	Suit is barred by law of limitation as filed after 21 years from the date of execution of sale deed and also barred by section 8 of Hindu Succession Act as the property was self-acquired property of plaintiffs' grand-father and plaintiffs are not covered in Class I heirs of plaintiffs' grand-father.

Ans	Thus, pronouncement on issue No.5 is given in affirmative.
-----	--

(18) Applicability of decisions cited by plaintiffs' advocate: -

(i) Decisions cited by the learned advocate of plaintiffs are not applicable to the case on hand as learned advocates cited the decisions without perusal of the facts and issue involved in the cited decisions. Hence, all the decisions cited are not necessary to deal separately at this juncture. But it is necessary to say that learned advocate mentioned the decision of Mohribibi vs. Dharmadas Ghos AIR 30 Cal. 539 which has no connection of point of fact or of law involved in the suit. In present scenario, it might be the myth of the learned advocates that only citing of voluminous decisions will bring the decision in their favour.

(ii) Everyone has to be responsible and careful in what they present to the Court, said the Supreme Court while reiterating that a lawyer demeans himself if he acts merely as a mouthpiece of his client. This observation was made by a bench comprising **Justice Arun Mishra and Justice Navin Sinha in case of Lal Bahadur Gautam vs The State Of Uttar Pradesh decided on 8 May, 2019** while allowing an appeal filed by a lecturer in a private unaided college affiliated to the Chaudhary Charan Singh University. While defending the impugned High Court judgment which had dismissed the lecturer's writ petition, the counsel who appeared for the college relied on a Supreme Court judgment which the court found was not applicable in the facts of the case. The court said that the said judgment was based on an expressly repealed Act.

The bench said: "Notwithstanding the easy access to information technology for research today, as compared to

the plethora of legal Digests which had to be studied earlier, reliance was placed upon a judgment based on an expressly repealed Act by the present Act, akin to relying on an overruled judgment. This has only resulted in a waste of judicial time of the Court, coupled with an onerous duty on the judges to do the necessary research. We would not be completely wrong in opining that though it may be negligence also, but the consequences could have been fatal by misleading the Court leading to an erroneous judgment."

(iii) Thus, there is no need to described all the decisions relied on by the learned advocate with separate ration and reasons for not applicability. The discussion made out in foregoing paragraphs is enough to distinguished the fact of present case with the facts of decisions cited by the learned advocate of plaintiffs.

Issue No.6 :-

(19) As discussed above, the suit is barred by law of limitation and Hindu Succession Act and plaintiffs are not succeeded in suit and in establishing any version or legality of issues in their favour. It is also cleared from the legal position and from the deposition of the plaintiffs that despite of having knowledge of the transaction since the beginning despite of having no knowledge of the suit fact to plaintiff No.1, the suit is filed merely for any other reasons than to get justice, hence, it is necessary to award the costs of the suit to the defendants as the suit was abuse of the process of law. Hence, in the interest of justice, following final order is required to pass.

-: FINAL ORDER :-

1. The suit of plaintiffs is rejected with costs.
2. Plaintiffs are ordered to pay the costs of the suit to defendants and to bear their own costs.
3. Decree be drawn accordingly.

Pronounce today on 25th day of September 2020 by online uploading.

(Shilpa M. Kanabar)
2nd Additional Senior Civil Judge,
Surat. GJ00814.

FINAL DECREE**In the Court of 2nd Additional Senior Civil Judge, Surat.****Spl. C. S. No. 61/2019****Old RCS No.1132/2015****Ex.- 209****Plaintiffs**

1	Induben D/O Jayantibhai Gandabhai Patel, Age – 47, Occupation – House Hold Work, Religion – Hindu, R/at.Address - Laya Faliyu, Abhwa Gam, Ta- Majura, Surat
2	Jayeshbhai Jayantibhai Patel, Age – 38, Occupation – Agriculture, Religion – Hindu, R/at.New Mohallo, Sarsana, Po- Khajod, Ta- Majura, Di- Surat

V/s.**Defendants**

1	Jayantibhai Gandabhai, Age – 65, Occupation Agriculture, Religion – Hindu, R/at. - New Mohallo, Arsana, Po- Khajod, Taluko - Majura, District - Surat
2	Nareshbhai Jayantibhai, Age – 43, Occupation – Service, Religion – Hindu, R/at. New Mohallo, Sarsana, Po- Khajod, Ta- Majura, Di- Surat
3	Prakashbhai Jayantibhai, Age – 40, Occupation – Service, Religion – Hindu, R/at. New Mohallo, Sarsana, Po- Khajod, Ta- Majura, Di- Surat
4	Laxmiben D/O Gandabhai Ranchhodbhai, Age – Adult, Occupation – House Hold Work, Religion – Hindu, R/at. New

	Mohallo, Sarsana, Po- Khajod, Ta- Majura, Di- Surat
5	Bebiben D/O Gandabhai Ranchhodbhai, Age – Adult, Occupation – House Hold Work, Religion – Hindu, R/at. Navo Mahollo, Sarsana, Po. Khajod, Ta. City Surat
6	Motlaben D/O Gandabhai Ranchhodbhai, Age – Adult, Occupation – House Hold Work, Religion – Hindu, R/at. Navo Mahollo, Sarsana, Po. Khajod, Ta. City Surat
7	Heirs of deceased Keshavbhai Hansajibhai
7/1	Dhanuben Wd/O Keshavbhai Hansaji, Age – Adult, Occupation – House Hold Work, Religion – Hindu, R/at. Bapu Nagar Street, Magdalla, Dumas Road, Surat
7/2	Heirs of deceased Bhanuben D/o. Keshavjibhai W/o. Navnitbhai Gosia.
7/2/1	Bhavinbhai Navnitbhai, Age – 32, Occupation – Service, Religion – Hindu, R/at. Karishma Street, Magdalla, Dumas Road, Surat
7/2/2	Kaushikbhai Navnitbhai, Age – 29, Occupation – Service, Religion – Hindu, R/at. Karishma Street, Magdalla, Dumas Road, Surat
7/3/3	Ankitbhai Navnitbhai, Age – 27, Occupation – Service, Religion – Hindu, R/at. Karishma Street, Magdalla, Dumas Road, Surat
8	Heirs of deceased Champakbhai Hasjibhai Patel, R/at. Bapu Nagar Street, Magdalla, Dumas Road, Surat
8/1	Niruben Wd/O Champakbhai Hansajibhai Patel, Age – Adult, Occupation – House Hold Work, Religion – Hindu, R/at. 46, Bapu Nagar Street No. 01, Magdalla, Dumas Road, Surat

8/2	Hemantbhai Champakbhai Patel, Age – Adult, Occupation – Agriculture, Religion – Hindu, Ra/t. 46, Bapu Nagar Street, Magdalla, Dumas Road, Surat
8/3	Nileshbhai Champakbhai Patel, Age – Adult, Occupation – Agriculture, Religion – Hindu, R/at. 46, Bapu Nagar Street, Magdalla, Dumas Road, Surat
8/4	Trejalbhai Champakbhai Patel, Age – Adult, Occupation – Agriculture, Religion – Hindu, R/at. 46, Bapu Nagar Street, Magdalla, Dumas Road, Surat
9	Heirs of deceased balubhai Hansajibhai
9/1	Laxmiben Wd/O Balubhai Hansajibhai, Age – Adult, Occupation – House Hold Work, Religion – Hindu, R/at.Bapu Nagar Street, Magdalla, Dumas Road, Surat.
9/2	Pareshbhai Balubhai Patel, Age – Adult, Occupation – Service, Religion – Hindu, R/at. Bapu Nagar Street, Magdalla, Dumas Road, Surat
9/3	Lataben D/O Balubhai Hansajibhai, Age – Adult, Occupation – House Hold Work, Religion – Hindu, R/at. Nava Magdalla, Dumas Road, Surat
9/4	Sarlaben D/O Balubhai Hansajibhai, Age – Adult, Occupation – House Hold Work, Religion – Hindu, R/at.Darji Mohallo, Magdalla, Dumas Road, Surat
9/5	Jagrutiben Balubhai Patel, Age – Adult, Occupation – House Hold Work, Religion – Hindu, R/at.Gurkha Street, Rundh-Magdalla, Dumas Road, Surat
9/6	21) Naynaben Balubhai Patel, Age – Adult, Occupation – House Hold Work, Religion – Hindu, R/at. Near Govind Garagewala, Bhestan Gam, Surat

10	Swagat Corporation, Address - T. P. Sceme- 43, Bhimrad, Final Plot No. 36, B/S Raghuvir Safron, Opp Belakasa, Bhimrad, Surat
11	Arunbhai Rasiklal, Partner Of Swagat Corporation, Address - T. P. Sceme- 43, Bhimrad, Final Plot No. 36, B/S Raghuvir Safron, Opp Belakasa, Bhimrad, Surat

**Subject:- Suit for Partition and
declaration with injunction and
cancellation of registered deeds.**

Date of Institution :- 5/5/2015

Date of Disposal:- 25/9/2020

(1) While preferring suit, plaintiff claims partition and declaration as well as injunction alleging that plaintiffs and defendants No.1 to 6 are the direct legal heirs of deceased Gandabhai Ranchhodbhai. Deceased Gandabhai Ranchhodbhai died on Dtd.27/9/1984 intestate leaving two lands i.e. S.No.71/2 Block No.125 and S.No.73/1 Block No.129 situated in the village Bhimrad Sub-district - Choryasi (Now Sub-district - Mujara). Such land was purchased by deceased Gandabhai Ranchhodbhai from Gajaraben Gulabbhai Katheji vide registered sale deed No.948 on Dtd.28-5-1954. Land R.S. No.71/2, Block No.125 was given by Gandabhai to his son defendant No.1 in partition during his lifetime and land R.S. No.73/1, Block No.129 kept with himself. Gandabhai died on Dtd.27/9/1984 and names of his heirs i.e. Lalitaben Gandabhai (Widow), Jayantibhai (Son i.e. defendant No.1) and Motliben (daughter i.e. defendant No.6) and Bebiben (daughter i.e. defendant No.5) and Laxmiben (daughter i.e. defendant No.4) were entered in revenue

record vide entry No.561 Dtd.9/1/1977. They alleged the land as ancestral land and they demanded their 1/5 share from the share of defendant No.1. It is further stated that suit land was undivided land and they did not transfer their share in favour of any one. They further claimed that demanded their share from the defendants but they passed time and on Dtd.10/1/2015 they declared the sale of disputed land in the year 1994 and stated that land measuring 405 Sq. M. of Block No.129 and they are ready to give the share from that land. It is further stated that on verifying the revenue record of the land they found the sale of land Block No.125 to defendant No.7 to 9. It is further stated that land Block No.129 was sold out by defendant No.1 and No.4 to 6 to defendant No.8 on Dtd.11/2/1994 vide registered sale deed No.1947. It is further stated that name of defendant No.2 and 3 were not entered in revenue record, even though the document was executed by defendant No.2 and 3 and No.1 as the guardian of plaintiff No.2 as he was minor at that time. Plaintiff No.1 raised the issue of her rights in land and claimed sale without her knowledge and consent as she was major at that time. They both denied any kind of debt or urgent necessity of the money in HUF and filed the suit for their 1/5 the share from the share of defendant No.1 in suit property and asked cancellation of registered sale deed No.1948 executed on Dtd.11/2/1994 and No.1947 executed on Dtd.11/2/1994.

(2) The suit is come out for final hearing, before Miss Shilpa Mansukhlal Kanabar, 2nd Additional Senior Civil Judge, Surat in the presence of learned Advocate for plaintiff – Mr. D.M.Chauhan, Advocate for defendant No.1 – 6 – Ex Parte, Advocate for defendant No. 9 – Mr.

R.V.Korat, Advocate for defendant No.7(1) & 8 – Mr. K.M.Patel,
Advocate for defendant No.10-11 – Mr. K.S.Banatwala, the following
final decree be passed.

-: FINAL ORDER :-

1. The suit of plaintiffs is rejected with costs.
2. Plaintiffs are ordered to pay the costs of the suit to defendants and to bear their own costs.

MEMO OF COSTS

Sr. No	Particulars	Costs of Plaintiff	Costs of Defendant No.9	Costs of Defendant No.7 (1) & 8	Costs of Defendant No.10, 11
1	Court fees stamp on plaint.	75,000/-	0/-	0/-	0/-
2	Court fees stamp on V.P.	2/-	2/-	2/-	2/-
3	Process Fees	100/-	0/-	0/-	0/-
4	Commissioner Fees	0/-	0/-	0/-	0/-
5	Pleader Fees.	2,96,975/-	2,96,975/-	2,96,975/-	2,96,975/-
	TOTAL RS.	3,72,077/-	2,96,977/-	2,96,977/-	2,96,977/-

Given under my hand and seal of the Court on this 25th day of September 2020

Prepared by

Checked by

(Assistant)

(Supt.)

(Shilpa M. Kanabar)
2nd Additional Senior Civil Judge,
Surat. GJ00814.

તા.૨૫/૯/૨૦૨૦
૨૦૮
૨૦૯

કામ રજુ
ઓનલાઈન ચુકાદો જાહેર કર્યો
હુકમનામું
સબબ કામ ફેસલ

(શિલ્પા મનસુખલાલ કાનાબાર)
બીજા એડીશનલ સિનીયર સિવિલ જજ
સુરત. કોડ નં.જી.જે.૦૦૮૧૪