Reserved On : 21/01/2026
Pronounced On : 06/02/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SECOND APPEAL NO. 67 of 2005

With
CIVIL APPLICATION (FOR STAY) NO. 2 of 2005
In R/SECOND APPEAL NO. 67 of 2005

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE J. C. DOSHI

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Approved for Reporting	Yes	No
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MAHESH NATUBHAI GAMIT & ORS.
Versus
CHHAGANBHAI RESHIABHAI THROUGH HEIRS AND L.R. & ORS.

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Appearance:
MR NIRAV R MISHRA(6140) for the Appellant(s) No. 1,2,3,4,5
MR RK MISHRA(482) for the Appellant(s) No. 1,2,3,4,5
MR ZUBIN F BHARDA(159) for the Respondent(s) No. 1.1,1.2,1.3,1.4,1.5,1.6
RULE SERVED for the Respondent(s) No. 3.1,3.2

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CORAM:**HONOURABLE MR. JUSTICE J. C. DOSHI**

CAV JUDGMENT

1. The present second appeal is filed under Section 100 of the Code of Civil Procedure (for short, The code) challenges the judgment and decree passed by the Principal District Judge, Navsari in Regular Civil Appeal No. 47 of 1996, by which order dated 21.09.2004, the appeal was allowed and the judgment and decree passed in Regular Civil Suit No. 13 of 1988 by the learned Civil Judge, Junior Division, Vansda dated 29.02.1996, was reversed and consequently the suit was dismissed.

BRIEF FACTS:-

2. The subject matter of the present Second Appeal arises from the judgment and decree dated 21.09.2004 passed by the learned District Judge, Navsari, in Regular Civil Appeal No. 47 of 1996, whereby the learned Appellate Court reversed the findings of the Trial Court and dismissed the suit of the present appellants. The litigation concerns the validity of a Will dated 15.04.1986 allegedly executed by one Reshiabhai, who was the grandfather of appellant Nos. 1 to 4 and father-in-law of appellant No. 5.

2.1. Shorn of non-essential details, the relevant factual matrix of the lis in hand is adumbrated thus: The appellants (original plaintiffs) instituted Regular Civil Suit No. 13 of 1988 before the learned Civil Judge (J.D.), Vansda, seeking a declaration that the aforesaid Will was null and void, contending that the properties bequeathed thereunder were ancestral in nature and that the plaintiffs possessed an undivided share therein. It was their case that the testator, being about 90 years of age and in a feeble mental condition, lacked testamentary capacity, and that the Will had been procured by respondent No. 1 through fraud and undue influence. Consequential relief of partition, possession of 1/3rd share, mesne profits, and permanent injunction were also prayed for.

2.2. The Trial Court, by judgment dated 29.02.1996, partly decreed the suit, holding that the Will was vitiated by fraud and undue influence and therefore void, and that the plaintiffs had a 1/3rd share in the suit properties; however, it further held that the suit was barred under Order II Rule 2 CPC and that it lacked jurisdiction to entertain the same. Aggrieved thereby, respondent No. 1 preferred Regular Civil Appeal No. 47 of 1996. The learned District Judge allowed the

appeal on 21.09.2004, setting aside the findings regarding the Will and dismissing the suit, though holding that the suit was not barred under Order II Rule 2 CPC and that the Trial Court did possess jurisdiction. It is this appellate judgment which is assailed in the present Second Appeal, wherein substantial questions of law are stated to arise.

3. The parties are relegated to their original status as obtaining before the learned Trial Court.

4. On 26.04.2025, this Court was pleased to formulate the following substantial questions of law for consideration:–

> "a) Having regard to conflicting finding of courts below on the truth and genuineness of Will dated 15.4.1986 at Exh. 49, whether Will at Exh. 49 genuine and whether its execution is in accordance with law?
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> b) Having regard to Entry No.47 dated 19.6.57 at Exh.42 that properties are ancestral and, along with Ranchhodbhai name of Reshiabhai has been mutated and even if there is partition between Ranchhodbhai and Reshiabhai, share obtained by Reshiabhai on partition is ancestral property as regards to his male issue and as per Hindu Succession Act since Appellant Nos. 1 and 2 being male heirs are entitled to have share by birth in said properties, whether Courts below have erred in law in not holding that Reshiabhai had no right to make will (i.e., Exh.49)?
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> c) Having regard to Exh.42 being Entry No.47 dated 19.6.1957 indicating that properties comprised by said entry are ancestral properties in respect of which by Exh.45 being Entry No.533 (dated 17.4.1982) of partition has been mutated and all the contents of Exh.45 have been admitted as correct by respondent No.1 in his evidence, whether lower appellate court has erred in law in not holding that suit

properties are Ancestral Properties?"

SUBMISSIONS OF THE APPELLANTS:-

5. Learned Advocate Mr. Nirav R. Mishra, adverting to the substantial questions of law framed by the Coordinate Bench, has principally contended that the suit properties, particulars whereof are delineated in para 2 of the plaint, are ancestral in character. The relief sought by the plaintiff is one for partition by metes and bounds, coupled with *mesne profits*, declaration, and permanent injunction. It is urged that the parties trace their lineage to deceased Agharabhai, and that the immovable properties in question originally belonged to him. According to the learned Advocate, the said properties were not the self-acquired assets of his sons, Reshiabhai and Ranchhodbhai, but retained their ancestral character. In that factual milieu, the plaintiff, being a Class-I heir of deceased Natubhai, who was a predecessor of Reshiabhai, acquired a share by birth in the suit properties. Ergo, any testamentary disposition sought to be made by Reshiabhai through a Will would be wholly impermissible in law. The Will dated 15.04.1986, produced at Exhibit 46, is therefore assailed as having been executed without lawful authority and in the teeth of Section 30 of the Hindu Succession Act. Reliance is further placed on Entry No. 47 dated 19.06.1957 (Exh. 42), which records that the agricultural lands forming the subject matter of the suit were ancestral and were merely held by deceased Reshiabhai.

5.1. It is further submitted that the learned Trial Court, upon a comprehensive rumination over the revenue record and documentary evidence, rightly decreed the suit, the said revenue entries having remained unchallenged for decades. However, the learned First

Appellate Court, in reversing the well-reasoned decree, is alleged to have fallen into a manifest error by misreading and misconstruing material documentary evidence, particularly Exhs. 42, 45, 49, and 79 to 83. On this score, it is contended that the appellate findings suffer from perversity, inasmuch as the ancestral nature of the properties stood established from unimpeached revenue entries which were never disputed by Reshiabhai or Ranchhodbhai during their lifetime.

5.3. In light of the prevenient ratiocination, learned Advocate for the appellants has thus entreated that the appeal be allowed, the impugned judgment and decree of the First Appellate Court be set aside, and the decree passed by the learned Trial Court be restored.

SUBMISSIONS OF THE RESPONDENTS:-

6. *E converso*, learned Advocate Mr. Zubin Bharda appearing for the respondents has supported the impugned judgment and decree, contending that the learned First Appellate Court has, upon a re-appreciation and independent reassessment of the entire evidentiary record, rightly concluded that deceased Reshiabhai possessed full legal authority and unfettered proprietary rights to dispose of the suit properties. It is submitted that the properties in question had assumed the character of self-acquired assets pursuant to a prior partition between the two brothers, Reshiabhai and Ranchhodbhai, and thus ceased to retain any ancestral imprimatur.

6.1. Learned Advocate further contended that the plaintiff, who asserts the properties to be ancestral and claims a share therein by birth, has failed to discharge the burden of proof cast upon him in law. No cogent, convincing, or legally admissible documentary evidence, it is urged, has been adduced to substantiate the plea that

the suit properties formed part of any coparcenary or joint family estate. In absence whereof, the very foundation of the plaintiff's claim stands eroded.

6.2. On the strength of the aforesaid submissions, learned Advocate for the respondents has thus entreated that the present Second Appeal, being devoid of merit and raising no substantial question of law warranting interference, deserves to be dismissed.

FINDINGS, ANALYSIS AND CONCLUSION OF THE COURT:-

7. I have heard the learned advocates appearing for the respective sides at length. I have also meticulously perused the judgments and decrees rendered by the Courts below, in tandem with the entire record and proceedings of the case.

RELEVANT CASE LAW:-

8. The precedents, apropos, to the matter in issue, are as follows:-

8.1. In ***Nazir Mohamed v. J. Kamala and Others, Civil Appeal Nos. 2843–2844 of 2010***, wherein, in Para 37, the Apex Court has lucidly and categorically enunciated the legal position in the following terms:-

> "37. The principles relating to Section 100 CPC relevant for this case may be summarised thus:
>
> (i) An inference of fact from the recitals or contents of a document is a question of fact, but the legal effect of the terms of a document is a question of law. Construction of a document, involving the application of any principle of law, is also a question of law. Therefore, when there is

misconstruction of a document or wrong application of a principle of law in construing a document, it gives rise to a question of law.

(ii) The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents, and, involves a debatable legal issue.

(iii) A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the Court below has decided the mat-ter, either ignoring or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question, violates the settled position of law.

(iv) The general rule is, that High Court will not interfere with the concurrent findings of the Courts below. But it is not an absolute rule. Some of the well-recognised exceptions are where i) the courts below have ignored material evidence or acted on no evidence; ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. A decision based on no evidence, does not refer only to cases where there is a total dearth of evidence, but also refers to case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding."

8.2. Reference is also profitably required to be made to the celebrated decision of the Hon'ble Supreme Court in ***Hero Vinoth v. Seshammal [(2006) 5 SCC 545]***, wherein, in Para 21, the Apex Court has authoritatively delineated and explicated the contours of

the expression "*substantial question of law*" in the following terms:-

> "21. The phrase "substantial question of law", as occurring in the amended Section 100 CPC is not defined in the Code. The word substantial, as qualifying "question of law", means of having substance, essential, real, of sound worth, important or considerable. It is to be understood as something in contradistinction with technical, of no substance or consequence, or academic merely. However, it is clear that the legislature has chosen not to qualify the scope of "substantial question of law" by suffixing the words "of general impor-tance" as has been done in many other provisions such as Section 109 of the Code or Article 133(1)(a) of the Constitution. The substantial question of law on which a second appeal shall be heard need not necessarily be a substantial question of law of general importance. In Guran Ditta v. Ram Ditta (1927-28) 55 IA 235, AIR 1928 PC 172 the phrase "substantial question of law" as it was employed in the last clause of the then existing Section 100 CPC (since omitted by the Amendment Act, 1973) came up for consideration and their Lordships held that it did not mean a substantial question of general importance but a substantial question of law which was involved in the case. In Sir Chunilal case 1962 Supp (3) SCR 549, AIR 1962 SC 1314 the Constitution Bench expressed agreement with the following view taken by a Full Bench of the Madras High Court in Rimmalapudi Subba Rao v. Noony Veeraju AIR 1951 Mad 969, (1951) 2 MLJ 222 (FB): (Sir Chunilal case 1962 Supp (3) SCR 549, AIR 1962 SC 1314, SCR p. 557)
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> "[When a question of law is fairly arguable, where there is room for difference of opinion on it or where the Court thought it necessary to deal with that question at some length and discuss alternative views, then the question would be a substantial question of law. On the other hand if the question was practically covered by the decision of the highest court or if the general principles to be applied in determining the question are well settled and the only question was of applying those principles to the particular fact of the case it would not be a substantial question of law."

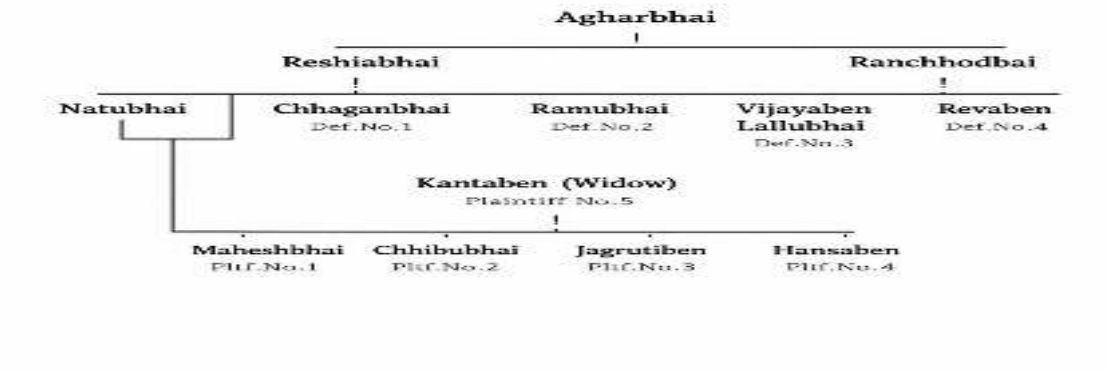
> This Court laid down the following test as proper test, for determining whether a question of law raised in the case is substantial: (Sir Chunilal case 1962 Supp (3) SCR 549, AIR 1962 SC 1314, SCR pp. 557-58)
>
> "The proper test for determining whether a question of law raised in the case is substantial would, in our opinion. be whether it is of general public importance or whether it directly and substantially affects the rights of the paretics and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law."

8.3. In the case of **Jaichand (Dead) through Lrs and Other v. Sahnulal and Another** reported in **2024 SCC OnLine SC 3864**, the Hon'ble Apex Court has observed as under:-

> "28. It is thus clear that under Section 100 CPC, the High Court cannot interfere with the findings of fact arrived at by the first Appellate Court which is the final Court of facts except in such cases where such findings were erroneous being contrary to the mandatory provisions of law, or its settled position on the basis of the pronouncement made by the Apex Court or based upon inadmissible evidence or without evidence."

9. Before adverting to the rival submissions canvassed by the learned Advocates appearing for the respective sides, it would be apposite to delineate the *inter se* relationship between the parties,

which forms the foundational backdrop of the lis in question:-



10. Having thus adverted to the *inter se* relationship between the parties, this Court proceeds to examine whether the evidence adduced during the trial, more particularly the revenue entries, including Entry No. 47 at Exhibit 42, establishes that the suit properties were ancestral in character and that deceased Reshiabhai, upon an alleged partition with Ranchhodbhai, merely received his share therein. Put differently, the seminal issue is whether the plaintiff has succeeded in demonstrating that the disputed properties originally belonged to Agharabhai and, by virtue of such lineage, devolved first upon deceased Natubhai by birth and thereafter upon plaintiff Nos. 1 to 4 as coparceners acquiring an interest by birth.

10.1. The documentary evidence commencing from Exhibit 42 onwards depicts the status of the agricultural lands in the names of deceased Reshiabhai and Ranchhodbhai. Significantly, Entry No. 47 dated 13.06.1957 reveals that Ranchhodbhai's name was initially mutated in the revenue record in the capacity of a tenant. Subsequently, upon statements of both brothers being recorded by the revenue authorities, the lands came to be mutated jointly in their names. Though the entry employs the nomenclature "ancestral

property," such description, in the absence of antecedent revenue records demonstrating title in the name of their father Agharabhai, cannot ipso facto be treated as conclusive proof of ancestral character.

10.2. Furthermore, the recitals in the revenue record indicating Ranchhodbhai's status as a tenant lend credence to the inference that the lands were originally held under a tenancy regime, presumably governed by the Bombay Tenancy and Agricultural Lands Act. It appears that although both brothers were cultivating the lands, statutory recognition as a tenant could be accorded to only one individual, whereafter the mutation came to reflect joint names. Ergo, the subsequent entry does not, in itself, elevate the character of the property to that of coparcenary or ancestral property in the strict legal sense, nor does it conclusively establish inheritance through Agharabhai.

10.3. The plaintiff remains conspicuously silent on this crucial aspect. There is no explanation whatsoever as to how the name of Ranchhodbhai, the brother of Reshiabhai continued to appear in the revenue record in the capacity of a tenant prior to Entry No. 47. In the absence of cogent evidence elucidating this circumstance, the plaintiff cannot successfully contend that the suit properties are ancestral merely on the strength of the solitary expression "ancestral" employed in Entry No. 47 at Exh. 42. It is trite, nay axiomatic, that a revenue entry neither creates nor extinguishes title; its utility is primarily fiscal and administrative. This well-settled proposition stands fortified upon a conjoint reading of Revenue Entry No. 535 (Exh.43) and Entry No. 533 (Exh.45), the latter unequivocally recording that Reshiabhai and Ranchhodbhai were

holding the properties as co-owners and that a family arrangement had been effected whereby their respective shares came to be demarcated.

10.4. The cumulative effect of these entries indubitably establishes that the brothers were dealing with the properties in their independent rights and not as coparceners inheriting from their predecessor, Agharabhai. The record further reveals that several registered sale deeds were executed by them from their own funds, the properties so acquired being subsequently treated as part of a common pool and thereafter partitioned under Entry No. 533 (Exh.45). Such conduct is wholly inconsistent with the theory of coparcenary property devolving by birth. At this juncture, it would be apposite to advert to the recent pronouncement of the Hon'ble Supreme Court in ***Angadi Chandranna v. Shankar & Ors., 2025 LiveLaw (SC) 494***, wherein, upon an illuminating survey of the earlier decision in ***Govindbhai Chhotabhai Patel & Ors. v. Patel Ramanbhai Mathurbhai, (2020) 16 SCC 255***, the distinction between ancestral property and self-acquired property has been pellucidly delineated:-

> "18. The learned counsel for the appellants has referred to Shyam Narayan Prasad [Shyam Narayan Prasad v. Krishna Prasad, (2018) 7 SCC 646 : (2018) 3 SCC (Civ) 702]. That is a case in which the property in question was held to be ancestral property by the trial court. The plaintiffs therein being sons and grandson of one of the sons of Gopal Prasad, the last male holder was found to have equal share in the property. The question examined was whether the property allotted to one of the sons of Gopal Prasad in partition retains the character of coparcenary property. It was the said finding which was affirmed by this Court. This Court held as

under: (SCC P. 651, para 12)

> "12. It is settled that the property inherited by a male Hindu from his father, father's father or father's father's father is an ancestral property. The essential feature of ancestral property, according to Mitakshara law, is that the sons, grandsons, and great grandsons of the person who inherits it, acquire an interest and the rights attached to such property at the moment of their birth. The share which a coparcener obtains on partition of ancestral property is ancestral property as regards his male issue. After partition, the property in the hands of the son will continue to be the ancestral property and the natural or adopted son of that son will take interest in it and is entitled to it by survivorship."
>
> … … … …
>
> 20. In view of the undisputed fact, that Ashabhai Patel purchased the property, therefore, he was competent to execute the will in favour of any person. Since the beneficiary of the will was his son and in the absence of any intention in the will, beneficiary would acquire the property as self-acquired property in terms of C.N. Arunachala Mudaliar case [C.N. Arunachala Mudaliar v. C.A. Muruganatha Mudaliar, (1953) 2 SCC 362: 1954 SCR 243: AIR 1953 SC 495]. The burden of proof that the property was ancestral was on the plaintiffs alone. It was for them to prove that the will of Ashabhai intended to convey the property for the benefit of the family so as to be treated as ancestral property. In the absence of any such averment or proof, the property in the hands of donor has to be treated as self-acquired property. Once the property in the hands of donor is held to be self-acquired property, he was competent to deal with his property in such a manner he considers as proper including by executing a gift deed in favour of a stranger to the family."

11. The second contention canvassed by learned Advocate Mr. Mishra pertains to the Will dated 15.04.1996, allegedly executed by deceased Reshiabhai, which is assailed as forged and beyond his

authority to execute. This Court, for reasons already recorded hereinabove, has unequivocally held that the properties bequeathed under the testamentary disposition were the self-acquired properties of Reshiabhai. Ergo, the embargo contemplated under Section 30 of the Hindu Succession Act would not operate as a fetter upon his testamentary competence.

11.1. Turning, therefore, to the issue of genuineness, the Will in question is produced at Exhibit 49. At the outset, it merits notice that the instrument is a registered Will, having been duly registered before the Sub-Registrar, Chikhli on 17.04.1996, who has also appended his official endorsement and signature thereon. Although the Will has been propounded by the defendants, its legality and validity have been put in issue by the plaintiff. In this context, it would be apposite to advert to the recent pronouncement of the Hon'ble Supreme Court in ***Metpalli Lasum Bai (Since Dead) & Ors. v. Metapalli Muthiah (D) by Lrs., 2025 LiveLaw (SC) 734***, wherein the principles governing proof of a Will and the burden resting upon the propounder, particularly in the face of allegations of suspicious circumstances, have been authoritatively expounded:-

> "
>
> XXX XXX XXX
>
> The Will, is a registered document and thus there is a presumption regarding genuineness thereof. The trial Court accepted the execution of the Will based on the evidence led before it. As the Will is a registered document, the burden would lie on the party who disputed its existence thereof, who would be defendant-Muthaiah in this case, to establish that it was not executed in the manner as alleged or that there were suspicious circumstances which made the same doubtful.

XXX XXX XXX ”

12. If the oral evidence on this aspect is scrutinized, the plaintiff, Kantaben Gamit, examined at Exhibit 30, has in her deposition unequivocally admitted that deceased Reshiabhai executed the Will dated 15.04.1986 and that the same came to be registered on 17.04.1986. Though she subsequently attempted to dispute the signature of Reshiabhai on the Will, no cogent material or expert evidence has been adduced in support of such bald assertion. Her statement, therefore, remains a mere *ipsi dixit* devoid of probative worth.

12.1. One of the attesting witnesses, Ranchhodbhai, was examined by the plaintiff himself at Exh. 67. The learned Trial Court discarded his testimony solely on the ground that he was serving as a clerk with the advocate representing the defendants. The learned Appellate Court, however, rightly found such reasoning to be wholly untenable. Merely because a witness is employed as a clerk by an advocate appearing in the matter cannot, *in vacuo*, render his testimony suspect or inadmissible, particularly when he has been examined by the plaintiff to assail the Will. In his cross-examination, he categorically admitted that Reshiabhai had executed the Will while being in a sound and disposing state of mind and that the execution and registration were carried out in his presence. He further admitted that, at the time of registration, even the learned Advocate for the plaintiff was present. These admissions indubitably lend assurance to the due execution of the testamentary instrument.

12.2. Section 63 of the Indian Succession Act, read with Section 68 of the Indian Evidence Act (*now substantially embodied in the*

Bharatiya Sakshya Adhiniyam, 2023), mandates examination of at least one attesting witness to prove a Will. The law is equally pellucid that, where an attesting witness either denies or fails to recollect execution, recourse may be had to Sections 69 and 70 of the Evidence Act to prove handwriting and attestation through other permissible modes. In this regard, reference may be made to Pentakota Satyanarayana v. Pentakota Seetharatnam, AIR 2005 SC 4362, wherein the Hon'ble Supreme Court has observed that an endorsement by the Sub-Registrar to the effect that the executant acknowledged execution before him carries significant evidentiary value and may, in appropriate circumstances, amount to attestation. On a cumulative appreciation of the oral and documentary evidence, the execution of the Will at Exh. 49 stands duly proved in accordance with law.

13. In view of the aforesaid discussion and the prevenient ratiocination, this Court finds no merit whatsoever in the present Second Appeal. The appeal is utterly devoid of substance, bereft of any sustainable ground warranting interference within the limited scope of Section 100 of the Code of Civil Procedure. Ergo, the Second Appeal fails and stands dismissed.

13.1. Interim relief, if any, stands vacated forthwith. The Record and Proceedings shall be transmitted back to the Court concerned without delay.

(J. C. DOSHI,J)

14. After pronouncement of the judgment, learned advocate Mr. Mishra has sought a stay on the implementation of the present order

for a period of four weeks so as to enable the plaintiff to avail appropriate remedies before the higher forum.

14.1. Having regard to the fact that interim relief has been operating since the admission of the present Second Appeal, the same shall continue to operate for a further period of four weeks from today, and shall stand vacated automatically thereafter without further reference to this Court.

(J. C. DOSHI,J)

MANISH MISHRA

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: MANISH MISHRA(HC01776), STENO GR II, at High Court of Gujarat on 06/02/2026 14:54:38