

GJAN010025342021



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**IN THE COURT OF PRINCIPAL DISTRICT JUDGE
ANAND.**

REGULAR CIVIL APPEAL No. 131/2021

Heirs of Kapilaben D/o Ashabhai Bakorbhai Patel

1. Vijaybhai Vaghjibhai Patel
Age. 51, Occ. Agril.
2. Kokilaben Vaghjibhai Patel
Age. 49, Occ. Agril. / household
Both R/o Nr. Chora, Sardar Chowk
At Sanul, Tal. Nadiad, Dist. Kheda

**..... appellants
(Original Plaintiffs)**

VERSUS

1. Heirs of deceased Shankarbhai Girdharbhai Patel
Heirs of deceased Dahyabhai Shankarbhai Patel
Bhailalbhai Dahyabhai Patel
1. Suryakant Bhailalbhai Patel
Age. 55, occ. Agril.
2. Dhirubhai Bhailalbhai Patel
Age. 56, Occ. Agril
Old address: Nr. Tower, In Khadki, Nr. Mataji

Mandir

At and Post Tal. Dist. Anand.

New address: Narayan Park, behind Gopi talkies

At and Post Tal. Dist. Anand

2. Heirs of deceased Harmanbhai Lallubhai Patel

1. Parshottambhai Harmanbhai Patel

Age. 60, Occ. Agril.

2. Rajubhai Parshottambhai Patel's minor

Age. 34, Occ. Agril.

Mukeshbhai Parshottambhai Patel

Rakeshbhai Parshottambhai Patel's guardian

Parshottambhai Harmanbhai Patel

R/o Nana Bajar, Krushnakunj Setu P, lot No.

1560

Chaloni Vihar Road, At Vallabh Vidhyanagar,

Tal. Dist. Anand.

..... **Respondents**
(Original defendants)

Appearance:

Id. Advocate MR. K.K. Mahida for appellants

Id. Advocate MR. P.P. Patel for Respondents

Appeal under Section 96 of the Code of Civil Procedure, 1908 against judgment and decree dated 18/08/2018 passed by Id. 2nd Addl. Civil Judge, Anand, in Regular Civil Suit No. 450/2012 .

::: J U D G M E N T :::

1. The appellants - the original plaintiffs have preferred the present appeal against the judgment and decree passed by Id. 2nd Addl. Civil Judge, Anand, in Regular Civil Suit No. 450/2012 dated 18/08/2018, whereby the suit

of the plaintiffs – appellants herein came to be rejected. Hence, for the sake of convenience they shall be referred as plaintiffs and defendants as they were in their original position before the trial court.

2. The fact of the appeal of the appellants – original plaintiffs is that the appellants – plaintiffs filed the RCS No. 450/2018 and sought relief and to declare that they are the direct legal heirs of deceased Sunderlal. The documentary evidence produced by the plaintiffs – appellants were not denied by the defendants – respondents in the civil suit. The respondents – defendants side had not submitted any evidence. The cross examination of the plaintiff was also not done by the defendants side. Only considering written arguments of the defendants side, Id. Trial court dismissed the suit vide judgment and decree dated 18/08/2018 and therefore being aggrieved and dissatisfied with the aforesaid judgment and decree, the appellants have preferred the appeal on the grounds that:

1. The judgment and decree of the trial court is against the principle of natural justice
2. The trial court has not considered the

evidence and fact of written arguments and thereby committed grave error and therefore also the judgment is required to be quashed and set aside.

3. The judgment and decree of the trial court is only relying upon the written arguments of the defendants side.
4. The trial court has not considered the various citations of the higher forum.
5. The defendants side has not submitted any evidence in support of their arguments.
6. The Id. trial court has passed the impugned order without properly considering the oral and documentary evidence produced by the appellants and the written submissions. Therefore, the order is erroneous and liable to be set aside.
7. The Id. trial court has mainly relied upon the arguments and judgments cited by the respondent/original defendants instead of considering the evidence on record and the pleadings of the parties.
8. The respondent/original defendants did not file an appropriate written reply / defence and did not produce any evidence to disprove the appellants' case.

Therefore, the defence subsequently raised ought not to have been considered.

9. The appellants produced their examination-in-chief and supporting documentary evidence, but the same was not properly appreciated by the Id. trial court. The respondent also failed to establish through cross-examination any facts contrary to the appellants' case.
10. The appellants produced the Pedigree at Exh. 32, which establishes their relationship and succession. The respondent failed to produce any evidence proving that the said pedigree was false or incorrect.
11. The appellants also produced the relevant death certificates at Exh. 33 and 34, establishing the death of their predecessors and their succession as legal heirs in the direct line.
12. The suit property bearing Revenue Survey No. 477/2, Mouje Anand, stands connected with the appellants' predecessor. The relevant revenue records and Hissa Mapani No. 11-A were produced, but the Id. trial court failed to properly consider them.

13. The deposition of witness Yashpal Mukundbhai Parmar at Exh. 48 supported the appellants' case. However, the Id. trial court failed to properly appreciate his evidence and relied upon irrelevant questions raised in cross-examination.
14. The Id. trial court wrongly held that the suit was not maintainable. The appellants had produced the order passed by the Collector of Anand District in the revision proceedings at Exh. 39, which supported the maintainability of the suit.
15. The finding regarding limitation is erroneous. The Collector passed the relevant order on 23/08/2012, and the suit was filed within three years thereof. Hence, the suit was within the prescribed period of limitation.
16. The Id. trial court wrongly held that the appellants failed to prove that they were the legal heirs in the direct line of Ashabhai Bakorbhai, son of Girdharbhai Jorabhai Patel. The Pedigree, death certificates, oral evidence and revenue documents collectively established the appellants' succession.
17. The respondent did not produce any evidence to establish that the appellants'

Pedigree was false, that the appellants were not legal heirs, or that their predecessor had no right or interest in the suit property.

18. The Id. trial court relied substantially upon the arguments of the respondent and interpreted the facts contrary to the evidence and pleadings on record. The findings are therefore contrary to the evidence and law.
19. The Id. trial court also made observations which were not supported by the pleadings or evidence and, in effect, raised issues and defences on behalf of the respondent. Such findings are legally unsustainable.
20. The impugned order and decree suffer from errors of fact and law, improper appreciation of evidence, and therefore, the order and decree are liable to be quashed and set aside, and the appellants' suit ought to be allowed in accordance with law.
21. The appeal is also within the prescribed period of limitation after considering the time taken for obtaining the certified copy in accordance with Section 12 of the Limitation Act.

22. On the basis of aforesaid contention, the appellants herein – the original plaintiffs have prayed to quash and set aside the judgment and decree passed by the Id. Trial court in RCS No. 450/2012 by allowing the appeal filed by the appellant – plaintiffs.
3. On issuance of notice, respondents have appeared through their advocate.
4. This court has considered the impugned judgment dated 18/08/2018. This court has also perused Record and Proceedings of the Trial court as well as the memo of appeal. Following points fall for determination before this court.
1. Whether the appellants can point out that they are the legal heirs of deceased Sundarlal?
 2. Whether the Trial court has committed serious error on facts and law in passing the impugned judgment?
 3. Whether the Trial court has committed any error in not considering the oral as well as documentary evidence?
 4. What order?
5. Answer to the above points are as follows :

1. In the negative.
2. In the negative.
3. In the negative.
4. As per final order.

:: R E A S O N S ::

6. I have heard oral as well as gone through the written arguments submitted by the rival parties. Ld. Advocate for the appellants submitted written arguments vide Exh. 14 and that of respondents vide Exh. 15.
7. The crux of the written as well as oral arguments on behalf of the Id. Advocate for the appellants are that;
 8. The appellants had filed Civil Suit No. 450/2011 before the Id. 2nd Additional Civil Judge, Anand, seeking a declaration that they are the legal heirs in the direct line of succession of deceased Sundarlal, through Girdharbhai, Jorabhai Girdharbhai, Bakorbhai, Ashabhai and Kapilaben. The respondents appeared through their advocates but did not file any written statement or affidavit of examination-in-chief. Nevertheless, the Id. trial court dismissed the appellants' suit, against which the present appeal has been preferred.
 9. The Id. trial court failed to properly apply

Order VIII Rule 10 of the Code of Civil Procedure. Since the respondents did not file a written statement, the court was required to proceed in accordance with the provisions applicable to non-filing of a written statement and pass an appropriate order. The impugned order is therefore legally unsustainable.

- 10.** The respondents did not file a written statement under the relevant provisions of the CPC. In such circumstances, their right to raise a defence was substantially restricted. However, the Id. trial court permitted them to cross-examine the plaintiffs and their witnesses without properly considering the legal consequences of their failure to file a written statement.
- 11.** The Hon'ble Supreme Court in *Balraj Taneja v. Sunil Madan*, (1999) 8 SCC 178, has explained the consequences of failure to file a written statement and the limitations on raising a defence thereafter. The Id. trial court failed to properly consider the said principle.
- 12.** The Hon'ble Gujarat High Court in *Mohanlal v. State of Gujarat*, 2001 (1) GLH 289, has also held that a defendant

who has not filed a written statement cannot claim cross-examination as a matter of right and may be permitted to cross-examine only with the permission of the court in the interests of justice. In the present case, no proper application seeking such permission was filed or granted. Therefore, the cross-examination permitted by the trial court was legally erroneous.

- 13.** The present suit was filed because, in the proceedings before the District Collector, Anand, the revenue authorities directed the appellants to obtain an appropriate declaration/order from the Civil Court regarding their legal heirship. Accordingly, the appellants filed the present declaratory suit.
- 14.** The appellants did not file the suit for a succession certificate under Section 372 of the Indian Succession Act, nor did they seek an injunction. The suit was filed for declaration of their status as legal heirs and was valued accordingly.
- 15.** The Pedigree produced by the appellants was prepared before the Talati-cum-Mantri, Anand, in the presence of competent witnesses on 04/02/2009, in

accordance with the applicable Government procedure/circular. The said document specifically records that no false heir was included and no genuine heir was omitted. Therefore, the objection that the Pedigree was incomplete or unreliable is without basis.

- 16.** The Id. trial court itself recorded that the respondents had not filed any written statement. The court framed issues regarding maintainability, limitation, legal heirship and entitlement to relief. The appellants produced oral and documentary evidence in support of all these issues, including the Pedigree and other relevant documents.
- 17.** The appellants produced their evidence at Exh. 28, supporting evidence at Exh. 48, and documentary evidence at Exh. 31 to 39. The respondents did not produce any substantive evidence to rebut the appellants' case and mainly relied upon written arguments.
- 18.** The Id. trial court nevertheless dismissed the suit by relying substantially upon the respondents' written submissions. The material evidence produced by the appellants was not properly appreciated.

- 19.** The appellants' witness Vijaykumar Waghjibhai Patel clearly stated in cross-examination that the appellants are the heirs of their father Ashabhai Bakorbhai, son of Girdharbhai Patel. The appellants supported this statement by producing the Pedigree. The respondents failed to produce any evidence proving that the appellants were not the legal heirs.
- 20.** The suit property, being Revenue Survey No. 477/2, Mouje Anand, is connected with the appellants' predecessor. The relevant revenue records and Hissa Mapani No. 11-A were produced, but the Id. trial court failed to properly consider these documents.
- 21.** The testimony of witness Yashpal Mukundbhai Parmar at Exh. 48 supported the appellants' case. The cross-examination mainly consisted of irrelevant questions concerning the manner of preparation of the Pedigree. The Id. trial court erred in relying upon such irrelevant matters.
- 22.** The appellants also produced the death certificates of Kapilaben Waghjibhai at Exh. 33 and Ashabhai Bakorbhai at Exh. 34, which supported the appellants' claim

of succession. These documents were not properly appreciated by the Id. trial court.

- 23.** The finding on Issue No. 1 regarding maintainability is erroneous. The order passed by the District Collector, Anand, in Revision Application Nos. 45/2011 and 46/2011 was produced at Exh. 39 and clearly supported the necessity for approaching the Civil Court.
- 24.** The finding on Issue No. 2 regarding limitation is also erroneous. The Collector passed the relevant order on 23/08/2012, and the appellants instituted the suit within three years thereafter. Therefore, the suit was within limitation.
- 25.** The finding on Issue No. 3 regarding legal heirship is contrary to the evidence on record. The Pedigree, death certificates, oral evidence and revenue documents, when read together, establish the appellants' succession in the direct line.
- 26.** The respondents did not prove that the Pedigree was false, that the appellants were not legal heirs, or that the appellants' predecessor had no connection with the suit property. No contrary documentary or oral evidence was produced by them.

- 27.** The Id. trial court relied upon facts and arguments which were not supported by the pleadings or evidence of the respondents and failed to consider material evidence produced by the appellants. The findings are therefore contrary to the record and law.
- 28.** The Id. trial court also erred in observing that the appellants had not established whose heirs they were. The appellants had specifically pleaded and proved their genealogy through documentary and oral evidence.
- 29.** The impugned judgment and decree suffer from misreading of evidence, failure to consider material documents, improper appreciation of pleadings, erroneous findings on limitation and legal heirship, and incorrect application of the CPC.
- 30.** Therefore, the impugned judgment and decree dated 18/08/2018 passed by the Id. trial court deserve to be quashed and set aside, and the present appeal deserves to be allowed in the interest of justice.
- 31.** Whereas Id. Advocate for the respondents submit vide oral as well as written arguments

at Exh. 15 that;

1. The first appellate court is required to reconsider the pleadings, evidence, issues, arguments and findings of the Trial Court.
2. The appellant, Vijaybhai Waghjibhai Patel, initially challenged Mutation Entry Nos. 5474 dated 20.02.1950 and 227 concerning Survey No. 477/2 by RTS Appeals Nos. 205/2009 and 206/2009. Both appeals were dismissed on 19.05.2011, and the subsequent RTS Revision Nos. 45/2011 and 46/2011 were dismissed by the Collector on 13.08.2012. The said orders were not challenged before the SSRD and therefore attained finality.
3. Mutation Entry No. 5474 clearly reflects the historical partition between the branches of Shankar Girdharbhai and Harman Lallubhai. The appellant challenged the said entry only after about 59 years. Had his alleged ancestors possessed any right, their names ought to have appeared in the said revenue record.
4. The Collector specifically observed that the appellant was claiming through an ancestor who had died about 150 years earlier and that such disputed inheritance could not be finally decided by the revenue authority.

The appellant was required to establish his succession before a competent Civil Court. His subsequent declaratory proceedings also failed.

5. The appellant's connected proceedings are based upon the same alleged genealogy, namely Kapilaben → Ashabhai → Bakorbhai → Girdharbhai, and his alleged inheritance in Survey No. 477/2.
6. The appellant principally relies upon the Pedigree at Exhibit 82. However, the Pedigree has not been duly proved. The witness admitted that it was not prepared in his presence and that he did not know the alleged Panch witnesses. Its first page, Panch statements, affidavits and complete endorsements were also not produced.
7. None of the alleged Panch witnesses or any elderly family member having personal knowledge of the genealogy was examined. The same Pedigree was relied upon in the appellant's different suits, but it remained substantially uncorroborated.
8. The Pedigree is further contradicted by the appellant's own RTS proceedings. In those proceedings he recognized the genealogy through Shankar Girdharbhai and Harman Lallubhai, whereas the Pedigree omits

material intervening heirs. Similarly, Lallubhai is shown as unmarried in the Pedigree, while the appellant himself relied upon Harmanbhai as his heir in the RTS proceedings. These contradictions make the Pedigree unreliable.

9. The appellant's pleadings are also mutually contradictory. In Civil Suit No. 170/2018, he claimed to be the legal heir of Mathurbhai Jorabhai Patel and simultaneously asserted a different chain of ownership and succession concerning the same property. Such contradictory pleadings go to the root of his claim.
10. The appellant has produced no reliable evidence of any partition deed or other document evidencing partition, any mutation entry showing such partition in his alleged lineage, testimony of any person who participated in the alleged partition, any evidence that Kapilaben, Ashabhai or Bakorbhai obtained the suit property by inheritance or partition, any revenue record showing their ownership or inheritance or any evidence of their cultivation or payment of land revenue.
11. Under Sections 101 and 102 of the Indian Evidence Act, the burden of proving the

asserted title and succession was upon the appellant. A party must succeed on the strength of its own case and cannot establish title merely from the weakness or absence of evidence of the opposite party.

12. The appellant's own admissions in cross-examination are fatal. He admitted that he had no documentary evidence showing that the names of Kapilaben, Ashabhai or Bakorbhai were ever recorded in the relevant 7/12 records, nor any document showing that the suit property devolved upon them by inheritance or partition. These admissions completely undermine the foundation of the appellant's case that the property was ancestral, was partitioned among his predecessors and thereafter devolved upon him.
13. Once the appellant failed to establish his basic title and succession, the respondents were not required to fill the evidentiary deficiency in the appellant's case. The plaintiff must first establish his own case by cogent and admissible evidence.
14. The mere description of an ancestor as "unmarried" or "without issue" in an unproved Pedigree cannot establish such fact. Appropriate death records,

independent genealogical evidence, testimony of persons having personal knowledge and corresponding inheritance entries were necessary, but were not produced.

15. The Trial Court failed to properly appreciate the material contradictions, the unproved Pedigree, absence of supporting revenue records, absence of partition evidence and the appellant's own admissions. It also failed to properly deal with the legal submissions and authorities cited by the respondents.
 16. In view of the foregoing, the appellant has failed to discharge the burden of proving his title, genealogy, inheritance and alleged partition. The impugned findings are therefore contrary to the evidence and settled principles of law.
 17. Accordingly, the present appeal deserves to be dismissed, and the judgment and decree of the learned Trial Court deserve to be confirmed, in the interest of justice.
- 32.** Here at this juncture, the principle regarding burden of proof is required to be discussed therefore judgment rendered by the Hon'ble Gujarat High Court in case of **Dhaval Enterprise Versus Gopal Industries 2023**

(0) AIJEL-HC 247490 wherein it is held;

"It is very well known principle that the party has to succeed on its own strength and not on the weakness of the other side. Applying this principle, in the present case, burden of proving the suit transaction and the amount due to the petitioner will remain on the petitioner till the petitioner discharges.

At this stage, Section 101 of the Indian Evidence Act, 1872, is worth considering. Section 101 of the Indian Evidence Act, 1972 reads as under:- 101. Burden of proof.- Whoever desires any Court to give judgment as to any legal right or liability 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. The said section defines burden of proof. The burden of proof lies on party who substantially asserts the affirmative averments. A party is bound to prove existence of any fact and the burden cannot be shifted. The burden of proof and the onus of proof are having distinct meaning in the law of evidence. Burden of proof lies upon a person who has to prove the fact and which never shifts whereas the onus of proof shifts. Such a shifting is a continuous process in the evaluation of evidence. The initial burden of proving a prima facie case is cast upon the plaintiff. The onus shift on the defendant to adduce rebating evidence to meet the case made out by the plaintiff."

- 33.** Therefore, considering the above ratio it is required to be noted that the burden of proof is on the person who asserts a fact. It is also a well settled principle of law that burden of proof never shifts but the onus to prove goes on shifting. Thus, it was the duty of the

plaintiffs to prove their case by cogent and convincing oral as well as documentary evidence.

- 34.** Moreover, at this juncture, it would be apt to refer to Section 107 of the Code of Civil Procedure, which vests wide powers in the appellate court to determine a case finally, remand the matter, frame issues, and take additional evidence, as the circumstances of the case may require.

SECTION 107 : Powers of Appellate Court

(1) Subject to such conditions and limitations as may be prescribed, an Appellate Court shall have power- (a) to determine a case finally; (b) to remand a case; (c) to frame issues and refer them for trial; (d) to take additional evidence or to require such evidence to be taken.

(2) Subject as aforesaid, the Appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by the Code on Courts of original jurisdiction in respect of suits instituted therein.

- 35.** In order to prove their claim before the trial court, the plaintiffs produce oral as well as documentary evidence. The plaintiffs produced deposition of Vijaykumar Vajibhai Patel vide Exh. 28 and also examined witness Yashpal Mukundbhai Parmar vide Exh. 48. The plaintiffs has produced copy of driving license

of plaintiff vide Exh. 31, pedigree of Sundardas vide Exh. 32, death certificate of Kapilaben Vaghjibhai at Exh. 33, that of Ashabhai Bakorbhai at Exh. 34, that of Vaghjibhai at Exh. 35, that of Sudharbhai at Exh. 36, pedigree of Vaghjibhai at Exh. 37 and copy of A-11 of survey no. 477 village Anand at Exh. 38 and Copy of RTS Case No. 45/11 and 46/11 vide Exh. 39.

- 36.** Whereas, the defendants – respondents herein have not produced any oral or documentary evidence.
- 37.** Herein the case on hand, first of all, if we look at the plaintiff's suit, he has only sought the following declaration in his suit and has not sought any other ancillary reliefs. Looking at the details of the plaintiff's suit, he has made this suit only with the aim of showing that he has a rightful share in the suit property. The following reliefs have been sought in his suit. Therefore, the question arises here whether the plaintiff's suit is maintainable under Section 34 of the Specific Relief Act?

“સબબ અરજ કરવાની કે :- ઉપર દાવા પેરા (૩) માં જે વડીલોના નામો દર્શાવેલા છે તે મુજબ તથા આ સાથે રજૂ કરેલ પેઢીનામામાં જે વારસો દર્શાવેલા છે તે મુજબ અમો વાદીઓના પિતા નામે આશાભાઈ બકોરભાઈ બીન ગીરધરભાઈ જોરાભાઈ પટેલના અને હુકમનામુ અમો વાદીની તરફેણમાં ફરમાવશોજી.

સીધી લીટીના વારસદાર છીએ તેવું જાહેર કરતો હુકમ આ સીવાય આપ નામદાર કોર્ટને બીજું યોગ્ય અને વ્યાજબી લાગે તેવી હરકોઈ દાદ અમો વાદીઓની તરફેણમાં અપાવશો જી.”

- 38.** Here in the case on hand, the plaintiff claims inheritance through Ashabhai, Bakorbhai and Girdharbhai and asserts that he is a fourth-generation heir of Girdharbhai and a seventh-generation heir of Sundardas, before the trial court.
- 39.** Looking to the cross examination of the plaintiff Vijaykumar Vaghjibhai Exh. 28, done by the Id. Advocate for the defendant in which he admits that it is true that Ashabhai Bakorbhai @ Girdharbhai Patel is not their father. It is true that they have not filed any procedure in any court to obtain succession certificate. A wrong inheritance entry has been made and therefore they made defendants as a party. The mutation entry No. 5474 dated 20/02/1950 is of partition between defendants in which entry No. 227 is also mentioned. It is true that they filed RCS No. 26/2011 against present defendants for land bearing survey No. 477/2 in which their injunction application was dismissed. They filed appeal against that order which was also dismissed. Against order of District Court, they have not filed any appeal before Hon’ble High Court. They filed

Revision against Exh. 39 order before SSRD. It is true that the present defendants sold survey No. 477/2 to Jashbhai Dahyabhai Patel and Nikulbhai Chhotabhai Patel and against that mutation entry, they filed appeal before Dy. Collector, which was dismissed. Against which Revision filed before Collector was also dismissed and thereafter revision before SSRD preferred was also rejected. Against that order i.e. the order of SSRD, no appeal is preferred before Hon'ble High Court. This witness does not remember whether the mutation entry is of Jashbhai Dahyabhai Patel and Nikulbhai Chhotabhai Patel bearing No. 99270 dated 17/9/2011 or not.

- 40.** Thus, according to the cross examination of the plaintiff, it is pertinent to note that the subject matter has already been decided in which the relief of declaration was not sought for by the plaintiffs - appellants. It was incumbent upon the plaintiff to seek the comprehensive relief of declaration of title along with consequential relief of injunction in the earlier suit itself, and the omission to do so without obtaining leave of the court attracts the bar under Order II Rule 2(3) as held by the Hon'ble Supreme Court in the case of

Channappa (D) Thr.Lrs. Versus

Parvatewwa (D) Thr.Lrs. 2026 (0)
AIJEL-SC 76815

(b) Code of Civil Procedure, 1908, Order II Rule 2 — Bar against subsequent suit — Requirements for invoking bar — In order that a plea of bar under Order II Rule 2(3) should succeed, the defendant must establish: (i) that the second suit was in respect of the same cause of action as that on which the previous suit was based; (ii) that in respect of that cause of action the plaintiff was entitled to more than one relief; and (iii) that being thus entitled to more than one relief, the plaintiff, without leave obtained from the court, omitted to sue for the relief for which the second suit had been filed — The bar under Order II Rule 2 is founded on the principle that a person should not be vexed twice for the same cause of action and the object is to prevent harassment of the defendant through successive litigation — The mandate of Order II Rule 2 is the inclusion of the whole claim arising in respect of one and the same cause of action in one suit, and must not be misunderstood to mean that all different causes of action arising from the same transaction must be included in a single suit — A correct and reliable test is to determine whether the claim in the new suit is in fact founded upon a cause of action distinct from that which was the foundation of the former suit — Where the plaintiff was fully aware that the defendant had denied her ownership and asserted rights over the suit property, it was incumbent upon the plaintiff to seek the comprehensive relief of declaration of title along with consequential relief of injunction in the earlier suit itself, and the omission to do so without obtaining leave of the court attracts the bar under Order II Rule 2(3). (Paras 20, 21, 24, 25, 26, 27, 28)

It was incumbent upon the plaintiff to seek the comprehensive relief of declaration of title along with consequential relief of injunction in the earlier suit itself, and the omission to do so without obtaining leave of the court attracts

the bar under Order II Rule 2(3).

- 41.** Moreover, plaintiff has filed suit and sought mere a declaration of heirship, though there is issue regarding title share and possession is in dispute. So question would arise that whether suit of plaintiff hit by the proviso of the section 34 of specific relief Act, 1963 or not? In this regard if we referred and relied upon the following judgments, it will help me to adjudicate the matter accordance with law.

Venkataraja Versus Vidyane Doureradja perumal (D) Thr.Lrs. 2013 (0) AIJEL-SC 53943

It is held that a suit for mere declaration simpliciter is not maintainable where the plaintiff is able to seek further or consequential relief but omits to claim such relief. Such a suit is hit by the proviso to Section 34 of the Specific Relief Act, 1963.

Heirs Of Deceased Ramshakti Jivandas Versus Heirs Of Deceased Bhalabhai Dahyabhai, 2026 (0) AIJEL-HC 253199 (GH)

41. Provisions of section 34 of the Specific Relief Act, 1963 provides for discretion of the Court as to declaration of status or right of any person entitled to any legal character, or to any right as to any property, who may institute a suit against any person denying, or interested to deny, his title to such character or right. However, there is no prayer for specific performance of the agreement to sale by the plaintiffs in the plaint. In absence of such prayer, as per proviso to section 34, no Court shall make any such declaration of title of the plaintiffs and the plaintiffs

have failed to seek declaration of title and in the facts of the case the plaintiffs have failed to seek further relief except mere declaration of title and therefore, the suit was rightly dismissed under Order VII Rule 11(d) of the Code by the trial Court. 42. The Hon'ble Apex Court in case of Vasantha (Dead) Thr. LR. V/s. Rajalakshmi @ Rajam thr. LRs (supra), has held that the purpose behind the inclusion of the proviso to section 34 was to prevent multiplicity of proceedings and mere declaratory decree remains non-executable in most cases if no prayer is made for specific performance or consequential relief and such suit is not maintainable being barred by law.

- 42.** Therefore, suit for mere declaration simpliciter is not maintainable where the plaintiff is able to seek further or consequential relief but omits to claim such relief. Such a suit is hit by the proviso to Section 34 of the Specific Relief Act, 1963.
- 43.** However, for sake of an arguments if we discuss the case on merits, to prove their suit before the trial court, the plaintiff relies mainly upon the Pedigree. However, the evidence of the Talati-cum-Mantri shows that it was prepared only on the basis of an affidavit and without verification of the revenue records. Several persons are shown as unmarried or issueless, but no independent documentary evidence was produced to establish these facts. The plaintiff produced the death certificate of Ashabhai, but failed to produce

any evidence establishing the succession from Bakorbhai or the complete chain of inheritance. The older partition / share-measurement record contains the names of Shankar Girdhar and Shamal Bakor, whereas these names are absent from the Pedigree, creating a material contradiction and doubt regarding its correctness. The plaintiff also failed to produce any reliable revenue record, before the Id. Trial court such as village form No. 7/12, Form 8-A or Village Form No. 6, showing ownership, inheritance, possession or cultivation by himself or his predecessors. Therefore, the plaintiff failed to prove that he is a direct-line heir of Girdharbhai or that he acquired any right, title or interest in the suit property. The suit is also affected by the delay and limitation. Thus, the Id. Trial court has rightly comes to the conclusion that the suit is not maintainable as it is beyond the period of limitation as well as plaintiffs also fails to establish that they are the direct line legal heirs opf Ashabhai Bakorbhai @ Girdharbhai Jorabhai Patel.

- 44.** Thus, in view of the afore-stated facts and circumstances, the trial court has not committed any error on facts and law while passing the impugned judgment and decree

and therefore no interference is warranted in the impugned order of the trial court. Therefore the points No. 1, 2 and 3 are answered in negative and for point No. 4, following order is passed.

:: O R D E R ::

- (1) The present Appeal stands **dismissed** on merits.
- (2) The judgment and decree passed by Id. 2nd Addl. Civil Judge, Anand, in Regular Civil Suit No. 450/2012 dated 18/08/2018 is hereby confirmed.
- (3) Decree be drawn accordingly.
- (4) No order as to costs.
- (5) R & P to be sent to Trial court along with copy of this judgment.

Pronounced in open Court on this 14th day of August, 2026.

Anand.
Date:
14.08.2026

(SANJAY LAVJIBHAI THAKKER)
Principal District & Sessions
Judge, Anand.
(Code : GJ-00588)

RR PATEL PS