

Received on :23-01-2026

Registered on :23-01-2026

Decided on :28-07-2026

Duration : Ys. Ms. Ds.

**IN THE COURT OF 2ND ADDITIONAL DISTRICT
JUDGE, PETLAD**

EXH. _____

MISC. CIVIL APPEAL No.02 of 2026

Appellant:-

(Orig. Defendant No. 1):-

Heirs of deceased Manibhai Mathurbhai Patel
Sumitraben d/o Manibhai Mathurbhai Patel Age 50,
R/o Shakti Chowk, Ghunteli, Tal. Petlad

V E R S U S

Respondents:-

(Orig. Plaintiff)

1. Heirs of Maheshbhai Chhotabhai bin
Mathurbhai Patel Age 61,
R/o Ghunteli, Tal. Petlad
Present R/o 2624, Alton CIR Waycross GA
(31501) USA
Through POA Jayeshbhai Dahyabhai Patel
R/o 28, Azad Khadki, At Manpura, Tal. Petlad
2. Heirs of Maheshbhai Chhotabhai bin

Mathurbhai Patel**Formal Party**

Nikitaben Maheshbhai Chhotabhai bin

Mathurbhai Patel

Present R/o 2624, Alton CIR Waycross GA
(31501) USA

R/o 28, Azad Khadki, At Manpura, Tal. Petlad

APPEARANCE :

W.P. Macwan, Ld. Advocate for appellant.

Jay K Shah, Ld. Advocate for opponent No.1.

V M Patel, Ld. Advocate for opponent no.2

Appeal under Order 43 Rule 1 of Civil

Procedure Code.

JUDGMENT

(1) Present appellant is the original defendant No. 1 and respondent No. 1 is the original plaintiff & respondent no.2 is the original defendant no.2 to the Regular Civil Suit No.77 of 2025 pending on the file of learned Additional Sr. Civil Judge, Petlad, and therefore, both the parties are referred to as plaintiff and defendants for the sake of convenience and brevity.

(2) The appellant has preferred the present Misc. Civil Appeal under order 43 Rule 1 of Civil Procedure Code, being aggrieved by and dissatisfied with the order dated 20/12/2025 passed below Exh.5 by learned Additional Additional Sr.

Civil Judge, Petlad in Regular Civil Suit No. 77 of 2025, on the grounds as stated in memo of appeal.

(3) Ld. advocate for the appellant gave written arguments vide Exh. 8 and mainly argued that order of the Id. trial court is erroneous and not tenable. The order of Id. trial court is ex-party and against the principle of natural justice. Plaintiff has misguided the Id. trial court and suppressed the facts and made false representation before Id. trial court and on the basis of false representation Id. trial court has passed impugned order which deserves to be set aside. Ld. Trial court has not considered the written arguments and evidence produced by the appellant. Plaintiff has suppressed facts of her marriage. Plaintiff has not produced any evidence to show her possession over the suit property. Ld. trial court has not considered the documentary evidence and government record and passed impugned order on the basis of oral representation of the plaintiff. Ld. trial court has not considered the issue of hardship to the appellant and passed impugned order. It is argued that appellant invested huge amount in the construction of property no.1, even if plaintiff has share in suit property same can be claim from other property also, so order of status quo would cause irreparable loss to her. Ultimately, it is argued to set aside the order passed below Ex. 5 by the Id. trial

court. In support of his argument he relied on following judgment.

1. Anand Prashad Agarwalla v/s Tarkeshwar Prashad 2001 Lawsuit (SC)846
2. Bachan Singh v/s Swaran Sinnggh, AIR 2001 Punjab & Hariyana 112
3. Maharwal Khewaji Trust v/s Baldev Dass AIR 2005 SC 104.
4. M/S Gauhati Roller Flour Mills Ltd. V/s Smti Premoda Medhi, RSA 35/12
5. Appeal from Order No. 60 of 2022, Rushabhbbhai Gayaprasad Jain v/s Rameshbhai Bhimjibhai Koladiya

(4) Ld. advocate for the respondent No. 1- plaintiff argued that suit property is join property of plaintiff and defendant no.1 and she has equal share in property. It is further argued that earlier defendant no.1 filed RCA 159/98 against Maheshbhai(plaintiff's husband) for declaration and injunction wherein she admitted that plaintiff is in possession of ground flour of suit property. It is further admitted that said suit was withdrawn by the present defendant no.1 on basis of compromise. It is argued that admittedly suit property is not partitioned and without her knowledge defendant demolished housed and carrying out new construction. It is argued that Ld. Trial court rightly grant order of statue qua as she has equal share in suit property and if such

construction was not restrain she would have irreparable loss. Hence, pray to reject present appeal.

ISSUES

- (1) Whether order dated 20/12/2025 passed below Exh.5 by learned Additional Additional Sr. Civil Judge, Petlad in Regular Civil Suit No. 77 of 2025, is unjust, illegal, perverse, against the established principle of law and requires to be interfered?

- (2) What order?

My findings on the above points are as under:-

- (1) In negative.
- (2) As per final order.

REASONS

(5) It is basic principle of law that unless and until there is gross illegality committed by the Trial Court in passing the order or unless and until it appears from the record of the case that the principles and provisions of the law are not followed by the Trial Court, the Appellate Court shall not interfere with the order, even if either view is possible, because an order of injunction is discretionary relief being granted or denied with the parties. As such if from the face of the record, it appears that the discretion is not wisely and judiciously used then and only

then, Appellate Court shall interfere with the order of the Trial Court. Now keeping in mind the settled principle of law, the present case is to be considered according to the facts and the laws and submissions of the parties.

(6) I have gone through documents produced by plaintiff and defendant before Ld. Trial Court. Defendant no.1 filed written statement. I have gone through the same. In written statement defendant no.1 contended that all suit properties are in possession of defendant no.1. It is further contended that except suit property they have other ancestral agricultural land situated at village Ghuteli,taluka Pelad. It is further contended that same were mutated in revenue record in the name of Chotabhai Mathurbhai Patel & Manibhai Mathurbhai Patel. It is further contended that after the death of Chothabhai Patel being his heir Late Maheshbhai received 50% share and rest of 50 % share received by the heirs of Manibhai Mathurbhai. It is contended that earlier plaintiff married to late Maheshbhai Chotabhai and due to their wed lock they have one daughter who is defendant no.2. It is further contended that after the death of Maheshbhai Chotabhai plaintiff married to one Rajubhai Patel,hence she lost statue of Maheshbhai's wife. It is further contended that plaintiff try to enter her name in agricultural land

and at that time she assure that she will not take any objection when defendant no.1 try to enter her name in suit property and construct the same. It is further contended that among suit property, property mention at serial no.1 is very dilapidated house and due to illness of defendant's husband, defendant was an urgent need of construction of new house. It is further contended that defendant no.1 informed plaintiff for deletion of Maheshbhai's name from said house, but plaintiff permit them to construct house and once she returned from US she will complete rest of formalities. It is further contended that though plaintiff has no right in agricultural land, defendant no.1 signed partition deed for the agricultural land as plaintiff gave assurance that she will relinquished Maheshbhai's name from suit property. It is further contended that they invested twenty one lacs for the construction of new house hence, pray to reject injunction application.

(7) I have gone through documentary evidence. As per assessment sheet produced vide mark 3/2, 3/3 and 3/4 suit properties were running in the name of plaintiff's husband Maheshbhai Chhotabhai, Sardaben and Sumitraben. That means the suit properties are ancestral properties running in joint name of plaintiff's husband and defendant No. 1. So, looking to documentary evidence prima

facie it transpires that plaintiff and defendant no.1 have equal share in suit property.

(8) So far as argument advance by the Ld. Advocate for the defendant no.1 that after the death of Maheshbhai, plaintiff did second marriage hence, she has no right in Maheshbhai's property is not tenable. Here, Ld. Trial court rightly relied on the judgment of Hon'ble Madras High Court, in case of Malliga v/s Shanmugam reported in 2024(0)AIJEL-TN, wherein held that "remarriage does not disqualify a widow from inheriting her husband's estate under the provisions of the Hindu Succession Act,1956." Here, whether the plaintiff remarried or not is question of evidence and as per above judgment same will not effect her right in her first husband's property. Further defendant no.2 is daughter of Late Maheshbhai and she has right in Maheshbhai's property. So, Ld. Trial Court rightly held that prima facie plaintiff and defendant no.1 have equal share in suit property.

(9) Here, in written statement defendant no.1 contended that plaintiff gave assurance that she will relinquished Maheshbhai's name from suit property and upon same assurance partition took place for the agricultural land. Here, admittedly Maheshbhai Chotabhai and Sumitraben Manibhai are heirs of late Chotabhai Mathurbhai and Manibhai Mathurbhai and they have equal right in

the property of Mathurbhai Patel. Plaintiff produced copy of Special Civil Suit no.159 of 98, filed by present defendant no.1 against Maheshbhai Chotabhai and Shardaben Chotabhai (husband of Plaintiff) for declaration and injunction for the joint property of Mathurbhai Patel. As per the pleading of suit it has been mention that plaintiff was staying at ground floor in house no.208 and she resides at first floor. So, argument advance by the Id. Advocate for the defendant no.1/appellant that the plaintiff was not in possession of house no.208 is not tenable. It is required to be consider that said suit was withdrawn by the present defendant no.1.

(10) Here, Ld. Trial Court rightly held that their is nothing on record which shows that plaintiff agree to relinquished Maheshbhai's share from suit property and agree to demolished entire house and construct new one. Here, from the copy of Special Civil Suit no.159 of 98 it transpires that plaintiff was in possession of ground floor of house no.208. So, Ld. Trial Court right held that plaintiff has prima facie case.

(11) Here, Ld. Advocate for the defendant no.1/Appellant argued that their are three different plots in suit property and two plots are still open and at present they start construction only in plot no.208 and at present they have invested huge amount for the construction, so order of status quo

would cause irreparable loss to her. I have gone through reasons given by Ld. Trial Court. As discuss above possession of plaintiff in the ground floor of property no.208 is prima facie established. Here, in absence of plaintiff defendant no.1 demolished entire house and started construction of new house. As per the argument advance by the plaintiff, it came on record that new construction would be such that defendant no.1 is the sole owner of property no.208. So, irreparable loss and balance of convenience would be to the plaintiff as at present she is homeless. So, far as argument advance by the defendant that their are still two plots available, I am of the view that they are open land so, at present plaintiff have no home as defendant no.1 demolished house situated at property no.208. So, Ld. Trial Court rightly held that plaintiff has prima facie case, balance of convenience and irreparable loss is in favour of plaintiff.

(12) I have gone through judgment cited by Ld. Advocate for the plaintiff. I have gone through judgment of Hon'ble Apex Court in case of Anand Prasad Agarwalla v/s Tarkeshwar Prasad, wherein held that at the stage of grant of temporary injunction court should not hold mini trial. I do agree with the same. Here, prima facie being wife of Deceased Maheshbhai, plaintiff is co owner in suit property. So, far as her second marriage is

concern same is question evidence and even for agricultural land, partition took place between plaintiff and defendant no.1. I have also gone through judgment relied by defendant no.1 in case of Bachan Singh v/s Swarn singh, reported in AIR 2001 Punjab and Haryana 112, but same is not applicable to present case. As prima facie it establish that plaintiff resides at ground floor of property no.208 and same was admitted in Civil Suit no.159/98, and in absence of plaintiff, defendant no.1 demolished entire house and start new construction according to her plan. hence, same is not applicable to present case.

(13) Thus, I am of the opinion that learned Trial Court has rightly applied mind and has given sound and cogent reasons while deciding application below Exh.5 and there is no illegality, perversity committed by the learned Trial Court. Thus, I am of the opinion that learned Trial Court has not committed any illegality and has not passed the order against the settled principle of law, there is no reason whatsoever to interfere with the order of the learned Trial Court at this juncture. As such there is no substance in the submission raised by the Learned Advocate for the appellant, and hence I answer Issue No.1 in negative and to decide Issue No.2, I do hereby pass the following final order in the interest of justice.

ORDER

1. The present Misc. Civil Appeal No.02 of 2026 is hereby dismissed.
 2. The order dated 20/12/2025 passed below Exh.5 by learned Additional Additional Sr. Civil Judge, Petlad in Regular Civil Suit No. 77 of 2025, is hereby confirmed and upheld.
 3. Parties to bear their own costs.
 4. Copy of this order be sent to the Learned Trial Court.
 5. R.& P., if any, be sent to the Trial Court.
- Signed and pronounced in the open Court today on this 28th day of July, 2026 at.

[Mrs. Zankhana Vaibhav Trivedi]

2nd Additional District Judge, Petlad.

Code No.GJ-00676