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IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE,
AT – JAMBUSAR, (BHARUCH)

Civil Miscellaneous Application No.:- 23 of 2004 (OLD)

Civil Miscellaneous Application No.:- 22 of 2017 (OLD)

REGULAR CIVIL SUIT No.:- 57 of 2025 (NEW)

Exhibit :- 274

Plaintiff :

Rajendra Pyarasaheb Rana

Through power of attorney Pyarasaheb Chandrasinh

Age: Adult, Occupation: Farmer,

Residing at: Amod - Himatpura

Taluka: Amod, Dist. : Bharuch

V/S

Defendants :

1. Maiyuddin Mansang Rana
Age - Adult, Occupation - Farming,
Residing at - Kervada khadki,
Ta.-Amod, Dist.-Bharuch
2. Heirs of Udesang Mansang Rana
- 2/1. Bismilla Udesang Mansang
Age - Adult, Occupation - Farming,
Residing at - As above
- 2/2. Ahmedsab Udesang
Age - Adult, Occupation - Farming,
Residing at - As above
- 2/3. Firdos Udesang

Age - Adult, Occupation - Farming,
Residing at - As above

2/4. Kherunnisa d/o Udesang Mansang
Age - Adult, Occupation - Household chores,
Residing at - As above

2/5. Mehrunnisa d/o Udesang Raj
Age - Adult, Occupation - Household chores,
Residing at - As above

2/6. Rasidaben d/o Udesang Mansang
Age - Adult, Occupation - Household chores,
Residing at - As above

Subject :- **SUIT FOR GETTING PROBATE CERTIFICATE.**

Appearance:-

Ld. Advocate for the plaintiff	Mr. M. M. Prajapati
Ld. Advocate for the defendants	Mr. H. I. Shah

- :: JUDGMENT :: -

1. On perusal of the record, it seems that the present suit has emerged out of original probate application which was originally filed on 17/04/2004 vide C.M.A. No.23/2004 before Civil Court, Bharuch and thereafter, it was transferred to Civil Court, Jambusar which was renumbered as C.M.A. No.22/2017 which was being tried even after being of the contested nature and hence, the plaintiff side had filed an application vide Exh.-271 and on the basis of the said application the said C.M.A. No. 22/2017 was converted and registered as R.C.S. No.57/2025.

The plaintiff through present suit submitted that there is a property situated at village Kervada, Ta.-Amod & Vichhiyad, Ta.-Vagra of the ownership of Roopba Gemalsinh Rana in which the property no.101 is a house at Saiyadvad, Kervada and the details of lands situated at Vichhiyad, Ta.-Vagra are as under ;

Sr. No.	Survey no.	Acre-Guntha	H. Aare Sq. mtr.	Aakar
1.	98 paiki	4-17	0-79-04	17-55
2.	79 paiki	1-04	0-44-51	2-89
3.	80 paiki	0-31	0-31-36	2-14
4.	101 paiki	1-06	0-46-54	3-19
<u>Total :-</u>		6-58	3-01-45	25-77

It is further submitted that the above mentioned properties are of absolute ownership of deceased Roopba Gemalsang Rana and the deceased Roopba Gemalsang Rana during her lifetime had executed a registered will no.248 before Sub-Registrar, Amod through which the deceased stated to give the property to the plaintiff. It is further submitted that the deceased Roopba Gemalsang Rana passed away on 10/02/2002 at Nava Vanta, Ta.-Borsad, Dist.-Anand which has been registered vide entry no.4 in the office at Nava Vanta, Ta.-Borsad and the opponents had raised objection for which case no.05/2002 was filed before Mamlatdar, Vagra and as per the order by the Amod Court for making the entry, the entry in the name of plaintiff having entry no.1702 was cancelled and hence, for getting probate of will, the present suit is filed. It is also submitted that the will executed by the deceased was not cancelled and is still in force and the deceased in the presence of two witnesses before Registrar and thereafter the deceased had not executed any other will.

2. The plaintiff has sought following reliefs from the Court ;
 - a. To order to issue a probate certificate as per the will dated 31/05/2000 executed by deceased Roopba Gemalsang Rana for the properties mentioned in para-1 of the plaint in favour of plaintiff.
 - b. Any other relief which the Hon'ble Court may deem proper be granted.
3. The summons of the present suit was duly served upon the defendants and the defendants appeared through their counsel and filed written statement vide Exh.-08

wherein the defendant while denying the facts of the plaintiff submitted that the true facts are that the suit lands were cultivated as tenant by Gemalsing Sahebsing and had received the lands as tenant and hence the said land was of new and undivided as per Section 43 of the Tenancy Act and since then the owner and possessor of the property was Gemalsing Sahebsing and the deceased Gemalsing Sahebsing executed will on 22/01/1996 and as per the said will the land and house were given to opponent no.1 and Gemalsing Sahebsing passed away on 26/05/1996 and since then the ownership and possession of the properties were of opponent no.1 without any hindrance and the opponent no.1 has also been residing at the house at Kervada and has possession of it till today and as per the said will at village Vichhiyad, Ta.-Vagra mutation entry no.1535 dated 05/06/1996 was entered however, the said entry was cancelled by the Circle Officer, Vagra as the will was not registered and thereafter inheritance entry of Roopba Gemalsang's name was entered vide mutation entry no.1536 dated 15/06/1996 and hence, the opponent no.1 against the said entry filed appeal no.39/1997 before Dy. Collector, Bharuch and after rejection further filed revision appeal no.03/1998 before Collector, Bharuch which was rejected stating that the effect in the revenue records will be given as per the Orders of the Court and aggrieved by the said order, the opponent no.1 filed revision no.Hakap / Bh.Ch. / 28 / 1998 before Joint Secretary, Revenue Department, Ahmedabad which was also rejected stating that the dispute is of civil nature and hence, reliefs can be granted only from the Civil Court whose effect will be given in the revenue records. Further, in addition to it, it is submitted that the deceased Roopba who was married to Gemalsang however, they got divorced in 1950 after one year of marriage and since then Roopba resided at her maternal home at Napa, Ta.-Borsad, Dist.-Kheda and only Gemalsang resided at Kervada with whom the opponent no.1 used to live and take care of him due to which the deceased Gemalsang executed will and made him owner and the opponent no.1 had filed R.C.S. No.224/1996 before Civil Judge, Amod for injunction orders against Roopba Gemalsang which was rejected and thereafter the opponent no.1 filed C.M.A. No.106/1998 before District Judge,

Bharuch and during that period on 10/02/2002 Roopba passed away and hence, opponent no.2 Udesang Mansang Rana was added as respondent in the appeal and thereafter there was compromise between opponent nos.1 & 2 in the appeal and as per the said compromise the opponent no.1 became owner of the properties and at that time as per the Order of Dy. Collector, Bharuch, names of opponent nos.1 & 2 were entered as direct legal heirs of Roopba Gemalsinh vide mutation entry no.1736 dated 07/03/2003 which was approved on 13/06/2003 and thereafter, Collector, Bharuch vide order in revision application no.17/2004 cancelled the Order of Dy. Collector, Bharuch in appeal no.25/2002 dated 30/01/2003 and stated in the order that the reliefs be claimed before Civil Court for the dispute regarding inheritance of suit property and on its basis mutation entry no.1764 dated 24/09/2004 was done and further submitted that the deceased Roopba Gemalsang had no concern, right or share over the suit properties and her name was entered falsely vide mutation entry no.1536 and revenue authorities stated that the will is concerned subject of Civil Court and decision will be taken after decision of Court. Further, it is submitted that deceased Roopba Gemalsang had no right to executed will and the said will executed by her is false, bogus and as per the knowledge of opponent, Roopba used to reside at Napa and also passed away there and never lived at Amod, however, even then there is false and bogus will of her name and as per Succession Act, the deceased had no right to execute will and Gemalsing Sahebsing was actual owner of the suit properties who had executed will on 22/01/1996 in favour of opponent no.1 which had made the opponent owner of the suit properties and deceased Roopba had no ownership right over the suit properties and having name in the revenue records does not establish ownership rights and is only for fiscal purpose and hence, prayed that taking into consideration the above mentioned facts and circumstances, the claim of plaintiff be dismissed with costs and as deceased Gemalsing Sahebsing executed will on 22/01/1996 in favour of opponent no.1 and order to issue probate certificate in favour of opponent no.1.

4. The plaintiff has filed following oral & documentary evidences in support of the

case.

Oral Evidence :-

S. No.	Particulars	Exhibit
1.	Examination in chief of plaintiff	51
2.	Examination in chief of plaintiff's witness Mubarak Mahamad Dalal.	84

Documentary Evidence :-

S. No.	Particulars	Exhibit
1.	True copy of power of attorney	52
2.	Original will	53
3.	Order of Collector for hakk patrak allowing Revision Application no.17/04	54
4.	Copy of assessment sheet	55
5.	Copy of village form no.7*12 of survey no.225 from 1981-82 to 1983-84	69
6.	Copy of village form no.7*12 of survey no.414 from 1984-85 to 1991-92	70
7.	Copy of village form no.7*12 of survey no.414 from 1995-96 to 2002-03	71
8.	Copy of form no.6 hakk patrak showing mutation entry no.3429	72
9.	Compromise pursis in R.C.S. No.224/1996	73
10.	Injunction application in R.C.S. No.224/1996	74
11.	Document no.252	75
12.	Receipt of Kervada gram panchayat	76
13.	Copy of form no.8 of serial no.736	77
14.	Vakilpatra of Advocate MohamadRafik U. Patel of Udesang Mansang Rana	99
15.	Copy of plaint of R.C.S. No.224/2004	100
16.	Copy of rojkam	101
17.	Copy of compromise pursis	102

5. The defendant side has produced following oral evidence in support of the case.

Oral Evidence :-

S. No.	Particulars	Exhibit
1.	Examination in chief of defendant	91

2.	Examination in chief of defendant's witness Sikandar F. Rana.	212
3.	Examination in chief of defendant's witness Chandrasinh Fatesinh Parmar.	213

Documentary Evidence :-

S. No.	Particulars	Exhibit
1.	Death certificate of Gemalsinh Sahebsang	103
2.	Death certificate of Roopba Gemalsinh	104
3.	Family pedigree of Rana Udesang Ajabsang	105
4.	Village form no.7 & 12 of revenue survey no.97/02 of Vichhiyad, Vagra	106
5.	Village form no.7 & 12 of revenue survey no.79 of Vichhiyad, Vagra	107
6.	Village form no.7 & 12 of revenue survey no.80 of Vichhiyad, Vagra	108
7.	Village form no.7 & 12 of revenue survey no.101 of Vichhiyad, Vagra	109
8.	Form no.6 of mutation entry no.1736 of Vichhiyad, Vagra	110
9.	True copy of decree vide Exh.-44 in R.C.S. No.224/1996 of Civil Judge, Amod Court	111
10.	True copy of compromise pursis vide Exh.-43 in R.C.S. No.224/1996 of Civil Judge, Amod Court	112
11.	True copy of affidavit of Jalaluddin vide Exh.-27 in R.C.S. No.224/1996 of Civil Judge, Amod Court	113
12.	True copy of affidavit of Jalaluddin vide Exh.-27 in R.C.S. No.224/1996 of Civil Judge, Amod Court	114
13.	True copy of affidavit of Yusuf Ismail vide Exh.-25 in R.C.S. No.224/1996 of Civil Judge, Amod Court	115
14.	True copy of affidavit of Rajendrasinh Harisinh vide Exh.-28 in R.C.S. No.224/1996 of Civil Judge, Amod Court	116
15.	Part no.10/164 of voter list of 1995 of 138 Borsad Vidhansabha	117
16.	Part no.05/07 of voter list of 1995 of 155 Vagra Vidhansabha	118
17.	Order of Dy. Collector in appeal no.25/02	119
18.	Assessment sheet of taxable land of year 2010-2011 of village Kervada, Ta.-Amod	120
19.	Certificate of The Kervada Group Co. Op. So. Ltd. Amod, Bharuch	121

20.	Copy of receipt of Gemalsinh Saheb of Bharuch hospital	122
21.	Receipt of The Kervada Group Co. Op. So. Ltd. Amod, Bharuch	123
22.	Receipts (11) of tax paid for account no.35, 37 & 51 of village Vichhiyad, Ta.-Vagra	124-134
23.	Receipts (7) of tax paid for account no.80, 20 of village Vichhiyad, Ta.-Vagra	135-141
24.	Receipts (10) of tax paid for account no.36, 35 & 51 of village Vichhiyad, Ta.-Vagra	142-151
25.	Receipts (4) of tax paid for account no.37 & 134 of village Vichhiyad, Ta.-Vagra	152-155
26.	Receipts (4) of tax paid for account no.37 of village Vichhiyad, Ta.-Vagra	156-159
27.	Receipts (4) of tax paid for account no.134 & 37 of village Vichhiyad, Ta.-Vagra	160-163
28.	Receipts (4) of tax paid for account no.134 & 37 of village Vichhiyad, Ta.-Vagra	164-167
29.	Receipts (5) of tax paid for account no.135 & 37 of village Vichhiyad, Ta.-Vagra	168-172
30.	Receipts (5) of tax paid for account no.135 & 37 of village Vichhiyad, Ta.-Vagra	173-177
31.	Receipts (5) of tax paid for account no.135 & 37 of village Vichhiyad, Ta.-Vagra	178-182
32.	Receipts (5) of tax paid for account no.135 & 37 of village Vichhiyad, Ta.-Vagra	183-187
33.	Receipts (5) of taxes & fund paid by Maiyuddin Mansang Rana and paid taxes and funds for account no.135 & 37 of village Vichhiyad, Ta.-Vagra	188-194
34.	Receipts (5) of tax paid for account no.135 & 37 of village Vichhiyad, Ta.-Vagra	195-200
35.	Revenue records of the suit property	201-207

6. **Oral & cross-examination of the plaintiff :-**

The plaintiff in the examination in chief produced vide Exh.-51 has reiterated the facts of the plaint and has referred the documentary evidences produced on record and hence, for the sake of brevity and convenience, the same has not been reiterated here. The brief facts of the examination in chief of plaintiff are that the will produced by the defendant is false, after the demise of Gemalsinh lands

were transferred in the name of Roopba Gemalsinh and Roopba Gemalsinh during her lifetime executed will in favour of Rajendrasinh Pyarasaheb and after asking for probate certificate from Collector's Office, the present application is filed and the earlier order of Collector's Office has been produced vide Exh.-54. It is further submitted that after the demise of Roopba, the properties are in possession of plaintiff and has received the properties of Vichhiyad, Ta.-Vagra through will, survey no.225 was later on numbered as block no.214 and its village form nos.7/12 have been produced vide mark 68/1 to 68/3 which have been exhibited 69-71. It is also submitted that after the demise of Gemalsinh, name of Roopba was entered through inheritance entry whose copy has been produced vide Exh.-72, the defendant Mayuddin filed suit before Amod Court and mislead the Court and the defendant did signature of Udesang Mansang instead of Roopba which was accepted and copy of its order has been produced vide Exh.-73, the suit filed before Amod Court has been produced vide Exh.-74, registered sale deed of land at village Kervada has been produced vide mark 68/9 which has been exhibited as Exh.-75, tax receipt has been produced vide mark 68/11 which have been exhibited as 76 & assessment sheet of Kervada village have been produced vide mark 68/17 which are certified copies and have been exhibited as Exh.-77. The properties of Roopba were received to the applicant Rajendra Pyara Saheb and Maiyuddin is habitual of doing any kind of signature, the faged will by Gemalsinh bears signature of Udesang Mansang or Mayuddin Mansang, Roopba passed away in 2002.

The plaintiff in the cross examination submitted that applicant Rajendrasinh is his son and the applicant is able to move and is aged about 30 to 35 years but cannot give deposition at revenue office and Court, his son has studied till 9th standard and can read and write as well as can understand Gujarati language, he does farming and hence, time and again he has to visit Courts & Offices and his son can remain present before the Court to give deposition, deceased Gemalsinh is his brother-in-law and he resides at Kervada village and he was married in 1949-50 to Roopba r/o Napa, Ta.-Borsad. It is admitted that father's name of Roopba was

Gemalsinh, it is admitted that after 8-9 months Roopba had misunderstanding, it is admitted that Roopba used to reside at village Napa, Ta.-Borsad since 1950 and used to come and go, it is admitted that the name of Roopba in voter list is running in Napa village and hence, there are possibilities that the name in ration card could also be running for the same village, it is admitted that Gemalsinh Sahebsinh used to reside alone at Kervada village, he used to reside next to Mansinh Rana, it is admitted that Gemalsinh Sahebsinh had lands of his ownership situated at village Vichhiyad and had house at Kervada village, it is admitted that the lands having old survey no.225 & new survey no.214 are situated at village Kervada and the said land was sold to Chimanbhai Ghanabhai in 1980 and the other property is situated at Ranada, Ta.-Amod which has survey no.309 and the said land was entered in the name of defendant Maiyuddin Mansang and others, it is admitted that Gemalsinh Sahebsinh had received the land of Vichhiyad as tenant, it is admitted that Gemalsinh Sahebsang had passed away on 26/05/1996 and prior to his death, he executed will on 22/05/1996 for all the properties, on perusal of mark 60/2, it is submitted that it is will executed by Gemalsinh Sahebsinh, it is admitted that as per the said will, Maiyuddin Mansing cultivates all the lands. It is admitted that after the demise of Gemalsinh Sahebsinh, name of Roopba was entered however, Maiyuddin fraudulently got the house transferred into his name and the property nos.734, 735 & 736 running in the name of Maiyuddin is true, it is admitted that Maiyuddin had demanded for entering his name in the properties of Vichhiyad on the basis of will for which the entry was done which was later rejected, it is admitted that Roopba had passed away in the year 2000, it is admitted that after the demise of Roopba other proceedings were done before Dy. Collector & Collector, it is admitted that Collector ordered to do proceedings as per the Orders of Civil Court, it is admitted that Maiyuddin Mansinh had filed R.C.S. No.226/1996 against Roopba before Amod Court, it is admitted that after the demise of Roopba during the pendency of the suit, name of Udesing Mansing was added in the suit as heir and thereafter there was compromise in the said suit, it is admitted that in 1996 Gemalsinh Sahebsinh

through will gave the properties to Maiyuddin Mansing Rana who is opponent, Roopba is his sister in law, it is admitted that Roopba used to reside at Napa and used to come and go.

Exh.-84 :- Cross examination of the plaintiff's witness :-

It is admitted that he has no knowledge of Roopba used to reside at Napa village and had no house at Amod but had house at Kervada, he has no knowledge about Roopba never resided at Kervada, it is submitted that at the time of preparation of will, the witness, Roopba, one other witness and Rajendrasinh were present and the date was 27th, the witness does not know that the will was prepared at stamp vendor. It is admitted that the will was registered before Sub-Registrar on the day it was prepared. It is submitted that he had not read the will at the time of registration at Sub-Registrar, the will mentioned about the properties of Kervada village which he had read as well as it also mentioned the names of other surrounding villages, the witness is unaware that there were relevant papers at the time of preparation of will, Hasan Suleman and applicant Rajendrasinh had friendship and the witness also had friendship with Rajendrasinh it is admitted that he did signature in the will due to friendship.

Exh.-91 :- Cross examination of the defendant no. 1:-

It is admitted that Udesang Mansang had engaged Mohammad Rafik Patel as advocate, it is admitted that he could have produced the documents of engaging the advocate but he did not produce, it is admitted that Mohammad Rafik Patel is junior of advocate S. I. Dola and works with S. I. Dola. It is admitted that in that matter his counsel was S. I. Dola, it is admitted that on perusal of mark 98/2 which is plaint, the witness stated that it is of date 10/04/2015 which mentions his name as plaintiff and defendant as Roopba Gemalsang Rana. It is submitted that Exh.-99 is certified copy of vakilpatra of Advocate M. G. Patel, Exh.-100 is certified copy of plaint of suit filed before Civil Judge, Amod Court, it is admitted that how the suit was decided which he is saying after perusal of Exh.-101 which is certified copy of rojkam of suit no.224/1996. It is admitted that in the said suit the witness and

Udesangbhai had produced compromise pursis and the copy of compromise pursis has been shown to the witness which bears the signatures of witness and Udesinh Mansinh and its certified copy has been exhibited as 102, it is admitted that Udesang is his real brother, it is admitted that the witness could have produced the four documents produced vide documentary list at Exh.-98, it is admitted that the witness had sought dates from the Court for producing the documents but even then did not produce, it is admitted that the name of Roopba Gemalsinh was entered in the records as heir after demise of Gemalsang Sahebsangsinh and the properties were of sole ownership of Roopba, it is admitted that no will was executed in witness' favour, it is admitted that the will produced in this matter was executed in favour of her nephew Rajendra Saheb, it is admitted that they filed appeal before Secretary wherein it was ordered to seek relief through civil proceedings, they have not produced divorce decree of Roopba. It is submitted that the compromise pursis produced in suit no.224/1996 was done with fraud in which the witness does not seek any amendments, it is admitted that the plaintiff, defendant and Roopba fall under the category of Molesalam Garashiya, it is admitted that Hindu Law is applicable to them for partition of properties, it is admitted that the survey number mentioned in entry no.1536 is still running in the name of Roopba, it is admitted that the receipts is kept with the witness.

7. **Oral & cross-examination of the defendant's witness Sikander F. Rana :-**

The defendant's witness in his examination in chief on oath vide Exh.-212 has reiterated the facts of the written statement and hence, for the sake of brevity and convenience and to avoid repetition of facts, the same has not been mentioned hereunder.

The witness in the cross examination submitted that he is unaware that the name of wife of Gemalsinh Sahebsinh was Roopba, everyone in the village used to know Gemalsinh from the name of Gemalsinh, it is admitted that Gemalsinh was used to be teased as Gembha Ganda, it is admitted that everyone used to tease Gemalsinh due to him being of unsound mind, the witness is unaware of Gemalsinh

not residing with Roopba due to being of unsound mind, the witness is unaware of fact that the entry which was done by Gemalsinh was cancelled, he is ninth standard pass, the witness has been shown mark 216/1 which is order of Mamlatdar, Vagra after the witness stated that the entry no.1792 was ordered to be cancelled. It is admitted that the signature done by the witness in the will has not been considered by the Government, it is admitted that after the entry no.1792, entry of Roopba was done, it is admitted that suit of Maiyuddin was being tried, the witness is unaware of fact that Maiyuddin had filed suit against Roopba or not, it is admitted that he came to Court after the say of Maiyuddinbhai, the witness has been shown mark 216/2 and asked what he has to say about the document which mentions of Gemalsinh Maansang being of unsound mind since the age of 20 years, to which the witness replied that people used to tease Gemalsinh in that way.

Exhibit – 213 : - Cross examination of defendant's witness Chandrasinh Fatesinh Parmar :-

The witness submitted that he is 50 years old and is residing at Kervada since birth. It is admitted that he has very good relations with Maiyuddin, it is admitted that the witness and Maiyuddin do talks and discussion regarding any proceedings of Court, it is admitted that the name of wife of Gemalsinh was Roopba, it is admitted that the people in the village used to tease Gemalsinh as Gambha Ganda, it is admitted that due to Gemalsinh Sahebsinh being of unsound mind, he was being teased for 20 years as Gambha Ganda, the witness is unaware that the properties in the name of Gemalsinh were entered in the name of Roopba by the Mamlatdar, Vagra, it is admitted that the Mamlatdar, Vagra had ordered for cancellation of entry in the name of Maiyuddin, he is seventh standard pass and can read and write, it is admitted that after perusal of mark 216/1 is the order of Mamlatdar, Vagra cancelling the order of cancellation. It is submitted that he does not knows Bapusaheb Jeetsinh Rana and does not knows as he does labour work, he is unaware of population of Kervada village, the witness is unaware of fact that it is crime to create any false right in the properties of person of unsound mind.

Arguments :-

8. Heard Ld. Advocates for both the respective parties at length.

The Ld. Advocate appearing on behalf of plaintiff side has filed written arguments vide Exh.-238.

The Ld. Advocate appearing on behalf of defendant side has filed written arguments vide Exh.-242.

The Ld. Advocates appearing on behalf of both the parties have argued on the basis of material placed on record.

- :: ISSUES :: -

9. For the determination of the present suit, following issues were framed by my Ld. Predecessor Judge vide Exh.-18 ;

1. Whether the applicant is entitled to obtain probate certificate in terms of para-8(1) of the application ?
2. What order and decree ?

10. My findings on the above issues are as under ;

ISSUES	FINDINGS
Issue No.1	In Negative
Issue No.2	As per Final Order

- :: REASONING AND ANALYSIS :: -**Issue No.1 :-**

As the Issue No.1 is concerned that whether the plaintiff is entitled to obtain probate certificate in terms of para-8(1) of the original application, so far as the present issue is concerned, the applicant had filed his examination in chief vide Exh.-51 and his witness vide Exh.-84 wherein the plaintiff has reiterated the facts of the application and referred the oral and documentary evidences produced on record. Now, on perusal of the cross examination of the plaintiff vide Exh.-51, it seems that the plaintiff has made some admissions on factual aspects such as the plaintiff admitted that Gemalsinh

Sahebsinh used to reside alone at Kervada village and he used to reside next to Mansinh Rana, further it is admitted that Gemalsinh Sahebsinh had lands of his ownership situated at village Vichhiyad and had house at Kervada village, it is further admitted that the lands having old survey no.225 & new survey no.214 are situated at village Kervada and the said land was sold to Chimanbhai Ghanabhai in 1980 and the other property is situated at Ranada, Ta.-Amod which has survey no.309 and the said land was entered in the name of defendant Maiyuddin Mansang and others, it is further admitted that Gemalsinh Sahebsinh had received the land of Vichhiyad as tenant, it is also admitted that Gemalsinh Sahebsinh had passed away on 26/05/1996 and prior to his death, he executed will on 22/05/1996 for all the properties in favour of Maiyuddin Mansinh, the plaintiff further submitted that on perusal of mark 60/1, which is a will executed by Gemalsinh Sahebsinh, it is admitted that as per the said will, Maiyuddin Mansang currently cultivates all the lands. The plaintiff in his cross examination further admitted that after the demise of Gemalsinh Sahebsinh, name of Roopba was entered however, Maiyuddin fraudulently got the house transferred into his name and the property nos.734, 735 & 736 running in the name of Maiyuddin is true, it is admitted that Maiyuddin had demanded for entering his name in the properties of Vichhiyad on the basis of will for which the entry was done which was later rejected, it is admitted that Roopba had passed away in the year 2000, it is further admitted that after the demise of Roopba other proceedings were done before Dy. Collector & Collector, it is also admitted that Collector ordered to do proceedings as per the Orders of Civil Court, it is further admitted that Maiyuddin Mansinh had filed R.C.S. No.226/1996 against Roopba before Amod Court, it is also admitted that after the demise of Roopba during the pendency of the suit, name of Udesing Mansing Rana was added in the suit as heir and thereafter there was compromise in the said suit between the parties, it is further admitted that in 1996 Gemalsinh Sahebsinh through will gave the properties to Maiyuddin Mansinh Rana who is opponent. Now, looking to the above admission, the plaintiff has categorically admitted that one civil suit was filed bearing R.C.S. No.226/1996 however, on perusal of the record, it seems that the

suit which was filed bears R.C.S. No.224/1996 before Amod Court by the defendant against the plaintiff and the plaint of the said suit has been produced vide Exh.-74 and compromise pursis between the parties in the said suit has been produced vide Exh.-73 and the Amod Court had passed a compromise decree on 08/03/2003. Now, as per the admission made by the plaintiff, it seems that prior to filing of the original probate application in 2004, the defendant had filed R.C.S. No.224/1996 which was disposed of by way of compromise decree on 08/03/2003 by Amod Court now, it seems that the Compromise decree passed by the Amod Court had not been challenged in any appellate forum by the present plaintiff and the plaintiff himself has admitted the factual aspects of the civil suit filed before Amod Court and effective decree was also passed by the Amod Court. Further, the plaintiff has alleged that the decree was obtained by way of fraud and it is not binding upon the plaintiff however, the plaintiff has not filed any appeal to challenge the said decree and merely contending that the said decree was obtained fraudulently is not acceptable in the eyes of law. Further, the plaintiff also admitted that possession of all the suit properties is lying with the defendant by virtue of will executed by Gemalsinh Sahebsinh in 1996. Now, as per the above admission, the plaintiff has admitted that the probate application filed was with respect to the will executed in the year 2000 and also admitted that prior to the said will, another will was executed in the year 1996 by Gemalsinh Sahebsinh in favour of defendant Maiyuddin Mansinh and by virtue of the said will of 1996 the defendant had filed the civil suit bearing R.C.S. No.224/1996 against Roopba Gemalsinh. Now, looking to the facts of the present suit, it seems that there is admission that a will was executed in the year 1996 which was well within the knowledge of parties and there was a compromise between the parties with respect to the said will in R.C.S. No.224/1996 then the question arises as to how the Roopba was in the capacity of executing another will in the year 2000 even when the Roopba had the knowledge of the will of 1996 and the dispute of the said will was pending before the Competent Civil Court and in spite of that Roopba executed a will in favour of the present plaintiff which pretty much seems to suspicious. Now, on perusal of the documentary evidences

produced by the plaintiff vide Exh.-69 to 72 which are revenue records and on perusal of these documentary evidences it seems that both the parties have their names running in the revenue records of the suit properties and on perusal of Exh.-73 & 74 which are copies of plaint and compromise pursis in R.C.S. No.224/1996. Further, on perusal of the documentary evidence produced by the plaintiff vide Exh.-53 which is registered will executed by Roopba Gemalsinh it seems that in the cross examination of the plaintiff, it creates doubt and seems to be ingenuine.

Further, the plaintiff has examined his witness named Mubarak Mahamad Dalal vide Exh.-84 who is attesting witness of the will and on perusal of the cross examination vide Exh.-84, it seems that the witness stated that he had not perused the will when it was registered before Sub-Registrar, the witness also stated that he had no knowledge that there were relevant papers at the time of preparation of will, the witness also stated that he has relation of friendship with the Hasan Suleman who is second attestator of the will and also had friendship with the applicant Rajendrasinh, further, he categorically admitted that due to friendship he had done signatures on the will. Now, taking into consideration the above cross examination of the plaintiff's witness who is also the attesting witness of the will, it seems that the version of the plaintiff's will has not been supported by the attesting witness of the will and it creates doubts regarding the impugned will produced vide Exh.-53.

Now, looking to the evidences adduced by the defendant side vide Exh.-91 and his witnesses vide Exh.-212 named Sikandar F. Rana & Exh.-213 named Chandrasinh Fatesinh Parmar, it seems that defense which has been taken by the defendants is proved on the record by way of admission in the cross examination that the will produced by the plaintiff is not genuine and is false and forged by the plaintiff. Further, the defendant has produced documentary evidences vide Exh.-201 to 207 which are revenue records and it seems that the names of defendants had been entered on the revenue records on the basis of will executed in 1996 and also produced documentary evidences vide Exh.-103 to 200 which are tax receipts and other documents and on perusal of the tax receipts, it seems that the names of defendants have been mentioned

as tax payers of the suit properties. Now, taking into consideration the above discussion, it seems that the will produced vide Exh.-53 by the plaintiff is not a genuine and valid as the executor of the will named Roopba had already in her knowledge that earlier a will had been executed in 1996 by Gemalsinh Sahebsinh in favour of defendant Maiyuddin Mansinh and a suit bearing R.C.S. No.224/1996 was also filed on the basis of will for declaration and injunction orders and the suit was disposed of by way of compromise decree and it was not challenged by any party of the suit and hence, it is reason to believe that the present suit which is filed for getting probate certificate on the basis on will executed by Roopba in 31/05/2000 produced vide Exh.-53 does not deserves to be decreed in the eyes of law and, therefore, Issue No.1 is answered **In Negative** and the Issue and the Issue no.2 is followed as per Final Order.

- :: FINAL ORDER :: -

1. The present suit of plaintiff bearing R.C.S. No.57 of 2025 is hereby Dismissed.
2. No order as to costs.
3. Decree to be drawn accordingly.

Pronounced and signed today in open court on 24th of March, 2026.

Date : 24/03/2026
Place : Jambusar

A. D. Rao
Principal Senior Civil Judge
Jambusar
UIC : GJ01480