



सत्यमेव जयते

Received on	13	04	2017
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Decided on	25	05	2026
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	DD	MM	YY

IN THE COURT OF HON'BLE ADDITIONAL DISTRICT AND
SESSIONS JUDGE, COURT No:03, AT: DAHOD.

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Regular Civil Appeal No:14/2017
(Arising from the Order of RCS No:130/2016)

Appellant :

(Original Plaintiff No:1-8 of RCS No:130/2016)

1. Minor Shivani Bhagabhai @ Bhagatsinh Ganava
Age - 8 Years, Occupation - Study
2. Minor Nagesh @ Divyang Bhagabhai @ Bhagatsinh
Ganava
Age - 17, Occupation - Study
3. Truptiben - Widow of Bhagabhai @ Bhagatsinh Ganava
Age - 40 years, Occupation : Service

All residing at Residing at Hariray Society,
Godhra Raod, Dahod, Tal. & Dist. Dahod.

Versus

Respondents:

1. Sharmilaben Bhagabhai @ Bhagatsinh Ganava
Age - 50 years, Occupation - Household
2. Urmilaben Bhagabhai @ Bhagatsinh Ganava
Age - 29 years, Occupation - Household
3. Anilkumar Bhagabhai Ganava
Age - 27 years, Occupation - Service
4. Rupalben Bhagabhai Ganava
Age - 25 years, Occupation - Household
5. Sonalben Bhagabhai Ganava
Age - 24 years, Occupation - Household

All residing at 24, Sahakar Nagar Society,
Garbadaroad, Dahod.

(de-facto Respondent/Defendant)

FOR Appellant	: Ld. Advo. : Mr. S.V. Malek.
FOR Respondent	: Ld. Advo. : Mr. A.R. Dave.

J U D G M E N T

[1] The appellant has preferred this appeal under Section 96 of the Code of Civil Procedure (CPC), against the judgment/order passed on

Dt:16-03-2017 in Regular Civil Suit No:130/2016 by the Ld. Principal Sr. Civil Judge, Dahod, Dist:Dahod (In short 'the Ld. Trial Court'), whereby the learned trial Court has rejected the suit preferred by the appellant, which was initially filed as Civil Misc. Application u/s 278 of the Indian Succession Act, 1925, r/w S.8 of the Hindu Succession Act, 1956, and as per the order passed below Exh. 111 by Ld. Principal Senior Civil Judge, Dahod Dt:10-08-2016 Misc. Civil Application No. 16 of 2012 converted into Regular Civil Suit No. 130 of 2016, hence the present appellant has challenged the legality, propriety and correctness of the judgment passed in Regular Civil Suit No:130/2016.

[2] The brief facts of the appellant's case are that, plaintiff No:3 is the wife of deceased Bhagabhai @ Bhagatsinh Ganava and

plaintiff No: 1 & 2 are the children of the deceased Bhagabhai @ Bhagatsinh Ganava. Further, defendant No:1 is the first wife of deceased Bhagabhai @ Bhagatsinh Ganava and defendant No: 2 to 5 are the children of deceased Bhagabhai @ Bhagatsinh Ganava and deceased Bhagabhai @ Bhagatsinh Ganava expired on Dt:20-03-2012 due the vehicular accident and during the life time of deceased Bhagabhai @ Bhagatsinh Ganava he had not executed any will and had not made any declaration. It is the further case of the plaintiff that deceased Bhagabhai @ Bhagatsinh Ganava was having account in SBI - Surat and having deposited amount of Rs.4,04,700/- in it and also having the property bearing *Khata* No. 483 at Revenue Survey No. 189/1 *paiki* 2 admeasuring 03-70-29 Hec-Are-SqMt. and the deceased Bhagabhai @ Bhagatsinh Ganava was serving in the police

department as DySP and had Rs.37,00,000/- as deposit in provident fund, gratuity, insurance, earned leave etc. As deceased Bhagabhai @ Bhagatsinh Ganava was expired on Dt:20-03-2012 in vehicular accident leaving behind this property and plaintiffs are the legal heirs of deceased Bhagabhai @ Bhagatsinh Ganava as per the Act, 8 of Hindu Succession Act, 1956. Therefore, present suit filed to get succession certificate for the above mentioned property.

As RCS No:130/2016 is dismissed by the Ld. Trial Court, the appellant preferred present appeal.

[3] The appellant in support of their appeal filed copy of Judgment of RCS No:130/2016, Dt:16-03-2017.

[4] Being aggrieved and dissatisfied with the

judgment/Order dated Dt:16-03-2017, appellant has filed this appeal under Section 96 of the CPC and has submitted various grounds in appeal memo.

The learned Advocate for the appellant has submitted that the Appellant (Original Plaintiff) has preferred this Appeal on the ground that the judgment passed by the Learned Trial Court is perverse, contrary to law, and suffers from serious errors of fact and law. The impugned judgment is therefore liable to be quashed and set aside, and the present Appeal deserves to be allowed.

[5] Per contra, learned advocate for the respondent, de-facto-defendant has vehemently argued that, the defendant has made a categorical denial of averments of appeal and has mainly alleged that, the plaintiff failed to

prove his case and failed to answer the issues framed by the court in his favour and the court held that, plaintiff failed to prove that Plaintiff No:3 is second wife of deceased Bhagabhai @ Bhagatsinh Ganava and applicant No: 1 & 2 are the children of deceased Bhagabhai @ Bhagatsinh Ganava and plaintiff are not entitled to get 1/2 share from all the financial benefit that is amount in saving account, amount of Provident Fund, Gratuity, Insurance etc. and immovable property situated at Zaribuzarg, under Sec. 8 of Hindu Succession Act and also held that the averments of the application/plaint are false and fabricated and plaintiff are not entitled to get prayer as prayed for and therefore the suit filed by the plaintiff does not deserves to be allowed and with these findings, the suit filed by the plaintiff was rejected.

Ld. Ad. for the respondent further stated that, the judgment passed by learned trial judge is just, proper and in consonance with evidence on record and principles of law, so no interference is warranted and it is urged to dismiss the Appeal.

[6] Considering the appeal memo, arguments of both sides and evidence adduced by the complainant before the learned trial Court following following points/issue arise for my determination.

[1] Whether the appellant proves that the impugned Judgment and order of dismissal of the of dismissal of the RCS No:130/2016 is perverse, invalid and illegal?

[2] What Order?

[7] My findings for said issues shall be as follows.

[1] In Negative.

[2] As per final order.

:: REASONS ::

[8] Before dealing with the legality of the judgment in question, the settled legal proposition is required to be considered. It is required to be noted that the present appeal has been preferred u/s 96 of CPC. So, the power of the Court to interfere in the judgment are subject to the settled legal proposition.

[9] As per the record of the case, the appellant/plaintiff herein preferred the Regular Civil Suit No:130/2016 in the Ld. Trial Court, with prayers mentioned in Ex:1 of the suit.

This suit was adjudicated and, ultimately, by judgment and decree Dt:16-03-2017 came to be dismissed.

The issues framed by the Ld, Trial Court and its reasoning of the the same are as under;

4]. Court has framed the below issues for deciding the present suit at Exh. 14.

- 1] Whether applicants prove that applicant no. 2 is second wife of deceased Bhagabhai @ Bhagatsinh Ganava and applicant nos. 1 & 2 are the children of deceased Bhagabhai @ Bhagatsinh Ganava ?*
- 2] Whether applicants prove that deceased Bhagabhai @ Bhagatsinh Ganava has expired on 29.03.2012 and during his life time he has not executed any Will ?*
- 3] Whether applicants prove that they are entitled to get 1/2 share from all financial benefit that is amount in saving account, amount of Provident Fund, Gratuity, Insurance etc. and immovable property situated at Zaribuzarg, under Sec. 8 of Hindu Succession Act ?*
- 4] Whether opponents prove that present Court has no jurisdiction to try this application ?*
- 5] Whether opponents prove that the averments of the application false and fabricated ?*
- 6] Whether opponents prove that land bearing account no. 483 is ancestral property and their names were entered in revenue*

record ?

7] Whether applicants are entitled to get prayer as prayed for ?

8] What order and decree ?

5]. My finding of above issues are as under :

- 1). Issue no. 1 in the negative.*
- 2). Issue no.2 is in the affirmative.*
- 3). Issue no. 3 is in the negative.*
- 4). Issue no. 4 is in the negative.*
- 5). Issue no. 5 is in the affirmative.*
- 6). Issue no. 6 is in the negative.*
- 7). Issue no. 7 is in the negative.*
- 8). Issue no. 8 As per final order.*

[10] Ld. Trial Court while adjudicating the case held that, the plaintiff failed to prove his case and failed to answer the issues framed by the court in his favour and the Ld. Trial Court held that, plaintiff failed to prove that Plaintiff No:3 is second wife of deceased Bhagabhai @ Bhagatsinh Ganava and applicant No: 1 & 2 are the children of deceased Bhagabhai @ Bhagatsinh Ganava and plaintiff are not entitled to get 1/2 share from all the financial benefit that is amount in saving account, amount of

Provident Fund, Gratuity, Insurance etc. and immovable property situated at Zaribuzarg, under Sec. 8 of Hindu Succession Act and also held that the averments of the application/plaint are false and fabricated and plaintiff are not entitled to get prayer as prayed for and therefore the suit filed by the plaintiff does not deserves to be allowed and with these findings, the suit filed by the plaintiff was rejected.

[10.1] It is relevant to refer para:9,10,11 of the judgment of the RCS No:130/2016, which is as under;

ISSUE NO. 1

9]. Plaintiffs have filed this suit to get succession certificate as they are alleged legal heirs of deceased Bhagabhai @ Bhagatsinh Ganava and and it is the claim of the plaintiffs that plaintiff no. 3 is the wife of deceased Bhagabhai @ Bhagatsinh Ganava but plaintiffs have not produced any documentary evidence like a marriage certificate etc. to show that she is the legally

wedded wife of the deceased Bhagabhai @ Bhagatsinh Ganava. Further, in the government record of the deceased Bhagabhai @ Bhagatsinh Ganava there are no name mentioned of the plaintiff no. 3 as a wife of deceased Bhagabhai @ Bhagatsinh Ganava. Therefore, in absence of any evidence plaintiffs have not proved beyond reasonable doubt that plaintiff no. 3 is the legally wedded wife of the deceased Bhagabhai @ Bhagatsinh Ganava. Hence, my reply to issue no. 1 is in the negative.

ISSUE NO. 2

10]. It is crystal clear from all the record that deceased Bhagabhai @ Bhagatsinh Ganava has expired on 29.03.2012 and death certificate also produced. Further, defendants also admitted the said fact in his reply, affidavit and also in cross. Further, police department also proved with documentary evidence that deceased Bhagabhai @ Bhagatsinh Ganava has expired on 29.03.2012 and further plaintiffs, defendants and department has also not produced any Will executed by deceased Bhagabhai @ Bhagatsinh Ganava, if deceased Bhagabhai @ Bhagatsinh Ganava was executed the Will the same has been handed over to some one and it has come on record. But no Will produced by the plaintiffs, defendants, police department or any other third party. Therefore, present Court has accepted that the Will was not executed by the deceased Bhagabhai @ Bhagatsinh Ganava. Hence, my reply to issue no. 2 is in the affirmative.

ISSUE NO. 3

11] Plaintiffs have filed this suit to get succession certificate. It is the claim of plaintiff no. 3 that she is a second wife of deceased Bhagabhai @ Bhagatsinh Ganava and defendant no. 1 is a first wife of deceased Bhagabhai @ Bhagatsinh Ganava and according to custom and law of schedule cast second marriage is accepted. Plaintiff no. 3 had married with deceased

Bhagabhai @ Bhagatsinh Ganava on 18.12.1993. Therefore, they are also the legal heirs of the deceased Bhagabhai @ Bhagatsinh Ganava. If, matter look at this angle that Deceased Bhagabhai @ Bhagatsinh Ganava was working as a Dy. S.P. in railway and at the time of filing of nomination form, name of defendant no. 1 that is the first wife of deceased Bhagabhai @ Bhagatsinh Ganava nominated to get all the financial benefits. Plaintiffs have not produced marriage registration certificate to show that plaintiff no. 1 had married with deceased Bhagabhai @ Bhagatsinh Ganava. Deceased Bhagabhai @ Bhagatsinh Ganava was working as Dy.S.P. in railway department therefore, he was a government servant and there is a government circular for government employee that government employee cannot execute second time marriage in presence of first wife. Therefore, there are restriction for government servant for polygamy. Moreover, each and every government employee filed declaration that he has only one wife and he will not adopt polygamy. Moreover, in the presence of deceased Bhagabhai @ Bhagatsinh Ganava, present plaintiff has never filed any application or suit to declare her as a legal wife of deceased Bhagabhai @ Bhagatsinh Ganava. Moreover, plaintiffs have stated in his application that she adopted hindu religious, therefore provision of Hindu Marriage Act, is applicable to the plaintiff and according to provision of Hindu Marriage Act, in presence of one wife second marriage is voidable. It appears from the record that deceased Bhagabhai @ Bhagatsinh Ganava has nominated defendant no. 1 as nominee for family pension and for other benefits and therefore, western railway, Vadodara has paid all the financial benefits of deceased Bhagabhai @ Bhagatsinh Ganava to the defendant no. 1. Plaintiffs have not produced any evidence to show that they are also the nominee of deceased Bhagabhai @ Bhagatsinh Ganava for family scheme benefits. Therefore, such type of suit is not maintainable in eye of law. Therefore, plaintiffs

are not entitled to get 1/2 share from all financial benefit that is amount in saving account, amount of Provident Fund, Gratuity, Insurance etc. and immovable property situated at Zaribuzarg, under Sec. 8 of Hindu Succession Act. Hence, my reply to issue no. 3 is in negative.

ISSUE NOS. 7 & 8

15] As discuss in above issues that plaintiffs have proved that plaintiff no. 3 is the legally wedded wife of deceased Bhagabhai @ Bhagatsinh Ganava and defendant no. 1 is the nominee in government record that is record of police department, plaintiffs are not entitled to claim any benefit in absence of concrete evidence. Further, for moment it is accepted that plaintiff no. 3 and deceased Bhagabhai @ Bhagatsinh Ganava married, but deceased Bhagabhai @ Bhagatsinh Ganava was the government employee and there is a government circular for government employee that government employee cannot execute second time marriage in presence of first wife. Therefore, there are restriction for government servant for polygamy. Moreover, each and every government employee filed declaration that he has only one wife and he will not adopt polygamy. Further, plaintiffs have stated in his application that she adopted hindu religious, therefore provision of Hindu Marriage Act, is applicable to the plaintiff and according to provision of Hindu Marriage Act, in presence of first wife second marriage is voidable. Therefore, plaintiffs are not entitled to get any prayer as prayed for. Hence, my reply to issue no. 7 is in negative and I pass the following order for the issue no. 8.

- O R D E R -

1. This suit is hereby rejected.
2. Decree be drawn accordingly.
3. No order as to cost.

[10.1] It is relevant to refer the judgment of Hon'ble High Court of Gujarat in SCA No:7002/2017; Vipul Nathabhai Vaghela Vs Municipal Commissioner; [Coram:Hon'ble Mr. Justice N.V. Anjariya saheb], the relevant para: 5-5.7 of the judgment are as under;

5. In order to consider and answer the moot question as to whether the petitioner could be considered as member of family of the deceased pensioner, provisions of the Gujarat Civil Services (Pension) Rules, 2002, are required to be surveyed since they govern for the eligibility and payability of family pension. Chapter X of the said Rules, 2002, contains group of rules under the title "Family Pension Scheme, 1972". Rule 91 has the provisions as to whom the family pension is payable. Sub-rule (1) of Rule 91 states about the period for which the family pension is payable.

5.1 In case of widow or widower, the family pension is provided to be payable until death or remarriage, whichever is earlier. In case of son, the payability of the family pension is until he attains the age of twenty five years or until he gets married, whichever is earlier. The family pension will be payable to the unmarried daughter until she attains the age of twenty five years or until she gets married, whichever is earlier. Sub-rule (3) and (4) of Rule 91 make provisions where deceased government employee is survived by widow but has left behind eligible child or children from another wife who is not alive. Sub-rule (5) contemplates the eventuality when the family pension would become payable to the parents of the pensioner. These provisions indicate the class,

category and type of persons in the family who may receive the family pension.

5.2 Rule 88 of the Rules mentions and defines the different terms used in Chapter IX. Thereunder definition of "family" in clause (a) becomes significant, which is extracted hereunder,

- (a) "family", in relation to a Government employee means -
 - (i) wife in the case of a male Government employee or husband in the case of a female Government employee, even if the marriage took place before or after retirement of the Government employee;
 - (ii) a judicially separated wife or husband, provided that the marriage took place before the retirement of the Government employee.
 - (iii) son or daughter who has not attained the age of twenty-five years including such son and daughter adopted legally before retirement and son or daughter born after retirement from the marriage which took place after retirement.
 - (iv) Parents who were wholly dependent on the Government servant when he/she was alive, provided the deceased employee had left behind neither a widow nor a child at the time of his / her death."

5.3 Under the above concept of family defined under Rule 88(a), family of government employee means a wife where the government employee is male and husband if the government employee is female. The family also includes a judicially separated wife or husband. In both the above cases, the wife or husband would be construed as "family" even if the marriage took place before or after retirement of government employee. After sub-clause (i) and (ii) of clause (a), encapsulating as above, the members who are mentioned in clause (iii) are the son or daughter who has not attained the age of twenty five years including such son or daughter legally adopted before retirement.

5.4 The family also includes son or daughter born after retirement from the marriage took place after retirement. As per sub-clause (iv), the word "family" would include the parents who are wholly

dependent on government servant when the government servant was alive, provided that the deceased employee had neither left behind a widow nor a child at the time of his death. It would be seen that the categories of members included in the concept of "family" under sub-clauses (i) to (iv) of clause (a) of Rule 88 have a necessary interaction with the provisions of Rule 91.

5.5 The idea of "family" under the Gujarat Civil Services (Pension) Rules, 2002, is a codified concept. It is statutorily defined under the Rules of 2002. The family includes class of persons mentioned therein in the particular way as included in the concept. Evidently, the petitioner who happens to be the niece of the pensioner does not fall within the said codified concept of "family" under the Rules. It is a trite canon of interpretation that when a statute defines a particular word or term, in that case such term or word has to be construed, understood and applied in the same way wherever it occurs in the different parts and provisions of the statute. Therefore, in view of the definition of word "family" in Rule 88(a) of the Rules, the word "family" wherever occurs in the Pension Rules of 2002, will be read and construed accordingly. It necessarily follows that only such persons who could be viewed as members of "family" as defined, could lodge claim for receipt of family pension.

5.6 What also becomes relevant to be noticed is Rule 95 of the Rules. It deals with the relief in case of death of pensioner who is in receipt of service pension. Rule 95 reads as under,

"95. Relief in the case of death of pensioner in receipt of service pension: (1) In case of death of a pensioner who is in receipt of a service pension, a lump sum amount equal to one months pension shall be payable to a nominee, who has been nominated by the pensioner under this rule.

(2)

(3)

(4)

(5)

(6) In cases where the pensioner, the nominee and alternate nominee dies simultaneously either in an accident or in air crash etc. or the nominee and the alternate nominee expires before the death of the pensioner and the pensioner dies without making revised nomination, the amount shall be paid to the person entitled to receive family pension under rule 91, or otherwise to the relatives of the family of deceased pensioner's family in the following order of priority :-

- (a) wife (in the case of male Government employee),
- (b) husband (in the case of female Government employee),
- (c) sons,
- (d) unmarried & widowed daughters,
- (e) father,
- (f) mother,
- (g) sons of predeceased son,
- (h) married daughter,
- (i) brothers."

5.7 Sub-rule (6) of Rule 95 extracted above inter alia mentions the list of relatives of the family of deceased pensioner in sub-clause (a) to (i) which are in consonance with the concept of "family" as defined in Rule 88(a) read with Rule 91 of the Rules. It does not include the relation the petitioner bears to the deceased pensioner. The conjoint reading of the definition of "family" and the provisions of interactive Rules would invariably and finally suggest that in the concept of "family" envisaged under the Rules for the purpose of entitlement to be paid the family pension, the members included cannot be except the wife, husband, sons, unmarried and widowed daughters, father, mother, sons of predeceased son, married daughter or brother. It may also include a son or daughter who is adopted legally before retirement of the government employee or born after the retirement from the marriage which took place after the retirement."

As per the above judgment and as it is evident from the record that, appellant was not nominee on government record of the deceased. It is evident that, the appellant does not fall within the definition of "family" as defined in Rule 88(a) read with Rule 91 of the Rules.

[11] Considering all the aspects described in the impugned judgment no such fact found which remain helpful to the appellant. The judgment/order passed by the Ld. Trial Court does not bear any illegality, perversity and the same is not devoid of full reasoning on facts and law applicable to the case.

[12] In view of discussion made herein above, I find no infirmity in the judgment/order passed by the Ld. Trial Court and by no stretch of imagination it can be said to be perverse and

therefore this court render the answer of issue No. 1 in Negative and for issue No:2, I pass the following order.

-:: O R D E R ::-

[1] The present RCA No:14/2017 preferred by the appellant/s is hereby dismissed.

[2] The Judgment passed by the learned trial court in RCS No:130/2016 is hereby affirmed.

[3] Interim relief, if any granted, stands vacated.

[4] Any pending application of the appeal stands disposed off accordingly.

Decree be drawn accordingly.

R & P be sent back to the Ld. Trial Court

along with the copy of this order.

Pronounced and declared in open Court on
this 25th day of May, 2026.

Place: Dahod.
Dt:25-05-2026

[Sandipsinh G. Dodiya]
UIC No:GJ00902
3rd Addl. District & Sessions Judge,
Dahod.