

GJJM010038002018  RCA/88/2018	 सत्यमेव जयते	Filed on	:	20/08/2018		
		Registered on	:	20/08/2018		
		Decided on	:	30/03/2026		
		Duration	:	Years	Months	Days
		07	07	10		

IN THE HON'BLE COURT OF 3rd ADDL. DISTRICT JUDGE
Dist. : JAMNAGAR

Exh :- 15

Regular Civil Appeal No. : 88/2018	
Appellant (Original Objector)	ANILKUMAR BHAGWANJI JOBANPUTRA Age: Adult, Occup:-Business, Residing at :- Khetwadi First Lane, "Badrikashram" Building, Fourth Floor, Room No.203, Mumbai-4000 004.
Versus	
Respondents (Resp. No. 1 = Original Applicant)	1. SHRI 5 NAVTANPURI DHAM KHIJDA MANDIR TRUST A PUBLIC TRUST REGISTERED UNDER PROVISIONS OF BOMBAY PUBLIC TRUST ACT, 1950, AT JAMNAGAR, ADDRESS KHIJDA MANDIR, JAMNAGAR,
	2. JOINT CHARITY COMMISSIONER JOINT CHARITY COMMISSIONER OFFICE, FIRST FLOOR, NEAR JAM TOWER, RAJKOT.
	3. ASSISTANT CHARITY COMMISSIONER NEAR LAL BUNGLOW, JAMNAGAR.

APPEARANCE :-

<i>Ld. Advocate for the Appellants</i>	Mr. B. A. Rathod
<i>Ld. Advocate for the Respondent No. 1</i>	Mr. R. A. Mehta
<i>Ld. Advocate for the Respondent No. 2 & 3</i>	-

**APPEAL CHALLENGING JUDGMENT & ORDER
DATED 30/06/2016 IN CHANGE REPORT NO. 220/2011
PASSED BY ASSISTANT CHARITY COMMISSIONER,
JAMANGAR AND JUDGMENT & ORDER DATED
06/07/2018 IN APPEAL NO. 30/2016 PASSED BY
THE JOINT CHARITY COMMISSIONER, AT RAJKOT.**

◀ J U D G M E N T ▶

- (1). The Appellant is the “Original Objector” and the Respondent No. 1 the ‘Original Applicant / Trust’, in Change Report No. 220/2011 and the Appellant is the “Original Objector” and the Respondent No. 1 is the “Original Applicant / Trust” in Appeal No. 30/2016 and they will be here-in-after referred by their original status as ‘Applicant’ and ‘Objector’ as per Change Report No. 220/2011, for the sake of brevity.

- (2). The Original Applicant had filed Change Report No. 220/2011 before the Assistant Charity Commissioner, Jamangar and on the conclusion and after hearing the Ld. Advocate for the Applicant, the Ld. Assistant Charity Commissioner, Jamangar, had passed a Judgment and Order dtd.30/06/2016, whereby the Change Report No. 220/2011 was allowed. Being aggrieved and dissatisfied by the said Order dtd.30/06/2016, the Original Objector had filed Appeal No. 30/2016 before the Learned Joint Charity Commissioner, Rajkot, against the Order dtd.30/06/2016 in Change Report No. 220/2011 passed by the Assistant Charity Commissioner, Jamnagar. After hearing the Ld. Advocates for parties, the Learned Joint Charity Commissioner, Rajkot, had passed an order on dtd.06/07/2018 in Appeal No. 30/2016, whereby dismissed the Appeal and confirmed the Order passed in Change Report No.220/2011. Being aggrieved and dissatisfied by the said Judgment & order dated 30/06/2016 passed in Change Report No. 220/2011 and dated 06/07/2018 passed in Appeal No. 30/2016, the Appellant / Original Objector has preferred this appeal.

(3). The appeal was registered and process were issued. On service of the process, the Respondent No. 1 / Original Applicant had appeared and objected the appeal and submitted that the Ld. Assistant Charity Commissioner, Jamangar and Ld. Joint Charity Commissioner has not committed any illegality or error and therefore, it does not require any interference and requested to confirm the Judgment and order passed by the Ld. Assistant Charity Commissioner, Jamangar and Joint Charity Commissioner, Rajkot and to dismiss the appeal with costs. The Ld. A.P.P. for the Respondent No. 2 & 3 had supported the case of Applicant – Trust and requested to dismiss Appeal.

(4). For adjudication of this appeal, following points for determination, arises :-

:: POINTS FOR DETERMINATION ::

1	Whether the objections of the Original Objectors with regards to making entry in PTR of the property in question given as Hibanama (Gift Deed) in Muslim, are just, legal and sustainable at Law ?
2	Whether the impugned Judgment & Order dated 30/06/2016 passed in Change Report No. 220/2011 by Assistant Charity Commissioner, Jamnagar and Judgment & Order dated 06/07/2018 passed in Appeal No. 30/2016 by Ld. Joint Charity Commissioner, Rajkot, is erroneous, illegal, perverse or with material irregularity, which requires interference by this Court and whether the said Order deserves to be quashed and set aside ?
3	What's Order & Decree ?

(5). My findings, arrived at, of the above stated points, are as under :

-: FINDINGS :-

1	In NEGATIVE
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2	In NEGATIVE
3	As per FINAL ORDER.

- (6). I have heard the Ld. Advocate Mr. B. A. Rathod for the Appellant and the Ld. Advocate Mr. R.A. Mehta for the Respondent No.1, at great length. I have also considered impugned Judgment & Order dated 30/06/2016 passed in Change Report No. 220/2011 by Assistant Charity Commissioner, Jamanagar and Judgment & Order dated 06/07/2018 passed in Appeal No.30/2016 by Ld. Joint Charity Commissioner, Rajkot and also gone through the record and proceedings of the suit of Trial Court. I have considered the Written Argument at Exh.-9 of the Appellant / Original Objector and Written Argument at Exh.-10 of the Respondents / Original Applicant.
- (7). The reasons, for the findings arrived at, of the above issues, are as under :

: REASONS :

POINT No. 1 to 3 :

- (7.1). The Applicant - Shri 5 Navtanpuri Dham Khijda Mandir Trust through the reporting Trustee had filed Change Report, which was registered as No. 220/2011 for Registering the land bearing Revenue Survey No. 911 and 914 admeasuring 342.76 Sq. Mtrs. and Revenue Survey No. 941 admeasuring 125.40 Sq.Mtrs., of village Budhana of Taluka-Budhana, Dist.-Muzafarnagar, State - Uttar Pradesh in the PTR of the

Applicant - Trust. The said land was given by (Hibanama) Gift Deed dtd. 08/09/2011 at Mark-1/3 to the Applicant Trust. Necessary resolution of the Trust was also produced. It reflects from (Hibanama) dtd. 08/09/2011 at Mark-1/3 that Rehtu Balvant and Surajgiri Shivgiri had given said property to the Applicant Trust in Hibanama and therefore, the Applicant – Trust had filed Change Application. After hearing, the Ld. Assistant Charity Commissioner, Jamangar, was pleased to allow the said change Report No. 220/2011 by Judgment and Order dtd. 30/06/2016 at Mark-3/2. The Objector / Appellant herein had preferred an Appeal before the Joint Charity Commissioner, Rajkot, vide Appeal No. 30/2016, but the same was dismissed vide Judgment and Order dtd. 06/07/2018 at Mark-3/1. Being aggrieved and dissatisfied by both the impugned Judgment and Order at Mark-3/1 and 3/2. The Original Objector / Appellant has preferred this Appeal.

- (7.2). It reflects that Hibanama dtd. 08/09/2011 executed by Rehtu Balvant and Surajgiri Shivgiri in favour of Applicant Trust was produced at Mark-1/3 before the Assistant Charity Commissioner, Jamnagar, whereby the property in question was given in Gift to the Applicant Trust. The Original Objector has objected the same on the ground that he is believing in the said

faith / religion and also donating in said Trust / Temple and therefore, he has right to challenge the same. If we see the record, then the property is coming to the Trust and therefore, it is in the interest of trust, not only that but it is in the interest of Trustee and all persons who is having faith and belief in the said religion. It is for the faith of the said religion under a said trust. If the property of the Trust is misused or misappropriated, then certainly any of the person can raise the objections, but when the property is coming in the favour of the Trust, then only the donor or their legal heirs could have objected the same. The Trust or any Trustee or any person believing in the said religion could not challenge the same because it is in the favour of the Trust and not against the Trust. Under such circumstances, neither the interest of Trust nor Trustee, nor any member of the Trust or any member of the religion carried out by the Trust or any donor of the said religion is affected. On the contrary it is in their favour that the property is going to Trust. Under such circumstances, the objection raised by the Original Objector is not sustainable in the eye of laws, considering the facts on record.

- (7.3). The Ld. Advocate for the Original Objector has submitted that Civil Procedure Code is to be followed and to conduct the inquiry as Civil Suit. Change Report

under Section 22 of the Bombay Public Trust Act, 1950, contemplate to conduct the inquiry for the purpose of verifying the correctness of the entries in the register to be made and therefore, detail inquiry by conducting full-fledge Trial as in the Civil Suit, in light of facts and circumstances of present case, does not demand.

(7.4). The Ld. Advocate for the Objector has relied on the decision delivered by the Hon'ble Supreme Court (Coram : Hon'ble Justice K. Venkataswami and Hon'ble Justice A.P. Misra, JJ) in case of **1SAIYED MOHAMMAD BAKAR EI-EDROOS (DEAD) BY LRS Vs. ABDULHABIB HASAN ARAB**, wherein held that the **procedure is not what is under civil Procedure Code** and hence, the argument that proceeding before the Charity Commissioner to be what is provided in Civil Procedure Code, is without any foundation and the same is accordingly rejected. Looking facts and circumstances of present case, it will not assist the case of the Objector in present case.

(7.5). The Ld. Advocate for the Objector has relied on the decision delivered by the Hon'ble Gujarat Court (Coram : Hon'ble Justice Vipul M. Pancholi, J) in case of **2ANIL BHAGVANJI JOBANPUTRA Vs.**

¹ **SAIYED MOHAMMAD BAKAR EI-EDROOS (DEAD) BY LRS Vs. ABDULHABIB HASAN ARAB**
: 1998 (1) G.L.H. 811 = CA 4116/86, D/-2/4/98

² **ANIL BHAGVANJI JOBANPUTRA Vs. NAVINBHAI CHIMANLAL PARIKH : R/SCA 3551/21,D/-19/2/21**
(RCA 88/2018 – Hibanama – Charity Com. - BJ-D -3rd ADJ, Jamnagar)

NAVINBHAI CHIMANLAL PARIKH, wherein the permission, as prayed for, was granted and the petition stands disposed of, as withdrawn. If the petitioner files an application with a prayer to give him an opportunity of hearing, the Joint Charity Commissioner shall consider the said application before passing any order in Appeal No. 21/2019 to 35/2019 pending before him. It is clarified that this Court has not examined the merits of the case. In present case, the Joint Charity Commissioner had heard and given all opportunities of fair and natural justice.

- (7.6). The Ld. Advocate for the Objector has relied on the decision delivered by the Hon'ble Supreme Court (Coram : Hon'ble Justice Kuldip Singh & Hon'ble Justice P. B. Sawant, JJ) in case of ³S.P. CHENGALVARAYA NAIDU (DEAD) BY LRS. Vs. JAGANNATH (DEAD) BY LRS., wherein held that judgment or decree obtained by fraud is to be treated as nullity and can be questioned even in collateral proceedings. Admittedly, there can be doubt, but there seems no fraud in present case. Looking facts and circumstances of present case, it will not assist the case of the Objector in present case.

- (7.7). The Ld. Advocate for the Objector has relied on the

³ *S.P. CHENGALVARAYA NAIDU (DEAD) BY LRS. Vs. JAGANNATH (DEAD) BY LRS.*
: (1994) 1 SCC 1 = CA 994/72, D/-27/10/93

decision delivered by the Hon'ble Supreme Court (Coram : Hon'ble Justice H.K. Sema & Hon'ble Justice Dr. AR. Lakshmanan, JJ) in case of ⁴**N. KHOSLA Vs. RAJLAKSHMI (DEAD)**, wherein held that S. 17(1)(b) of Registration Act, 1908, applies only to documents that create rights in praesenti or in future and it does not apply to documents that merely record or proceed on the basis of any right created or extinguished in the past. Looking facts and circumstances of present case, it will not assist the case of the Objector in present case.

- (7.8). Moreover, the Objector was given Opportunity of hearing and objecting at both the levels of quasi-judicial adjudication and the rule of natural justice is fully complied with and it does not require any interference by this Court and the objections of the Objector are not sustainable and therefore, I answer the **POINT No. 1 & 2** in **NEGATIVES** and answer **POINT No. 3** by passing the following order.

-: FINAL ORDER :-

➤ The appeal is dismissed.

➤ The impugned Judgment & Order dated 30/06/2016 passed in Change Report No. 220/2011 by Assistant Charity Commissioner, Jamnagar and Judgment & Order dated 06/07/2018 passed in Appeal No. 30/2016 by Ld. Joint Charity Commissioner, Rajkot, are hereby confirmed.

➤ No order as to Costs.

➤ Copy of this Order be sent to the Assistant Charity Commissioner, Jamnagar and Joint Charity Commissioner, Rajkot, forthwith, for information and record.

DECREE IS TO BE DRAWN ACCORDINGLY.

Signed, pronounced and declared in the open Court on this 30th day of March, 2026, at Jamnagar.

Date : 30/03/2026
Place : Jamnagar

(Rasikkumar V. Mandani)

3rd Additional District Judge
Jamnagar. (Code : GJ00715)

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