

Received on	:	19/04/2025
Registered on	:	19/04/2025
Decided on	:	20/04/2026
Duration	:	Y M D

IN THE COURT OF 2nd ADDITIONAL CIVIL JUDGE
PANCHMAHAL @ GODHRA

Civil Miscellaneous Application No.16 of 2025

Exh.10

Applicant:

Heirs of Nanabhai Kabhai Chauhan

1. Ganpatbhai Nanabhai Chauhan
2. Udesinh Nanabhai Shauhan

Through their Power of Attorney
Sonalben Shivsindh Rathod

Daughter of Ganpatsindh Nanabhai Chauhan

Age : adult, Occupation : job

Having address at :

Vijhol, Ta. Godhra, Panchmahal

Versus

Opponents

1. Heir of Galabbhai Shankarbhai Chauhan
Chauhan Prabhatsindh Galabbhai
Age : adult, Occupation : agriculture
2. Kankuben Kalubhai Chauhan
3. Kailasben Kalubhai Chauhan
4. Lilaben Kalubhai Chauhan
5. Jasvantsindh Kalubhai Chauhan
6. Lalitaben Natvarsindh Chauhan
7. Manishkumar Natvarsindh Chauhan
8. Nainaben Natvarsindh Chauhan
9. Kalaben Natvarsindh Chauhan

Above all
Age : adult, Occupation : agriculture
Having address at :
Vijhol, Ta.Godhra, Panchmahal

10. Sub-Registrar- Godhra
Godhra.

Advocate appearance:

For Applicant: Ld. Advocate Mr. K. S. Vyas

For Opponents: Ld. Advocate Mr. I. I. Ismailwala

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-:: J U D G M E N T ::-
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1. The petitioner has presented this petition for Restoration of the Regular Civil Suit no.172/2021 which was dismissed by 3rd Addl. Civil Judge on 26.03.2025 due to default of plaintiff on submitting evidence.
2. As per the petition, the petitioner had filed the suit bearing Regular Civil Suit no.172/2021 against the opponents for declaration and permanent injunction. The matter was pending for further evidence and the plaintiff submitted the oral evidence of witnesses on 06/04/2025 and matter was kept for cross-examination of witnesses on 07/03/2025. However the witnesses were not present on that day and hence matter was adjourned on 26/03/2025. It is say of applicant that on 26/03/2025 due to absence of plaintiff, his witnesses and advocate the cases was dismissed for default of plaintiff. it is say of applicant that due to death of plaintiff's aunt namely Kantaben Udesinh Patel the plaintiff could not remain present and suit was dismissed.

3. On perusal of the record of the petition and the document at mark 3/3 i.e. death certificate of Kantaben Udesinh Patel, it appears that Kanataben died on 26/03/2025 and from mark 3/1 it appears that this suit is dismissed on 26/03/2025. Therefore it appears that the applicant could not remain present due to death of Kantaben. At this stage it is important to refer provision of Order 9 Rule 4 of the Code of Civil Procedure, 1908 which is mentioned as under:

Order 9 Rule 4 - Plaintiff may bring fresh suit or Court may restore suit to file.

Where a suit is dismissed under rule 2 or rule 3, the plaintiff may (subject to the law of limitation) bring a fresh suit, or he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for (such failure as is referred to in rule 2) or for his non-appearance, as the case may be, the Court shall make an order setting aside the dismissal and shall appoint a day for proceeding with the suit.

4. The above provision specifically states that there should be sufficient reason. In view of aforesaid discussion it appears that plaintiff could not remain present due to unavoidable circumstances. Further the present application for restoration is submitted within the limitation period. Therefore, it appears proper to restore the suit of plaintiff, Hence I pass the following orders.

-:: O R D E R ::-

- (1) The present C.M.A.No. 16/2025 is hereby allowed.

(2) Regular Civil Suit no. 172/2021 is hereby restored.

Order signed and pronounced today in the open court on 20th April, 2026.

Date : 20.04.2026

Place : Godhra

[Aradhana Ramchandra Yadav]

2nd Additional Civil Judge

Panchmahal@ Godhra

(GJ01672)