

C.M.A 7/2004

GJKT020004482004



Received on 24.02.2004
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Decided on 17.08.2026
Duration Ds. Ms. Ys.
22 05 24

**IN THE COURT OF
PRINCIPAL SENIOR CIVIL JUDGE AT
BHUJ,KACHCHH**

CMA 7/2004
Exhibit No: 108

Appellants :

(1) Bhagyavantiben Morarji Parmar,

Aged: 52 years,

(2) Gajendrabhai Morarji Parmar,

Aged: 32 years,

Both are residing at Vejnath Sheri,
Near Mahadev Naka, Bhuj- Kachchh.

VERSUS

Opponent:

Kanta Devji Parmar,

Age:-45 years,

Residing At:- Village Varli,

Taluka: Bhuj- Kachchh.

**Subject:-For Issuance of Succession Certificate under
Indian Succession Act**

Appearances:

Learned Advocate for the Plaintiffs :- Shri M.H.Rathod.
Learned Advocate for the Defendant :- Shri R.M.Gadhvi.

-:: J U D G M E N T ::-

1. It is important to note that the Opponent filed a Second Appeal under Section 100 of the Code of Civil Procedure, 1908. In this appeal, the original opponent challenged the judgment and decree dated 30.08.2007 passed by the Hon'ble Additional District Judge & Presiding Officer (Fast Track Court-1), Kutch at Bhuj in Regular Civil Appeal No. 76 of 2006. That decision had set aside the earlier judgment and order passed on 23.11.2006 by the learned Principal Senior Civil Judge, Bhuj-Kutch in Miscellaneous Civil Application No. 7 of 2004.

2. In the said Second Appeal (R/Second Appeal No. 270 of 2007), the Hon'ble High Court of Gujarat passed an order on 08.04.2026. Paragraphs 9 and 10 of that order are reproduced below:

"9. The learned Trial Court shall record evidence on the following issue:

'(i) Whether the applicants prove the birth certificate issued by the Sub-Registrar (Birth and Death), Bhuj Nagarpalika?'

10. The parties are permitted to give evidence only on this specific issue and will not be allowed to present any other oral or document evidence on any other issue.

Based on the evidence presented, the Trial Court shall decide afresh the issues framed at Exhibit-11. The learned Trial Court shall record the evidence and deliver its judgment afresh within three months from the date of receiving a copy of this order, without being influenced by any observations made by this Court above."

3. Following these clear directions from the Hon'ble High Court, the present case was restored to the Court record to be heard and decided afresh.

4. Brief Facts of the Applicants' Case:

4.1 The present application under Section 372 of the Indian Succession Act, 1925, has been filed by Applicant No. 1 (wife) and Applicant No. 2 (son) seeking a Succession Certificate in respect of the debts, securities, and terminal service benefits of the deceased, late Morarji Kalyanji Parmar, as detailed in **Schedule-A** attached to the application.

4.2 It is the case of the applicants that Applicant No. 1 was legally married to the deceased, Morarji Kalyanji Parmar, as per Hindu rites and customs in 1971 at Bhuj. Out of the said wedlock, Applicant No. 2, Gajendra, was born. The deceased was serving as a *Kotval* at Gram Panchayat, Varli, and passed away in due to illness on 08.04.1978 during the period of service. The death certificate of the deceased has been produced on record.

4.3 Following his demise, the applicants applied to the State Government for family pension and death-cum-retirement

benefits for Applicant No. 1, as well as compassionate appointment for Applicant No. 2 as a legal heir. In proceedings before the Hon'ble High Court of Gujarat, the District Collector, Kutch, directed the applicants to produce a Succession Certificate from a competent Court of law. Consequently, the cause of action arose for filing the present application and prayed for succession certificate for Schedule-A.

5. Objections of the Opponent (Exhibit-19):

5.1 Upon service of notice, the opponents appeared and filed written objections at Exhibit-19, challenging the maintainability of the application.

5.2 The opponents asserted that Applicant No. 1 has never obtained a decree of declaration from a competent Civil Court affirming her status as the legally wedded wife of the deceased. The opponents claimed that the deceased died unmarried in 1978 and lived with the family of Opponent No. 1. They relied upon the oral order of the Hon'ble High Court in Special Civil Application No. 7613/2001 and an order dated 30.11.2003 passed by the District Collector, Kutch, contending that the applicants failed to establish their legal heirship before the revenue authorities.

5.3 It was further asserted that the name of Applicant No. 1 does not appear in the service records of the deceased or in the records of Varli Gram Panchayat. The opponents asserted

that they are the genuine legal heirs and prayed for the dismissal of the application and the grant of a Succession Certificate in their favor instead.

6. In support of their case, the appellants have produced following oral as well documentary evidence:-

<u>:: Oral Evidence:-</u>	
Exhibit	Details
15	Deposition of applicant Bhagyavantiben.
30	Deposition of applicant No.2 Gajendra Morarji Parmar.
34	Deposition of Dayaben Manishankar Bhatt.
35	Deposition of Javergar Ramgar Gunsai.
36	Deposition of Jayram Tejmal Solanki.
37	Deposition of Chavda Premji Karshan.
100	Deposition of Prakashbha Dhansukhbhai Jogi
102	Deposition of Ansuyaba Rashubha Rathod
<u>:: Documentary Evidence:-</u>	
Exhibit	Details
68	Letter sent by the Mamlatdar, Bhuj to the Talati Mantri Village Varali Gram Panchayat dated 07.04.2000.
69	Application sent by the applicant to the Mamlatdar dated 17.06.2000.
70	Application sent by the applicant to the Mamlatdar
101	True Copy of Birth & Death Register
105	Updated Computerized birth certificate of opponent no-2

7. In support of their case, the opponent has produced following oral and documentary evidence :-

<u>:: Oral Evidence:-</u>	
Exhibit	Details
21	Deposition of Satubhai Nathubha Jadeja.
22	Deposition of Kharashankar Ramjibhai Joshi.
23	Deposition of Hudabhai Hamir Chavda.
24	Deposition of Dansang Meghjibhai Parmar.
43	Deposition of defendant Kantaben Devji Parmar.
49	Deposition of Dansang Meghjibhai Parmar.
59	Deposition of Bhavalabhai Ladhubhai Rathod (Talati-Cum-Mantry of the Village Varali)
72	Deposition of Satubha Nathubha Jadeja.
<u>:: Documentary Evidence:-</u>	
Exhibit	Details
61	Abstract of birth and death registered.
62	Letter written by the Talati-Cum-Mantry to the Mamlatdar Bhuj.
63	Supplementary documents along with the panchnama.
64	Supplementary documents along with the panchnama.
65	Consent of the defendant Kantaben Devjibhai Parmar.
66	Deposition of defendant Kantaben Devji Parmar.

8/A. Arguments on Behalf of the Applicants (Exhibit-77):

The learned Advocate for the applicants submitted written arguments at Exhibit-77 and advanced oral arguments. It was submitted that the birth register entry (Exh. 101) explicitly names the deceased as the father of Applicant No. 2. This documentary evidence is strongly corroborated by four independent eye-witnesses (Exhs. 34 to 37) who personally attended the marriage ceremony solemnized at *Nrutya Gopal Temple*, Bhuj. It was argued that the applicants are Class-I legal heirs of the deceased under the Hindu Succession Act, 1956, and that the defense regarding missing service records holds no weight as no official service records were maintained for the post of *Kotval* prior to 1978. Thus, the applicants are fully eligible to receive the Succession Certificate.

8/B. Arguments on Behalf of the Opponents (Exhibit-80):

The learned Advocate for the opponents submitted written arguments at Exhibit-80 and advanced oral arguments. It was contended that the deceased resided with Opponent No. 1's husband, Devji, and died unmarried in 1978. It was argued that a mere birth certificate entry cannot confer legal heirship, and that Applicant No. 1 was never seen attending family or social functions. The opponents further pointed out that an earlier civil suit filed by Applicant No. 1 was dismissed for default. Therefore, the applicants are not the legal heirs of the deceased, and the application ought to be

dismissed

9. Issues :-On the basis of the pleading of the parties and documents on record, issues were framed for adjudication of this suit vide Exh.11. In accordance with the directions of the Hon'ble High Court, Issue No 1A has been framed :

<u>No.</u>	<u>Issues</u>	<u>Finding</u>
<u>1A</u>	<u>Whether the applicants prove the birth certificate issued by the Sub-Registrar (Birth and Death), Bhuj Nagarpalika?</u>	<u>Affirmative</u>
1	Whether the applicants prove that they are the legal heirs and representatives of the deceased Morarji Kalyanji Parmar?	Affirmative
2	Whether the applicants prove that they are entitled to get the Succession Certificate as prayed for?	Affirmative
3	Whether the present application is tenable for the Schedule property?	Partly Affirmative
4	Whether the application is barred due to non-joinder of necessary parties?	Negative
5	Whether the objectors have any share in the Schedule properties?	Negative
6	What order?	As per Final Order

10. FINDINGS ON ISSUES :-

10.1 Issue No. 1A: Whether the applicants prove the birth certificate issued by the Sub-Registrar (Birth and Death), Bhuj Nagarpalika?

(a) The Hon'ble High Court of Gujarat directed a specific determination on the authenticity of the birth certificate of Applicant No. 2 (Mark 3/3).

(b) To satisfy this requirement, the court summons was served upon the Bhuj Nagarpalika. Pursuant to the summons, Shri Prakashbhai Dhansukhbhai Jogi, In-charge Sub-Registrar (Birth and Death), Bhuj Nagarpalika, was examined at Exhibit 100.

(c) The witness brought the original official Birth and Death Register of Bhuj Nagarpalika for the year 1971 and produced it in open Court. Physical verification of register confirms the birth of Applicant No. 2 (Gajendra), recording Morarji Kalyanji Parmar as the father and Bhagyavantiben as the mother. The certified true copy of this public entry was taken on record as Exhibit 101.

(d) The opponents contended that minor ink overwriting or corrections in the entry invalidate the document. However, visual inspection of the original public register reveals that the entries were made in the regular course of official business by a public

officer. Under Section 35 of the Indian Evidence Act, entries made in public registers by public servants in the discharge of official duties carry a strong legal presumption of genuineness. The opponents produced no public register or official counter-record from Bhuj Nagarpalika to disprove this entry.

(e) The testimony of the Sub-Registrar (Exh. 100) along with the official public record (Exh. 101) conclusively proves the birth certificate of Applicant No. 2. (f) **Issue No. 1A is answered in the Affirmative.**

10.2 As to Issue No. 1: Whether the applicants prove that they are the legal heirs and representatives of the deceased Morarji Kalyanji Parmar?

(a) Applicants' Evidence (Exhs. 15, 30, 34–37):

Applicant No. 1 (Bhagyavantiben) deposed at Exhibit 15 that her marriage with late Morarji Kalyanji Parmar was solemnized according to Hindu rites and customs at *Nrutya Gopal Temple*, Bhuj, in 1971 in presense of society members. Applicant No. 2 (Gajendra) deposed at Exhibit 30 corroborating these facts. The applicants examined four independent witnesses to prove the marriage and parentage:

- **Dayaben Bhatt (Exh. 34):** Testified on affidavit that she personally attended the marriage ceremony of Morarji and Bhagyavantiben at *Nrutya*

Gopal Temple, Bhuj, and that Applicant No. 2 was born out of this wedlock.

- **Javergar Gunsai (Exh. 35):** Confirmed attending the marriage at *Nrutya Gopal Temple* and affirmed that Morarji's aunt Devbai resided in his vicinity.
- **Jayram Solanki (Exh. 36):** Supported the factum of marriage and testified to Morarji's visits to Bhagyavantiben's family.
- **Premji Chavda (Exh. 37):** Brother of Applicant No. 1, who confirmed the marriage and testified that Morarji passed away in 1978.

(b) Evaluation of Cross-Examination & Opponents' Rebuttal (Exhs. 43, 49, 59, 72):

- The opponents attempted to discredit the applicants by highlighting minor discrepancies—such as Applicant No. 2's statement in cross-examination (Exh. 30) regarding the year of death, or the fact that witness Dayaben (Exh. 34) had not visited Varli village.
- However, these minor variance items do not affect the basic testimony of four eye-witnesses who witnessed the wedding ceremony itself.
- In defense, Opponent No. 1 (Kantaben, Exh. 43) claimed Morarji died unmarried. However, in cross-examination, she admitted she married into the family only in 1976—five years after the 1971 marriage—and conceded

her statement was based purely on hearsay from her mother-in-law.

- Opponent's witness (Dansangji, Exh. 49) admitted he came to depose at Kantaben's instance.
- The Talati-Cum-Mantri (Exh. 59) produced Panchayat papers (Exhs. 62–66), but admitted he did not make the register entries, did not know who recorded Morarji's marital status, and produced Mamlatdar records showing Bhagyavantiben's ongoing widow pension inquiry. Opponent witness Satubha (Exh. 72) admitted he deposed at the instance of Kantaben's son.

(c) The oral evidence of the four eye-witnesses (Exhs. 34–37), supported by the official public birth record (Exhs. 100 & 101), outweighs the uncorroborated hearsay statements of the opponents. Applicant No. 1 is proved to be the legally wedded wife and Applicant No. 2 the legitimate son of Morarji Kalyanji Parmar.

(d) Even no questions or defense has been taken that Bhagyvantiben and her son are other person's family members. Therefore, this court finds the **Issue No. 1 is answered in the Affirmative.**

10.3 As to Issue No. 2: Whether the applicants prove that they are entitled to get the Succession Certificate as prayed for?

(a) The deceased, Morarji Kalyanji Parmar, died intestate in 1978. Under Section 8 of the Hindu Succession Act, 1956,

the self-acquired property, debts, and securities of a male Hindu dying intestate devolve firstly upon his Class-I legal heirs.

(b) As established in Issue No. 1, Applicant No. 1 (widow) and Applicant No. 2 (son) are the direct Class-I legal heirs of the deceased under Section 8 of the Hindu Succession Act, 1956. Under the statutory scheme of succession, Class-I legal heirs inherit the estate of the deceased equally and hold absolute priority over secondary or collateral relatives.

(c) The applicants have established the death of the deceased in on 08.04.1978, their relationship as Class-I legal heirs, and the existence of monetary terminal dues payable by the employer. The opponents' objections have failed on evaluation of evidence. Thus, the applicants are fully entitled to receive the Succession Certificate to collect the monetary debts and securities of the deceased.

(d) Hence, **Issue No. 2 is answered in the Affirmative.**

10.4 As to Issue No. 3: Whether the present application is tenable for the Schedule property?

(a) A Succession Certificate can only be issued in respect of "debts and securities" due to the deceased. Liquidated monetary dues—such as unpaid salary, accrued provident fund, gratuity, and leave encashment standing to the credit of the deceased at the time of his death—constitute "debts"

payable to his estate. Therefore, the application is maintainable in respect of all monetary terminal dues listed in Schedule-A.

(b) The jurisdiction of a Succession Court is summary and limited to representative title. The grant of a Succession Certificate does not operate as an administrative order commanding the State Government or Panchayat to grant:

- **Compassionate Appointment:** A compassionate job is governed strictly by executive schemes and policy criteria framed by the Government. It is not an inheritable asset or a "debt" under Section 370.
- **Family Pension:** Family pension is a statutory right created by pension rules for eligible dependants, not a debt left behind by the deceased forming part of his estate.

(C) The application is tenable for collecting the monetary debts, gratuity, and terminal dues specified in Schedule-A, but administrative matters like compassionate appointment and family pension must be processed under relevant government policies.

(d) Hence, **Issue No. 3 is answered Partly in the Affirmative.**

10.5 As to Issue No. 4: Whether the application is barred due to non-joinder of necessary parties?

(a) The opponents contended that the application is bad for non-joinder because other family members or government

departments were not arrayed as co-parties in the application title.

(b) Succession proceedings under Part X of the Indian Succession Act are summary in nature. Public citation notice was duly published in newspapers inviting objections from the general public. Furthermore, as Applicant No. 1 (wife) and Applicant No. 2 (son) are the sole Class-I legal heirs, no other Class-I legal heir was left out. Collateral relatives (Class-II) and government bodies holding the funds are not necessary parties to be arrayed as applicants. There is no non-joinder of necessary parties.

(c) Hence, **Issue No. 4 is answered in the Negative.**

10.6 As to Issue No. 5: Whether the objectors have any share in the Schedule properties?

(a) Opponent No. 1 (Kantaben) is the widow of the deceased's brother (Devji), and Opponent No. 2 (Dansangji) is the nephew of the deceased. Under Section 8 of the Hindu Succession Act, 1956, collateral relatives fall into Class-II/agnates and are completely excluded from inheritance when Class-I legal heirs (wife and son) are present.

(b) The opponents hold no statutory right, title, or interest in the debts, securities, or terminal benefits of the deceased.

Issue No. 5 is answered in the Negative.

10.7 As to Issue No. 6: What Order?

In light of the above discussion and findings on Issue Nos. **1A through 5**, the applicants have fully established their claim, and the following final order is passed:

:: FINAL ORDER ::

- The present Succession Application is hereby allowed with costs.
- It is hereby declared that Applicant No. 1 (Bhagyavantiben, Wd/o Morarji Kalyanji Parmar) and Applicant No. 2 (Gajendra Morarji Parmar) are the sole Class-I legal heirs and representatives of the deceased, late Morarji Kalyanji Parmar.
- A Succession Certificate be issued in favor of Applicant No. 1 and Applicant No. 2 in respect of the accrued debts, terminal service benefits, gratuity, arrears, and securities of the deceased as specified in Schedule-A attached to the application, empowering them to receive and collect the said amounts. It is clarified that the grant of this Succession Certificate certifies the applicants' representative title to collect financial dues/debts under Section 372 of the Indian Succession Act, 1925. The entitlement regarding Family Pension and Compassionate Appointment shall be governed and processed by the competent administrative authorities/Government in accordance

with the prevailing service rules and administrative policy regulations.

➤ The opponents have no right, title, or share in the Schedule-A properties/dues of the deceased, and their written objections (Exhibit-19) stand dismissed.

➤ The Succession Certificate shall be formally drawn up and issued upon payment of the requisite Court Fee Stamp as per rules and upon the applicants executing an Indemnity Bond in accordance with the law.

Pronounced and signed in open Court on this 17th day of August, 2026.

Place: Bhuj.

(Kardam Chandravadan Joshi)

Date: 17.08.2026

Principal Senior Civil Judge , Bhuj

UID Code No- GJ01132

/VBJOSHI/