

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SECOND APPEAL NO. 22 of 2025
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2025
In
R/SECOND APPEAL NO. 22 of 2025

=====

PATEL VISHNUKUMAR RATILAL & ORS.
Versus
PATEL GAURIBEN KANITLAL & ORS.

=====

Appearance:

MR SACHINKUMAR V PATEL(10593) for the Appellant(s) No. 1,2,3,4
MR. KISHAN H DAIYA(6929) for the Appellant(s) No. 1,2,3,4

=====

CORAM: HONOURABLE MR.JUSTICE SANJEEV J.THAKER

Date : 10/01/2025

ORAL ORDER

Order in Second Appeal

1. Present Second Appeal has been filed challenging the impugned judgment and decree dated 13.12.2024 passed by the 5th Additional District Judge, Mehsana in Regular Civil Appeal No.78 of 2018 whereby the appellate Court has set aside the judgment and decree dated 29.12.2017 passed by the learned 3rd Additional Senior Civil Judge, Mehsana in Special Civil Suit No.151 of 2013.

2. It is the case of the appellants that the appellants are in possession of the property by way of registered sale deed dated 29.05.1978 and pursuant to the said sale deed, a mutation entry was also entered on 09.10.1978. It is the case of the appellants that in the revenue record, more

particularly, entry No.178, the name of Khodabhai Patel was mentioned and after he expired in the year 1995, name of his son Prahladbhai Patel was entered in the revenue record and the property in question has been purchased by the appellants from Prahaladbhai somewhere in the year 1978.

3. It is the case of the appellant that the brother of Khodabhai Patel i.e. Kantibhai Patel, original defendant legal heirs have executed a sale deed in the year 2013 and the appellants have challenged the said sale deed by way of filing Special Civil Suit No.151 of 2013 and the said suit was also filed restraining the defendants of the said suit from entering in the premises and restraining uninterrupted possession of the plaintiff. By an order dated 29.12.2017, trial Court has allowed the said suit and has passed orders declaring the sale deed No.9971 dated 24.10.2013 as null and void and not binding on the plaintiff. Aggrieved by the said order, the present defendants had filed Regular Civil Appeal No.78 of 2018 and the appellate Court relying on the provisions of section 307 of Succession Act had quashed and set aside the judgment and decree passed in Special Civil Suit No.151 of 2013 and thereby allowed the said appeal and

dismissed the suit of the plaintiff.

4. Having heard learned advocate Mr. Sachinkumar V. Patel for the appellants and having perused the papers, the main submission of the appellants is that since the order passed by the trial Court is a well reasoned order, the same could not be interfered by the appellate Court. Moreover, the appellants are owners by registered documents and in possession of the property since the year 1978, and therefore, the appellate Court could not have passed the order.

5. Having heard the learned advocates the present Second Appeal requires consideration. In view of the same **Second Appeal is admitted.**

6. The following substantial question of law are raised:-

A. Whether that reasoning interpretation relating sec. 307 of Indian succession act. 1925 read with sec. 3 and 41 of TP Act in the facts of the present case placing reliance on reported case in 2022 (7) SCC 90 has any application in the facts of the present case requiring upsetting of well reasoned judgment decree of the trial court by the appellate court by way of impugned judgment in appeal without understanding

that even sec. 307 also states that transaction may become voidable at best not void?

B. Whether in absence of any concrete evidence regarding mental condition of Kantibhai Ishwardas at different stages of the life comes on record was it safe in law at all and was it right on the part of the learned district judge to draw conclusion branding Kantibhai as lunatic merely from an entry no.178 of 1970, applying unwarranted analogy of sec. 307 of Indian succession act, ignoring all other probability and possibility under which arrangement between the family might have made between unknown to the Khodabhai and Kantibhai and even legal heirs of Kantibhai at the relevant time as they were close relatives; more so when Kantibhai was lived up to 1986; neither Kantibhai Ishwaradas during his life time, nor his legal heirs if any even raised any issue regarding entry no. 178 or regd. Sale of 1978 and certified entry of 1979 of the appellant for more than 41 years; under such eventuality merely under presumption learned district judge could have set aside the trial court well reasoned judgment that too technically at the instance of D/4- whose modus apparently as fraudulent besides no locus?

Order in Civil Application

Notice returnable on 06th February, 2025.

In view of the facts stated herein above and the fact that it is an admitted position that the plaintiff is in possession of the property, relief as prayed for in paragraph No.3(b) is granted till the next date.

(SANJEEV J.THAKER,J)

Manoj Kumar Rai