

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SECOND APPEAL NO. 69 of 2025**

With

**CIVIL APPLICATION (FOR INTERIM RELIEF) NO. 1 of 2025
In R/SECOND APPEAL NO. 69 of 2025**

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L H OF DECD. VALIBEN KARAMSHIBHAI DHARAVIYA & ORS.

Versus

SHANTABEN DAYABHAI MAGHODIYA D/O PREMJBHAI DEVJBHAI
DALWADI

=====

Appearance:

MR HASIT H JOSHI(2480) for the Appellant(s) No.

1,1.1,1.1.1,1.1.2,1.1.3,1.2,1.3,1.4,1.5,1.6,2

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CORAM: HONOURABLE MR. JUSTICE SANJEEV J. THAKER

Date : 17/04/2025

ORAL ORDER

Present Second Appeal has been filed challenging the judgment and decree passed by the learned Principal District Judge at Jamnagar in RCA No.74 of 2017 whereby the first appellate court confirmed the judgment and decree passed by the learned Additional Senior Civil Judge, Jamnagar in SCS No.85 of 2009.

2. Learned advocate for the appellant has drawn attention of this Court to the fact that plaintiff has filed the suit challenging the sale-deed executed by org. defendant no.3 in favour of defendant no.1 and 2. The org. defendant no.3 was the father of the plaintiff and defendant no.1 and 2. It is the case of the appellant that partition took place on 08/05/1956 which is recorded in the revenue entry at Sr.No.134 and by virtue of said entry, defendant no.3 became the exclusive owner of the property and by virtue of the owner of the property, defendant no.3 had executed the sale-deed in favour of defendant no.1 and 2 and thereby defendant no.3 became the owner of the property and therefore when the Hindu Succession Act, 1956 came into existence i.e. on 17/06/1956, it has been

argued that if the father of the plaintiff had an exclusive right over the property and executed a sale-deed in favour of defendant no.1 and 2 and the trial Court and appellate Court have decided the same and has not considered the original position of defendant no.3 became the exclusive owner of the property and had executed the sale-deed in favour of defendant no.1 and 2.

3. Having heard the learned advocate for the appellants and considering the fact that partition took place on 08/05/1956 by which the org. defendant o.3 i.e. father of the plaintiff became the owner of the property, present appeal deserves consideration. Appeal is admitted on the following substantial questions of law.

“(1) Whether the Courts below have committed grave error of law and facts in not appreciating that since the suit property was divided as per the family arrangement according to the plaintiff herself, ceases to be an ancestral property as soon as the family arrangement comes into effect?

(2) Whether the Courts below have committed grave error in law and facts in not appreciating that in the year 1957, since the suit land and other lands were recorded in the sole and independent name of grand father and that by virtue of division of the lands as per family arrangement that the suit lands and other lands fell in the share of deceased defendant No.3 as per entry No.134 made in the revenue record, and, therefore, deceased defendant No.3 was competent to deal with and dispose of the suit property in the manner liked by him in the facts of the present case?

(3) Whether the Courts below have committed gross error in law

and facts in not dismissing the suit of the plaintiff for want of sufficient court fees?

Order in Civil Application No.1 of 2025.

Since the appeal is admitted and considering the fact that partition took place on 08/05/1956 i.e. before the Hindu Succession Act came into existence and the fact that org. defendant no.3 executed sale-deed in favour of defendant no.1 and 2, interim relief in terms of paragraph 5(B) of the application is granted till the next date of hearing.

Matter to come up for hearing on 09/05/2025.

(SANJEEV J.THAKER,J)

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Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: MANISHKUMAR JYOTINDRA SOMPURA(HC00189), Principal Pvt. Secretary, at High Court of Gujarat on 19/04/2025 13:07:54