

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 10878 of 2025**

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MADHUBEN RATILAL PATEL & ORS.

Versus

LH OF DECD DHANLAXMIBEN KANTILAL PATEL NITISH VIPULKUMAR
PATEL & ORS.

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Appearance:

MR SP MAJMUDAR(3456) for the Petitioner(s) No. 1,2,3

MR. HJ KARATHIYA(7012) for the Petitioner(s) No. 1,2,3

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CORAM:HONOURABLE MR. JUSTICE MAULIK J.SHELAT**Date : 07/08/2025****ORAL ORDER**

1. Heard learned advocate Mr.S.P.Majmudar with learned advocate Mr.H.J.Karathiya for the petitioners.

2. Learned advocate Mr.Majmudar would submit that petitioners happen to be original plaintiffs of Special Civil Suit No.597 of 2007 pending before Senior Civil Judge, Vadodara, which was filed seeking declaration and injunction and so also cancellation of sale deed executed between the defendants.

2.1. Learned advocate Mr.Majmudar would submit that within no time of filing of suit, impugned amendment application came to be filed by plaintiffs below Exh.38 under Order 6 Rule 17 of the Civil Procedure Code, 1908 seeking

certain amendment in the plaint as well as in the prayer clause, which is nothing but an elaboration of the fact, which are stated in the plaint.

2.2. Learned advocate Mr.Majmudar would submit that the Trial Court without appreciating the controversy germane in the suit, and having completely lost sight of the fact that nature of suit is not going to change but nature of relief is in addition to what has been prayed in the plaint is to be added.

2.3. Learned advocate Mr.Majmudar would submit that the Trial Court has erroneously rejected the impugned application, thereby, caused great injustice.

2.4. Lastly, learned advocate Mr.Majmudar would submit that the suit has not even reached to the stage of recording of evidence and issues were recently framed on 03.01.2025 and no serious prejudice would cause to the defendants if amendment, as sought for, could have been granted by the Trial court.

3. At the outset, it is required to be observed that impugned application filed below Exh.38 on 19.06.2008

surprisingly decided by Trial Court vide its order dated 08.10.2024.

4. Prima facie, considering the submissions made by learned advocate Mr.Majmudar and so also, after going through the averments made in the plaint, vis-à-vis amendment application, what is sought to be amended by plaintiffs appears to be elaboration of the pleadings, which have already been made in relation to the suit property.

5. Further, prima facie, it appears that suit is filed seeking declaration and injunction and so also cancellation of sale deed executed between the defendants, wherein by way of amendment, which is sought for, is another declaration to the effect that as per family arrangement deed dated 09.05.1950, the plaintiff nos.1 to 3 be declared as owner of suit land.

6. According to this Court, the Trial Court has not properly examined the issue germane the impugned application and prima facie, requires to be observed that it has erroneously assumed that by granting amendment, as sought for, it changes the nature of the suit.

7. In view of the aforesaid, issue requires consideration.
Issue Notice for final disposal returnable on 26.09.2025. Ad-interim relief in terms of para 18(B) is granted.
8. Direct service is permitted.

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(MAULIK J.SHELAT,J)