

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 2113 of 2026

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ZUBER ISMAIL GENDI & ORS.

Versus

**AAYESHBIBI WD/O MUSABHAI ISMAIL GENDI (HEIRS OF DECD.
MUSABHAI ISMAIL) & ORS.**

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Appearance:

MR JINESH H KAPADIA(5601) for the Petitioner(s) No. 1,2,3,4

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CORAM:HONOURABLE MR. JUSTICE DEVAN M. DESAI

Date : 19/02/2026

ORAL ORDER

1. Heard learned advocate Mr. Jinesh H Kapadia for the petitioners.
2. Learned advocate for the petitioners submitted that after the closure of the evidence on behalf of the plaintiff on 11.05.2022, the evidence of defendant was recorded and concluded on 05.08.2025. Thereafter, the petitioners filed list of documents at Exh. 221 on 22.09.2025, without an application seeking **leave** of Court to produce documents. It is

contended that the learned Trial Court by allowing Exh. 222, which is an application for giving exhibits has committed a grave jurisdictional error. It is further contended that without any formal evidence with regard to the documents which are sought to be produced vide mark 221/1 to 221/5, the learned Trial Court has given Exhibits as Exh. 241 to 245. It is further submitted that there is a gross delay in submitting the documents without any proof thereof. However, learned Trial Court has passed an order of giving "Exhibits subject to prove as per Evidence Act". It is submitted that under the provisions of Indian Evidence Act, 1872, there is no such provision of giving exhibits to documents subject to proof.

3. Having considered the submissions, it appears that the learned Trial Court has gravely erred in giving exhibits to the documents produced at mark 221/1 to 221/5. The order that documents are exhibited subject to prove as per Evidence Act is in my opinion a gross error of interpretation of law. In view

of this, the order dated 29.11.2025 passed by learned 3rd Additional Civil Judge, Bharuch, is stayed till next date of hearing.

4. Issue **Rule** making it returnable on 04.05.2026.

(D. M. DESAI,J)

SHIVANI SHUKLA

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: SHIVANI SHUKLA(HC02350), ENGLISH STENO GRADE-II\, at High Court of Gujarat on 20/02/2026 18:12:06