

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SECOND APPEAL NO. 148 of 2026****With****CIVIL APPLICATION (FOR STAY) NO. 1 of 2026****In R/SECOND APPEAL NO. 148 of 2026**

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RAMESHBHAI VEERSINGBHAI HATHILA**Versus****RAMANBHAI VEERSINGBHAI HATHILA**

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Appearance:**MR HRIDAY BUCH(2372) for the Appellant(s) No. 1****MR A A ZABUAWALA(6823) for the Respondent(s) No. 1**

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CORAM:HONOURABLE MR. JUSTICE DEVAN M. DESAI**Date : 24/03/2026****ORAL ORDER**

1. Heard learned advocate Mr. Nishant Lalakiya for learned advocate Mr. Hriday Buch for the appellant.

2. Learned advocate for the appellant contended that the plaintiff had filed a suit for setting aside the ex-parte judgment and decree dated 30.04.2007 passed against the plaintiff in Regular Civil Suit No. 38 of 2005 by the learned Principal Civil Judge, Jhalod. It is submitted that a suit challenging an ex-parte decree is not maintainable under the settled proposition of law. However, the learned Court below as well as the learned Appellate Court, ignoring the settled proposition of law, decreed the suit of plaintiffs

and set aside the judgment and decree passed in Regular Civil Suit No. 38 of 2005. The following substantial questions of law have been proposed by learned advocate for the appellant during the course of submissions:

(A) Whether a subsequent independent civil suit for cancellation of an ex parte decree is maintainable in law, without availing the remedies provided under the Code of Civil Procedure, 1908?

(B) Whether the Courts below committed a substantial error of law in holding that social acceptance or alleged treatment as a son, in the absence of any proof of valid adoption or binding custom having force of law, confers inheritance or proprietary rights in the self-acquired property of a person?

(C) Whether the First Appellate Court misapplied the ratio laid down in Civil Appeal No. 7777 of 2023 by mechanically invoking the principle that “fraud vitiates all judicial acts”, without first examining whether the foundational facts constituting fraud were pleaded and proved in the present case?

(D) Whether the learned First Appellate Court acted in violation of the mandatory requirement under Order XLI Rule 31 of the Code of Civil Procedure, 1908, by dismissing the First Appeal without framing points for determination and without independent re-appreciation of the evidence on record?

Except above, no other substantial questions of law were proposed by learned advocate for the appellant. In view of the facts and circumstances, the present Second Appeal is admitted on above substantial questions of law. Record and Proceedings to be called for before the next date of hearing.

3. As no case is made out for the grant of interim-relief, the request for the same is hereby rejected.

(D. M. DESAI,J)

MUSKAN