

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 3738 of 2026

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE DEVAN M. DESAI

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Approved for Reporting	Yes	No
		✓
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RAMESHCHANDRA DAYALJI DUDHAIYA
 Versus
 DINABEN DAYALJI DUDHAIYA

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Appearance:
 NISHITH P ACHARYA(9308) for the Petitioner(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE DEVAN M. DESAI

Date : 09/04/2026
JUDGMENT

1. The present petition is filed under Article 227 of the Constitution of India, 1950 by the petitioner-original plaintiff seeking following prayers;

“(A) YOUR LORDSHIP be pleased to admit and allow this petition;

(B) YOUR LORDSHIP be pleased to quash and set aside order dated 10.02.2026 passed below Exhibit 67 in Special Civil Suit No.02 of 2019 passed by the ld. Additional Senior Civil Judge, Khambhaliya, and further be pleased to allow the application at Exhibit 67 and prayer prayed for therein (Annexure A);

(C) Pending admission, hearing and final disposal of this Petition, Your Lordship may be pleased to stay the further proceedings of Special Civil Suit No.02 of 2019 pending before ld. Additional Civil Judge, Khambhaliya;

*(D) *****.”*

2. Heard learned advocate Mr. Nishith P. Acharya for the petitioner. Rule returnable forthwith.

3. Upon request and consent of learned advocate for the petitioner, the present petition is taken up for final hearing.

4. The brief facts of the case are as under:-

4.1. It is the case of the petitioner that petitioner-original plaintiff has filed a suit seeking declaration of two registered Wills dated 12.05.2009 and 01.11.2013 executed by Dayalji Khimji and Damyantiben Dayalji respectively be declared null and void. Petitioner further prayed for declaration that mother of plaintiff Damyantiben and sister of plaintiff Dinaben are not owners of the suit property pursuant to Wills and has also prayed for cancellation of the revenue entries mutated in the Revenue Record for the same. It is the further case of the petitioner that petitioner has prayed for declaration of 1/3 portion of the land and in alternative, the petitioner has prayed for his portion of share from the proceeds arising after the

subject property being auctioned through the Court Commissioner. The suit came to be registered as Special Civil Suit No.02 of 2019 on 17.01.2019. Issues were framed at Exhibit-36. Thereafter, suit was transferred from the Court of learned Principal Senior Civil Judge, Khambhaliya to learned Chief Judicial Magistrate, Khambhaliya. Plaintiff as well as learned advocate for the plaintiff were not able to present before the Court to produce / lead evidence, therefore, an adjournment application was tendered vide Exhibit-66. The same was rejected by closing the right to produce / lead evidence by the plaintiff. Thereafter, on 10.02.2026, an application Exhibit-67 came to be filed seeking to open right to produce / lead evidence. The same came to be rejected. An application Exhibit-69 came to be filed seeking stay of impugned order passed below Exhibit-67 for a period of 30 days with a view to challenge the impugned order before the Hon'ble Higher Court. However, the said application was rejected on 10.02.2026 by learned Additional Senior Civil Judge, Khambhaliya.

4.2. Being aggrieved and dissatisfied with the impugned order, petitioner-original plaintiff is before this Court.

5. Learned advocate for the petitioner has submitted that the order is illegal and arbitrary. It is further submitted that learned trial Court has committed the jurisdictional error in passing the order. It is further submitted that petitioner-original plaintiff was ready to proceed further in the proceedings, however, due to personal difficulty, he could not remain present and therefore, plaintiff could not file affidavit in lieu of examination-in-chief. Learned trial Court closed the right to produce / lead evidence on the unavailability of the plaintiff. It is further submitted that learned trial Court ought to have taken a lenient view considering the non-availability of the plaintiff and at least one chance should have been given to the plaintiff before closure of the right of plaintiff to produce / lead evidence. It is further submitted that plaintiff filed Exhibit-67 for re-opening right to produce / lead evidence. However, the same application was

rejected. It is further submitted that the impugned being arbitrary and based on assumption and presumption, therefore, the same is required to be quashed and set aside by this Court. Except above, no other submissions are canvassed by learned advocate for the petitioner.

6. I have considered the submissions made by learned advocate for the petitioner and perused the record. The petitioner-plaintiff has filed the suit for cancellation of two registered Wills dated 12.05.2009 and 01.11.2013 executed by his parents Dayalji Khimji and Damyantiben Dayalji respectively. Plaintiff has also prayed for 1/3 share in the suit property. From the copy of Rojkam, it appears that issues have been framed below Exhibit-36 on 02.12.2022. Thereafter, plaintiff has not remained present and did not file affidavit-in-lieu of examination-in-chief. The Rojkam indicates that since framing of issues till the date of closing of the right to lead evidence, plaintiff has only sought adjournments. The right to

file evidence was closed on 19.01.2026. The conduct of the plaintiff is evident from the record that plaintiff was not inclined to proceed with the matter and by one reason or the other delaying the proceedings. No litigant can be permitted to march over the Court proceedings, and by no reason, litigant can be permitted to delay the proceedings and make any attempt to proceed with the suit at his wishes and whims. As such, there is no illegality in the impugned order. However, taking a lenient view and with a view to give the last opportunity, the plaintiff is permitted to lead evidence. However, considering the conduct of plaintiff, such permission to lead evidence shall be subject to cost of Rs.1,00,000/- to be deposited by plaintiff before the District Legal Services Authority at Khambhaliya, Devbhoomi Dwarka within a period of 15 days from the receipt of this order.

7. It is needless to observe that failure to deposit the aforesaid cost amount within stipulated time, shall render this petition dismissed and the order impugned shall be upheld. Both parties are hereby directed to give full co-operation to the

learned Court below in expeditious hearing of the suit. Parties shall not ask unnecessary adjournment. Parties are further directed to comply with the provisions of Order 16 Rule 1 of the Code of Civil Procedure, 1908.

8. With the above observations and directions, the present petition is allowed. Rule is made absolute.

RINKU MALI

(D. M. DESAI,J)