

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/FIRST APPEAL NO. 1086 of 2025****With****CIVIL APPLICATION (FOR STAY) NO. 1 of 2025****In R/FIRST APPEAL NO. 1086 of 2025**=====
KIRAN DASHRATHBHAI PATEL**Versus****ASHOK PRABHUDAS MODI & ORS.**
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Appearance:

MR PS CHAMPANERI(214) for the Appellant(s) No. 1
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CORAM: HONOURABLE MS. JUSTICE SANGEETA K. VISHEN**and****HONOURABLE MR. JUSTICE NIRAL R. MEHTA****Date : 15/04/2025****ORAL ORDER****(PER : HONOURABLE MS. JUSTICE SANGEETA K. VISHEN)**Order in First Appeal

Mr P.S. Champaneri, learned advocate for the appellant submitted that there was a registered Will dated 04.12.2008 in favour of the family members, so also the appellant. Subsequent thereto, defendant nos.6 to 8 had come out with a theory of notarised Will dated 25.08.2009. The appellant, claiming his share through the Will, filed a suit, which came to be rejected upon Order VII Rule 11 application being filed on the ground that new cause of action has arisen in favour of the appellant.

2. It is submitted that while deciding the Order VII Rule 11 application, the learned Judge, had also touched the merits of the matter and given his findings about the rights and title of the party which, would be an impermissible exercise. Reliance is placed on

the judgment of the Apex Court in the case of *Geetha, D/o Late Krishna vs. Nanjundaswamy & Ors.* reported in 2023 (0) AIJEL-SC 72723.

3. Issue notice to the respondents, returnable on 24.06.2025.

Order in Civil Application:

Issue notice to the respondents, returnable on 24.06.2025.

(SANGEETA K. VISHEN,J)

(NIRAL R. MEHTA,J)

BINOY B PILLAI