

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SECOND APPEAL NO. 171 of 2025****With****CIVIL APPLICATION (FOR STAY) NO. 1 of 2025****In R/SECOND APPEAL NO. 171 of 2025****With****CIVIL APPLICATION (FOR ADDITIONAL EVIDENCE) NO. 2 of 2025****In R/SECOND APPEAL NO. 171 of 2025**

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BACHUBHAI BABABHAI CHAUHAN**Versus****THAKOR RANCHHODJI CHHANAJI & ORS.**

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Appearance:**MR.D K.PUJ(3836) for the Appellant(s) No. 1****MR.PRASHANT B SHARMA(7028) for the Respondent(s) No. 1,2**

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CORAM:HONOURABLE MR.JUSTICE SANJEEV J.THAKER**Date : 15/04/2025****ORAL ORDER****ORDER IN SECOND APPEAL NO. 171 of 2025**

1. The present Second Appeal has been filed, challenging the Judgment passed by the Principal District Judge, Gandhinagar on 17.03.2025 in Regular Civil Appeal No.48 of 2019 whereby the said appeal has been allowed and the Judgment and Decree passed by 4th Additional Senior Civil Judge, Gandhinagar in Special Civil Suit NO.60 of 2019 has been reversed.

2. Learned Senior Advocate Mr.Mihir Thakore with learned

advocate Mr.D.K.Puj for the appellant has mainly argued that the suit that has been filed is on the basis that the property belonged to the father of the plaintiffs and defendant no.1 who has expired on 04.02.1986 and pursuant to his death by revenue entry no.1753, the names of mother of the plaintiffs and defendant no.1 were entered in the revenue record and by way of the statement made before the revenue authorities, the plaintiffs and defendant no.1 have relinquished their rights in the property and a mutation entry to that effect has also been entered in the revenue record by way of entry nos.2176 and 2256 and therefore the name of the mother Jiviben was entered in the revenue record, pursuant thereto a Will has been executed by mother of the plaintiffs and defendant no.1 on 27.04.2004 by which the suit properties have been bequeath in the name of defendant no.2 and the appellate Court has come to the conclusion that as the defendant no.2 has not proved the Will dated 27.04.2004, it cannot be said that defendant no.2 has been bequeath the property by the mother of plaintiffs and defendant no.1. Learned Senior Advocate Mr.Mihir Thakore has relied on the cross examination of the plaintiffs wherein they have accepted the fact that the Will has been executed by the mother of the plaintiffs and defendant no.1.

3. Having heard learned Senior Advocate Mr.Mihir Thakore and having considered the plaint, documents and the judgment

produced along with separate paper book, the fact remains that the plaintiff has though knowing well that the Will has been executed by the mother of the plaintiffs and defendant no.1 has not challenged the said Will and in the cross examination of the plaintiff, the plaintiff has also admitted the fact that the Will has been executed by the mother of the plaintiffs in favour of defendant no.2.

4. The fact also remains that though the respondent herein is on caveat and the fact that the matter was placed on 11.04.2025, wherein also learned advocate Mr.D.K.Puj for the appellant on that day informed the learned advocate for the other side, that looking at the urgency of the matter, he would press for hearing of the present proceedings. The fact remains that the stay that has been granted by the Principal District Judge is also expiring today i.e. 15.04.2025. Moreover, looking to the facts of the present case, the matter requires consideration, in view of the said fact the present Second Appeal is **Admitted** on the following substantial questions of law:

“(a) Whether the Learned Principal District Judge, Gandhinagar has erred in considering the contention of Plaintiffs about capacity of mother of Plaintiffs and Defendant No. 1 to execute Will in favour of the Defendant No. 2 as the issue about genuineness of Will?”

(b) Whether the Learned Principal District Judge, Gandhinagar has erred in placing burden on Defendant No. 2 on proving the execution of the Will where the execution of the Will was admitted by the Plaintiffs?

(c) Whether the Learned Principal District Judge, Gandhinagar is right in law in holding that it is an admitted fact and proved by the Plaintiffs that the suit property is an ancestral property and they have their share in the suit property?

(d) Whether in the facts and circumstances of the case, the learned Principal District Judge, Gandhinagar is right in law in holding that even if Plaintiffs have relinquished their right in favour of their mother, then also their mother has no right to execute a Will for the entire suit property?

(e) Whether the impugned judgement and order passed by the learned Principal District Judge, Gandhinagar is contrary to the provisions contained in Section 14 of the Hindu Succession Act, 1956 which says that any property possessed by Female Hindu, whether acquired before or after the

commencement of this Act, shall be held by her as full owner thereof and not as a limited owner?”

ORDER IN CIVIL APPLICATION (FOR STAY)NO.1 of 2025

Learned senior advocate for the appellant Mr.Mihir Thakore stated that the stay which was granted by the District Court is expiring today, moreover, the fact is that the present Second Appeal has been admitted, the learned advocate for the appellant has also pressed for hearing of the present stay application in view of the fact that there is an urgency in the matter and when the matter was placed on 11.04.2025, on that day also, learned advocate Mr.Dakshesh Barot was present on behalf of the caveator and on that day also it was pressed that as the stay was expiring on 15.04.2025, there is serious urgency in the matter.

Moreover, looking to the facts of the present case also, in view of the fact that the Will has already been admitted by the plaintiffs in their cross examination, the operation, implementation of the judgment and decree passed by the Appellate Court is required to be stayed. In view of the said fact, interim relief, in terms of para no.6(b) is granted till the next date. Let the matter be listed on **06.05.2025.**

Direct service is permitted.

(SANJEEV J.THAKER,J)

URIL RANA