

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SECOND APPEAL NO. 310 of 2026****With****CIVIL APPLICATION (FOR STAY) NO. 1 of 2026****In R/SECOND APPEAL NO. 310 of 2026****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE MAULIK J. SHELAT**

=====		
Approved for Reporting	Yes	No
		✓

SHARADKUMAR PRATAPRAY PATTANI**Versus****SONI BHAGUBHAI LAKHUBHAI PATTANI & ORS.****Appearance:****VAIBHAV V GOSWAMY(9019) for the Appellant(s) No. 1****CORAM: HONOURABLE MR. JUSTICE MAULIK J. SHELAT****Date : 12/06/2026****JUDGMENT**

1. The present Appeal is filed under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as “**CPC**”), by one of the original objectors, challenging the judgment and decree dated 07.02.2026 passed by the Principal District Judge,

Amreli in Regular Civil Appeal No. 31 of 2022, whereby, it has dismissed the aforesaid appeal and confirmed the order passed by the Trial Court dated 14.08.2018 passed in Civil Misc. Application No. 11 of 2007.

2. THE SHORT FACTS OF THE CASE APPEAR TO BE THAT:

2.1. The respondent Nos. 1 and 2 herein are original applicants who preferred CMA No. 11 of 2007 under Section 276 of the Indian Succession Act, 1925 (hereinafter referred to as “*the Act, 1925*”) before the Trial Court concerned, whereby, sought probate of the Will and Codicil dated 19.05.1998 and 04.05.1999 respectively executed by testator concerned. The respondent Nos. 1 and 2 herein appear to be executors of the aforesaid Will/Codicil and thereby filed the aforesaid application. The present appellant and others though appeared before the Trial Court but did not submit any objection in any form, be it oral or written.

2.2. After following the due procedure of law and inviting objections from the general public, after recording the evidence of the applicants as well as the witnesses to the Will/Codicil as

the case may be, vide its order dated 14.08.2018, the Trial Court has allowed the application whereby granted probate as prayed for. The operative portion of the aforesaid order reads thus:

“ORDER

[1] The present application for Issuance of Probate of Will executed by late Kanjibhai Merambhai Pattani & late Kantaben Kanjibhai Pattani on dated 19/05/1998 and 04/05/1999 for movable/immovable property mentioned in the Will which more particularly described in para No. 4 of the plaint, is hereby ordered to be allowed in favour of preset applicant Nos. 1 & 3 - Soni Bhagubhai Lakhubhai Pattani & Anubhai @Anantrai Lakhubhai Pattani respectively.

[2] It is ordered that for the purpose of assessment of requisite court fee stamps, on production of valuation report, showing the exact valuation of the above properties being made through the approved Government valuer and after making assessment of court fee stamp leviable thereon and especially on on production of requisite court fee stamps before this court by the applicants, a Probate of Will in respect of above mentioned immovable property be issued on the joint name of present applicant Nos. 1 & 3 - Soni Bhagubhai Lakhubhai Pattani & Anubhai @ Anantrai Lakhubhai Pattani respectively.”

2.3. While allowing the application, the Trial Court has specifically observed in Para 3 of the said order that neither the present appellant nor other co-appellants of the first appeal have submitted any objection and opposed the application. It appears that the concerned applicant was also cross-examined and as such the evidence of the witnesses to the aforesaid Will/Codicil (Exhibit 70 and 72) went uncontroverted. Thus, the Will/Codicil were duly proved by the applicants before the Trial Court.

2.4. The present appellant with others had preferred the impugned first appeal before the Appellate Court concerned, questioning the legality and validity of the impugned order passed by the Trial Court on several grounds which were enumerated by the Appellate Court in Para 5 of its order. Nonetheless, after hearing the parties, the Appellate Court has not found any substance in the submissions of the appellant herein, thus, it has dismissed the appeal vide its impugned judgment/decreed.

3. Learned Advocate Mr. Goswami has vehemently made the following submissions in support of this appeal:

3.1. The Appellate Court has failed to exercise its power by not

appreciating the fact that there is a suspicious circumstance as regards the Will and Codicil executed by the testator and irrespective of the fact that whether the witnesses concerned were not cross-examined by the appellant, the court concerned could not have ignored the circumstances under which the Will and Codicil were alleged to have been prepared and executed by them.

- 3.2. The signatures of the common witness to the Will and Codicil, namely Vitthalbhai Purushottambhai Patel, are apparently different and that could create reasonable doubt in the mind of prudent person about the genuineness of the Will and Codicil.
- 3.3. By way of the Codicil Will, a number of other properties were added in the Will and the appellant, though residing in the house, was not given any share in the property by the testator. There is a reasonable cloud surrounded with the Will and Codicil and as such for quite a long time, none of the Will/Codicil were made known to public by the applicants – respondent Nos. 1 and 2 herein being executors of the Will/Codicil.
- 3.4. According to Mr. Goswamy, learned Advocate for the

appellant, the matter deserves consideration and the substantial question of law framed in Para 9 of the present appeal ought to be considered by this Court and accordingly the appeal may be adjudicated.

- 3.5. To buttress his arguments, Mr. Goswamy, learned Advocate, would rely upon the following decision:

(i) ***Smt. Jaswant Kaur V/s. Smt. Amrit Kaur and others, reported in (1977) 1 SCC 369.***

4. No other and further submissions are being made.
5. Heard Mr. Goswami, learned Advocate for the appellant at length.
6. At the outset, it is profitable to rely upon the Constitution Bench decision of the Hon'ble Supreme Court of India in the case of ***Chunilal V. Mehta And Sons Limited Versus Century Spinning And Manufacturing Company Limited, reported in AIR 1962 SC 1314 ; 1962 (0) AIJEL-SC 5258***, wherein, scope and ambit of the second appeal was succinctly discussed, and as such ratio of the said binding decision still holds the field. It has been held thus: -

"3. The next question is whether the interpretation of a document of the kind referred to above raises a substantial question of law. For, Art. 133(1) provides that where the judgment, decree or final order appealed, from affirms the decision of the court immediately below in any case other than a case referred to in sub-cl. (c) an appeal shall be to this Court if the High Court certifies that the appeal involves some substantial question of law. To the same effect are the provisions of sec. 110 of the Code of Civil Procedure. In the old Judicial Commissioner's Court of Oudh the view was taken that a substantial question of law meant a question of general importance. Following that view its successor, the Chief Court of Oudh, refused to grant a certificate to one Raghunath Prasad Singh whose appeal it had dismissed. The appellant, therefore, moved the Privy Council for special leave on the ground that the appeal raised a substantial question of law. The Privy Council granted special leave to the appellant and while granting it made the following observation in their judgment:

"Admittedly here the decision of the Court affirmed the decision of the Court immediately below and, therefore, the whole question turns upon whether there is a substantial question of law. There seems to have been some doubt, at any rate in the old court of Oudh, to which the present court succeeded as to whether a substantial question of law meant a question of general importance. Their Lordships think it is quite clear-and indeed it was conceded by Mr. De Gruyther-that that is not the meaning but that "substantial question of law" is substantial question of law as between the parties in the case involved."

Then their Lordships observed that as the case had occupied the High Court for a very long time and on which a very elaborate Judgement was delivered the appeal on its face raised as between the parties a substantial question of law. This case is reported in 54 Ind App 126 : AIR 1927 PC 110. What is a substantial question of law as between the parties would certainly depend upon the facts and circumstances of every case. Thus, for instance, if a question of law had been settled by the highest court of the country the question of law however important or difficult it may have been regarded in the past and however much it may affect any of the parties would cease to be a substantial question of law. Nor, again, would a question of law which is palpably absurd be a substantial question of law as between the parties. The Bombay High Court, however, in their earlier decision already adverted to have not properly appreciated the test laid down by the Privy Council for ascertaining what is a substantial question of law. Apparently the Judgement of the Privy Council was brought to their notice for, though they do not make a direct reference to it, they have observed as follows :

"The only guidance that we have had from the Privy Council is that substantial question is not necessarily a question which is of public importance. It must be a substantial question of law as between the parties in the case involved. But here again it must not be forgotten that what is contemplated, is not a question of law alone; it must be a substantial question. One can define it negatively. For instance, if there is a well established principle of law and that principle is applied to a given set of facts, that would certainly not be a substantial question of law. Where the

question of law is not well settled or where there is some doubt as to the principle of law involved, it certainly would raise a substantial question of law which would require a final adjudication by the highest Court."

One of the points which the learned judges of the Bombay High Court had to consider in this case was whether the question of the construction to be placed upon a decree was a substantial question of law. The learned Judges said in their Judgement that the decree was undoubtedly of a complicated character but even so they refused to grant a certificate u/s. 110 of the Code of Civil Procedure for appeal to the Federal Court because the construction which the Court was called upon to place on the decree did not raise a substantial question of law. They have observed that even though a decree may be of a complicated character what the Court has to do is to look at its various provisions and draw its inference therefrom. **Thus according to the learned Judges merely because the inference to be drawn is from a complicated decree no substantial question of law would arise. Apparently in coming to this conclusion they omitted to attach sufficient weight to the view of the Privy Council that a question of law is "a substantial question of law" when it affects the rights of the parties to the proceeding.** Further the learned Judges seem to have taken the view that there should be a doubt in the mind of the Court as to the principle of law involved and unless there is such doubt in its mind the question of law decided by it cannot be said to be "a substantial question of law" so as to entitle a party to a certificate under S. 110 of the Code of Civil Procedure. It is true that they have not said in so many words that such a doubt must be entertained by the Court itself but that is what we understand their

Judgement to mean and in particular the last sentence in the portion of their Judgement which we have quoted above.

*6. We are in general agreement with the view taken by the Madras High Court and we think that while the view taken by the Bombay High Court is rather narrow the one taken by the former High Court of Nagpur is too wide. **The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally, settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest Court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law.***

(emphasis supplied)

7. This Second Appeal is filed against the concurrent findings of fact recorded by both the courts below, whereby none of the courts have remotely doubted the genuineness of the Will/Codicil. As stated hereinabove, though the appellant herein with other family members had appeared before the Trial Court, but chosen not to file any objection in any form, i.e., oral or written. The witnesses to the Will/Codicil had been

examined before the Trial Court at Exhibit 70 and 72 respectively, whereby, the condition precedent of proving the Will as per Section 68 of the Evidence Act is fulfilled by the applicants being executors of the Will, to get the probate.

8. There was no grievance raised by the appellant before the Trial Court and as such, the Trial Court had no occasion to consider any suspicious circumstances which were sought to be raised before the Appellate Court by the appellant herein. It can be seen from the issues framed by the Trial Court as recorded in Para 4 of its order, the following issues have been framed:

- “1. Whether the applicants prove that the Will executed by the deceased Kanjibhai Pattani and Kantaben Kanjibhai Pattani on 19/05/1998 and the Codicil Will dated 04/05/1999, are the last Will and Codicil Will executed by them in their full sound state of mind?*
- 2. Whether the applicants are entitled to get probate of the Will as prayed for in the application?*
- 3. What order?”*

9. Thus, it can be seen that before the Trial Court, neither any objections have been raised nor any suspicious circumstances shown to the Trial Court to give its finding on such issues. Rather, after appreciating the evidence, the Trial Court answered the said issues in favour of the executors of the Will, i.e., original applicants – Respondent No. 1 & 2 herein.

10. For the first time, in the first appeal proceeding, the appellant with two other persons raised grievance and challenged the execution of the Will/Codicil on several grounds. Whereas, this appeal is filed by only one of the appellants and rest are joined as the Respondents No. 3 & 4. The Appellate Court has considered such submissions in light of the evidence available on record and made the following observations/reasons:

"14. Considering the above settled principles as laid by the Hon'ble Supreme Court and provisions of Law, the present appeal is taken on hand for its finality. I have gone through the records of the case as well as judgment of Ld. Trial Court. I have also gone through the written arguments submitted by the parties at Exh. 11 & 15 respectively. The applicants Soni Bhagubhai Lakhubhai Pattani (Applicant No. 1), Soni Amrutlal Jagjivan Pattani (Applicant No. 2) and Anubhai @ Anantrai Lakhubhai Pattani (Applicant No. 3) filed Civil Misc. Application to obtain Probate of the Will under Section 276 of The Indian Succession Act, but since Applicant No. 2, Soni Amrutlal Jagjivan Pattani, died during the proceedings, hence he was deleted per order below Exh. 44. The applicants sought probate for the following testamentary documents executed by deceased Kanjibhai Merambhai Pattani who was died on 24/11/2005 and Kantaben Kanjibhai Pattani who was died 03/08/2000 and they have executed a Will on 19/05/1998 and a Codicil on 04/05/1999. The Will disposed of the primary assets viz. Immovable Property (A): House E-37, Gujarat Housing Board, Amreli, bequeathed to grandson Ankit Kiranbhai Pattani, Immovable Property (B): Plot No. 359, Manekpara, Amreli, to be disposed of for public or charitable purposes by the appointed trustees and Movable Assets: Various Post Office monthly schemes and Bank of Baroda deposits totaling approximately Rs. 10,58,000/-. On perusal of the impugned judgment, it reveals that the Trial Court has decided both the issues simultaneously, wherein the Ld.

Trial Court has evaluated all the oral and documentary evidences led by the parties of the application in detail. The court has analyzed the following evidence and procedural steps to reach its decision:

Evidence of Execution: The court relied on the testimony of the applicants (Exh. 30) and the two attesting witnesses, Vasantraai Revashankar Raval (Exh. 70) and Vitthalbhai Parshottambhai Patel (Exh. 72).

Witness Testimony: The witnesses deposed that the testators signed the Will and Codicil in their presence while in a sound state of mind.

Public Notice: A public notice was published in the daily newspaper "Aaj Kaal" on 25/08/2007.

Lack of Objections: No objections were raised by the general public or the legal heirs (Pushpaben and Sharadkumar) who appeared through advocates but not led any evidence

Authenticity: The court found the original Will (Exh. 68) and Codicil (Exh. 69) to be the last valid testamentary wishes of the deceased.

15. After observing above, the Trial Court granted Probate in the joint names of the applicants for the movable and immovable properties described in the Will with a condition to produce a valuation report from an approved Government valuer and upon production of the requisite court fee stamps. So far as findings of the Trial Court is concerned, the Respondents (Original Applicants) sought probate as executor-trustees of the testamentary documents, wherein the Trial Court found that the deceased testators were in a sound state of mind and executed the documents without pressure. Two attesting witnesses, Vasantraai Revashankar Raval and Vitthalbhai Parshottambhai Patel, testified that the Wills were signed in their presence as per the wishes of the deceased. Public notices were affixed at various government offices and published in the newspaper "Aaj Kaal" on 25/08/2007. No objections were received from the general public or from the legal heirs who appeared during the proceedings.

16. Upon reviewing the record, this Court finds no merit in the Appellant's challenge for the reasons that, the Trial Court correctly relied on the uncontroverted testimony of the attesting witnesses (Exh. 70 and 72) who proved the execution of the Will and Codicil as required under Section 68 of the Indian Evidence Act.

The Appellants failed to demonstrate any suspicious circumstances during the trial. The change in trusteeship through the Codicil dated 04/05/1999 was logically explained by the demise of the original trustee, Soni Babubhai Merambhai. The Trial Court correctly answered all framed issues in the affirmative, noting that the application remained unchallenged despite ample opportunity for the public or heirs to object. The specific bequests, such as the house given to grandson Ankit Kiranbhai Pattani, were clearly documented and supported by the original Will produced at Exh. 68.

17. So far as controversy that arise in the the matter on hand is concerned, in legal terms, whether a property of house can be bequeathed (given away through a Will) depends entirely on the nature of the property specifically, whether it is Self-Acquired or Ancestral (Joint Hindu Family Property). The fact that a person has "lived there since birth" creates a strong emotional tie and potentially a right to residence, but it does not automatically determine ownership or the right to bequeath. Further, if the owner purchased the house with their own earnings, or received it through a Gift Deed or a Will, they have absolute ownership. The owner can bequeath this property to anyone they choose (even a stranger), completely excluding the person who has lived there since birth. The person living there is technically a "licensee" (living with permission). Upon the death of the owner, the new beneficiary of the Will can legally ask that person to vacate. But, if the House is "Ancestral Property" i.e. in Hindu Law, if the property has been passed down through four generations of male lineage without being partitioned, it is considered ancestral. The owner (Karta or a Coparcener) cannot bequeath the entire house through a Will. They can only bequeath their specific undivided share. Moreover, if the person living there is a "Coparcener" (e.g., a son or

daughter), they have a birthright to that property. The owner cannot "Will away" the resident's share. **So far as the contention of the appellants regarding that, they have been residing in the subject property since birth; specifically, Appellant No. 1 was born in the said premises on 14/05/1966 and the Appellants have maintained continuous, open, and permanent possession since 1966 is concerned, on perusal of the page No. 3 of the Will dtd. 19/05/1998 (Exh. 68), it is clearly stated in Will that, "Chhotalal Kanji resides in the Housing Board tenement and their grandson Sharad Prataprai resides in the Manekpara's house. However, upon the demise of both of them (Will maker), the occupant(s) shall be required to vacate the premises and handover peaceful possession to the Trustees whenever they so demand, without any dispute or objection."** While on perusal of Codicil dtd. 04/05/1999 (Exh. 69) which is in respect of the amounts invested in monthly income scheme in Head Post Office, Amreli and the amount lying in saving account of Bank of Baroda that were remain missed to mention in original Will as well appointment of a trustee since one of the trustee got expired. In view of the above, whatever grounds raised by the appellant in appeal memo, are not valid grounds for appeal because they have not produced any specific evidence in this regard neither before the Trial Court nor before this Appellate Court and therefore, it can be said that the Trial Court's judgment is based on sound legal principles and a thorough evaluation of the evidence, including death certificates (Exh. 56 and 57) and original passbooks (Exh. 58 to 67). There is no illegality or perversity in the findings."

(emphasis supplied)

11. At this juncture, I would like to refer to the recent decision of the Honourable Apex Court in the case of **Parvathi Nairthi (Dead) and Ors. V/s. Laxmi Nairthy (Dead) Through Lrs. And Ors., reported in 2026 LawSuit(SC) 570 : 2026 INSC 521,**

wherein, the following principles have been discussed and propounded:

"Scope of Suspicious Circumstances to Vitate a Will

[32] The contention of the Appellants that the Appellants, being the natural heirs of the testator, have been outrightly excluded without any reason and that such exclusion constitutes a suspicious circumstance surrounding the execution of the Will is legally untenable. It is well-established that mere deprivation of natural heirs, by itself, may not amount to a suspicious circumstance because the whole idea behind the execution of a Will is to interfere with the normal line of succession, as categorically held in Rabindra Nath Mukherjee and Another v. Panchanan Banerjee (Dead) by LRs and Others, 1995 4 SCC 459. However, in the case of Ram Piari v. Bhagwant and Ors., 1990 3 SCC 364. this Court also held that prudence requires reason for denying the benefit of inheritance to natural heirs and an absence of it, though not invalidating the Will in all cases, shrouds the disposition with suspicious as it does not give inkling to the mind of the testator to enable the Court to judge that disposition was a voluntary act.

[33] This brings us to the next issue i.e., what are the suspicious circumstances which may vitiate the disposition of a Will. In Indu Bala Bose & Ors. v. Manindra Chandra Bose & Anr., 1982 1 SCC 20. this Court held that-

"8. Needless to say that any and every circumstance is not a "suspicious" circumstance. A circumstance would be "suspicious" when it is not normal or is not

normally expected in a normal situation or is not expected of a normal person."

*[34] With regard to the prudence to be drawn while determining the suspicious circumstances, all the Courts have unambiguously opined that the Will in question was validly executed. It is trite to state that when the validity of a Will is to be determined, the overall terms of a Will, the intention of the testator and the surrounding circumstances have also to be seen. Mere exclusion of the natural heirs from the property of the testator, by itself, cannot be construed as a suspicious circumstance so as to invalidate a Will outrightly. **A testator is legally entitled to dispose of his property according to his own wishes, and unless the exclusion is accompanied by suspicious circumstances affecting the genuineness or due execution of a Will, such exclusion alone does not render a Will invalid.** Thus, we are of the considered view that the exclusion of the natural heirs cannot be sufficient to vitiate the Will in question, particularly when the Will clearly specifies that the testator has not done any injustice to his wife, children, or other relatives, and that he has given enough to his wife and children who are residing at Bombay."*

(emphasis supplied)

12. As can be seen from the contents of the Will, so far as the immovable property is concerned, wherein the appellant happens to be one of grandson of testator was/is residing since birth, as referred by the Appellate Court in Para 17 of its impugned judgment (reproduced above), that it was the wish of the testator in the form of the Will that upon their demise, the

occupant of the premises (appellant herein) shall be required to vacate the premises and hand over the possession to the trustee concerned whenever they so demand. It was a last wish of the testator to donate/gift this immovable property for any charitable purpose or to construct community hall of their community wherein their names be written. So far as other immovable property is concerned, as per Will, it was given to one of the other grandsons of the testator, i.e., Ankit Kiranbhai Pattani. Thus, it can be seen that testators have not excluded all family members from their self-acquired properties. The appellant has not disputed the fact that immovable property in question wherein he was/is residing was not a self-acquired property of the testator. Merely because he was/is living in the property since his birth and requires to vacate on demand by the trustees as per the terms of the Will, would not become a suspicious circumstance. There are as such no suspicions circumstances surrounding the Will, that could vitiate the Will/Codicil, rather it is sought to be created after grant of the probate.

13. The decision relied upon by Mr. Goswamy, learned Advocate, would not be applicable to the facts of the present case,

inasmuch as the facts of the case before the Honourable Apex Court are not so similar and identical to the case on hand. Each case needs to be examined as per its peculiar facts and circumstances. There was an ample opportunity available to the appellant to lead appropriate evidence and question the witness concerned about discrepancies in the signatures on the Will/Codicil, as the case may be. The witness could have explained this situation. The appellant appears to have remained silent before the Trial Court, though represented through a lawyer, and woke up from slumber after the order was passed by the Trial Court. By now, it is well-settled position of law that the Will is nothing but the last wish of the testator and the Court cannot doubt the execution of the Will on mere suspicion raised by the party without any supporting documents/evidence/circumstances. Thus, in view of the aforesaid findings of fact recorded by the Trial Court as well as the Appellate Court, the grounds raised by the appellant are unsustainable and as such, the Appellate Court has correctly not entertained the appeal.

14. It is a well-settled position of law that this Court cannot re-appreciate the findings of fact recorded by the Courts below unless it has been shown or pointed out to this Court that the

findings recorded are either perverse or contrary to the evidence on record or the case is decided against settled principles of law. It cannot be gainsaid that, merely because another view is possible, this Court should disturb the finding of fact recorded by the courts below which are otherwise neither perverse nor erroneous.

15. Lastly, it needs to be reiterated that by now, it is settled law that this Court should not interfere with the findings of fact recorded by the Courts below unless it is either patently perverse or against settled position of law. **{See: Jaichand (Dead) through Lrs. and others vs. Sahnulal and others – 2024 SCC Online SC 3864 & Rabindranath Panigrahi vs. Surendra Sahu – 2025 INSC 333 : 2025 SCC Online SC 504}**.
16. Even otherwise, considering the substantial question of law framed by the appellants/plaintiffs in this second appeal, by no stretch, it can be considered as substantial question of law.
17. Thus, in view of the aforesaid and for the foregoing reasons, I do not find any illegality committed either by the Trial Court or the Appellate Court while passing the impugned judgment and decree. As such, there is no perversity in the impugned

judgement/decreed passed by the court below which requires any interference by this Court, having limited jurisdiction to interfere while exercising its power under Section 100 of CPC, inasmuch as in the absence of substantial question of law, this Court sans its jurisdiction to interfere with the judgement/decreed impugned.

18. In light of the above, the present Second Appeal is found meritless and requires to be dismissed, which is hereby dismissed.
19. As a sequel, the Civil Application is also disposed of accordingly.

(MAULIK J. SHELAT, J)

NILESH