

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SECOND APPEAL NO. 207 of 2025****With****CIVIL APPLICATION (FOR STAY) NO. 1 of 2025****In R/SECOND APPEAL NO. 207 of 2025****With****R/SECOND APPEAL NO. 208 of 2025****With****CIVIL APPLICATION (FOR STAY) NO. 1 of 2025****In R/SECOND APPEAL NO. 208 of 2025**

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NIKHILBHAI KAMLASHANKAR RINDANI**Versus****LH OF DECD KAMLASHANKAR DURGASHANKAR RINDANI & ORS.**

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Appearance:**MR SP MAJMUDAR(3456) for the Appellant(s) No. 1****MR VARUN H MODASIA(13395) for the Appellant(s) No. 1**

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CORAM: HONOURABLE MR. JUSTICE SANJEEV J. THAKER**Date : 05/05/2025****ORAL ORDER****COMMON ORDER IN BOTH THE APPEALS:**

1. The present Appeals have been filed challenging the consolidated order passed in Regular Civil Appeal No.09 of 2023 with Regular Civil Appeal No.87 of 2004 whereby the Regular Civil Appeal No.09 of 2023 filed by original defendant no.5's counter claim has been allowed and the Civil Appeal filed by the plaintiff challenging the judgment and decree passed in Suit No.188 of 1988 has been dismissed and the First Appeal No.87 of 2004 has also been dismissed.

2. Learned advocate for the plaintiff has drawn attention of this Court to the fact that the plaintiff had filed suit whereby the plaintiff

has sought partition of the suit property more particularly the property mentioned as Schedule A and Schedule B and has sought for mesne profit with respect to the possession of the suit property. As against that, the defendant had filed counter claim at Exh.81 and trial Court had rejected the said counter claim on the ground that the dispute that the defendant had raised in counter claim was on the ground that there is relationship of landlord and tenant and, therefore, the trial Court had held that the trial Court did not have jurisdiction to hear and decide the suit. The appellate Court, while allowing the said counter claim, had held that as there is no dispute with respect to payment of rent and as defendant had also raised issue of relationship of a licensor or licensee the trial Court could not have rejected the counter claim.

3. Learned advocate for the appellant has also drawn attention of the Court to the fact that defendant, in the counter claim, has tried to rely on the Will that has been executed on 05.09.1949 by Durgashankar Rindani, who has expired on 30.05.1950, in favour of defendants and it has been argued that the trial Court and the appellate Court have come to conclusion that as Indian Succession Act would not be applicable to State of Saurashtra till 08.12.1949, there was no necessity to prove the Will as per provisions of Indian Succession Act.

4. Having heard learned advocate for the appellants and having gone through the judgment and decree, the fact remains that admitted position is that late Durgashankar Rindani has expired on 30.05.1950 i.e. when the Indian Succession Act was applicable to the State of Saurashtra. Moreover, the fact also remains that Will not being proved as per provisions of law, in view of these facts, there are

substantial questions of law involved in the present second appeal and, therefore, the present second appeals are admitted on the following substantial questions of law.

“(1) Whether the First Appellate Court has made a substantial error of law by holding that the Indian Succession Act, 1925 was not applicable at the relevant point of time when the Will dated 05.09.1949 at Exh.226 was executed by late Durgashankar Rindani ?

(2) Whether the First Appellate Court has made a substantial error of law of holding that original plaintiff had failed to prove that the Will dated 05.09.1949 at Exh.226 is illegal and invalid ?

(3) Whether the First Appellate has made a substantial error of law by misinterpreting Section 90 of Indian Evidence Act, 1872 while applying the presumption to the Will dated 05.09.1949 at Exh.226?

(4) Whether the First Appellate Court has made a substantial error of law by not correctly appreciating that the plaintiff has right of co-ownership over suit property by virtue of Sanad produced at Exh.113 to Exh.114 ?

(5) Whether the Ld. First Appellate Court has made a substantial error of Law by not appreciating that the counter claim filed by Defendant No.5 at Exh.81 can only be tried by Rent Court ?”

COMMON ORDER IN BOTH CIVIL APPLICATIONS FOR STAY:

1. Heard learned advocate for the appellants.
2. Issue Notice to the respondents returnable on 26.06.2025. Since the main appeals are admitted, interim relief in terms of para:18(B) is granted. In the meantime, the operation, implementation and execution of the judgment and decree dated 05.02.2025 passed by Principal District Judge, Jamnagar in Regular Civil Appeal 87 of 2004 and Regular Civil Appeal No.09 of 2003 are stayed till the next date of hearing. Direct service is permitted.

(SANJEEV J.THAKER,J)

MISHRA AMIT V.