

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SECOND APPEAL NO. 174 of 2014**

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SHREE BHEEMNATH MAHADEV MANDIR....Appellant(s)

Versus

H.U.F REPRESENTATIVE OF SOMWARPURI GOSWAMI-DECD. &

1....Respondent(s)

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Appearance:

MR BIPIN BHATT AGP for the Appellant(s) No. 1

BHARGAV KARIA & ASSO, ADVOCATE for the Respondent(s) No. 2

MR NILESH A PANDYA, ADVOCATE for the Respondent(s) No. 1.1 , 1.3 -
1.4 , 1.6 - 1.9

NOTICE SERVED for the Respondent(s) No. 1.2 , 1.5

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CORAM: **HONOURABLE MR.JUSTICE Z.K.SAIYED**

Date : 30/09/2016

ORAL ORDER

Heard learned advocates for both the parties.

Second Appeal is admitted considering the following substantial questions of law.

- (A) Whether both the Courts below have failed to consider that case of the defendant is barred by principle of estoppel as ownership over survey no.447 was accepted by the defendant in 1955 by letter produced at Exhibit 235?
- (B) Whether both the Courts below have erred in not considering that plaintiff was not made party in the earlier suit and hence

judgment rendered in said proceedings are not binding to the plaintiff?

- (C) Whether both the Courts below have made error in applying the rule of res-judicata as contemplated under section 11 of the Civil Procedure Code?
- (D) Whether both the Courts below have committed serious error of law in holding that the facts admitted are not proved?
- (E) Whether both the Courts below have committed serious error of law on issue of burden of proof in facts admitted by the other side?

Expedite.

Registry is directed to call for the Record and Proceedings of the case from the Trial Court.

(Z.K.SAIYED, J.)

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