

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SECOND APPEAL NO. 285 of 2025
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2025
In
R/SECOND APPEAL NO. 285 of 2025

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GAVIBEN @ GAURIBEN D/O HARIBHAI GAMARA W/O KARABHAI
BHUNDIYA

Versus
KIDIBEN D/O RAVJIBHAI THUNGA & ORS.

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Appearance:

MR. NISHIT P GANDHI(6946) for the Appellant(s) No. 1
MR MOUSAM R YAGNIK(3689) for the Respondent(s) No. 3
MR NIRAD D BUCH(4000) for the Respondent(s) No. 3

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CORAM: HONOURABLE MR.JUSTICE SANJEEV J.THAKER

Date : 17/07/2025

ORAL ORDER

Order in Second Appeal

1. The present Second Appeal has been filed challenging the judgment and decree dated 30.05.2025 passed by the Additional District Juddge, Gondal, Rajkot in Regular Civil Appeal No.11 of 2022 wherebythe appellate Court has confirmed the judgment and decree passed in SpecialCivil Suit No.67 of 2012.

2. The main grievance of the appellant herein is that the suit property belonged to her maternal grand father Ravjibhai Bharwad who has expired on 10.09.2003. The plaintiff is the daughter of Rudiben so therefore the plaintiff has filed a suit claiming right on the basis of being the legal heir as per Hindu Succession Act. The case of the plaintiff before this Court is that after the expiry of Ravjibhai Bharwad, who is maternal grand father of the plaintiff, by way of revenue entry No.1436, dated

21.07.2006, the name of the mother was not entered into revenue record. Thereafter the other daughter of Ravjibhai Bharwad i.e. Kidiben, Babiben Kuvarrben relinquished their right from the suit property in favour of Kadviben, who is the wife of deceased – Ravjibhai Bharwad on 26.03.2008 and revenue entry to that effect has also been entered by way of entry No.1569 and the maternal grand mother i.e. Kadviben executed a sale deed in favour of the husband of Babiben on 07.02.2012 and revenue entry to that effect has also entered by way of entry No.2053, and thereafter, the present Second Appeal is filed.

3. Learned advocate for the appellant has argued that the plaintiff being a Class-I legal heir and the plaintiff has not relinquished her right in the suit property, Kadviben could not have executed any sale deed in favour of the husband of Babiben, and therefore, the trial Court and the appellate Court have not properly appreciated the facts.

4. Learned advocate for the respondent argued that in view of fact that during the lifetime of Ravjibhai Bharwad, mother of the plaintiff had expired and the father of the plaintiff having remarried, the plaintiff will not have any right in the property.

5. Having heard learned advocate for the parties and having considered the judgment and decree passed by the trial Court and first appellate Court. The fact remains that the plaintiff falls under the definition of Class-I heir under the Hindu Succession Act. There is nothing on record that during the lifetime of Rudiben she has relinquished right in the suit property. In view of the same, present matter requires consideration.

6. Hence, present Second Appeal is **admitted** on the following substantial questions of law:-

(i) Whether the courts below have committed substantial error of law in holding that the appellant had no right, title, or interest in the suit property, despite her inheriting the rights as a granddaughter through a predeceased daughter, as per the provisions of the Hindu Succession Act, 1956?

(ii) Whether the courts below committed a substantial error of law in passing the impugned judgment and orders ignoring the undisputed fact that appellant has not relinquished her rights from the suit properties?

(iii) Whether the Courts below committed a substantial error of law by treating an unregistered relinquishment (Entry No.1569 dated 26.03.2008) as valid, in clear violation of Section 17(1)(b)

of the Registration Act, 1908, which mandates registration of documents affecting immovable property?

(iv) Whether the sale deed dated 07.02.2012, executed solely by Kadviben, could bind the coparcenary interest of the appellant in joint family property, in absence of a registered partition or consent of all coparceners?

(v) Whether the courts below committed a substantial error of law in holding that the sale deed was supported by valid consideration which is perverse, arbitrary and unsupported by any cogent evidence, especially when no receipts, banking proof, or acknowledgment of payment were produced?

Order in Civil Application

1. In view of the fact that the present Second Appeal is admitted, the present appellants have been protected by the first appellate Court till 15.07.2025, interim relief in terms of paragraph No.8(ii) is granted.

(SANJEEV J.THAKER,J)

Manoj Kumar Rai