

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 13599 of 2025**

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DECD SIKANDARKHAN KAMALUDDINKHAN SINCE DECD. THROUGH
HIS LHS & ORS.

Versus

KUMAR MAYURDHWAJSHINHJI VIJAYSINHJI RANA & ORS.

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Appearance:

MR DIGANT B KAKKAD(6523) for the Petitioner(s) No. 1,1.1,1.2,1.3,1.4

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CORAM:HONOURABLE MR. JUSTICE MAULIK J.SHELAT

Date : 03/10/2025

ORAL ORDER

1. Heard learned Advocate Mr. Digan B. Kakkad for the petitioners.
2. After arguing for some time, under the instructions of his client, learned Advocate Mr. Digan B. Kakkad does not invite the reasons in the matter. Nonetheless, learned Advocate Mr. Kakkad would state that pursuant to the order passed below Exhibit 63 in the Special Execution Application No. 13 of 2017, by the Executing Court, abruptly possession of the suit property was taken over by the decree holder through the help of the bailiff on 5th June 2025. Thereafter, the decree holder

has filed withdrawal pursis below Exhibit 64, which came to be accepted by the Executing Court vide its order dated 21st June 2025, thereby disposed of aforesaid execution as withdrawn.

3. So, in light of the aforesaid facts, Mr. Kakkad would submit that the right of the petitioners, who were dispossessed from the suit property, requires to be adjudicated by the Executing Court as per Order 21, Rule 99 read with 101 of Code of Civil Procedure, 1908, which is taken away and to that extent, this Court may permit the petitioners to submit an appropriate application before the Executing Court.
4. Considering the aforesaid submissions and request, it appears reasonable, requires acceptance.
5. It is open for the petitioners herein to file an appropriate application under Order 21, Rule 99 read with 101 of CPC in Special Execution Application No. 13 of 2017, though withdrawn by the decree holder, wherein, the petitioners are permitted to seek appropriate relief in accordance with law.
6. Such permission is granted to the petitioners, considering the peculiar facts and circumstances of the case, inasmuch as after taking over of possession of the suit property by the decree

holder, the withdrawal pursis was filed by the decree holder below Exhibit 64 in the aforesaid execution on 10th June 2025, without serving any copy to the judgment debtor, including the petitioners herein, who happen to be legal heirs of the third party objector namely Sikandarkhan Kamaluddinkhan.

7. As and when such application will be filed by the petitioners herein, after giving an opportunity of hearing to the decree holder, such applications shall be decided by the Executing Court in accordance with law.
8. It is made clear that this Court has neither gone into nor examined the merits of the matter. So, all the rights and contentions of the respective parties are hereby kept open to be adjudicated by the Executing Court in the said application.
9. In view of the aforesaid observations and reserving liberty in favor of the petitioners as aforesaid, the present writ application is disposed of as withdrawn. No order as to costs.

(MAULIK J.SHELAT,J)

NRP

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: PARMAR NILESHKUMAR R(HCD0068), ENGLISH STENOGRAPHER GRADE TWO CLASS TWO, at High Court of Gujarat on 03/10/2025 18:04:13