

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CIVIL REVISION APPLICATION NO. 595 of 2025**

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DIPAK SHIVSHANKAR TRIVEDI

Versus

DECD. ASHA KAMATH THROUGH LHR SANGEETA RANE

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Appearance:

MR BJ TRIVEDI(921) for the Applicant(s) No. 1

MS JIGNASA B TRIVEDI(3090) for the Applicant(s) No. 1

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CORAM:HONOURABLE MR.JUSTICE SANJEEV J.THAKER**Date : 07/10/2025****ORAL ORDER**

1. The present Civil Revision Application is filed challenging the order passed in Special Civil Suit No.291 of 2025, whereby the application passed below Exhibit-23, whereby the application of the original plaintiff under the provisions of Order VII Rule 11 of the Code of Civil Procedure, 1908 has been rejected.
2. Learned advocate for the petitioner has mainly argued that the suit that has been filed by the plaintiff is for seeking possession of the suit premises on the ground that the mother of the original defendant was a permissive user and pursuant to the sale deed that has been executed by the original owner Mr.Dholakia in favour of the present defendant on 23.04.2024, whereby the plaintiff has purchased the suit property by a registered sale deed and in view of the fact that the said permission to reside in the suit premises was given by the

erstwhile owner of the suit premises i.e. Mr.Dholakia and thereafter as the permissive user i.e. the brother of the defendant had expired, the present suit is filed for seeking possession of the suit premises and in the said suit, the defendant i.e. daughter of permissive user has filed a counterclaim and it has been argued that the said counterclaim is taken into consideration, there is no cause of action arising for the defendant to file the counterclaim on the ground of a declaration that they have become the owner of the suit property by way of adverse possession.

3. Learned advocate for the petitioner has also drawn the attention of this Court to the fact that neither any details have been stated as to when and how the ownership has become hostile to the real owner.
4. Moreover, learned advocate for the petitioner has also drawn attention of this Court to the fact that in the said suit, the earlier owner from whom the suit property was purchased was not a party and therefore the fact of claiming ownership by way of claiming hostile right in the suit property for the last 12 years would not arise and therefore also, when the application by the plaintiff to reject the counterclaim was filed, the same could not have been rejected by the Trial Court in view of the fact as neither any details have been stated in the application,

nor the claim of being owner by way of adverse possession could not have been filed against the plaintiff, in view of the fact that the plaintiff has purchased the suit property in the year 2024 and therefore the question claiming adverse possession would not arise.

5. Having heard learned advocate for the original plaintiff and having considered the counterclaim and the order passed by the Trial Court, the fact remains that the suit that has been filed by the plaintiff is for seeking possession of the suit property, on the ground that the defendant is a permissive user of the suit premises and in the said suit, the counterclaim that has been filed is on the basis of claiming hostile right of ownership for the last 12 years. The fact remains that the ownership of the suit property of the plaintiff is only in the year 2024 and therefore, the question of filing the counterclaim against the original plaintiff would not be maintainable and as on date, the original owner of the suit property who has sold the suit property to plaintiff is not on record.
6. In view of the same, the present matter requires consideration, hence issue **Notice** returnable on **04.12.2025**. The order dated 19.08.2025 passed below Exhibit 23 is stayed till the next date of hearing. Direct service is permitted **Today**.

(SANJEEV J.THAKER,J)

URIL RANA