

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CIVIL REVISION APPLICATION NO. 512 of 2023**

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NATVARBHAI KARSHANBHAI RATHOD & ANR.

Versus

VIJYABEN D/O KARSHANBHAI RATHOD W/O JAYESHBHAI MOTILAL
KAPADIYA

=====

Appearance:

DHRUVIK K PATEL(7769) for the Applicant(s) No. 1,2

MS AVNIBAHEN J KAPADIA(12623) for the Opponent(s) No. 1

RUCHIKA N KAKKAD(9493) for the Opponent(s) No. 1

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

1. The present Revision Application has been filed challenging the Order dated 09.11.2023 passed by the learned City Civil Judge, Ahmedabad in Civil Suit No.345 of 2023, whereby the application exhibit 19 under the provisions of Order VII Rule 11 of the Code of Civil Procedure, 1908 (for short “the Code”) has been rejected.
2. It is the case of the petitioner that earlier the plaintiff had filed Civil Suit No.2866 of 2015, wherein the plaintiff had challenged the registered Will executed by her mother Dhuliben Karsanbhai Rathod dated 06.01.2011 and had also sought for relief to declare that the plaintiff has 33% share in the suit property and the City Civil Court no.6 has on

20.08.2022 declared the said will dated 06.01.2011 as null and void and with respect to the issue of plaintiff's 33% right in the suit property has been rejected.

3. Learned advocate for the petitioner has drawn attention of this Court that the petitioner herein had challenged the said order by filing the First Appeal No.796 of 2024 and the same has been admitted by an order dated 27.06.2024.
4. Learned advocate for the petitioner has stated that the plaintiff has not challenged the said judgment and decree passed in Civil Suit No.2866 of 2015 whereby the Trial Court has rejected her claim and share of 33% and even relief that has been sought in the Civil Suit no.345 of 2023, the plaintiff has sought to declare that the plaintiff has 1/3rd share in the suit property and the relief for partition will be ancillary to the relief for declaration to hold that the plaintiff has 1/3rd share in the suit property.
5. Learned advocate for the petitioner has argued that once the plaintiff has not succeeded in getting the said right of share adjudicated in Civil Suit No.2866 of 2015, the plaintiff could not have filed the suit for the said relief and the judgment and decree qua the plaintiff's right to claim 33% has become final as the plaintiff has not challenged the said judgment and

decree passed by the Trial Court and therefore, the Trial Court has already rejected the said application.

6. Learned advocate for the plaintiff has argued that the issue before the Court was whether the plaintiff's suit was within a period of limitation and the fact that the plaintiff having sought for partition of the property the same could not be said to be barred by law and therefore the Trial Court has rightly rejected the said application.
7. Having heard learned advocate for the parties and having considered the application, the fact remains that in earlier round of litigation, i.e. Civil Suit No.2866 of 2015 the plaintiff had sought for relief claiming 33% share in the suit property and the same having been rejected, and in the present proceeding also, the plaintiff has sought for 1/3rd share in the suit property.
8. In view of the same, the present matter requires consideration, issue **Notice** returnable on **22.08.2025**. In the meantime, interim relief in terms of para no.8(D) is granted.

URIL RANA

(SANJEEV J.THAKER,J)