



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SECOND APPEAL NO. 389 of 2026

With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2025
In R/SECOND APPEAL NO. 389 of 2026

With
R/SECOND APPEAL NO. 395 of 2026

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FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE MAULIK J.SHELAT

Approved for Reporting	Yes	No
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HARESHBHAI RAMJIBHAI KASHIPARA & ANR.

Versus

SAVITABEN NAGJIBHAI NONDHANVADRA

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Appearance:

MR NIRAV C THAKKAR(2206) for the Appellant(s) No. 1,2

MR HITESH N ACHARYA(2302) for the Respondent(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE MAULIK J.SHELAT

Date : 14/08/2026

COMMON JUDGMENT

1. Heard Mr. Nirav C. Thakkar, learned advocate for the appellants and Mr. Hitesh N. Acharya, learned advocate for the respondent.

2. Since both these appeals are arising out of the judgment and decree passed by the Courts below in a cross suit filed by the appellants-respondent against each



other and issue involved is also inter connected, with consent of learned advocates for the respective parties, they were heard and decided together by way of this common judgment.

SUBMISSIONS OF THE APPELLANTS:

3. Mr. Thakkar, learned advocate, would submit that the Courts below have committed a serious error by not allowing the prayer made by the appellants in his suit being Regular Civil Suit No. 27 of 2013, and wrongly decreed the Regular Civil Suit No. 115 of 2013 filed by the respondent.

3.1. Mr. Thakkar, learned advocate, would submit that the appellants have proved their case beyond doubt and without appreciating the evidence on record, the Courts have committed a serious error in law by decreeing the suit in favor of the respondent.

3.2. Mr. Thakkar, learned advocate, would further submit that there are substantial questions of law



involved in this appeal, this Court may entertain the appeals.

3.3. Making the above submissions, Mr. Thakkar, learned advocate requests this Court to allow the present appeal.

SUBMISSIONS OF THE RESPONDENT:

4. *Per contra*, Mr. Hitesh Acharya, learned advocate appearing for the respondent, would submit that this Court should not entertain this appeal, which is otherwise against the concurrent findings of fact recorded against the appellants. It is further submitted that there is no error much less any gross error of law committed by the Courts below by decreeing the suit in favor of the respondent, whereas dismissed the suit of the appellants.

4.1. Mr. Acharya, learned advocate, would further submit that as per the settled position of law unless the findings of fact recorded by the Courts below is perverse and grossly erroneous, this Court should not entertain the appeals.



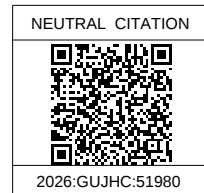
4.2. Making the above submissions, Mr. Acharya, learned advocate, requests this Court to reject the appeals.

5. No other and further submissions have been canvassed by learned advocates for the respective parties.

ANALYSIS:

6. Having heard learned Counsels for the respective parties and upon perusal of the impugned judgment passed by the Courts below in both the cases, it appears that these appeals filed against concurrent findings of fact recorded by the Courts below against appellants.

7. As such, after going through the impugned judgment in both the cases and even after appreciating the contentions of the learned advocate for the appellants, I am not able to find any perversity and/or any gross error of law committed by the Courts below in recording the findings against the appellants in both the cases. The



Courts below have concurrently held that the appellants have encroached upon the parcel of land of respondent. Even the appellants failed to prove that they are the owners of land situated at Revenue Survey No. 96/1 at Village Sardhar. When such would be the case, it cannot be said that the Trial Court and/or Appellate Court have committed any error by directing the appellants to remove the encroachment on the land of the respondent.

8. Likewise, the appellants have also failed to prove their case and having not proved that they are owner of suit land, the Courts below have correctly dismissed the suit and the appeal respectively filed by the appellants. According to my view, the Courts below have not committed any error of law, whereby they have not granted any relief to the appellants.

9. Having found no substantial questions of law involved in these appeals as framed by the appellants in memo of appeals, these appeals cannot be entertained by this Court by exercising its power under Section 100 of CPC.

10. At this juncture, I would like to refer to and rely upon the recent decision of the Hon'ble Apex Court in the case of **Russi Fisheries (P) Ltd. Vs. Bhavna Seth**, reported in **2026 SCC OnLine SC 555**, wherein it has been categorically held that this Court should not interfere with finding of fact recorded by the Courts below unless it is so perverse or grossly erroneous, and / or contrary to a settled principles of law. The relevant observations of the said decision read thus:

“31. It is settled in law that the findings of fact howsoever erroneous, cannot be reopened and disturbed in second appeal which is required to be adjudicated only upon the substantial question of law, if any, arising therein. Thus, the argument that the High Court in second appeal ought to have examined the evidence to ensure the correctness of the findings of the First Appellate Court has no legs to stand and fails.

*32. Long back in 1981, three judges of this Court in the case of **Bholaram v. Ameerchand** had ruled that even if findings of facts by courts below are wrong or grossly inexcusable that by itself would not entitle the High Court to interfere under Section 100 CPC in the absence of clear error of law. A similar view was reiterated in **Madhavan Nair v. Bhaskar Pillai (Dead) by Lrs.**, wherein it has been laid down that even if the First Appellate Court commits an error in recording a finding of fact, that itself will not be a ground for the High Court to upset the same.*

*33. In **Kashibai w/o Lachiram v. Parwatibai w/o Lachiram**, a similar proposition of law was laid down by*



this Court and it was held that the High Court cannot reappreciate the evidence and interfere with the findings of facts unless a substantial question of law or a question of law duly formulated is to be decided. The second appeal does not lie on the ground of erroneous findings of facts based on appreciation of the relevant evidence.

*35. Again, in **Kulwant Kaur v. Gurdial Singh Mann (Dead) by Lrs**, it was emphasized that the fact remains that in a second appeal, a finding of fact, even if erroneous, will not be disturbed unless it is found that it stands vitiated for want of perversity. No such case for interference has been made out in the present case.”*

(Emphasis supplied)

11. In view of the aforesaid facts and circumstances and by applying the ratio of **Russi Fisheries (P) Ltd. (supra)** to the case at hand, I am of the considered view that both these appeals are found meritless. Accordingly, both these appeals are dismissed. No order as to costs. Civil Application would not survive and hence, they are disposed of.

SHAHANAZ

(MAULIK J.SHELAT,J)