



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SECOND APPEAL NO. 565 of 2026

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE MAULIK J.SHELAT

Approved for Reporting		Yes	No
			✓

THAKOR MANGUBEN WD/O KHODAJI VIRAJI THAKOR & ANR.

Versus

THAKOR (MAKWANA) AMAJI KACHARAJI SINCE DECD THRU LH AND
ADMIN OF FAMILY KAMUBEN WD/O AMAJI KACHRAJI & ORS.

Appearance:

MR JM BAROT(143) for the Appellant(s) No. 1,2

CORAM:HONOURABLE MR. JUSTICE MAULIK J.SHELAT

Date : 11/09/2026

JUDGMENT

1. Heard Mr.J.M.Barot, learned advocate for the appellants.

2. The present Second Appeal is filed under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as "**CPC**") against the judgment and decree dated 08/06/2026 passed by the 6th Additional District Judge, Mehsana, in Regular Civil Appeal No.21 of 2018, whereby it has confirmed the judgment and decree dated 01/07/2014 passed by the Principal Senior Civil Judge, Vijapur, in Regular Civil Suit No.56 of 2007.

3. The appellants herein are the original plaintiffs (hereinafter referred to as "**the plaintiffs**"), whereas the



respondent No.1.1 to 1.4.4 are the heirs and legal representatives of the original defendant No.1 and respondent No.2 is the original defendant No.2 (hereinafter referred to as **“the defendants”**). For the sake of convenience, herein after, as far as possible, the parties will be referred as per their original position in the suit.

BRIEF FACTS OF THE CASE :

4. Regular Civil Suit No.56 of 2007 filed, seeking a declaration that the suit property is an ancestral property of the plaintiffs and they are having a one-third share. The defendants objected to such claim and filed their written statement. The parties appear to have led their documentary and oral evidence before the Trial Court. The Trial Court appears to have framed the following issues and answered them accordingly.

“ISSUES

- 1. Whether plaintiffs prove that, Suit property is ancestral property and they are having their 1/3 share in the Suit property?*
- 2. Whether plaintiffs prove that, Suit is filed within limitation?*
- 3. Whether defendants prove that, their father has acquired the Suit property by paying necessary amount?*
- 4. Whether the plaintiffs prove that, they are entitled to get relief as prayed for?*
- 5. What order and decree?*

(6) My findings for the above issues are as under:-

Issue No.1 In negative.

Issue No.2 In negative.



Issue No.3 : In affirmative.

Issue No.4 : In negative.

Issue No.5 As per final order.”

4.1 Since the plaintiffs failed to prove that the suit property is an ancestral property and they have a right to claim a 1/3rd share in the property, the Trial Court, vide its aforesaid judgment, dismissed the suit.

4.2 Feeling aggrieved and dissatisfied with the aforesaid judgment and decree passed by the Trial Court, the plaintiffs preferred Regular Civil Appeal No. 21 of 2018, which also met with the same fate; hence, *vide* its impugned judgment and decree dated 08/06/2026, the Appellate Court dismissed the aforesaid Appeal.

SUBMISSIONS OF THE APPELLANTS:

5. Mr.Barot, learned advocate appearing for the plaintiffs, would submit that the courts below have committed a serious error in law by not appreciating the fact that the plaintiffs have successfully proved on record that the suit property was an ancestral property and from the documentary evidence, more particularly the agreement executed between the parties (Exhibit 56), it was proved on record that the plaintiffs' predecessor had right, title, and interest in the suit property, thereby the plaintiffs also have a 1/3rd share in the suit property.

5.1 Mr.Barot, learned advocate would further submit that merely because the witness to the aforesaid document was not examined by the plaintiffs, it would not mean that



document was not proved on record when it was exhibited.

5.2 Mr.Barot, learned advocate would further submit that the revenue proceedings instituted by the defendants against the plaintiffs culminated into an order passed by the Joint Secretary (Disputes), wherein it was only observed that to prove the title, the party has to approach the Civil Court; and as such, the defendants failed to prove their exclusive ownership over the suit property.

5.3 By making the above submissions, Mr.Barot, learned advocate would request this Court to admit this appeal on the substantial questions of law framed along with the memo of the second appeal.

ANALYSIS:

6. Having heard Mr.Barot, learned advocate for the appellants and upon perusal of the impugned judgment and decree passed by the courts below, *prima facie*, this Second Appeal is filed against the concurrent findings of fact recorded by the courts below against the appellants-plaintiffs. The Trial Court as well as the Appellate Court had thoroughly examined the issues framed and answered them against the plaintiffs, as the plaintiffs failed to prove on record that the suit property was an ancestral property wherein, they had a 1/3rd share.

7. The entire basis of such claim of the plaintiffs was upon the agreement executed between the parties produced at Exhibit 56. Nonetheless, to prove such agreement, neither any witness nor anyone else was examined by the plaintiffs to



prove its execution. It is a settled position of law that mere production and exhibition of the document would not, by itself, amount to proof of the document or its contents. On the other hand, the defendants brought on record the fact that after the Gujarat Devsthan Inams Abolition Act, 1969, the suit property stood in favour of the State from the original owner and upon deposit of six *pats* by the defendants as per the Gujarat Tenancy and Agricultural Lands Act, 1948, by virtue of tenancy right, their names were entered into the revenue record and they had become owner. So far as the entry mutated in favour of the predecessors of the plaintiff is concerned, i.e., Entry No.5298, this entry was reversed by the higher revenue officials and thereby, it was rejected. Even otherwise, on the strength of revenue entries, the plaintiffs cannot prove that it was owned by their predecessor.

8. At this stage, it would be apt to refer to and rely upon the following decisions of the Hon'ble Apex Court regarding the scope and ambit of the power of this Court while adjudicating the second appeal filed under Section 100 of CPC.

8.1 In the case of **Russi Fisheries (P) Ltd. vs. Bhavna Seth - 2026 SCC OnLine SC 555**, it has been categorically held by the Hon'ble Apex Court that this Court should not interfere with findings of fact recorded by the Courts below unless they are so perverse or grossly erroneous, and / or contrary to a settled principle 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 vs. Ameerchand – (1981) 2 SCC 414** 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. - (2005) 10 SCC 553**, 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 – (1995) 6 SCC 213**, 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 – AIR 2001 SC 1273**, 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)

8.2 It is also profitable to refer to the decision of the Hon'ble Apex Court in the case of **Jaichand (Dead) through Lrs and Others v. Sahnulal and Another - 2024 SCC OnLine SC**



3864, whereby, the Hon'ble Apex Court held thus:

*"25. In **Kshitish Chandra Purkait v. Santhosh Kumar Purkait** reported in (1997) 5 S.C.C. 438), this Court held that in the Second Appeal, the High Court should be satisfied that the case involves a substantial question of law and not mere question of law.*

*27. This Court in **Kondira Dagadu Kadam v. Savitribai Sopan Gujar** reported in AIR 1999 S.C. 2213 held:-*

"The High Court cannot substitute its opinion for the opinion of the first Appellate Court unless it is found that the conclusions drawn by the lower Appellate Court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the Apex Court, or was based upon inadmissible evidence or arrived at without evidence."

28. It is thus clear that under Section 100, C.P.C., the High Court cannot interfere with the findings of fact arrived at by the first Appellate Court which is the final Court of facts except in such cases where such findings were erroneous being contrary to the mandatory provisions of law, or its settled position on the basis of the pronouncement made by the Apex Court or based upon inadmissible evidence or without evidence."

(Emphasis supplied)

9. After taking note of the aforesaid principle, and considering the aforesaid facts, so also after having minutely gone through the impugned judgment and decree passed by the courts below, I am unable to agree with the submissions advanced by Mr.Barot, learned advocate for the appellants. Rather, the judgments passed by the courts below were upon correct appreciation of facts and law. As such, I could not find any perversity and/or any finding of fact recorded by the



courts below is grossly erroneous, when they reached to their conclusion.

CONCLUSION :

10. In view of the foregoing reasons, I am of the considered view that the appellants have failed to make out any ground for interference by this Court under Section 100 of the CPC, inasmuch as no substantial question of law is involved in the matter, though framed along with the memo of this second appeal.

11. In view of the foregoing conclusion, the present appeal is found to be without any merit; accordingly, it is dismissed *in limine*. Consequently, the judgments and decree passed by the courts below are hereby confirmed. No order as to costs. Decree shall be drawn accordingly.

GAURAV J THAKER

(MAULIK J. SHELAT, J)