



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 11065 of 2026

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE MAULIK J.SHELAT

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Approved for Reporting	Yes	No
		✓
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HEIRS OF DECEASED LALLUBHAI KESHAVBHAI PATEL & ORS.

Versus

HEIRS OF DECEASED LALLUBHAI KESHAVBHAI PATEL & ORS.

Appearance:

MR HENIL M SHAH(10677) for the Petitioner(s) No. 1,1.1,1.1.1,1.1.2,1.1.3

MR YOGESHKUMAR PATEL(2601) for the Petitioner(s) No.

1,1.1,1.1.1,1.1.2,1.1.3

CORAM:HONOURABLE MR. JUSTICE MAULIK J.SHELAT

Date : 11/08/2026

ORAL JUDGMENT

1. Heard Mr. Henil M. Shah, learned advocate for the petitioners at length.

2. This petition is filed under Article 227 of the Constitution of India seeking the following relief:-

“(a) A writ of certiorari or any other appropriate writ, order or direction may kindly be issued quashing and setting aside the order below application, Exh. 27 dated 29-6- 2026 at Annexure -'F' passed by Principal Senior Civil Judge, Olpad Dist Surat in Regular Civil Suit No. 170



of 2024, with costs throughout.

(b) Pending hearing and final disposal of the present Special Civil Application, the operation, implementation and execution of the order below application, Exh. 27 dated 29-6-2026 at Annexure -'F' passed by Principal Senior Civil Judge, Olpad Dist Surat in Regular Civil Suit No. 170 of 2024, may kindly be ordered to be stayed.

(c) Any other and/or further relief that may be deemed necessary in the interest of justice may kindly be granted.”

3. At the outset, Mr. Shah, learned advocate would submit that the issue No.4 framed by the Trial Court ought to have been struck out, inasmuch as no burden can be cast upon the plaintiff to prove that the suit is within limitation, especially when by way of issue No.3, that burden is already put on the shoulder of the defendant, who has disputed the fact that the suit is not within limitation.

3.1 Mr. Shah, learned advocate would submit that when the burden was upon the defendant to discharge so far as the suit is not filed within limitation is concerned, the same burden cannot be put on the shoulder of the plaintiff to prove that the suit is within limitation.

3.2 According to Mr. Shah, learned advocate, the Trial Court has committed a serious error in law by not entertaining the impugned application and thereby, not striking out issue No.4.

3.3 Making the above submissions, Mr. Shah, learned advocate, would request this Court to allow this petition.

4. Having heard Mr. Shah, learned advocate, at length and on



perusal of the plaint as well as the issues framed by the Court, *prima facie*, the petitioner who happens to be the plaintiff of the suit in paragraph-5 of the plaint has specifically averred that the suit is filed within limitation as the suit is for partition and there is a continuous right. The defendant appears to have disputed this fact in their written statement. Accordingly, the Trial Court has framed issue Nos.3 & 4, thereby, cast the burden upon the defendant as well as the plaintiff to prove as to whether the suit is beyond limitation or within the limitation, as the case may be.

5. The petitioner vide its impugned application requested the Trial Court to strike out issue No.4, whereby the burden was cast upon the plaintiff to prove that the suit is within limitation. The Trial Court, upon appreciation of the pleadings of the parties, more particularly the plaint, has turned down such a request of the petitioner.

6. Having gone through the aforesaid facts and circumstances of the case, I am of the considered view that the impugned order cannot be said to be either perverse, grossly erroneous, and/or contrary to the settled principles of law. It is not the case of the petitioner- plaintiff that they have not averred that the suit is within limitation; rather, in paragraph-5 of the plaint, given a heading of "limitation", the plaintiff has explained how the suit is within limitation. Such a fact is specifically denied by the defendant, whereby the issue would definitely arise as to whether the suit is filed within limitation or not, for which the burden is cast upon the plaintiff as well as the defendant.

7. Apart from the aforesaid, as per Section 3 of the Limitation Act, 1963, irrespective of any defense set up by the defendant with regard to limitation, it is the duty of the Court to examine such an issue independently.



8. Thus, according to my view, considering the aspects of the case and provisions of law, the impugned order cannot be said to be illegal, or any gross irregularity committed by the Trial Court while rejecting the impugned application.

9. It is a settled position of law that a mere error of law is not a ground to interfere with the order passed by the Trial Court while exercising its powers under Article 227 of the Constitution of India [See:- **(i) Sameer Suresh Gupta Through PA Holder Vs. Rahul Kumar Agarwal : 2023 (9) SCC 374**, (ii) **M/s Garment Craft Vs. Prakash Chand Goel : 2022 (4) SCC 181**].

10. In view forgoing discussion and reasons, I do not find any merit in this petition, which is required to be dismissed, and it is hereby dismissed. No order as to costs.

Lalji Desai

(MAULIK J.SHELAT,J)