



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 11151 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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CHATUR SAMJIBHAI KORADIA
Versus
CHATURBHAI VIRJIBHAI GORASVA & ORS.

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Appearance:
MR MEET D KAKADIA FOR MR JAY B AMBANI(13896) for the Petitioner(s)
No. 1

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CORAM: HONOURABLE MR. JUSTICE MAULIK J.SHELAT

Date : 13/08/2026

JUDGMENT

1. Heard Mr. Meet D. Kakadia, learned advocate appearing on behalf of Mr. Jay B. Ambani, learned advocate for the petitioner.

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

“(A) YOUR LORDSHIPS may be pleased to issue a writ of Certiorari and/or any other appropriate writ, order or direction quashing and setting aside the impugned Orders dated 07.07.2026 passed by the learned Principal Civil Judge Vinchhiya below Exhibit-84 and 85 in Regular Civil Suit No.09 of 2024 (ANNEXURE-A and B), and be



further pleased to allow the applications below Exhibit-84 and 85 (ANNEXURE D & E) in the interest of justice.

(B) Pending the admission, hearing and final disposal of the present petition, YOUR LORDSHIPS may be pleased to stay the operation, implementation and execution of the proceedings of Regular Civil Suit No.09 of 2024 (ANNEXURE-A) in the interest of justice.

(C) Pass any such other and/or further orders that may be thought just and proper, in the facts and circumstances of the present case.”

SHORT FACTS:

3. The petitioner herein is an original plaintiff, whereas the respondents herein are original defendants. The oral examination of the plaintiff came to be over on 17.09.2025 and the suit is pending at the stage of cross-examination of the defendant. At that stage, during midst of the cross-examination of the defendant, the plaintiff filed the impugned application below Exh. 84, thereby requested the Trial Court to reopen his right to lead evidence.

3.1. After hearing the parties, the Trial Court, vide its impugned order 07.07.2026, rejected the aforesaid application. The plaintiff, by way of the impugned



application, requested the Trial Court that since the defendant has not submitted the requisite documents though agreed to produce during cross-examination and complaint given by the defendant to the Collector concerned under Gujarat Land Grabbing(Prohibition) Act, 2020 (hereinafter referred to as “***the Land Grabbing Act***”), which was filed against son of the plaintiff, the plaintiff may be permitted to examine the witness for which his right to lead evidence may be reopened.

3.2. The Trial Court while rejecting the impugned application as specifically observed that the plaintiff was having enough time and opportunity to examine the witness, inasmuch as the Collector concerned passed an order on 26.05.2025 in regards to complaint filed by the defendant against the son of the plaintiff, whereas the plaintiff's evidence was closed on 17.09.2025. It is also observed that vide its order dated 05.05.2026 passed below Exh. 81, it has already rejected the application filed by plaintiff, under Order 11 Rule 12 of CPC and the said



order was not challenged.

3.3. It is to be noted here that the aforesaid order dated 05.05.2026 passed below Exh. 81 by the Trial Court is now challenged by the petitioner by way of writ petition being Special Civil Application No. 11152 of 2026. Nonetheless, after arguing for some time, learned advocate for the petitioner does not press the said writ petition. Thus, the aforesaid order dated 05.05.2026 passed by the Trial Court below Exh. 81 becomes final.

3.4. With this background of facts, the present petition is filed.

SUBMISSION OF PETITIONER:

4. Mr. Kakadia, learned advocate, would submit that no prejudice would have been caused to the defendant if the Trial Court had allowed the plaintiff's impugned application. It is submitted that the Trial Court ought to have exercised its power under Section 151 of CPC in favor of the plaintiff, whereby the plaintiff ought to have



been given one opportunity to establish on record by bringing the copy of complaint filed by the defendant against the son to the Collector, Rajkot under the Land Grabbing Act, wherein it would have come on record that the plaintiff is in possession since long.

4.1. Mr. Kakadia, learned advocate, would further submit that the principle laid down by the Honorable Apex Court in the case of ***K.K. Velusamy v. N. Palaanisamy*** reported in ***(2011) 11 SCC 275*** although cited before the Trial Court, but not at all considered. It is also submitted that as per the decision of Honorable Apex Court in the case of ***M. L. Sethi v. R. P. Kapur*** reported in ***(1972) AIR SC 2379***, the Trial Court ought to have allowed the plaintiff to bring on record the material documents which can decide the *lis* between the parties.

4.2. Lastly, Mr. Kakadia, learned advocate, would submit that this Court may correct the mistake committed by the Trial Court by exercising its power under Article 227 of the Constitution of India.



ANALYSIS & REASONS:

5. Having heard Mr. Kakadia, learned advocate at length and upon perusal of the impugned application and so also the impugned order, *prima facie*, it would emerge that the impugned application was filed by plaintiff below Exh.84 under Section 151 of CPC, inasmuch as there is no other provision under CPC whereby the plaintiff can request the Trial Court to reopen his right to lead evidence since the suit reached at the stage of cross-examination of defendant.

5.1. It is not in dispute that during the midst of cross-examination of the defendant, at first time, plaintiff filed an application below Exh. 81 under Order 11 Rule 12 of CPC and the same was rejected by Trial Court vide its order dated 05.05.2026 and thereafter, this impugned application filed. As observed above, the aforesaid order dated 05.05.2026 is now become final, as the said order came to be challenged by way of Writ Petition being



Special Civil Application No. 11152 of 2026, but today itself, the same was withdrawn.

5.2. It can be seen from a bare reading of the impugned application that the plaintiff wants to examine the officials of the Collector, Rajkot to bring on record the complaint filed by the defendant against his son under the Land Grabbing Act and other documents where from he can prove that as per the complaint as well, the plaintiff is in possession of suit property since long. The suit is filed seeking a declaration that the defendant has no right to disturb the possession of plaintiff without due process of law and also have no right to enter into suit land.

6. The Trial Court appears to have considered the aforesaid facts and circumstances and having found that the order passed by the Collector, Rajkot, on 26.05.2025 upon the complaint filed by the defendant, this fact was well within the knowledge of the plaintiff. If the plaintiff wishes to examine any witness from the office of the Collector, there was an ample opportunity available to the



plaintiff to examine such witness as his evidence was closed by the Trial Court on 17.09.2025. It is also observed by the Trial Court that the impugned application is filed just to fill the lacuna and it is nothing but an attempt on the part of the plaintiff to delay the trial of the suit.

6.1 It is not even a remote case of the petitioner that during course of his evidence, he was not granted adequate opportunity to lead his evidence. It is not even disputed that order of Collector was dated 26.05.2025 and petitioner's evidence was closed on 17.09.2025. At the relevant time, it was within knowledge of the petitioner-plaintiff that respondent-defendant had file complaint against his son under the Land Grabbing Act, then he could have easily examined the officials of the Collector, Rajkot. There is no explanation forthcoming from side of the petitioner in this regard in the impugned application as to why he could not examined the official except blamed the respondent who did not submit a copy of the complaint despite showing willingness during his



cross-examination. It is well settled that plaintiff cannot rely upon the lacune or weakness of the defence, rather the plaintiff will have to prove his case on strength of his evidence.

6.2. Nothing more to add, as I am in complete agreement with reasons assigned by the Trial Court in its impugned order and found no gross error of law committed by the Trial Court while rejecting the impugned application, which can be corrected by this Court.

7. Mr. Kakadia, learned advocate, has placed heavy reliance upon the decision of **K.K. Velusamy (supra)**, even in the very decision in Para-16, the Honorable Apex Court has observed and held thus:

“16. We may add a word of caution. The power under section 151 or Order 18 Rule 17 of the Code is not intended to be used routinely, merely for the asking. If so used, it will defeat the very purpose of various amendments to the Code to expedite trials. But where the application is found to be bona fide and where the additional evidence, oral or documentary, will assist the court to clarify the evidence on the issues and will assist in rendering justice, and the court is satisfied that non-production earlier was for valid and sufficient reasons, the court may exercise its discretion to recall the witnesses or permit the fresh evidence. But if it does so, it should ensure that the process does not become a protracting tactic. The court should firstly award appropriate costs to the other party to compensate for the delay. Secondly the court should take up and complete the case within a fixed time schedule so that the delay is



avoided. Thirdly if the application is found to be mischievous, or frivolous, or to cover up negligence or lacunae, it should be rejected with heavy costs. If the application is allowed and the evidence is permitted and ultimately the court finds that evidence was not genuine or relevant and did not warrant the reopening of the case recalling the witnesses, it can be made a ground for awarding exemplary costs apart from ordering prosecution if it involves fabrication of evidence. If the party had an opportunity to produce such evidence earlier but did not do so or if the evidence already led is clear and unambiguous, or if it comes to the conclusion that the object of the application is merely to protract the proceedings, the court should reject the application. If the evidence sought to be produced is an electronic record, the court may also listen to the recording before granting or rejecting the application.”

(Emphasis supplied)

7.1. Later in point of time, even taking note of the ratio of **K. K. Velusami (supra)** the Honorable Apex Court in the case of **M/s. Bagai Construction v. M/s. Gupta Building Material Store** reported in **(2013) 14 SCC 1** the Honorable Apex Court held thus:

“[11]..... Though power under Section 151 can be exercised if ends of justice so warrant and to prevent abuse of process of the court and Court can exercise its discretion to permit reopening of evidence or recalling of witness for further examination/cross-examination after evidence led by the parties, in the light of the information as shown in the order of the trial Court, namely, those documents were very well available throughout the trial, we are of the view that even by exercise of Section 151 of CPC, the plaintiff cannot be permitted.

[12] After change of various provisions by way of amendment in the CPC, it is desirable that the recording of evidence should be continuous and followed by arguments and decision thereon within a reasonable time. This Court has repeatedly held that courts should constantly endeavour to follow such a time schedule. If the same is not followed, the purpose of amending several provisions in the Code would get defeated. In fact, applications for adjournments, reopening and recalling are interim measures, could be as far as possible avoided and only in compelling and acceptable reasons, those applications are to be

considered. We are satisfied that the plaintiff has filed those two applications before the trial Court in order to overcome the lacunae in the plaint, pleadings and evidence. It is not the case of the plaintiff that it was not given adequate opportunity. In fact, the materials placed show that the plaintiff has filed both the applications after more than sufficient opportunity had been granted to it to prove its case.....”
(Emphasis supplied)

7.2. This view again recently fortified by the Hon’ble Apex Court in the case of **K. Bharathamma v. Bandaru Sakku Bai & Ors.** reported in **(2026) INSC 795** which reads thus:

“6.2. It is not permissible that the evidence by a party already led and settled is allowed to be improved by reopening the evidence or recalling the witness under this Order of CPC. The provision is not a tool whereby a party can embellish the evidence, fill in the omissions therein or refine the evidence at a later stage.

6.3 Also, it is no valid yardstick to be employed for permitting reopening the evidence or allowing recalling of a witness that such a course would not prejudice any party. It is no valid ground for invoking the powers under Order XVIII Rule 17, CPC that a party to the proceedings will not be prejudiced. Not the absence of prejudice but an independent justification must exist before the court can legitimately take resort to Order XVIII Rule 17, CPC.

(Emphasis supplied)

7.3. Thus, in view of above, it is now well settled that the power under Section 151 of CPC cannot be routinely exercised by the Court and such type of application cannot be entertained by the Court as to cover up the negligence or lacuna; rather, such type of application is



required to be rejected with heavy cost.

8. Having considered the ratio of the decisions supra and keeping in mind the facts and circumstances of the present case, I am of the considered view that the plaintiff just wants to fill the lacuna which remained in his evidence and to cover up such negligence on his part, he came with the impugned application. According to my view, such type of application should not be entertained by the Trial Court, otherwise to fill the lacune in the evidence, any party may come at any stage with such type of application and ultimately the Trial gets delay.

9. It is now settled position of law that this Court while exercising its power under Article 227 of the Constitution of India should not interfere with an impugned order passed by the Trial Court merely because some error of law committed unless it is shown to this Court that there is a gross error of law committed and or an impugned order is either perverse or grossly erroneous, this Court

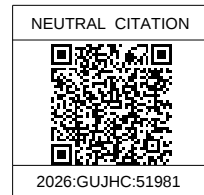


should not routinely interfere with an impugned order.
[See - ***Sameer Suresh Gupta (Through POA holder) vs. Rahul Kumar Agarwal***, reported in **(2013) 9 SCC 374** and ***Garment Craft v. Prakash Chand Goel***, reported in **(2022) 4 SCC 181]**

10. In view of the foregoing discussions and reasons, I am of the considered view that there is no gross irregularity or illegality and/or any perversity found in the order impugned in this writ petition.

11. At last, I would like to observe that such type of petition requires to be dismissed with cost, but Mr. Kakadia, learned advocate, would request this Court not to impose any cost as there is no deliberate attempt on the part of the petitioner to delay the trial of the suit, which is of the year 2024. Having considered his request, I do not wish to impose any cost upon the petitioner.

12. Thus, the upshot of the aforesaid would lead to only



one conclusion that this petition is found meritless and accordingly it is dismissed. No order as to costs.

SHAHANAZ

(MAULIK J.SHELAT,J)