

Reserved On : 27/01/2026

Pronounced On : 04/02/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SECOND APPEAL NO. 222 of 2022****With****CIVIL APPLICATION (FOR STAY) NO. 1 of 2022****In R/SECOND APPEAL NO. 222 of 2022****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE J. C. DOSHI**

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Approved for Reporting	Yes	No

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HANSABEN W/O JIVAN BARIYA**Versus****SAKARBHAI RAMBHAI SOLANKI & ORS.**

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Appearance:**MR. BHAUMIK DHOLARIYA(7009) for the Appellant(s) No. 1****MR TUSHARKUMAR R UPADHYAY(9812) for the Respondent(s) No. 1****MS SNEHA A JOSHI(2156) for the Respondent(s) No. 1****NOTICE SERVED for the Respondent(s) No. 2,3,4**

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CORAM:HONOURABLE MR. JUSTICE J. C. DOSHI**CAV JUDGMENT**

1. This second appeal u/s 100 of the Code of Civil Procedure, 1908 (in short "the Code") at the instance of the original plaintiff challenges concurrent findings of fact arrived at by the learned Courts below, whereby firstly, the learned Addl. Senior Civil Judge, Una by judgment and decree dated

3.4.2021 dismissed the suit. Regular Civil Appeal No.7 of 2021 filed by the appellant – plaintiff was also dismissed by the learned 2nd Additional District Judge, Una by judgment and decree dated 9.3.2022. Both the judgment and decree have been questioned by the appellant – plaintiff inter alia raising following questions as substantial questions of law.

“i. Whether the Court(s) below erred in holding that registered deed / document is mandatory for relinquishment / waiver of right?

ii. Whether in the facts and circumstances of the case, while deciding the title of the property in the civil suit, the Courts below erred in heavily relying upon the Judgment passed by the High Court in revenue entry proceedings?

iii. Whether the revenue entry of family settlement / waiver of right has no evidentiary value?

Iv Whether in the facts and circumstances of the case, the Court(s) below erred in holding that on account of withdrawal of previous suit by the Defendant No.2, the Defendant No.1 has no dispute with respect to title of the suit land and therefore the Plaintiff is not entitled to get the reliefs as prayed in the plaint?

v. Whether the Court(s) below erred in holding that the Plaintiff is not the bonafide purchaser of the suit land?

vi. Whether the Id. Lower Appellate Court has erred in not framing proper issues for determination and has mechanically upheld the Judgment of Id. Trial Court without appreciating the evidences on record in its true perspective?”

2. For the sake of convenience and brevity, parties are

referred to as per their original status before the learned trial Court.

3. The factual matrix required notice in nutshell are that the plaintiff filed suit for declaration and cancellation of sale deed executed on 7.5.1990 registered at Sr No.556 by Rajiben Jadav through her irrevocable power of attorney Vasantlal Gokalbhai in favour of defendant No.1 Sakarbhai Solanki and to declare that the plaintiff is the owner and occupier of the land bearing survey No. 179/1 admeasuring 1 acre 3 guntha of Tal: Una (in short "suit land"). The plaintiff 's case is based on the fact that previously, the suit land was in name of Rajiben. Defendant No.2 Valabhai Jadav is son of Rajiben. The revenue entry was mutated in favour of Valabhai Jadav on 5.9.1975 being mutation entry No.672, which assigned the title in favour of Valabhai Jadav, It is further the case of the plaintiff that the plaintiff being *bona fide* purchaser of the suit land purchased the same on 18.4.2009 by executing registered sale deed No.1005 from defendant No.1 Valabhai and on the premises of the said execution of the sale deed, the plaintiff became the owner and occupier of the suit land.

3.1 The aforesaid suit was tried by the learned trial Court, who, after fixing the issues and permitting both the parties to lead evidence, ultimately dismissed the suit by judgment and decree impugned in this second appeal.

3.2 Being aggrieved, the plaintiff preferred the Regular Civil Appeal before the learned appellate Court. The learned appellate Court after hearing both the parties dismissed the

Regular Civil Appeal.

3.3 Being further aggrieved, the plaintiff is before this Court.

4. I have heard learned advocate Mr. Bhaumik Dholariya for the plaintiff and learned advocate Ms. Sneha Joshi for the respondent No.1. Rest of the respondents though served, did not remain present.

5. To swell up the questions of law framed by the plaintiff, learned advocate Mr. Dholariya, referring to the judgment in case of **Subraya M.N. Vs. Vittala M.N. and others, (2016) 8 SCC 75**, would submit that the promulgation entry of the suit land and other parcels of land were mutated in the revenue records in name of deceased Ahir Bai Sona Bhagvan vide promulgation entry No.2 on 21.1.1951. He would further submit that deceased Bai Sona gave the suit land and other parcels of land to her daughter Rajiben, whereby two other sisters namely, Chhavarben and Puniben relinquished their right over the suit land and other parcels of land. Said fact is recorded in Mutation Entry No.665 dated 27.6.2025. He would further submit that likewise, Rajiben in her lifetime, assigned the suit land and other parcels of land in favour of her son Valabhai and entry No.672 is mutated in the revenue records on 5.9.1975. He would further submit that this mutation entry No.672 was pursuant to family settlement took place between the parties. The family settlement since was to ally the dispute between the parties has to be adhered to in its true sense by the Court of law. He would further submit that after 5.9.1975, vide mutation entry No.672, Valabhai Jadav

became the absolute owner of the suit land. Thus, subsequent thereto, Rajiben had no right or authority whatsoever in the suit land to sell the same through power of attorney and therefore, such sale has no legality value in the eyes of law.

5.1 Learned advocate Mr. Dholariya would further submit that the learned Courts below failed to consider this issue being survived on the ground that revenue entry mutated in favour of defendant No.1 pursuant to the registered sale deed executed by Rajiben has been approved by this Court in writ proceedings. He would further submit that revenue entries/mutation entries admittedly are for fiscal purpose. Revenue entry/mutation entry does not create nor extinguish title. It is only civil Court which has authority to decide the title of the immovable property and the revenue authority has to follow the decision of the civil Court.

5.2 Stretching argument further, learned advocate Mr. Dholariya would submit that in view of above, since the year 1975, the suit land stands in name of defendants Valabhai Jadav, Rajiben, who has relinquished her right from the suit land and thus, she had no whatsoever right, authority or title to execute sale deed. This aspect has been totally ignored by the learned Courts below.

5.3 Lengthening the argument further, learned advocate Mr. Dholariya would submit that the learned appellate Court erred in considering that the registered deed or document is mandatory requirement of the right as well as failed to consider the evidentiary value of the revenue entry decided

since 1975 in favour of the plaintiff and further failed to mark that the plaintiff is a bona fide purchaser of the suit land.

5.4 Upon above submissions, learned advocate Mr. Dholariya requests the Court to admit the second appeal on the aforesaid substantial questions of law or any other substantial questions of law as this Court deems fit and proper.

6. In contrast, learned advocate Ms. Sneha Joshi supports the concurrent findings of fact of the learned Courts below and assails the questions of law framed by the plaintiff by arguing that these questions are questions of fact and not the questions of law. She would further submit that the jurisdiction of this Court u/s 100 of the Code is limited to examine whether the substantial question of law exists or not. The findings of fact given by the learned Courts below if are on no evidence or on misrepresentation of the evidence, then this Court certainly can entertain the second appeal, but otherwise, the Court cannot disturb the concurrent findings of fact arrived at by the learned Courts below.

6.1 Learned advocate Ms. Sneha Joshi would further submit that entry No.672 does not confer title in favour of Vala Jadav. She would further submit that it is not a relinquishment by Rajiben, but it is conveyance or assignment, whereby, according to entry No.672, Rajiben conveyed property to Vala Jadav, who had no pre-existing right in the suit land. She would further submit that Rajiben received the suit land from her maternal side and therefore, u/s 14 and 15 of the Hindu Succession Act, the Rajiben became absolute owner of the suit

land and her son cannot claim any right in the immovable property until the immovable property is conveyed by way of instrument recognized by law. Mere revenue entry would be insufficient to convey the title. She would further submit that the learned Courts below have discussed this issue at length and breath. Therefore, present second appeal being an attempt to convert dispute in third trial is not maintainable.

6.2 Upon above submissions, learned advocate Ms. Sneha Joshi requests the Court to dismiss the second appeal at threshold.

7. I have heard learned advocates for both the sides and perused the paper book, along with record and proceedings, as well as the judgment and decree impugned in the second appeal.

8. Learned trial court fixed the issue at Exh. 29, which reads as under:-

“1). Whether the plaintiff proves that he has purchased the suit property from deft.no.1 by registered sale. deed ?

2). Whether the plaintiff proves that he become owner and occupier of suit property by virtue of regd. sale deed no.1005 dt. 18/04/09 ? of

3) Whether the plaintiff proves that he is a bonafide purchaser of suit property ?

4) Whether the plaintiff proves that sale deed no.556 of dated 07/05/1990 is false, bogus and null and void ?

5) Whether the plaintiff is entitled to get the relief as prayed for ?

6.) What order and decree ?”

8.1 Issue No. 1 is answered in affirmative, whereas rest of the issues are in negative and suit was dismissed as answer of issue No.6.

9. It is noticeable that the plaintiff, who has propogated theory of family settlement, did not plead a whisper of word in the pleadings that revenue entry No.672 was mutated pursuant to the family settlement between the parties. In absence of the pleadings, no issue is framed qua and obviously, no evidence to that effect was led. The theory is propagated first time in second appeal with a view to come out from the operation of the impugned judgment and decree. Nonetheless, the family settlement must be between the parties and not between family members and not mother and son. Raising of the issue first time in second appeal duly related to facts of the case is totally impermissible.

10. Learned advocate, Mr. Dholariya, was put to question that whether defendant No.2 has obtained any share pursuant to any family settlement ever took place. He was not in a position to answer this question, as there is no document produced on record to show that at any point of time, the family settlement was taken place and was reduced in writing between the parties and subsequently acted upon. Thus, theory of family settlement argued by learned advocate Mr. Dholariya is deceptive and proved to be fictitious and dummy.

The entire case of the plaintiff is based upon revenue entry No.672. It is between Rajiben and Vala Jadav, where mother conveyed/assigned the title of the suit land in favour of Vala Jadav.

11. Section 5 of the transfer of property act defines transfer of property; section 6 defines what may be transfer; section 8 defines operation of transfer. Reading harmoniously all these provisions along with section 54 of the transfer of property Act, it indicates that instrument is required, and if value of the involved property is more than Rs.100/-, it requires registration as per section 17 of the Registration Act to convey the title from one person to another person.

12. The copy, upon which the plaintiff relied upon to claim title of the suit land i.e. by way of mutating entry by mother in favour of without registering any instrument, is not recognized copy of transfer under law. By revenue entry No.672, the defendant Vala Jadav did not get any title in his favour, as the revenue entry apparently are for the fiscal purpose except in case otherwise is proved.

13. In case of **Sawarni Versus Inder Kaur, 1996 (6) SCC 223**, the Hon'ble Apex Court held that mutation of name in the revenue records does not create or extinguish title nor has it any presumptive value on title. It only enables the person in whose favour mutation is ordered to pay the land revenue.

14. The aforestated ratio has been reiterated by the Hon'ble Apex Court in case of **Balwant Singh Versus Daulat Singh,**

1997 (7) SCC 137, wherein it is held that mutation of entry in revenue records neither creates nor extinguishes title to the property nor has it any presumptive value on title.

15. In the present case, the plaintiff, except revenue entry No.672 dated 5th September 1975 failed to establish that defendant No.2 Vala Jadav was holding any title in the suit land. In view of above settled legal position, the revenue entry by itself, does not create title or even presumption to the title.

16. Another aspect is noticeable that Rajiben through her power of attorney executed sale deed in the year 1990, precisely on 7th May 1990 vide Sr No.556 in favour of defendant No.1 and revenue entry to that effect was mutated in the revenue records. This Court in SCA No.9254 of 2009, by judgment dated 3rd November 2009, noted that there is no dispute in regards to title exist between the parties and further noted that the revenue authority is bound to post revenue entry pursuant to the registration and execution of the sale deed. In para 9, the Coordinate Bench of this Court observed as under:-

“9. In view of the aforesaid facts, the present petition is required to be considered. As per the decision rendered by this Court in the case of Jhaverbhai Savjibhai Patel Thro' POA Holder Ashok J. Patel (Supra) entry posted on the basis of the registered sale deed is required to be reflected in the revenue record. As held by learned Single Judge in the case of Agricultural Produce Market Committee, Khambhat (Supra), once there is a right acquired in the property by a registered document, it must be

reflected in the revenue record unless the objector contends that the sale deed is bogus or not executed at all or the executor of the sale deed was lacking inherent jurisdiction or authority to execute the sale-deed. In the present case, such is not the situation as Civil Suit filed by respondent No.5 against the petitioner has been withdrawn and there is no dispute now pending with respect to title of the petitioner and challenging the sale deed in favour of the petitioner. Therefore, it was required for the revenue authority to mutate the name of the petitioner on the basis of the registered sale deed. The Collector, Junagadh as well as the Secretary (Appeals), Revenue Department, State of Gujarat has materially erred in cancelling the mutation entry No.998, which was in favour of the petitioner on the basis of the registered sale deed and in quashing and setting aside the order passed by the Deputy Collector, Veraval. Under the circumstances and considering the aforesaid two decisions of this Court, the present petition deserves to be allowed and the order passed by the Collector, Junagadh as well as the Secretary (Appeals), Revenue Department, State of Gujarat cancelling the mutation entry No.998, which was in favour of the petitioner, are required to be quashed and set aside and the order passed by the Deputy Collector, Veraval dated 26/09/2005 deserves to be restored."

17. Thus the revenue entry in name of purchaser i.e. defendant No.1 was posted thereon and it was within the knowledge of defendant No.2 Vala Jadav. Vala Jadav initially filed a suit in a civil court, Una, but then withdrew it without reserving any right /liberty or without giving any reason, in other words, has conditionally withdrawn the suit and thus, revenue entry No.998, which was posted pursuant to the order passed by this Court, is thus confirmed. The sale deed in favour of the plaintiff was executed on 18th April 2009 by Vala

Jadav. There is yawning gap in the execution of the sale deed by Rajiben Jadav through her power of attorney in the year 1990 and another one is in 2009 by Vala Jadav in favour of the plaintiff. Thus, it is evident that the plaintiff having seen revenue entry No.672 has taken a chance and got executed sale deed with a view to disturb the title of the suit land in favour of the defendant No.1. It is a speculative litigation and filed with a view to grab the land. The title of the suit land changed in the year 2009 when Rajiben executed sale deed precisely on 7.5.1990. The revenue entry mutated pursuant to the registered sale deed has been confirmed by this Court in the order of the SCA. Thus, when sale deed was executed in 2009 by Vala Jadav in favour of the plaintiff, Vala Jadav was not holding any title or interest in the immovable property and therefore, he had no right to transfer the suit land in favour of the plaintiff. It is famous principle that a person cannot transfer immovable property which he does not possess on the date of executing sale deed and recipient or purchaser cannot get better title than title of seller.

18. Once Vala Jadav predecessor in title of the plaintiff has withdrawn the suit from the civil Court, the plaintiff has no *locus* to file any civil litigation. Principle of estoppel squarely applies. The plaintiff, thus, is stated to have taken chance by got executing sale deed from Vala Jadav without noticing the fact that at the same time, Vala Jadav was holding just a revenue entry of the suit land in his favour. The title of this suit land was transferred in 1999 by Raji Jadav through her power of attorney in favour of defendant No.1 and thus, in the year 2009, Vala Jadav was not holding any legal title. Qua suit

land and thus the sale deed, which the plaintiff claims to be an instrument of transferring title, is just an eye wash and remains as piece of paper.

19. It is also to be borne in mind that the concurrent findings of the learned court below have been challenged in this appeal. The scope of second appeal has been specifically discussed by the Hon'ble Apex Court along with the findings that what are the substantial question of law.

20. Recently, the Hon'ble Apex Court in the case of **Jaichand (dead) through LRs v. Sahanulal, 2024 INSC 996** with regard to what could be considered a substantial question of law and what is the scope of a second appeal, in para 23 to 31 read as under:-

“23. We are thoroughly disappointed with the manner in which the High Court framed the so-called substantial question of law. By any stretch of imagination, it cannot be termed even a question of law far from being a substantial question of law. How many times the Apex Court should keep explaining the scope of a second appeal under Section 100 of the CPC and how a substantial question of law should be framed? We may once again explain the well-settled principles governing the scope of a second appeal under Section 100 of the CPC.

*24. In **Navaneethammal v. Arjuna Chetty reported in AIR 1996 S.C. 3521**, it was held by this Court that the High Court should not reappreciate the evidence to reach another possible view in order to set aside the findings of fact arrived at by the first appellate Court.*

*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.

26. In *Dnyanoba Bhaurao Shemade v. Maroti Bhaurao Marnor* reported in 1999 (2) S.C.C. 471, this Court held:-

Keeping in view the amendment made in 1976, the High Court can exercise its jurisdiction under Section 100, C.P.C. only on the basis of substantial questions of law which are to be framed at the time of admission of the Second Appeal and the Second Appeal has to be heard and decided only on the basis of such duly framed substantial questions of law. A judgment rendered by the High Court under Section 100 C.P.C. without following the aforesaid procedure cannot be sustained.

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.

29. The High Court in the Second Appeal can interfere with the findings of the trial Court on the ground of failure on the part of the trial as well as the first appellate Court, as the case may be, when such findings are either recorded without proper construction of the documents or failure to follow the decisions of this Court and acted on assumption not supported by evidence.

Under Section 103, C.P.C, the High Court has got power to determine the issue of fact. The Section lays down:-

Power of High Court to determine issue of fact: In any Second Appeal, the High Court may, if the evidence on the record is sufficient to determine any issue necessary for the disposal of the appeal,-

(a) Which has not been determined by the lower Appellate Court or both by the Court of first instance and the lower Appellate Court, or

(b) Which has been wrongly determined by such Court or Courts by reason of a decision on such question of law as is referred to in Section 100.

30. In *Bhagwan Sharma v. Bani Ghosh* reported in AIR 1993 S.C. 398 , this Court held:-

The High Court was certainly entitled to go into the question as to whether the findings of fact recorded by the first appellate court which was the final court of fact were vitiated in the eye of law on account of non-consideration of admissible evidence of vital nature. But, after setting aside the findings of fact on that ground the Court had either to remand the matter to the first appellate Court for a rehearing of the first appeal and decision in accordance with law after taking into consideration the entire relevant evidence on the records, or in the alternative to decide the case finally in accordance with the provisions of Section 103(b). If in an appropriate case the High Court decides to follow the second course, it must hear the parties fully with reference to the entire evidence on the records relevant to the issue in question and this is possible if only a proper paper book is prepared for hearing of facts and notice is given to the parties. The grounds which may be available in support of a plea that the finding of fact by the court below is vitiated in law does not by itself lead to the further conclusion that a contrary finding has to be finally arrived at on the disputed issue. On a reappraisal of the entire evidence the ultimate conclusion may go in favour of either party and it cannot

be prejudged.

31. In the case of **Hero Vinoth v. Seshammal reported in (2006) 5 SCC 545** this Court explained the concept in the following words:

It must be tested whether the question is of general public importance or whether it directly and substantially affects the rights of the parties.

Or whether it is not finally decided, or not free from difficulty or calls for discussion of alternative views.”

21. In the aforesaid circumstances, the appeal fails to bring any substantial question of law. It is found to be ‘third trial’ on facts and ‘one more dice in the gamble’, as held by the Apex Court in the case of **Gurdev Kaur & Ors. v. Kaki & Ors.**, reported in **(2007) 1 SCC 546** of the Supreme Court, wherein it is observed that:-

“The legislative intention was very clear that legislature never wanted second appeal to become ‘third trial on facts’ or ‘one more dice in the gamble’.”

22. Applying the aforesaid ratio to the facts of the present case, no case is made out for admission of the second appeal.

23. Accordingly, second appeal fails and stands dismissed at admission stage. Notice discharged.

24. Consequently, CA does not survive and stands disposed of accordingly. Notice discharged.

Registry is directed to return back the R & P, if any, to the concerned Court forthwith.

SHEKHAR P. BARVE

(J. C. DOSHI,J)

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: SHEKHAR PRAFULBHAI BARVE(HC00200), Principal Pvt. Secretary, at High Court of Gujarat on 04/02/2026 14:28:45