

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SECOND APPEAL NO. 201 of 2025****With****CIVIL APPLICATION (FOR STAY) NO. 1 of 2025****In R/SECOND APPEAL NO. 201 of 2025**

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SANT SHRI ASHARAM ASHRAM TRUST & ORS.**Versus****THAKOR ASHOKKUMAR RAMANJI & ORS.**

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Appearance:**MR. AADIT R SANJANWALA(9918) for the Appellant(s) No. 1,2,3,4,5,6****MR.ADITYA J PANDYA(6991) for the Respondent(s) No. 20**

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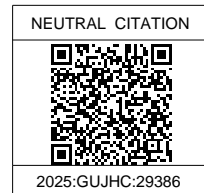
CORAM:HONOURABLE MR.JUSTICE SANJEEV J.THAKER**Date : 12/06/2025****ORAL ORDER**

1. The present second appeal has been filed under section 100 of the Code of Civil Procedure 1908, ('the CPC', for short) challenging the judgment and decree dated 07.04.2025 passed by the 3rd Additional District Judge, Gandhinagar passed in Regular Civil Appeal No.29 of 2022 confirming the judgment and decree dated 25.04.2022 passed by the 7th Additional Senior Civil Judge, Gandhinagar in Special Civil Suit No.160 of 2008 is confirmed.

2. For the sake of brevity, the parties are referred to at their original status in the suit.

FACTS :-

3.1 The plaintiffs filed suit seeking relief to declare them as owner of the suit property and also for declaration that defendants do not have any

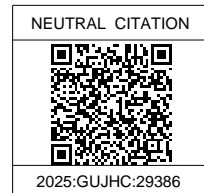


right, title and interest in the suit property and to direct the defendants to handover peaceful and vacant possession of the suit premises. The defendants appeared in the said suit and filed written statement at Exh.22. The trial Court framed issues *vide* Exh.49.

- “(1) Whether the plaintiff proves that they are the owner of the land ?
- (2) Whether the plaintiff proves that the defendant has illegally taken possession of disputed land ?
- (3) Whether the defendant proves that the dispute land was given tot hem through a gift deed by the plaintiff Forefather ?
- (4) Whether the Defendant proves that they are in possession of suit land since 1993 ?
- (4.A) Whether the suit of the Plaintiff is barred by law of limitation ?
- (4.B) Whether the defendant Proves that they became owner by virtue of adverse possession of suit land ?
- (5) Whether the plaintiff is entitled to get relief as prayed for ?
- (6) What order and decree ?”

The plaintiff examined himself *vide* Exh.70, the defendant examined himself *vide* Exh.119 and the witness of the defendant examined himself *vide* Exh.143. After taking into consideration documentary and oral evidence and giving findings on all the issues, the trial Court decreed the said suit.

3.2 Being aggrieved by the said judgment and decree, the defendant filed First Appeal under the provisions of Section 96 of the CPC and after

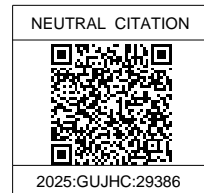


re-appreciating the evidence, the first appellate Court dismissed the said appeal and hence the present second appeal before this Court.

SUBMISSIONS OF APPELLANTS (DEFENDANTS) :-

4.1 Learned senior advocate for the defendants has mainly argued that the trial Court and the appellate Court have not taken into consideration oral and documentary evidence and the appellate Court has not re-appreciated the evidence and, therefore, the Second Appeal is required to be admitted on substantial questions of law which have been suggested in the memo of appeal.

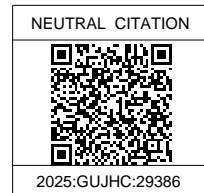
4.2 Learned senior advocate for the defendants has argued that if the written statement at Exh.22 is taken into consideration, it is the case of the defendants that since many years, the suit property has been given as a gift to the defendants and it was the case of the defendants in the written statement that pursuant to the said gift, irrecoverable power of attorney was executed in favour of Kaushikbhai Chinubhai Patel and Kaushikbhai Kiranbhai Patel and, therefore, defendants are in possession of the property since the years 1993. It has been argued that though the documentary evidence substantiating the possession of the defendants is produced by the defendants, it is not taken into consideration by the Courts below and therefore also the Second Appeal is required to be admitted. It has also been argued that even in the year 2006 when a public notice was issued by the plaintiffs with respect to the suit property, the same was objected by the defendants and even in the year 2006 the defendants had stated that defendants are in possession of the suit property.



4.3 Learned senior advocate for the defendants has also argued that entire case of the plaintiffs is based on the fact that it is only in the month of February, 2008, that defendants have tress-passed on the suit property and are occupying the suit property since February, 2008 and the possession of the property is with the defendants since February, 2008 and that the defendants are trespassers of the property and have encroached upon the suit property since February, 2008, but the fact remains that if the documentary evidence produced by the parties before the trial Court are perused, it can be clearly established that defendants are in possession of the property since 1993 and the said fact is very much in knowledge of the plaintiffs when the plaintiffs filed civil suit and, therefore, entire story that just before filing of the suit the defendants have encroached upon suit property is not true. Defendants relied on documents more particularly Exh.129 dated 09.05.1994, which is a letter written by the Revenue Department to the trustee of the defendants which clearly shows that even in the year 1994 there were correspondences with respect to the suit property and, therefore, it has been argued that since the year 1994 the defendants are in possession of the suit property.

4.4 Learned senior advocate for the defendants has argued that even in the reply to the notice produced vide Exh.132 on 13.01.2006, the defendant has already stated that the defendants are in possession of the property and, therefore, the story that has been created by the plaintiffs that defendants encroached upon the property in the year 2008 is not true and cannot be believed.

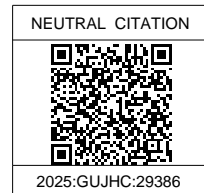
4.5 Learned senior advocate for the defendants has also argued that the first appellate Court has also not complied with the provisions of Order



41 Rule 31 of the CPC and has not given independent assessment of evidence on each point and has also not disposed of appeal in accordance with law. It has also been argued that the first appellate Court has not properly appreciated the facts and evidence and has not applied its mind while deciding the case considering the material on record. It has also been argued that there is no independent assessment with respect to relevant evidence on all important aspects of the matter and in that view of the matter, present Second Appeal is required to be admitted.

4.6 Learned senior advocate for the defendant has also argued that the first appellate Court has also not dealt with the provisions of Order 41 Rule 27 of the CPC, while rejecting the application for production of additional evidence. It is the case of the defendants that the documents that have been produced with the application filed under Order 41 Rule 27 of the CPC, were not in possession of the defendants at the time of disposal of the civil suit and it is only under the provisions of Right to Information that the defendants could obtain the said document and the same having been filed the first appellate Court could not have rejected the same on the ground mentioned in the order dated 07.04.2025.

4.7 Learned senior advocate for the defendants has also argued that the defendants had raised the issue that the defendants being charitable trust registered and incorporated under the provisions of Gujarat Public Trust Act, 1950, permission of Charity Commissioner was mandatory in view of Sections 50, 51, 79 and 80 of the Gujarat Public Trusts Act and unless the permission is taken from the Charity Commissioner under the provisions of Section 50 of the Gujarat Public Trust Act, the suit could not have been filed and the said suit having been taken in appeal, there is

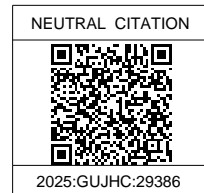


no findings of first appeal on the said aspect. Moreover, it has also been argued that the judgment that have been relied upon by the parties to the present petition have not been dealt by the first appellate Court and therefore also Second Appeal is required to be admitted on the substantial questions of law suggested in the memo of appeal.

4.8 Learned senior advocate for the defendants has relied upon on the following judgments on the issue of Order 41 Rule 31 of the CPC.

- (i) G. Amalorpavam and others vs. R.C.Diocese of Madurai and others, (2006) 3 SCC 224;
- (ii) H. Siddiqui (dead) by Lrs. vs. A. Ramalingam; (2011) 4 SCC 240;
- (iii) Malluru Mallappa (D) Thr. Lrs. vs. Kuruvathappa & Ors. ; Civil Appeal No.1485 of 2020, dated 12.02.2020;
- (iv) Nafees Ahmad & Anr. vs. Soinuddin & Ors.; Civil Appeal No.5213 of 2025, dated 16.04.2025.

4.9 Learned senior advocate, with respect to the issue on permission to be taken from the Charity Commissioner under the provisions of Section 50 of the Gujarat Public Trusts Act, has relied upon the judgment rendered in the case of *Sainath Mandir Trust vs. Vijaya and others* reported in **(2011) 1 SCC 623** and submitted that the present Second Appeal is required to be admitted on substantial questions of law as suggested in the memo of appeal, which read as under :



“(i) Whether transfer by way of gift in favour of a public charitable trust is mandatorily required to be effected by a registered document in writing ?

(ii) Whether findings negating claim of title would make the Plaintiffs possession hostile from day one ?

(iii) Whether the Plaintiff would be entitled to plead adverse possession in the alternative if his plea of possessory title is negated ?

(iv) Can a disputed question of facts regarding possession be decided on the basis of revenue records in the face of settled law that revenue records are only for fiscal purposes ?

(v) Whether under the provisions Order XLI Rule 31, points for determination are required to be issue specific to enable the parties to make submissions on particular issues ? Whether a single generic and widely worded point for determination for the entire appeal is permitted under the provisions of Order XLI Rule 31 ?

(vi) Whether it is permissible for an Appellate Court to simply adopt the findings given by the Trial Court ? Whether the Appellate Court is required to give its findings on each issue independently so as to show independent application of mind ?

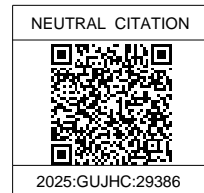
(vii) Whether a suit against the public charitable trust registered under the provisions of the Bombay Public Trusts Act, 1950 is maintainable without obtaining prior permission from the Charity Commissioner in view of Section 50 ?

(viii) Whether the Civil Court ceases to have jurisdiction in view of Section 79 and 80, and whether such a suit would be maintainable in light of the said provisions ?

(ix) Whether misleading averments and an incorrect factual narrative in the plaint would disentitle the Plaintiffs to the reliefs prayed for ?”

SUBMISSIONS OF RESPONDENTS (PLAINTIFFS) :-

5.1 Learned senior advocate for the plaintiffs has mainly argued that

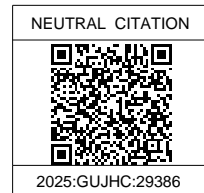


there are no substantial questions of law involved in the present second appeal and the present second appeal is required to be dismissed at the admission stage.

5.2 Learned senior advocate for the plaintiffs has argued that the entire suit of the plaintiff is based on the fact that the plaintiff is owner of the property and defendants have encroached on the property and have trespassed on the suit property in the month of February, 2008 and, therefore, the suit is filed to direct the defendants to handover the peaceful and vacant possession of the suit property.

5.3 It has been argued by learned senior advocate for the plaintiffs that entire case of the defendants is based on fact that by virtue of gift-deed, the defendants have been handedover possession of the property but no documentary evidence to support the said case is produced by the defendants to prove the fact of execution of gift-deed. Moreover, the fact that the defendants are in possession of the property since the year 1993 has also not been proved by the defendants as no documentary evidence to support the said fact has come on record before the trial Court to establish the fact that since the year 1993, the defendants are in possession and in occupation of the property.

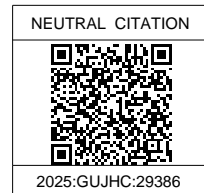
5.4 Learned senior advocate for the plaintiffs has also stated that even assuming that defendants are in possession of the property since the year 1993, there is no subsisting agreement and / or document to permit the defendants to occupy the premises. In the written statement filed by defendants at Exh.22, the defendant has taken a contention that by virtue of gift-deed the plaintiffs had handed over possession of the property to



the trustees of defendant trusts and, therefore, the defendants are claiming right by way of gift and in the said written statement defendant has also taken contention that defendant is owner of the property by virtue of adverse possession. Therefore, the defendant has taken contradictory stand to the effect that i.e. (i) to be the owner of property by virtue of oral gift-deed of the suit property in favour of defendants and (ii) being the owner by virtue of holding adverse possession of the suit property. It is the case of the plaintiffs that contradictory stand can never be taken by the defendants and in view of the said fact it has been argued that present second appeal is required to be dismissed.

5.5 Learned senior advocate for the plaintiff has also argued that while deciding the appeal, the appellate Court has taken into consideration all the relevant facts and after reappreciating the evidence and giving independent assessment of all relevant evidences, the first appellate Court has dismissed the said appeal.

5.6 With respect to the contention that the possession of the suit property was with the plaintiff till 2008. Learned advocate for the plaintiff has relied on oral evidence of plaintiff wherein at para:1 of the cross-examination, question was put to witness of the plaintiff as to whether till 2008, the plaintiff has been doing agricultural in the suit premises to which plaintiff has replied that it is true that till 2008, the plaintiff was doing agricultural activities in the suit premises and, therefore, it has been argued that it is in this connection that the appellate Court has dealt with the issue of there being no dispute to the fact that till 2008 the plaintiff was in possession of the suit premises.



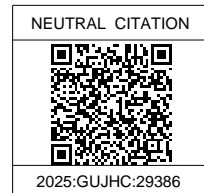
5.7 It has also been argued by learned senior advocate that though in the written statement defendant has taken contention that defendant is in possession of the suit property since 2008 but no iota of evidence by the defendant to substantiate the said fact is produced that defendant being in possession of the property since 1993.

5.8 With respect to the Order 41 Rule 31 of the CPC learned advocate for the plaintiff has argued that first appellate Court has dealt with all the issues and the only issue that was to be decided by the trial Court and re-appreciated by the first appellate Court was whether the defendant is in possession of the property since 1993 and whether the defendants can claim ownership by way of adverse possession and defendant has miserably failed to prove both the issues and, therefore, there are no substantial questions of law involved in the present second appeal and therefore this appeal is required to be dismissed.

ANALYSIS :-

6.1 Having heard learned advocates for the parties and having considered the oral and documentary evidence and the findings arrived at by the trial Court and the first appellate Court, the fact remains that though the defendant has taken contention that the suit property was given to the defendant through a gift-deed by the plaintiff's forefathers and that the defendant is in possession of the suit property since 1993, the fact remains that the suit property was always in the name of plaintiffs and their forefathers, the following facts will have to be taken into consideration while deciding the present second appeal i.e.

- (i) the plaintiffs have produced documentary evidence to prove that plaintiffs are owners of the property;



(ii) the plaintiffs have come forward with the case that in February, 2008, the defendants have encroached on the suit property and the defendants are trespassers in the property;

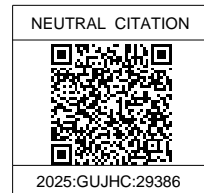
(iii) the defendants have stated that in the year 1993, the suit property was given by gift to the defendants by forefathers of the plaintiffs;

(iv) no documentary evidence is produced to prove the existence of said gift-deed,

(v) defendants also claimed that defendants are in possession of the suit property since 1993;

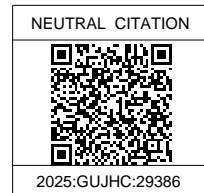
(vi) the defendants have also taken a contention that defendants have become owners of the property by way of adverse possession.

6.2 In view of the aforesaid facts, the plaintiffs have produced documents at Exhs.74 to 74 i.e. revenue entries with respect to suit property from the year 1951-52 till 2004-05. The defendants have also admitted the fact that in the revenue record, names of the plaintiffs are mentioned as owners of the property. The said witness of the defendant has also admitted that there is no registered gift-deed executed in favour of the defendants. The said witness of the defendants have also admitted that there is no independent document to support the claim of the defendants that the defendants are in possession of the property since the year 1993. The witness who has been examined by defendant vide Exh.43, has also become trustees of the trust only in the year 2021 and the said witness has stated that the defendants are in possession of the property since 1993, but the said witness has stated that he is not aware as to who was administering the trust in the year 1990. Vide Exh.133, the

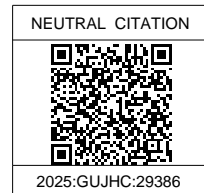


defendant has produced document to show that on 01.02.2006 a revenue tax has been paid by the defendant but the said document will not prove that defendant is in possession of the property since 1993.

6.3 The fact also remains that though it is stated that the suit property was transferred to the defendant by way of gift-deed, there is no registered document produced by the defendant to substantiate the said claim. It has also come on record that the suit land was restricted land and therefore also the same could not have been transferred by the plaintiff in favour of defendant but even otherwise there is no document produced on record to show that the suit property was ever transferred and / or given as gift by the plaintiff to the defendant. The witness of the defendant produced vide Exh.143 has categorically stated that in the year 1990 who was administering the trust is not known to the said witness. But the fact remains that it is the plaintiff's case that plaintiff was in possession of property till the year 2008 and it is only in the year 2008 when possession was illegally taken over by the defendant that the plaintiff has filed suit. The defendant has taken contention that the defendant has become owner of the property by virtue of being in possession of property by adverse possession. The fact remains that revenue entries of the year 2003 to 2005 wherein some of the owners had expired also shows that by succession names of the plaintiff are shown as owner of the property. The fact of defendant paying revenue tax will also not prove the fact that the defendant is in possession of the property since the year 1993. The fact that the defendant has not been able to prove that the defendant is in possession of the property before the year 2008, the defendant cannot be considered to be owner by the property by way of adverse possession. In the oral evidence of the plaintiff at Exh.70, the plaintiff no.1, in his cross-

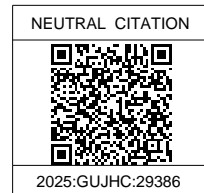


examination, has stated that it is true that till the year 2008 the plaintiff was doing agricultural activities in the suit premises and, therefore, the question that must have been put to the plaintiff by the defendant's advocate would have been "is it true that till the year 2008 you have been doing agricultural activities in the suit premises?" and in view of the said fact it can also be carved out that the defendant also admits that till 2008 defendant would not in possession of the property and the possession of the property was with the plaintiff. The fact remains that there is neither any document to show that the property has ever been given by registered document to the defendant by the plaintiff, nor there is any subsisting agreement by which the defendant can claim to have right to be in possession of the property and, therefore, the material proposition of fact or law in the present case was that the plaintiff is seeking possession of the property being true owner of the property and the defendant claims that by way of gift-deed, the defendant is having possession of the property. The bare statement containing that the defendant had been handed over possession of the property by way of gift-deed will not suffice as the defendant shall have to prove the said fact as the burden of proving the said fact was on the defendant as the defendant had claimed that defendant is in possession of the property by way of gift-deed and as nothing on record is proved by the defendant nor any document has been produced to prove the said fact. In the present case, it has been proved by the plaintiff that, plaintiffs are owners of the property and the defendant having not been able to prove that they have right to occupy the premises. The judgment on which learned advocate for the defendants relies on with respect to Order 41 Rule 31 of the CPC i.e. (i) G. Amalorpavam and others vs. R.C.Diocese of Madurai and others (supra), (ii) H.



Siddiqui (dead) by Lrs. vs. A. Ramalingam; (supra) ; (iii) Malluru Mallappa (D) Thr. Lrs. vs. Kuruvathappa & Ors.(supra) ; and (iv) Nafees Ahmad & Anr. vs. Soinuddin & Ors.(supra) will not be applicant to the facts of the present case as in the present case, the first appellate Court has dealt with the entire dispute, the fact remains that the plaintiff has proved that he is owner of the property and defendant is claiming to be in possession of the property by virtue of the gift-deed which has not come on record. Moreover, as laid down by the Apex Court in the case of G. Amalorpavam and others vs. R.C.Diocese of Madurai and others (supra) wherein it has been observed that whether in a particular case there has been substantial compliance that the provisions of Order 41 Rule 31 of the CPC should be determined on the nature of judgment delivered in each case and non-compliance with the provisions by itself may not vitiate the judgment and make it wholly void and may be ignored if there has been substantial compliance with it. In the present case, entire evidence has been reappreciated by the first appellate Court. The first appellate Court has also taken into consideration the fact that the plaintiff is owner of the property and there are no documents to give a right to the defendant to occupy the premises. Moreover, the provisions of Rule 31 of Order 41 of the CPC has to be reasonably construed and should he held to require various particulars in the judgment only when the appellate Court has actually raised certain points for determination and not when no such points are raised.

6.4 The another judgment that has been relied upon by learned advocate for the defendant in case of *Sainath Mandir Trust vs. Vijaya and others* (supra) refers to provisions of Bombay Public Trust Act, however, the fact remains that Section 50 of the said Act is enabling



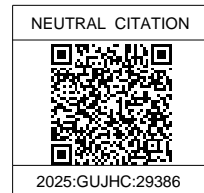
provision. In ordinary circumstances, trustees as legal owners alone are only able to file suit for recovery of possession of trust property. The Charity Commissioner or the persons claiming to be interested as beneficiaries, but having no legal right in them would fail in filing a suit for recovery of possession of trust property even if their case is that defendant is in adverse possession and interest of each beneficiaries will be jeopardised and a special provision therefor has been made under Section 50 of the Act, the Charity Commissioner or beneficiaries of the public trust to institute suit for various reliefs set-out in clauses (a) to (h) of Section 50 of the Act, therefore, substantial portion of section 50 is confined to powers of Charity Commissioner and the power of beneficiaries of the trust to institute the suit that is enumerated in clause (a) to (h) of Section 50 of the Act. But the said section will not come in way of the trustees and / or the owners of the property to file the suit of recovery possession of the trust property.

6.5 Apt to refer herein the judgment passed in the case of **Maria Margarida Sequeria Fernandes and Others v. Erasmo Jack de Sequeria (Dead) in Appeal No.2968 of 2012 (Arising out of SLP (C) No.15382 of 2009)** decided on 21.03.2012, the Hon'ble Apex Court has observed as under:-

“101. Principles of law which emerge in this case are crystallized as under:-

1. No one acquires title to the property if he or she was allowed to stay in the premises gratuitously. Even by long possession of years or decades such person would not acquire any right or interest in the said property.

2. Caretaker, watchman or servant can never acquire interest



in the property irrespective of his long possession. The caretaker or servant has to give possession forthwith on demand.

3. The Courts are not justified in protecting the possession of a caretaker, servant or any person who was allowed to live in the premises for some time either as a friend, relative, caretaker or as a servant.

4. The protection of the Court can only be granted or extended to the person who has valid, subsisting rent agreement, lease agreement or license agreement in his favour.

5. The caretaker or agent holds property of the principal only on behalf of the principal. He acquires no right or interest whatsoever for himself in such property irrespective of his long stay or possession.”

6.6 In the present case, there are no documentary proof giving right to the defendant to be in possession of the premises and therefore also the trial Court and the first appellate Court have rightly decided all the issues in the matter. Further, in view of the facts stated herein above there are no substations questions of law involved in the present second appeal and the questions suggested in the memo of appeal more particularly reproduced at para:4.9 herein above are not substantial questions of law and therefore also the present second appeal is required to be dismissed at the admission stage

7. Under the circumstances, this Second Appeal is devoid of any substantial question of law. Both the learned Trial Court and first appellate Court have rightly decided the issue between the parties in the right perspective and as stated above no substantial question of law arises in the present appeal. The appellants have failed to prove their case before the learned trial Court as well as before the first appellate Court.



This Court does not find any substance in the present Second Appeal as the same is devoid of any merit both on facts and law and the same is dismissed at admission stage. Connected Civil Application, if any, would also not survive and it is disposed of accordingly.

(SANJEEV J.THAKER,J)

8. After the pronouncement of the judgment, learned advocate Mr. Aadit Sanjanwala has requested to stay this order for a period of 30 days. Learned senior advocate Mr. Dhawal Dave for the respondent has objected to the said request.

Learned advocate for the appellant has stated that while disposing of the First Appeal, the first appellate Court has stayed the order passed by the first appellate Court. Looking to the facts and circumstances of the case, the operation and implementation of the present order shall stand stayed for a period of 30 days from today.

(SANJEEV J.THAKER,J)

MISHRA AMIT V.