

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 293 of 1997

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

SARASWATIBEN NATWARLAL CHANDARANA

Versus

MAHENDRA POPATLAL GAJJAR -DECDTHRO' HEIRS AND L.R.

Appearance:

1. Civil Revision Application No. 293 of 1997
MR A.M Dagli for
MR YOGESH S LAKHANI for Petitioner No. 1
..... for Respondent No. 1
DELETED for Respondent No. 1/1-1/10,1/3,1/6-1/9
NOTICE SERVED for Respondent No. 1/2,1/4-1/5

CORAM : MISS JUSTICE R.M.DOSHIT
Date of decision: 30/08/2002

ORAL JUDGEMENT

Heard the learned advocate Mr. A.M Dagli for Mr.
Y.S Lakhani, the learned advocate for the petitioner.

This Revision has been preferred against the Order dated 6th December, 1996 made by the learned Civil Judge [SD], Rajkot below Application Exh. 16 in Civil Misc. Application No. 43 of 1984. It appears that the petitioner has instituted a Civil Suit in the Court of Civil Judge [SD], Rajkot against one Mahendra Popatlal Gajjar (since deceased) for recovery of sum of Rs. 1,41,331/=. The petitioner also filed Civil Misc. Application No. 43 of 1984 for leave to sue in forma pauperis. Pending the said application, the said defendant-Mahendra Gajjar died on 7th July, 1984. The petitioner, therefore, moved application Exh 16 for impleading the present respondents as the heirs and legal representatives of the deceased defendant. The said application has been rejected by the learned Judge under the impugned order dated 6th December, 1996. Feeling aggrieved, the plaintiff has preferred the present Revision Application.

As observed in the earlier order dated 28th August, 2002 made by this Court [i.e., myself], though the Revision has been pending before this Court for more than five years, the petitioner has not been able to serve all the respondents. The only respondents who remain on the record are the respondents nos. 2, 4 and 5.

The learned Judge has rejected the application on the ground that no valid reason was made out by the petitioner-plaintiff. To me the learned Judge appears to be right. In the Application Exh. 16, nowhere the petitioner has mentioned that the deceased-defendant had left any estate from which the plaintiff's dues can be recovered and that such estate has been inherited by the alleged legal representatives. Nor is it mentioned that the right to sue survived against the said legal representatives. In absence of the material averments, the learned Judge cannot be said to have erred in rejecting the Application Exh. 16. No interference is, therefore, warranted. The Revision is dismissed. Notice is discharged.

[Ms. R.M Doshit, J.]

Prakash*