

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 313 of 1983

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?
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THACKER PRANJI KANJI & 1 - Appellant(s)

Versus

THACKER KARSHANDAS DEVJI & 2 - Defendant(s)

Appearance :

MR PM THAKKAR for Appellant(s) : 1, None for Appellant(s) : None for
 Petitioner No(s).: for Appellant(s) : 2, MR NAVIN K PAHWA for
 Appellant(s) : 2.2.1, 2.2.2, 2.2.3, 2.2.4, 2.2.5, 2.2.6
 MR YS MANKAD for Defendant(s) : 1,
 None for Defendant(s) : 2 - 3, 3.2.1, 3.2.2

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

Date : 31/08/2005

ORAL JUDGMENT

Heard, learned Advocate Mr.Thakkar for the appellants and
 learned Advocate Mr.Mankad for the respondents.

2.Learned Advocate Mr.Thakkar has taken this Court

through Records & Proceedings. He submitted that the first appellate Court erred in allowing the appeal by holding that the suit was not for partition but for recovery of proportionate share from the sale proceeds, and therefore, all co-sharers were not necessary parties. The first appellate Court also, erred in holding that the suit was therefore, not preferred at a belated stage, the questions formulated while admitting the appeal may therefore, be accordingly answered.

3.Learned Advocate Mr.Mankad has submitted that the stake involved Rs.2666.66 Paise only and on smallness of the claim, the appeal may not be entertained. He submitted that the reasoning adopted by the first appellate Court are just, legal and proper and no interference is necessary.

4.This Second Appeal arises out of a judgment and decree rendered in Regular Appeal No.158/1979 dated 17/12/1982. The said appeal arose out of Regular Civil Suit No.1116/1974 rendered by Joint Civil Judge (J.D.), Bhuj on 31/8/1979, dismissed the suit.

4.1The said suit was preferred by present respondents

claiming their share in the sale proceeds of a property of which they were joint owners. The property was sold by appellant No.2 for Rs.8,000/- and therefore, they claimed 1/3rd of the said amount as their share as co-owner of the property.

5.The trial Court dismissed the suit on the ground that all the co-owners were not joined as party and that partition was sought after a long laps of about 40 years.

5.1The plaintiffs preferred appeal before the District Court, Bhuj and the District Court allowed the appeal by holding that the suit cannot be considered as a suit for partition because the property was sold out and only share in the sale proceeds thereof was sought by the plaintiffs, and therefore, all the joint owners of the property were not necessary parties and, ultimately, while allowing the appeal passed decree in favour of the plaintiffs - the respondents herein.

5.2While admitting this appeal following three questions were formulated, as questions involved in the appeal.

"1. Whether in the facts and circumstances of the case, the court below erred in holding that the

respondents were entitled to 1/3rd share in the suit shop as claimed by them.

2. Whether in the facts and circumstances of the case, the court below erred in not holding that the suit preferred by the respondents were barred by limitation.

3. Whether in the facts and circumstances of the case, the Court below erred in not holding that the suit was bad in law and not tenable since it suffers from material defect of non-joinder of necessary parties."

6.This Court has examined the Records & Proceedings and it transpires that the claim of the plaintiffs being co-sharers was never denied or disputed by the defendants - appellants herein. On the contrary, the case of the appellants was that in 1/3 amount of the sale proceeds was deposited in a joint Bank Account of the co-sharers and as such, there appeared no dispute about the entitlement of 1/3 share of the plaintiffs from the sale proceeds.

7.Keeping this aspect in mind and considering the smallness of amount involved, this Court is of the view that first Appellate Court was justified in allowing the appeal and passing decree. No interference is called for in the judgment and decree impugned herein. It would also be appropriate to record that the

questions of law suggested in the memo of appeal and to some extent accepted do not go to the root of the matter and in order to that substantial justice is rendered between the party, they are not gone into. The questions if gone into would also require this Court to examine and consider factual aspects and are therefore, not neat questions of law. The findings on factual aspects by the first appellate Court bind the second appellate Court as well, and therefore, the appeal does not merit acceptance. Appeal must fail and is accordingly dismissed.

(A.L.DAVE, J.)

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