**Reserved On : 06/01/2026****Pronounced On : 22/01/2026****IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CIVIL REVISION APPLICATION NO. 146 of 2020****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE J. C. DOSHI**

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Approved for Reporting	Yes	No

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HEIR OF DECD. PRATAPSINH HARWARILAL DALAL - SATVANTIBEN
PRATAPSINH DALAL

Versus

RANJANBEN PRATAPSINH DALAL & ORS.

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Appearance:

MR KV SHELAT(834) for the Revisionists

MR AMAR D MITHANI(484) for the Respondent No. 4

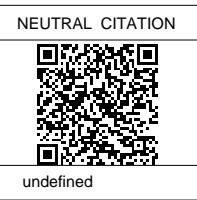
MR HEMANG M SHAH(5399) for the Respondent No. 2,3

MR SHALIN MEHTA, SR. ADVOCATE with MR NINAD P SHAH(10911) for
the Respondent No. 1

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

1. Present CRA filed u/s 115 of the Code of Civil Procedure, 1908 (in short "the Code") r/w section 384(1)(3) of the Indian Succession Act, 1925 (in short "the Act") is directed against judgment and order dated 31.8.2020 passed by the learned 4th Additional District Judge, Junagadh in Regular Civil Appeal No.3 of 2017, whereby the learned appellate Court dismissed



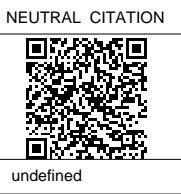
the appeal and confirmed the judgment and order passed by the learned Senior Civil Judge, Junagadh in CMA No.429 of 2016 to grant succession certificate in favour of the original petitioners.

2. The revisionists before us filed Regular Civil Appeal No.3 of 2017 before the learned appellate Court against the original petitioners claiming that revisionist No.1 is the legally wedded wife of deceased Pratapsinh Harwarilal Dalal. The original petitioners without joining the revisionists as party in the proceedings for getting succession certificate, obtained succession certificate in their favour by playing fraud not only upon the revisionists but also upon the Court.

3. For the sake of convenience and brevity, petitioners are referred to as revisionists, respondents are referred to as original petitioners and deceased Pratapsinh Harwarilal Dalal is referred to as the deceased.

4. The factual matrix leading to filing of the present petition is as under:-

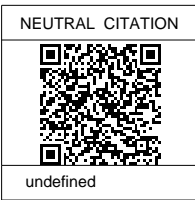
4.1 Amongst original petitioners, petitioner No.1 Ranjanben claimed that she is legally wedded wife of the deceased, who was serving as a Veterinary Doctor and Asst. Professor in the Veterinary and Animal Husbandry Agricultural University, Junagadh (in short "the University"). She married to the deceased on 14.8.1993 and out of said wedlock, she gave birth to two children, namely Grishma and Prajval, aged 22 and 19 yrs respectively being original petitioner Nos.2 and 3.



4.2 On 3.5.2016, the deceased during his service tenure, expired due to road accident. The original petitioner No.1 was appointed as nominee by the deceased in his service book maintained with the University for the purpose of family pension, leave encashment, PF, gratuity, group insurance, post-retirement benefits etc. The original petitioner No.1 claimed service benefits of the deceased on the basis of she being legally wedded wife and nominee of the deceased.

4.3 The University insisted for succession certificate vide letter dated 29.7.2016. In the premises of the aforesaid facts, the original petitioners preferred application u/s 372 of the Act before the jurisdictional Court i.e. learned Principal Senior Civil Judge, Junagadh claiming issue of succession certificate in regards to pensionary benefits of the deceased lying with the University. All the original petitioners to be class 1 heirs of the deceased under the Act, did not join any other persons as opponents since, because except the original petitioners, there were no near relatives of the deceased at the time of filing of the application.

4.4 The learned trial Court after publishing citation, was pleased to issue succession certificate in favour of the original petitioners by judgment and order dated 21.10.2016. The fact was becoming known to the revisionist No.1 that the learned trial Court has passed the order issuing succession certificate in favour of the original petitioners from the University where they made inquiry and thus, she filed captioned Regular Civil



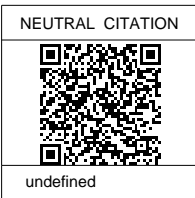
Appeal before the learned Principal District Judge, Junagadh for cancellation / revocation of the succession certificate under the provisions of the Act.

4.5 The learned appellate Court after through and elaborate discussion, dismissed the first appeal and confirmed the judgment and order passed by the learned trial Court.

4.6 Being aggrieved by the aforesaid judgment and order passed by the learned appellate Court, the revisionists are before this Court by filing present petition.

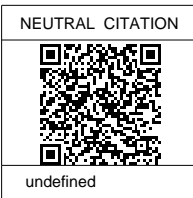
5. Heard learned advocate Mr. KV Shelat for the revisionists, learned Senior counsel Mr. Shalin Mehta assisted by learned advocate Mr. Ninad Shah for the original petitioners and learned advocate Mr. Amar Mithani for the respondent University.

6. Fly at the judgment and order passed by the learned appellate Court impugned in this petition, learned advocate Mr. KV Shelat mainly argued that the learned appellate Court has materially erred in dismissing the appeal filed by the revisionists. He would further submit that in view of section 372(1)(c) of the Act, the original petitioners were required to furnish particulars of the family members or other near relatives of the deceased and their respective residence. He would further submit that the revisionist No.1 is the legally wedded wife of the deceased and she married to the deceased in the year 1977 and begotten two children. He would further submit that all relevant documents were produced on the file



of the first appeal; consisting marriage certificate, birth certificate of two sons begotten out of marriage life etc, however, they were not considered by learned appellate Court and thereby, materially erred. He would further submit that permanent address of the deceased having been in the city of Haryana is also reflected from the service records, but no notice was issued on this address. All these documents have totally been ignored by the learned appellate Court.

7. Learned advocate Mr. Shelat would further submit that since breach of section 372(1)(c) of the Act was attracted in the matter, it was the duty upon the learned appellate Court to remand the matter for fresh consideration by permitting the revisionists to lead necessary evidence to the effect that she also falls in the definition of “family” or “near relative”. However, the learned appellate Court has committed serious error in dismissing the appeal by narrating the reasons not befitting to the legal stipulation and therefore, he submits that the judgment and order passed by the learned appellate Court is unsustainable. He would further submit that as per the service records of the deceased, permanent residential address is shown at State of Haryana and therefore, in view of section 373 of the Act, the public citation was needed to be pasted at conspicuous place of the deceased where he was permanently residing. However, in the present case, since the original petitioners have surreptitiously hid the material facts and did not mention existence of the original petitioners from the permanent residential address of the deceased, no such notice requiring u/s 373 of the Act was pasted on conspicuous part of the city and thereby, have committed mischief of



suppression of material facts and thus, the learned appellate Court was required to set aside the order passed by the learned trial Court granting succession certificate.

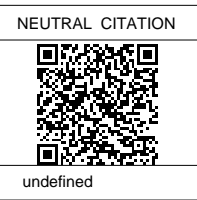
7.1 Learned advocate Mr. Shelat would further submit that the revisionists are the class 1 heirs of the deceased and they succeeded inheritance of the deceased including the estate of the deceased and therefore, the succession certificate was also required to be issued jointly in favour of the revisionists.

7.2 Lastly, learned advocate Mr. Shelat submits that since the learned appellate Court did not consider relevant documents produced by the revisionists, the judgment and order impugned is *non est* and does not have any effect of legal order.

7.3 In support of his submission, learned advocate Mr. Shelat has referred to and relied upon judgment of the Hon'ble Apex Court in case of Shakti Yezdani and another Vs. **Jayanand Jayant Salgaonkar and others, 2024(4) SCC 642** to submit that general principle of succession should override the nomination. The nominee is nothing but a trustee of the estate of the deceased. The nominee cannot have a better right than the successor of the deceased.

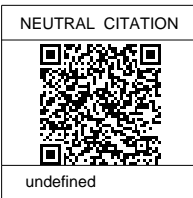
7.4 Another judgment relied upon by learned advocate Mr. KV Shelat is in case of **Revanasiddappa Vs. Mallikarjun, AIR 2023 SC 4770** to submit that children born out from a void or voidable marriage will have a right to or in property of parents.

7.5 Upon above submissions, learned advocate Mr. KV Shelat



requests to allow this petition and to quash and set aside the impugned judgment and order by remanding the matter back to the learned trial Court to decide the issue of grant of succession certificate afresh.

8. As against aforesaid submissions, learned Senior counsel Mr. Shalin Mehta assisted by learned advocate Mr. Ninad Shah appearing for the respondents took this Court through para 17 to 19 and 22 of the impugned judgment and order of the learned appellate Court, would submit that the submission canvassed by learned advocate Mr. Shelat that the documents produced by the revisionists have not been considered by the learned appellate Court is totally misconceived. He would further submit that in fact, in view of Order 41 Rule 27 and 28 of the Code of Civil Procedure, 1908 (in short "Code"), if the appellant intended to bring some evidence on record at the appellate stage, he has to follow the procedure laid down therein, but in the present case, the revisionists, who were the appellants before the learned trial Court, just produced photocopy of the documents by preparing documentary list, which are generally done in a suit before leading evidence and therefore, the revisionists cannot claim that the learned appellate Court has not noticed the documents produced during the appellate proceedings. He would further submit that the revisionist has hopelessly failed to prove that she is legally wedded wife of the deceased. He would further submit that in fact, during the pendency of the appeal, the original petitioners have preferred application at Exh.31 calling upon the revisionists to produce documentary evidence to establish the claim that the revisionist No.1 is the legally wedded wife



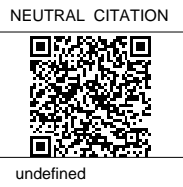
of the deceased, but this application was neither replied nor complied with and no evidence was produced by the revisionists to establish that the revisionist No.1 is the legally wedded wife of the deceased.

8.1 In the aforesaid arguments, learned Senior counsel Mr. Mehta submits that the judgment and order passed by the learned appellate Court is in accordance with law and which deserves no interference.

8.2 Upon above submissions, learned Senior counsel Mr. Mehta requests to dismiss the petition.

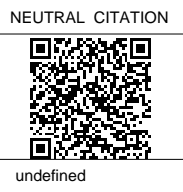
9. Learned advocate Mr. Amar Mithani appearing for the respondent University would submit that it being employer of the deceased, would release the pensionary benefits in favour of a person, who obtained succession certificate subject to order of this Court.

10. Regard being had to the rival submissions of learned advocates for both the parties, if we summarize the arguments canvassed by learned advocate Mr. Shelat, he has argued that the learned appellate Court has not considered the documents produced by the revisionists during appellate proceedings and secondly, the original petitioners have surreptitiously not provided particulars about relatives and permanent residential address of the deceased and therefore, the proceeding to issue succession certificate taken behind the back of the revisionists are nugatory and against the settled principles of law.



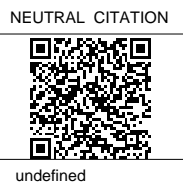
11. At the outset, let me refer the findings of the judgment of the learned appellate Court in para 17 to 19 and 22 , which is seminal of the entire proceedings to negate the first appeal, which read as under:-

"17. In appeal memo appellant stated that she Married to Decd. in the year 1977 at village Mandothi, Tehsil Bahadurgadh, District Zajjar, time of State Hariyana. But she has not declared the date of marriage, place of marriage, name of priest, children presence of family members of her marriage with Decd. She has not even declared the say. birth dates and birth place namely Pankaj and Navin who were born in the year 1982 and 1989 respectively as Moreover, she has not adduced any documentary be legally evidence or affidavit of any family members of Decd.which supports her claim to wedded wife of Decd. (As she taken such a plea that respondent no.1 has not declared such facts in C.M.A. and misled the civil court). In support of her version She has adduced xerox copy of her Aadhar Card issued on date 13/01/2014 at Mark 8/4 and xerox coy of Identity Card issued by Election Commission of India (duplicate)at mark 8/6 dated 04/07/2008. In both these documents "Pratap" is shown as her husband's name and full name of Decd.is not shown. As far as xerox copy of of village Mandothi is concerned which is at mark 8/5, certificate issued by Sarpanch declaring appellant as wife of Deed., that certificate is neither on letter pad of Gram Panchayat, Mandothi nor bears any seal impression of panchayat and without date of its issuance or it. It is silent about the any outward no. fact, under which authority and on the basis of such certifice is issued? first page which information Appellant has adduced xerox copy of of ration card vide Mark-8/7 but that certificate also does not bear any seal impression nor date of its issuance. In that card name of mother of Decd. is



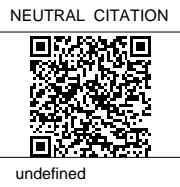
shown but in that card "Pankaj", who is declared as son of Decd. in appeal memo, reflects the full name like "Pankaj Ramdas Dalal" that, appellant has not made any clarification. Moreover, photo of family members on it is not properly visible. Appellant has also adduced xerox copy for application of succession certificate filed by her and her two sons namely Pankaj and Navin before the Senior Civil Court Bahadurgadh vide mark 8/3. In that application she has not joined present respondent no. 4 it mark 8/3 reflects For as party. From order the for that, publication of notice was passed in the said application by concerned Court on Dt. 6/12/2016 returnable on 02/03/2017. It transpires from its bare reading that she has not declared before that court regarding issuance of succession certificate in favor of present respondents no. 1 to 3 by Junagadh senior civil court as she was having that knowledge as per mark 8/2 and 8/1 before Dt. 6/12/2016, but taken the plea in appeal that in C.M.A. No. 49/2016, Agriculture University party by the original joined applicants and thereby misguided the court. This court is also unable to understand why she has not declared the description of movable and immovable properties in the name of decd. when she possesses such knowledge as declared by her in appeal memo. Even in appeal memo also she has not given description of any properties running has asked of Decd. Appellant succession certificate only in context of post retirement benefits lying with respondent No. 4 at Decd. was in the name As junagadh. per her version when residing at junagadh and died at junagadh, dues of decd. with respondent no. 4 is at junagadh then jurisdiction for such application lies with civil court junagadh, as per S. 371 of The Indian Succession Act, then she has no reason to apply for succession certificate before the civil court court that Bahadurgadh, jurisdiction. as was not having

As the the appellant has not adduced documents or affidavits which shows prima facie that she is the wife of Decd. and Pankaj and Navin are children of Decd.



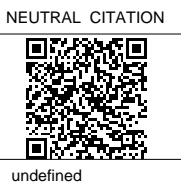
This is a regular civil appeal from uncontested order, as per S. 384 6388(2) of the Indian Succession Act, and provision of 0.41 will also be attracted, During the pendency of present appeal also, appellant has not adduced any further documents in support asked by version, when same were respondent No.1 by moving an application vide preferred to Ex.31, then also appellant has not adduce it and asked adjournment for submission of objection towards it vide Ex.34 and subsequently of her objections were also not furnished. Appellant even not applied for adducing any additional evidence as per rule 27 and 28 of the Order 41 of shown her Civil Procedure Code. If has she willingness then her evidence might be recorded as per provision of C.P.C. 0. 41 Rule 27 &28 and considering S.384 and s.388 of the Indian it Succession Act. No where in appeal memo, reflects that, during the life time of Decd. appellant ever come forward with a plea that she is legally wedded wife of Decd. more over she is silent about the fact, when she last resided with Decd. at junadadh and at which place when she visited junagadh frequently?

18. It is admitted between the parties that Decd.was serving with respondent No.4 since 30 years (that document is adduced by respondent No.4 in C.M.A. No.49/2016 vide Mark-35/8 which shows the date of birth of Decd. 01/06/1957 and He had joined service 09/03/1987 on and his G.P.F. Passbook was created on 26/07/1988). On perusal of that document, it reflects that even at the time of joining service in the year 1987 Decd. appointed mother his Smt.Khajani Hardvarilal Dalal his legal as heir and nominee.subsequently 01/09/1995, on he has cancelled his old nomination and entered the name of wife i.e. Original and daughter applicants/present respondents No.1 and 2 as his nominee. On perusal of record of C.M.A. it transpires that original applicants have adduced true copy of of Decd.at death certificate Ex.13, which shows that Decd. died at Trimurti Hospital, Junagadh on 03/05/2016. through the record of C.M.A. that, in his service record,i.e.in



Ex.22,25to29 i.e.General nomination r On going it is on record on from-1, filled up Dt.25/3/2014, Form IV Nomination for Gratuity filled up on Dt. 12/6/1995, Nomination form for G.P.F. filled up on Dt. 15/4/1995, Correspondence for change of name in nomination from mother- father to wife and daughter(i.e. repondents No. 1&2), Decd. declared respondent No.1 as his wife and appointed her as nominee and repondents no.2 &3 were shown as his children and appointed them as second nominee. These forms were lying with record of respondent no.4 and filled up by Decd. In presence of his colleagues as attesting his colleagues in presence witnesses. Said entries were also made in the of as service book of Decd.as per Ex.27. Undisputedly no where, in his service record, appellant was shown as his wife by the Decd. from the date of joining the service till his death.Original No.1 has also made applicant/respondent correspondence with Principal/Dean, Agriculture University for copy of service book of Decd. vide her letter dated 29/08/2016 but that request was no.4, Agriculture refused by respondent University vide letter dated 08/09/2016, at Exh.- 28. Moreover, original applicant Ranjanben has also adduced true copy of marriage certificate at Ex. 14, for proving her marriage with Decd.which shows that her marriage ceremony was performed to Vaidik Vidhi at Arya Samaj, according Junagadh on 14/08/1993.All these documents were not challenged, by any body on publication of public notice, so Ld. Add. senior civil judge has relied on it.

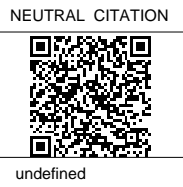
So by adducing copies of service record which was prepared by Decd.himself in his life time, being a Govt. employee, in presence of his colleagues as attesting witnesses and with a copy of marriage certificate original applicants have proved that applicant no.1 is wife and applicants No.2 and 3 are children of Decd. and they are also appointed as nominee by the Decd. for the post retirement benefits in his absence.and they are also class I legal heir of Decd. As per Hindu Succession Act. Ld. Add. senior



civil judge has no reason to discard it.

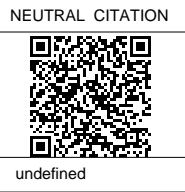
navin are 19 Against these documents, as discussed above, bare version that appellant has only come with she is legally wedded wife of Decd. and pankaj and the children of Decd. without any supportive documents or affidavits and she has not chosen to adduced any documents when it is asked by respondent no.1 in appeal. It is also on i.e. marriage record in appeal vide mark 53/2, by up Decd. and in which Decd. shown his declaration filled form, Respondent no.1 marital status on 14/8/1993 as unmarried.

22 If we look at the conduct of appellant, she has not cared to prove her status as wife of deceased prima facie till the end of appeal though she can do it and being appellate court also, u/s. 384(2) read with Sec. 388 of The Indian Succession Act and Order 41 Rule 27 and 28 could have considered that documents and also would have ascertained the claim of appellant but from the record it transpires that appellant is only interested in prolonging the matter by hook or crook as she has obtained ex-parte stay order in her favour. From the record of appeal, it also transpires that respondent has No.1 for moved it. application for early disposal of appeal but the appellant has not co-operated. Subsequently, the respondents No.2 and 3 have applied for release of some amount of P.F. and gratuity vide Exh.-51 and same was allowed by my predecessor but against that order, the appellant has approached the Hon'ble High Court vide Sp. Civil Application No.10262/18, with same plea that she is legally wedded wife of Decd., without adducing any such evidence in appeal. The Hon'ble High Court was pleased to pass an order on 25/09/2019, considering the fact that once the Appellate Court has stayed the order of operation of certificate, succession then it is not permissible to release the amount of P.F. and gratuity in favour of the respondents No.2 & 3 and also directed to dispose the matter on merits within 3 months from the date of receipt of the order. That order was received on

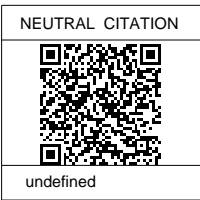


03/10/2019. At that with my time the matter was pending colleague, Mr.H.A. Trivedi to 5th Add. District this Court on Judge Junagadh and on expiry of stipulated time period laid down by the Hon'ble High Court, matter was transferred 09/01/2020. After that, at the time of argument on 19/03/2020, attention of this Court was drawn towards the direction passed by the Hon'ble High Court in Sp.Civil App.No.10262/2018. Subsequently there was lock-down and on issuance of direction of Hon'ble High Court on its administrative side vide 26/06/2020, matter was heard with the consent of Ld. Advocates for the parties. But appellant cannot claim her status merely on the fact of stay order was passed in her favor without proving her version.

As the appellant has adduced no documents which can justify her claim that she is legally wedded wife of Decd. and pankaj and navin are children of Decd. Moreover, she has not declared necessary facts in the appeal memo that where she or whether Decd. was used to her by resided with Decd. sent any amount from his salary depositing it in her Bank account. She has not even clarified why name of Ramdas Dalal is shown after name of her son Pankaj in xerox copy Ration Card at Mark-8/7. It transpires from the record i.e. Mark-8/2 that after the death of Decd. for the first time, she claimed herself to be her letter dated 22/06/2016. wife of Decd.vide (Said letter not is adduced on of record by appellant) It is not the say of the appellant that she has physically approached respondent No.4 but It also that letter was sent by the post. transpires from Exh.-30 of C.M.A. that prior to claim of appellant, respondent No.1 has claimed the retirement benefits before respondent No.4 and office order to proceed the pension papers in ordered on favour of the respondent No.1 Dt.22/6/2016 by Principal and Dean, Veterinary in College, Agriculture University, Junagadh, which respondent No.1 was shown as wife of Decd.as per the service record/service book of Decd. Was wife On claim of present appellant that she is of Decd. vide her letter



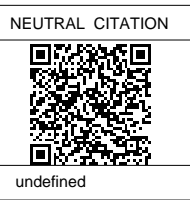
dated 22/06/2016, without any supportive documents or by the before respondent No.4(as no such documents are even no.4 adduced by respondent. appellant in this appeal except the documents which are discussed earlier), though respondent No.1 was appointed as nominee and declared as wife by Decd.himself, respondent No.4 has stopped the process of pension papers and releasing the amount in favour of nominee/respondent no.1 and issued letter to both respondent No.1 and appellant vide letter No.JAU/JV/A-1/3606-3608/16 dated 29/07/2016 asked and for succession certificate. On receiving that letter, though respondent No.1 was appointed as nominee and she was declared as wife by Decd. himself in his service record then also respondent No.1 has applied for succession certificate before Senior Civil Court, Junagadh as per Sec.371 of Indian Succession Act because Decd. was residing at Junagadh till his death since 30 years and dues in respect of which succession certificate asked was with respondent allowing no.4 at application the for Junagadh. On succession certificate in favour of respondent No.1, 4 Additional Senior Civil Court, Junagadh, has intimated that fact to respondent No.4 vide its letter bearing outward No.2034/2016 dated 25/10/2016 and same was received by authorized employee i.e. Assistant Administrative Officer, Science College of and Agriculture Agriculture University, Junagadh on 26/10/2016. As per the provision of Nomination Act, 1985, and time and again, the Hon'ble Supreme Court has laid down the ratio in the settling of legal principle that nominee only hold the estate on behalf of the legal heirs of deceased and said nomination does not amount to declaration of heirship. However many a times, succession leads to mis-understanding when nominee and legal heir and the same, just like in the both are one declared present matter, because Decd.has respondent No.1 as his legally wedded wife and respondent Nos.2 and 3 as his children by filing necessary form of nomination in his record and appointed them as nominee. Nowhere in his service



record in his life time Decd.has declared himself service as married to appellant nor appellant has adduced any such evidence, while challenging the succession certificate by way of Here in this matter, Decd.has this appeal. appointed respondent No.1 as nominee who herself is the wife of Decd.and second nominee children of Decd. There is no reason for Senior Civil Court to discard these facts while allowing the succession certificate as nominee are also class I heir of Decd.as per Hindu Succession Act and rightly issued the succession has he certificate in favour of respondent Nos.1 to 3 and not committed any error on appreciation of adduced in the matter and evidence appreciation of Succession Act. provision of The in Indian.”

12. It is noticeable therefore, that though the revisionists have not proceeded to follow the provisions of additional evidence to be produced at appellate stage contained in section 41 Rule 27 and 28 of the Code, the learned appellate Court referred to the documents produced by the revisionists and believed that none of the documents could establish any support to the claim of the revisionists. In these detailed analysis, the learned appellate Court believed that the revisionist No.1 failed to prove that she is legally wedded wife of the deceased and two sons, who are claimed to be sons of the deceased, are failed to establish that they are the children born out of marriage between the revisionist wife and the deceased. In that circumstances, merely on words, it cannot be believed that the revisionist No.1 and her two sons are the legal heirs of the deceased.

13. Order 41 Rule 27 of the Code has to be followed if appellant is intended to bring evidence on record at appellate



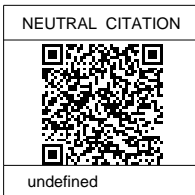
stage, otherwise, it is not the business of the Appellate Court to supplement the evidence adduced by one party or the other in the lower Court and in absence of satisfactory reasons for the non- production of the evidence in the trial court, additional evidence, generally is not to be permitted in appeal.

14. At this juncture, let refer judgment of the Hon'ble Apex Court in case of **Union Of India Versus Ibrahim Uddin, 2012 (8) SCC 148**, wherein in para 39, the Hon'ble Apex Court held as under:-

“39. It is not the business of the Appellate Court to supplement the evidence adduced by one party or the other in the lower Court. Hence, in the absence of satisfactory reasons for the non- production of the evidence in the trial court, additional evidence should not be admitted in appeal as a party guilty of remissness in the lower court is not entitled to the indulgence of being allowed to give further evidence under this rule. So a party who had ample opportunity to produce certain evidence in the lower court but failed to do so or elected not to do so, cannot have it admitted in appeal. (Vide: State of U.P. V/s. Manbodhan Lal Srivastava, AIR 1957 SC 912; and S. Rajagopal V/s. C.M. Armugam & Ors., AIR 1969 SC 101). “

15. In the aforesaid circumstances, the argument of learned advocate Mr. Shelat that the learned appellate Court has not considered the documents produced by the revisionists failed to conceive and stand.

16. It is an admitted position that in service book of the deceased, original petitioner No.1 was appointed as nominee.



Subsequent to cancellation of nomination of mother of the deceased. In other words, firstly, mother of the deceased was nominated as nominee, but subsequently, as the deceased contracted marriage with original petitioner No.1, her name was replaced as nominee in the service records of the deceased. Rule 85 of the Gujarat Civil Services Pension Rules, 2002 provides for nomination, which reads as under:-

“85. Nominations :

(1) A Government employee shall, on his initial appointment in a service or post, make a nomination in forms as prescribed by the Government and as may be appropriate in the circumstances of the case, conferring on one or more persons the right to receive the death-cum-retirement gratuity payable under rule-81.

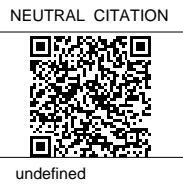
Provided that if at the time of making the nomination

(i) the Government employee has a family members from Group-1 referred to in rule-82, the nomination shall not be in favour of any person or persons other than the members of his family of the said group; or

(ii) the Government employee has no member of the family from Group-1 referred to in rule-82, the nomination may be made in favour of a member of family from Group-2 failing which in favour of a person or persons, or a body of individuals, whether incorporated or not.

Explanation: *For the purpose of convenience the nomination forms are laid down and issued by Government vide Finance Department Government Resolution No. DPP/1099/496/945 (4)/P. Dated 23-6-2000.*

(2) If a Government employee nominates more than one person under sub- rule (1), he shall specify in the



nomination the amount of share payable to each of the nominees in such manner as to cover the entire amount of gratuity.

(3) A Government employee may provide in the nomination

(i) that in respect of any specified nominee who dies before the death of Government employee, or who dies after the death of the Government employee but before receiving the payment of gratuity, the right conferred on that nominee shall pass to such other person as may be specified in the nomination:

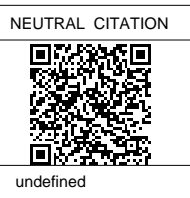
Provided that if at the time of making the nomination the Government employee has a family consisting of more than one member, the person so specified shall not be a person other than a member of his family:

(ii) that the nomination shall become invalid in the event of the happening of the contingency provided therein.

(4) The nomination made by a Government employee in favour of a member of the family from Group-2 referred to in rule-82, who has no family member of Group-1 at the time of making it, shall become invalid in the event of the Government employee subsequently acquiring a family from Group-1 or an additional member in the family from the said group as the case may be.

(5) The nomination made by a Government employee under proviso (ii) to rule-85 (1) in favour of a person or persons who are not the members of family from Group-1 or 2 referred to in rule-82 at the time of making it, shall become invalid in the event of the Government employee subsequently acquiring a member of family from either Group-1 or 2 or an additional member in the family from the said groups as the case may be.

(6) A Government employee may, at any time, cancel a



nomination by sending a notice in writing to the Head of Office in case he is a non-Gazetted Government employee, to the Head of Department if he is a Gazetted Officer and to the Pay and Accounts Officer if he is a Head of Department

Provided that he shall along with such notice, send a fresh nomination made in accordance with this rule.

(7) Immediately on the death of a nominee in respect of whom no special provision has been made in the nomination under clause (i) of sub-rule (3) or on the occurrence of any event by reason of which the nomination becomes invalid in pursuance of clause (ii) of that sub-rule, the Government employee shall send to the Head of Office, a notice in writing cancelling the nomination together with a fresh nomination made in accordance with this rule.

(8)

(a) Every nomination made (including every notice of cancellation, if any, given) by a Government employee under this rule shall be sent

(i) if the Government employee is Gazetted Officer to the Head of Department concerned; and

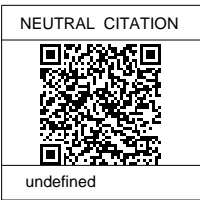
(ii) if the Government officer is the Head of Department to the Pay & Accounts Officer, Gandhinagar.

(iii) in any other case, to the Head of Office.

(b) The Head of Department or Head of Office or the Pay and Accounts Officer, as the case may be, shall, immediately on receipt of the nomination referred to in clause (a), countersign it indicating the date of receipt and keep it under his custody.

(c)

(i) The Head of Office may authorise his subordinate



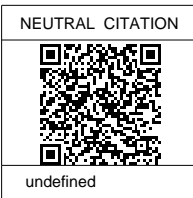
Gazetted Officers to countersign the nomination forms of Non-gazetted Government employees

(ii) Suitable entry regarding receipt of nomination shall be made in the service book of the Government employee.

(9) Every nomination made, and every notice of cancellation given, by a Government employee shall, to the extent that it is valid, take effect from the date on which it is received by the Head of Department / Head of Office or Pay and Accounts Officer as the case may be."

17. Thus, nomination can be made in favour of family member from group No.1. Generally, pension is service benefit has to be paid to the nominee in view of Rule 82 and 83 of the Rules. The scheme of the Rules therefore, provides that if any employee has nominated a person to be his nominee for receiving death-cum-retirement benefits, he is presumed to be fallen in group 1, which is defined in section 82 of the Rules. In the present case, nomination of the original petitioner No.1 was not questioned by the revisionists till date. Ordinarily, the respondent University pays retirement benefits to a family member defined in group 1 in Rule 82 of the Rules. The respondent University shall pay the family benefits or post-retirement -cum-death benefits to the nominee. In the present case, the respondent University insisted for issuance of succession certificate. The learned trial Court after following procedure laid down in section 373 of the Act, granted succession certificate in favour of the original petitioners.

18. At this juncture, let us have worthy glance of Section

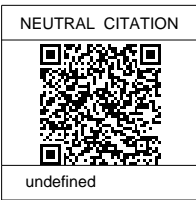


373(3) of the Act:-

“373(3) Procedure on application-If the judge cannot decide the right to the certificate without determining questions of law or fact which seem to be too intricate and difficult for determination in a summary proceeding, he may nevertheless grant a certificate to the applicant if he appears to be the person having prima facie the best title thereto.”

19. In view of section 373(3) of the Act, even if judge sitting in testamentary jurisdiction cannot decide the right to the certificate without determining questions of law or fact which seem to be too intricate and difficult for determination in a summary proceeding, he may nevertheless grant a certificate to the applicant if he appears to be the person having *prima facie* the best title thereto. In the present case, undisputedly, the original petitioner No.1 was nominee of the deceased, her name is reflected in the service records and therefore, nevertheless, dispute raised by the revisionists, in view of section 373(3) of the Act since she holds *prima facie* best title thereto to get succession certificate, according to this Court, the learned Courts below have not committed any error much less error of understanding the facts or law, which permits this Court to exercise revisional jurisdiction.

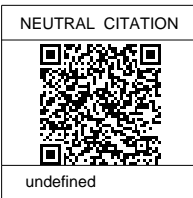
20. In **Banarsi Dass Vs. Teeku Dutta, (2005) 4 SCC 449**, the Hon'ble Apex Court carved down the main object of succession certificate and held that issues of succession certificate is to facilitate collections of debts on succession and afford protection to the parties paying debts to representatives of the deceased person. Such certificate does



not give any general power of administration on the estate of the deceased nor establish title to the grantee as the heirs of the deceased, but only furnishes him with authority to collect his debts and allows the debtors to make payments to him without incurring any risk.

21. The Hon'ble Apex Court in another judgment in case of **Madhvi Amma Bhawani Amma Vs, Kunjikutty Pillai Meenakshi Pillai, (2000) 6 SCC 301**, held that grant of succession certificate would not operate as res judicata to the suit for partition filed in the civil Court between the same parties because to grant or not to grant succession certificate is wholly summary proceedings on the *prima facie* view of the matter. In other words, grant of succession certificate is only a determination of *prima facie* title and not a final decision between the parties.

22. As per section 381 of the Act, succession certificate merely affords full indemnity to the debtor for the payments he makes to the person holding such certificate. So, he may not be later dragged into the litigation which may arise subsequently inter se between the parties claiming title or right in the properties of the deceased. Thus, reasonings in the proceedings under the Act are not final but statute recognizes such payment to be in good faith in favour of holder of certificate. Thus, issue of succession certificate can yet to be questioned in subsequent proceedings and it may be held to belong to other claimant, including the contesting party, as proceeding falling under part X in the Act range whereof is between section 370 to 390 will not bar the same



question to be adjudicated in other subsequent title suits.

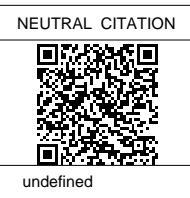
23. The Calcutta High Court in case of **Sandhya Banerjee Vs. Shyama Banerjee (2010) SCC Online Calcutta 1355**, held that succession certificate can be granted in favour of any person, may be a heir or a nominee. By reason of granting such succession certificate, a person in whose favour, it is granted, becomes a trustee to distribute the amount payable by the deceased to his heirs and legal representatives, but it does not derive any right thereunder. Thus, succession certificate merely enables him to collect the dues of the deceased and no status is conferred by the grantee thereby. Granting of succession certificate does not necessarily prove any relation between the deceased and the applicant.

24. Thus, issue of succession certificate in favour of original petitioners does not forfeit proprietary right of the revisionists.

25. Applying the aforestated ratio *decidendi* in the aforesaid case, the contention raised by learned advocate Mr. Shelat does not sound germane and deserves to be struck down and accordingly, it is rejected.

26. Under the aforesaid circumstances, the judgments relied upon by learned advocate Mr. KV Shelat has rendered no help to the case of the petitioners.

27. Resultantly, the petition sans merit and accordingly, it is



rejected. Notice discharged. Interim relief granted earlier stands vacated.

28. Consequently, CA, if any, does not survive and stands disposed of accordingly.

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

SHEKHAR P. BARVE

(J. C. DOSHI,J)

FURTHER ORDER

After pronouncement of the judgment, learned advocate Mr. KV Shelat appearing for the revisionists requests the Court to stay implementation, operation and execution of the judgment so as to enable him to approach higher forum. The request is refused.

SHEKHAR P. BARVE

(J. C. DOSHI,J)