Reserved On : 30/03/2026
Pronounced On : 30/06/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 1313 of 1985

With
CIVIL APPLICATION NO. 1 of 1987
In R/FIRST APPEAL NO. 1313 of 1985
With
CIVIL APPLICATION (FOR ADDITIONAL EVIDENCE) NO. 1 of 2014
In R/FIRST APPEAL NO. 1313 of 1985
With
CIVIL APPLICATION (FOR PRODUCTION OF ADDITIONAL EVIDENCES) NO. 3 of 2025
In R/FIRST APPEAL NO. 1313 of 1985
With
R/CIVIL REVISION APPLICATION NO. 747 of 1992
With
CIVIL APPLICATION (FOR BRINGING HEIRS) NO. 1 of 2023
In R/CIVIL REVISION APPLICATION NO. 747 of 1992
With
CIVIL APPLICATION (FOR CONDONATION OF DELAY) NO. 1 of 2024
In R/CIVIL REVISION APPLICATION NO. 747 of 1992
With
CIVIL APPLICATION (FOR BRINGING HEIRS) NO. 2 of 2023
In R/CIVIL REVISION APPLICATION NO. 747 of 1992
With
CIVIL APPLICATION (FOR CONDONATION OF DELAY) NO. 2 of 2024
In R/CIVIL REVISION APPLICATION NO. 747 of 1992
With
CIVIL APPLICATION (FOR BRINGING HEIRS) NO. 3 of 2023
In R/CIVIL REVISION APPLICATION NO. 747 of 1992
With
CIVIL APPLICATION (FOR CONDONATION OF DELAY) NO. 3 of 2024
In R/CIVIL REVISION APPLICATION NO. 747 of 1992
With
CIVIL APPLICATION (FOR BRINGING HEIRS) NO. 4 of 2023
In R/CIVIL REVISION APPLICATION NO. 747 of 1992
With
CIVIL APPLICATION (FOR CONDONATION OF DELAY) NO. 4 of 2024
In R/CIVIL REVISION APPLICATION NO. 747 of 1992
With
CIVIL APPLICATION (FOR BRINGING HEIRS) NO. 5 of 2023
In R/CIVIL REVISION APPLICATION NO. 747 of 1992
With

CIVIL APPLICATION (FOR CONDONATION OF DELAY) NO. 5 of 2024
In R/CIVIL REVISION APPLICATION NO. 747 of 1992
With
CIVIL APPLICATION (FOR BRINGING HEIRS) NO. 6 of 2023
In R/CIVIL REVISION APPLICATION NO. 747 of 1992
With
CIVIL APPLICATION (FOR CONDONATION OF DELAY) NO. 6 of 2024
In R/CIVIL REVISION APPLICATION NO. 747 of 1992
With
CIVIL APPLICATION (FOR BRINGING HEIRS) NO. 7 of 2023
In R/CIVIL REVISION APPLICATION NO. 747 of 1992
With
CIVIL APPLICATION (FOR BRINGING HEIRS) NO. 8 of 2023
In R/CIVIL REVISION APPLICATION NO. 747 of 1992
With
CIVIL APPLICATION (FOR CONDONATION OF DELAY) NO. 8 of 2024
In R/CIVIL REVISION APPLICATION NO. 747 of 1992
With
CIVIL APPLICATION (FOR SUBSTITUTE SERVICE) NO. 9 of 2024
In R/CIVIL REVISION APPLICATION NO. 747 of 1992
With
R/FIRST APPEAL NO. 924 of 1986
With
CIVIL APPLICATION (FOR DIRECTION) NO. 1 of 2005
In R/FIRST APPEAL NO. 924 of 1986
With
CIVIL APPLICATION (FOR ORDERS) NO. 1 of 2014
In R/FIRST APPEAL NO. 924 of 1986
With
CIVIL APPLICATION (FOR BRINGING HEIRS) NO. 1 of 2026
In R/FIRST APPEAL NO. 924 of 1986
With
CIVIL APPLICATION (FOR CONDONATION OF DELAY) NO. 2 of 2026
In CIVIL APPLICATION (FOR BRINGING HEIRS) NO. 1 of 2026
In R/FIRST APPEAL NO. 924 of 1986
With
R/CROSS OBJECTION NO. 34 of 2001
In
R/FIRST APPEAL NO. 1313 of 1985

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE NISHA M. THAKORE

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Approved for Reporting	Yes	No

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MOGHIBAI WIDOW OF MADHAVDAS RAVJI & ORS.
Versus
SHANTIBEN WD/O DECEASED CHHABILDAS RAVJI (DELETED) & ORS.
===
Appearance:
MR SAURABH G AMIN(2168) for the Appellant(s) No. 2.1,2.2,2.3
MR. DEVAN PARIKH, SENIOR ADVOCATE WITH MR. MAYUR DHOTRE FOR NANAVATI ASSOCIATES(1375) for the Appellant(s) No. 2.1,2.2,2.3,3,4,5,6,7,8
DECEASED LITIGANT THROUGH LEGAL HEIRS/ REPRESENTATIVES for the Defendant(s) No. 12,9
DELETED for the Defendant(s) No. 1,10,11,12.1,13,14,17,2,7,8,9.1
MR. MEHUL S. SHAH, SENIOR ADVOCATE WITH MR. JENIL M SHAH(7840) for the Defendant(s) No. 10.1,10.2,12.2,12.3,23,3,4,6
MR AJ YAGNIK(1372) for the Defendant(s) No. 15,16,18
MR RAJESH K SAVJANI(2225) for the Defendant(s) No. 5
MS MEGHA JANI(1028) for the Defendant(s) No. 22
RULE SERVED BY DS for the Defendant(s) No. 19,20
SERVED BY RPAD (N) for the Defendant(s) No. 21
===
CORAM:**HONOURABLE MS. JUSTICE NISHA M. THAKORE**

CAV JUDGMENT

CHALLENGE :

1. The present appeal is filed under Section 96 of the Code of Civil Procedure, 1908 (hereinafter to be referred as “the Code”) by the original defendant nos.1 to 8, being aggrieved and dissatisfied with the judgment and order dated 29.03.1985 passed by the learned 3rd Joint Civil Judge, Senior Division at Jamnagar in Special Civil Suit No.54 of 1974.

1.1 By the said impugned judgment and order, the trial court has partly allowed the suit preferred by the original plaintiffs, thereby granting preliminary decree by declaring that the plaintiff has 1/12th share in the properties mentioned in the Exh.8 appended with the plaint, by treating it as co-ownership properties of the parties. This includes the structures and open land on the subject properties. The plaintiff is further entitled to get division and partition by metes and bounds of his 1/12th share and to secure actual possession, accordingly. Consequently, the trial court has also declared and decreed in favour of the heirs of branch of Madhavdas Ravji which consists of 11 heirs i.e. original defendant nos.1 to 8 and defendant nos.26 to 29, in which, defendant no.3 is also included holding 1/12th share of the total, thereby, each of these defendants are held entitled to get 1/32 share. Similarly, the heirs of branch of Morarji Ravji consisting of original defendant nos.9 to 13 and 30 are also held entitled to 1/12th of the total share, and thereby, has granted each of these defendants 1/72 share and, lastly the heirs of Vasanji Ravji consisting of defendant nos.32, 40 and 50 are held entitled to get 1/12th of the total share, and thereby, has held each of these defendants entitled to 1/36 share.

2. The appellants of the First Appeal no. 1313 of 1985 are the original defendants no. 1 to 8 representing the branch of Madhavdas Ravji. They have approached in appeal under section 96 of the Code of Civil Procedure, 1908, disputing the preliminary decree mainly on the ground that the trial court committed grave error by treating the subject properties as co-ownership property instead of partnership

property and, further disputing the proportionate share decreed in favour of the respective parties. The cognate appeal being First Appeal no. 924 of 1986 is filed by the original defendants no. 20 to 25 viz. on behalf of Bai Vali Lalji and her son Vitthaldas Lalji, challenging the directions of the trial court of handing over the possession of property 'Boriwali ni Chawl '. Whereas, cross objections have been filed by the original plaintiff challenging the part of the impugned judgment and order whereby their prayer seeking relief of audit of the accounts has been denied.

3. Considering the grounds raised in the appeal memo, and the submissions made by learned advocates for the respective parties, who have appeared at the stage of admission, the appeal was admitted. Subsequently, it was directed to be heard with First Appeal No. 924 of 1986. The Cross-objections filed by the respective respondents were also directed to be heard along with these appeals for final hearing. Pending the hearing and final disposal of the matters, the Hon'ble Division Bench of this Court vide Order dated 19.09.1985 had by ad interim relief had stayed the impugned judgment and preliminary decree.

<u>CASE OF THE PLAINTIFF AS PLEADED IN THE PLAINT :</u>

4. In order to appreciate the controversy involved, it would be

appropriate to consider the facts of the case as pleaded by the original plaintiff in the plaint. The same are summarized as under:

4.1 The forefather of the plaintiff and the defendants namely Vallabhdas Kanji hold several movable and immovable properties in Mumbai and Jamnagar. These properties include properties situated at Princess street, Marine street in Mumbai and property named Laxmi Bhuvan in Jamnagar. The present dispute pertains to property named Laxmi Bhuvan, situated near New Jail road, Jamnagar, as described in Schedule 'A' Ex.A appended to the plaint.

4.2 The wife of Vallabhdas Kanji namely Smt. Manikbai had expired in the year-1909. The said Vallabhdas Kanji had five sons namely; (1) Ravji Vallabhdas Kanji (2) Ratansey Vallabhdas Kanji, (3) Lalji Vallabhdas Kanji, (4) Ramji Vallabhdas Kanji, (5) Ranchhoddas Vallabhdas Kanji and, one daughter named Jamnabai. The said daughter Jamnabai was married during his lifetime. Appropriate would be to reproduce the pedigree of the deceased Vallabhdas Kanji for better appreciation of the facts of the case:

4.3 The said Vallabhdas Kanji expired in the year-1937, leaving behind his Will dated 19.04.1937. Notably, prior to his death, a deed of release was executed by his son Lalji Vallabhdas in the month of June, 1916 for consideration of sum of Rs.20,000/-, which was paid in cash and further consideration in the form of ornaments and jewelry worth Rs.5,000/- was given to his wife. Thus, the said Lalji Vallabhdas Kanji had released and relinquished all his right, title, interest, share, claim or demand from the ancestral properties of the Vallabhdas Kanji. Despite the aforesaid release deed executed by the deceased son Lalji Vallabhdas Kanji, who had predeceased the said Vallabhdas Kanji, in order to take care of widowed daughter in law Bai Vali and grandson Vitthaldas, who was minor, had made arrangement in his Will conferring limited right of residence in a part of the property situated in Jamnagar known as "*Boriwali ni chawl*.

4.4 During the lifetime of the deceased Vallabhdas Kanji, another son named Ramji Vallabahdas had also expired in the year-1932 leaving behind his widow namely Sundarbai and two minor sons named Purshottam Ramji and Gokuldas Ramji, as his heirs and legal representatives. The said branch of Ramji Vallabhdas Kanji had preferred one civil suit before the High Court of Bombay, praying for partition of the properties, which was registered as Suit No.1282 of 1934. The aforesaid Suit was filed against the father-in-law i.e. Vallabhdas Kanji and his two sons named Ratansey and Ranchhoddas and, sons of the deceased Ramji Vallabhdas, *inter alia,* praying for declaration and other ancillary reliefs. Subsequently, the parties entered into a compromise whereby a consent decree was drawn on

12.04.1937, which was presented before the Sub-Registrar of Assurances at Bombay on 28.06.1937. Under the said consent decree, the heirs of the deceased Ramji Vallabhdas had separated from the joint family and had released and relinquished their right, title, interest, share, claim or demand in the ancestral properties. Considering the compromise arrived upon, the High Court of Bombay had recorded such compromise on 05.08.1937.

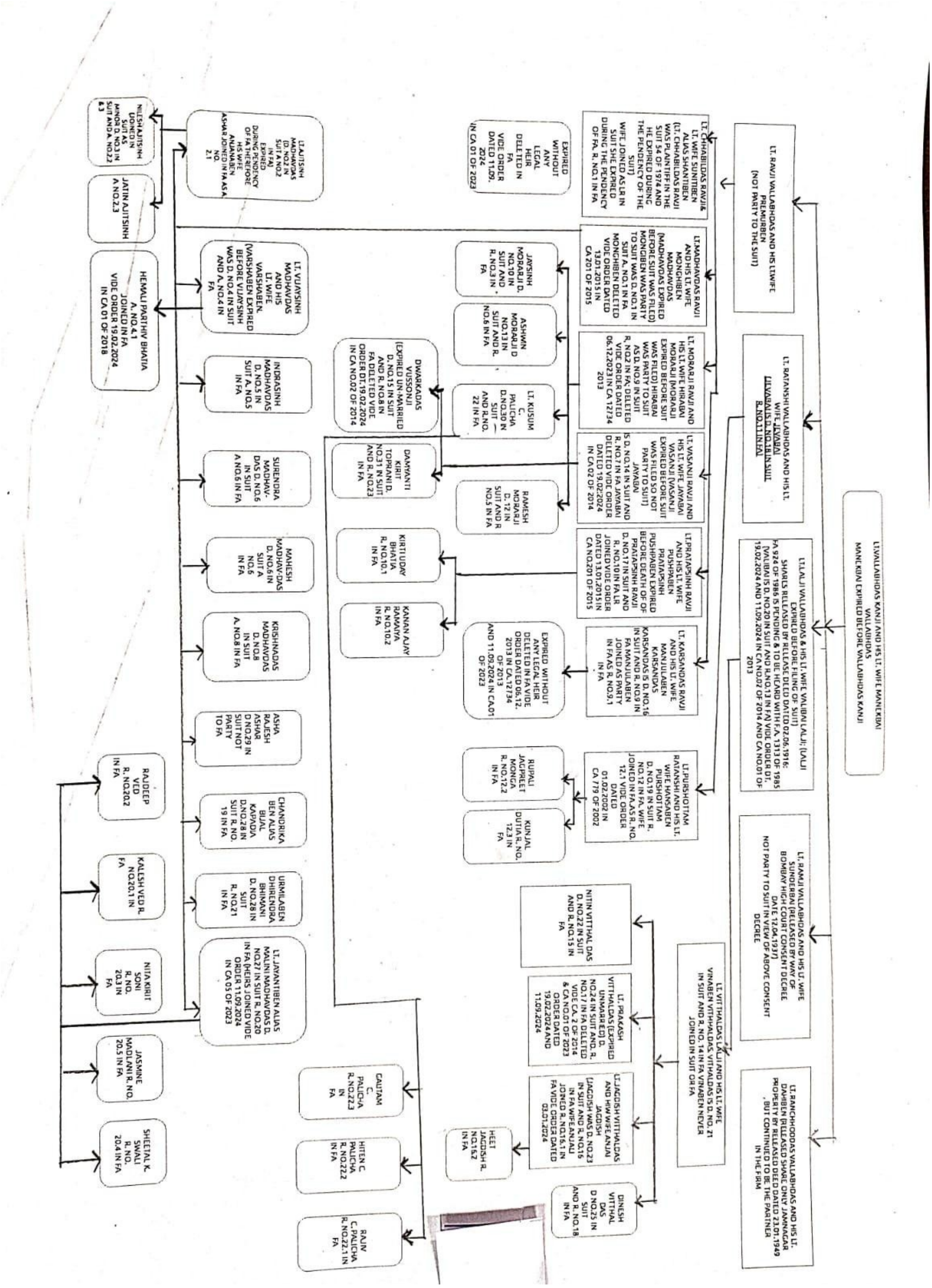
4.5 It was, therefore, contended that on death of the deceased-Vallabhdas Kanji, the property in question had devolved upon the branches of remaining three sons namely Ravji Vallabhdas Kanji, Ratansey Vallabhdas Kanji, and Ranchhoddas Vallabhdas Kanji. Accordingly, the partition of the properties in question was sought for amongst the parties on record. It was also pointed out that the branch of Ranchhoddas Vallabhdas Kanji is concerned, the said Ranchhoddas Vallabhdas had expired in the year-1965 leaving behind his widow Dahibai and four sons namely Bhagwandas, Ramdas, Narottamdas and Chatrabhuj. The said Bhagwandas expired in the year-1968 and had no issue. The son Narottamdas died in the year-1971 leaving behind his widow Nirmalabai and one son- Krishnadas. The son-Ramdas had one son namely Chandrasinh and the fourth son- Chatrabhuj had one son named Rajesh. Thus, it was stated that the branch of Ranchhoddas Vallabhdas Kanji consisted of Dahibai, Ramdas and Chandrasinh along with Nirmalabai, Krishnadas, and Chatrabhuj with son Rajesh.

4.6 On 23.04.1949, a deed of release and relinquishment was executed by Ranchhoddas Vallabhdas for consideration of sum of Rs.20,000/-, which was also duly registered before the office of Sub-Registrar of Assurance at Jamnagar. It was, therefore, submitted that the branch of Ranchhoddas Vallabhdas were not entitled to any right, title, interest, share, claim or demand in any of the ancestral properties, in view of the release deed dated 23.04.1949. The branch of Lalji Vallabhdas Kanji includes widow, son and grandson respectively being joined in the suit proceedings as defendant nos.20 to 25, for the reasons of right of residence and maintenance conferred in respect of the property named *Borivali in Chawl*, despite, release deed executed by Lalji Vallabhdas Kanji during his lifetime. It was contended that pursuant to the right of residence conferred in terms of the Will executed by the deceased Vallabahdas Kanji, the defendant nos.20 to 25 were residing in the said property, which is marked in red colour in the map "F" appended with plaint. The rental income from the tenants of the said premises was collected by Ajitsinh Madhavdas Ravji. As per Clause-8 of the Will dated 19.04.1937, it was expressed by deceased- Vallabhdas Kanji that in the event, if the heirs of the deceased decide to sell the said immovable property, then a sum of Rs.8,000/- is required to be paid to Vithaldas Lalji. Despite repeated requests and notice being issued upon the said defendant nos.20 to 25, they had failed to cooperate or to vacate the said premises even though the assurance was given for payment of Rs.8,000/- in terms of the Will.

PRAYERS IN THE SUIT :

5. With such pleadings, the cause of action arose for the plaintiffs for declaration that properties mentioned in Ex.A appended to the plaint to be treated as joint family property and to issue appropriate declarations holding that the plaintiffs and the defendants were entitled to their respective shares as may be ascertained by law. Alternatively, the declaration was sought for that the plaintiff has 1/12th share in all the properties belonging to the joint family including the properties and structures as reflected in Exh.A. The directions were also sought to hold that the plaintiff is entitled to the partition of said joint family property and to the accounts of said joint family property. Thus, the directions were also sought for division and partition by metes and bounds. Alternatively, if the said property cannot be divided by metes and bounds, then permission was sought to sell away such properties, for which, the accounts may be directed to be maintained. The directions were also sought for against defendant nos.1 to 8 to disclose on oath all the properties and assets, income and profits received by them from the joint family property,

after the death of the deceased. It was also prayed for to direct them to pay compensation at the rate of Rs.2,000/- or any other sum, which, the Hon'ble Court may deem fit and proper for the wrongful use and occupation towards past arrears and Rs.2000/- per month or any other sum, which the Court may deem fit for further use and occupation of the said property. As against the defendant nos.20 to 25, the prayer was made to treat the joint family property by determining its rate and/or compensation at the rate of Rs.300/- per month or any other sum, which may be deemed fit and proper towards future use and occupation of such premises. Pending the suit, the direction was sought to appoint the Court Receiver or any other fit and proper person as may be appointed by the court as a receiver of said properties and the income thereof by exercising the powers conferred under Order XL Rule 1 of the Code, 1908. The interim directions were also sought for against the defendant nos.1 to 8 and defendant nos.20 to 25 to be restrained by injunction order from dealing with the properties in question in any manner by disposing or alienating or encumbering or parting with the possession of the said joint family property for any part thereof or any income thereof or any part thereof.


LT.VALLABHDAS KANJI AND HIS LT. WIFE MANEKBAI VALLABHDAS MANEKBAI EXPIRED BEFORE VALLABHDAS KANJI
LT. RAVJI VALLABHDAS AND HIS LT.WIFE PREMURBEN (NOT PARTY TO THE SUIT)
LT. RATANSHI VALLABHDAS AND HIS LT. WIFE JEVABAI (JEVABAI IS D. NO.18 IN SUIT R. NO.11 IN FA)
LT.LALJI VALLABHDAS & HIS LT. WIFE VALIBAI LALJI; (LALJI EXPIRED BEFORE FILING OF SUIT) SHARES RELEASED BY RELEASE DEED DATED 02.06.1916: FA 924 OF 1986 IS PENDING & TO BE HEARD WITH F.A. 1313 OF 1985 (VALIBAI IS D. NO.20 IN SUIT AND R.NO.13 IN FA) VIDE ORDER DT. 19.02.2024 AND 11.09.2024 IN CA NO.02 OF 2014 AND CA NO.01 OF 2013
LT. RAMJI VALLABHDAS AND HIS LT. WIFE SUNDERBAI (RELEASED BY WAY OF BOMBAY HIGH COURT CONSENT DECREE DATE 12.04.1937) NOT PARTY TO SUIT IN VIEW OF ABOVE CONSENT DECREE
LT. RANCHHODDAS VALLABHDAS AND HIS LT. DAHIBEN (RELEASED SHARE ONLY JAMNAGAR PROPERTY BY RELEASED DEED DATED 23.01.1949 , BUT CONTINUED TO BE THE PARTNER IN THE FIRM
LT. CHHABILDAS RAVJI& LT. WIFE SUNITIBEN ALIAS SHANTIBEN (LT. CHHABILDAS RAVJI WAS PLAINTIFF IN THE SUIT 54 OF 1974 AND HE EXPIRED DURING THE PENDENCY OF THE SUIT) WIFE JOINED AS LR IN SUIT SHE EXPIRED DURING THE PENDENCY OF FA. R. NO.1 IN FA
LT.MADHAVDAS RAVJI AND HIS LT. WIFE MONGHIBEN MADHAVDAS (MADHAVDAS EXPIRED BEFORE SUIT WAS FILED) MONGIBEN WAS PARTY TO SUIT WAS D. NO.1 IN SUIT A. NO.1 IN FA MONGHIBEN DELETED VIDE ORDER DATED 13.01.2015 IN CA 201 OF 2015
LT. MORARJI RAVJI AND HIS LT. WIFE HIRABAI MORARJI (MORARJI EXPIRED BEFORE SUIT WAS FILED) HIRABAI WAS PARTY TO SUIT AS D. NO.9 IN SUIT R. NO.2 IN FA; DELETED VIDE ORDER DATED 06.12.2023 IN CA 12734 2013
LT. VASANJI RAVJI AND HIS LT. WIFE JAYABAI VASANJI (VASANJI EXPIRED BEFORE SUIT WAS FILED SO NOT PARTY TO SUIT) JAYABAI IS D. NO.14 IN SUIT AND R. NO.7 IN FA JAYABAI DELETED VIDE ORDER DATED 19.02.2024 IN CA 02 OF 2014
LT.PRATAPSINH RAVJI AND HIS LT. WIFE PUSHPABEN PRATAPSINH PUSHPABEN EXPIRED BEFORE DEATH OF OF PRATAPSINH RAVJI D. NO.17 IN SUIT AND R. NO.10 IN FA LR JOINED VIDE ORDER DATED 13.01.2015 IN CA NO.201 OF 2015
LT. KARSANDAS RAVJI AND HIS LT. WIFE MANJULABEN KARSANDAS KARSANDAS IS D. NO.16 IN SUIT AND R. NO.9 IN FA MANJULABEN JOINED AS PARTY IN FA AS R. NO.9.1 IN FA
LT.PURSHOTTAM RATANSHI AND HIS LT. WIFE HANSABEN PURSHOTTAM D. NO.19 IN SUIT R. NO.12 IN FA. WIFE JOINED IN FA AS R. NO. 12.1 VIDE ORDER DATED 01.02.2002 IN CA 779 OF 2002
LT. VITTHALDAS LALJI AND HIS LT. WIFE VINABEN VITHHALDAS. VITHALDAS IS D. NO. 21 IN SUIT AND R. NO. 14 IN FA VINABEN NEVER JOINED IN SUIT OR FA
EXPIRED WITHOUT ANY LEGAL HEIR DELETED IN FA VIDE ORDER DATED 11.09. 2024 IN CA 01 OF 2023
JAYSINH MORARJI D. NO.10 IN SUIT AND R. NO.3 IN FA
ASHWIN MORARJI D NO.13 IN SUIT AND R. NO.6 IN FA
LT. KUSUM C. PALICHA D.NO.30 IN SUIT AND R.NO. 22 IN FA
RAMESH MORARJI D. 12 IN SUIT AND R NO.5 IN FA
EXPIRED WITHOUT ANY LEGAL HEIR DELETED IN FA VIDE ORDER DATED 06.12. 2013 IN CA.12734 OF 2013 AND 11.09.2024 IN CA.01 OF 2023
RUPALI JAGPREET MONGA R. NO.12.2 IN FA
KUNJAL DUTIA R. NO. 12.3 IN FA
NITIN VITTHAL DAS D. NO.22 IN SUIT AND R. NO.15 IN FA
LT. PRAKASH VITTHALDAS (EXPIRED UNMARRIED) D. NO.24 IN SUIT AND. R. NO.17 IN FA DELETED VIDE CA. 2 OF 2014 & CA NO.01 OF 2023 ORDER DATED 19.02.2024 AND 11.09.2024
LT.JAGDISH VITTHALDAS AND HIW WIFE ANJAI JAGDISH (JAGDISH WAS D. NO.23 IN SUIT AND R. NO.16 IN FA WIFE ANJALI JOINED R. NO.16.1 IN FA VIDE ORDER DATED 03.01.2024
DINESH VITTHAL DAS D NO.25 IN SUIT AND R. NO.18 IN FA
HEET JAGDISH R. NO.16.2 IN FA
DWARKADAS VUSSONJI (EXPIRED UN-MARRIED D. NO.15 IN SUIT AND R. NO.8 IN FA DELETED VIDE ORDER DT.19.02.2024 IN CA NO.02 OF 2014
DAMYANTI KIRIT TOPRANI D. NO.31 IN SUIT AND R. NO.23 IN FA
KIRTI UDAY BHATIA R. NO.10.1 IN FA
KANAN AJAY RAMAIYA R. NO.10.2 IN FA
GAUTAM C. PALICHA R. NO.22.3 IN FA
HITEN C. PALICHA R. NO.22.2 IN FA
RAJIV C. PALICHA R. NO.22.1 IN FA
LT.AJITSINH MADHAVDAS (D. NO.2 IN SUIT A NO.2 IN FA) EXPIRED DURING PENDENCY OF FA THEREFORE HIS WIFE ANJANABEN ASHAR JOINED IN FA AS A. NO. 2.1
LT. VIJAYSINH MADHAVDAS AND HIS LT. WIFE VARSHABEN. (VARSHABEN EXPIRED BEFORE VIJAYSINH WAS D. NO.4 IN SUIT AND A. NO.4 IN FA
INDRASINH MADHAVDAS D. NO.5 IN SUIT A. NO.5 IN FA
SURENDRA MADHAV-DAS D. NO.6 IN SUIT A NO.6 IN FA
MAHESH MADHAV-DAS D. NO.6 IN SUIT A NO.6 IN FA
KRISHNADAS MADHAVDAS D. NO.8 IN SUIT A. NO.8 IN FA
ASHA RAJESH ASHAR D NO.29 IN SUIT NOT PARTY TO FA
CHANDRIKA BEN ALIAS BIJAL KAPADIA D.NO.28 IN SUIT R. NO. 19 IN FA
URMILABEN DHIRENDRA BHIMANI D. NO.28 IN SUIT R. NO.21 IN FA
LT. JAYANTIBEN ALIAS MALINI MADHAVDAS D. NO.27 IN SUIT R. NO.20 IN FA (HEIRS JOINED VIDE ORDER 11.09.2024 IN CA 05 OF 2023
NILESH AJITSINH (JOINED IN SUIT AS MINOR D. NO.3 IN SUIT AND A. NO.2.2 & 3
JATIN AJITSINH A NO.2.3
HEMALI PARTHIV BHATIA A. NO.4.1 JOINED IN FA VIDE ORDER 19.02.2024 IN CA 01 OF 2018
RAJDEEP VED R. NO.20.2 IN FA
KALESH VED R. NO.20.1 IN FA
NITA KIRIT SONI R. NO. 20.3 IN FA
JASMINE MADLANI R. NO. 20.5 IN FA
SHEETAL K. SWALI R. NO. 20.4 IN FA

With such pleadings, the suit for declaration and partition was preferred before the Court of learned Senior Division Civil Court at Jamnagar on 30.04.1974, which was registered as Special Civil Suit No.54 of 1974.

PROCEEDINGS BEFORE THE TRIAL COURT :

6. Considering the pleadings, the learned Civil Judge has issued summons, which was made returnable on 20.06.1974. In response to the summons, the defendants nos.1 to 8 have filed their written statements at Exhs.69, 70, 82 and 83. Responding to the amended plaint, they have also filed amended written statements at Exhs.142,144 and 145. The defendant nos. 9 to 19 have submitted common written statements at Exh.84 and Exh.85. The original defendant no.17 had submitted its written statement at Exh.85 and defendant nos.20 to 21 had submitted their written statements at Exh.86, whereas defendant nos.22 to 25 have submitted their written statements at Exh.87. It is required to be noted that the defendant no.13 has filed its written statement at Exh.95, who has supported the case of the plaintiff. The written statements submitted by defendant nos.9 to 19 also suggest that they have supported the case of the plaintiff. On the other hand, the written statements by defendant nos.1 to 8 have been supported by defendant nos.26, 27 and 28. By

tendering their affidavits respectively at Exhs. 301, 286 and Exh. 303. The defendant nos.30 and 31 have filed their written statements at Exh.276 and Exh.277, and have also prayed for shares in the suit property.

6.1 In the written statement , the defendant nos.1 to 8 have mainly denied the averments made in the plaint by the plaintiff thereby categorically denying the claim of the plaintiff having right, title, interest or share in the suit properties. They have objected to the fact that prior to year-1937, Vallabhdas Kanji owned the suit properties at Jamnagar as described in Schedule-A. They have also disputed the averments regarding Will executed by Vallabhdas Kanji. They have also disputed the deed of release as averred in para-3 of the plaint. However, they have admitted the averments made in para-4 of the plaint. It is denied that the branches of Vallabhdas Kanji are entitled to shares in the suit properties, thereby disputing the quantum of share as prayed for. They have categorically denied the claim of the plaintiff that the property described in Schedule-A namely Laxmi Bhawan is the joint Hindu undivided family property. It was also denied that two branches of said Ravji Vallabhdas and said Ratansey Vallabhdas alone have share in the suit properties.

6.2 A specific defence has been raised that the suit properties are actually a partnership Firm properties and were treated so, during the lifetime of Vallabhdas Kanji and even after his death, it has been dealt with as a partnership property and not as a joint Hindu undivided family property. Alternatively, it was contended that, in case, if the suit property is to be declared as joint family property, then the suit for partial partition was not tenable in the eyes of law in absence of other properties being included. They also have denied their responsibility or liability towards the plaintiff or any other member of the joint family or the payment of any rent or compensation or any other amount regarding suit property as prayed for. The map produced on record at Exh.F submitted by the plaintiff indicating the possession of the respective parties and area thereof has also been disputed. According to said defendants, substantial part of property is in occupation of tenants, despite being aware about such facts, the plaintiffs have chosen not to disclose the same before the court. Regarding the averments made in Paras 10 to 13 of the plaint as well as in Para 14, they have disputed the alleged claim of Rs.50,000/- on the ground that, so called amount has no nexus or relation with regard to the relief sought for in the plaint seeking partition. The maintainability of the suit has also been disputed on the ground of misjoinder of causes of action, by raising issue of law of limitation, as regards the alleged amount of Rs.50,000/- towards old *Vahivat* account is pleaded. The issue of proper court fees has also been raised. Thus, by raising the issue of latches, acquiescence , estoppel as well as misjoinder of necessary parties, the said defendants have prayed for dismissal of the suit. Considering the controversy involved in the present appeal, it would be appropriate to look into the defence raised by defendant nos.20 and 21 i.e. by Valibai and her son Vithaldas Lalji, who have filed their written statements at Exhs. 86 and 87. Disputing the averments made in the plaint, they have also disputed the maintainability of the suit on the issue of misjoinder of causes of action and limitation. As regards the nature of properties is concerned, it is stated that deceased Vallabhdas Kanji was not holding property as an individual, but was jointly holding these properties. It was contended that the said properties have been purchased from the income of common business run by the family. Though, they have admitted the execution of Will by the deceased Vallabhdas Kanji; however, it is stated that it is valid only to the extent of their 1/5th share as he could not have transferred by any means more than what he possessed. The said defendants have categorically denied the fact that sons of Vallabhdas Kanji were managing the affairs of property during his lifetime. They have denied the fact that their ancestral deceased- Lalji had executed release deed in June-1916 by accepting consideration of Rs.20,000/- in cash and Rs.5,000/- towards ornaments and jewelry thereby waiving his right from the suit properties. It is submitted that such release deed was raised to defeat their rightful claim and shares in the suit properties. The validity of such deed has also been challenged on the ground that the same is not registered. As regards the prayer sought for recovery of possession of the property of *Borivali in Chawl* was concerned, it is stated that deceased Vallabhdas Kanji had made provision for protection of widow of deceased Lalji and minor son Vithaldas. Merely because such provision has been made in the Will, it does not affect their right of entitlement of 1/15th share of the deceased- Lalji. The provision regarding Khotachiwadi made by the deceased Vallabhdas Kanji towards them, was out of love and affection. Merely because the consent decree was drawn before the Bombay High Court, it does not defeat their right in the suit property because the said decree mentions that their right to share in the suit property. They have also disputed the prayer of payment of any rent or compensation to the plaintiff as regards their entitlement of share at the rate of Rs.8,000/- is concerned. It is contended that the rent was collected by the defendant no.2 on behalf of all the defendants and plaintiff, and therefore, appropriate directions are required to be issued to defendant no.2 to produce the accounts in this regard. They have categorically expressed in the written statement that if the suit property is agreed to be sold for partition, then the said defendants may be awarded sum of Rs.16 Lakhs on the basis of Rs.8,000/- rate, as expressed in the Will qua their shares in the subject property. According to them, as per the accounts, the amount comes to Rs.4 Lakhs.

6.3 Having raised such contentions, the said defendants have expressly stated that they have no objection, if the subject property is declared joint Hindu family property; however, by including the share of the deceased Lalji Vallabhdas, they have further disputed the entitlement of the half share as prayed for by the plaintiff.

6.4 As against the aforesaid defence raiseds by the defendant nos.20 and 21, defendant nos.9 to 19 have expressed no objection, if the amount of Rs.8,000/- is ordered to be paid to the defendant nos.20 to 25. While agreeing for selling of the joint family properties as provided in the Will of the deceased- Vallabhdas Kanji, the defendant nos.30 and 31 have also claimed their shares in the suit properties by effecting the partition and giving separate possession along with the amount to be paid.

6.5 With such pleadings being brought on record, the learned Judge has proceeded to frame the issues at Exh.147, which reads as under:

> “(1) Whether the suit properties mentioned in the schedule attached to the plaint are proved to be the H.U. F. properties of

the parties ?

(2) Whether the plaintiff has got the share in the suit properties? If yes, what is the share of the plaintiff therein?

(3) Whether the plaintiff is entitled to a decree for partition, separate possession and accounts?

(4) Whether the plaintiff proves that he is a co-owner of the suit properties? If yes, whether the plaintiff is entitled to a decree for partition, separate possession and accounts?

(5) Whether the suit is barred by mis-joinder of causes of action ?

(6) Whether the Court-fees paid are adequate ?

(7) Whether the suit is barred by non-joinder of necessary parties ?

(8) Whether the suit is barred by law of limitation ?

(9) Whether the suit is barred by delay, latches, acquiescence and estoppel?

(10) What order and decree?”

7. On appreciation of the evidence brought on record, the learned Judge has decided issues nos. 1 to 4 jointly. The learned Judge has taken into consideration the documentary evidence mainly Exh. 105, the partnership deed dated 30.07.1941, wherein the parties to the proceedings have been described as co-owners; the release deed executed by Lalji Vallabhdas produced on record at Exh. 172; the

document produced on record at Exh. 178, wherein the parties are referred as co-owners and have acknowledged the fact of property of co-ownership of branches of Ratansey and Ravji as well as the city survey record produced on record at Exh. 182, which suggest joint ownership of the parties to the proceedings. Reference is also made to the Will executed by Vallabhdas, wherein the joint owners of the property includes the sons of Vallabhdas. The Court has also taken into consideration the fact that Vallabhdas had expressed his wish to continue the widow of his deceased son Lalji i.e. Valibai, and his minor son Vithaldas, to occupy the premises known as *Borivali Ni Chawl* for limited residential purposes. Apart from the aforesaid documentary evidence, the trial court has further considered the papers related to Civil Suit No. 1282 of 1934 filed before the Bombay High Court. The learned Judge has also considered Exh. 190 and has noted that the suit was filed for dissolution of the partnership Firm. However, the learned Judge, on overall appreciation of the evidence on record, has inferred that the partnership business is closed; Ranchhoddas has sold one-third share in favour of the two remaining holders namely Ratansey and Ravji. The learned Judge has, therefore, arrived at a conclusion that only two properties situated in Bombay continued as partnership Firm properties. The Court noting the fact that the consent terms drawn before Bombay High Court was signed by

Ajitsinh Madhavdas, being one of the members of the branch of Madhavdas Vallabhdas (appellants herein), has therefore discarded their defence that the suit property situated in Jamnagar continued to be a partnership Firm property. As regards the contradiction noticed in the evidence of Chhabildas Ravji is concerned, the learned Judge was of the view that when the evidence of the said witness was recorded, he was on the verge of his death, as suffering from Cancer, and has thereby ignored the contradictions brought on record with regard to the core issue as to whether the suit property was a co-ownership property or a partnership Firm property. The learned Judge has believed the relinquishment deed executed by Lalji Vallabhdas and has arrived at a conclusion that despite the fact that the said document was not registered, the principles of estoppel are to be applied, and therefore, the widow and son are entitled to the limited right conferred under the Will. The learned Judge has, therefore, arrived at a conclusion that they were at the most entitled to Rs. 8,000/- only with regard to their rights in the part of suit property i.e. Boriwali ni Chawl , alongside the property in Bombay.

8. Considering the overall documents brought on record, the learned Judge has believed the case of the plaintiff, and has thereby declared the suit properties of being co-ownership of the parties to

the proceedings and has further held the plaintiff entitled to 1/12th share in the suit properties. The learned Judge has, therefore, decreed the suit by holding the plaintiff entitled to partition and separate possession of his share, as well as has defined the share of the respondents in the suit properties. The learned Judge has, however, rejected the prayer for rendition of the accounts and has reserved the liberty in favour of the plaintiff to file appropriate proceedings in this regard.

9. With these findings and reasons assigned, the learned Judge has partly granted the preliminary decree in favour of the plaintiffs. Hence, the present appeal no. 1313 of 1985 at the instance of the heirs and legal representatives, representing the branch of Madhavdas.

IN APPEAL :

10. The cognate appeal no. 924 of 1986 has been filed mainly on the ground that the learned Judge committed error in confining the right of the appellants to the extent of realization of Rs.8,000/- as against their specific defense of having a distinct share in the suit properties. Considering the grounds raised in the appeal and the submissions made by the learned advocate for the appellants therein, the Hon'ble Division Bench of this Court, has admitted the appeal. Upon admission

of the lead appeal; a cross-appeal was preferred by the heirs and legal representatives of the branch of Lalji, which was registered as First Appeal No. 924 of 1986, after condonation of delay was granted by this Court. Civil Revision Application No.747 of 1992 has also been filed in view of subsequent orders passed by the trial court appointing Court Commissioner and defining the shares of the respective parties by metes and bounds in terms of impugned preliminary decree. Cross-objections were also preferred by respondent nos. 2 to 9, 12, and 23, assailing the impugned judgment and order, essentially challenging the non-grant of their prayer with regard to rendition of the accounts vis-à-vis recovery of the amount as prayed for by the original plaintiffs.

SUBMISSIONS ON BEHALF OF THE APPELLANTS:

11. Learned senior advocate Mr. Devan Parikh appearing with learned advocate Mr. Mayur Dhotre for the appellants, has vehemently assailed the impugned judgment and preliminary decree by submitting that the same is perverse, as being *de hors* the evidence on record and the provisions of law. At the outset, it was submitted that the learned Judge committed a grave error in holding the suit properties as co-ownership property, thereby rejecting the specific defense raised by the appellant about the suit properties being the property of partnership Firm.

11.1 In order to substantiate his arguments, learned advocate has, for the convenience of the Court, produced on record a fair copy of the pedigree of the deceased Vallabhdas Kanji. Referring to the consent decree dated 12.04.1937 passed by the Bombay High Court in Civil Suit No. 1282 of 1934, it was submitted that on bare appreciation of the contents of the aforesaid document, the intention of the parties can be gathered, inasmuch as, it was recorded that the partnership was created in the year of the Hindu calendar Vikram Samvat 1983, which would be year 1926 AD. The recitals of the aforesaid document make reference to three schedules appended therein, wherein the properties situated in Jamnagar were included under the third schedule. Thus, the suit property was thrown into the partnership as part of its assets. A close reading of the recitals further suggests that the parties have clearly expressed that irrespective of the fact that the property was in the name of an individual, it was to be treated as partnership property.

11.2 Learned senior advocate has much emphasized on the expression "as part in assets" as appearing in the said deed. He has, therefore, submitted that though the property was in the name of Vallabhdas Kanji, but by virtue of the aforesaid consent deed, it has to be treated as an asset of the partnership Firm. It was further pointed out that the heirs of the Ramji Vallabhdas branch have foregone their shares in the assets of the partnership described in Schedules 1, 2, 3, and 4 by accepting a sum of Rs. 30,000/- towards their share. Similarly, a release deed dated 23.04.1949 was executed by Ranchhoddas Vallabhdas, releasing his share in the suit property at Jamnagar by accepting a sum of Rs.20,000/-. It was further pointed out that in case of Ramji Vallabhdas, he had retired from the partnership Firm having accepted the amount towards his share in the assets of the partnership, whereas Ranchhoddas Vallabhdas continued as a partner, as can be gathered from the indenture of partnership dated 15.01.1970 produced on record at Exh. 188. Referring to the aforesaid documents at Exh. 175 and 188, learned senior advocate had submitted that merely on the retirement of one of the partners from the partnership Firm, there was no dissolution of the partnership Firm. He has, therefore, submitted that by no stretch of imagination, the document dated 23.04.1949 can be read as taking away the Jamnagar property from the assets of partnership Firm.

11.3 Learned senior advocate had further invited my attention to the recitals of the partnership deed dated 15.01.1970 (EXH.188) which clearly suggest that Jamnagar property belonged to all the three branches. According to him, it demonstrates that the Jamnagar property was always an asset of the partnership Firm right since 1926. As regards, the inference drawn by learned Judge that the business of the partnership Firm was closed, reliance was placed on the recitals of partnership deed dated 30.07.1941, produced on record at Exh. 173. Learned senior advocate had emphasized on the fact that bare reading of the recitals of the said document clearly suggests that the business is going concern in the name and style of M/s. Vallabhdas Kanji & Company, M/s. Valkhan and M/s. V. K. Sons. According to him, the said agreement was executed only for the limited purpose to redefine the shares of sons of Ravji separately in partnership as Ravji's sons have separated amongst themselves.

11.4 It was submitted that the aforesaid deed does not create any new partnership and was only executed with a view to record the rights of the parties, which stand modified in the existing partnership by specifying the respective shares. As regards the use of term "co-owner" in the recitals of the aforesaid document are concerned, it was submitted that the same has been loosely used; however, the fact admittedly remains that since inception the immovable property i.e. the Princess Street and the Marine Street in Mumbai were partnership properties. Even in the partnership deed dated 15.01.1970, the parties have admittedly referred the properties as partnership properties. It was, therefore, submitted that merely because in the recitals of the aforesaid documents, the parties have referred to the term "co-owner", does not mean that the properties were not partnership properties. Even otherwise, at the most, the Bombay properties can be considered as co-ownership; however, the present suit was not concerned with the aforesaid properties.

11.5 According to learned senior advocate, the close reading of the recitals (at page 112 and 113), the parties have clearly agreed to the shares of the partners in the profits and losses of partnership business of the said Firm. Thus, the said document was for the purpose of fixing the shares in the partnership Firm.

11.6 Learned senior advocate had also relied upon the document dated 27.02.1943 (Exh.190).Referring to the recitals of the aforesaid document, it was submitted that mere partial closure of business would not result in dissolution of partnership Firm. On the contrary, the close reading of the contents of Para 1 with Para 8 of the aforesaid document, specifically provides that the partnership was to continue for the purposes as stated in Para 8, though certain business have been stopped. It further clarifies that the partners can carry on similar business on their own account as recorded in Para 9.

11.7 At this stage, learned senior advocate has invited my attention to the legal provisions, more particularly, section 16 (b) of the Indian Partnership Act, 1932 to contend that the partners can carry on competing business henceforth. It was submitted that initially in Clause 16 of the original partnership deed dated 05.04.1928, the partners were prohibited from carrying on competing business. Thus by incorporating the aforesaid recital in Para 8 of the partnership deed dated 15.01.1970 , the earlier clause 16 stands modified. It was further submitted that even in the partnership deed dated 15.01.1970, the reading of contents of Para 1 (Clause- 1) clearly suggests that the business of the Firm of M/s. Vallabhdas Kanji & Company was deemed to have continued even after the death of Ranchhoddas Vallabhdas, who unfortunately expired on 27.05.1965. Learned senior advocate had, therefore, submitted that the resolution of the question with regard to resolution of partnership, in view of the document dated 27.02. 1943 is clearly based upon misinterpretation thereof.

11.8 Learned senior advocate had placed reliance upon Section 46, 47, 48 and 49 of the Indian Partnership Act, 1932 and had submitted that even if it is to be presumed that a Firm is dissolved upon death of a partner, the assets of the partnership will continue to remain as it is till they are subjected to as per the aforesaid provisions of the Indian Partnership Act, 1932. It was, therefore, submitted that ample evidence has been brought on record, which suggests that the suit properties were partnership properties.

11.9 While referring to the document dated 23.04.1949, which is a release deed executed by Ranchhoddas, as proved on record at Exh. 195, it was submitted that it is a settled law that once a property owned by an individual is sold in the hotchpot of partnership, it will become an asset of partnership, in view of Section 14 of the Indian Partnership Act, 1932. Merely because the original Sanad of the Jamnagar properties continue to show this property as jointly owned; however, the fact remains that in view of original consent terms of 1937, the properties were thrown into the hotchpot of partnership Firm, and therefore, had become partnership property, even in absence of any sale deed or transfer deed being executed or registered.

11.10 To substantiate his arguments, learned senior advocate has placed reliance upon various judgments of the Hon'ble Supreme Court. Referring to the case of **Addaanki Narayanappa v. Bhaskara Krishnappa** reported in **1966 SCC OnLine SC 6**, wherein the Court held that when a partner contributes immovable property to the partnership, no separate registered conveyance is required. The attention of this Court was also invited to the decision of the Bombay High Court in the case of **In Re Adarji Mancheriji Dalal** reported in **(1931) 33 BOMLR 576**. It was highlighted that though a property continued to be shown in the records as individual property, but for the purpose of law, it will become partnership property under Section 14 of the Indian Partnership Act, 1932. The reliance was also placed on the decision of Hon'ble Supreme Court in the case of **CIT vs. Dewas Cine Corporation.** reported in **MANU/SC/0140/1967: 1968 (68) ITR 240 (SC)** as well as in the case of **S.V. Chandra Pandian and Ors. v. S.V. Sivalinga Nadar and Ors.** reported in **(1993) 1 SCC 589,** which reiterated the principle that an asset of partnership are properties purchased by using the money of the partnership and specifically thrown into partnership by one of the partners at any stage, becomes a partnership property.

11.11 Reference was also made about the principle laid down by the Hon'ble Supreme Court in circumstances, where a personal property is thrown into partnership without requiring a registered document, the Court observed that what is essential is the intent of the parties to do so. In this regard, reliance was placed on the decision of the Madras High Court in the case of **Chief Controlling Revenue Authority vs. Chidambram** reported in **1969 SCC OnLine Mad 20,** and the Hon'ble Supreme Court in the case of **Sachin Jaiswal v. Hotel Alka Raje reported in 2025 SCC OnLine SC 446.**

11.12 It was submitted that no individual partner has the right to deal with or dispose of any specific share in the partnership property by treating it as his exclusive asset. Referring to the relevant observations made by the Hon'ble Supreme Court in the case of **Addanki Narayanappa (supra)** in para-4, learned advocate has submitted that a partner's interest is only a right to claim a share of the profits during the subsistence of the Firm and, upon dissolution, to claim a share in the surplus after the settlement of accounts. Considering the aforesaid legal position, as evident from the partnership deed dated 15.01.1970, the heirs of Ranchhoddas Vallabhdas still continued as partners, and therefore, there was no question of the dissolution of the Firm, having been arisen. As regards, subsistence of the partnership Firm is concerned, learned senior advocate has invited my attention to the evidence of **Chhabildas Ravji,** who, in paragraph 50 of his cross-examination, has specifically deposed that the firm M/s. Vallabhdas Kanji & Company has never been dissolved. He has also stated in paragraph 34 that the accounts of the partnership are being maintained. He has also stated that, as and when, the partners died, new partnership documents have been made.

11.13 Reliance was placed on the decision of the Allahabad High Court in the case of **Narendra Bahadur Singh vs. Chief Inspector of Stamps, Uttar Pradesh** reported in **1971 SCC OnLine All 110**, to contend that merely a registered deed of release was made based on the original S*anad*, which was reflected in joint names, does not mean that the suit property ceases to be partnership property. It was submitted that once an asset is brought into the partnership Firm, it retains the character as partnership property until the dissolution, settlement of final accounts, and distribution of the surplus, as per the provisions of the Indian Partnership Act, 1932. Even on a close appreciation of the various documentary evidences on record, it does not establish the fact of the sale of the property, nor does it state that the remaining partners are now holding the status of owners of the property and/or individual possession thereof. He has, therefore, assailed the findings of the learned Judge treating the closure of the business of the partnership and the partnership property to be as the co-ownership property of the parties to the litigation.

11.14 In order to substantiate the aforesaid argument, learned senior advocate has also placed reliance upon the decision of the Hon'ble Supreme Court in the case of **Shridhar Govind Kamat vs. Yeshwant Govind Kamat and another,** reported in **(2006) 13 SCC 481**, as well as in the case of **N. Khadervali Saheb (Dead) by Legal Representatives and another vs. N. Gudu Sahib (Dead) and others** reported in **(2003) 3 SCC 229**. Reliance was also placed on the decision in the case of **Sattappa Chetti and others vs. S.N. Subrahmanyan**

Chetti and others, reported in **1927 SCC OnLine PC 10: AIR 1927 PC 70**. Apart from the aforesaid decisions, reliance was also placed on the decision of the Madhya Pradesh High Court in the case of **Shrimati Viraj Kunwarbai and others vs. Kunjbiharilal and others, reported in AIR 1971 MP 109**, and of the Andhra Pradesh High Court in the case of **Reddy Veeraju vs. Chitturi Lakshminarasamma and others,** reported in **MANU/AP/0087/1971: AIR 1971 AP 266.**

11.15 It was, therefore, submitted that the assets of the partnership do not cease to be so the minute a partnership is dissolved. They continue to remain so until the final winding up and till final accounts are drawn. Till then, they continue to remain assets of the partnership. It was further submitted that, considering the provisions of the Indian Partnership Act, 1932, an asset of the partnership ceases to be so only if all the partners transfer the said asset to a third party by a registered document of sale or after dissolution, the final winding up takes place and a final decision is arrived at either to sell the assets and apply its proceedings or to transfer the assets to the partners in a particular manner. Learned senior advocate has, therefore, concluded his submissions by contending that, in light of the aforesaid legal position and the facts on record, no circumstances demonstrate that the properties in question are co-ownership properties of co-parceners and not partnership properties. He has, therefore, urged this Court to quash and set aside the impugned judgment and preliminary decree drawn by the court below.

SUBMISSIONS OF THE RESPONDENTS:

12. Learned senior advocate Mr. Mehul Suresh Shah appearing with Mr. Jenil M. Shah, learned advocate on record for respondent nos. 3, 4, 6, 10.1, 10.2, 12.2, 12.3, and 23, has forcefully objected to the aforesaid submissions made by the learned senior advocate appearing for the appellants. Learned senior advocate appearing for the aforesaid respondents has invited my attention to the findings and reasons assigned by the learned Judge and has submitted that, upon appreciation of the entire evidence on record, the learned Judge has rightly drawn the conclusion by treating the suit properties as the co-ownership of the parties to the litigation.

12.1 At the outset, learned advocate has placed on record a convenience chart reflecting the pedigree of the deceased Vallabhdas. In order to substantiate his arguments, learned advocate has placed reliance upon the document produced on record at Exh.182 to point out that one of the sons of the deceased Vallabhdas namely Lalji Vallabhdas had released his right in Laxmi Bhuvan way back in the year

1916. The consent decree dated 12.04.1937 at Exh.175 was drawn in the suit filed seeking dissolution of the partnership Firm. The attention of this Court was invited to the fact that, at that stage, the partnership between Ramji Vallabhdas, Ravji Vallabhdas, Ratansey Vallabhdas, and Ranchhod Vallabhdas, stood dissolved. He has further invited my attention to the recitals of the consent decree to submit that the heirs of Ramji have also released their rights in the entire properties by accepting consideration of Rs. 20,000/- in cash and one property in Bombay. It was specifically stated that the Jamnagar property i.e. Laxmi Bhuvan was of the joint ownership of Ravji Vallabhdas, Ratansey Vallabhdas, and Ranchhod Vallabhdas. In view thereof, Ramji having left the partnership Firm, the partnership Firm stood dissolved, and therefore, the suit property i.e. the Jamnagar property, became the joint property of Raoji Vallabhdas, Ratansey Vallabhdas, and Ranchhod Vallabhdas.

12.2 It was further pointed out that in the Will dated 19.04.1937 executed by Vallabhdas, produced on record at Exh. 187, his shares in the partnership properties were also conferred upon Ravji Vallabhdas, Ratansey Vallabhdas, and Ranchhod Vallabhdas. Unfortunately, the father of the respective parties i.e. Vallabhdas expired in the year 1937. Subsequently, an agreement for closure of the partnership deed was executed on 27.02.1943, which is produced on record at Exh.190. It was submitted that the aforesaid agreement was executed between the heirs of Ravji Vallabhdas, Ratansey Vallabhdas, and Ranchhod Vallabhdas. The partnership business came to closure. Since then, the property of Jamnagar i.e. Laxmi Bhawan, and two other properties situated at Bombay, became co-ownership properties.

12.3 He has further submitted that, in fact, as evident from the document produced on record at Exh.173, a new partnership deed was executed between the heirs of Ravji Vallabhdas, Ratansey Vallabhdas, and Ranchhod Vallabhdas, wherein Laxmi Bhawan was specifically not included and only the Bombay properties were included. He has further referred to the recitals of the release deed dated 23.04.1949, produced on record at Exh.195, which indicates that Ranchhod Vallabhdas had released his one-third share in Laxmi Bhawan in favour of the heirs of Ravji Vallabhdas and Ratansey Vallabhdas. Referring to the aforesaid document, learned senior advocate had contended that on bare appreciation of the aforesaid recitals, it is clearly evident that the property was treated as co-ownership property. It was argued that the appellants have, in fact, received benefit under this document and have never objected to the document by claiming it to be a partnership property.

12.4 Referring to the agreement dated 13.08.1952, which is produced on record at Exh.178 and entered upon between Madhavdas Ravji (father of the appellant), Morarji Ravji, Vasansinh Ravji, Karsandas Ravji, Chhabildas Ravji, Pratapsinh Ravji, and Parshottam Ravji, have been referred to as the co-owners of the property wherein, the rights of all the brothers in Laxmi Bhawan have been specified. It was submitted that the father of the appellant was one of the signatories to the aforesaid document.

12.5 Inviting my attention to the partnership deed dated 01.04.1957, produced on record at Exh.192, learned senior advocate had pointed out that the said new partnership deed was executed between three branches, namely, Ravji, Ratansey and Ranchhod, wherein Laxmi Bhawan was not included, which goes to suggest that the said property was treated as co-ownership property.

12.6 Reliance was placed on the city survey record, more particularly, the *Sanad* dated 14.08.1963 (Exh.182), which reflects the joint ownership of all the heirs of Ravji Vallabhdas. It was submitted that the appellant had, in fact, attempted to get his name mutated in the revenue record. The property cards were also prepared in the individual names of the co-owners. It was further submitted that even the appellant, Ajitsinh Madhavdas, in one of his letters dated

13.07.1966, produced on record at Exh.179, has admitted that the property of Laxmi Bhuvan is of joint ownership.

12.7 The attention of this Court was invited to the entire history narrated in the document i.e. the new partnership deed dated 15.01.1970 produced on record at Exh.188. According to learned senior advocate, on close appreciation of the recitals of the aforesaid document, it clearly suggests that the property of Laxmi Bhuvan was specifically excluded from the new partnership deed since it was actually treated as of the co-ownership of the heirs of Ravji and Ratansey Vallabhdas. It was submitted that only two properties of Bombay were included in the new partnership deed. Inviting my attention to the relevant admission made by the said witness, Ajit Madhavdas, one of the appellants, who has admitted that property of Laxmi Bhawan has been excluded in the new partnership deed.

12.8 Even in the written statement filed by Ajitsinh Madhavdas at Exh.245, he has admitted that the suit property is not a partnership property but of co-ownership. Similar admission appears in the written statement given before the Labour Court in the recovery application produced on record at Exh.253. Reliance was placed on the property tax receipts, the municipal tax bills, the rent agreement, and rent receipts (Exhs. 307 to 313), which goes to suggest that the same have been issued in the name of an individual and not in the name of the partnership Firm. Lastly, reliance was placed on the deposition of Pratapsinh Ravji at Exh.233, who has categorically stated that the partnership was dissolved in the year 1943 and no partnership was in existence.

12.9 As regards the legal provisions of law are concerned, learned senior advocate had pressed the principles of estoppel by contending that, the conduct of the appellants as evident from the aforesaid documents and the benefit received thereunder, the appellants may be estopped from contending that Laxmi Bhawan is a partnership property. Reliance was placed on the decisions of the Hon'ble Supreme Court in the cases of (i) **Kale & Others vs Deputy Director Of Consolidation Ors** reported in **(1976) 3 SCC 119, (ii) The Joint Action Committee of Airlines Pilots Associations of India & Ors. vs.Director General Of Civil Aviation & Ors** reported in **(2011) 5 SCC 435.** Reliance was also placed on the judgment of Hon'ble Supreme Court in the case of Rajasthan State Industrial Development & Investment Corporation & ords. Vs. Diamond Development Corporation Ltd. & ord. , reported in (2013) 5 SCc 470. It was also submitted that in absence of any cogent evidence brought on record about the partnership Firm as a going concern, no error can be found with the findings of the learned Judge by treating the business of the partnership Firm as being closed. On the contrary, it is an additional factor to be borne in mind to draw the conclusion that the partnership Firm was actually dissolved. In fact, a new partnership Firm came into existence way back in the year 1970, wherein the property of Laxmi Bhawan was not included.

12.10 The aforesaid fact can also be borne out from the evidence of defendant no. 17 i.e. Pratapsinh Ravji (Exh.233), who in his cross-examination, has admitted that no business is carried out by a partnership Firm. Reference was also made to the admission made by the appellant in paragraph 24 of his cross-examination.

12.11 At this stage, reliance was placed on the decisions of the Division Bench of this Court in the case of **Ibrahim Shah Mohamad & Ors. vs. Noor Ahmed Noor Mohamed & Ors.** reported in **(1983) 2 GLR 961,** more particularly, the relevant observations recorded in paragraph 16. The reliance was also placed on the decision of the Hon’ble Supreme Court in the case of **Mir Abdul Khaliq (Dead) By Lrs. vs Abdul Gaffar Sheriff (Dead) By Lrs And** reported in **(1985) 2 SCC 14.**

12.12 Learned senior advocate has further submitted that as evident from the contents of the consent decree produced on record at Exh.175, the partnership was dissolved by virtue of all the partners having agreed before the Bombay High Court and the consent decree being drawn accordingly, in view of Sections 40, 44(c)(d) and (g) of the Act of 1932.

12.13 Lastly, learned senior advocate has submitted that it is an undisputed fact that one of the partner namely Ramjji expired in the year 1932. In such circumstances, the partnership gets dissolved in view of Section 42 of the Act. There was no provision to the contrary in partnership deed between the parties. Learned senior advocate has placed reliance upon the judgment of the learned Single Judge of this Court in the case of **Splendid Infrabuild LLP & Ors. Versus Manuben Nanubhai Bharvad & Ors**. (**CRA No. 11 of 2023 decided on 16.10.2025** , more particularly , the relevant observations made in para 37 to 39. Reliance was also placed on the judgments of the Hon'ble Supreme Court in the case of **S.P.Misra vs Mohd. Laiquddin Khan** reported in **2019 (10) SCC 329 (Paras 15-18, 21)** and in the case of **Mohd. Laiquiddin & Anr vs Kamala Devi Misra (Dead) By Lrs. & Ors** reported in **2010 (2) SCC 407** (Paras 25 to 28 and 42).

12.14 Learned senior advocate has, therefore, urged this Court that the appellants have no prima facie case and even the balance of convenience is in favour of the respondents, who are in possession of the suit properties. Further, no irreparable injury is likely to be caused to the plaintiffs, and hence, he has urged this Court to dismiss the appeal.

ARGUMENTS OF THE APPELLANTS OF FIRST APPEAL NO. 924 OF 1986:

13. Learned advocate Mr. A.J. Yagnik appearing on behalf of the appellants of First Appeal No. 924 of 1986- original defendant nos. 20 to 25, has submitted that the present appeal is filed by the legal representatives of the branch of Lalji Vallabhdas. Assailing the findings and reasons assigned by the learned Judge, as recorded in para 9 of the impugned judgment, he has submitted that the learned Judge committed grave error in law by ignoring the provisions of Section 14 of the Hindu Succession Act, 1956 (hereinafter to be referred as " the Act of 1956").

13.1 At the outset, learned advocate has fairly submitted that no arguments in this regard were advanced before the trial court; however, Appellate Court can always re-appreciate the evidence and the question of law, which arises for consideration. It is submitted that the trial court failed to appreciate the circumstances that deceased Lalji Vallabhdas had passed away at a young age and was survived by widow Valibai and his minor son Vithaldas. In such circumstances, the widow had a preferential right over the subject property i.e. *Borivali Ni Chawl,* situated in the campus of Laxmi Bhawan. The appellants have admitted that the husband of Bai Vali i.e. Lalji had executed a relinquishment deed dated 02.06.1916, and had thereby relinquished his legal rights qua the ancestral properties, including the subject properties, by accepting consideration. They have admitted that her father-in-law, Vallabhdas Kanji had conferred the right of use and residence in favour of her and her son Vithaldas, by executing a Will dated 19.04.1937. By virtue of the aforesaid Will, Bai Vali along with her son, were put in possession of part of the premises known as *Borivali Ni Chawl* for the limited purpose of use and residence during their lifetime.

13.2 Referring to the pleadings in the plaint and the averments made in the written statement filed by them, learned advocate has submitted that, if the suit property as described in the plaint is appreciated against the properties described in the schedule appended to the plaint along with the map produced on record, the part of the property which is *Borivali* Ni Chawl is identified and marked with red colour. It is submitted that the said premises is a tenanted premises; however, the prayer for account being not audited as regards the rent from the tenants being realized, has rightly not been entertained by the trial court.

13.3 Referring to clause 16 of the Will dated 19.04.1937(EXH.187), it was argued that only when the co-owners agreed to sell the property, the arrangement was to be made by giving Rs. 8,000/- to the heirs of the Lalji's family. In other words, what was expressed by the executor of the Will, Vallabhdas Kanji, was to adequately compensate Bai Vali and her minor son, keeping in mind the valuation prevailing at the relevant point of time. Hence, the direction issued by the trial court to hand over the possession of the aforesaid property to the plaintiff as against the payment of Rs. 8,000/- after almost a gap of 47 years of such execution of the Will, is not only illogical but irrational. He has further drawn my attention to the prayer clause in the plaint and has submitted that no prayer with regard to vacating of the aforesaid premises has been made by the plaintiff. In such circumstances, the direction issued by the learned Judge to hand over possession of the aforesaid premises to the plaintiff is beyond jurisdiction, and the Division Bench of this Court, while admitting the present appeal of the appellants, has rightly stayed such directions, pending the final hearing of the appeal.

13.4 It was further pointed out that, upon bare reading of Clauses 6 to 8, 9, and 10 of the Will dated 19.04.1937 (EXH.137), it is evident that right of use and residence both were given to Bai Vali and her son Vithaldas out of pious obligation to maintain them. It was only when the co-owners of the property agreed to sell the property, the wish expressed by the executor was to compensate them in lieu of such right. Referring to para 9 of the written statement, it was submitted that the property was, in fact, jointly owned by Vallabhdas Kanji as *Karta* of the Joint Hindu Undivided Family. He has, in his last wish, expressed to confer such a right. It was further pointed out that the property at Kotechewadi was given for maintenance however, disputing the aforesaid argument of other side, he had submitted that a trust has been created in the property at Kotechewadi and proceeds out of which were to be given to appellant widowed daughter in law and her son. No document suggesting the aforesaid benefit being derived by the appellants has been brought on record.

13.5 It was further submitted that, considering the circumstances, more particularly the fact that she had lost her husband at an early age and had to take care of her son, the deceased Vallabhdas Kanji, being the head of the family and father-in-law, owed an obligation to maintain her and her child. It was submitted that the argument that partnership was entered much prior to WILL has no significance as far as pre-existing rights of widow are concerned. The appellant and her son were not party to any litigation initiated before the Bombay High Court. In order to meet with pious obligation, the father-in-law had, in his last wish, made such an arrangement however, the same would not be considered an instrument which has for the first time confer rights in widow so as to attract section 14(2). He has, therefore, urged this Court that, considering Section 14 (1) of the Act of 1956, which recognizes and protects the pre-existing right of the widow, the impugned judgment and order and the directions issued against the appellants to handover possession, are therefore, required to be quashed and set aside.

13.6 From the facts, it was pointed out that, admittedly, the husband had expired somewhere around the year-1929. Indisputably, the Will was executed in the year-1937, whereas the Hindu Succession Act was enacted in the year 1956. In view thereof, it has been established on record that the possession of the aforesaid premises was acquired before the commencement of the said Act and, in view of sub-section (1) of Section 14, the pre-existing right of the widow which relates to her right to maintenance though limited right of residence was conferred under the Will, stood crystallised into a full ownership right.

13.7 Referring to sub-section (1) of Section 14 of the Act of 1956 and the explanation provided under the said Section, learned advocate has submitted that once the right of possession is conferred in lieu of maintenance before or after the date of marriage in any other manner, then such property shall be held by the female as *Stridhan* immediately before commencement of this Act. According to the learned advocate, sub-section (2) of Section 14 would relate to property, which is acquired for the first time without there being any element of a pre-existing right. He has, therefore, submitted that the case of the appellants shall be governed by sub-section (1) of Section 14 and, not by sub-section (2).

13.8 In order to substantiate his arguments, he has relied upon the landmark decision of the Hon'ble Supreme Court in the case of **V. Tulasamma v. Sesha Reddy** reported in **(1977) 3 SCC 99**. In this regard, my attention was invited to the facts of the case and the two points for determination, which arose for consideration before the Hon'ble Supreme Court as recorded in Para 4. Considering the proposition laid down, t\it was argued that the case of the appellants will be governed by Section 14(1) of the Act of 1956, as if the Will recognizes the pre-existing right of maintenance of the widow. Also, the relinquishment deed executed by Lalji would not bind the rights of the widow to maintenance, in the absence of her husband, from the father-in-law or the son of a deceased son would not get excluded for his right in the coparcenary properties. He has, therefore, submitted that in such circumstances, the Will executed by Vallabhdas cannot be treated as an instrument conferring some new and fresh right in favour of Bai Vali and the son for the first time, which she never possessed. It is only when the rights are conferred for the first time after the enactment of the Act of 1956, the provisions of sub-section (2) of Section 14 of the Act of 1956, shall be attracted. In view of Section 14(1), any property a Hindu woman possesses in lieu of maintenance shall become her absolute ownership property. He has, therefore, submitted that merely the property is to be considered as HUF property or co-ownership property, or even a partnership property, would not defeat or restrict her right to absolute ownership.

13.9 It was further submitted that, though the father-Lalji had expired, who had relinquished his rights qua ancestral properties during his lifetime for consideration, the same would not be adverse to the right of his son, who has otherwise become a coparcener and has acquired rights in the ancestral properties by birth. The pious obligation to maintain the daughter-in-law and the grandson has arisen much prior to the enactment of the Act of 1956. It was therefore submitted that, if Valibai had pre-existing right of maintenance and her son having coparcenary right in the ancestral property, any subsequent arrangement in the form of Will or throwing away of property in the hotchpotch of partnership, would not terminate her right. In fact, the partnership asset still continues to be subject to the widow's maintenance. In support of his submissions, learned advocate has also referred to and relied upon the following judgments:

SR. NO.	JUDGMENTS	RELEVANT PARAGRAPHS
1.	V. Tulasamma v. Sesha Reddy reported in **(1977) 3 SCC 99**	4, 20, 31 to 34, 62, 71
2.	C. Masilamani Mudaliar v. Idol of Sri Sw reported in **(1996) 8 SCC 525**	4 to 6, 10, 26 to 29
3.	Ram Kali v. Choudhri Ajit Shankar reported in **(1997) 9 SCC 613**	1, 13 to 16
4.	Bhoomireddy Chenna Reddy v. Bhoospalli P. reported in **(1997) 10 SCC 673**	2
5.	Raghubar Singh v. Gulab Singh reported in **(1998) 6 SCC 314**	1, 12 to 17, 23, 24
6.	Thota Sesharathamma v. Thota Manikyamma reported in **(1991) 4 SCC 312**	9 to 12, 31, 32
7.	Beni Bai v. Raghubir Prasad reported in **(1999) 3 SCC 234**	1, 6 to 8
8.	V. Muthusami v. Angammal reported in **(2002) 3 SCC 316**	2, 3, 16
9.	Jaswant Kaur v. Harpal Singh	1, 3

	reported in **(1989) 3 SCC 572**	
10.	Naresh Kumari v. Shakshi Lal reported in **(1999) 2 SCC 656**	5, 10 to 12
11.	Kalawatibai v. Soiryabai reported in **(1991) 3 SCC 410**	11
12.	Nazar Singh v. Jagjit Kaur reported in **(1996) 1 SCC 35**	9 to 11
13.	Vijay Pal Singh v. Dy. Director of Conso reported in **(1995) 5 SCC 212**	4 to 6
14.	Naraini Devi v. Ramo Devi reported in **(1976) 1 SCC 574**	4 and 6
15.	Gumpha v. Jaibai reported in **(1994) 2 SCC 511**	3 and 12
16.	Ram Vishal v. Jagan Nath reported in **(2004) 9 SCC 302**	14 & 15
17.	Seth Badri Prasad v. Kanso Devi reported in **(1969) 2 SCC 586**	
18.	Giani Ram v. Ramjilal reported in **(1969) 1 SCC 813**	

13.10 Learned advocate has, therefore urged this Court to quash and set aside the impugned judgment and order passed by the Trial Court directing the appellants- original defendant nos.22 to 25, to hand over the possession of the premises called *Borivali Ni Chawl* by accepting the sum of Rs. 8,000/-.

SUBMISSIONS CUM REJOINDER ON BEHALF OF THE APPELLANT OF FIRST APPEAL NO. 1313 OF 1985 :

13.11 Mr. Parikh appearing for the appellants of First Appeal no. 1313 of 1986 has objected to the aforesaid submissions of the counsel for cognate appeal. It was pointed out that the pre-existing right has to be confined to the husband aND husband's property. It was submitted that the ratio led down by the Hn'ble Supreme Court in the case of ***Tulsamma (supra)*** has to be right in light of the question which arose for consideration as recorded in para (2) read with para (4) which was with regard to applicability of section 14(1) to an instrument of compromise in context of right of maintenance. The judgment finds distinction between section 14(1) and section 14(2). The property traced in case of ***Tulsamma (supra)*** was an ancestral property whereas in the present case it is a partnership property. Unless and until the rights of the partners are not crystallised in the property of the Firm by dissolution of the firm followed with winding up, no title can be conferred in the firm's property to a third party. It was also argued that as observed in para 24 and 26 of the ***Tulsamma (supra)***, the possession has to be based on title. He has further pointed out the relevant provisions of the Hindu Adoption and Maintenance Act more particularly Section 19, 21 and 22. It was submitted that as per sub section (2) of section 19, the father in law is entitled to maintain her only from 'coparcenary property'. He has therefore concluded that when the property is not held to be co-parcenery property, there is no applicability of provisions of section 14(1) of the Act, 1956. He has therefore urged to dismiss the appeal.

ARGUMENTS ON BEHALF OF LEARNED ADVOCATE MR. RAJESH K. SAVJANI APPEARING FOR RESPONDENT NO. 5

14. Learned advocate Mr. Rajesh K. Savjani appearing for respondent no.5 has invited my attention to the pedigree of Vallabhdas Vithaldas and, has pointed out that, essentially, the present appeal is confined to *inter se* disputes between the heirs of Ravji Vallabhdas, more particularly the family of Ajitsinh Madhavdas - appellant in First Appeal No. 1313 of 1985, who is disputing the fact that the property in question to be a partnership property and not a co-ownership property. He has, therefore, submitted that even the rest of the heirs of the branch of Ravji Vallabhdas have not disputed the aforesaid fact that the suit properties were of co-ownership.

14.1 Learned advocate has mainly relied upon documents, which are the partnership deed dated 061.1926 (EXZH.174), the consent decree dated 12.04.1937 drawn by the Bombay High Court (Exh.175), the deed recording the dissolution agreement dated 27.02.1943 of Vallabhdas company whereby the business was closed in the year 1942 (Exh. 190), and the new partnership Firm constituted on 15.01.1970 (Exh.189). Referring to the aforesaid documents, it was submitted that admittedly the parties to the proceedings have not disputed about execution of these documents. Thus, if the covenants are required to be taken into consideration, it is apparent that the original partnership Firm was dissolved by virtue of the consent decree drawn by the Bombay High Court. The aforesaid fact is corroborated in view of the dissolution deed produced on record at Exh.190. The very fact that the partnership Firm was constituted later, on 15.01.1970, also corroborates the fact that the earlier Firm stood dissolved. The aforesaid facts being evident on record, this Court may not entertain the plea of the appellants that the subject properties were the property of the Firm and, not of co-ownership property of the members of the Joint Hindu Undivided Family.

14.2 The attention of this Court was invited to issue no. 4 to contend that no application for recasting of issues was submitted by either of the parties to the proceedings. He has further submitted that later on, though an application was moved pending the recording of evidence, the same has not been granted in absence of any attempt being made by the parties. It is further submitted that a specific stance taken by the party, more particularly, Ajitsinh Madhavdas, about suit property being of co-ownership is evident from his deposition. According to the learned advocate, with such circumstances on record, no further adjudication is required on the aspect of the dissolution of the Firm.

14.3 It is further submitted that once the parties to the consent decree and the deed of dissolution (Exh.190) have derived the benefit, they are estopped from raising such a plea. As regards the challenge made to the finding of the trial court about the Firm being not in existence is concerned, it is submitted that no evidence worth in the form of business transactions, any government records reflecting the existence of the Firm, bank account details, or even ledger accounts have been produced before the trial court. In absence of such evidence, no error can be found with the aforesaid recording of the finding by the trial court that the Firm had ceased to exist after 1943.

14.4 Learned advocate has further argued that this Court, while considering the issue of the abatement of the present proceedings and dismissing such application of the respondent, has opined that the estate is represented by Class II heirs; thus, according to learned advocate, this Court has also considered the provisions of the Act of 1956, and therefore, cannot delve into the issue of property in question being partnership property or co-ownership property. The observations recorded in para 10.6 of the order passed on 28.03.2025 in Civil Application (For Orders) No. 1 of 2024 have been referred to and relied upon.

14.5 It is further pointed out that appropriate applications with regard to bringing the heirs of few of the deceased parties on record, were pending consideration before the Co-ordinate Bench, which came to be withdrawn by the present appellants vide order dated 08.07.2025. He has, therefore, submitted that, still the heirs have not been brought on record in respect of the aforesaid deceased litigants, the proceedings get abated.

14.6 In view thereof, the preliminary decree impugned dated 01.03.1985 has attained finality as against the deceased respondent nos. 1, 9.1, and 17 are concerned. In such eventuality, the plea of the appellants of First Appeal No. 1313 of 1985 about the nature of the suit property being partnership Firm property and, not of co-ownership property, is simply required to be rejected.

14.7 As regards the prayer sought for in para 14(E) is concerned, it was submitted that the First Appeal is required to be dismissed on the principles of estoppel, waiver, and acquiescence, inasmuch as the parties to the deed at Exh.190 have consciously stated their status as of co-owners. The aforesaid fact is also evident from the recitals of the documents, more particularly, the release deed produced on record at Exh.195, the agreement dated 13.08. 1952 at Exh. 178, the Sanad of the subject property produced on record at Exh. 182, the deed dated 15.01.1970 about constitution of the Firm at Exh. 188, the letter addressed by Ajitsinh Madhavdas appellant no.2 in First Appeal No.1313 of 1985 at Exh. 177, the written statement of Ajitsinh (Exh. 253) specifically referring to the status of co-ownership of the property, the recovery proceedings by the municipality at Exh. 290, and the tax bills/receipt of rent notes, and rent receipts at Exh.s 280 to 289.

14.8 As regards the arguments made by Mr. Devan Parikh, learned senior advocate for the appellants, that once the properties are thrown in the hotchpotch of partnership Firm, requires the status of assets of the Firm is concerned, learned advocate has referred to and relied upon the consent decree drawn by the Bombay High court to contend that the partnership Firm stood dissolved and, therefore, the assets of the Firm also stands released.

14.9 Learned advocate has pressed into service the principle of estoppel, which can be inferred from the conduct of the parties as well. According to the learned advocate, if the twin conditions that the benefit of an individual has been realized and there is clear, conscious and voluntary waiver, the property ceases to be a partnership property. It was further submitted that a separate Special Civil Suit has been filed by the heirs of Madhavdas i.e. appellants herein before the Competent Court being registered as Special Civil Suit No. 33 of 2008, whereby a prayer is made for the specific performance of the subsequent agreement dated 21.05. 2007 executed by the respective parties. The aforesaid fact has been placed for consideration of this Court by way of an affidavit filed in the Civil Application preferred for abatement of the proceedings.

14.10 The attention of this Court was once again invited to the reliefs prayed for in the plaint.

14.11 In view of the aforesaid conduct of the parties, learned advocate has urged this Court to dismiss the appeals, as the appellants have accepted that the property is not a partnership property, as evident from the recitals of the agreement dated 21.05.2007 entered upon by them. Even the bare appreciation of the tenor of the plaint itself suggests that the subject property is not treated as partnership property. In order to substantiate his arguments on the principle of estoppel, learned advocate has placed reliance upon the decision of the Hon'ble Supreme Court in the case of **B.L. Sreedhar & Ors vs K.M. Munireddy (Dead) And Ors** reported in **2003 (2) SCC 355**. Referring to the document produced at Exh.290, a specific declaration was sought for by Ajitsinh Madhavdas that the suit property was of the co-ownership. Nowhere it has been pleaded that the property is of partnership Firm. It was pointed out that the aforesaid proceedings were initiated for eviction of the tenant before the competent forum.

14.12 Referring to the industrial dispute proceedings, learned advocate has once again invited my attention to the pleadings made therein, wherein the nature of the property, which is subject property, is described as co-ownership property. Reliance was also placed on the decision of the Hon'ble Supreme Court in the case of **Sanjit Singh Salwan & Ors. Versus Sardar Inderjit Singh Salwan & Ors. (Neutral Citation: 2025 INSC 988).** He has once again pressed into service the various documents referred to and relied upon as recorded earlier and has urged this Court to dismiss the appeal.

14.13 As regards the claim made in First Appa no. 924 of 1986 is concerned, it was submitted that admittedly, Lalji has executed a released deed which is admitted as evidence at EXH. 164 stating that he has no interest in any of the property. Even Bai Vali in her deposition has agreed that they never claimed any interest in the property. Lalji expired in 1929 and has lived for almost 13 years after execution of release deed in the year 1916. All throughout these years he has not disputed released deeds or has claimed any share in the property. In fact, the Will of 1937 confers only limited right of residence and only when the all owners agreed to sell the property, the heirs of Lalji were required to vacant possession of premises Boriwali ni chawl on acceptance of Rs. 8,000. It was pointed out that they have moreover derived right in Kothechewadi property.

14.14 Lastly, learned advocate had drawn my attention to the oral order dated 27.09.1991 passed by the Hon'ble Division Bench restraining the respondents herein from parting with possession of the suit property either actual or constructive, to any other person during pendency of the present appeal. He has further drawn my attention to the averments made in the application being Civil Application No. 3 of 2025 at the instance of the aforesaid respondent no.5 has been referred to and relied upon to point out that agreement dated 05.02.2008 has already been entered upon between the parties, pending the present proceedings. In this regard, the present appellants of First Appeal No. 1313 of 1985, who are the plaintiffs of Special Civil Suit No. 33 of 2008, have prayed for specific relief seeking performance of such document. Though consequential relief of setting aside sale deed has also been made, however, the fact remains that the properties are treated as co-ownership property and, not of partnership Firm. He has therefore objected to first appeals. He has therefore urged this Court to dismiss both Appeals as well Civil Revision application

ANALYSIS :

15. I have carefully considered the oral as well as the written submissions of the learned advocates appearing for the respective parties. I have carefully gone through the findings and reasons assigned by the trial court. I have closely scrutinized the relevant evidence on record in order to appreciate the arguments made on behalf of the parties. I have carefully read the judgments relied upon by the respective parties.

16. Considering their arguments, in my view, the following points for determination arise for consideration in the present appeal:

(1) Whether the trial court committed any error in holding the suit properties as co-ownership properties and not a partnership properties, in the facts of the case and the evidence on record?

(2) Whether the partnership Firm stood dissolved, in view of the consent decree (Exh.175) drawn by the Bombay High Court on 12.04.1937, in light of Section 40 and Section 44 of the Indian

Partnership Act,1932?

(3) Whether the partnership Firm stood dissolved upon the death of Ramji in the year 1932, in view of Section 42 of the Indian Partnership Act, 1932?

(4) Whether, by virtue of the consent decree drawn by the Bombay High Court, the subject property ceased to be a Firm's asset, in absence of any deed of transfer or enforcement of the decree?

(5) Whether the Will dated 19.04.1937 executed by Vallabhdas Kanji conferring the right of usage and residence of the property, namely *Borivali Ni Chawl*, created a completely new or independent right, or was towards his pious obligation of right to maintenance of Bai Vali and her son Vithaldas?

(6) Whether the limited right of residence of the deceased Bai Vali in *Borivali Ni Chawl* has got translated into a full ownership right by virtue of sub-section (1) of Section 14 of the Act of 1956, read with the Explanation, and whether sub-section (2) of Section 14 would have no application?

POINTS FOR DETERMINATION NOS. 1, 2, 3, AND 4:

17. Since the aforesaid points for determination are interconnected

with each other, the same are decided together.

18. Indisputably, the parties to the proceedings are *ad idem* to the fact that the properties in question, "Laxmi Bhawan" including the part of the premises namely "*Borivali Ni Chawl*", was originally owned exclusively by Vallabhdas Kanji. It is an admitted position, and not disputed by the respondents herein that after the constitution of the partnership Firm in the name of M/s. Vallabhdas Kanji and company (referred as ' the partnership Firm', hereinafter), the aforesaid property at Jamnagar along with two other properties situated at Princess Street and Marine Street were thrown into the hotchpotch of the said partnership Firm.

19. It is evident from the bare reading of the recitals of the relinquishment deed executed by Lalji Vallabhdas being produced on record at Exh.182 that he released his share in Laxmi Bhawan way back in the year 1916. The terms and conditions of the consent as recorded by the Bombay High Court on 12.04.1937, clearly suggest that an amicable settlement was arrived between the partners of the Firm namely Ramji Vallabhdas, Ravji Vallabhdas, Ratansey Vallabhdas, and Ranchhod Vallabhdas, indicate that the partnership between them was dissolved. It is required to be noted that the plaintiff- the widow-Bai Sundar of Ramji Vallabhdas has filed Civil Suit No. 1282 of 1934

essentially seeking a declaration that the partnership mentioned in the plaint stood dissolved. She has also prayed for appropriate directions to wind up the partnership Firm, for which, she had sought necessary inquiry and directions for entitlement of the amount qua the share of the plaintiff, to be paid by the defendants.

20. It transpires from the concise statement submitted before the Bombay High Court in the aforesaid proceedings indicates that the core contention, which was raised for consideration by the plaintiffs was that the partner Ramji Vallabhdas having expired, the Firm stood dissolved. Along with the concise statement, the list of documents relied upon by the plaintiff has been produced, including the partnership agreement entered into between the partners of the Firm of M/s. Vallabhdas Kanji dated 05.04.1928. In Clause 20 of the aforesaid agreement, the provision was made with regard to bringing the heirs of the partners on record in case of the absence of one of the partners. It has also been resolved that, in case if the widow of the deceased partner is not inclined to continue with the share of the deceased, then his share in the partnership shall be discontinued and the entire property coming to his share, shall be invested in good securities fetching good income. In Clause 21, the provision is made that in case if the share of any deceased partner is discontinued, or if any of the partners separates, then the remaining partners shall be

partners in equal shares of the entire income. Again, in Clause 22, it is resolved that if any of the partners dies without any issue, then his property shall be managed in the manner he may have directed in writing; but if there is no writing, then the entire property shall be invested in good and reliable securities fetching good income. Alternatively, shall be enjoyed by his widow during her lifetime. After her death, the owners of her property shall be the remaining partners.

21. Having noted the aforesaid understanding between the partners at the time of the constitution of the Firm, if one looks at the schedule of immovable properties described, it does include a piece of land with four bungalows standing thereon situated at Jamnagar at Item No. 6, apart from the properties situated at Princes Street, Kalbadevi Road, Cavel Street, Marine Street, Girgaon, and Borivali in Mumbai.

22. As evident from the consent terms recorded by the Bombay High Court on 12.04.1937 in Civil Suit No. 1282 of 1934, produced on record at Exh.175, the respective parties to the proceedings have entered into an amicable settlement and, accordingly, a consent decree was drawn. The parties in the aforesaid proceedings were *ad idem* about the ownership of the properties either being owned by defendant no. 1 i.e. Vallabhdas Kanji

exclusively, or being purchased by him out of the money of the partnership Firm. It is evident from the recitals of the consent decree that the parties were *ad idem* to the fact that the properties of Jamnagar described in the third schedule were part of the assets of the partnership Firm. The said partnership Firm was agreed to be continued between Vallabhdas Kanji (the first defendant), Ratansey Vallabhdas (the second defendant), Ranchhoddas Vallabhdas (the third defendant), and Ravji Vallabhdas (since deceased) and in so far as the deceased Ramji Vallabhdas's share is concerned, it was further agreed between the parties that the plaintiffs being the heirs and legal representatives of the deceased Ramji Vallabhdas were entitled to the property situated at Cavel Street in Mumbai as described in the first schedule, and also a sum of Rs. 30,000/- in discharge of the share, right, title, and interest of the deceased Ramji Vallabhdas in the said partnership Firm and the assets and goodwill thereof, including the said immovable properties described in the first, second, third, and fourth schedules. In the process, the parties have further agreed about the shares of the partners in the said partnership and in the goodwill and assets thereof including the immovable properties described in the second, third, and fourth schedules. It was agreed that there shall be one equal fourth share derived by each of the said first, second, and third defendants, and the remaining 1/4th share was equally distributed between the fourth, fifth, sixth, seventh, eighth, and ninth defendants. Thus, it is evident from the bare appreciation of the aforesaid recitals of the consent decree that the partnership Firm, M/s. Vallabhdas Kanji, continued however qua the deceased Ramji, his shares in the Firm's assets were settled by offering property at Cavel street and Rs. 30,000 to his heirs. Thus, the rights of the remaining partners in the firm stood crystallized accordingly. It is also evident that, except for the property at Cavel Street and the amount of Rs. 30,000/-, the properties described in schedule 3, which includes the Jamnagar property namely Laxmi Bhawan and *Borivali Ni Chawl* continued to be the assets of the partnership Firm. The only clarification was made with regard to shares of the partners in the said partnership Firm as well as in the goodwill and assets of the respective partners.

23. Having appreciated the aforesaid consent terms, the argument raised by the learned advocate for the respondents that the partnership Firm stood dissolved, in view of the provisions of Sections 40, 42, and 44 of the Partnership Act, 1932, is required to be rejected.

24. At this stage, it would be appropriate to look into the Partnership Act, 1932. Section 40 governs the dissolution of a partnership Firm by agreement. It provides that a Firm can be

dissolved in either of the following two ways. Firstly, with the consent of all partners, whereby all members of the partnership mutually agree to dissolve the Firm at any given time; secondly, in accordance with a contract.

25. Having appreciated the aforesaid provision and the terms based on which the consent decree was drawn by the Bombay High Court, there is no hesitation in arriving at a conclusion that though the parties mutually agreed to settle the share of deceased partner from the firm's business, in view of the death of one of the partners Ramji Vallabhdas. However, the rest of the partners also agreed to continue with the existing partnership Firm. The aforesaid fact can also be gathered from the very terms and conditions, whereby, the shares of the respective partners have been crystallized, not only with regard to the goodwill and assets of the Firm, but also with regard to immovable properties. At the same time, the argument of learned senior advocate Mr. Shah about the principle of estoppel shall apply against them who are now disputing the suit property to be a partnership property.

26. So far as reliance placed on Section 42 of the Partnership Act, 1932 is concerned, it deals with the dissolution of a Firm upon happening of certain contingencies. The said provision deals with a

situation whereby, upon the occurrence of some specific event, it leads to the closure of a partnership Firm, unless the partners have explicitly agreed otherwise in their partnership deed. Considering the aforesaid provision and having appreciated the original partnership deed of 1926, wherein the partners explicitly incorporated a clause to continue with the partnership Firm even in the absence of one of the partners, the aforesaid provision shall not be applicable in the facts of the case. Thus, the judgments relied upon by learned senior advocate Mr. Shah on the aspect of dissolution of a firm in case of death of a partner shall not be applicable in the facts of the case.

27. So far as Section 44 of the Partnership Act, 1932 is concerned, it governs the dissolution of a partnership Firm by a court order. It deals with a situation where a partner approaches the court and the court, having entertained his plea for dissolution on specific grounds such as unsound mind, permanent incapacity, misconduct, or continuous operational losses, may result in the dissolution of the Firm. Considering the specific eventualities stated in the said provision, in absence of any such circumstances existing the said provision shall not be applicable in the facts of the case.

28. In view of the aforesaid findings and reasons, the points for determination nos. 2 and 3 are answered accordingly.

29. This brings me to the question, as framed, as to whether the subject properties ceased to be a Firm's asset by virtue of the consent decree drawn by the Bombay High Court, in absence of any deed of transfer or enforcement of the decree. Having appreciated the terms of the consent decree drawn by the Bombay High Court at Exh.175, it is evident that the parties to the proceedings have mutually agreed on specific terms and conditions, whereby, the Firm continued. The entitlement to the extent of the share of the deceased Ramji was realized by the heirs of the deceased original plaintiffs in the form of property situated on Cavel Street in Mumbai, and further sum of Rs. 30,000/- being paid. Thus, the entitlement of share of the deceased partner in partnership Firm was setted qua the share of the deceased Ramji- one of the partners. The parties have further agreed to continue the partnership Firm, whereby, the properties described in schedule 3, which includes the properties situated in Jamnagar, to be precise, Laxmi Bhawan including *Borivali Ni Chawl,* continues to be the assets of the Firm. What has been crystallized by virtue of the consent decree between the partners of the partnership Firm, as can be gathered from Clauses 20 and 21, were the shares of the partners in the said partnership and the goodwill and assets thereof, which include the said property to the extent of "1 equal 4th share for" each of the said first, second, and third defendants to the proceedings, and

the remaining 1/4th share was distributed equally between the fourth, fifth, sixth, seventh, eighth, and ninth defendants.

30. With such evidence on record, in my view, the learned Judge committed grave error in reading the recitals to arrive at a conclusion that it was property of co-ownership and not partnership property.

31. As regards the agreement for closure of the partnership dated 27.02.1943, produced on record at Exh.190 is concerned, it is evident that the said document was executed between the partners, namely: (1) Ratansey Vallabhdas, (2) Ranchhoddas Vallabhdas, (3) Madhavdas Ravji, (4) Morarji Ravji, (5) Vasanji Ravji, (6) Karshandas Ravji, (7) Chhabildas Ravji, and (8) Pratapsinh Ravji, in respect of three shops situated on Carnac Road, Sheikh Memon Street, and in Mulji Jetha Cloth Market in Mumbai. The parties have mutually agreed to close their business of selling clothes at the aforesaid shops. It is required to be noted that in Clause 8, it has been clarified by the eight partners having agreed to close their business at the aforesaid shops; however, they have undertaken to continue the partnership Firm in order to resolve and meet with eventualities such as: (i) transaction related to the stock of goods (ii) to meet with the standing existing contracts, (iii) payment of any excise profit tax, and (iv) clearing

payments to external agencies. It was also resolved, as stated in Clause 9, that the partners are parting from the Firm's business with effect from 08.11.1942 and, shall be entitled to independently carry out their business. Appreciating the entire terms and conditions incorporated in the said agreement of closure of the Firm, which was executed on 27.02.1943, admittedly, no provision has been made with regard to the assets of the Firm, more particularly, the property of the Firm situated at Jamnagar.

32. The question, therefore, arises as to whether the subject property retains the character of an asset of the partnership Firm or would become a co-ownership property?

33. In order to examine the aforesaid issue, it would be appropriate to look into the provisions of Sections 46, 47, 48, 49, and 50 of the Indian Partnership Act, 1932. Section 46 of the Act of 1932, provides for the right of partners to have the business wound up after dissolution. The aforesaid provision confers a right on every partner or his representatives, as against all the other partners or their representatives, to have the property of the Firm applied in payment of the debts and liabilities of the Firm, and thereafter, the surplus to be distributed amongst the partners or their representatives as per their shares/rights. Section 47 of the Partnership Act, 1932, provides

the continuing authority of partners for the purpose of winding up. Even after the dissolution of the Firm, the authority of each partner to bind the Firm and the other mutual rights and obligations of the partners shall continue, notwithstanding the dissolution.

34. Similarly, Section 48 of the Act of 1932, provides for the mode of settlement of accounts between the partners. Clause (b)(iv) of Section 48 deals with the aspect of the assets of the Firm, including any sums contributed by the partners to make up the deficiencies of capital, and the manner and order in which such assets have to be applied. Firstly, towards the payment of the debts of the Firm to third parties; secondly, for payment to be made to each partner rateably due to him from the advances made by the Firm as distinguished from the capital; thirdly, in making payment to each partner rateably, what is due to him on account of capital; and lastly, the assets of the Firm, including the sums are required to be contributed i.e. the residue left out, if any, to be divided amongst the partners in the proportion of their entitlement to share profits. Further, Section 49 of the Act of 1932, provides for the payment of Firm debts and of separate debts, and Section 50 provides for personal profits earned after dissolution. Considering the aforesaid provisions in the facts of the case, the mere execution of the deed in the form of an agreement of dissolution at

Exh. 192 cannot be accepted as dissolution of the Firm including the settlement of the assets of the Firm, which would only take place after the winding up as provided under the statute is followed, more particularly, when the dispute surrounds the immovable property of the Firm.

35. It is also required to be considered that the respondents have supported the judgment of the trial court by harping on the use of the term "co-owners" appearing at various stages in different documents. For instance, much emphasis has been laid on the agreement of 1941, produced on record at Exh.173, wherein the parties to the agreement in relation to the Bombay properties situated at Princess Street and Marine Street have been described as "co-owners". Yet, those properties are admittedly Firm's assets and remained so throughout. Even the 1970's deed clearly describes the aforesaid properties as Firm assets.

36. At this juncture, it would be relevant to note the indenture of partnership deed dated 15.01.1970, produced on record at Exh.188. The aforesaid deed records the past history of the partnership Firm, wherein it is clearly recorded that Vallabhdas Kanji had introduced his four sons as partners at the time of the constitution of the Firm way back on 06.11.1926 and, had thrown the

immovable properties, which include the Jamnagar property described under the third schedule, as part of the assets of the said partnership Firm. Again, in Clause (1) of the 1970's deed, it is recorded that the business of "M/s. Vallabhdas Kanji and Company" shall be deemed to have continued even after the death of Ranchhoddas Vallabhdas on 27.05.1965. This suggests that if the Firm had in fact dissolved on an earlier occasion in the form of the agreement of dissolution executed on 27.02.1943 (with effect from 08.11.1942), the question of continuation does not arise.

37. It is required to be noted that the document of 1970 was signed on behalf of the Madhavdas Ravji's branch through Ajitsinh Madhavdas. However, it is equally important to note that Chhabildas Ravji, in his cross-examination, had clearly stated that no consent was taken from other heirs of Madhavdas Ravji to verify permitting Ajitsinh to act in their representative capacity. He had clarified that the Solicitor Nandlal Patwari, had advised Ajitsinh, being the eldest son, to represent the branch. It is required to be noted that every heir is an individual and would not be bound by the signature of one of the heirs representing the branch of a partner. In absence of any expressive authority conferring such power to act on their behalf; the remaining heirs of Madhavdas Ravji, who are the appellants before this Court, cannot be said to be bound by such document. It is also

required to be noted that in para 54 of the cross-examination of Chhabildas Ravji, he has admitted that, in fact, the document of 1970 was never implemented. The aforesaid admission on behalf of the witness has not been taken into consideration/ has not been dealt with by the learned Judge before arriving at a conclusion that the partnership Firm had ceased to exist and subsequently, a new partnership Firm was constituted. On assumption that when he has deposed before the court he was at the last stage of cancer and therefore noticing contradiction in stand taken in written statement, has discarded his entire evidence, which is not the right approach.

38. With such circumstances on record, in my view, the learned Judge committed grave error by relying upon such a document to draw such a conclusion. The document, which was never acted upon by the parties and in the absence of any expressive authority being conferred by the representatives of the Madhavdas branch, cannot be read as an evidence to find out as to whether the suit property was removed from the assets of the Firm. Similarly, the reliance placed on the documents in the nature of the Sanad (Exh.182), the property register (Exh.252), the municipal bills (Exhs. 288 and 289), the letter dated 13.07.1966 (Exh.179), the letter dated 18.09.1971 (Exh.177), the reply in the recovery application submitted before the Labour Court on 17.08. 1974 (Exh. 253), as well as the rent

notes (collectively from Exhs. 306 to 313), though describes the parties in relation to the property as "co-owners", in my view, in absence of the correct status of the property being reported to the respective competent authorities had led to the absence of the description of the property under the name of the partnership Firm. It is required to be noted that in view of Section 14 of the Act of 1932, once the property owned by an individual is thrown into the hotchpotch of a partnership Firm, it becomes an asset of the partnership Firm. In the case of **Addanki Narayanappa (supra)**, it has been ruled that when a partner contributes immovable property to a partnership Firm, no separate registered conveyance is required. Thereafter, in the case of **Dewas Cine Corporation** (supra) as well as in the case of **S.V. Chandra Pandian** (supra), the courts have reiterated the principle that an assets of partnership are the properties purchased by using the money of the partnership Firm and, specifically, if thrown into the partnership Firm by one of the partners at any stage, it acquires the characteristic of asset of the partnership Firm. In such circumstances, it ceases to be an individual property, and only with the consent of the partners of the Firm, or at any stage of dissolution of the Firm followed by winding up with the settlement of accounts, the residue remaining in the form of the property of the Firm can be distributed to the partners in respect of their shares, as provided under Section 48, Clause (b)(iv).

39. As regards the Sanad of 1963 produced on record, it is apparent that the said certificate was issued by the city survey authorities reflecting the names of the holder. The original Sanad of 1916 stood in joint and individual names, and thereafter, the Sanad revisited in 1963 carried forward the names reflected in the record. It is required to be noted that even at the stage of survey settlement of the properties, the city survey authorities are required to inquire into the title of the properties. Appropriate would be to mention about the decision of the Bombay High Court in the case of **Adarji Mancheriji Dalal** (supra), as relied upon by the learned advocate for the appellants. The Court ruled that once the properties are partnership properties, even if they stand in the name of a partner, they belong to the partnership and the partner holds them in trust. Notably, the properties situated on Princess Street and Marine Street, though stand in the individual names, were admittedly Firm assets.

40. Hence, in my view, the document in the nature of a Sanad, in the facts of the case and the controversy involved, cannot be treated as proof of title, more particularly to resolve the issue as to whether the property was a partnership Firm property or of co-ownership. So far as the property register (Exh. 252) and municipal

bills (Exhs. 288 and 289) are concerned, they are the government records used for the limited purpose of municipal tax assessment. Even, the names of the occupier of the premises are reflected, may not derive any title to the property. Hence, such records cannot be taken into consideration for the purpose of ascertaining the fact as to whether the property was partnership Firm property or of co-ownership. The letter dated 13.07.1966 produced on record at Exh. 179 clearly suggests that such letter was written in the context of the possession and occupation of portion of "Laxmi Bhuvan", which was used by Vishnu Industries, run by Ajitsinh- one of the appellants herein. However, the mere use of the term "*Joint Maliki*" would not change the character of the property of being the property of the partnership Firm. The letter dated 18.09.1971 produced on record at Exh. 177, if examined as a whole, in the second paragraph, it refers to the 1952 agreement as document between "*Bhagidaro*" meaning partners and attaches a document relating to shares in partnership property at Jamnagar. A party who describes himself and others as "*Bhagidaro*" in the very letter relied upon to show absence of partnership cannot be sustained to draw a conclusion that the property is not a partnership property. The reply dated 17.08.1974 submitted before the Labour Court produced on record at Exh.253, though describes the parties as co-owners of the property; however, the fact remains that such a written statement was submitted in a recovery application given by the workmen of Vishnu Industries. The aforesaid reference of the term cannot be taken out of context to draw a conclusion that the subject property was not a partnership Firm property but of a co-ownership character. The rent notes (collectively marked Exhs. 306 to 313), signed across by Ajitsinh describing him as "*Bhagidar*" (meaning partner), would merely demonstrate the fact that in his capacity as a partner, he has acknowledged the receipt of rent. The said document again cannot be considered as a proof of the property being of the nature of co-ownership and not of partnership Firm assets.

41. In other words, the actual nature of the subject property was required to be examined in light of the provisions of law, more particularly, Section 14 read with Section 49 of the Act of 1932, to ascertain as to the reference made to the terms "co-owners", "*Joint Maliki*", and "*Bhagidaro*" was in the context of the partners of a partnership Firm and not in the context of the co-ownership. The trial court ought to have gathered the surrounding circumstances on record before arriving at a conclusion that the expression of the aforesaid terms related to the property as of co-ownership character. In fact, the aforesaid terms can be said to have been used by the parties like a layman referring to such terms in loose, contextual, and

colloquial usages. The legal position remains that the mere description or use of such expression in the document cannot alter the legal character of the subject property, which has throughout remained as partnership asset.

42. In view of the aforesaid discussions and reasons, the point for determination -no. 1 framed by this Court, is answered accordingly. I hereby hold that the subject property to be the asset of the partnership Firm, M/s. Vallabhdas Kanji and Company.

POINTS FOR DETERMINATION NOS. 5 AND 6:

43. This brings me to the points for determination nos. 5 and 6, to be examined separately, in view of Appeal No. 924 of 1986 being filed by original defendants nos. 20 to 25, assailing the impugned judgment and order on the limited ground of challenging the directions issued by the trial court of handing over the possession of part of "Laxmi Bhawan" i.e. "*Borivali Ni Chawl*".

44. In order to appreciate the aforesaid controversy raised by the appellants of the aforesaid First Appeal, who are the heirs and legal representatives of the deceased Bai Vali and her son Vithaldas, it would be appropriate to revisit the past events and the manner in which, the aforesaid property came into possession of the appellants

herein. The younger son of Vallabhdas Kanji, namely Lalji Vallabhdas, was married to Bai Vali, and out of their wedlock, a son named Vithaldas was born. Lalji Vallabhdas had parted ways from the family by executing a release deed dated 02.06.1916 produced on record at Exh. 172, thereby relinquishing his rights from the ancestral properties, including the subject properties for consideration of sum of Rs. 5,000/- and ornaments. It is required to be noted that the release deed of 1916 describes the properties covered by it as those acquired through trade and business. Unfortunately, Lalji Vallabhdas survived for only thirteen years after executing such a release deed. The fact of his expiry in 1929 is borne out from the evidence of Chhabildas, who was examined as a witness by the plaintiffs. It is required to be noted that Lalji Vallabhdas had never asserted any independent ownership rights over the subject property i.e. Laxmi Bhawan", during his lifetime. It is further required to be noted that the partnership Firm came into existence on 06.11.1926 at Exh. 174. It is required to be noted that a partnership deed was executed in this on 05.04.1928, which specifically identifies Laxmi Bhawan situated at Jamnagar, as a partnership asset. The partnership deed records that no partner was entitled to sell the property of the Firm to any outsider and, if the share of any partner becomes separate, the remaining partners to continue with equal shares in the entire income. This deed of resolution is an unrebutted acknowledgment that Laxmi Bhawan was a Firm asset since the year 1926. Thus, the Laxmi Bhawan property was thrown into the hotchpotch of the partnership Firm namely M/s. Vallabhdas Kanji and Company, and has remained a partnership asset since 1926.

45. Having noted so, the dissolution deed dated 27.02.1943 produced on record at Exh. 190 suggests that the subject property continued to be the asset of the partnership Firm as on 27.02.1943. Even the subsequent documents in the nature of release deed executed by Ranchhoddas Vallabhdas produced on record at Exh. 195 executed on 23.04.1949, the agreement of dissolution entered into between partners on 30.08.1952 produced on record at Exh.178, and the indenture of partnership dated 15.01.1970 produced on record at Exh. 188 in no manner affected the legal character of the property namely Laxmi Bhawan to be a partnership asset.

46. In view thereof, if one considers the recitals of the Will executed by Vallabhdas Kanji on 19.04.1937 produced on record at Exh. 187, it is required to be noted that hardly five days after the consent decree dated 12.04.1937 was recorded the property as a partnership asset, the said Will was executed. On a close reading of the recitals of the said Will, more particularly, paragraph 6, the only

limited right, which is conferred on Bai V ali and her son Vithaldas is the right of residence and maintenance. It further provides that, in the event if all the owners decide to sell the property, the heirs of Lalji shall vacate the aforesaid premises by receiving an amount of Rs. 8,000/-. It is required to be stated that the testator of the Will was holding that property in his capacity as a partner. The question, therefore, arises as to whether a partner of a Firm can bequeath his right over an asset of the partnership Firm to the beneficiary.

47. In this regard, it would be appropriate to consider the provision of Section 22 of the Act of 1932, which binds a Firm in case where a partner of the Firm acts or executes in any manner expressing or implying an intention to bind the Firm. Considering the aforesaid provision and the circumstances, in which, the Will was executed in absence of any challenge being made to the Will, it can be inferred that the rest of the partners of the Firm have impliedly agreed to the act of Vallabhdas Kanji to confer such limited rights of use and residence.

48. With such circumstances on record, if one looks at the provisions of Section 14 of the Act of 1956, and considering the fact that the husband of Bai Vali i.e. Lalji Vallabhdas has expired in 1929, being survived by widow and minor son, and Vallabhdas being head of

the family as well as one of the partners of the Firm, in order to discharge his pious obligation to maintain his daughter-in-law and grandson, has conferred such right in the property of the partnership Firm.

49. Having noted the arguments of learned Senior advocate Mr. Parikh and Mr. Yagnik as regards provisions of Hindu Adoption and Maintenance Act is concerned, this court is called upon to decide as to Whether under Hindu adoption and maintenance Act, the father in law is under obligation to maintain her widowed daughter in law? If Yes, then in the facts of the case the significant question which has been posed for consideration is to what extent a partner in the firm can bequeath his rights in partnership firm's property in favour of the widowed daughter in law? Again, whether this limited rights of a partner in partnership firm's property even with implied consent of other partners conferred gets translated into absolute ownership rights in favour of the widowed daughter in law in view of section 14(1) of the Hindu Succession Act?

50. As regards the first question which is posed for consideration, it would be appropriate to consider the law settled by the Hon'ble Supreme Court which is a binding precedent. In the recent pronouncement in the case of ***Kanchana Rai v. Geeta Sharma***

(Neutral citation : 2026 INSC 54), the Hon'ble Supreme Court has ruled that a widowed daughter-in-law is a legal dependent of her father-in-law; She has the right to claim maintenance from his inherited estate, regardless of whether her husband passed away before or after his father. Thus, considering Section 22 of the Hindu Adoptions and Maintenance Act, 1956, the term dependent under Section 21(vii), the court has observed that denial of maintenance violates Articles 14 and 21, guaranteeing equality and dignity. It has therefore held that the time during which she became a widow is irrelevant to qualify as dependent. The Court observed :

> "9. The law on the grant of maintenance of Hindus has been codified by enacting the Hindu Adoptions & Maintenance Act, 1956. The aforesaid Act provides for the adoption as well for the maintenance. The adoption part is dealt under Chapter II of the Act, whereas Chapter III of the Act provides for maintenance to the dependants of a Hindu under Sections 18 to 28.
> 10. The "dependants" have been defined under Section 21 of the Act inter alia to include the following relatives of the deceased.
> "...
> 2 (vii). any widow of his son or of a son of his predeceased son, so long as she does not remarry: provided and to the extent that she is unable to obtain maintenance from her husband's estate. or from her son or daughter, if any, or his or her estate; or in the case of a grandson's widow, also from her father- in-law's estate;
> ..."
> 11. A plain reading of the above definition of the dependants makes it crystal clear that the relatives of the deceased, namely, "any widow of his son" would be a dependant provided she is unable to maintain herself from her husband's estate or from her son or her daughter's estate and in the case of grandson's widow, from her father-in-law's estate.

12. Section 22 of the Act provides for the maintenance of dependants and casts an obligation upon all the heirs of the deceased Hindu to maintain the dependants of the deceased out of the estate inherited by them from the deceased. In simpler words, all the heirs of the deceased Hindu are obliged to maintain the dependants of the deceased from the funds inherited out of the estate of the deceased.

13. Sub-section (2) of Section 22 further provides that where a dependant of the deceased Hindu has not obtained share in the estate of the Hindu either by testamentary or intestate- succession, such a dependant shall be entitled to maintenance from those who take the estate. Therefore, anyone succeeding to the estate of the deceased Hindu is under an obligation to maintain the dependant of the deceased.

14. Section 23 of the Act provides for the manner and the factors on the basis of which maintenance to a dependant has to be determined.

15. Section 21 of the Act, as stated earlier, is only a defining section which defines the "dependants" of the deceased Hindu. One of the relatives of the deceased Hindu who has been defined as a dependant is clearly "any widow of his son" meaning thereby a widow of the deceased son of the Hindu is a dependant irrespective of the time she becomes a widow.

16. The above definition is quite clear and unambiguous. It is not open for any other meaning except that a "widow of the son" of the deceased is a dependant. In view of such a clear definition, it is not open for anyone to infer and assign any other meaning to the said definition so as to say that only a widow of the predeceased son of a Hindu would be covered by the said definition. The aforesaid definition nowhere uses the word "widow of a predeceased son". It simply uses the words "any widow of a son". The legislature in its wisdom has deliberately avoided to use the word "predeceased" before the "son" so as to include any widow of the son. The time of her becoming a widow or the death of the son is immaterial."

51. Having noted the guiding principles, as regards the claim

of absolute ownership via Section 14(1) of the Hindu Succession Act, 1956, is concerned, it is required to be noted that the requirement of widow having legally derived the holding in the property in lieu of her pre-existing maintenance claim, is also required to be satisfied. Taking into consideration the provisions of the Partnership Act , 1923, more particularly section 14 and 23, her absolute right would be restricted only to the specific interest possessed by her husband or father in law, as the case may be. Even reading of section 14(1) of the Hindu Succession Act, 1956 does not expand her rights against third parties, such as the other surviving partners in the firm, in the present case. It is required to be noted that when a partner dies his interest in the Firm's assets is confined as 'tenant in common' meaning thereby the deceased partner shall have a distinct , undivided and alienable share in the property rather than an absolute right like exclusive ownership. It is a settled legal position that no person can confer a better title than what he has. However, in absence of any cross objections being raised by the heirs of deceased Bai Vali praying for any declaration which has been sought for the first time in present appeal, this Court has restrained to further examine merits of the appeal on the issue of absolute ownership rights of widow in light of provision of section 14(1) of the Act, 1956, as argued on behalf of the appellant of First appeal no. 924 of 1986.

52. Admittedly, the Will was executed in the year 1937, pursuant to which, the parties have acted upon the same inasmuch as

the widow and her son were actually put in possession of the property known as "*Borivali Ni Chawl*". As rightly pointed out by the learned advocate Mr. Yagnik appearing for the said appellants that no separate prayer was couched in the prayer clause seeking recovery of possession of aforesaid premises known as "*Borivali* Ni *Chawl*" by the plaintiff. In such circumstances, in my view, the learned Judge committed grave error in issuing further directions to vacate the said premises and to hand over possession of the said premises to the plaintiff, by treating it as joint family property . Although the argument of benefit under section 14(1) of Hindu Succession Act was not raised specifically before the learned Judge; however, on bare appreciation of the pleadings, more particularly, the written statement filed by original defendants nos. 20 to 25, necessary averments in this regard were made. At the same time, no evidence has been brought on record by the plaintiff to suggest that the heirs of Bai Vali have derived any rights in Kotechewadi property. For the foregoing reasons, in my view, in absence of any declaration being sought for in this regard or any cross-objections being filed by the original defendants no. 20 to 25, this Court is not inclined to adjudicate on the issue of absolute right derived by widow but at the same time, the direction issued by the learned Judge of handing over the possession of the premises namely "*Borivali* Ni *Chawl*" against the original defendant nos. 20 to 25 is required to be quashed and set aside.

CONCLUSIONS :

53. For the foregoing reasons, the impugned judgment and preliminary decree dated 29.03.1985 passed by the learned 3rd Joint Civil Judge, Senior Division at Jamnagar in Special Civil Suit No.54 of 1974, is hereby quashed and set aside. The consequential directions issued by the learned Judge further defining the shares of the respective parties by treating the subject property as co-ownership property are also quashed and set aside. The findings of fact and the decisions in respect of the related issue regarding the handing over of possession of the property known as *"Borivali Ni Chawl"* against defendants nos. 20 to 25 are also quashed and set aside.

54. In the result, First Appeal No. 1313 of 1985 is allowed and First Appeal No. 924 of 1986 is partly allowed. Cross-Objection No. 34 of 2001 is not entertained in view of the disposal of the First Appeals as allowed. In view of the disposal of the main First Appeals, all pending civil applications are disposed of.

55. Civil Revision Application praying for quashing of subsequent orders passed by the court below appointing Court

Commissioner for demarcation of suit property as per defined shares of the parties in terms of the impugned judgment and order, is also required be quashed and set aside. Thus, the Civil Revision application stands allowed, in view of the orders passed in First Appeal.

56. Record & proceedings are directed to be sent back to the concerned forthwith.

<u>ORDER IN CIVIL APPLICATION NO. 1 OF 1987 (CA 416/1987) AND CIVIL APPLICATION NO. 1 OF 2014 (CA 4109 OF 2014):</u>

1. The present applications are filed by the original appellants praying for direction of production of documents of convenience dated 13.12.1986 executed by Ajitsinh Madhavdas Ravji in respect of the properties situated at Princess Street and Marine Street in Mumbai, in order to substantiate the grounds raised in the appeal.

2. Since the main appeal being First Appeal No. 1313 of 1985 has been decided finally, in view thereof, the present applications seeking production of additional documents have become infructuous and, the same are disposed of, accordingly.

ORDER IN CIVIL APPLICATION NO. 3 OF 2025:

1. The present application is filed by the applicant/original respondent no.5- Ramesh Morarji Ravji to bring on record the subsequent developments, more particularly, the agreement entered between the parties in respect of the suit properties to counter the arguments raised by learned advocates for the appellants about the subject property having retained the character of partnership asset.

2. Notably, the respondent no.5 neither has preferred any appeal nor any cross-objections have been filed. It is required to be noted that under the Code, 1908, additional evidence at the appeal stage is an exception, which is strictly governed by the provisions of Order XLI Rule 27 of the Code, 1908.

3. Having appreciated the case of the respective parties on merits and the legality and validity of the impugned judgment and order being tested on the appreciation of the evidence produced on record before the trial court, this Court does not find it fit to permit such production of additional document at the instance of the respondent. For the foregoing reasons, the present Civil Application is not entertained and, is hereby rejected.

ORDER IN CIVIL APPLICATION NOS. 1 OF 2023, 1 OF 2024, 2 OF 2023, 5 OF 2024, 2 OF 2024, 4 OF 2023, 3 OF 2023 , 3 OF 2024, 4 OF 2024, 5 OF 2023, 6 OF 2023, 6 of 2024, 7 OF 2023, 8 OF 2023 AND 8 OF 2024, IN CIVIL REVISION APPLICATION NO.747 OF 1992:

In order to appreciate the merits of the present applications, the details of the days of delay and the names of the respective applicants/respondents are reproduced hereunder in tabular form:

Sr.No	Civil Application Nos. (bringing legal heirs and for condonation of delay)	Days of Delay	Name & Date of death of deceased	Original status in First Appeal No. 1313 of 1985	Order passed in the Civil Application, by which, heirs of applicant/defendant are brought on record in main First Appeal No.1313 of 1985
1.	1 of 2023 & 1 of 2024	4179	Respondent no.9- Pratapsinh Ravji (07.07.2007)	Respondent No.10	Civil Application No.8554 of 2001 on 24.08.2001
2.	2 of 2023 & 5 of 2024	1462	Respondent no.15- Jagdish Vithaldas Lalji (31.8.2019)	Respondent No.16	Civil Application No. 2 of 2023 on 03.01.2024
3.	4 of 2023 & 2	4104	Applicant	Appellant	Civil

	of 2024		no.2- Ajitsinh Madhavdas Ravji (20.09.2007)	No.2	Application No.2621 of 2009 on 17.03.2009
4.	3 of 2023 & 3 of 2024	1770	Respondent no.6 Jayabai wd/o late Vasanji Ravji (09.11.2013)	Respondent No.7	**Deleted** vide order dated 19.02.2024 passed in Civil Application No.2 of 2014 (Civil Application No. 2428 of 2014)
5.	5 of 2023 & 4 of 2024	548	Applicant No.4 Vijaysinh Madhavdas Ravji (03.02.2018)	Appellant No.4	Civil Application No.1 of 2018 on 19.02.2024
6.	6 of 2023 & 8 of 2024	6316	Respondent no.11- Purshottam R Vallabhdas (30.08.2001)	Respondent No.12	Civil Application No.779 of 2002 on 01.02.2002
7.	7 of 2023 (for bringing legal heirs)	-	Applicant No.10 – Jayvanti @ Maliniben Madhavdas (05.04.2019)	Respondent No.20	Civil Application (For Bringing Heirs) No. 5 Of 2023 on 11.09.2024
8.	8 of 2023 & 6	2803	Respondent	Respondent	**Deleted** vide

	of 2024		no.2- Hirabai wd/o late Morarji Ravji (13.01.2011)	No.2	order dated 06.12.2013 passed in Civil Application No.12734 of 2013

2. The present applications are filed by the original applicants of revision who are also appellants of First Appeal No. 1313 of 1985, praying for condonation of delay as mentioned above in tabular form caused in bringing the heirs and legal representatives of the deceased respondents/applicants in the main revision application.

3. The cause of action arose for filing Revision Application at the instance of the appellants-original appellants challenging the order passed below the applications, whereby the learned Judge has approved the prayer of appointment of Court Commissioner and the report submitted by the Court Commissioner with regard to defining of the boundaries of subject properties as per the share of the respective parties.

4. It is required to be noted as can be that the Division Bench of this Court, having perused the averments made in the application and the fact that the main lead matter being First Appeal No. 1313 of 1985 was pending consideration, vide order dated 21.03.1991 had stayed

the order passed below Exhs.383, 389, 391 and 395, which is subject matter of challenge in the main Revision Application.

5. Having noted so, at the outset, It is required to be noted that, since the old appeals were pending for final adjudication, with the consent of learned advocates representing the respective parties in the main lead matter being First Appeal No. 1313 of 1985, wherein the impugned judgment and order passed by the trial court granting the relief of declaration of subject properties as co-ownership properties and, further prayer of partition of said properties by metes and bounds, were pending consideration for long, the present applications were heard peremptorily with the main matters.

6. It is apparent from record that the respective parties have been represented by learned senior advocates as well as advocates on record in the main lead appeal, and the appeal itself being heard with the consent of learned advocates for the respective parties along with Revision Application as well as present applications, the applications are disposed. It is required to be noted as can be gathered from the remark column of the tabular details appearing in preceding para, that the application was preferred by the respondent nos.3, 4, 6, 10.1, 10.2, 12.2, 12.3 and 23 of First Appeal No.1313 of 1985 praying for

abatement of the proceedings on the ground that the heirs of the deceased parties to these proceedings have not been brought on record. The aforesaid application was objected tooth and nail by the respective parties and, a detailed order was passed on 28.03.2025 in Civil Application (For Orders) No. 1 of 2024, whereby the heirs and legal representatives of the deceased parties, which are 1, 9.1 and 17 in the First Appeal No. 1313 of 1985 have been allowed. It is required to be noted that, considering the nature of the dispute involved, the issue of abatement of proceedings was examined closely. It has been reported that none of the parties have approached in appeal against the aforesaid order passed by this Court in the said Civil Application praying for abatement.

7. Applying the same principles, in the present applications as well, the present applications praying for condonation of delay caused in bringing the heirs and legal representatives of the deceased applicants/respondents in Civil Revision Application No.747 of 1992 are hereby allowed, the present applications also deserves consideration. Consequently, the Civil Applications (For Bringing Heirs) are also allowed.

8. The heirs and legal representatives of the deceased

respondent /applicants are hereby permitted to be brought on record in the main Revision Application. The learned advocate for the applicants is hereby directed to carry out necessary amendments to bring the cause title of the man revision application in sync with the cause title of the main First Appeal no. 1313 of 1985.

9. With these observations, the Civil Applications (For Condonation of Delay) and Civil Applications (For Bringing Heirs) in the respective matters stand disposed of, in aforesaid terms. No order as to costs.

ORDER IN CIVIL APPLICATION NO. 9 OF 2024:

The present application is filed praying for affecting service of notice upon unserved respondents, by way of substituted service in Civil Application. However, in view of the fact that, the main lead appeal along with Revision Application has been heard on merits with the consent of learned advocates representing the respective parties, the present application for substituted service has been finally heard and, is hereby disposed of. No order as to costs.

ORDER IN CIVIL APPLICATION NO. 1 of 2005 (CA 6139 OF 2005):

The present application is filed by the original appellant – Jaisinh Morarji Ravji praying for production of additional evidence in the nature of Trust deed in respect of the subject properties situated at Princess Street and Marine Street in Mumbai. However, considering the fact that the main appeal along with Revision Application has been finally heard and disposed of by common judgment, the present Civil Application has become infructuous and, is hereby disposed of.

ORDER IN CIVIL APPLICATION NO. 1 OF 2014 (CA 3767 OF 2014):

1. The present application is filed at the instance of the appellants of First Appeal No. 924 of 1986 praying for confirmation to delete original appellant nos. 1, 2 and 5 as well as respondent nos.2, 3, 10, 15, 16, 17 and 19, from the array of the parties of First Appeal, inasmuch as, the aforesaid parties are reported to have expired, pending the main matter.

2. I have carefully considered the averments made in the application and the prayer sought for. It is required to be noted that the main appeal being First Appeal No.924 of 1986 was heard along with lead appeal being First Appeal No. 1313 of 1985 and cognate Revision Application being Civil Revision Application No. 747 of 1992, the aforesaid matters were finally heard with the consent of learned advocates appearing for the respective parties as well as advocates on record along with present application. The aforesaid main matters have been decided by common judgment, and the same have been disposed of.

3. It is also required to be noted that lead matter being First Appeal No. 1313 of 1985, this Court had dismissed the application preferred by few of the respondents seeking prayer of abatement of proceedings, in absence of the heirs and legal representatives being brought on record of deceased respondent nos. 1, 9.1 and 17 in Civil Application (For Orders) No. 1 of 2024 on 28.03.2025. The matter was heard at length and the parties to the proceedings have argued tooth and nail. Finally, the aforesaid Civil Application was dismissed vide order dated 28.03.2025 thereby permitting the appellants of First Appeal No.1313 of 1985 to bring on record the heirs of the respective parties.

4. In view of the aforesaid order dated 28.03.2025 being not further challenged in appeal before the higher forum and the dispute pertains to the same, such property in the present main appeal being First Appeal No. 924 of 1986, this Court is inclined to permit the appellants of the main appeal to properly and suitably carry out amendment in the cause title of the main proceedings in sync with the cause title of First Appeal No. 1313 of 1985.

5. With these observations, the Civil Applications (For Condonation of Delay) and Civil Applications (For Bringing Heirs) are disposed of in aforesaid terms. No order as to costs.

ORDER IN CIVIL APPLICATION NOS. 2 OF 2026 AND 1 OF 2026:

1. The present applications are filed by the applicants praying for condonation of delay of 2261 days caused in preferring the Civil Application for bringing the heirs and legal representatives of the deceased appellant no.4- Shri Jagdish Vithaldas Lalji in the First Appeal No. 924 of 1986.

2. It is apparent that the respective parties have been represented by learned senior advocates as well as advocates on record in the main lead appeal, and the appeal itself being heard with the consent of learned advocates for the respective parties along with Revision Application as well as present applications at length, in view of disposal of the main First Appeal, the present application also deserves consideration. It is required to be noted that the application was preferred by the respondent nos.3, 4, 6, 10.1, 10.2, 12.2, 12.3 and 23 of First Appeal No.1313 of 1985 praying for abatement of the proceedings on the ground that the heirs of the deceased parties to these proceedings have not been brought on record. The aforesaid application was objected tooth and nail by the respective parties and, a detailed order was passed on 28.03.2025 in Civil Application (For Orders) No. 1 of 2024, whereby the heirs and legal representatives of the deceased parties, which are 1, 9.1 and 17 in the First Appeal No.

1313 of 1985 have been allowed. It is required to be noted that, considering the nature of the dispute involved, the issue of abatement of proceedings was examined closely. It has been reported that none of the parties have approached in appeal against the aforesaid order passed by this Court in the said Civil Application praying for abatement.

3. Applying the same principles, in the present applications as well, the present applications praying for condonation of delay caused in bringing the heirs and legal representatives of the deceased appellant no.4- Shri Jagdish Vithaldas Lalji in main First Appeal No.924 of 1986 hereby allowed. Consequently, the Civil Applications (For Bringing Heirs) are also allowed.

4. The heirs and legal representatives of the deceased applicants are hereby permitted to be brought on record in the main appeal.

5. Learned advocate appearing for the applicants is hereby directed to carry out the necessary amendment in this regard in the cause title of the main appeal forthwith.

6. With these observations, the Civil Applications (For Condonation of Delay) and Civil Applications (For Bringing Heirs) are disposed of in aforesaid terms. No order as to costs.

(NISHA M. THAKORE,J)

FURTHER ORDER

1. After the judgment was pronounced learned Senior Advocate Mr. Mehul Shah appearing with Mr. Jenil Shah learned advocate on record for respondents No.3,4, 6, 10.1 to 10.2, 12.2, 12.3 and 23 has prayed for stay of the judgment pronounced today for a period of six weeks as the said respondents intend to assail this order before the Hon'ble Supreme Court.

2. Learned Senior advocate Mr. Parikh appearing with learned advocate Mr. Dhotre representing Nanavati Associates for the appellants of First Appeal No. 1313 of 1985 vehemently objected to the aforesaid prayer of learned advocate for the respective respondents.

3. Having heard the learned Senior advocates representing the respective parties, it is required to be noted that the Hon'ble Division Bench of this Court vide order dated 21.03.1991, had stayed the impugned judgment and order of the trial court declaring suit properties as coownership and directions of handing over possession of part of property as well as defining of share of subject property , pending the hearing of the present appeals.

4. In view of the aforesaid orders, the declaration given by the

Trial Court holding the subject properties to be of co-ownership has remained stayed all throughout these years pending adjudication of the present appeals. It is also required to be noted that the parties to the proceedings have not so far raised any grievance with regard to the change in nature of properties.

5. Considering the above aspect, the request of learned senior advocate Mr. Mehul S. Shah appearing for the respective respondents is acceded to. The judgment and order pronounced today is stayed for a period of **six weeks** from today.

(NISHA M. THAKORE,J)

SUYASH SRIVASTAVA