

**HIGH COURT OF GUJARAT**

**HEIRS OF SOMABHAI GANESHBHAI PATEL AND 4 ORS**

*Versus*

**PATEL JETHALAL JOITARAM ALODIYA AND 5 ORS**

**Date of Decision:** 10 May 2011

**Citation:** 2011 LawSuit(Guj) 540

**Hon'ble Judges:** [M R Shah](#)

**Case Type:** Special Civil Application

**Case No:** 2028 of 2011

**Subject:** Civil, Constitution, Family

**Acts Referred:**

[Constitution Of India Art 227, Art 226](#)

[Indian Succession Act, 1925 Sec 388\(2\), Sec 276, Sec 388](#)

**Advocates:** [G D Acharya](#), [K H Baxi](#), [R C Jani](#)

**M.R. Shah, J.**

**[1]** Rule. Shri K.H. Baxi, learned advocate waives service of notice of rule on behalf of Respondent No. 1 and Shri G.D. Acharya, learned advocate waives service of notice of rule on behalf of rest of the Respondents.

**[2]** In the facts and circumstances of the case and with the consent of the learned advocates appearing on behalf of the respective parties, the present petition is taken up for final hearing today.

**[3]** By way of this petition under Articles 226 and 227 of the Constitution of India the Petitioners-original Plaintiffs have prayed for an appropriate writ, order or direction quashing and setting aside the impugned order dated 24/09/2010 passed by the learned Additional District Judge and Presiding Officer, 1st Fast Track Court, Mehsana in Civil Miscellaneous Application No. 78/2008 on the ground that valuation of the property for which the probate was sought, is more than Rs. 20,000/- and, therefore, the learned District Court has no pecuniary jurisdiction.

**[4]** Having heard the learned advocates appearing on behalf of the respective parties, it appears that being aggrieved and dissatisfied with the judgment and order dated 05/05/2008 passed by the learned 4th Senior Civil Judge, Mehsana in Civil Miscellaneous Application No. 2/2005, which was filed under Section 276 of the Indian Succession Act, 1925, the Petitioners have approached the District Court under Section 388 of the Indian Succession Act and the same came to be dismissed on the aforesaid ground alone. Considering the amendment in the Gujarat Civil Courts Act, 2005, it cannot be said that the District Court has no pecuniary jurisdiction to decide the appeal when the amount or value of the subject matter of the original suit is less than Rs. 5 lakhs.

**[5]** Shri Baxi, learned advocate appearing on behalf of Respondent No. 1 and Shri Acharya, learned advocate appearing on behalf of rest of the Respondents have submitted that as such appeal before the District Court is not maintainable, more particularly, under Section 388(2) of the Indian Succession Act. However, it is to be noted that the learned District Court has not dismissed the aforesaid application on the aforesaid ground. As stated hereinabove, the learned District Court has dismissed the said application solely on the ground of pecuniary jurisdiction as recorded hereinabove.

**[6]** Under the circumstances and for the reasons stated hereinabove, the impugned order passed by the learned appellate Court deserves to be quashed and set aside and the matter is to be remanded to the learned appellate Court for deciding the same afresh in accordance with law keeping all the questions open, inclusive of maintainability of such an application purported under Section 388(2) of the Indian Succession Act, which shall be established and dealt with and considered by the learned appellate Court in accordance with law.

**[7]** In view of the above and for the reasons stated hereinabove, the present petition succeeds and the impugned order passed by the Additional Judge and Presiding Officer, 1st Fast Track Court, Mehsana dated 24/09/2010 in Civil Miscellaneous Application No. 78/2008 is hereby quashed and set aside and the matter is remanded to the learned appellate Court for deciding the same afresh in accordance with law on its own merits and all the questions, which are available to the respective parties inclusive of maintainability of such an application purported to be under Section 388(2) of the Indian Succession Act, are kept open, which shall be dealt with and considered by the learned appellate Court in accordance with law on its own merits. Rule is made absolute to the aforesaid extent. No cost.