

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/FIRST APPEAL NO. 1283 of 1996****With****CIVIL APPLICATION NO. 1 of 2008
In R/FIRST APPEAL NO. 1283 of 1996****With****CIVIL APPLICATION (FOR BRINGING HEIRS) NO. 3 of 2025
In CIVIL APPLICATION NO. 1 of 2008
In R/FIRST APPEAL NO. 1283 of 1996****With****CIVIL APPLICATION (FOR CONDONATION OF DELAY) NO. 4 of 2025
In CIVIL APPLICATION (FOR BRINGING HEIRS) NO. 3 of 2025
In CIVIL APPLICATION NO. 1 of 2008
In R/FIRST APPEAL NO. 1283 of 1996**=====
SHANTI CORPORATION**Versus****RUPESH CORPORATION & ORS.**
=====**Appearance:****MR HEMANG M SHAH(5399) for the Appellant(s) No. 1****JENIL M SHAH(7840) for the Defendant(s) No. 1****LOVE S MODI(8362) for the Defendant(s) No. 8****MR KV SHELAT(834) for the Defendant(s) No. 3,7****MRUGESH A VYAS(8363) for the Defendant(s) No. 8****RULE NOT RECD BACK for the Defendant(s) No. 3.1,3.2,3.3,3.4,3.5****RULE UNSERVED for the Defendant(s) No. 4,5,6****UNSERVED EXPIRED (R) for the Defendant(s) No. 2**
=====**CORAM:HONOURABLE MR. JUSTICE DEVAN M. DESAI****Date : 22/12/2025****ORAL ORDER****Order in C.A. No. 1 of 2008:**

1. The present Civil Application is filed for substitution of applicant in place of the original appellant – Shanti Corporation, a partnership firm.

2. Heard learned advocate, Mr. Hemang Shah for the applicant, learned advocate, Mr. Jenil Shah for the respondent No. 1, learned advocate, Ms. Shivani Barot for respondent No. 2 and learned advocate, Mr. K.V. Shelat for respondent Nos. 3, 7 and 8. Though served, none appeared for respondent Nos. 4 to 6.

3. Learned advocate for the applicant contended that the challenge in the First Appeal by original appellant is against the judgment and conditional decree of specific performance of the suit agreement. Pending the First Appeal, vide agreement dated 03.05.2000, the original appellant – Shanti Corporation, (original defendant) i.e. present opponent No. 1 assigned its rights and interest in the suit land bearing Final Plot No. 57 admeasuring about 647 sq. mtr. of Town Planning Scheme No. 22, Ahmedabad in favour of the present applicant, Mr. K.K. Rathod. A copy of the notarized agreement is placed on record which is taken on record. It is contended that the original appellant has given up its rights qua suit property and they are no more interested in the suit land. It is further contended that by virtue of the aforesaid agreement dated 03.05.2000, a right has been created in the suit property and therefore, the present applicant is required to be substituted in

place of original appellant in the First Appeal. Upon substitution of the applicant, the applicant also does not want to proceed with the First Appeal and wishes to withdraw the same unconditionally. The communication dated 16.12.2025 addressed to the learned Senior Advocate, Mr. Anshin Desai is placed on record which is taken on record. It is further submitted that pending the captioned Civil Application, the applicant, Mr. K.K. Rathod has passed away. Separate applications for condonation of delay and for bringing legal heirs and representatives are also filed. Except above, no other submissions were canvassed by learned advocate for the applicant.

4. Per contra, learned advocate, Mr. Hemang Shah for original appellant submits that the agreement dated 03.05.2000 was executed in favour of the present applicant and in view of the aforesaid agreement, the right and interest in the suit property has been assigned in favour of original applicant. Therefore, he has no objection if the applicant is substituted in place of original appellant. Learned advocate, Mr. Jenil Shah for opponent No. 2 – original plaintiff – decree holder has no objection if the present application is allowed. Except above, no other submissions were

canvassed by learned advocate, Mr. Hemang Shah for the original appellant.

5. Learned advocate, Mr. K.V. Shelat for opponent Nos. 3, 7 and 8 also contended that in view of a declaration that the applicant does not wish to continue with the First Appeal and also as some of the heirs of judgment-debtors have expired during the pendency of the First Appeal, he has no objection if the present application is allowed. Except above, no other submissions were canvassed by learned advocate, Mr. K.V. Shelat for opponent Nos. 3, 7 and 8.

6. Having considered the submissions canvassed by learned advocates for the parties and on perusal of the application, it appears that pending the First Appeal, the original appellant – Shanti Corporation, a partnership firm, has assigned its rights qua suit property in favour of the present applicant, Mr. K.K. Rathod by an agreement dated 03.05.2000. The ultimate submission of learned advocate for the applicant is that a right has been created in favour of the present applicant and therefore, the present applicant may be substituted as appellant in place of original

appellant – Shanti Corporation. Considering the overall aspects of the matter, and more particularly, in view of the communication dated 16.12.2025, expressing the wish of the present applicant not to continue with the First Appeal, without entering into the merits and demerits of the assignment deed dated 03.05.2000, the present application is allowed. The name of Shanti Corporation, a partnership firm is permitted to be deleted from the array of parties. Necessary amendment is ordered to be carried out forthwith.

Order in C.A. No. 4 of 2025 (for Condonation of Delay):

1. The present Civil Application is filed under Section 5 of the Limitation Act, 1963, for condonation of delay of 266 days in preferring an application for bringing the legal heirs and representatives of deceased – applicant of Civil Application No. 1 of 2008, Mr. K.K. Rathod, on record of the First Appeal.

2. Heard learned advocate, Ms. Shivani Barot for the applicants and learned advocate, Mr. Hemang Shah for respondent No. 1, learned advocate, Mr. Jenil Shah for respondent No. 2 and learned advocate, Mr. K.V. Shelat for respondent Nos. 3 and 7.

3. Learned advocate for the applicants submits that the original applicant, Mr. K.K. Rathod in Civil Application No. 1 of 2008 has passed away during the pendency of the present First Appeal. Except above, no other submissions were canvassed by learned advocate for the applicants.

4. Per contra, learned advocates for the respective respondents have no objection if the present application is allowed. Except above, no other submissions were canvassed by learned advocates for the respective respondents.

5. Having considered the submissions canvassed by the learned advocates for the parties and on perusal of the application, it appears that the deceased – applicant has expired on 20.12.2024. However, the legal heirs and representatives of deceased applicant could not be brought on record within the prescribed period of limitation. It also appears that the application has not been abated qua the heirs of deceased – applicant. Sufficient cause is made out. Therefore, applying a lenient view, delay is condoned. The present application is allowed accordingly.

Order in C.A. No. 3 of 2025 (for bringing legal heirs):

1. The present Civil Application is filed for bringing the legal heirs of the deceased – applicant, Mr. K.K. Rathod on record. Copy of death certificate is produced on record.

2. Learned advocate, Ms. Shivain Barot for the applicants, submits that the heirs of the deceased applicant are required to be brought on record. The Appeal would be rendered futile if the heirs of the deceased – applicant are not brought on record.

3. In view of the averments made in the application and having considered the submissions made by the learned advocate for the applicants, the heirs of the deceased - applicant are found to be necessary parties. Hence, the present application deserves to be allowed, and the same is hereby allowed. Necessary amendment is ordered to be carried out forthwith.

Order in F.A. No. 1283 of 1996:

1. Learned advocate, Ms. Shivani Barot for the appellant has placed on record a communication dated 16.12.2025 addressed to learned Senior Advocate, Mr. Anshin Desai and the same is taken

on record. It is submitted that the appellants do not want to proceed further with the captioned First Appeal and pray for withdrawal of the same.

2. In view of the communication dated 16.12.2025 and the submissions canvassed by learned advocate for the appellant, the present First Appeal stands disposed of as withdrawn. No order as to costs.

3. In view of the disposal of the main matter, the connected Civil Applications, if any, do not survive and the same are disposed of accordingly.

4. Record and Proceedings be sent back to the concerned Court / Tribunal.

(D. M. DESAI,J)

MUSKAN

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: MUSKAN AJAY MENON(HC02359), ENGLISH STENO GRADE-II\, at High Court of Gujarat on 24/12/2025 18:00:04