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IN THE COURT OF DEPUTY COLLECTOR, DIU
U.T. ADMINISTRATION OF DAMAN & DIU, COLLECTORATE, DIU.

Shri Rashiklal Devshi Kamalia
R/o. H.No.1152, Bhoiwada,
Choro Chanchan, Ghoghla, (Diu).....Appellant

Vs

1. Smt. Maniben Babu Chauhan,.....Respondent
R/o.Firangiwada, Diu.
2. The Enquiry Officer,
City Survey, Diu.

ORDER

1. **WHEREAS**, this office has received an Appeal filed by applicant Shri Rasiklal Devji Kamalia resident of H.No. 1152, Bhoiwada, Choro Chanchan, Ghoghla(Diu) V/S (1) Smt. Manibai Babu Chauhan resident Firangiwada, Diu & (2) The Enquiry Officer, City Survey, Diu against the impugned order No. 8060/2011 passed by the Enquiry Officer, City Survey, Diu dated 16/11/2011 in respect of land bearing No. PTS-46/61/1 admeasuring 88 sq.mts. situated at Ghoghla, Diu;

2. **AND WHEREAS**, the applicant Shri Rasiklal Devji Kamalia, R/o H.No.1152, Bhoiwada, Choro Chachan, Ghoghla(Diu) has respectfully submitted appeal against the impugned Order passed by the Enquiry Officer, City Survey, Diu in file No. 8060/2011 on dated 16-11-2011 as under:-

- (i) "The opponent No.1 filed an application No. 8060/2011 in the court of The Enquiry Officer, City Survey, Diu i.e. opponent No.2 on dated 04/03/2011 for the confirmation of residential house situated at Choro Mangal, Brahman Street, Ghoghla - Diu.
- (j) The said property bearing PTS No. 46/61 which is situated at Choro Mangal, Brahman Street, Ghoghla - Diu was originally belongs to maternal grandfather and maternal grandmother of the present applicant.
- (k) The original owner of this property was Nathu Kan & his wife Jiviben Nathu. For kind perusal, applicants give following list of the heirs of Nathu Kan & Jiviben Nathu.

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Nathu Kan & Jiviben Nathu.

(1) Viriben Devaji	(2) Manuben Parbat	(3) Maniben Babu
(1) Rasiklal (2) Kantilal	(1) Ratilal. (2) Virji (3) Devraj (4) Ishwar (5) Parsottam (6) Pravin (7) Jitendra	(1) Chandu (2) Manhar (3) Devendra (4) Nirmala

- (l) Lt. Nathu Kan and his wife Lt. Smt. Jivuben Nathu executed Gift Deed registered on Sr. No. 106/76 on dated 16-11-1976 of property PTS No.46/61 and 46/57 situated At Choro Mangal, Brahman Street, Ghoghala- Diu.
- (m) The applicant has full fledged possession over this property since last 30 (Thirty) years.
- (n) Opponent No.2 filed Regular Civil suit No. 3/1995 against the present applicant Before The Hon. Civil Judge (S.D.) At Diu which was decided on dated 16/10/1999 in the favor of the present applicant and his brothers as the opponents No.1 has failed to produce the evidence of the witnesses of that Gift Deed. This legal aspect was not given wait rage by opponent No.2.
- (o) Opponent No.1 also filed appeal In the District Court at Diu vide Regular Civil Appeal No. 1/2001 which was also decided in favor of the present applicant. Therefore, opponent No.1 has preferred an appeal In the High Court of Judicature at Bombay vide Appeal No. 151/2006 which was also decided in favor of the present applicant. All legal factors and aspect were not look out by opponent No.2 while deciding the application for confirmation of the disputed property. The present opponent No.1 has produce a got up Gift Deed of Dhaniben Ranchod who gifted this disputed property to the present opponent No.1 by virtue of gift deed registered under serial No. 219 dated 15/11/1967.
- (p) The opponent No.2 has wrongly decided the confirmation Application of the property PTS No. 46/61. Therefore, being aggrieved by the order passed by the opponent No.2 the applicant prefer this appeal against the said impugned order to this Hon'ble Court on the grounds given below. A certified copy of the impugned order is attached herewith.

J. Narasimha
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The grounds of the Appeal:-

- (A) The learned Enquiry Officer, City Survey, Diu i.e. opponent No.2 has erred in law as well as in facts in deciding the confirmation application of opponent No.1.
- (B) The learned Enquiry Officer, City Survey, Diu i.e. opponent No.2 ought to have decided this matter in favour of the present applicant if he has verified the true documents.
- (C) The Enquiry Officer has erred in not believing the ownership of the present applicant.
- (D) The Enquiry Officer has erred in not taking into consideration of the judgments of The Hon. Civil Court, Diu, District Court, Diu and High Court of Bombay.
- (E) The Enquiry Officer has erred in believing the bogus Gift Deed presented by opponent No .1.
- (F) The Enquiry Officer has not verified the facts and the objections given by the present applicant that Gift Deed was not proved.
- (G) As this property is an ancestral property therefore after the death of maternal grandfather and maternal grandmother the present applicant's mother also entitled to get equal share in this disputed property, this fact was not given into consideration by The Enquiry Officer, Diu i.e. Opponent No.2., Diu has not given proper opportunity to the present applicant for producing documents as well as time to convince him. On the contrary the opponent No.2 i.e. The Enquiry Officer was prejudice from the beginning as the present applicant has filed written complain to your Good Self and The Administrator of Diu & Daman.
- (H) The Learned Enquiry Officer, Diu miss interpreted the facts from the beginning. And not given proper time to defend the case to the applicant.
- (I) The Learned Enquiry Officer, Diu has erred in holding that the present disputed property was not in the possession of the opponent No.1.
- (J) The impugned order suffers from allegations.
- (K) The impugned order deserved to set aside.

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On the grounds given above and more which will be urged at the time of argument the applicant most humbly prays as:-

- (1) To set aside the order passed by The Enquiry Officer, Diu on dated 16-11-2011 in The File No. 8060/2011 of the property PTS No. 46/61 situated at Ghoghla.
- (2) In alternation to remand this case with direction to allow the present applicant to produce required documents.
- (3) To order to stop the confirmation proceedings of residential house situated at Choro Mangal, Brahman Street, Ghoghla - Diu.
- (4) To award the cost of this appeal.

The present appeal was within limitation period as the order passed by the Enquiry Officer, Diu on dated 16-11-2011 which was intimated to the present applicant on dated 05-12-11. Therefore the present applicant demanded certified copy of the impugned order which was supplied to him on dated: - 14/12/2011. Therefore, no question of time limit is arise.

3. AND WHEREAS, it is submitted that the power of Appeal under Section 188 is delegated to the Dy. Collector, Diu vide Order No. 3-34-2010-11-ESTT/573 dated 27/5/2011; Meanwhile, this office has received a Caveat application u/s 148-A from Smt. Maniben Babubhai Chauhan, resident of Firangiwada, behind Collector Office, Diu;

4. AND WHEREAS, this office has issued Notice dated 18/11/2013 under section 188 to applicant Shri Rasiklal Devji Karnalia resident of H.No. 1152, Bhorwada, Choro Chanchan, Ghoghla(Diu)(Appellant) V/s (1) Smt. Manibai Babu Chauhan resident Firangiwada, Diu & (2) The Enquiry Officer, City Survey, DIU (Respondent) against the impugned order No. 8060/2011 passed by the Enquiry Officer, City Survey, Diu dated 16/11/2011 in respect of land bearing No. PTS-46/61/1 admeasuring 88 sq.mts. situated at Ghoghla, Diu to face legal proceedings in the Court of Deputy Collector, Diu under Section 188 of Goa, Daman and Diu Land Revenue Code, 1968 and rules made thereunder;

5. AND WHEREAS, hearing in the Court of Dy. Collector, Diu was fixed on 12.12.2013 at 15:30 hours, on 23.12.2013 at 16.00 hours, on 10.01.2014 at 16.00 hours, on 20.01.2014 at 16.00 hours, on 05.02.2014 at 15.00 hours, on 28.02.2014 at 16.30 hours, on 12.03.2014 at 16.00 hours, on 09.04.2014 at 16.00 hours, on .7.05.2014 at 15.00 hours, on 27.05.2014 at 15.00 hours, on 10.06.2014 at 15.00 hours, on 13.05.2015 at 16.00 hours, on 17.06.2015 at 16.00 hours, on 08.07.2015 at 16.00 hours, on 05.08.2015 at 16.00 hours, on 02.09.2015 at 16.00 hours, on 16.06.2016 at 16.00 hours, on 15.07.2016 at 16.00 hours, on 04.08.2016 at 16.00 hours, on 30.08.2016 at 16.00 hours, on 21.09.2016 at 16.00 hours, on 26.10.2016 at 16.00 hours, on 07.12.2016 at 16.00 hours, on 04.01.2017 at 16.00 hours, and on 22.02.2017 at 16.00 hours ;

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6. **AND WHEREAS**, the advocate, of Respondent no.1 Smt. Maniben Babu Chauhan & other has most respectfully submit her written statement as under :-

- i. The Appeal of the Appellant is totally false, malafide, baseless, frivolous, imaginary and vexatious. It is misconceived and not tenable under the law. It is filed to mentally harass the Respondent and hence deserves to be dismissed. This Hon'ble Court has no jurisdiction to entertain and try this appeal.
- ii. The Appellant has not joined legally wedded wife of Appellant and spouse of the Respondent No.1 and hence this appeal is not maintainable and deserves to be dismissed, for want of necessary party.
- iii. It is most respectfully submitted that the averments and allegations of the Appeal, which are not specifically admitted hereunder by the Respondent No.1, are hereby specifically denied in toot.
- iv. Before replying on the contents and averments of Appeal, it is necessary to bring some facts before this Hon'ble Court to elucidate the dispute in proper perspective.
- v. That originally Mrs. Jivibai Nathu and her husband Mr. Nathu Kan was owner in possession of two immovable properties Viz.:
 - (a) An immovable property i.e. old house, totally admeasuring 69 Sq. Mts., bearing New City Survey Plot No. PTS-47/443 & 444 and which is corresponding to Matriz NO.101S Old and No.9S8 New and described in Land Registration Office, Daman; under No.707S at Page No.78-V of Book B-16th Modern, situated at Choro Vachhradeo, Ghoghla, Diu; &
 - (b) An immovable property i.e. old house and yard, totally admeasuring 146.05 Sq. Mts., bearing New City Survey Plot No. PTS-46/59 & 60/1 and which is corresponding to Matriz No.1436 and described/Inscribed in Land Registration Office, Daman; under NO.47 of Book B-16th Modern, situated at Brahmin Sheri, Choro Mangal, Ghoghla, Diu.
- vi. That said Mrs. Jivibai Nathu and her husband Mr. Nathu Kan were having only three daughters (and no son) Viz.:
 1. Mrs. Viriben (married to Deva Lala),
 2. Mrs. Manuben (married to Parbat Savai Solanki) and
 3. Mrs. Maniben (married to Babu Jeraj Chauhan).
- vii. That during their lifetime said Mrs. Jivibai Nathu and her husband Mr. Nathu Kan gifted their above referred two properties, in favour of their said three daughters in the following manner Viz.:

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1. Mrs. Viriben (married to Deva Lala):-

An immovable property i.e. old house, totally admeasuring 69 Sq. Mts., bearing New City Survey Plot No. PTS-47/443 & 444, situated at Choro Vachhradeo, Ghoghla, Diu; by virtue of GIFT DEED Serial No.219/1967.

2. Mr. Ratilal Parbat Solanki. Who is real son of said Mrs. Manuben (married to Parbat Savai Solankil):-

An immovable property i.e. old house and yard, admeasuring 57.35 Sq. Mts., bearing New City Survey Plot No. PTS-46/59, situated at Brahmin Sheri, Choro Mangal, Ghoghla, Diu; by virtue of GIFT DEED Serial No.105/76.

3. Mrs. Maniben (married to Babu Ieraj Chauhan):-

An immovable property i.e. old house and yard, admeasuring 88.70 Sq. Mts., bearing New City Survey Plot No. PTS- 46/60/1, situated at Brahmin Sheri, Choro Mangal, Ghoghla, Diu (hereinafter referred to as the "suit property" for the sake of brevity); by virtue of GIFT DEED Serial No.106/76.

- (1) As the present Appellant and his family members, encroached upon a strip of land, admeasuring 06 Sq. Mts. (owned and possessed and belonged to Respondent No.1 by virtue of Gift Deed Serial No.106/76) the present Respondent No.1 filed a Civil Suit bearing R.C.S. No.3/1995 in Civil Court, Diu; for declaration and possession and for removal of encroachment against present Appellant and his family members and said suit was dismissed by the Civil Court and the Judgment of the Civil Court was upheld by the District Court and High Court also.
- (2) As per the judgment/order and Decree of Civil Court passed in R.C.S.No.3/1995, the Plaintiff's suit for ownership and possession (over a strip of land, admeasuring 06 Sq. Mts., which is part of above referred land of Respondent No.1) has been dismissed.
- (3) The Civil Suit was for or concerning said strip of land, admeasuring 06 Sq. Mts., only and the present Appellant has also admitted therein that they have no claim over remaining portion of the same land, belonged to Respondent No.1 and judgment of the said Civil Suit also substantiate and clearly mentioned this fact.
- (4) In reply to Para No.1 of the Appeal Memo, it is submitted as under:
 - i. It is not true and hence denied that Respondent No.1 filed an application No.8060/2011 for confirmation of residential house.
 - ii. The true fact is that vide an application dated: 04/03/2011, Respondent No.1 applied before City Survey Office, Diu; for confirmation of property being old house along-

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with yard, admeasuring 88.70 Sq. Mts., bearing New City Survey Plot No. PTS-46/61/1, situated at Brahmin Sheri, Choro Mangal, Ghoghla, Diu; in her own name.

- (5) In reply to Para No.2 of the Appeal Memo, it is submitted as under:-
- i. It is true that originally Mrs. Jivibai Nathu and her husband Mr. Nathu Kan were owner in possession of an immovable property i.e. old house and yard, totally admeasuring 146.05 Sq. Mts., bearing Matriz No.1436 and described/Inscribed in Land Registration Office, Daman; under No.47 of Book B-16th Modern, situated at Brahmin Sheri, Choro Mangal, Ghoghla, Diu.
- (6) In reply to Para No.3 of the Appeal Memo, it is submitted as under:
- i. It is not true and hence it is denied that the persons mentioned in this para are the heirs of deceased Mr. Nathu Kan and Mrs. Jiviben Nathu.
- (7) In reply to Para No.4 of the Appeal Memo, it is submitted as under:-
- i. It is admitted fact and hence true that Mrs. Jivibai Nathu and her husband Mr. Nathu Kan have gifted part of their said property i.e. old house and yard, admeasuring 88.70 Sq. Mts., situated at Brahmin Sheri, Chore Mangal; Ghoghla, Diu; in favour of their daughter Mrs. Manibai Babu Chauhan - Respondent No.1, by virtue of GIFT DEED registered under Sr. No.106/76.
- That as per City Survey Record, this property is corresponding to New City Survey Plot No. PTS-46/61/1.
- (8) In reply to Para NO.5 of the Appeal Memo, it is submitted as under:
- i. It is not true and hence it is denied that Appellant has full fledged possession over this property, since last thirty years. The Appellant was never in possession over the suit property. The fact is that originally owners Mrs. Jivibai Nathu and her husband Mr. Nathu Kan have gifted said property to Respondent No.1 vide Gift Deed executed on dated: 12/11/1976 and registered under Serial No.106/76 and on the same day, original owners have handed over actual possession of said property to the Respondent No.1 and since 12/11/1976, present Respondent No.1 is in actual, physical possession of the said property.;
- (9) In reply to Para No.6 of the Appeal Memo, it is submitted as under:
- i. The Appellant has not came with clean hands and with an intention to misguide this Hon'ble Court, Appellant has not disclosed true facts of the said civil suit.
- ii. As the present Appellant and his family members, encroached upon a strip of above referred land, admeasuring 06 Sq. Mts. (owned and possessed and belonged to Respondent No.1) the present Respondent No.1 had filed a Civil Suit bearing R.C.S.No.3/1995 in Civil Court, Diu; for declaration and possession and for removal

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of encroachment from said strip of land, admeasuring 06 Sq. Mts., against present Appellant and his family members and said suit was dismissed by the Civil Court on dated: 16/10/1999 and the Judgment of the Civil Court was upheld by the District Court and High Court also.

None of the Court has held that Respondent No.1 is not the owner/possessor of the suit property.

In compliance with said Civil Court Judgment/Order, Respondent No.2 has not confirmed said strip of land admeasuring 06 Sq. Mts., which was the subject matter of the said Civil Suit.

The Civil Court nor the District Court nor the High Court has ever held that Appellant is the owner of the suit property and Respondent No.2 has rightly confirmed suit property in the name of Respondent No.1, after: considering all legal aspect and after verifying the actual, physical possession of the Respondent No.1 over suit property and after taking into consideration the Gift Deed executed on dated: 12/11/1976 and registered under Serial No.106/76.

- (10) In reply to Para NO.7 of the Appeal Memo, it is submitted as under:
- i. Respondent No.1 has already submitted herein above that Appeal No.1/2001 against the Judgment/Order of a Civil Suit bearing R.C.S.No.3/1995 was dismissed by District Court, Diu and Appeal No.151/2006 of High Court, Bombay was also dismissed, pertaining to her claim of declaration and possession upon a strip of above referred land, admeasuring 06 Sq. Mts., only.
 - ii. Respondent No.2 has rightly confirmed possession over suit property in the name of Respondent No.1, after considering all legal aspect and after verifying the actual, physical possession of the Respondent No.1 over suit property and after taking into consideration evidence on record.
- (11) In reply to Para No.8 of the Appeal Memo, it is submitted as under:
- i. It is not true that Respondent No.2 has wrongly decided the confirmation application of the property PTS-46/61.
 - ii. It is the statutory duty of the Respondent No.2 to decide all the application filed before the office and Respondent No.2 has rightly decided the confirmation application of the Respondent No.1, as per the Code and Rules framed and applicable in this territory.

The Appellant has no right to prefer the. Present appeal against the Judgment/Order dated: 16/11/2011 on following grounds:

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- (1) In reply to GROUND NO.A of the Appeal Memo, it is submitted as under:-
- i. That the learned Enquiry Officer, City Survey, Diu has not erred in laws as well as in facts in confirming the property in the name of Respondent No.1 Smt. Maniben Babu Chauhan. The Confirmation of suit property is legal and Judgment and Order dated: 16/11/2011 is passed after observing all formalities as prescribed in Land Revenue Code, 1968 and City Survey Rules, 1969.
- (2) In reply to GROUND NO.B of the Appeal Memo, it is submitted as under:
- i. That the learned Enquiry Officer, City Survey, Diu has rightly decided this matter in favour of the present Respondent No.1, after actual physical site inspection of the suit property and after taking into consideration that Respondent No.1 is in actual, physical possession of the suit property and Respondent No.2 has verified all documents and evidence brought on records.
- (3) In reply to GROUND NO.C of the Appeal Memo, it is submitted. as under:
- i. That the learned Enquiry Officer, City Survey, Diu has not erred in not believing the ownership of the Appellant.
- ii. The matter regarding the ownership dispute is the subject matter of the Civil Court only and Appellant shall approach competent civil court, for redressed of his grievances if any.
- (4) In reply to GROUND NO.D of the Appeal Memo, it is submitted as under:
- i. That the learned Enquiry Officer, City Survey, Diu has rightly taken into consideration of the Judgment of Hon'ble Diu Civil Court, District Court, Diu and High Court of Bombay and the learned Enquiry Officer, City Survey, Diu has not confirmed said strip of land admeasuring 06 Sq. Mts., in favour of . Respondent No.1.
- (5) In reply to GROUND NO.E of the Appeal Memo, it is submitted as under:
- i. That the learned Enquiry Officer, City Survey, Diu has rightly confirmed the suit property in favour of Respondent No.2, after observing all formalities as prescribed in Land Revenue Code, 1968 and City Survey Rules, 1969.
- (6) In reply to GROUND NO.F of the Appeal Memo, it is submitted as under:
- i. That the learned Enquiry Officer, City Survey, Diu has rightly verified the facts of the case as the Judgment of Hon'ble Diu Civil Court, District Court, Diu and High Court of Bombay is pertaining to a strip of above referred land, admeasuring 06 Sq. Mts., and the learned Enquiry Officer, City Survey, Diu has not confirmed said strip of land admeasuring 06 Sq. Mts., in favour of Respondent No.1.

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- (7) In reply to GROUND NO.] of the Appeal Memo, it is submitted as under:
- i. The learned Enquiry Officer, City Survey, Diu has rightly held that Respondent No.1 is in actual possession of the suit property.
- (8) In reply to GROUND NO.K of the Appeal Memo, it is submitted as under:
- i. As Appellant was knowing from the beginning that his claim over the suit property is not tenable, to pressurize the Respondent No.2, Appellant made false and frivolous allegation, without any substance, just to advance his bogus claim, with an intention to grab the suit property.
- (9) In reply to GROUND NO.L of the Appeal Memo, it is submitted as under:
- i. That impugned Judgment and Order is legal and valid and passed after observing all prescribed formalities and it is in compliance with the law and rules, that the Appellant is not entitled for any of the relief prayed for in the appeal memo.

Taking into consideration the facts of this case, the appeal of the Appellant be dismissed summarily with cost, and exemplary cost be awarded to the Respondent No.1 from the Appellant.

FOR WHICH ACT OF KINDNESS RESPONDENT' NO.1 SHALL EVER PRAY.

7. **AND WHEREAS**, the Appellant Shri Rasiklal Devji Kamalia, R/o H.No.1152, Bhoiwada, Choro Chachan, Ghoghla(Diu) has respectfully submitted written argument against the written statements file by respondent on dated 27/05/2014 as under:-

- i. The appellant has preferred this appeal against the order of respondent No.2, confirming the properties bearing new City Survey No. PTS-46/61, of Ghoghla situated at Choromangalno, Ghoghla by virtue of false Gift Deed registered under serial no. 105/76 dated 16/11/1976.
- ii. The short story of case is as under :-

The opponent No. I filed an application No. 8060/2011 in the court of the Inquiry Office, City Survey, Diu i.e. opponent No.2 on dated 04/03/2011 for the confirmation of residential house situated at Choro Mangal Brahma Street, Ghoghla-Diu, The said property bearing PTS No. 46/61 which is situated at Choro mangal Brahma Street, Ghoghla-Diu was originally belongs to Maternal grandfather and Maternal grandmother of the present applicant.

The original owner of this property was Nathu Kan & his wife Jiviben Nathu. For kind perusal, applicant gives following list of the heirs of Nathu Kan & Jiviben Nathu.

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Nathu Kan & Jiviben Nathu

(1) Viriben Devaji	(2) Manuben Parbat	(3) Maniben Babu
(1) Rasiklal (2) Kantilal	(1) Ratilal. (2) Virji (3) Devraj (4) Ishwar (5) Parsottam (6) Pravin (7) Jitendra	(1) Chandu (2) Manhar (3) Devendra (4) Nirmala

(Lt. Nathu Kan and his wife Lt. Smt. Jiviben Nathu executed Gift Deed Registered on Sr. No. 106/76 on dated 16/11/1976 of property PTS No. 46/61 and 46/57 situated At Choro Mangal. Brahma Street, Ghoghla-Diu

The applicant has fully fledged possession over this property since last 30 (Thirty) years.

- iii. Opponent No. 1 filed Regular Civil suit No.3/1995 against the present applicant Before the Hon. Civil Judge (S.D.) At Diu which was decided on dated 16/10/1999 in the Favor of the present applicant and his brothers as the Opponents No. 1 has failed to produce the evidence of the Witness of the Gift Deed.
- (3) Appeal in the District Court at Diu vide Regular Civil Appeal No. 1/2001 which was also decided in favor of the present applicant. Therefore, Opponent No.1 has preferred an appeal In the High Court Of judicature At Bombay vide Appeal No. 151/2006 Which was also decided in favor of the present applicant All legal factors and aspect were not look out by opponent No.2 while deciding the application for confirmation of The disputed property. The present opponent No.1 has produced a got up Gift Deed of Dhaniben Ranchhod who Gifted this disputed property to the present opponent No.1 has by virtue of gift deed registered under serial No.219/67, Dated 15/11/2011.
- (4) The opponent No.2 has wrongly decided the confirmation Application of the property PTS No.46/61. Therefore, being aggrieved by the order passed by the opponent No.2. The applicant prefers this appeal against the said impugned Order to this Hon'ble Court on the grounds given below.
- (5) The learned Enquiry Officer, City Survey, Diu i.e. Opponent No.2 has erred in law as well as in facts in Deciding the confirmation application of the opponent No.1.

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- A. The learned Enquiry Officer, City Survey, Diu i.e. Opponent No.2 ought to have decided this matter in favor Of the present applicant if he has verified the true Documents.
 - B. The Enquiry Officer has erred in not believing the Ownership of the present applicant.
 - C. The Enquiry Officer has erred in not taking into Consideration of the judgments of The Hon. Civil Court, Diu, District Court, Diu and High Court Bombay.
 - D. The Enquiry Officer has erred in believing the bogus Gift Deed presented by opponent No.1 also field The Enquiry Officer has not verified the facts and the Objectives given by the-present applicant that Gift Deed Was not proved.
 - E. As the property is an ancestral property therefore after the Death of maternal grandfather and maternal grandmother The present applicant's mother also entitled to get equal Share in this disputed property, this fact was not given into Consideration by The Enquiry Officer, Diu i.e. Opponent No.2.
 - F. The Enquiry Officer, Diu has not given proper opportunity to the present applicant for producing documents as well as time to convince him. On the contrary the opponent No.2 i.e. The Enquiry Officer was prejudice from the Beginning as the present applicant has field written Complain to your Good Self and the Administrator of Diu & Daman.
 - G. The Learned Enquiry Officer, Diu miss interpreted the facts from beginning and not given proper time to defend The case of the applicant.
 - H. The Learned Enquiry Officer, Diu has erred in holding that the present disputed property was not in the Possession of the opponent No.1.
 - I. The impugned order suffers from allegations.
 - J. The impugned order deserved to set aside.
- (6) It is most respectfully submitted that Hon'ble respondent No.2 has erred in passing the order, which is quite illegal and unauthorized. The Hon'ble Enquiry Officer, City Survey, Diu, has not followed the proper procedure as prescribed by the Law while conducting the confirmation proceeding. The Hon'ble Enquiry Officer, City Survey, Diu, applied a strange procedure in initiating procedure against dead persons without bothering who are the legal heirs of the dead persons and who are in actual possession of the aforesaid land on the date of application filed by so- called owners for confirmation of the lands in their joint names. Thus the impugned order has been passed against the appellant and without giving an opportunity being heard to their legal heirs who are interested parties and in violations of principle of natural justice, which is the core principle of our judicial system. The enquiry under Land Revenue Code 1968 and rules made there under is. Judicial inquiry and it cannot be conducted arbitrarily.



- (7) The function of Enquiry Officer, City Survey, Diu, under Rule 6 of the Goa, Daman and Diu, City Survey Rules, 1969 is to confirm the possession.
- (8) The Appellant has put up the case from the beginning that he is in Possession since last more than 30 years.
- (9) It is pertinent to note that appellant was not given opportunity to lead his evidence to show that they are in possession of the lands in question since more than 30 years. If he would have been given such opportunities, appellant would have produced oral as well as documentary evidence to show long possession and by producing such evidence appellant could have proved the case of long possession; though there is nothing in the record to disbelieve the case of appellant that they are in long possession of the lands in question.
- (10) Hence the appellant has prayed for following reliefs:-
1. To set aside the order passed by The Enquiry Officer, Diu on dated 16-11-2011 in The File No. 8060/2011 of the property PTS No. 46/61 situated at Ghoghla.
 2. In alternation to remand this case with direction to allow the present applicant to produce required documents.
 3. To order to stop the confirmation proceedings of residential house situated at Choro Mangal, Brahman Street, Ghoghla- Diu.
 4. To award the cost of the appeal.
 5. The present appeal is within time limit as the order passed by the Enquiry Officer, Diu on dated 16-11-2011 which was intimated to the present applicant on dated 05-12-11. Therefore the present applicant demanded certified copy of the impugned order which was supplied to him on dated, 14/12/2011. Therefore the grace period of the appeal is Ninety days is to be complete today. Therefore, no question of time limit is arise.
- (11) All these discussions go to prove that the proceeding has been conducted and disposed of by Learned Enquiry Officer, City Survey, Diu, without observing proper procedure and principle of Natural Justice.
- (12) Under Rules, the Learned Enquiry Officer, City Survey, Diu, is supposed to decide possession and possession only. He is not supposed to inquire into title of the land/property. The inquiry for City Survey is governed by Section 65 of Goa, Daman and Diu Land Revenue Code 1968 and rules framed for the purpose, there is no roll of Hon'ble Revenue Officers under Land Revenue Code and only Hon'ble Civil Court is competent to deal with such dispute.

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(14) Thus objections filed by the Respondent, are superfluous and not tenable at Law and the impugned Judgment and Order are liable to be set-a-side.

With this prayer appellant conclude his argument.

8. AND WHEREAS, the Appellant Shri Rasiklal Devji Kamalia, R/o H.No.1152, Bhoiwada, Choro Chachan, Ghoghla(Diu) submit his Written Submission on dated 04/01/2017 as under :-

The Respondent No.1 herein most respectfully submits Written Submission as under:-

- (1) The case of the Appellant is that the Enquiry Officer, City Survey, Diu; has erred in confirming the property in the name of Respondent No.1 and he prayed to set aside the impugned order or in alternative prayed to remand back the case.
- (2) The Appellant has not come with clean hands and he himself has grabbed family properties and on the other hand he is objecting the legal confirmation process of the Respondent No.1.
- (3) The Appeal of the Appellant is totally false, malafide, baseless, frivolous, imaginary and vexatious and it is misconceived and not tenable under the law.
- (4) The Appellant has not joined legally wedded wife of Appellant and spouse of the Respondent No.1 and hence this appeal is not maintainable and deserves to be dismissed, for want of necessary party.
- (5) That originally Mrs. Jivibai Nathu and her husband Mr. Nathu Kan was owner in possession of two immovable properties Viz.:
 - i. An immovable property i.e. old house, totally admeasuring 69 Sq. Mts., bearing New City Survey Plot No. PTS-47/443 & 444, situated at Choro Vachhradeo, Ghoghla, Diu; &
 - ii. An immovable property i.e. old house and yard, totally admeasuring 146.05 Sq. Mts., bearing New City Survey Plot No. PTS-46/59 & 60/1, situated at Brahmin Sheri, Choro Mangal, Ghoghla, Diu.
- (6) That said Mrs. Jivibai Nathu and her husband Mr. Nathu Kan were having only three daughters (and no son) Viz.:
 - i. Mrs. Viriben (married to Deva Lala).
 - ii. Mrs. Manuben (married to Parbat Savai Solanki) and
 - iii. Mrs. Maniben (married to Babu Jeraj Chauhan).

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(7) That during their lifetime said Mrs. Jivibai Nathu and her husband Mr. Nathu Kan gifted their above referred two properties, in favour of their said three daughters in the following manner Viz.:

(i) Mrs. Viriben (married to Deva Lala) :-

An immovable property i.e. old house, totally admeasuring 69 Sq. Mts., bearing New City Survey Plot No. PTS-47/443 & 444, situated at Choro Vachhradeo, Ghoghla, Diu; by virtue of GIFT DEED Serial No.219/1967.

(ii) Mr. Ratilal Parbat Solanki, who is real son of said Mrs. Manuben (married to Parbat Savai Solankil) :-

An immovable property i.e. old house and yard, admeasuring 57.35 Sq. Mts., bearing New City Survey Plot No. PTS-46/59, situated at Brahmin Sheri, Choro Mangal, Ghoghla, Diu; by virtue of GIFT DEED Serial No.105/76.

(iii) Mrs. Maniben (married to Babu Ieraj Chauhan) :-

An immovable property i.e. old house and yard, admeasuring 88.70 Sq. Mts., bearing New City Survey Plot No. PTS- 46/60/1, situated at Brahmin Sheri, Choro Mangal, Ghoghla, Diu (hereinafter referred to as the "suit property" for the sake of brevity); by virtue of GIFT DEED Serial No.106/76. the present Appellant and his family members, encroached upon a strip of land, admeasuring 06 Sq. Mts. (owned and possessed and belonged to Respondent No.1 by virtue of Gift Deed Serial No.106/76) the present Respondent No.1 filed a Civil Suit bearing R.C.S.No.3/1995 in Civil Court, Diu; for declaration and possession and for removal of encroachment against present Appellant and his family members and said suit was dismissed by the Civil Court and the Judgement of the Civil Court was upheld by the District Court and High Court also.

(8) As per the judgment/order and Decree of Civil Court passed in R.C.S.No.3/1995, the Plaintiff's suit for ownership and possession (over a strip of land, admeasuring 06 Sq. Mts., which is part of above referred land of Respondent No.1) has been dismissed.

(9) The Civil Suit was for or concerning said strip of land, admeasuring 06 Sq. Mts., only and the present Appellant has also admitted therein that they have no claim over remaining portion of the same land, belonged to Respondent No.1 and judgement of the said Civil Suit also substantiate and clearly mentioned this fact.

(10) The Respondent No.1 do herein submit that she is exclusive owner and in exclusive possession of suit property, since 12/11/1976 i.e. since GIFT DEED Serial No.106/76.



- (11) The Respondent No.1 do herein submit that she is using, occupying and possessing said property and house-tax and electric bill are in her own name and she is paying the usages charges thereof, to the government.
- (12) The Respondent No.1 do herein submit that as per land revenue code and city survey rule, she was entitled to got confirmed possession over suit property and on her application, city survey officer inspected the suit property and physical measurement of the suit property was taken by them and site inspection note was recorded, wherein it is clearly mentioned by city survey officer that Respondent No.1 is owner and in possession of suit property and after due process of law, city survey officer confirmed possession unto or upon the suit property in the name of Respondent No.1.
- (13) The impugned Order confirming possession unto or upon suit property, in favour of Respondent No.1 is legal and in accordance with Land Revenue Code and City Survey Rules.
- (14) The Appellant themselves have admitted (Para No.4 at Page No.2 of Appeal Memo) that late Mr. Nathu Kan and Mrs. Jiviben Nathu have executed Gift Deed registered under Sr. No.106/76 on dated: 16/11/1976 of property PTS-46/61 And PTS-46/57, situated at Choro Mangal, Brahman Street, Ghoghla, Diu.
- (15) The Appellant has stated (Para No.5 at Page No.2 of Appeal Memo) that he has full-fledged possession over this property since last 30 (thirty) years. This claim of the Appellant is totally false and baseless and he has failed to submit any evidence in support of his said claim. On the contrary, Appellant has admitted in Civil Suit No.3/1995 that suit property belongs to said Respondent No.1. The Appellant is misguiding this court, with an intention to harass the Respondent No.1 and with an intention to grab the suit property.
- (16) Adjoining to suit property, there was a small hut (being kitchen admeasuring 3 X 2 meters only) towards East and South Side of the suit property. The Respondent No.1 had filed Civil Suit No.3/1995 for declaration and possession over that small hut only.
- (17) Appellant has deliberately not disclosed that Civil Suit No.3/1995 was pertaining to a small hut (being kitchen admeasuring 3 X 2 meters only) and not for suit property, and thereby misguiding this court.
- (18) Appellant has stated (Para No.7 at Page No.2 of Appeal Memo) the "Opponent No.1 has produced a got up Gift Deed of Dhaniben Ranchod, who gifted this disputed

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property to the present Opponent No.1 by virtue of Gift Deed registered under Serial No.219/67 dated: 15/11/2011" is totally false and not admitted. The Respondent No.1 do herein clarify and reiterate that she has acquired title and possession over suit property by virtue of Gift Deed registered under Sr. No.106/76 on dated: 16/11/1976.

- (19) Appellant has stated (Para G at Page No.3 of Appeal Memo) that "this property is an ancestral property of his grand-parent and after their death, his mother is also entitled to get equal share in this disputed property ". Here Appellant claims undivided share in the suit property, which means he is claiming title over the suit property.
- (20) It transpires that Appellant want to challenge the legal title of the Respondent No.1 over the suit property, for which this court is not the proper forum and he shall approach competent forum, for redressed of his grievances.
- (21) It is the basic duty of the Respondent No.2 to decide as to who is in actual possession over every parcel of land, located in city survey area and it is admitted fact that suit property is located at Ghoghla Village of city survey area of Diu District and as such Respondent No.2 is duty bound to confirm said property.
- (22) Appellant has no concern with the suit property and despite of the sufficient opportunities given by Respondent No.2, Appellant failed to submit the evidence in support of his objection and after due process and in accordance with prevailing act/rules, Respondent No.2 has right rejected the false objection of the Appellant.
- (23) Respondent No.1 is in actual, physical possession over the suit property and she is holding legal and valid electric connection in suit property and she is paying house-tax of suit property to the Diu Municipality and as such Respondent No.2 has rightly confirmed possession over suit property, in favour of said Respondent No.1.
- (24) That the Appellant is not entitled for any of the relief prayed for in the appeal memo.
- (25) Taking into consideration the facts of this case, the appeal of the Appellant is dismissed summarily with cost, and exemplary cost be awarded to the Respondent No.1 from the Appellant.

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FOR WHICH ACT OF KINDNESS RESPONDENT NO.1 SHALL EVER PRAY.

9. **AND WHEREAS**, the Dy. Collector, Diu heard both the parties along with their advocates in presence of Government pleader and during the argument, the Appellant has accepted that the possession of the suit land is with the respondent No.1 since 1979-80; and when the respondent shifted to Diu from the suit land, the keys to the lock of the suit land were with respondent; Further, the appellant has called for the equal division of the ancestral property of his maternal grandmother; to this, the Advocate of the Respondent has contended that this contention does not hold since the property was gifted during the life time of the mentioned maternal grandmother, and as per the Portuguese civil law, the owner has right to gift the land, is as she pleases;

10. **AND WHEREAS**, the argument of the appellant that the gift deed is Fraud, is a matter that Civil Court is competent to decide; the Enquiry Officer is to decide and confirm possession, which he has done rightly in this matter;

11. **AND WHEREAS**, if the Appellant believes that the Respondent has encroached upon his land then in that case, he should move appropriate Hon'ble Civil Court for eviction of the encroacher;

12. **AND WHEREAS**, the most important facet of the case is the acceptance by the Appellant in open court that the possession is indeed with the Respondent;

13. **NOW THEREFORE**, keeping the above facts, submissions, detailed arguments and reasons in view, I, **Dr. Apurva Sharma, DANICS, Deputy Collector, Diu** in exercise of the powers conferred to me under section 188 of Goa, Daman and Diu, Land Revenue Code, 1968 do hereby **reject this appeal for being devoid of merit.**

Given under my hand & seal of this Court on thirteenth day of October, 2017.



Sharma
20/10/17
(DR. APURVA SHARMA), DANICS
DY. COLLECTOR, DIU

To:-

1. The Enquiry Officer, City Survey, Diu for necessary action.
2. Shri Rashiklal Devshi Kamalia, R/o. H.No.1152, Bhoiwada, Choro Chanchan, Ghoghla, (Diu) (Appellant)
3. Smt. Maniben Babu Chauhan, (Respondent), R/o.Firangiwada, Diu.
- ✓ 4. NIC, Diu to upload it on the official website.
5. Guard File.