

HIGH COURT OF GUJARAT**MAHESHBHAI RAMANIKLAL CONTRACTOR***Versus***DINESHBHAI RAMNIKLAL CONTRACTOR****Date of Decision:** 24 June 2021**Citation:** 2021 LawSuit(Guj) 2025**Hon'ble Judges:** [Nikhil S Kariel](#)**Case Type:** Second Appeal; Civil Application (For Stay)**Case No:** 32 of 2021; 1 of 2020**Subject:** Criminal**Acts Referred:**[Indian Penal Code, 1860 Sec 198](#)[Indian Succession Act, 1925 Sec 383, Sec 372\(2\), Sec 372, Sec 383\(b\), Sec 383\(A\), Sec 372\(1\)\(c\).](#)**Final Decision:** Appeal dismissed**Advocates:** [Sudhir Nanavati](#), [M/S Nanavati & Nanavati](#), [K S Nanavati](#), [M/S Nanavati Associates](#)**Cases Referred in (+):** 5**Nikhil S. Kariel, J.**

[1] Heard learned Senior Counsel Shri Sudhir Nanavati for M/s. Nanavati & Nanavati for the appellant and learned Senior Counsel Shri Kirtikant S. Nanavati for M/s. Nanavati Associates for the respondent.

[2] By way of present Second Appeal, the appellant challenges the judgment and order passed by the learned 5th Additional District Judge, Kheda at Nadiad in Regular Civil Appeal No.71 of 2019 dated 21.10.2019, whereby the judgment and decree passed by the learned Principal Senior Civil Judge, Kheda, in Civil Misc. Application No.282 of 2018 dated 03.04.2019 was set aside and consequently, the Succession Certificate issued in the name of the appellant - Maheshbhai Ramniklal Contractor vide

judgment and order dated 20.04.2017 in Succession Application No.73 of 2016 passed by learned Principal Senior Civil Judge, Kheda at Nadiad, had been revoked.

[3] Brief facts leading to the Second Appeal can be summarized as follow:

3.1 The appellant herein had preferred Succession Application No. 73 of 2016 before the learned Principal Senior Civil Judge, Kheda at Nadiad under Section 372 of the Indian Succession Act, 1925, inter alia contending that his parents Ramniklal Ishwarlal Contractor and Madhuben Ramniklal Contractor were residents of Nadiad town and they were owners of the movable property in form of shares and other immovable properties of which they were independent owners. It is stated that said Ramniklal Contractor had expired on 01.02.2002 at Nadiad and Madhuben Contractor had expired on 03.04.2006. It was mentioned that the appellant is a "straight line" legal heir of deceased Ramniklal Contractor and Madhuben Contractor and whereas they have left behind the properties mentioned at Schedule "A". The appellant had thus sought for Succession Certificate since the deceased had died and whereas the appellant had also claimed that he had an agreement on Rs.10/- stamp paper signed by his parents. The appellant had also claimed that he had not made any application for grant of Succession Certificate before any other Court. The learned Civil Court had directed the applicant therein - appellant herein to have publish the public notice in the newspaper and it was done in the newspaper "Jay Hind" dated 22.10.2015. The applicant had also produced documentary evidence including xerox copy of the pedigree affidavit executed before a Notary at Exhibit 10, wherein the appellant had stated that he was the sole legal heir of the deceased Ramniklal Contractor and Madhuben Contractor. The learned Principal Senior Civil Judge, Kheda at Nadiad vide judgment and order dated 20.04.2017 after hearing learned Advocate for the appellant and after considering the documents on record had inter alia framed the following issues for determination, the chart showing issues and findings are reproduced herein below:

ISSUES

1. Whether the applicant proves that the parents of applicant have expired?	In Affirmative
2. Whether the applicant proves that his parents was holding shares valued at Rs.55,07,026/- as mentioned in the Schedule?	In Affirmative
3. Whether the applicant proves that no Will or partition writing is executed by parents of applicant regarding the said properties?	In Affirmative
4. Whether the applicant proves that he is sole legal heir of his parents?	In Affirmative

5. Whether the applicant is entitled to get Succession Certificate as prayed for?	In Affirmative
6. What order?	As per final order.

3.2 It would be pertinent to mention herein that learned Civil Court had come to a conclusion that the applicant therein - appellant herein was the sole heir of his parents. Ultimately, the learned Civil Court had been pleased to issue Succession Certificate in the name of the appellant herein for the purpose of transferring the shares of his parents in his name.

3.3 It would be pertinent to mention herein that the respondent had originally, after the Succession Certificate had been granted by the learned Civil Court in favour of the present appellant approached this Court by preferring First Appeal (Filing) No.2935 of 2017 and whereas vide order dated 09.07.2018 of this Court (Coram: J.B. Pardiwala, J.), the respondent herein had sought permission to withdraw the said proceedings with a liberty to file appropriate proceedings before the appropriate forum, which liberty had been reserved. After the aforesaid order had been passed by this Court, the respondent herein had moved an application under Section 383 of the Indian Succession Act for revocation of Certificate being Civil Misc. Application No.282 of 2018 inter alia submitting that the appellant had made false assertion before the Court for issuance of Succession Certificate and whereas the appellant had concealed material facts from the Court and therefore, Succession Certificate had been obtained fraudulently by the appellant. It was submitted that the deceased Ramniklal Contractor and Madhuben Contractor had 3 children namely Pravinbhai Contractor, Maheshbhai Contractor (present appellant / original applicant) and Dineshbhai Contractor (present respondent herein). It was stated that Pravinbhai had expired on 08.05.1998 before Ramniklal Contractor and Madhuben Contractor had expired and that wife of Pravinbhai had expired on 18.07.2016 before the demise of Ramniklal Contractor and Madhuben Contractor and that Pravinbhai Contractor was survived by a daughter named Sonal, who was married on 21.02.2006. It was further stated that Ramniklal Contractor and Madhuben Contractor had 3 legal heirs being Maheshbhai, Dineshbhai and Sonal - daughter of late Pravinbhai. It was further submitted that the pedigree affidavit executed by the appellant was false inasmuch as the appellant claimed that he was sole legal heir of the deceased Ramniklal Contractor and Madhuben Contractor. It was further pointed out that while learned Civil Court vide order dated 24.11.2016 had directed to publish public notice in a newspaper having wide circulation and whereas the appellant had got the public notice published in a newspaper which was being published from Ahmedabad and more particularly, in the North Gujarat edition of such newspaper and therefore, the respondent was not aware about such

notice and therefore, the respondent could not submit objection with regard to grant of Succession Certificate. A contention had also been raised that the reliance upon an agreement of stamp paper of Rs.10/- between the appellant and his parents was also misplaced since such agreement was bogus and fraudulent. Further, reliance had also been placed upon an award of Arbitrator with regard to two Civil Suit Nos.227 of 1998 and 228 of 1998. Thus, on these grounds, the respondent had sought for revocation of the Succession Certificate issued in favour of the appellant herein. The learned Principal Senior Civil Judge, Kheda at Nadiad vide judgment and order dated 03.04.2019 passed in Civil Misc. Application No.282 of 2018 had been pleased to reject the application preferred by the present respondent herein.

3.4 The respondent thereupon had preferred Regular Civil Appeal No.71 of 2019 before the learned District Court, Kheda at Nadiad against the judgment and order passed by the learned Principal Senior Civil Judge, Nadiad in Civil Misc. Application No.282 of 2018 dated 03.04.2019. Learned 5th Additional District Judge, Kheda at Nadiad, vide judgment and order dated 21.10.2019, had been pleased to set aside order passed by the learned trial Court and furthermore, the Succession Certificate granted in favour of the appellant herein was also revoked. The learned First Appellate Court had come to a conclusion that the appellant was not the sole legal heir of his parents, who died intestate. The Court had also come to the conclusion that since Section 372 of the Indian Succession Act, 1925, particularly Sub-Section 1(c) thereof required the applicant to mention the family or other relatives and their residences and since the appellant in his application had mentioned himself as sole legal heir of his parents and had not joined other Class I legal heirs of the deceased as per the Hindu Succession Act, 1956, therefore, the appellant by doing so had made false suggestion and concealed material facts and therefore, the Certificate was defective and obtained fraudulently as per the Clause (b) of Section 383 of the Succession Act. The Court had also held that the public notice was not given in newspaper having wide circulation rather the public notice was published in a newspaper having limited circulations in North Gujarat and therefore, the direction of the Trial Court had not been obeyed in true letter and spirit and the proceedings was held to be defective as per Section 383 of the Succession Act. Learned First Appellate Court had also noted that order in Civil Suit Nos.227 and 228 of 1998 as well as the agreement between the applicant and his parents at Exhibit 36 were not made basis for obtaining Succession Certificate in Succession Misc. Application No.73 of 2016 whereas according to the learned First Appellate Court, reliance placed upon the said documents by the learned Trial Court while passing judgment and order dated 03.04.2019 in Civil Misc. Application No.282 of 2018 was misplaced. Based upon the aforesaid conclusion, learned Appellate Court

had allowed the Appeal and had passed direction as stated hereinabove. The appellant being aggrieved and dissatisfied by the order passed by the District Court, has approached this Court by way of this Appeal.

[4] Learned Senior Counsel Shri Sudhir Nanavati for M/s. Nanavati & Nanavati for the appellant has assailed the order passed by the Appellate Court by submitting that the appellant had sought for Succession Certificate with respect to shares mentioned in Schedule A to Succession Misc. Application No. 73 of 2016 and whereas such shares had been handed over to the appellant vide settlement as per order passed by the learned Arbitrator in Civil Suit Nos.227 and 228 of 1998 and therefore, there was no requirement for joining respondent in the proceedings for grant of Succession Certificate. It was further submitted that the appellant herein had held the shares for over 10 years uninterruptedly before the respondent had raised claim by filing Civil Misc. Application No.282 of 2018 and whereas the learned trial Court rightly rejected the said application and while setting aside the order, the learned First Appellate Court had committed a grave error of law. It was further submitted that as per the settlement arrived in Civil Suit Nos.227 and 228 of 1998, the shares in question had been vested in the appellant and the respondent had waived his right in the share in exchange for other properties. Learned Senior Counsel has further submitted that there was no objection raised by the respondent herein with regard to the public notice published pursuant to the direction of the Civil Court and therefore, it was not open for the respondent to file application under Section 383 of the Indian Succession Act. Learned Senior Counsel has further emphasized on question No.4(ii), (iv) and (v) as mentioned in the memo of the appeal, as the substantial questions of law raised for consideration of this Court for deciding present Appeal. Said questions are reproduced hereinbelow:

(i) Whether the Ld. Trial Court erred by setting aside the succession certificate at the behest of a non-applicant i.e. Respondent herein who has not preferred any application under Section 372 of Indian Succession Act, 1925?

(ii) Whether Ld. Court erred by not relying upon exhibit 36 which was produced by the Appellant in proceedings under Section 383 of the Indian Succession Act, 1925?

(iii) Whether the Ld. Court erred in law by re-appreciating facts and documents akin to a suit for deciding title?

(iv) Whether the Ld. Court erred in revoking the succession certificate when the succession certificate was issued qua the shares as mentioned in Schedule-A?

(v) Whether the Ld. Court erred in law and fact in holding that the grant of succession certificate is required to be revoked on the ground of not joining the

necessary parties, when the appellant alone had possession and title under Exh-36 and in view of the proceedings being summary in nature?

[5] As against the same, learned Senior Counsel Shri K.S. Nanavati for the respondent has submitted that this Court may not interfere with the judgment and order passed by the learned Appellate Court, more particularly, since no error either of law and on fact has been committed by the learned Appellate Court. Learned Senior Counsel draws the attention of this Court to Section 372 of the Succession Act and submitted that according to said provision, an application for Succession Certificate should contain particulars as required by the statute and clause 1(c) of the said Section clearly requires that application should contain particulars of the family or other relatives of the deceased and their respective residences, which requirement had been intentionally avoided by the appellant while filing application for Succession Certificate. Learned Senior Counsel further submits that the Act makes it imperative that particulars as required should be mentioned and he submits that the seriousness attached to such requirement is made evident on perusal of sub-section 2 of Section 372 which inter alia states that that if the petition for Succession Certificate contains any averment which the person verifying it knows or believes to be false or does not believe to be true, than such person shall be deemed to have committed an offence under Section 198 of the Indian Penal Code. He further submits that Section 372 does not envisage any exception to the requirement of joining family members or other relatives of the deceased and joining only such person, who have some shares in the property in question. It is further submitted by learned Senior Counsel that purpose of the said Section is to put all persons concerned to notice of an application being preferred for getting Succession Certificate of any deceased person so as to ensure that any person who has a claim can join the proceedings. Learned Senior Counsel also draws attention of this Court to the admission made by the appellant in his cross-examination in Civil Misc. Application No.282 of 2018 where the appellant inter alia stated that "it is true that in the said pedigree affidavit, I have not shown names of Dinesh or Sonal as legal heirs. Deponent submits on his own accord that since pedigree affidavit was only for the purpose of share certificate therefore, Dinesh or Sonal have not been referred therein." Learned Senior Counsel also referred Section 383 of the Succession Act and has submitted that since the pedigree affidavit on which the Succession Certificate had been sought for was admittedly showing incorrect facts and since the fact of the deceased having other Class I legal heirs apart from the appellant was concealed from the Court, therefore, as per Sub-Section (a) and (b) of Section 383, the Succession Certificate had been rightly revoked by the learned First Appellate Court. Learned Senior Counsel has elaborately taken this Court through the documents at Exhibit 65 and 66 i.e. the Arbitral Award passed in Civil Suit Nos.226 and 227 of 1998 as well as agreement on stamp paper of Rs.10/- between the appellant and his

parents at Exhibit 36 before the learned Trial Court but for the reasons recorded herein below, this Court does not propose to either refer to the said Suits or the findings therein. Learned Senior Counsel had in conclusion submitted that no substantial questions of law have been raised by the appellant and therefore, Second Appeal does not merit admission by this Court and same may be dismissed.

[6] Learned Senior Counsels for the parties have not submitted anything further.

[7] Heard learned Senior Counsels for the respective parties and perused the record. Before analyzing the submissions made on behalf of the parties and recording findings arrived at by this Court, at this stage, it would be beneficial to refer to observation of the Supreme Court in the case of [Nazir Mohamed Vs. J. Kamala and Ors.](#), 2020 AIR(SC) 4321, whereby the Supreme Court has set out the principles for deciding when the questions of law become substantial questions of law:

"29. The principles for deciding when a question of law becomes a substantial question of law, have been enunciated by a Constitution Bench of this Court in *Sir Chunilal v. Mehta & Sons Ltd. v. Century Spg. & Mfg. Co. Ltd.* 1, where this Court held:-

"The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law."

30. In *Hero Vinoth v. Seshammal*, this Court referred to and relied upon *Chunilal v. Mehta and Sons* (supra) and other judgments and summarised the tests to find out whether a given set of questions of law were mere questions of law or substantial questions of law.

31. The relevant paragraphs of the judgment of this Court in *Hero Vinoth* (supra) are set out hereinbelow:-

"21. The phrase "substantial question of law", as occurring in the amended Section 100 CPC is not defined in the Code. The word substantial, as qualifying "question of law", means of having substance, essential, real, of sound worth, important or considerable. It is to be understood as something in contradistinction with-

technical, of no substance or consequence, or academic merely. However, it is clear that the legislature has chosen not to qualify the scope of "substantial question of law" by suffixing the words "of general importance" as has been done in many other provisions such as Section 109 of the Code or Article 133(1)(a) of the Constitution. The substantial question of law on which a second appeal 2(2006) 5 SCC 545 shall be heard need not necessarily be a substantial question of law of general importance. In [Guran Ditta v. Ram Ditta](#), 1928 AIR(PC) 172 : 1927 515 IndApp 235 (28)] the phrase substantial question of law as it was employed in the last clause of the then existing Section 100 CPC (since omitted by the Amendment Act, 1973) came up for consideration and their Lordships held that it did not mean a substantial question of general importance but a substantial question of law which was involved in the case. In [Sir Chunilal case](#), 1962 Supp3 SCR 549 : AIR 1962 SC 1314 the Constitution Bench expressed agreement with the following view taken by a Full Bench of the Madras High Court in [Rimmalapudi Subba Rao v. Noony Veeraju](#), 1951 AIR(Mad) 969 : (1951) 2 MLJ 222 (FB)] : ([Sir Chunilal case](#), 1962 Supp3 SCR 549 : AIR 1962 SC 1314] , SCR p. 557)

"When a question of law is fairly arguable, where there is room for difference of opinion on it or where the Court thought it necessary to deal with that question at some length and discuss alternative views, then the question would be a substantial question of law. On the other hand if the question was practically covered by the decision of the highest court or if the general principles to be applied in determining the question are well settled and the only question was of applying those principles to the particular fact of the case it would not be a substantial question of law."

32. To be "substantial", a question of law must be debatable, not previously settled by the law of the land or any binding precedent, and must have a material bearing on the decision of the case and/or the rights of the parties before it, if answered either way.

33. To be a question of law "involved in the case", there must be first, a foundation for it laid in the pleadings, and the question should emerge from the sustainable findings of fact, arrived at by Courts of facts, and it must be necessary to decide that question of law for a just and proper decision of the case.

34. Where no such question of law, nor even a mixed question of law and fact was urged before the Trial Court or the First Appellate Court, as in this case, a second appeal cannot be entertained, as held by this Court in [Panchagopal Barua v. Vinesh Chandra Goswami](#).

35. Whether a question of law is a substantial one and whether such question is involved in the case or not, would depend on the facts and circumstances of each case. The paramount overall consideration is the need for striking a judicious balance between the indispensable obligation to do justice at all stages and the impelling necessity of avoiding prolongation in the life of any lis. This proposition finds support from Santosh Hazari v. Purushottam Tiwari.

36. In a Second Appeal, the jurisdiction of the High Court being confined to substantial question of law, a finding of fact is not open to challenge in second appeal, even if the appreciation of AIR 1997 SC 1047 4(2001) 3 SCC 179 evidence is palpably erroneous and the finding of fact incorrect as held in Ramchandra v. Ramalingam. An entirely new point, raised for the first time, before the High Court, is not a question involved in the case, unless it goes to the root of the matter.

37. The principles relating to Section 100 CPC relevant for this case may be summarised thus :

(i) An inference of fact from the recitals or contents of a document is a question of fact, but the legal effect of the terms of a document is a question of law. Construction of a document, involving the application of any principle of law, is also a question of law. Therefore, when there is misconstruction of a document or wrong application of a principle of law in construing a document, it gives rise to a question of law.

(ii) The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents, and, involves a debatable legal issue.

(iii) A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the Court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered 5 AIR 1963 SC 302 on a material question, violates the settled position of law.

(iv) The general rule is, that High Court will not interfere with the concurrent findings of the Courts below. But it is not an absolute rule. Some of the well-recognised exceptions are where

(i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. A decision based on no evidence, does not refer only to cases where there is a total dearth of evidence, but also refers to case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding. "

[8] At this stage, this Court feels it appropriate to refer the following undisputable aspects, which emerge from the perusal of the record.

(1) The parents of appellant and respondent Ramniklal Contractor and Madhuben Contractor had died intestate.

(2) The appellant had moved application for being granted Succession Certificate with regard to the shares mentioned in Schedule A of the application. The application was moved on the strength of submission that the appellant was sole legal heir of his deceased parents and in support thereof a pedigree affidavit stated as much had been placed on record.

(3) The appellant had referred to an agreement between the appellant and his deceased parents on Rs.10/- stamp paper but Succession Certificate had not been sought for on the basis of said agreement.

(4) The appellant had also not based his application for grant of Succession Certificate on the basis of Arbitral Award dated 30.09.1999 in Civil Suit Nos.227 and 228 of 1998.

(5) The appellant had not stated in the application for Succession Certificate that his deceased parents had 2 other Class I legal heirs being respondent and daughter of the deceased brother of the appellant and respondent.

(6) The Court granting Succession Certificate was led to believe that the appellant was the sole legal heir of his parents and the said Court had given finding as such.

[9] Having recorded the undisputable issues as above, this Court at this stage proposes to reproduce Section 372 of the Indian Succession Act, 1925 with regard to the application for certificate and Section 383 with regard to the revocation of the Certificate, the issue raised in this Appeal being governed by the said Sections.

"372 Application for certificate. -

(1) Application for such a certificate shall be made to the District Judge by a petition signed and verified by or on behalf of the applicant in the manner

prescribed by the Code of Civil Procedure, 1908 (5 of 1908) for the signing and verification of a plaint by or on behalf of a plaintiff, and setting forth the following particulars, namely:-

- (a) the time of the death of the deceased;
- (b) the ordinary residence of the deceased at the time of his death and, if such residence was not within the local limits of the jurisdiction of the Judge to whom the application is made, then the property of the deceased within those limits;
- (c) the family or other near relatives of the deceased and their respective residences;
- (d) the right in which the petitioner claims;
- (e) the absence of any impediment under section 370 or under any other provision of this Act or any other enactment, to the grant of the certificate or to the validity thereof if it were granted; and
- (f) the debts and securities in respect of which the certificate is applied for.

(2) If the petition contains any averment which the person verifying it knows or believes to be false, or does not believe to be true, that person shall be deemed to have committed an offence under section 198 of the Indian Penal Code, 1860 (45 of 1860).

(3) Application for such a certificate may be made in respect of any debt or debts due to the deceased creditor or in respect of portions thereof.]

383. Revocation of certificate.-A certificate granted under this Part may be revoked for any of the following causes, namely:-

- (a) that the proceedings to obtain the certificate were defective in substance;
- (b) that the certificate was obtained fraudulently by the making of a false suggestion, or by the concealment from the Court of something material to the case;
- (c) that the certificate was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant thereof, though such allegation was made in ignorance or inadvertently;
- (d) that the certificate has become useless and inoperative through circumstances;

(e) that a decree or order made by a competent Court in a suit or other proceeding with respect to effects comprising debts or securities specified in the certificate renders it proper that the certificate should be revoked."

[10] Section 372 sets out the requirement for an application for Succession Certificate. A petition for Succession Certificate is required to be filed by the applicant or any other person on behalf of the applicant in the manner prescribed in the Civil Procedure Code, 1908 for filing and verification of the claim and whereas the said claim requires particulars as mentioned therein to be incorporated in the petition. For the purpose of present dispute, sub-Section (c) would be relevant whether it is required that the particulars of the family or other near relatives of the deceased and respective residences shall be mentioned in the petition. The framers of the statute to emphasize importance attached to mention true and correct particulars in an application for grant of Succession Certificate had caused to incorporate sub-section 2 in Section 372 whereby a person shall be deemed to have committed an offence under Section 198 of the Indian Penal Code, if the petition contains any averment which the person verifying knows and believes to be false and does not believe to be true. The emphasis of Sub-section 2 of Section 372 being on the knowledge of the person verifying the application i.e. the averments should be such that the person verifying should not verify any averment which he knows as being false or which he does not believe to be true. Meaning thereby that a bonafide error or mistake would not invite any penal proceedings but a deliberate misrepresentation would be treated as having committed offence punishable under the IPC.

[11] Section 383 of the Indian Succession Act, 1955 lays down causes for which the Succession Certificate, which is granted, may be revoked. For the purpose of present issue, Sub-Section (a) and (b) of Section 383 would be relevant, whereby it is set out that when the proceedings initiated to obtain certificate were defective in substance and where certificate was obtained by fraud upon making false suggestions or concealing something material from the Court. At this stage, it would also be beneficial to refer to the decision of the Supreme Court in the case of [Joseph Easwaran Wapshare & Ors. and Shirley Katherine Wheeler](#), 2019 5 SCC 58 has observed thus.: "Under Section 383, the Certificate so granted could only be revoked for the reasons set out in the said Section. It will be noticed that revocation cannot be granted unless anyone of sub-sections (a) to (e) of Section 383 is satisfied,"

Thus, the issues before this Court can be said to be two folds inasmuch as whether judgment and order under challenge in Second Appeal passed by First Appellate Court was relying upon the causes as mentioned in Sub-Section (a) to (e) of Section 383 as held by the Supreme Court in the case of Joseph Easwaran Wapshare & Ors. (Supra) and whether the appellant herein has raised any

substantial questions of law which would require interference by this Court in exercise of jurisdiction under Section 100 of Code of Civil Procedure.

[12] The appellant herein - original applicant while submitting his application for Succession Certificate, had not mentioned the details of family or other near relatives of the deceased and their respective residences, which were a statutory requirement as per Section 372 (1)(c). Learned First Appellate Court has noted that the appellant himself has admitted in revocation proceedings being Civil Misc. Application No.282 of 2018 in his cross-examination that the deceased had two other Class I legal heirs apart from the present appellant. That inspite of such position, the appellant - original applicant having not joined other Class I legal heirs in his application, the First Appellate Court had come to a conclusion that the proceedings were defective in substance and were obtained fraudulently after concealing true fact from the Court. Learned Senior Counsel Shri Sudhir Nanavati on behalf of the appellant had attempted to submit that since the Succession Certificate was for share mentioned in the Schedule, which share being in possession of the appellant for around 10 years and whereas the respondent not having questioned such a position, the respondent should be treated as having waived his right upon the share in question. In considered opinion of this Court, such submission cannot be countenanced inasmuch as the appellant had originally approached the Civil Court for grant of Succession Certificate on the strength of his claim that he was the sole legal heir of his deceased parents. That the appellant had not submitted his application for Succession Certificate on the strength of contention that the respondent herein be treated as having waived his right upon shares in question. Moreover, in considered opinion of this Court, such a question may not be strictly within purview of a Court to decide in an application under Section 372 of the Indian Succession Act. If the claim of the appellant upon share certificate was on the ground of waiver by the respondent herein than the appellant ought to have approached a competent Civil Court by filing a Civil Suit under the provisions of Code of Civil Procedure, 1908. The Succession Act does not contain out any exception to Section 372(1)(c), whereby family or near relative of the deceased are not required to be joined on any ground including the ground of waiver by such relative of their right. Thus, it was incumbent upon the appellant to have joined other Class I legal heirs of the deceased. Having not done so, the proceedings were defective in substance as required under Section 383 (a) of the Succession Act.

On the other hand, in so far as some ground of non-joinder to substantiate his claim of being the sole legal heir of the deceased, the appellant had submitted pedigree affidavit, which was attested by a Notary, where the appellant had mentioned that he was the sole legal heir of the deceased. As stated hereinabove, since it is a an admitted position that there were two other Class I legal heirs of the

deceased other than the appellant, the learned First Appellate Court has come to a conclusion that the certificate was fraudulently obtained and the material facts had been concealed from the Court as required for revoking sub-section (b) of Section 383 of the Indian Succession Act. This Court does not find any perversity or illegality committed by the learned First Appellate Court in coming to the above conclusion, more particularly, in view of the fact that a conjoint reading of Sections 372(2) and 383 of the Indian Succession Act leads to an inevitable conclusion that onus is on the person making the application for Succession Certificate to make true and correct averments and whereas if knowingly false averments are made, the statute provides for penal punishment. That the appellant had knowingly provides false information by stating that the deceased had no other legal heir except present appellant whereas later on the appellant himself had admitted that there were two other legal heirs. Thus, there is no doubt in mind of Court that certificate had been obtained fraudulently by concealing material fact from the Court, which is a relevant consideration as per Sub-Section 383(b) of the Indian Succession Act, 1925.

In view thereof, this Court holds that the judgment and decree passed by the learned First Appellate Court having come to the conclusion that the proceedings for obtaining Succession Certificate was defective and the Certificate was obtained fraudulently and the said findings being causes as mentioned in Section 383(a) and Section 383(b) for revoking the Succession Certificate granted under the Act, the said findings fulfilled the mandate of the judgment of Supreme Court in the case of Joseph Easwaran Wapshare (Supra) and thus no interference is called for with the said judgment and order.

[13] In so far whether the questions raised by the appellant are substantial questions, which require interference by this Court, this Court proposes to discuss the said issue keeping in view of the principles of law laid down by the Supreme Court in the case of Nazir Mohamed (Supra).

First question being with regard to the learned First Appellate Court having erred in invoking Section 383(a) and (b) for revocation of certificate granted only under Schedule 1 when the appellant was even otherwise in possession and acquired title under the settlement deed dated 01.10.1999. In this regard, it is required to be appreciated that the application for Succession Certificate by the appellant for the shares in question was not on the strength of his submission that he was having title of the shares in question and he was in possession of the shares in question. His entire case was based upon the submission that he is sole legal heir of his deceased parents and therefore, he is entitled for Succession Certificate. Having not approached the Trial Court for grant of Succession Certificate on the ground

that he had acquired title of shares under the settlement deed dated 01.10.1999, the appellant would be precluded from raising a question in Second Appeal as above. Moreover, as noted above, the learned First Appellate Court has rightly invoked the provisions of Section 383(a) and (b) for revoking the Succession Certificate since the proceedings to obtain the Certificate were indeed defective and if the Certificate had been obtained fraudulently as elaborately discussed hereinabove. In so far as question as to whether the learned First Appellate Court erred in re-appreciating the fact and evidence under Section 382 when the proceedings are summary in nature, this Court finds that the learned First Appellate Court has not re-appreciated any evidence rather the learned First Appellate Court has only recited the nature of material which had been placed before it with a view to find whether the Succession Certificate was substantially or the Succession Certificate ought to be revoked under the causes mentioned in Section 383.

In so far as third question with regard to a document being validly exhibited or not, in the considered opinion of this Court, the document at Exhibit 36 was as such not an issue which would be gone to the root of the matter, more particularly, since the findings fulfill the causes as found in Section 383 (a) and (b) and the said findings being borne out from the records as well as from an admission by the appellant himself, therefore, in the opinion of this Court, the question itself is misconceived.

13. In view of the above discussion and findings, this Court is of the considered opinion that the questions raised by the appellant are not substantial questions of law which requires interference of this Court in the present Appeal and thus, this Court finds no reason for interfering that the judgment and decree dated 21.10.2019 passed by the learned First Appellate Court being learned 5th Additional District Judge, Kheda at Nadiad in Regular Civil Appeal No.71 of 2019. Present Second Appeal therefore, fails and is hereby dismissed. No order as to costs. In view of the disposal of the Second Appeal, Civil Application No.1 of 2020 is hereby disposed of.

FURTHER ORDER:

Learned Advocate Mr. Vandan Baxi for Nanavati and Nanavati for the appellant requests this Court to stay the order of this Court for some period of time to avail appropriate remedy.

This request is strongly opposed by learned Advocate for the respondent No.1.

Considering the fact that the order passed by the First Appellate Court setting aside the order of the learned Principal Senior Civil Judge, Kheda at Nadiad granting

Succession Certificate in favour of the appellant was never stayed even by that Court itself of by this Court and for the reason that the Second Appeal has been dismissed by this Court, such request is rejected.

