NEUTRAL CITATION
undefined

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 5872 of 2023

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE J. C. DOSHI

==========

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

==========

UMABEN JAYANTBHAI SHAH D/O LATE RAMANLAL N. SHAH
Versus
NA

==========

Appearance:
MR BHARGAV HASURKAR(5640) for the Petitioner(s) No. 1
MR VISHWAJITSINH V JADEJA(11128) for the Petitioner(s) No. 1
for the Respondent(s) No. 1

==========

CORAM:**HONOURABLE MR. JUSTICE J. C. DOSHI**

Date : 25/08/2023

CAV JUDGMENT

1. In this petition under Article 227 of the Constitution of India, the petitioner challenges order dated 21.01.2023 passed below Exh.1 in Civil Miscellaneous Application No.174 of 2022, where-under the learned Court below returned the plaint to the

Uploaded by () on Downloaded on : Sat Nov 14 07:45:02 IST 2026

NEUTRAL CITATION
undefined

plaintiff in exercise of power under Order 7 Rule 10 of the Code of Civil Procedure for filing the same before the Court having jurisdiction to grant succession certificate.

2. Brief facts of the case can be stated as under :-

2.1. The petitioner preferred application under section 372 of Indian Succession Act, 1925 (in short **'the Act'**) seeking relief to issue succession certification in the name of the petitioner for different movable securities stated in para 3 of the petition. Said petition was registered as Civil Miscellaneous Application No.174 of 2022 before the Court below. The petition was kept for hearing on the issue of territorial jurisdiction. Learned Court below having referred to the provisions under the Act as well as provisions of Code of Civil Procedure, held that the Civil Court, Vadodara has no territorial jurisdiction to entertain and grant relief of issuing succession certificate as deceased died in Mumbai.

3. Being aggrieved and dissatisfied with the impugned order, the petitioner has filed this petition.

4. Learned advocate Mr. Bhargav Hasurkar for the petitioner submit that present petitioner – Umaben is daughter of late Ramanlal Shah and late Kamalaben Shah. He would further submit that late Ramanlal Shah firstly married to Kamalaben and during wedlock, present petitioner as well as her brother Bankim were born. On demise of first wife - Kamlaben, late Ramanlal Shah married to Kumudben and wedlock has given

Uploaded by () on Downloaded on : Sat Nov 14 07:45:02 IST 2026

NEUTRAL CITATION
undefined

birth to two sons viz. Sudhir and Pankaj. He would submit that late Ramanlal Shah passed away on 03.12.2014 at Cerritos, Los Angeles, California, United States, whereas, Kumudben passed on 09.10.1992 at Mumbai. He would further submit that late Ramanlal and Kumudben have left behind movable properties in terms of share of different companies stated in para 3 of the petition. Learned advocate would further submit that out of siblings, Sudhir and Pankaj have stated no objection, whereas, the petitioner is not knowing whereabouts of heirs of late Bankim Shah.

5. After narrating facts, learned advocate Mr. Bhargav Hasurkar assailing the impugned order would submit that learned Court below failed to appreciate application of section 18 to 20 of Code of Civil Procedure as well as section 371 of the Act to determine that Court below has territorial jurisdiction to try and decide the application for succession certificate. He would further submit that out of various shares mentioned in para 3 of the petition, late mother Kumudben was holding shares of Deepak Nitrite Limited having Folio No.K000075. It is submitted that Deepak Nitrite Limited is carrying business within territorial jurisdiction of District Court, Vadodara having its registered office at Vadodara. Therefore, in view of 2nd part of section 371 of the Act as well as in view of section 20(C) of the Code of Civil Procedure, the District Court, Vadodara was having jurisdiction to try and decide the application This submission was canvassed by learned advocate for the petitioner to allow the petition. He would further submit that Court below has erred in relying and interpreting provision of law referred herein above. It

Uploaded by () on Downloaded on : Sat Nov 14 07:45:02 IST 2026

NEUTRAL CITATION
undefined

is also submitted that petitioner is 76 years old and it is difficult for her to approach Court at Mumbai. Therefore, considering special and alternative circumstances, he would submit to allow this petition.

6. Since proceedings initiated in terms of Civil Miscellaneous Application No.174 of 2022 was uncontested proceedings, no one has been joined as party respondent herein.

7. Having heard learned advocate for the petitioner, at the outset, let refer section 371 of the Act :-

> *"371. The District Judge within whose jurisdiction the deceased ordinarily resided at the time of his death, or, at that time had no fixed place of residence, the District Judge within whose jurisdiction any part of the property of the deceased may be found, may grant a certificate under this part."*

8. The provision is in two parts and joined with conjuncture "or". First part provides that application for succession certificate is maintainable within whose jurisdiction deceased ordinarily resided at the time of his death. That jurisdictional Court is authorized to grant succession certificate. Second part of section 371 of the Act spells that if deceased had no fixed place of residence, the District Judge, within whose jurisdiction any part of the property of the deceased may be found, is competent to grant succession certificate.

Uploaded by () on Downloaded on : Sat Nov 14 07:45:02 IST 2026

NEUTRAL CITATION
undefined

9. Perusal of the copy of the petition (Annexure-A) indicates that deceased Ramanlal Shah died at Los Angeles, California, United States and deceased Kumudben Shah died at Mumbai. Plain reading of the petition does not indicate that either of the deceased ordinarily lived at Vadodora or they had no fixed place of residence.

10. Domicile and residence ordinarily may carry the same meaning and refer to a permanent home but in common use both are different. Domicile may take many colours like as domicile of residence, domicile of choice, domicile by operation of law or domicile of dependence. On the contrary, the concept of ordinarily resident is different and may shift from place of ordinary domicile as a person may have lived at one time in a particular village of a State and may owe some property there but may subsequently start living elsewhere and in these circumstances for all purposes the person may be treated to be ordinarily residing in the subsequent place. [see **Union of India v/s. Doodh Nath Prasad (AIR 2000 SC 525]**.

11. The term residence is flexible one and it connotes the ordinary and general place of residence of a person and not casual or occasional place of his visit. Apt to note that person is deemed to be residing at a place where he actually and voluntarily resides and carries on business. He cannot be said to be residing at a place where he has a family and visits occasionally.

Uploaded by () on Downloaded on : Sat Nov 14 07:45:02 IST 2026

NEUTRAL CITATION
undefined

12. On considering section 371 of the Act, what perceives that it provides alternate place where application for succession certificate may be filed. First part would be Court of District Judge within whose jurisdiction deceased ordinarily resided at the time of his death and second part would be District Judge within whose jurisdiction any part of the property of the deceased may be found. Perusal of section 371 of the Act further indicates that second part of section 371 of the Act confirming jurisdiction can be considered only if at the time of death, deceased had no fixed place of residence.

13. In connection with section 371 of the Act, apt to refer judgment in the case of **Rameshwari Devi v/s. Raj Pali Shah [AIR 1988 Allahabad 68]**, whereby, it is held that *"a reading of Section 371, however, shows that it is only in those cases in which the deceased at the time of his death had no fixed place of residence that recourse to the second part of the section could be taken".*

14. A similar view was expressed by the Madras High Court in the case of **Mohanaprakasam [AIR 1975 Madras 30]** and it was held that second part relating to jurisdiction on the basis of the situation of the property of the deceased would come into operation only if the deceased had no fixed place of residence.

15. In **Km. Rakhi v/s. Ist Additional District Judge [AIR 2000 Allahabad 166]**, principle has again been reiterated that second part of section 371 of the Act would not be attracted unless first part is exhausted.

Uploaded by () on Downloaded on : Sat Nov 14 07:45:02 IST 2026

NEUTRAL CITATION

undefined

16. Coming back to the case on hand, the petition is totally salient on the aspect that what was ordinary residence of deceased – Ramanlal Shah or Kumudben Shah at the time of their death. No averments are made to that extent. What is coming from the petition is that deceased – Ramanlal Shah died at California, United States and deceased Kumudben died at Mumbai. In absence of any other pleadings / averments or ordinary residence of both the deceased, it can be presumed that they were ordinary residence of the place where they died. It was duty upon the petitioner to make averments to clarify about ordinary residence of deceased.

17. On the contrary while narrating jurisdiction clause in the petition, the petitioner relied upon second part of section 371 of Act to bring the petition within territorial jurisdiction of District Court, Vadodara by stating that some of the movable property is situated within local jurisdiction of District Court, Vadodara. Unless first part of section 371 of the Act is exhausted, the petitioner cannot straightway come before the Court below at Vadodara seeking relief of grant of succession certificate. In order to invoke second part of section 371 of the Act to bring the petition within the territorial jurisdiction of Court below, the petitioner was required to fulfill criteria of "deceased had no fixed place of residence." In present case, the petitioner has failed to demonstrate said criteria.

18. Learned Court below has discussed all this aspects in consonance with the provision of law and rightly ordered to

Uploaded by () on Downloaded on : Sat Nov 14 07:45:02 IST 2026

NEUTRAL CITATION

undefined

return the petition. Learned Court below has not committed error in arriving at impugned order. The petitioner has failed to make out case which may permit this Court to interfere with impugned order.

19. For the foregoing reasons, the petition sans merits and accordingly, it is dismissed.

(J. C. DOSHI,J)

SATISH

Uploaded by () on Downloaded on : Sat Nov 14 07:45:02 IST 2026