IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION NO. 15825 of 2017

NAYANABEN FIROZKHAN PATHAN @ NASIMBANU FIROZKHAN PATHAN.
V
PATEL SHANTABEN BHIKHABHAI & 4.

CORAM: MR.JUSTICE J.B.PARDIWALA
Date : 26/09/2017

As a neat question of law is raised in this petition, thematter is taken up, with the consent of the learned counselappearing for the respective parties, for final disposal at theadmission stage itself.
This petition although titled as one under Article 226 ofthe Constitution of India, yet, in substance, is a petition underArticle 227 of the Constitution of India.By this application under Article 227 of the Constitution ofIndia, the applicant calls in question the legality and validity ofthe order dated 22nd March 2017 passed by the SSRD atAhmedabad, by which the SSRD rejected the revisionapplication filed by the applicant herein, thereby affirming theorder of the Collector, Vadodara, dated 29th November 2011.

The facts of this case may be summarised as under :
The applicant herein took birth as a Hindu. There is nodispute in this regard. The dispute between the partiespertains to the parcels of land enumerated below :

Village Block No. Area [H-RA]
Type
Vemali 52/8 0.33.39 2.50 Rs./Ps.
Vemali 54/8 0.31.36 2.25 Rs./Ps.
Vemali 107/B/8 0.04.05 0.25 Rs./Ps.
Vemali 191/8 1.89.19 16.18 Rs./Ps.

The lands referred to above are the ancestral properties.The applicant herein happens to be the sister of therespondent no.1 and the respondent no.2. They all are childrenof one Bhikhabhai Patel. Bhikhabhai Patel passed away on 12thOctober 2004. On his demise, the names of the respondentnos.1 and 2 came to be entered in the record of rights bysuccession vide entry no.1502. At that point of time, the nameof the applicant herein was not entered along with her brotherand sister.It appears that the applicant, having learnt about themutation of entry no.1502 in the record of rights, filed anaffidavit dated 13th December 2007 and produced it before theauthority concerned for the purpose of getting her name alsomutated in the revenue record. This led to the mutation ofentry no.1668 dated 19th December 2007. This entry no.1668came to be later certified. The private respondents hereinquestioned the mutation of revenue entry no.1668 before theDeputy Collector, Vadodara, by filing an R.T.S. Appeal No.137of 2008. This entry came to be challenged substantially on theground that the applicant herein although Hindu by birth, butlater having married to a Muslim and having

embraced Islam,she would ceased to be a Hindu and, therefore, the HinduSuccession Act would not apply in her case.The appeal filed by the private respondents before theDeputy Collector came to be dismissed vide order dated 16th September 2009. The private respondents, being dissatisfiedwith the order passed by the Deputy Collector, preferred arevision application before the Collector. The Collectoraccepted the argument of the private respondents and allowedthe revision application. The disputed entry no.1668 came tobe cancelled. The applicant herein, being dissatisfied with theorder passed by the Collector, preferred a revision applicationbefore the SSRD and the SSRD, by its impugned order, rejectedthe revision application and thought fit to affirm the orderpassed by the Collector.Being dissatisfied with the orders passed by the SSRDand the Collector, the applicant is here before this Court withthis application under Article 227 of the Constitution of India.

The Collector, while allowing the appeal filed by theprivate respondents, held as under :
"On carefully examining the case-papers of the lowercourt and the submissions made by the parties, itappears that the lands situated at MoujeVemali, TalukaVadodara, bearing Survey Nos.52/8, 54/8, 107/B/8, 191/8are the ancestral lands owned by late Shri BhikhabhaiRanchhodbhai. On his demise, an entry bearing no.1502came to be entered on 12.4.2004, which is also certified.The present opponent – Nayanaben alias Nasimbanu hasrenounced the Hindu religion and on 11.7.1990 she hasvoluntarily and without any force embraced Islam. On25.1.1991, she married to one Muslim boy Firozkhan asper the Muslim rites and rituals, which is also registeredon 30.1.1991 as per the provisions of the RegistrationAct. As the opponent has embraced Islam, the provisionsof the Hindu Succession Act, 1956 cannot be enforced inher case, which itself is apparently clear. Therefore, thepresent opponent will have to seek appropriate relief toestablish her right of share from the civil court. Moreover,at the relevant point of time the succession entryno.1502 of the deceased has also been certified, forwhich they have not raised any dispute. As per theprovisions of the law, they should have come with adispute with regard to the mutation entry no.1502. Asshe failed to do that, her demand to consider her as theheir by reentering the succession entry of the deceasedis not as per the rules. As the decision taken by the lowercourt is contrary to the provisions of the law, the samedeserves to be rejected. Therefore, the following order ispassed:

O R D E R
The application of the applicant is allowed and the orderbearing no.RTS/Appeal/137/2008 dated 16.9.2009 passedby the Deputy Collector, Vadodara, is rejected. It isordered to cancel the mutation entry no.1668 dated21.2.2008 entered in the village record."
The SSRD, while rejecting the revision application filed bythe applicant herein, held as under :
"Considering the revision application filed by theapplicant, oral submission, written submissions made onbehalf of the opponent nos.1 and 2 as well as consideringthe impugned order of the Collector, it appears that thedisputed lands are the ancestral properties owned by lateBhikhabhaiRanchhodbhai and on his demise, successionentry no.1502 came to be entered. Nayanaben hadvoluntarily renounced the Hindu religion and embracedIslam on 11.7.1990 and married to one Firozkhan Pathanon 25.1.1991 as

per the Muslim rites and rituals, whichhas also been registered on 30.1.1991. The applicant hasalso changed her name from Nayanaben to Nasimbanu.As the applicant has adopted Muslim religion, theprovisions of the Hindu Succession Act, 1956, cannot beenforced in her case. Despite that, she can seek anappropriate relief with regard to her share and right fromthe competent civil court. That itself is a clear fact. Thedetailed and reasoned order passed by the Collector afterexamining the orders of the lower courts and consideringthe provisions of the Act, Rules and Circulars of theGovernment is a just, legal and proper order."Mr.DhruvK.Dave, the learned counsel appearing for theapplicant, vehemently submitted that the SSRD committed aserious error in passing the impugned order. He would submitthat merely because his client got married to a Muslim andconverted herself by embracing Islam that by itself would notdisentitle her to claim a share in the ancestral property inaccordance with the provisions of the Hindu Succession Act. Insuch circumstances referred to above, Mr.Dave prays thatthere being merit in this petition, the impugned orders bequashed and the petition be allowed.

On the other hand, this petition has been vehementlyopposed by Mr.Parthiv Shah, the learned counsel appearing forthe private respondents.Mr.Sharma, the learned AGP has appeared on behalf ofthe State respondents.Mr.Shah submitted that a Hindu woman who hasembraced Islam by renouncing her religion is not entitled toinherit the properties of a Hindu. Relying on Section 2 of theHindu Succession Act, Mr.Shah submitted that the Act appliesto any person, who is a Hindu by religion, in any of its forms ordevelopments and to any person who is a Buddhist, Jain or Sikhby religions and to any other person who is not a Muslim,Christian, Parsi or Jew by religions.The second limb of Mr.Shah's submission is that withoutquestioning the legality and validity of the revenue entryno.1502 mutated in the record of rights on 12th October 2004on the demise of Bhikhabhai Patel, the applicant herein couldnot have got her name mutated vide entry no.1668. To put itin other words, according to Mr.Shah, the applicant is guilty offiling a false affidavit, which is at page-72 Annexure-R2,wherein she has solemnly affirmed in the name as Nainaben,daughter of BhikhabhaiRanchhodbhai Patel. According toMr.Shah, on the date when the affidavit was affirmed, she wasalready married to one Firozkhan Pathan and her name wasalso been changed to NasimbanuFirozkhan Pathan. Accordingto Mr.Shah, unless and until the competent authority cancelsthe entry no.1502, the entry no.1668 could not have beenmutated. This argument of Mr.Shah proceeds on the footingthat even if the applicant herein is held to be liable to inheritthe ancestral property, the name of the applicant could nothave been entered in the revenue record without thecancellation of entry no.1502.In support of his submissions, he has placed reliance onthe following case-law :

(1) Sundarammal v. Ameenal, AIR 1927 Madras 72;
(2) C.V.N.C.T. Chidambaram Chettyar v. Ma Nyein Me and others, AIR 1928 Rangoon 179;
(3) Ponniah Nadar Devadas Silas v. EsakkiDeviana and others, AIR 1954 Kerala 180;
(4) RajeshwarBaburao Bone v. State of Maharashtra, AIR 2015 SC 3024; and
(5) Sitaben v. BhanabhaiMadaribhai Patel, (2002)2 GLR

1365.
Having heard the learned counsel appearing for theparties and having considered the materials on record, theonly question that falls for my consideration is, whether aHindu daughter can inherit from her father after gettingmarried to a Muslim and embracing Islam.

Section 2 of the Hindu Succession Act reads as under :
“2. Application of Act.- (1) This Act applied -
(a) to any person, who is a Hindu by religion in any
of its forms or developments, including a
Virashaiva, a Lingayat or a follower of the Brahmo,

Prarthana or Arya Samaj.
(b) to any person who is a Buddhist, Jaina or Sikh byreligion, and

(c) to any other person who is not a Muslim,Christian, Parsis or Jew by religion, unless it isproved that any such person would not have beengoverned by the Hindu law or by any custom orusage as part of that law in respect of any of thematters dealt with herein if this Act had not beenpassed.

Explanation. -The following persons are Hindus,Buddhists, Jainas or Sikhs by religion, as the case may be:

(a) any child, legitimate or illegitimate, both ofwhose parents are Hindus, Buddhists, Jainas orSikhs by religion;

(b) any child, legitimate or illegitimate, one ofwhose parents is a Hindu, Buddhist, Jaina or Sikh byreligion and who is brought up as a member of thetribe, community, group or family to which suchparent belongs or belonged;

(c) any person who is convert or reconvert to theHindu, Buddhist, Jaina or Sikh religion.
(2) Notwithstanding anything contained in sub-section
(1), nothing contained in this Act shall apply to themembers of any Scheduled Tribe within the meaning ofclause (25) of Article 366 of the Constitution unless theCentral Government, by notification in the OfficialGazette, otherwise directs.
(3) The expression "Hindu" in any portion of this Act shallbe construed as if it included a person who, though not aHindu by religion, is nevertheless, a person to whom thisAct applies by virtue of the provisions contained in thissection.
Sub clause (a) of Sub-Section (1) of Section 2 of the Act

specifies that the Act applies to any person, who is a Hindu byreligion in any of its forms. Explanation (a) to Section 2 of theAct makes its clear that any child, legitimate or illegitimateboth of whose parents are Hindus, are Hindus by religion. SubSection
(3) to Section 2 of the Act explains that the term"Hindu", in any portion of the Act, shall be construed as if itincluded a person, who, though not a Hindu by religion, is,

nevertheless, a person to whom this Act applies by virtue ofthe provisions contained in this Section. This makes clear thatif the parents are Hindus, then, the child is also governed bythe Hindu Law or is a Hindu. Perhaps, the Legislature mighthave thought fit to treat the children of the Hindus as Hinduswithout foregoing the right of inheritance by virtue ofconversion. This is also clear by virtue of Section 4 of the Act.Section 4 of the Act reads as under :
“4. Over-riding effect of Act.- (1) Save as otherwise
expressly provided in this Act, -

(a) any text, rule or interpretation of Hindu law orany custom or usage as part of that law in forceimmediately before the commencement of this Actshall cease to have effect with respect to anymatter for which provision is made in this Act;

(b) any other law in force immediately before thecommencement of this Act shall cease to apply toHindus in so far as it is inconsistent with any of theprovisions contained in this Act.”Section 4(1)(b) of the Act envisages that any other law inforce immediately before the commencement of this Act shallcease to apply to Hindus in so far as it is inconsistent with anyof the provisions contained in the Act. Following the saidprovision, a number of Central Acts had been repealed, whichare inconsistent to the provisions of (he Act. However, theCaste Disabilities Removal Act, 1850 (Act 21 of 1850) had notbeen repealed so far. This Act contains only one Section, whichis as follows :

"Law or usage which inflicts forfeiture of, or affects,rights on change of religion or loss of caste to cease tobe enforced ; So much of any law or usage now in forcewithin India as inflicts on any person forfeiture of rightsor property, or may be held in any way to impair to affectany right of inheritance, by reason of his or herrenouncing, or having excluded from the communion of,any religion, or being deprived of caste, shall cease to beenforced as law in any Court."

A change of religion and loss of caste was at one timeconsidered as grounds for forfeiture of property and exclusionof inheritance. However, this has ceased to be the case afterthe passing of the Caste Disabilities Removal Act, 1850.Section 1 of the Caste Disabilities Removal Act inter aliaprovides that if any law or (customary) usage in force in Indiawould cause a person to forfeit his/her rights on property ormay in any way impair or affect a person’s right to inherit anyproperty, by reason of such person having renounced his/herreligion or having been ex-communicated from his/her religionor having been deprived of his/her caste, then such law or(customary) usage would not be enforceable in any court oflaw. The Caste Disabilities Removal Act intends to protect the
person who renounces his religion.

In the case of E.Ramesh and Anr. v. P. Rajini and 2 Ors.
[(2002) 1 MLJ 216], a Division Bench of the Madras High Courthas held that by virtue of Section 1 of the Caste Disabilities

Removal Act, the conversion of a Hindu to another religion willnot disentitle the convert to his right of inheritance to theproperty.As stated above, a Hindu convert does not lose the rightto inherit property under the Hindu Succession Act, 1956.Therefore, the applicant herein is entitled to inherit her sharein her father's property and the Hindu Succession Act shallapply to her with regard to her right to inherit her share in her father's property.

It may be noted that Section 26 of the Hindu SuccessionAct states that if a Hindu has ceased to be a Hindu byconversion to another religion, children born to the convertafter such conversion and their descendants shall bedisqualified from inheriting the property of any of their Hindurelatives, unless such children or descendants are Hindus atthe time when the succession opens. However, this section hasno impact on the convert's right to inherit property from herHindu relatives and shall only apply to the children born after
conversion and their descendants.

Thus, where 'A' has got three sons namely 'B', 'C' and'D' converts to Christianity during the life time of 'A'. On thedeath of 'A', 'D' will be entitled to claim a share along with 'B' and 'C'. He would not be disqualified to inherit as per Section26 of the Act and would get 1/3 share in the property of 'A'.In the above illustration if 'D' dies after conversion during
the lifetime of 'A' leaving behind him his two sons 'M' and 'N',who are born to him after conversion, 'M' and 'N' would beexcluded from inheritance.

WHO IS A MOHAMMEDAN ?
A whole course of conduct has been prescribed by theMuslim religion for a Mohammedan. All actions are divided intofive classes by Muslim jurists or faqihs.

(1) farz (p. faraiz), acts the omission of which is
punished and the doing of which is rewarded;
(2) manzoob or mustahabb, acts the doing of which is
rewarded but the omission of which is not punished;
(3) jaiz or mubah acts the doing of which is permitted;
(4) makruh, acts which are disapproved but are legally
valid;
(5) haram, acts strictly prohibited and punishable.

In all matters to which the Mohammedan Law applies, allMohammedans are governed by the Mohammedan Law even ifthey are converts to Islam. Conversion to Islam makes theIslamic Law applicable. The previous religious and personal lawis substituted by Islam and with so much of the personal law asnecessarily follows from that religion.According to the Mohammedan Law, a Hindu cannotsucceed to the estate of a Mohammedan. When a personbecomes a Mohammedan by conversion and had a child whichsurvived him the child would be his heir and not his relativeswho are still Hindus.
None of the contentions put forward by Mr.Shah, thelearned counsel appearing for the private respondents, hasappealed to me. Section 2 of the Hindu Succession Act simply

provides a class of persons whose properties will devolveaccording to the Act. It is only the property of those personsmentioned in Section 2 that will be governed according to theprovisions of the Act. Section 2 has nothing to do with theheirs. This section does not lay down as to who are thedisqualified heirs.

Sections 24, 25, 26 and 28 of the Act lay down theprovisions how a person is disqualified.
Section 24 provides, “certain widows re-marrying maynot inherit as widows”. Section 25 disqualifies a murderer frominheriting the property of the person murdered. Section 28 provides that no person shall be disqualified from succeedingto any property on the ground of any disease, defect ordeformity, or save as provided in this Act, on any other groundwhatsoever. The most important section is Section 26. Section26 reads as follows :
“26. Convert’s descendants disqualified. - Where, beforeor after the commencement of this Act, a Hindu hasceased or ceases to be a Hindu by conversion to anotherreligion, children born to him or her after such conversionand their descendants shall be disqualified frominheriting the property of any of their Hindu relatives,unless such children or descendants are Hindus at thetime when the succession opens.”
This Section, therefore, does not disqualify a convert. Itonly disqualifies the descendants of the convert who are bornto the convert after such conversion from inheriting theproperty of any of their Hindu relatives. Section 28 of the Actdiscard almost all the grounds which impose exclusion frominheritance and lays down that no person shall be disqualified

from succeeding to any property on the ground of any disease,defect or deformity. It also rules out disqualification on anyground whatsoever except those expressly recognized by anyprovisions of the Act. The exceptions are very few andconfined to the case of re-marriage of certain widows. Anotherdisqualification stated in the Act relates to a murderer who isexcluded on the principle of justice and public policy (Section25). **The change of religion and loss of caste have long ceasedto be the grounds of forfeiture of property and the onlydisqualification to inheritance on the ground that the person**
has ceased to be a Hindu is confined to the heirs of suchconvert (Section 26). The disqualification does not affect theconvert himself or herself. This being the position, I have nohesitation to hold that the applicant who is admittedly a sister of the private respondents, i.e. the daughter of late BhikhabhaiPatel, is entitled to succeed in getting her name mutated in therecord of rights as one of the legal heirs. The provisionscontained in Section 26 of the Hindu Succession Act is the only provision dealing with the right of succession of children bornto a convert after the conversion. However, this provision doesnot disqualify the convert himself from succeeding to theproperty of the Hindu father.What is the meaning of the expression 'on any otherground whatsoever' is the question. It is of wide import.Section 4 of the Act provides that any pre-existing law, whichis inconsistent with the provisions of the Act, shall cease tohave effect. Sections 24 to 26 prescribe disqualification; andSection 28 removes disabilities. To explain a little elaborately,under the Shastrik law preceding the Act, unchastity of awidow was a disqualification. But the Legislature did notengraft the

unchastity as a disqualification. Under Section 24remarriage was provided as a disqualification but notunchastity. On the other hand, Section 28 engrafts a widelanguage 'on any other ground whatsoever' encompassingwithin its ambit any other ground which was a disqualificationunder the Shastrik law excepting those disqualificationsexpressly recognised to note that the commentators on theHindu Law have taken the view that unchastity is no longer adisqualification for the intestate successor, after the Act cameinto force.In N.R.Raghavachariar's Hindu Law, Principles andPrecedents, 8th Edition 1987, considering the effect of Section28 of the Act, Prof. S.Venkataraman who edited thiscommentary and who himself is an authority on the Hindu Law,has stated thus :

"This Section removes the disqualification prescribed bythe Hindu law based upon disease, defect or deformity.Unless the disqualification is one gatherable from theprovisions of this Act it does not operate as a bar tosuccession. That means that the Act has made itsintention specific that unchastity of a widow will, afterthe Act came into force, no longer be a disqualification inregard to her heritable capacity nor conversion of an heirto any other religion is a disqualification under the Act"In Mulla's Principles of Hindu Law, 15th Edition revised byS.T. Desai interpreting Section 28 of the Act, it is stated thus :

"The present Section discards almost all the groundswhich imposed exclusion from inheritance. It rules outdisqualification on any ground whatsoever exceptingthose expressly recognised by any provisions of the Act.Unchastity of a widow is not a disqualification under theAct. Nor is conversion of an heir to any other religion adisqualification under the Act." (Page 1039).

In Jayalakshmi v. T.V.G. Iyer, AIR 1972 Madras 357, aDivision Bench of the Madras High Court, speaking throughVeeraswami C.J. considered the effect of the decision of the
Full Bench in Ramaiya v. Mottayya (AIR 1951 Madras 954) andalso the provisions of Section 28 read with Section 4 of the Actand held thus :

"It seems to us that the position under the HinduSuccession Act is entirely different. The Hindu SuccessionAct in so far as it covers the matters therein, is meant tobe a complete Code relating to Hindu Succession and tothat extent the Act prevails and the Hindu law in respectof it will cease to operate. That is the effect of S.4 whichas we said, gives the provisions of the Act an effect ofoverriding the Hindu Law except to the extent save asotherwise, expressly provided for in the Act itself. Theeffect of S.8 is to limit succession to the class of personsin the order of priority specified. Unless, therefore, anyrule of Hindu Law with reference to the disqualification ofany of the heir mentioned in any of the classes is coveredby S.8 each one of them will be, as a matter of right,entitled to succeed in accordance with the provisions ofthat Section."In the said case also unchastity of widow was sought tobe put forth as a disqualification. While negativing this, theMadras High Court held thus :

"..... the Act has made its intention specific thatunchastity of a widow will, after the Act came into force,no longer be a disqualification for her to succeed as thefather's widow."
It is a settled principle of statutory construction that thecourt should endeavour to find what is the existing law, thedefects which the law did not provide for and the remedy the Legislature intended to provide and cure the defect and thereasons therefor. There is a presumptive evidence that theLegislature is aware of the pre-existing Shastric law as judicially interpreted including the one in Ramaiya's (AIR 1951Mad 954) (FB) ratio in regard to unchastity as a disqualificationfor succession to or maintenance of Hindu women. Articles 14and 15 of the Constitution provide equality to every citizenregardless of sex and prohibits invidious discrimination,enables the Legislature to make inroads into the pre-existinglaw. The Legislature felt the need most acute to remove manya disability under which the Hindu women are reeling from inmatters of inheritance, succession rights. It animated toremove all the disabilities except those prescribed under theAct, used the appropriate language in Section 4 and chose notto make conversion a disqualification.
I have gone through all the decisions relied upon byMr.Shah in support of his submissions. In my view, none of thedecisions are applicable to the facts of the present case.I am also not impressed by the submission of Mr.Shahthat without questioning the legality and validity of therevenue entry no.1502 the applicant could not have got her name mutated in the record of rights vide entry no.1668. Theapplicant herein is not disputing even for a moment the factthat the private respondents are Class-I heirs of late
Bhikhabhai Patel. The applicant is also not disputing that therespondent no.1, her sister, has also a share in the propertiesin accordance with the provisions of the Hindu Succession Act.In the same manner, the applicant is also not disputing thather brother, i.e. the respondent no.2, also has a share in theproperties in accordance with the provisions of the HinduSuccession Act. In such circumstances, it is too technical asubmission to be canvassed that without getting the revenueentry no.1502 quashed and set-aside the applicant could nothave got her name entered in the record of rights vide entryno.1668. The Supreme Court decision which has been reliedupon is to fortify the submission that if the applicant got hername entered in the record of rights by playing a fraud, i.e. byfiling a false affidavit, then the entire action could be termedas a nullity. The Supreme Court decision was with regard to theclaim of the appellant to be a member of a Scheduled Tribe.Such claim was put forward on the basis of the false statementand the false affidavit. In such circumstances, the SupremeCourt declined to interfere having regard to the report of thescrutiny committee constituted by the State Government to
look into the validity of the certificate.

Prima facie, I am of the view that for the purpose ofgetting her name entered in the record of rights, all that wasnecessary to be indicated was, that the applicant is one of theClass-I legal heirs. It was not necessary for her to declare thatshe is married to a Muslim and she has embraced Islam byrenouncing her Hindu religion. Once the question of law isanswered in favour of the applicant, I do not see any goodreason to lay much emphasis on the issue of affidavit filed bythe applicant.In the result, this application succeeds and is herebyallowed. The impugned orders

passed by the SSRD as well asthe Collector, Vadodara, are hereby quashed and the orderpassed by the Deputy Collector is hereby affirmed. Themutation of the revenue entry no.1668 in the record of rights isheld to be just, legal and proper. The revenue record be

corrected accordingly.
(J.B.PARDIWALA, J.)