

REGULAR CIVIL APPEAL NO. 45 OF 2024**ORDER BELOW EXHIBIT - 05**

(1) Heard the Ld. Advocates for both the parties as well as the caveator and perused the documents produced in the matter. The present appeal is filed as per the provisions of Order XLI of Code of Civil Procedure. The Ld. Advocate for the appellant has argued that the suit property is in the possession of the appellant and the documents which were produced before the Ld. trial Court is also suggest that the suit property belongs to the Trust and the present appellant – Nutan Kelvani Mandal, Valsad is running educational institutions and hostel is also there in the suit property which fact was proved by the report of Court Commissioner produced before the Ld. trial Court. The Ld. Advocate for the appellant has further argued that the appellant – trust is having 05 colleges and more than 7000 students are studying in those colleges. It is the case of the appellant that the suit property was given to the trust by the grandfather of the Defendant No.1 to 21 in exchange of the property and the trust had allotted the same measurement of land at other place to the grandfather of the defendants. However, the necessary revenue entries in the register has not been made.

(2) The Ld. Advocate for the appellant has further stated that the proceedings for the transfer of the property in the name of trust was initiated in the year 1990, however, the same has not been

completed due to the pending disputes. The Ld. Advocate for the appellant has further stated that the Ld. trial Court has granted Ex-05 in his favour and on rejection of the suit of the plaintiff/appellant, he has preferred the present appeal and therefore, till the appeal is decided, it is necessary to stay the judgment and decree dated 31.08.2024 passed by the Ld. trial Court in Special Civil Suit No. 22/2016. The Ld. Advocate for the appellant has further stated that if the said judgment and decree dated 31.08.2024 is not stayed, then the defendants are likely to transfer the suit property and the purpose of filing of the present appeal will be frustrated and therefore, he has requested to stay the judgment and decree dated 31.08.2024 passed by the Ld. trial Court in Special Civil Suit No. 22/2016.

(3) Whereas, the Defendant No.23 has by filing his reply vide Ex-08 argued that the judgment and decree passed by the Ld. trial Court is according to law and no case has been made out by the appellant for the grant of stay and therefore, he has requested to reject the Ex-05 application of the appellant. The Ld. Advocate for the defendant has further argued that the necessary procedure as per Section 118 of Transfer of Property Act has not been followed by the appellant and there is no registered sale-deed available on the record and the present suit property is agricultural land and whereas, the trust is not agriculturist and therefore, the present Ex-05 application is required to be rejected. The Ld. Advocate for the

defendant has further argued that as per the provisions of Order XXXI, Rule 2 of Code of Civil Procedure, all the trustees were not made parties in the suit and appeal and therefore, the present appeal is liable to be dismissed on the ground of non-joinder of the parties. Concluding the Ld. Advocate for the defendant requested to dismiss the appeal of the appellant with costs.

(4) I have heard the Ld. Advocates for both the parties and perused the documents produced in the matter and reply filed by the Defendant No.23 vide Ex-08. In the present suit, though the notice and summons was issued to all the defendants, only Defendant No.23 has appeared and filed his reply vide Ex-08. It appears that in the present appeal, the Ex-05 application was granted in favour of the appellant by the Ld. trial Court and stay was in operation till the dismissal of the suit by the Ld. trial Court. The present suit came to be dismissed on 31.08.2024 and the plaintiff/appellant has preferred the present appeal and by filing the present Ex-05 application, requested to grant status quo in the matter. It appears that in the suit property, there is hostel building and canteen/mess for the students which have been admitted by the defendants in his cross-examination and it is also established by the report of Court Commissioner that there is hostel and canteen/mess in the suit property. Therefore, considering the facts and circumstances of the present appeal, it appears that if the judgment and decree dated 31.08.2024 passed in Special Civil Suit

No. 22/2016 is not stayed, then the purpose of filing of the appeal will be frustrated and if the suit property is transferred to third party, it will give rise to the multiplicity of proceedings. Therefore, in the interest of justice, the following order is passed :-

::: O R D E R :::

(i) The present Ex-05 application of the appellant/plaintiff is hereby **allowed**.

(ii) The judgment and decree dated 31.08.2024 passed in Special Civil Suit No. 22/2016 is hereby **stayed** till the final disposal of the present appeal.

(iii) No order as to costs.

Date : 05.10.2024

Place : Valsad

**[V.K. Pathak]
Principal District Judge,
Valsad
(Code No. GJ00468)**