

RCA/2/2015

ORDER

Registration No.: RCA/2/2015

Filing No.: RCA/2/2015

Filed On: 09/01/2015

Registered On : 09/01/2015

IN THE DISTRICT COURT AT PALANPUR

REGULAR CIVIL APPEAL NO. 2 OF 2015.

RCA/2/2015

Appellant :

1. ABDULRAZAK SANDALBHAI BHISTI MUSALMAN
AT-BEHIND STATION MASJID, PALANPUR
TA-PALANPUR, DIST-BANASKANTHA
PALANPUR

VERSUS

Respondent :

1. IKBALBHAI BASHIRBHAI MUSALMAN
AT-BEHIND STATION MASJID, PALANPUR
TA-PALANPUR, DIST-BANASKANTHA
PALANPUR

Appearance:

I.S.CHAVADA For Appellant 1

G.R.TRIVEDI For Respondent 1

COMMON ORDER BELOW EXHS. 5 & 10

IN

REGULAR CIVIL APPEAL NO. 2/2015

1. During the pendency of this Regular Civil Appeal learned advocate
Shri I. S. Chavda for the appellant has moved to this Court at Exhs.

5 & 10 praying for temporary injunction and requested to stay the execution of judgment and decree dtd. 16.12.2014 passed by learned Principal Sr. Civil Judge, Palanpur in Regular Civil Suit No. 253/1998 till the final disposal of the appeal.

2. The factual matrix of the application Exh. 5 of the appellant are as under.

That the disputed land is in possession and ownership of the appellant original plaintiff and in the original suit injunction was granted vide order passed below Exh. 27 till the disposals of the suit and also till the filing of the appeal and therefore, it is prayed to stay the final order passed by learned Principal Sr. Civil Judge in the original suit till the disposal of the appeal.

It is also contended that if the final order of learned Principal Sr. Civil Judge, Palanpur is not stayed, in that case appellant would suffer a great loss which cannot compensate in terms of money whereas respondent would not suffer any loss.

It is further contended that impugned judgment and decree passed on 16.12.2014 therefore, appellant had filed application to stay the execution of the judgment and decree and therefore, stay was granted till 15.01.2015 and hence, the present application is filed to stay the judgment and decree till the disposal of the appeal.

On all such grounds the appellant has prayed to allow the application Exh. 5.

The appellant has also prayed vide Exh. 10 to extend the Status-quo.

3. Heard the arguments advanced by both the parties. It is made clear that at this juncture this Court is not travelling final decision of regular civil appeal. Simultaneously, it is made clear that normally if Status-quo or the Stay is granted by learned Sr. Civil Judge or Civil Judge at very initial stage, in that case generally Appellate Court used to continue the same but here the situation is little different. Originally plaintiff has come forward with the case of possession of Government open land since last more than 30 years but learned Principal Sr. Civil Judge, Palanpur has observed that possession is not more than 30 years old. Since so far as adverse possession is required to be legal against Government if it requires more than 30 Years. Here, the possession is not of more than 30 Years but it is of 20 Years (per judgment of learned Principal Sr. Civil Judge, Palanpur in R & P) therefore, prima facie indirectly possession is of 20 Years it means if the Status-quo is not maintained till the decision of appeal, in that case the object of filing appeal would be frustrated. In the present case earlier Status-

quo was granted but subsequently after hearing both the sides the same was vacated. Further, possession is adverse or not that was a question of trial but subsequently after trial the same is disbelieved by learned Principal Sr. Civil Judge, Palanpur. Now appeal is continuing process of suit, therefore, once Status-quo is granted, it is just and proper to maintain the Status-quo, otherwise, the object of the filing appeal would be frustrated. But at the same time when learned Principal Sr. Civil Judge, Palanpur has observed that there is no right of plaintiff on open land, upon such circumstances time bound schedule is required to be given so that at the earliest Appellate Court can decide the same and the rights of parties may not be affected therefore, following order is passed in the greater interest of justice.

:: O R D E R ::

- (1) An application Exh. 5 is partly allowed to the extent that Status-quo of disputed property is maintained till next date.
- (2) On every fresh date appellant is required to file extension report so that new construction may be prevented (if any) and respondent is at liberty to make Panchnama if so requires.
- (3) When this Court has maintained the Status-quo, application Exh. 10 stands disposed of accordingly.
- (4) No order as to costs.

- (5) Both the parties will conclude final appeal within one year from date of this order.
- (6) This order be kept with application Exh. 5 and a copy of this order be kept with application Exh. 10.

Pronounced in the Open Court today i.e. on **16th** Day of **March, 2015.**

P A L A N P U R.
Date: 16/03/2015

(Ashokkumar Chimanlal Joshi)
Principal District Judge,
B.K.DISTRICT, PALANPUR
(Code No. GJ00095)

VISHAL