

**IN THE COURT OF
ADDITIONAL DISTRICT AND SESSIONS JUDGE,
CHHOTAUDEPUR AT BODELI.**

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Order Below Exhibit 05

in

Regular Civil Appeal No. 01 of 2025

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1. The Appellants herein are the Original Defendants in Regular Civil Suit No. 137 of 2016, and being aggrieved by the judgment and decree dated 04.01.2025 passed by the Learned Principal Senior Civil Judge, Bodeli, whereby the suit filed by the plaintiff was allowed and the defendants were directed to specifically perform the Registered Sale Deed No. 870/2012 dated 13.09.2012 in favour of the plaintiffs in respect of the suit property, further holding that the defendants have no right to sell, mortgage, gift or otherwise transfer the said property to any third party, and an injunction was granted accordingly, and whereby the defendants were also directed to receive the balance consideration of Rs. 20,000/- within 30 days and execute the registered sale deed or in default the said amount to be deposited in Court for execution through a Commission. The appellants have preferred the present appeal and along with

the present application under Order 41 Rule 5 CPC seeking stay of operation and execution of the said judgment and decree, as otherwise the appellants would suffer irreparable loss by losing their land for a nominal amount, and the appeal itself would be rendered infructuous.

Submissions on behalf of the Appellants

2. A Learned counsel appearing for the Appellants /Original Defendants has submitted that the Appellants were the defendants in Regular Civil Suit No. 137 of 2016 before the Court of the Principal Senior Civil Judge, Bodeli. By judgment and decree dated 04.01.2025, the said Court decreed the suit for specific performance and directed the defendants to execute the Registered Sale Deed No. 870/2012 dated 13.09.2012 in favour of the plaintiffs in respect of the suit property, further restraining the defendants from selling, mortgaging, gifting or otherwise transferring the property to any third party, and also directing payment of the balance sum of Rs. 20,000/- within thirty days, failing which the said amount was to be deposited in Court and the sale deed executed through a Commissioner. The appellants have assailed the said judgment and decree in appeal. It is their case that unless the decree dated 04.01.2025 is stayed,

the appeal will be rendered infructuous and the appellants will suffer irreparable injury by being dispossessed of their valuable agricultural land for a nominal balance consideration. Learned counsel has urged that the appellants have a strong prima facie case on the merits, inasmuch as the trial Court failed to properly appreciate the effect of Registered Sale Deed No. 961/2010, the obligations under Registered Sale Deed No. 870/2012, and the question of readiness and willingness of the plaintiffs. It is contended that these issues raise substantial questions of law and fact requiring appellate scrutiny. It is further contended that if the decree is allowed to be executed during the pendency of the appeal, the appellants will suffer irreparable loss and prejudice which cannot be compensated in monetary terms. Conversely, no comparable prejudice would be caused to the Respondents if execution is stayed, as their rights can be safeguarded by directing deposit of the balance sum of Rs. 20,000/- or other appropriate security. Counsel emphasises that the balance of convenience lies in favour of the appellants. Unless the execution of the decree is stayed, the appellants right to pursue their statutory appeal will be rendered meaningless. Reliance has also been placed on the settled

principle that the discretionary power to grant stay under Order 41 Rule 5 CPC ought to be exercised where the impugned decree, if executed, would result in irreversible prejudice to the appellants and frustrate the very object of the appeal. On the above grounds, it is prayed that execution of the judgment and decree dated 04.01.2025 passed in Regular Civil Suit No. 137 of 2016 be stayed pending disposal of the appeal, and that the Respondents be restrained from taking any steps to alienate or encumber the suit property, subject to such terms as this Court may deem fit.

Submissions on behalf of the Respondents

3. Learned counsel for the Respondent/Original Plaintiff has opposed the present appeal and the stay application and has submitted that the judgment and decree dated 04.01.2025 passed by the Learned Principal Senior Civil Judge, Bodeli in Regular Civil Suit No. 137 of 2016 is well-reasoned, based on proper appreciation of evidence, and calls for no interference by this Court. The present application for stay is an attempt to delay the execution of a lawful decree and ought to be dismissed at the threshold. It is submitted that the original plaintiff instituted the suit seeking specific performance of

Registered Sale Deed No. 870/2012 dated 13.09.2012, declaration, and consequential reliefs in respect of the suit property being Block/Survey No. 231, Account No. 77, Moje Bamroli, admeasuring 0-24-97 hectares. The suit was originally filed before the Court at Sankheda (R.M. No. 24/2013) and later transferred to Bodeli as Regular Civil Suit No. 137 of 2016. The trial Court, after hearing both sides and recording evidence, decreed the suit by directing that the plaintiffs are entitled to specific performance of the registered sale deed and by further granting a permanent injunction restraining the defendants from selling, mortgaging, gifting, or transferring the suit property to any third party. The defendants were also directed to accept the balance consideration of Rs. 20,000/- within thirty days or, in the alternative, the said amount to be deposited in Court with liberty to the Court Commissioner to execute the sale deed. Further, the plaintiff examined Mitesh Gopalbhai Shah, who confirmed the execution and validity of the registered documents and produced relevant certified copies. The defendant himself admitted execution of the Registered Sale Deed No. 870/2012, and in cross-examination, his son Kamleshbhai Hasmukhbhai Patel identified and accepted the

defendant's signature thereon. Hence, execution of the sale deed was conclusively established. The registered deed of 2012 imposed clear obligations on the defendant, namely to cause necessary entries to be made in the revenue record within four months, to secure title clearance, and to execute the final registered sale deed in favour of the plaintiff. The defendant deliberately failed to carry out these obligations despite service of notice dated 15.01.2013 (Exh. 99). The plaintiff(present respondents), having paid Rs. 1,50,000/- out of the total consideration of Rs. 1,70,000/- and having demonstrated readiness and willingness to pay the balance, had no option but to seek enforcement of the contract through Court.* On the question of limitation, counsel for the respondent submits that the cause of action arose only upon expiry of the four-month period prescribed in the deed. The suit was instituted on 05.03.2013, which was well within the statutory period. The plea of limitation raised by the appellants is thus untenable. With regard to readiness and willingness, it is contended that the plaintiff/respondents consistently demonstrated his capacity to perform his part of the contract. The fixed deposit maintained in the name of the plaintiff's wife, with accrued interest, proved

availability of funds. The plaintiff's conduct before and after the institution of the suit reflected his bona fide. As held by the Hon'ble Supreme Court in *Sughar Singh v. Hari Singh* (Civil Appeal No. 5110 of 2021) and *Ramathal v. Maruthathal* (Civil Appeal No. 10741 of 2017), once readiness and willingness is established and substantial consideration is proved to have been paid, a decree for specific performance should ordinarily follow. Learned counsel further submits that the discretion exercised by the trial Court is based on settled legal principles and there is no perversity or error apparent. On the contrary, refusing to grant specific performance despite payment of major part consideration would reward the defendant's default and encourage dishonesty. It is therefore argued that the appellants have no prima facie case in their favour, nor is there any irreparable injury to them if the decree is executed. The balance of convenience is overwhelmingly in favour of the respondent/plaintiff who has been waiting since 2012 for completion of the transaction. The stay application is a device to delay execution and deprive the respondent of fruits of a lawful decree. In totality, it is submitted that the appeal itself is devoid of merit and the stay application is wholly misconceived.

This Hon'ble Court may therefor vacate the stay application and direct the appellants/defendants to execute the sale deed in favour of the plaintiff within a time to be fixed by this Court, with costs.

Findings :

4. I have carefully considered the rival submissions and perused the trial Court record. The principles governing grant of stay under Order XLI Rule 5 CPC are well settled: the applicant must show (i) a prima facie case, (ii) likelihood of irreparable prejudice, and (iii) balance of convenience in his favour.
5. In the present case, the execution of the Registered Sale Deed No. 870/2012 dated 13.09.2012 is not in serious dispute. The defendant himself admitted execution, corroborated by the testimony of his son. Out of the total consideration of Rs. 1,70,000/–, an amount of Rs. 1,50,000/– has already been paid by the plaintiffs–respondents. The remaining balance of Rs. 20,000/– is comparatively nominal. The respondents have consistently expressed readiness and willingness to perform their part of the contract and have even offered to deposit the balance amount in Court.

- 6.** At the same time, the appellants have raised arguable grounds relating to readiness and willingness, the effect of the earlier sale deed of 2010, and appreciation of evidence by the trial Court. These contentions require consideration at the stage of final hearing. If the decree is executed during the pendency of the appeal, the property may stand transferred, third party rights and interests may arise, and the appeal may be rendered infructuous.
- 7.** On the other hand, the respondents have already paid substantial consideration and have been awaiting completion of the transaction since 2012. To indefinitely restrain execution would unjustly prejudice them. Hence, the equities require balancing: while the subject matter of the appeal must be preserved, the rights of the decree-holders must also be protected.
- 8.** In these circumstances, striking a balance between the interests of the appellants as well as the respondents is the need of the hour. This Court is, therefore, of the considered view that an equitable balance must be maintained between the rights of both parties, and accordingly, the following order is passed in the larger interest of justice.

:: ORDER ::

1. The application under Order 41 Rule 5 CPC is **partly allowed**.
2. Execution and operation of the judgment and decree dated 04.01.2025 passed in Regular Civil Suit No. 137 of 2016 **shall remain stayed pending disposal of the appeal**, subject to the following conditions:
 - (a) The respondents (original plaintiffs) shall deposit the balance consideration of **Rs. 20,000/- (Rupees Twenty Thousand only)** before the learned trial Court within **two weeks** from today.
 - (b) The appellants (original defendants) shall file an undertaking before this Court within **two weeks** that they shall not sell, mortgage, gift, lease, transfer, or create any third party rights or encumbrances in respect of the suit property until final disposal of the appeal.
3. In case of default by either party in complying with the above conditions within the stipulated period, the interim protection shall stand vacated automatically, and the decree-holders shall be entitled to proceed with execution.

- 4.** It is clarified that this order is passed only for balancing equities at the interlocutory stage and shall not be construed as an expression on the merits of the appeal.

Pronounced & Signed in the open Court today on 10th September,2025

Date: 10/09/2025.
Place:Bodeli.

[S. P. Shankar]
UIC No. GJ01601
Addl. District Judge,
CHHOTAUDEPUR AT BODELI