

**IN THE COURT OF 5TH ADDITIONAL DISTRICT JUDGE,
GANDHINAGAR**

R. C. A. No. 28/2025

SARIKABEN KESHAVBHAI PATEL & ORS

...APPELLANT

VERSUS

SHYAMKUMAR RAMPRATITI SARSAIYA & ORS

...RESPONDENT

Appearance:

Ms. Tamanna Upadhyay, Mr. D. N. Shah, Ld. Adv. for Appellant.
Mr. H. K. Panchal, Ld. Adv. for Respondent.

ORDER BELOW EX. 5

**Application for Stay of Final Judgment & Decree Dated
06.03.2025 passed in S.C.S. No. 250/2011**

01. Read the application. Heard the Ld. Advocates for the parties. Perused the documents and judgment and decree of the Ld. Trial Court.
02. The Ld. Advocate for the appellant (Ori. Plaintiff) has submitted that, being aggrieved and dis-satisfied with the judgment and decree passed in S.C.S. No. 250/2011, by Ld. 5th Addl. Senior Civil Judge, Gandhinagar, whereby the Ld. Trial Judge was pleased to dismissed the suit with the observation that, the sale deed under the challege is void

however the suit of the plaintiff is barred by law of limitation, the appellant (Original-Plaintiff) has preferred the present appeal and along with the appeal has preferred the present application Ex. 5, and prayed to stay the order of Ld. Trial Court on the ground that;

The judgment and decree passed by Ld. Trial Court is illegal and against the settled principle of law and there are all the chances that the appellant will succeed in appeal and therefore, if pending the appeal the implementation of judgment and decree passed by Ld. Trial Court is not stayed, there are all the chances that the Respondents (Original Defendants) may sale the disputed property, though the sale deed is fraudulently executed on the basis of the power of attorney and the suit is dismissed erroneously on the ground of limitation. Further, it is submitted that, the appellant is having prima-facie case and the concept of balance of convenience is in his favour and if the stay as prayed for is not granted, under that circumstances, he will suffer irreparable loss. Therefore, on the above grounds he prayed to allow the present application and grant relief as prayed for. Ld. Advocate for the plaintiff has also relied upon the judgment of Hon'ble Supreme Court in Shanti Devi through Lrs. Goran Vs. Jagan Devi & Others, reported in 2025 SCC Online SC 1961.

03. The notice was served upon the respondent and they have appeared through their Ld. Advocate and filed reply/objection to the present application vide Ex. 14 and

denied all the facts of the present application and submitted that, the order passed by the Ld. Trial Court is just and proper and does not require any interference and the Ld. Trial Court has rightly held that, the suit is barred by law of limitation and the defendant no. 1 has executed the sale deed in favour of defendant no. 2 with consideration of Rs. 35,00,000/-, on the virtue of Power of Attorney duly executed by the plaintiff and within the knowledge of the plaintiff since 2008 when the plaintiff has filled up the form for transfer of electricity connection in name of defendant no. 2, thus the plaintiff failed to rebut the evidence and failed in suit. Further, the plaintiff was also not granted temporary injunction filed along with the suit. Therefore, there is not question of granting any stay at this stage and present application filed for stay is required to be rejected with cost.

04. In view of the aforesaid arguments advanced by both the side, the factual matrix of the suit is such that, the plaintiff has executed one Power of Attorney in favor of defendant no. 1 and on the basis of that POA the defendant no. 1 has executed registered sale deed in favor of defendant no. 2, wife of defendant no. 1. The suit is filed for cancellation of the alleged POA and Registered Sale Deed and also for the permanent injunction restraining the defendant for further transfer, alienation etc. The suit was dismissed by the Ld. Trial Court, with the observation that the plaintiff suit is barred by law of limitation. This Court has perused the

documentary evidence produced on record and judgment and decree passed by Ld. Trial Court. From the perusal of record as well as judgment & decree of Ld. Trial Court, it is crystal clear and undisputed that, the parties have executed POA and on basis of that the alleged sale deed was came to be executed and the Ld. Trial Court has also held that the said sale deed was not executed in consonance with provisions of law and the grounds raised in the present appeal that the Ld. Trial Court has wrongly applied Article 58 instead of Article 65 of the Limitation Act, 1963 So, on perusing the documents produced herewith, it could be believed at this stage that, the appellant has prima facie case. The appellant has further argued that, as the sale deed is fraudulently executed and the plaintiffs are true owners of the disputed property and if the defendants part with the property or transfer or alienate the property, the appellant will suffer irreparable loss and balance of convenience is also in favour of the appellant, which is also sustainable. So far as, fraudulent execution of sale deed, Law of Limitation, the suit is dismissed erroneously and other contentions raised in the appeal are concerned those are matter of arguments. Looking to the aforesaid facts and circumstances and the law set out in the catena of judgments, if there exists element of prima facie case, irreparable loss and balance of convenience the Court can protect the right of the party by exercising discretionary power to do the justice and grant the relief of equity. Hence, under the above

circumstances the present stay application of the appellant deserve to be allowed, the following order is passed, in the larger interest of justice.

::- O R D E R -::

- 1) Present application Ex. 5 is allowed.
- 2) The implementation of impugned judgment and decree dated 06.03.2025 passed in S.C.S. No. 250/2011 below Ex. 175 by the Ld. 5th Additional Senior Civil Judge, Gandhinagar, is stayed and consequently, respondents are temporarily restrained from transferring, alienating, parting or creating third party rights in the suit property in any manner, till final disposal of present appeal.

**Pronounced and Signed in Open Court today on this
13th Day of February, 2026.**

**Date: 13.02.2026.
Place: Gandhinagar.**

**(Dilip Pukhraj Purohit)
5th Addl. District Judge,
Gandhinagar.
GJ00928.**