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| GJJM010040822022  RCA/147/2022 |  सत्यमेव जयते | Filed on : | 19/11/2022 | | |
| | | Registered on : | 19/11/2022 | | |
| | | Decided on : | 30/03/2026 | | |
| | | Duration : | Years | Months | Days |
| | | 03 | 04 | 11 | |

IN THE HON'BLE COURT OF 3rd ADDL. DISTRICT JUDGE
Dist. : JAMNAGAR

Exh :- 9

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| Regular Civil Appeal No. : 147/2022 | |
| Appellants (Original Plaintiffs) | 1 ABIDBHAI ABBASBHAI KHERANI VIGILANT PERSON OF CITY JAMNAGAR AND ADMINISTRATIVE HEAD OF OLD RAILWAY STATION PLACE, Age:64, Occupation: Trade. |
| | 2 ALAMJAIB ABIDBHAI KHERANI Age: 33, Occupation: Working as Vigilant Person, Residing At: Galaxy Cinema, Railway Siding Area, Jamnagar. |
| Versus | |
| Respondents (Original Defendants) | 1 MURTUZABHAI NOORMOHAMMAD VAHORA Age: Adult, Occupation: Business, Residing At: City Color, Dhanseri Khad, Below Health Club, Jamnagar. |
| | 2 MUSTAFA ABBASBHAI LOKHANWALA Age: Adult, Occupation: Business, Residing At: Opposite S.A Color Amjariya Chamber, K.V. Road, Jamnagar. |
| | 3 ABBASBHAI NOORMOHAMMAD MAKATI Age: Adult, Occupation: Trade. Residing At: Anjeria Chamber, Bedi Gate K.V. Road, Jamnagar. |
| | 4 MANOJBHAI HASMUKHLAL NIMAVAT Age: 52, Occupation: Trade, Residing At: Radha Krishna Temple, Near Satyanarayana Temple, Jamnagar. |
| | 5 JAMNAGAR MUNICIPAL CORPORATION through:- Commissioner, Municipal Corporation, Jamnagar. |

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| 6 | JAMNAGAR MUNICIPAL CORPORATION Town Planning Officer. Municipal Corporation, Jamnagar. |
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APPEARANCE :-

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| <i>Ld. Advocate for the Appellants</i> | <i>Mr. C. K. Nathwani</i> |
| <i>Ld. Advocate for the Respondent Nos.1 & 2</i> | <i>Mr. J. N. Zhala</i> |
| <i>Ld. Advocate for the Respondent No.3</i> | <i>None</i> |
| <i>Ld. Advocate for the Respondent No. 4</i> | <i>Mr. R. A. Mehta</i> |
| <i>Ld. Advocate for the Respondent No. 5 & 6</i> | <i>Mr. M. A. Shah</i> |

APPEAL UNDER SECTION 96 READ WITH ORDER XLI OF I-SCHEDULE OF CODE OF CIVIL PROCEDURE CHALLENGING ORDER DATED 09/11/2022 IN REGULAR CIVIL SUIT No. 530/2022 PASSED BY THE LEARNED 3rd ADDITIONAL SENIOR CIVIL JUDGE, AT JAMNAGAR.

◀ J U D G M E N T ▶

- (1). The Appellants are the “Original Plaintiffs” and the Respondents are the ‘Original Defendants”, in Regular Civil Suit No.530/2022 and they will be here-in-after referred by their original status as ‘Plaintiffs’ and ‘Defendants’, for the sake of brevity.
- (2). The Original Plaintiffs had filed Regular Civil Suit No.530/2022 declaration and permanent injunction before the Hon’ble Civil Court, Jamnagar. On conclusion of the trial and after hearing the Ld. Advocates for parties, the Hon’ble 3rd Additional Senior Civil Judge, Jamnagar, passed an impugned Order below Exh.-1 on dt.09/11/2022 in R.C.S No.530/2022 whereby dismissed the suit of the Plaintiffs under Order VII, Rule 11(d) of CPC. Being aggrieved and dissatisfied by the said Order dated 09/11/2022 passed below Exh.-1 in Regular Civil Suit No.530/2022, the

Plaintiffs have preferred this appeal under Section 96 read with Order-XLI of I-Schedule of Civil Procedure Code, 1908.

- (3). The appeal was registered and process were issued. On service of the process, the Respondents / Original Defendants had appeared and objected the appeal and submitted that the Ld. Trial Judge has not committed any illegality or error and therefore, it does not require any interference and requested to confirm the Order and decree passed by the Hon’ble 3rd Additional Senior Civil Judge, Jamnagar and to dismiss the appeal with costs.
- (4). For adjudication of this appeal, following points for determination, arises:-

:: POINTS FOR DETERMINATION ::

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| 1 | Whether the Suit is not premature and is maintainable under law? |
| 2 | Whether the impugned Order dated 09/11/2022 passed below Exh.-1 in Regular Civil Suit No.530/2022 by Ld. 3 rd Additional Senior Civil Judge, Jamnagar, is erroneous, illegal, perverse or with material irregularity, which requires interference by this Court and whether the said Order deserves to be quashed and set aside ? |
| 3 | What’s Order & Decree ? |

- (5). My findings, arrived at, of the above stated points, are as under :

-: FINDINGS :-

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| 1 | NEGATIVE |
| 2 | NEGATIVE |

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| 3 | As per FINAL ORDER |
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- (6). I have heard the Ld. Advocate Mr. C. K. Nathwani for the Appellants and the Ld. Advocate Mr. J. N. Zhala for the Respondent No. 1 & 2 and the Ld. Advocate Mr. R.A. Mehta for the Respondent No. 4 and Ld. Advocate Mr. M.A. Shah for the Respondent No. 5 & 6, at great length. I have also considered the impugned Order dated 09/11/2022 passed below Exh.-1 in Regular Civil Suit No.530/2022 by the Hon'ble 3rd Additional Senior Civil Judge, Jamnagar and also gone through the record and proceedings of the suit of Trial Court
- (7). The reasons, for the findings arrived at, of the above issues, are as under :

: REASONS :

POINT No. 1 :

- (7.1). The Plaintiffs have filed the representative suit for removing the illegal construction of the Defendant No. 1 to 4 by the Statutory Authority being Defendant No. 5 and 6. The Ld. 3rd Additional Senior Civil Judge, Jamnagar, was pleased to reject the Suit under Order VII Rule 11(d) of CPC on the ground that the suit is being premature. Hence, the Plaintiffs have preferred this Appeal.
- (7.2). It is the case of the Plaintiffs that the Defendant No. 1 to 4 were carrying on illegal constructions and it is duty of the Defendant No.5 to 6 to prevent the illegal

construction and to demolish the same. If we go through the records of the suit, then the Plaintiffs had issued Legal Notice dtd. 02/11/2022 at Mark-3/11 to the Defendant No. 5 and 6 for discharging the Statutory Duty and to remove the illegal construction of the Defendant No. 1 to 4.

(7.3). If we go through the provision made under Section 253 of the Gujarat Municipalities Act, 1963 then it read as follows:-

Section 253 in The Gujarat Municipalities Act, 1963

“(1) No suit shall lie against a municipality or against any officer or servant of municipality in respect of any act done in pursuance or execution or intended execution of this Act, or in respect of any alleged neglect or default in the execution of this Act-

(a) unless it is instituted within six months next after the accrual of the cause of action; and

(b) until the expiration of one month after notice in writing has been, in the case of a municipality, delivered or left at the municipal office and in the case of an officer or servant of a municipality, delivered to him or left at his office or place of abode; and all such notices shall state with reasonable particularity, the cause of action and the name and place of

abode of the intending Plaintiff and of his advocate, pleader or agent, if any, for the purpose of the suit.

- (2) *At the trial of any such suit,-*
- (a) *the Plaintiff shall not be permitted to adduce evidence relating to any cause of action save such as is set forth in the notice delivered or left by him as aforesaid;*
- (b) *if the suit before damages and if tender of sufficient amends shall have been made before the action was brought the Plaintiff shall not recover more than the amount so tendered and shall pay all costs incurred by the Defendant after such tender.*
- (3) *If the Defendant in any such suit is an officer or servant of a municipality payment of any sum or part thereof payable by him or in consequence of the suit may, with the sanction of the executive committee be made from the municipal fund.”*

(7.4). Thus, from the above provision, it is crystal clear that there is bar of filing of suit against the municipality or against its officer, unless 1 month time after issuance of notice in writing has been expired. The Notice is issued dtd.02/11/2022 and present suit is being filed

just after 5 days on dtd.07/11/2022. The Plaintiffs have not prayed to Court to waive the period of expiry of 1 month after issuance of notice and therefore, the suit is premature. Secondly, the Plaintiffs had not given application to the Hon'ble Trial Court for waiving statutory notice period and therefore, also the suit can be said to be premature. Under such circumstances, the Ld. Trial Court has not committed any error in dismissing the suit.

- (7.5). Moreover, the Ld. Advocate for the Defendants has submitted that the municipality have already taken the actions and demolished the properties as per their information. Moreover, when the suit itself is premature, then it is not maintainable under law and therefore, I answer the **POINT No. 1** in **NEGATIVE**.

POINT No. 2 & 3 :

- (7.6). In view of the reasons stated here-in-above, the suit is premature and not maintainable at law and therefore, Ld. Trial Court has not committed any error and therefore, the impugned Order dated 09/11/2022 passed below Exh.-1 in Regular Civil Suit No. 530/2022 does not calls for any interference by this Court and the

appeal deserves to be dismissed. Therefore, I answer **POINT No. 2** in **NEGATIVE** and answer Point No. 3 by passing the following order.

-: FINAL ORDER :-

- The appeal is dismissed.
- The impugned Order dated 09/11/2022 passed below Exh.-1 in Regular Civil Suit No. 530/2022 by the Ld. 3rd Additional Senior Civil Judge, Jamnagar, is hereby, confirmed.
- No Order as to costs.
- Yadi, alongwith the Copy of this Judgment and Order as well as the Record and Proceeding of Regular Civil Suit No. 530/2022, is ordered to be sent back to the Hon'ble Trial Court, Jamnagar, forthwith.

DECREE IS TO BE DRAWN ACCORDINGLY.

Signed, pronounced and declared in the open Court on this 30th day of March, 2026, at Jamnagar.

Date : 30/03/2026

Place : Jamnagar

(Rasikkumar V. Mandani)

3rd Additional District Judge

Jamnagar. (Code : GJ00715)