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**IN THE COURT OF PRINCIPAL DISTRICT JUDGE
(MR.R.T.PANCHAL), NARMADA, AT – RAJPIPLA**

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**ORDER BELOW EXH.5 IN REGULAR CIVIL APPEAL
NO.15 OF 2021**

- [1] Present appellants i.e. appellant No. 1 Vijaybhai Jayantilal Bhatt, appellant No. 2 Prakashbhai Jayantilal Bhatt, appellant No. 3 Umeshkumar Jayantilal Bhatt have preferred this appeal bearing RCA No. 15/2021 and stay application Exh.5 in this appeal under the provision of Order-41, R-5 & Sec.96 of the C.P.C. to stay the Judgment & Decree dated 11.02.2021 passed in R.C.S. No.37/2001 till final disposal of the present appeal.
- [2] Learned Advocate for the appellant has mainly relied on the contentions raised in the memo of appeal Exh.1 and has argued that the original plaintiff i.e. Gopalbhai Dhansukhbhai Bhatt had filed R.C.S. No.37/2001 which was dismissed by learned Trial Court vide Judgment & Decree dated 11.02.2021. It is further submitted that appellants have prima facie case, balance of convenience in favour of the plaintiffs and if the stay application is

not granted, then present appeal will become infructuous. Lastly, learned advocate for the appellant has prayed to stay the Judgment Decree dated 11.02.2021 passed in R.C.S. No.37/2001 till final disposal of the present appeal.

- [3] On issuance of notice, the respondents have appeared through their ld advocate Mr. M.H. Saiyad and filed written arguments vide Exh. 61 which is not pressed by him and thereafter he has filed new written arguments vide **Exh. 80** in which he has stated that the appellant's elder Gopalbhai Dhansukhbhai Bhatt had filed RCS No. 37/2001 against the respondents which was dismissed by ld Trial Court. That the application Exh. 5 filed by the appellants is not legal, proper and maintainable in the eye of law. It is further submitted that the appellants are not entitled for any relief prayed in the present application Exh. 5. It is further submitted that the learned Trial Court has passed legal and proper order and the appellant is required to execute the same. It is further submitted that the appellants have to execute the order of learned Trial Court within time limit, but the appellants have failed to do so and hence the present application is not maintainable. Lastly, learned advocate for the respondents prayed to dismiss the present injunction application Exh.5 along with cost in the interest of justice.

- [4] The R&P of the learned Trial Court for Regular Civil Suit No.37/2001 was called for, received and considered.
- [5] This Court has gone through the present application, Judgment & Decree of the learned Trial Court, written arguments advanced by the respondent vide **Exh. 80** as well as submissions made by learned advocates for the parties. Looking to the record and judgment of the Trial Court, present appellants i.e. appellant No. 1 Vijaybhai Jayantilal Bhatt, appellant No. 2 Prakashbhai Jayantilal Bhatt, appellant No. 3 Umeshkumar Jayantilal Bhatt are not the party in the original suit RCS No. 37/2001.

Ld advocate for appellants has relied on following case-laws :

- LAWS (SC) 2003 3 46 in the case between Sahebgouda (dead) by LRS v/s OGEPPA
- LAWS (SC) 2021 2 17 in the case between A. Subramaniam and Another v/s R. Pannerselvam
- LAWS (MAD) 2001 4 50 in the case between S.K. Parthasarathy Naidu v/s K. Rama Naidu

This Appellate Court has gone through the case-laws relied by ld advocate for appellants but the facts and circumstances of the present case are different from the case-laws cited by ld advocate for appellants, therefore the case-laws are not helpful to the present appellants.

- [6] In these circumstances, the present appellants are not the party in the original suit No. 37/2001. Moreover, looking to

the record, father (Jayantibhai Dahyashankar Bhatt) of the present appellants joined as a heir of original plaintiff Gopal Dhansukh Bhatt in RCS No. 37/2001. The RCS No. 37/2001 was disposed off (decided) on dated 11/02/2021 by the 1d Trial Court and looking to the present appeal Exh. 1 the appellants stated in para 3 that his father was joined as a party in original suit but he died on dated 13/04/2019. Even though, the appellants's father died during the pendency of the original suit but present appellants not joined in the original suit as heirs of late Jayantibhai Dahyashankar Bhatt. Looking to the record of 1d Trial Court the present appellant Vijay Jayantilal Bhatt has deposed before Trial Court as POA of Jayantibhai Dahyashankar Bhatt vide Exh. 402. Despite of this, the present appellant Vijay Jayantilal Bhatt and other two appellants have not applied to join themselves as party in the original suit before Trial Court.

In these circumstances, looking to the record, considering the overall facts, there is no prima-facie case or balance of convenience in favour of the appellants at this stage. When the prima-facie case and balance of convenience are not in favour of the appellants at this stage, then there is no question of irreparable loss. In view of the above discussion, this Court comes to the conclusion that the present stay application is required to be rejected and therefore following order is passed accordingly.

ORDER

- [1] The appellant's present stay application Exh.5 is hereby rejected.
- [2] The cost should follow the final order of the appeal.

Signed and pronounced in the Court today on 6th day of February, 2026.

Date: 06/02/2026
Place: Rajpipla

(Rameshkumar Thakorbhai Panchal)
(GJ00413)
Principal District Judge,
Narmada, At – Rajpipla