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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.69 OF 2023**

- [1] Present appellant has preferred this application Exh.5 for injunction in this appeal to stay execution of Judgment & Decree dated 12.10.2023 passed in Regular Civil Suit No.3/2012 by the learned Judicial Magistrate First Class, Sagbara, Dist. Narmada, till final disposal of the present appeal.
- [2] Ld. Advocate Mr. H.K. Darji for the appellants has mainly relied on the contentions raised in the memo of appeal Exh.1 and has further argued that the appellants have filed the present appeal against the Judgment & Decree dated 12.10.2023 passed in Regular Civil Suit No.3/2012 by the learned JMFC, Sagbara, Dist. Narmada and there are considerable substances prima-facie to allow the present appeal. It is further submitted that the suit land is in possession of the appellants since the beginning and if the Judgment & Decree of learned Trial Court is executed at this juncture, then the appellant's right over the suit land will be frustrated and

the appellants will have severe financial loss and the present appeal filed by the appellants will become infructuous. It is further submitted that if the execution of Judgment & Decree is stayed at this stage, then there will not be any harm to the respondents, whereas there will be irreparable loss to the appellants in terms of money and therefore the balance of convenience is in favour of the appellants. Lastly, it is prayed to stay the Judgment & Decree dated 12.10.2023 passed in Regular Civil Suit No.3/2012 till final disposal of the present appeal.

- [3] Ld. Advocate Mr. S.M. Malik appeared on behalf of the respondents and filed written objections at Exh.34 objecting the present application. He has mainly argued that the injunction application filed by the appellants is not maintainable and hence it is required to be rejected along with the cost. It is also submitted that the learned Trial Court has passed the Judgment & Decree on merit therefore, the interim injunction application of appellant is not maintainable. It is further submitted that the learned Trial Court has passed legal and proper Judgment & Decree and it does not require any interference. Lastly, it is prayed to dismiss the present injunction application Exh.5 along with cost in the interest of justice.

- [4] It is required to note here that earlier my predecessor has passed order below Exh. 5 in the present RCA No. 69/2023 on 19/01/2024 and passed ad-interim injunction order.
- [5] The R&P of the learned Trial Court for Regular Civil Suit No.3/2012 was called for and considered.
- [6] This Court has gone through the present application, Judgment & Decree of the learned Trial Court, written objections Exh.34 filed by the respondents as well as submissions made by learned advocates for the parties. Learned advocate for the appellants Mr. H.K. Darji filed purshis at Exh. 44 and declared that there is no stay of Hon'ble High Court about hearing and proceed Injunction application Exh. 5. Considering the overall facts and circumstances, it appears that if the execution of impugned Judgment & Decree is not stayed at this juncture and respondents execute the decree in execution proceeding in the Civil Court against the present appellants, then the appellant's right of the appeal to get the judgment from the Appellate Court on merits, will be frustrated and the present appeal filed by the appellants will become infructuous. In these circumstances, there is prima-facie case and balance of convenience in favour of the appellants at this stage for interim injunction. When the prima-facie case and balance of convenience are in favour of the appellant at

this stage, then there may be irreparable loss to the appellants about his right of appeal in absence of injunction. In view of the above discussion, I come to the conclusion that the present injunction application is required to be allowed and therefore following order is passed accordingly.

ORDER

- [1] The appellant's present interim injunction application Exh.5 is hereby allowed and earlier Injunction/Stay Order passed by my predecessor below Exh. 5 dated 19/01/2024 is hereby extended till final disposal of appeal.
- [2] The execution of Judgment & Decree dated 12.10.2023 passed in Regular Civil Suit No.3/2012 by the learned Principal Civil Judge & JMFC, Sagbara, Dist. Narmada, is hereby stayed till final disposal of the present appeal.
- [3] The appellants are directed to ready and remain present for final hearing of the appeal on each and every adjournment date, without fail.
- [4] The cost should follow the final order of the appeal.
- [5] Copy of this order be sent to Trial Court for information.

Signed and pronounced in the Court today on 27th day of September, 2024.

Date: 27/09/2024
Place: Rajpipla

(Rameshkumar Thakorbbhai Panchal)
(GJ00413)
Principal District Judge,

Narmada, At - Rajpipla