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

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**ORDER BELOW EXH.5 IN REGULAR CIVIL APPEAL
NO.51 OF 2022**

- [1] Present appellant has preferred this application Exh.5 for injunction in this appeal to stay execution of Judgment & Decree dated 29.09.2022 passed in Special Civil Suit No.23/2016 by the learned Principal Senior Civil Court Porbandar, till final disposal of the present appeal.
- [2] Ld. Advocate Mr. N. D. Khatri for the appellant has mainly relied on the contentions raised in the memo of appeal Exh.1 and has further argued that the appellant has filed the present appeal against the Judgment & Decree dated 29.09.2022 passed in Special Civil Suit No.23/2016 by the learned Principal Senior Civil Court Porbandar 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 appellant since the beginning as admitted by the respondents 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 appellant will have severe financial loss and the present appeal filed by the

appellant 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 appellant in terms of money and therefore the balance of convenience is in favour of the appellant. Lastly, it is prayed to stay the Judgment & Decree dated 29.09.2022 passed in Special Civil Suit No.23/2016 till final disposal of the present appeal.

- [3] Ld. Advocate Mr. V. K. Modha appeared on behalf of the respondent Nos.1 & 2 and filed written objections at Exh.19 objecting the present application. He has mainly argued that the injunction application filed by the appellant 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 for the share of respondents out of the suit property and not for the share of appellant and 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] Though the notices were duly served to the respondent Nos.3(1) to 3(3), 4, 5 & 6(1) to 6(3), they have neither appeared before this Court nor filed any reply in the matter. Therefore, this Court has passed an order dated 01.04.2023 below Exh.1 to proceed against him ex-parte.
- [5] The R&P of the learned Trial Court for Special Civil Suit No.23/2016 was called for and considered.
- [6] This Court has gone through the present application, Judgment & Decree of the learned Trial Court, written objections Exh.19 filed by the respondent Nos.1 & 2 as well as submissions made by learned advocates for the parties. Considering the overall facts and circumstances, this Court is having prima-facie considered opinion that there is prima-facie case and balance of convenience in favour of the appellant at this stage. 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 appellant. 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 appellant, then the appellant's right over the suit property will be frustrated and the present appeal filed by the appellant will become infructuous and there may be irreparable loss to the appellant about the right of the appeal. 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.
- [2] The execution of Judgment & Decree dated 29.09.2022 passed in Special Civil Suit No.23/2016 by the learned Principal Senior Civil Court Porbandar, is hereby stayed till final disposal of the present appeal.
- [3] The appellant is directed to remain present during the proceedings of the present appeal without fail.
- [4] The cost should follow the final order of the appeal.

Signed and pronounced in the Court today on 20th day of April, 2023.

Date: 20/04/2023
Place: Porbandar

(Rameshkumar Thakorbhai Panchal)
(GJ00413)
Principal District Judge,
Porbandar.