

IN THE COURT OF PRINCIPAL SR.CIVIL JUDGE, TAPI @ VYARA

SPECIAL CIVIL SUIT NO.: 22 OF 2015

Plaintiff : Ms. Diptikaben J Bhakt & another

VERSUS

Defendants : Ms. Induben Dhirubhai Bhakt & another.

Subject: Suit for declaration, permanent injunction and cancellation of Sale Deed.

APPEARANCES:-

Shri N M Patel, Ld. Counsel for the Plaintiffs.

Shri D R Dhimar, Ld. Counsel for the Defendant No.: 1.

Shri V K Rupavatiya, Ld. Counsel for the Defendant No.: 2.

ORDER BELOW EXH.:206:-

This application is at the instance of Ld. Counsel for the Defendant No.:1 inter alia stating that, power of attorney holder of the Plaintiff has submitted his examination-in-chief on behalf of the Plaintiff. It is inter alia further stated that, said power of attorney deed is already declared as cancelled vide order passed in **RCS No.: 53 of 2013** and same is confirmed by Hon'ble District Court, Tapi @ Vyara in **Regular Civil Appeal No.: 02 of 2018**. As such, according to present Defendant, only for the acts done by the Power of Attorney holder, he can depose and he cannot depose for the act done by his Principal.

This application is duly supported by Defendant No.:2 through his legal counsel.

The Plaintiff has vehemently opposed present application by filing reply at **Exh.: 209** wherein it is inter alia contended that, against the order passed by Civil Court as well as District Court, Tapi @ Vyara in above numbered proceedings, his client has preferred Second Appeal No.: 603 of 2022 wherein Notice is ordered to be issued by Hon'ble High Court of Gujarat, on 19.12.2022 [Mark-210/2] According to him, present application is

nothing but delaying tactics adopted by the Defendants to prolong this suit under guise of one or other reason.

Heard Ld. Counsels for the parties. Perused record. Having given my thoughtful consideration the controversy involved in present application, in my opinion, this court cannot direct any parties, as to how and what evidence is to be adduced by them, since, it is solely for the parties to decide the manner and mode of proving their case in the light of burden cast upon them on the Issues framed by this court in the suit. The Judgements relief upon by the Ld. Counsel for the present application though applicable to the facts of the case, same are more concerned while evaluating the evidence adduced by the parties hence same are not discussed at length.

The Plaintiff is master of his suit and cause and he has to decide the mode and manner in which he has to prove his own cause; therefore, it is his sole discretion as to how he or she wants to prove his or her case and cause; however, the apprehension of the Defendants appears to be genuine to the effect that, once he cross examine the power of attorney holder, their line of defense will be open and thereafter Plaintiff may try to fill up the lacuna by examining the Plaintiff in his personal capacity, therefore, in my opinion, balance of equity and justice would be served if following order is passed, hence, following order:

-::: ORDER :::-

Application is ordered to be rejected with no orders as to costs.

Plaintiff is however given option either to examine Plaintiff himself in the first instance or declare on record that, he wants to continue examining his power of attorney holder.

In case Plaintiff choose to continue his stand of examining his power of attorney holder, in that case, Plaintiff would be precluded from examining himself [in his personal capacity] either as Plaintiff or as witness of Plaintiff in present proceedings.

PRONOUNCED IN OPEN COURT ON THIS 24TH DAY OF FEBRUARY, 2023 AT TAPI @ VYARA.

**[RAVICHANDRAN PERIYASWAMY DAVENDRA],
PRINCIPAL SENIOR CIVIL JUDGE, TAPI @ VYARA
[GJ00459]**