

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/FIRST APPEAL NO. 164 of 2025****With****CIVIL APPLICATION (FOR STAY) NO. 1 of 2025****In R/FIRST APPEAL NO. 164 of 2025**

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**DIPAKBHAI BHAGCHANDBHAI KHATRI & ANR.****Versus****DHULIBEN D/O NANJIBHAI MITHAJI & ORS.**

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**Appearance:****MR SHEGUN B CHOKSHI(12790) for the Appellant(s) No. 1,2****MR SP MAJMUDAR WITH MR JAMSHED KAVINA (3456) for the Appellant(s) No. 1,2**

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**CORAM: HONOURABLE MS. JUSTICE SANGEETA K. VISHEN****and****HONOURABLE MR. JUSTICE NIRAL R. MEHTA****Date : 22/01/2025****ORAL ORDER****(PER : HONOURABLE MS. JUSTICE SANGEETA K. VISHEN)**

Mr.S.P. Majmudar, learned advocate with Mr.Jamshed Kavina, learned advocate for the appellants-applicants, submitted that the suit was filed seeking specific performance of the agreement to sell dated 08<sup>th</sup> February, 2001. It was agreed between the parties that after receiving the necessary permission under Section 43 of the Bombay Tenancy & Agricultural Lands Act, 1948 the sale deed was to be executed. Instead of executing the sale deed in favour of the plaintiffs, defendant Nos.1 to 6 executed the sale deed in favour of defendant No.7.

**2.** It is further submitted that previously, there was an application filed under Order VII Rule 11 of the Code of Civil Procedure, 1908 by the defendant No.7, which came to be rejected by passing order dated 30<sup>th</sup> March, 2017. However,

recently another application was filed by defendant Nos.1 to 6 raising the same ground. The said application, ought not to have been accepted inasmuch as, the same, would be barred by the principle of *res judicata*, as much as, the ground of Section 43, was raised previously and has been determined by the court below.

**3.** Considered the submissions. Issue Notice to the respondents, returnable on 27<sup>th</sup> February, 2025.

Direct service is permitted.

**(SANGEETA K. VISHEN,J)**

**(NIRAL R. MEHTA,J)**

ANUP