

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/FIRST APPEAL NO. 719 of 2024****With****CIVIL APPLICATION (FOR STAY) NO. 1 of 2024****In R/FIRST APPEAL NO. 719 of 2024****With****CIVIL APPLICATION (FOR ADDITIONAL EVIDENCE) NO. 2 of 2024****In R/FIRST APPEAL NO. 719 of 2024**=====
KRISHNAKUNVARBA ALIAS KRISHNADEVI W/O KIRITSINH JADEJA**Versus****M/S PRITHVI DEVELOPMENT CORPORATION & ORS.**
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Appearance:

MR PERCY KAVINA, SENIOR ADVOCATE WITH MR JAMSHED
KAVINA(11236) for the Appellant(s) No. 1MR SP MAJMUDAR(3456) for the Appellant(s) No. 1
for the Defendant(s) No. 1,2,3,4,5
=====**CORAM: HONOURABLE MS. JUSTICE SANGEETA K. VISHEN**
and**HONOURABLE MS. JUSTICE NISHA M. THAKORE****Date : 26/02/2024****ORAL ORDER****(PER : HONOURABLE MS. JUSTICE SANGEETA K. VISHEN)**Order in First Appeal no.719 of 2024

Heard Mr Percy Kavina, learned Senior Advocate with Mr Jamshed Kavina, learned advocate for the appellant. It is submitted that by drawing a preliminary decree dated 29.09.2023, the partnership firm came to be dissolved; however, the other prayer prayed for in the said application, Exh.52, was not granted. The suit, came to be decided by the impugned judgment dated 24.01.2024, rejecting the suit.

2. It is submitted that the opponents – defendants, have never entered into the witness box. In absence whereof, the issues, could

not have been decided against the appellant. Also, the speed with which, the suit has been decided, is also not in a right earnest, namely, issues were framed somewhere in the month of June 2023, the examination-in-chief of the appellant, was also in the month of June 2023, the application for preliminary decree, Exh.52, came to be filed, which was decided by an order dated 29.09.2023. Plaintiffs' cross-examination was somewhere in the month of October 2023, followed by an application seeking appointment of the Court Commissioner in the month of November 2023, i.e. Exh.62, which came to be rejected immediately vide an order dated 16.12.2023 and in the month of January 2024, that the suit, came to be decreed against the appellants.

3. It is also submitted that the orders passed below Exhs.52 and 62, have not been challenged, but the provisions which would come to the aid of the appellant, would be Section 105 of Code of Civil Procedure, 1908, which states that where the decree is appealed from, any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as ground of objection in the memorandum of appeal and therefore, the appellants have formulated the grounds, challenging the preliminary decree with the order dated 29.09.2023 as well as order dated 21.11.2023, Exh.16.

4. Having regard to the submissions made, issue notice to the respondents, returnable on 18.03.2024.

Order in Civil Application (for stay) no.1 of 2024

Heard Mr Percy Kavina, learned Senior Advocate with Mr Jamshed Kavina, learned advocate for the applicants.

Issue notice to the respondents, returnable on 18.03.2024.

Order in Civil Application (for additional evidence) no.2 of 2024

To be heard with First Appeal no.719 of 2024 on 18.03.2024.

(SANGEETA K. VISHEN,J)

BINOY B PILLAI

(NISHA M. THAKORE,J)