

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/FIRST APPEAL NO. 767 of 2024****With****CIVIL APPLICATION (FOR STAY) NO. 1 of 2024****In R/FIRST APPEAL NO. 767 of 2024**=====
**LH OF DECD. BACHUBHAI KANTIBHAI PATEL & ANR.****Versus****LH OF DECD. HARIPRASAD SHAMBHUPRASAD PATEL & ORS.**
=====**Appearance:****MR JF MEHTA(461) for the Appellant(s) No. 1,1.1****for the Defendant(s) No.****1,1.1,1.2,1.3,1.4,1.5,2,2.1,2.1.1,2.1.2,2.1.3,2.2,2.3,2.4,2.5,3,3.1,3.2,4**
=====**CORAM:HONOURABLE MS. JUSTICE GITA GOPI****Date : 26/03/2024****ORAL ORDER****ORDER IN FIRST APPEAL**

Mr. J.F Mehta, learned advocate submitted that it is a specific case of the plaintiff that the plaintiff's grand father- Kantilal Shambhuprasad Patel and defendant no.1 Hariprasad Shambhuprasad Patel were carrying on the business in name of M/s Kantilal Chandulal in capacity of Karta of their respective HUFs, at Tambakantha, Mumbai. The father of the plaintiff- Kantilal Shambhuprasad Patel died in the year 1965. It is submitted that the suit property was purchased on 30.12.1960, in the name of defendant no.1 who was the elder brother of plaintiff's father Kantilal and the purchase amount was paid from the partnership

firm of M/s Kantilal Chandulal. It is submitted that after the death of the plaintiff's father, the property was managed by defendant no.1. Mr. Mehta submitted that the plaintiff and defendant no.2 and 3 were the members of the HUF and would have half the share in the suit property. A notice was sent on 16.03.1993 to defendant no.1, instructing him not to indulge in any activity to sell the suit property, inspite of that, learned advocate Mr. Mehta submitted that defendant no.1 had sold the suit property to defendant no.4 in 17.08.1995 and sent a cheque of an amount of Rs. 1,85,000/-. Mr. Mehta, referring to the provisions of Section 22 of the Hindu Succession Act, 1956, submitted that if any one of the heirs proposes to transfer his or her interest in the property or business, the other heirs shall have a preferential right to acquire the interest proposed to be transferred.

Here in this case, the trial Court oblivious of the provision had considered the act of the defendant no.1, as just and proper by observing that for better administration and benefit of the estate the suit property was sold. Mr. Mehta, thus submitted that after the legal notice was served to defendant no.1, the defendant was required to follow the provisions of Hindu Succession Act and the Court therefore was required to declare the sale deed as null and void.

Mr. Mehta further stated that the sale deed in favour of defendant no.4 as a tenant of the property was also not legal and valid, since defendant no.1 was required to exercise action under Section 22 of the Hindu Succession Act and should have sold the property to the plaintiff making the plaintiff the sole owner with the tenant.

In view of the submissions made, **ADMIT**.

**ORDER IN CIVIL APPLICATION**

**Rule** returnable on **29.04.2024**.

In the meanwhile, interim relief in terms of para.6(c) is granted till then.

Radhika

**(GITA GOPI,J)**