

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 11556 of 2026**

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LEGAL HEIRS OF DECD. AMRAJI VARDHAJI PRAJAPATI ALIAS AMRAJI
VARGHAJI PRAJAPATI & ORS.

Versus

TRUSTEES OF PATEL PRABHUDAS KISHORDAS BIDIWALA PUBLIC
TRUST & ORS.

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Appearance:

MR SP MAJMUDAR(3456) for the Petitioner(s) No.

1,1.1,1.2,1.2.1,1.2.2,1.2.3,1.3,1.4,1.4.1,1.4.2,1.4.3,1.4.4,1.4.5,1.4.6,1.5,1.5.1

MR. PERCY KAVINA, SENIOR COUNSEL assisted by MS KRISHNA S
SHAH(13157) for the Petitioner(s) No.

1,1.1,1.2,1.2.1,1.2.2,1.2.3,1.3,1.4,1.4.1,1.4.2,1.4.3,1.4.4,1.4.5,1.4.6,1.5,1.5.1

MS. MANISHA SHAH, SENIOR Counsel assisted by Mr. Aaditya Dave & Ms.
Bhanvi Juvekar for NANAVATI ASSOCIATES(1375) for the Respondent(s)

No. 1

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CORAM: HONOURABLE MR. JUSTICE MAULIK J. SHELAT

Date : 16/09/2026

ORAL ORDER

1. Heard Mr. Percy Kavina, learned Senior Counsel assisted by Ms. Krishna Shah, learned advocate for the petitioners and Ms. Manish Lavkumar Shah, learned Senior Counsel assisted by Mr. Aaditya Dave & Ms. Bhanvi Juvekar for M/s Nanavati Associates, learned advocate for the respondent – Trust, at length.

2. At the outset, it was brought to the notice of Mr. Kavina, learned Senior Counsel that by way of this petition, the petitioner sought to challenge the order dated 27.11.2025 as well as order dated 20.03.2020 passed by the executing Court in Execution Petition No.1 of 2016 in

question and as such, there is no explanation forthcoming from the side of the petitioners so far as delay in challenging the order dated 20.03.2020 is concerned.

2.1 Mr. Kavina, learned Senior Counsel would candid in his submission that as such, there is no reasonable explanation given by the petitioners for delay in challenging the aforesaid order dated 20.03.2020. Yet, Mr. Kavina, learned Senior Counsel would state that subsequent to the aforesaid order, the Execution Petition was dismissed for non-prosecution in the year 2022 and delay condonation / restoration of the Execution Petition was challenged by the petitioners before the Appellate Court but failed. Nevertheless, Mr. Kavina, learned Senior Counsel, at present, would request this Court to consider his submissions qua the challenge of impugned order dated 27.11.2025 passed by the executing Court. Accordingly, Mr. Kavina, learned Senior Counsel made his submissions.

3. Mr. Percy Kavina, learned Senior Counsel, would submit that impugned order dated 27.11.2025 passed by executing Court in Execution Petition No.1 of 2016 is *ex facie* bad in law and without appreciating the objections raised by the petitioners, whereby the Executing Court, by impugned order, directed the petitioners to handover

the possession of the suit lands well as to execute the sale deed in favour of respondent No.1 – decree holder. It is submitted that decree which is sought to be executed is inexecutable one, inasmuch as the consent decree came to be passed by the trial Court on 21.06.1980 below Exhibit-54, whereby the original defendant No.1 of Regular Civil Suit No.41 of 1975 who happens to be original owner of the suit land and vendor, agreed to execute the sale deed in favour of plaintiff – decree holder. It is further submitted that indisputably, the petitioners herein or their predecessor in title who was joined as defendant No.2, was not party to the consent decree passed below Exhibit-54. Since the aforesaid compromise decree passed in the year 1980 and without joining the defendant No.1-vendor in the Execution Petition filed in the year 2016 (Annexure-A) and having been deleted the defendant No.1 from the Second Appeal No. 230 of 1985, the executing Court could have directed the legal heirs of defendant No.2 (petitioners herein) to execute the sale deed in favour of the decree holder while directing them to hand over the peaceful and vacant possession of the suit land as per the decree passed by this Court in the Second Appeal No. 230 of 1985.

3.1 Mr. Kavina, learned Senior Counsel would further submit that once the compromise decree passed in favour of decree holder, whereby

original owner – vendor - defendant No.1 was agreed to execute the sale deed in relation to suit land in favour of the plaintiff – decree holder, further direction issued by the executing Court vide its impugned order that heirs of original defendant No.2 i.e. petitioners herein and respondent Nos.2 and 3 respectively, should handover the possession of suit land in favour of the decree holder, is unsustainable in law. It is submitted that as per settled position of law, possession would follow title. Since the execution of consent decree passed below Exhibit-54 cannot be implemented upon, whereby no sale deed can be executed in favour of decree holder, they are not entitled to get the possession.

3.2 Mr. Kavina, learned Senior Counsel would further submit that the aforesaid suit was filed on 07.02.1975 by respondent No.1 herein (plaintiff-decree holder) seeking specific performance of Agreement to Sell dated 17.12.1974 (for short '*ATS*') executed by original owner-vendor-defendant No.1 in the plaintiff's favour, but prior to filing of aforesaid suit, a registered sale deed was executed by defendant No.1 in favour of predecessor of the petitioners i.e. defendant No.2 on 30.12.1974. Even though, compromise decree was passed by the trial Court on 21.06.1980, the suit was dismissed on 13.10.1980 and the Regular Civil Appeal No.65 of 1980 was also dismissed by the appellate

Court vide its judgment and decree dated 04.04.1985. Therefore, neither trial Court nor appellate Court had granted any decree for specific performance in favour of original plaintiff. It may be true that plaintiff preferred Second Appeal No.230 of 1985 before this Court on 20.06.1985, but during the pendency of such appeal, the original owner – defendant No.1 died on 14.09.1996 and the predecessor of the petitioners (defendant No.2) also died on 21.01.1999 and at the time of bringing the legal heirs of original defendant No.2 in the year 2007, the original defendant No.1 was deleted from the array of the party respondent of the said Second Appeal. It is further submitted that this Court vide its judgment and decree dated 08.08.2012, though allowed the appeal in favour of original plaintiff but no decree for specific performance was passed and same could not have been passed in absence of the legal heirs of original owner – landlord – defendant No.1.

3.3 Mr. Kavina, learned Senior Counsel would further submit that since this Court vide judgment / decree dated 08.08.2012 had not directed the petitioners to execute the sale deed in favour of original plaintiff – decree holder, such direction issued by Executing Court in its impugned order is nothing but going beyond the decree, which is impermissible in law. It is submitted that this Court in its aforesaid judgment only held that

decree for specific performance of ATS against original defendant No.1 shall bind the heirs of original defendant No.2 and in such circumstances, directed them to handover the vacant and peaceful possession of the suit land. It is further submitted that even though, the Special Leave Petition filed by the petitioners herein was not pressed by them but liberty was granted to such other remedy as is available to the petitioners before the Executing Court, meaning thereby, they were permitted to raise their objections before the Executing Court in the execution proceedings and as per Section 47 of Civil Procedure Code (CPC), Executing Court was under legal obligation to decide all the objections raised by the petitioners.

3.4 Mr. Kavina, learned Senior Counsel would further submit that executing Court ought to have decided the objections raised by the petitioners as per law without being influenced by any fact that the decree was passed by this Court. It is well-settled position of law that irrespective of the decree passed by any Court, the objections raised by the judgment debtor or third party is bound to be considered by the executing Court and in a case where the decree is non-executable, such objections require to be decided by the executing Court only.

3.5 Mr. Kavina, learned Senior Counsel would further submit that

despite detailed written objections filed by the petitioners, the same was rejected by executing Court vide its order dated 20.03.2020 which is also challenged in this petition. Furthermore, before passing the impugned order dated 27.11.2025, the petitioners again raised their objections about non-executability of the decree but same was turned down by executing Court without touching the merit of the objections, thereby, it has committed jurisdictional error, which is required to be corrected by this Court while exercising its powers under Article 227 of the Constitution of India.

3.6 Mr. Kavina, learned Senior Counsel would further submit that as per settled position of law, no decree for specific performance can be passed by the Court in a suit where the vendor is either not joined or deleted. It is undisputed fact that when this Court passed aforesaid judgment and decree, vendor – original defendant No.1 was deleted being died and, in his absence, / not joining his legal heirs, even this Court could not have passed the decree for specific performance in favour of the original plaintiff – decree holder. It is also undisputed fact that the aforesaid registered sale deed executed by original defendant No.1 in favour of predecessor of the petitioners – defendant No.2 is never set aside by this Court and in absence of vendor – defendant No.1, executing

Court could not have directed the legal heirs of defendant No.2 – petitioners to execute the sale deed in favour of decree holder.

3.7 To buttress his arguments, Mr. Kavina, learned Senior Counsel would rely upon the following decisions: -

- i. ***Lala Durga Prasad & Ors. Vs. Lala Deep Chand & Ors.*** reported in ***(1953) 2 SCC 509***;
- ii. ***Dwarka Prasad Singh Vs. Harikant Prasad Singh*** reported in ***1973 (1) SCC 179***;
- iii. ***Kishorilal (D) Thr. Lrs & Ors. Vs. Gopal*** reported in ***2026 (3) SCC 231***;
- iv. ***Vikram Bhalchandra Ghongade Vs. State of Maharashtra*** ***2025 (0) AIJEL-SC 76075***;
- v. ***Odisha State Financial Corporation Vs. Vigyan Chemical Industries*** reported in ***2025 (9) SCR 1***;
- vi. ***Government of Orissa Vs. Ashok Transport Agency & Ors.*** reported in ***(2005) 1 SCC 536***;

3.8 By making the above submissions, Mr. Kavina, learned Senior Counsel would request this Court to admit this petition and grant interim relief as prayed in this petition.

4. *Per contra*, Ms. Shah, learned Senior Counsel has vehemently opposed this petition contenting *inter alia* that petitioners are the

judgment debtors who having lost before this Court and the Hon'ble Apex Court, have no right to object the execution of the decree passed by this Court in the aforesaid Second Appeal. It is submitted that whatever objections raised by the petitioners at the first instance, such objections were already decided by the executing Court vide its order dated 20.03.2020 and at that relevant point of time, the petitioners chose not to challenge the aforesaid order, thereby, it has become final. It is vehemently opposed that after about five years from passing of the said order, petitioners cannot be allowed to challenge it in this petition when they are challenging the impugned order dated 27.11.2025. It is submitted that the petitioners have not explained the delay in challenge of the aforesaid order dated 20.03.2020 passed by the executing Court, whereby it had rejected the objections of the petitioners, merely because there is no period of limitation prescribed under Article 227 of the Constitution of India, this Court should not exercise its supervisory jurisdiction in favour of the petitioners whose real intention is to frustrate the decree passed by this Court.

4.1 Ms. Shah, learned Senior Counsel would further submit that all the contentions raised by the petitioners either before this Court in the Second Appeal and / or before the executing Court, such objections

already been dealt with by the Courts in detail and at this stage, nothing further is to be looked into by this Court in its supervisory jurisdiction. It is submitted that while allowing the aforesaid Second Appeal in favour of the original plaintiff, this Court, in its aforesaid judgment, has categorically recorded the conduct of the predecessor of the petitioners – original defendant No.2, in para-5.01 to 5.04 and after noticing such conduct, this Court has directed the legal heirs of original defendant No.2 (petitioners) to handover the possession of the suit land in favour of decree holder. Even the aforesaid judgment was not disturbed by the Hon'ble Apex Court though two Special Leave Appeals were filed, one by the petitioners and another by their family members. Thus, in view of the aforesaid judgment and decree passed by this Court, the legal heirs of defendant No.2 are required to handover the vacant and peaceful possession of the suit land to the respondent No.1-original plaintiff-decree holder, and as such, no error much less any gross error of law committed by the executing Court, by directing the petitioners and their other family members to handover the possession of the suit land in favour of the decree holder.

4.2 Ms. Shah, learned Senior Counsel would further submit that the executing Court was well within its right to see the nature of decree

passed by the Court and taking into account the consent decree as well as the directions issued by this Court in form of the separate decree, including the conduct of the judgment debtor, vide its impugned order, the directions were issued by the executing Court to execute the sale deed in favour of the decree holder.

4.3 Ms. Shah, learned Senior Counsel would further submit that the consent decree passed below Exhibit-54 was a decree for specific performance, inasmuch as the vendor – defendant No.1, agreed to execute the sale deed in favour of original plaintiff and the decree passed by this Court in the Second Appeal was in the nature of granting relief in favour of plaintiff to get the possession of the suit land from subsequent purchaser – defendant No.2. It is further submitted that there was no error of law committed by this Court while passing the aforesaid decree and it is incorrect to say that in absence of vendor, the decree for specific performance was granted in favour of plaintiff – ATS holder by this Court.

4.4 Ms. Shah, learned Senior Counsel would further submit that decisions cited by Mr. Kavina, learned Senior Counsel, are not applicable to the facts of the present case, inasmuch as neither of the decree sought to be executed by the decree holder, are in any manner non-executable. It

is submitted that once the legal heirs of defendant No.2 were directed by this Court to handover the possession of suit land in favour of the decree holder, they have no right to object the execution of such part of the decree of this Court especially when the predecessor of the petitioners – original defendant No.2 was found in illegal possession of the suit land.

4.5 Lastly, Ms. Shah, learned Senior Counsel would further request that in a case where this Court is inclined to admit this petition and grant any relief in favour of the petitioners, the respondent No.1 may be given right to file reply.

4.6 To buttress her arguments, Ms. Shah, learned Senior Counsel would reply upon the following judgments: -

- i. ***Marshall Sons & Co. (I) Ltd. Vs. Sahi Oretrans (P) Ltd. & Anr.*** reported in (1999) 2 SCC 325;
- ii. ***Bhavan Vaja & Ors. Vs. Solanki Hanuji Khodaji Mansang & Anr.*** reported in (1973) 2 SCC 40;

5. Heard learned Senior Counsels appearing for the respective parties at length. For the sake of convenience and brevity, hereinafter parties would be referred to as per their original position in the Suit/Second Appeal.

6. Since both the learned Senior Counsels appearing for the respective parties have argued only against and in support of the impugned order dated 27.11.2025, at this stage, this Court would not like to examine the legality and validity of the order dated 20.03.2020 passed by the executing Court. Accordingly, I would like to outline my *prima facie* observations and reasons qua the impugned order dated 27.11.2025. Having gone through the impugned order as well as the documents which are submitted in the form of paper-book along with this petition, following facts would emerge.

6.1 The respondent No.1 appears to be the original plaintiff of Regular Civil Suit No.41 of 1975 which was filed seeking specific performance of ATS dated 17.12.1974. The suit appears to have been filed on 07.02.1975. The defendant No.1 was original owner-vendor of the suit land. The defendant No.2 was purchaser of suit land from defendant No.1 by way of registered sale deed on 30.12.1974. The petitioners and respondent Nos.2 and 3 herein are legal heirs of original defendant No.2.

6.2 The defendant No.1 filed compromise pursis below Exhibit-54 in the aforesaid suit whereby he accepted the execution of ATS and agreed to execute the sale deed in favour of plaintiff after getting necessary

permission from the authority. It was also stated by him that defendant No.2, by force, took possession of the suit land and got the sale deed executed in his favour. The trial Court appears to have drawn the consent decree on 21.06.1980 as per the compromise pursis filed by the defendant No.1. It is to be noted here that defendant No.2 was aware about the consent decree, but for any reason, he did not challenge it.

6.3 Since the defendant No.2 was not party to the consent decree and found in the possession of the suit land, the suit proceeded on its merits. After considering the evidence on record, the trial Court dismissed the suit by observing that the suit for specific performance, for possession and for damages of Rs. 5,000/- is dismissed. Yet, trial Court observed that plaintiff do recover Rs.1,000/- from defendant No.1 with 6% interest from the date of suit till its realization.

6.4 The plaintiff challenged the aforesaid judgment and decree of the trial Court by way of Regular Civil Appeal No.65 of 1980 before the first appellate Court concerned. After hearing the parties, the appellate Court vide its judgment and decree dated 04.04.1985 dismissed the said appeal.

6.5 Feeling aggrieved and dissatisfied, the plaintiff preferred Second Appeal before this Court being Second Appeal No.230 of 1985 on

28.06.1985. The defendant No.1 and 2 died on 14.09.1996 and 21.01.1999, respectively. It appears from the judgment dated 08.08.2012 passed by this Court in the aforesaid Second Appeal that heirs of defendant No.2 were brought on record, whereas defendant No.1 appears to have been deleted from the array of the respondents. After hearing the parties, this Court vide its judgment and decree dated 08.08.2012 allowed the Second Appeal.

6.6 The petitioners appear to have challenged the aforesaid judgment and decree passed by this Court before the Hon'ble Apex Court by way of Special Leave Appeal (Civil) (CC No.19512 of 2013), which came to be dismissed on 18.11.2013 with a liberty to take recourse to such other remedy as is available to the petitioners before the executing Court. Likewise, other legal heirs of the defendant No.2 also filed Special Leave to Appeal (Civil) No.5801 of 2013, which was dismissed on 04.03.2013. Thus, the judgment and decree passed by this Court in the aforesaid Second Appeal was not disturbed by the Hon'ble Apex Court. Thereafter, the Execution Petition appears to have been filed by the plaintiff - respondent No.1 – decree holder being Execution Petition No.1 of 2016 on 21.04.2016.

6.7 It is also required to be noted here that in the aforesaid Execution

Petition, the defendant No.1 was shown as deleted, though the consent decree dated 21.06.1980 was sought to be executed. At the first instance, the objections came to be filed on behalf of the petitioners (petitioner Nos. 1.2.3) below Exhibit-25 on 15.09.2017, which came to be rejected by the executing Court on dated 20.03.2020.

6.8 The executing Court, vide its impugned order dated 27.11.2025, while allowing the Execution Petition, directed the petitioners to handover the possession of suit land in favour of respondent No.1 - decree holder and further directed the parties to execute the sale deed as per terms and conditions of ATS, and after fulfilling the terms and conditions by both the parties, sale deed shall be registered. It was also observed that in case where there is a failure on the part of respondents of the execution, i.e., petitioners herein and others, to execute the sale deed, the sale deed shall be registered by the Registrar of this Court.

7. With this background of facts and the directions issued by the executing Court, the petitioners have approached to this Court by filing this petition under Article 227 of the Constitution of India.

8. The principal submission of Mr. Kavina, learned Senior Counsel for the petitioners appears to be that in absence of defendant No.1, i.e.

original owner-vendor, no decree for specific performance could have been passed by this Court while allowing the Second Appeal, and such decree is inexecutable. Mr. Kavina, learned Senior Counsel has placed strong reliance upon of the various decisions of the Hon'ble Apex Court to convince me that the executing Court has committed jurisdictional error by not examined the objections as per Section 47 of CPC. According to Mr. Kavina, learned Senior Counsel, while passing the decree, this Court could not have directed the legal heirs of the defendant No.2 to handover the possession of suit land in favour of the original plaintiff when there was no order of execution of sale deed could have been passed by this Court in absence of defendant No.1-vendor.

9. *Per contra*, Ms. Shah, learned Senior Counsel appearing for the original plaintiff has vehemently objected to such submission. She had forcefully argued that the decree in question passed by this Court is unquestionably executable, and having lost before the Hon'ble Apex Court, petitioners have no legal right to question the legality and validity of the decree passed by this Court in any manner whatsoever. It was mainly contended by the decree holder that just to frustrate the decree at any cost, at regular interval, the judgment debtors were trying to object to the execution of decree, but the executing Court has correctly directed

them to handover the possession. So far as execution of sale deed by the legal heirs of the defendant No.2 is concerned, Ms. Shah, learned Senior Counsel would candid during her submission that no such direction was issued by this Court while directing the legal heirs of defendant No.2 to handover the vacant and peaceful possession of suit land. Yet, Ms. Shah, learned Senior Counsel, would try to draw the attention of this Court that while passing the decree by this Court, it has been so observed in the body of the judgment that there was a consent decree passed by the trial Court in favour of the plaintiff whereby the relief for specific performance was already granted, and on that basis, executing Court was not powerless to direct the parties to prepare the sale deed for its registration.

10. Having considered the all submissions and taking note of the aforesaid facts, *prima facie*, it appears that suit was filed seeking specific performance of the ATS wherein original owner-vendor was joined along with subsequent purchaser of suit land. The defendant No.1 - vendor filed compromise pursis whereby he had accepted the ATS and agreed to execute the sale deed and accordingly, consent decree came to be passed in favour of plaintiff on 21.06.1980. This consent decree passed by the trial Court is nothing a decree for specific performance of the ATS. It

may be true that later on, the trial Court dismissed the suit and regular civil appeal was also dismissed by the Appellate Court. Nonetheless, this Court allowed the aforesaid Second Appeal filed by the plaintiff.

11. At this juncture, it would be apt to refer to the relevant observations made by this Court while allowing the aforesaid Second Appeal in favour of the original plaintiff, which read thus:

“5.01. As stated hereinabove, as such the learned trial court had already passed a decree for specific performance of the Agreement-to-sell in favour of the plaintiffs on the basis of the consent terms arrived at between the plaintiffs and the defendant No.1 – Ex.56 and the learned trial court passed an order to draw decree in terms of the consent terms. It is required to be noted at this stage that in the said consent terms / purshis defendant No.1 has specifically admitted execution of Agreement-to-sell dtd.17/12/1974 in favour of the plaintiffs for a sale consideration of Rs.6000/- and received Rs.1000/- by him as earnest money. He also specifically admitted that original defendant No.2 got sale deed executed in his favour by fraud and defendant No.2 was never in possession of the suit land and that he entered into suit land after getting sale deed executed in his favour on 30/12/1974.

5.02. It is also required to be noted at this stage that the

consent terms / purshis was served upon the learned advocate appearing on behalf of the defendant No.2 who never disputed the contents of the said consent terms / purshis Ex.54 and the learned advocate appearing on behalf of the defendant No.2 raised only one objection with respect to identity of the original defendant No.1 and never disputed contents of the said consent terms / purshis Ex.54. That thereafter, original defendant No.1 appeared in the Court in person and after having satisfied with respect to the identity of the original defendant No.1, the learned trial court accepted compromise purshis / consent terms Ex.54 and directed to draw decree in terms of the said consent terms qua defendant No.1 and passed order to proceed further with the suit against the defendant No.2. It is also required to be noted at this stage that the learned trial court has specifically negatived the case on behalf of the defendant No.2 that he was in possession of the suit land as tenant since 1965 as alleged by him. Considering the aforesaid, it is required to be considered whether the decree for specific performance of the Agreement- to-sell dtd.17/12/1974 is binding upon the defendant No.2 or not and whether defendant No.2 can be said to be bonafide purchaser of the suit land, as contended by him and whether the decree for recovery of the possession in favour of the plaintiffs is required to be passed or not.

5.03. As stated hereinabove, agreement-to-sell in favour of the plaintiffs executed by the defendant No.1 is dtd.17/12/1974 and the defendant No.2 has alleged to have

purchased the said land by registered sale deed dtd.30/12/1974. In the deposition/evidence, the defendant No.2 has categorically admitted that he was aware of the agreement-to-sell executed by the defendant No.1 in favour of the plaintiff and thereafter he got sale deed executed in his favour. Thus, it has come on record that the defendant No.1 had knowledge about the agreement to sell executed by the defendant No.1 in favour of the plaintiffs which was prior in time, still he has purchased the suit land and therefore, he cannot be said to be bonafide purchaser of the suit land as observed by the learned trial court confirmed by the learned appellate court.

5.04. It is also required to be noted that as such the original defendant No.1 has denied having receipt of Rs.900/- from the original defendant No.2 as sale consideration as mentioned in the sale deed dtd.30/12/1974 which was got executed in his favour and the same has not been disputed by the defendant No.2. It is also required to be noted at this stage that though sale consideration mentioned in the Agreement to sell dtd.4/12/1974 which was alleged to have executed in favour of the defendant No.2 is Rs.900/- only. When the value of the suit land as per the Agreement-to-sell dtd.17/12/1974 is considered at Rs.6000, it is not appreciable as to how the valuation of the suit land is considered and fixed at Rs.900/- only that too on 30/12/1974. This shows the conduct on the part of the defendant No.2. In any case, when the defendant No.2 had knowledge about the Agreement-to-sell dtd.17/12/1974 in

favour of the plaintiffs and still he purchased the suit land, he cannot be said to be bonafide purchaser of the suit land and therefore, **decree for specific performance passed against the original owner – defendant No.1 is binding to the defendant No.2.** In the case of **Vasantha Viswanathan and others (supra)**, the Hon'ble Supreme Court considered section 19(b) of the Specific Relief Act and has observed and held that specific performance of the contract can be enforced not only against the either parties thereto but against any person claiming under him by a title arising subsequently to the contract except a transferee for value, who has paid his money in good faith and without notice of original contract. Thus, considering the aforesaid decision of the Hon'ble Supreme Court, specific performance of the contract against the original defendant No.1 can be enforced against the defendant No.2 also and therefore, he is liable to be evicted and is liable to handover the possession of the suit land to the plaintiffs on passing a decree for specific performance of the Agreement-to-sell dtd.17/12/1974. As stated hereinabove, there is specific finding given by the learned trial court that till the sale deed was executed by the defendant No.2 on 30/12/1974 in his favour, the defendant No.2 was not in possession of the suit land. **Under the circumstances, it appears that the defendant No.2 got possession of the suit land illegally while getting sale deed executed in his favour on 30/12/1974 which was subsequent to Agreement-to-sell executed in favour of the original plaintiffs and therefore, the defendant No.2 is liable to**

handover the possession of the suit land to the original plaintiffs (on passing decree for specific performance of the contract in favour of the plaintiffs and against the defendant No.1).

5.05. Now, so far as the contention on behalf of the respondents – heirs of the original defendant No.2 that appeal qua original defendant No.1 has been abated and therefore, present appeal qua original defendant No.2 cannot be further considered is concerned, the aforesaid has no substance.

5.06. It is required to be noted that as such considering the provisions of Order 22 Rule 4 (4) of the Code of Civil Procedure, appellants are permitted to delete the name of the respondent No.1 as he did not appear before the first appellate court as well as despite the service of the notice, he had not made any representation for his representation. Even while passing order dtd.1/3/2007 in Civil Application No.11654 of 2006 and other applications, permitting the appellants to delete respondent No.1 and setting aside the abatement qua original defendant No.2 and permitting the appellants to bring heirs of original defendant No.2 on record, the learned Single Judge has specifically observed that despite the above, appeal would be proceeded further against the heirs of the original defendant No.2.

5.07. Even otherwise, considering the fact that as such the learned trial court had already passed a

decree against the original defendant No.1 and directed to draw decree in terms of the consent terms – Ex.54 and directed to proceed further with the suit qua original defendant No.2, basically the appeal before the lower appellate court and even the present second appeal would be against the original defendant No.2 only and therefore, the submission on behalf of the heirs of the original defendant No.2 that in absence of the original defendant No.1 present appeal against the original original defendant No.2 cannot be proceeded further, cannot be accepted.

6.00. In view of the above and for the reasons stated above, present Second Appeal is allowed. The impugned judgement and decree passed by the learned Civil Judge (SD), Palanpur in Regular Civil Suit No.41 of 1975 dtd.13/10/1980 as well as the impugned Judgement and Order passed by the learned District Judge, Banaskantha at Palanpur in Regular Civil Appeal No. 65 of 1980 dtd.4/4/1985, are hereby quashed and set aside and **it is held that the decree for specific performance of the Agreement to Sell dtd.17/12/1974 against the original defendant No.1 shall bind the original defendant No.2 - now heirs of the original defendant No.2 and consequently a decree for possession of the suit land is passed in favour of the plaintiffs and against the respondent Nos.2/1 to 2/7/4 – heirs of the original defendant No.2 and consequently respondent Nos.2/1 to 2/7/4 – heirs**

of the original defendant No.2 to handover vacant and peaceful possession of the suit land to the original plaintiffs forthwith. *Present appeal is allowed to the aforesaid extent. However, considering the facts and circumstances of the case, there shall be no order as to costs.”*

(Emphasis supplied)

12. This Court not only considered the objections of defendant No.2 on merits, but also taken into account that since the trial Court had already passed a decree against original defendant No.1 and drawn a decree in terms of consent terms, the suit and the appeal proceeding was essentially against the defendant No.2 only, and even in absence of presence of defendant No.1, the appeal can be proceeded against defendant No.2. Thereafter, in its para-6, the direction was issued against the legal heirs of defendant No.2, whereby they were directed to handover the possession of suit land in favour of plaintiff. As recorded above, the aforesaid judgment and decree passed by this Court in the Second Appeal was not disturbed by the Hon'ble Apex Court, as both the Special Leave Appeals were dismissed / withdrawn.

13. What would emerge from the above is that there are two sets of decree passed by the Court, i.e., i) consent decree passed by the trial Court, ii) the decree passed by this Court in the Second Appeal. It is well

settled law that there can be more than one decree passed at different stages in the same suit. [*See – Bai Chanchal & ors. Vs. Syed Jalaluddin & ors. reported in AIR 1971 SC 1081 (para-8)*].

13.1 So far as the consent decree passed by the trial Court is concerned, indisputably, it was passed for specific performance of the ATS, that too in presence of original owner-vendor-defendant No.1, inasmuch as the vendor himself agreed for execution of a sale deed in favour of the plaintiff. Whereas, so far as the judgement passed by this Court in the said Second Appeal is concerned, whereby it was declared that decree for specific performance against original defendant No.1 shall bind defendant No.2. Accordingly, a decree for possession of the suit land was passed in favour of plaintiff, and consequently, the legal heirs of defendant No.2 were directed to handover the vacant and peaceful possession of suit land to the plaintiff. Thus, the Execution Petition in question filed in the year 2016 citing the consent decree passed by the trial Court as well as this Court in the Second Appeal.

13.2 *Prima facie*, according to my view, when there was a decree for specific performance passed by the trial Court at the first instance, it cannot be gainsaid that a decree subsequently passed by this Court while allowing the Second Appeal can be executed in its true letter and spirit. It

is not the case here that in absence of any decree for specific performance, this Court passed a decree only against legal heirs of original defendant No.2, whereby they are directed to handover the possession of the suit land; rather the consent decree as well as decree passed by this Court was passed in presence of defendant No.2 or his legal heirs, as the case may be. So long as the consent decree passed by the trial Court is not disturbed by any Court, the decree passed by this Court in the said Second Appeal is required to be executed on the principle that the executing Court cannot go beyond the decree.

14. Thus, in view of the aforesaid peculiar facts and circumstances of the case and for the foregoing reasons, this Court cannot accept the submission of Mr. Kavina, learned Senior Counsel, that the decree for specific performance was passed in absence of vendor and consequently, no direction could have been issued by this Court to handover the possession of suit land by legal heirs of defendant No. 2. Likewise, there is no merit in the submission of Mr. Kavina, learned Senior Counsel, that since the execution of sale deed in absence of the defendant No.1 could not have been ordered by the executing Court, the legal heirs of defendant No.2 could not have been directed to handover the possession of the suit land. According to me, execution of the sale deed can be affected by the

consent decree, whereas handing over the possession of suit land by the legal heirs of defendant No.2 in favour of the decree holder-plaintiff would be governed by the decree passed by this Court in the said Second Appeal. Since, both these decrees are separate and distinct, may be passed at the different stages of the suit proceeding, still it can be executed accordingly.

15. At this stage, this Court would not like to discuss anything more on the issue germane to this petition. According to me, the authorities cited by learned Senior Counsel would not apply to the case at hand, as I am of the view that decree for specific performance was passed in favour of the plaintiff (decree holder) not only in presence of the vendor (defendant No.1) but it was passed at vendor's instance, which was well within knowledge of the defendant No.2 being party to the suit, who did not challenge it. *A fortiori*, the decree was passed by this Court in the Second Appeal, thereby, the legal heirs of defendant No.2 were directed to handover the vacant and peaceful possession of suit land to the plaintiff – decree holder.

16. At the stage of the execution, at least legal heirs of the defendant No.2 who not only lost before this Court in the Second Appeal, but their further appeals preferred before the Hon'ble Apex Court were dismissed,

now they cannot object the execution of decree passed by this Court in the aforesaid Second Appeal on the ground which was already negated by this Court referred supra. According to my considered view, the objection raised by judgment debtors is ill-founded and not sustainable in law so far as direction issued by the executing Court, whereby they are directed to handover the vacant and peaceful possession of suit land to the decree holder. Rather, the decree passed by this Court in the Second Appeal sought to be executed, is a separate decree, can certainly be executed. In any case, the petitioners - judgment debtors cannot be allowed to frustrate such decree, especially when it was observed by this Court in its aforesaid judgment that original defendant No.2 (predecessor of the petitioners) has illegally got the possession of the suit land. To that extent, no error, much less any gross error of law, can be found on part of executing Court while passing the impugned order dated 27.11.2025 in the Execution Petition in question.

17. So far as aspect of execution of sale deed is concerned, in the Execution Petition in question, the original owner - defendant No. 1 - vendor was not joined, though consent decree was also sought to be executed by plaintiff. It is not in dispute that there was no direction issued by this Court while passing the decree in the Second Appeal that the sale

deed shall be executed by the legal heirs of the defendant No.2. *Prima facie*, in absence of the legal heirs of the defendant No.1 joined in the Execution Petition, such direction issued by the executing Court to the legal heirs of original defendant No. 2 (petitioners and respondent Nos.2 & 3 herein) to execute the sale deed in favour of the decree holder – the plaintiff is nothing but to travel beyond the decree passed by this Court. To that extent, the impugned order requires to be interfered with by this Court and due to such reason, this petition needs to be admitted and this part of the impugned order requires to be stayed.

18. Since Ms. Shah, learned Senior Counsel has requested this Court to allow the respondent No.1 to file its response in a case where this Court admits the petition, at this stage, without expressing anything more, and even the arguments advanced by learned Senior Counsel were confined to the admission of this petition and for the interim relief, I would like to pass following order:

18.1 **RULE** returnable on 14.12.2026. Mr. Aaditya Dave, learned advocate for M/s Nanavati Associates, waives service of notice of Rule for and on behalf of respondent No.1 – Trust and its trustees joined in this petition.

18.2 The second operative part of the impugned order dated 27.11.2025 passed by the Principal Senior Civil Judge, At- Danta, Dist – Banaskantha in Execution Petition No.1 of 2016 is hereby stayed qua the petitioners only. Consequently, the petitioners are not required to execute the sale deed in favour of the decree holder – the respondent no.1 herein.

18.3 For the reasons supra, there shall be no stay against the first operative portion of the aforesaid impugned order, thereby, the legal heirs of original defendant No.2 (petitioners and respondent No. 2 & 3 herein) are required to handover the vacant and peaceful possession of suit land to the plaintiff - decree holder. In a case where, the legal heirs of the original defendant No.2 including the petitioners herein do not hand over the possession of the suit land in favour of the decree holder – the respondent No.1 herein, the executing Court shall implement the first operative part of its order dated 27.11.2025 without any further delay.

18.4 It is open for the respondents herein to file their reply. The petitioners can as well file their rejoinder, if any. The Registry shall accept the reply/rejoinder and replace it in the file.

Lalji Desai

(MAULIK J.SHELAT,J)