

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CIVIL REVISION APPLICATION NO. 234 of 2023**

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RAMESHJI BHIKHAJI THAKOR

Versus

KISHORBHAI MOHANBHAI KUHADA

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Appearance:

MR RAXIT J DHOLAKIA(3709) for the Applicant(s) No. 1,2

for the Opponent(s) No. 1

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CORAM: HONOURABLE MS. JUSTICE SANGEETA K. VISHEN**Date : 06/07/2023****ORAL ORDER**

1. Heard Mr Raxit J. Dholakia, learned advocate appearing for the applicants. It is submitted that the suit, was filed for specific performance of the agreement to sell dated 16.12.2011. It is submitted that from the plaint itself, it is clear that the land, was of new tenure which fact, is also considered by the court below favourably. It is submitted that the agreement to sell, was not in conformity with the provisions of Section 43 of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as "the Act of 1948") and therefore, would be unenforceable. It is submitted that the issue is no longer *res integra*.

2. Reliance is placed on the judgment of this Court in the case of *Naranbhai Kanjibhai Gajera v. Vinodbhai Shankarbhai Patel* passed in First Appeal no.1268 of 2022. It is submitted that the Division Bench, while considering various judgments of the High Court so also Apex Court, has held and observed that if the agreement to sell, is hit by the bar of provisions of Section 43 of the Act of 1948, in that event, the agreement to sell, would be invalid and not

enforceable in law. It is submitted that therefore, when the issue is settled, the learned judge, ought not to have rejected the application only on the ground that the suit, needs a trial and all the aspects can be considered at the time of the trial.

3. Considered the submissions. Issue notice to the respondents, returnable on 10.08.2023. Ad-interim relief, is granted in terms of paragraph 7(C), till the next date of hearing. Direct service is permitted.

4. Mr Raxit Dholakia, learned advocate, upon instructions, has stated before this Court, that the applicants, shall not deal with the said property and not create any third party rights.

RAVI P. PATEL

(SANGEETA K. VISHEN,J)