

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SECOND APPEAL NO. 142 of 2024****With****CIVIL APPLICATION (FOR INJUNCTION) NO. 1 of 2024****In R/SECOND APPEAL NO. 142 of 2024**

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NATVARLAL MANILAL PATEL & ORS.**Versus****PANKAJBHAI RAMBHAI PATEL & ANR.**

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Appearance:**MS TRUSHA PATEL, SENIOR ADVOCATE with****MR JAYDIPSINH G GADHAVI(9422) for the Appellant(s) No. 1,2,3,4,5,6****for the Respondent(s) No. 1,2**

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CORAM: HONOURABLE MR. JUSTICE SANDEEP N. BHATT**Date : 21/03/2024****ORAL ORDER****Order on Second Appeal :**

Draft amendment is allowed. To be carried out forthwith.

Heard learned senior advocate Ms. Trusha Patel with learned advocate Mr. Jaydipsinh G. Gadhavi for the appellants.

Considering the following substantial questions of law, as suggested by learned advocate for the appellants, issue **notice** to the respondents returnable on **24.04.2024**.

- (i) Whether the lower Court was justified in dismissing the appeal of the appellant, without formulating and independently deciding appropriate points for determination as mandated by provision of law contemplated by Order 41, Rule 31 of the Code of Civil Procedure, 1908 ?
- (ii) Whether the Courts below have justified in interpreting the documents and materials, more particularly, the Released Deed at Exh.82, supported by the oral evidence of Notary at Exh.87, for establishing the claim and case of the appellants ?
- (iii) Whether the alleged transaction of the sale in respect of 1/3rd share of the land in question, being an ancestral land, in favour of the respondents is valid as per law, more particularly, in absence of any consent by the co-owners of the land in question ?
- (iv) Whether the alleged sale deed executed in favour of the respondents in respect of the

land in question is valid in absence of any proof of payment of consideration by the respondents as per the provisions of Section 54 of the Transfer of Property Act ?

- (v) Whether the Release Deeds at Exh.82 and 84, executed by the Defendant No.1 in favour of the plaintiffs, in respect of the land in question is valid and enforceable under the law ?
- (vi) Whether the Release Deeds at Exh.82 and 84, executed in favour of the plaintiffs are required to be registered compulsorily under the provisions of Section 17 of the Registration Act ?
- (vii) Whether the Courts below have justified in dismissing the suit and appeal preferred by the appellants without considering the settled position of law ?
- (viii) In view of Section 36A and 36B of the Gujarat Prevention of Fragmentation and Consolidation of Holdings Act, 1948; whether

the Courts below could have held that the sale deed executed by the defendant No.1 was not in breach of provisions of said act, without framing and referring said issue to the competent authority under the said Act ?

(ix) Whether the Courts below could have rejected the relief of permanent injunction as prayed for by the plaintiffs, when admittedly, there was no decree for partition of land bearing S.No.1010/A/1; by metes and bounds ?

(x) Whether the Courts below have erred in ignoring the provisions of Section 22 of the Hindu Succession Act, 1956 ?

Order on Civil Application :

Heard learned advocate for the applicants.

Considering the averments made in this application as well as considering the submissions made at the bar and in view of the facts and circumstances of the case, it is ordered that in the meantime, interim relief granted by the learned appellate Court below vide order dated 08.09.2021

and extended at the time of dismissing the appeal vide impugned judgment and decree 03.02.2024 passed on Regular Civil Appeal No.24 of 2021 by the learned Additional District Judge, Gandinagar at Kalol, is further extended till the next date of hearing.

Direct service, in addition to normal mode of service, is permitted.

M.H. DAVE

(SANDEEP N. BHATT,J)