

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/FIRST APPEAL NO. 1319 of 2024**

PUNJAB NATIONAL BANK

Versus

ABDUL REHMAN ABDUL KARIM SAFRI &amp; ORS.

Appearance:

MR. VN. SEVAK(3791) for the Appellant(s) No. 1

for the Defendant(s) No. 1,2,3,4

**CORAM: HONOURABLE MS. JUSTICE SANGEETA K. VISHEN**

and

**HONOURABLE MS. JUSTICE NISHA M. THAKORE****Date : 27/03/2024****ORAL ORDER****(PER : HONOURABLE MS. JUSTICE SANGEETA K. VISHEN)**

1. Mr V. N. Sevak, learned advocate appearing for the appellant submitted that the mortgage in favour of the bank, was created on 17.02.2014 clearly stating that the document of title mentioned in schedule is free from encumbrances and with an intent to create a security by way of a equitable mortgage. It is thereafter, that the sale deed, appears to have been executed only with a view to nullifying the right of the appellant and that too against the provisions of the mortgage deed, the sale deed, could not have been executed. The said sale deed, was behind the back of the appellant and without their knowledge. What weighed with the learned Judge, was the notice issued in the year 2020 and only on the basis of the said notice, inference has been drawn that the registered sale deed, was within the knowledge of the appellant. It is submitted that even in the notice issued by the respondent, categorical reference has been made to the search caused and subject property being mortgaged in favour of bank by the proprietor of M/s. A. R. Enterprise. The learned Judge, has proceeded

on erroneous premise and rejected the plaint.

2. Considered the submissions. Issue notice to the respondents, returnable on 24.04.2024.

**(SANGEETA K. VISHEN,J)**

RAVI P. PATEL

**(NISHA M. THAKORE,J)**