

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/FIRST APPEAL NO. 4520 of 2024**

With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2024
In R/FIRST APPEAL NO. 4520 of 2024

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JASHODABEN BAKORBHAI SUTARIYA & ORS.

Versus

MANOHAR MOHANLAL HARIYANI & ORS.

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Appearance:

A R KADRI(7330) for the Appellant(s) No. 1,2,3,4,5

VASIMRAJA A KURESHI(8609) for the Appellant(s) No. 1,2,3,4,5

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CORAM: HONOURABLE MS. JUSTICE SANGEETA K. VISHEN

and

HONOURABLE MR. JUSTICE SANJEEV J. THAKER

Date : 23/12/2024

ORAL ORDER

(PER : HONOURABLE MS. JUSTICE SANGEETA K. VISHEN)

Order in First Appeal

Mr. AR Kadri, learned Advocate submitted that what the learned Judge did not consider was the documents produced by the defendant nos. 1 to 5 namely the registration of the first information report by a third party against the plaintiff. It is submitted that it is true that the agreement to sell was executed in the year 2010 and the aspect of receipt of earnest money has also been proved against the defendant nos. 1 to 5. It is not in dispute that after the execution of the agreement to sell in favour of the plaintiff, the plaintiff has assigned his right twice and for which he has received the money from respective parties which aspect, is strengthened by the first information report registered with Karjan

Police Station, Vadodara (Rural) against the plaintiff. The allegation in the first information report is that the plaintiff has received the amount from one Rohit Chaddarwala so also, from the complainant. Had this first information report, the allegations and the aspect of receipt of money been considered, perhaps, the direction of refund of the amount of Rs.41,00,000/- would not have been there. It is submitted that the learned Judge has committed an error in saddling the appellants-defendant nos. 1-5 with Rs.41,00,000/-, despite the fact that the plaintiff has already received a huge amount from the parties by entering into a transaction.

2. Considered the submissions. Issue notice to the respondents returnable on 10.02.2025. Direct service is permitted.

Order in Civil Application

Heard Mr.AR Kadri, learned Advocate appearing for the applicants.

Issue notice to the respondents returnable on 10.02.2025. Ad-interim relief is granted in terms of paragraph 8(B).

Direct service is permitted.

(SANGEETA K. VISHEN,J)

(SANJEEV J.THAKER,J)

SINDHU NAIR