

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/FIRST APPEAL NO. 1307 of 2025**

With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2025
In R/FIRST APPEAL NO. 1307 of 2025

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NALINKUMAR MANGALBHAI

Versus

MAHESHKUMAR CHANDRAKANTBHAI PANDYA & ORS.

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Appearance:

MR VIJAY H NANGESH(3981) for the Appellant(s) No. 1

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CORAM: **HONOURABLE MS. JUSTICE NISHA M. THAKORE**

Date : 05/05/2025

ORAL ORDER

Order in FA:

1. Heard Mr. Vijay Nanges, learned advocate for the appellant- original defendant no.8. At the outset, learned advocate has relied upon the Full Bench decision of this Court in the case of **Deceased Shaikh Ismailbhai Hushainbhai Through LH vs. Vankar Ambalal Dhanabhai** reported in in **2024(1) GLH 222** to contend that the agreement to sell in respect of subject land entered upon between the original plaintiff and defendant nos. 1 to 7 was in gross violation of provision of Section 43 of the Bombay Tenancy and Agriculture Land Act, 1948. He has further submitted that the enforcement of such transaction, as held by the Full Bench in the aforesaid decision, is forbidden in view of Section 23 of the Contract Act, 1872 in absence of any previous permission being obtained from the Collector. While referring to the alleged agreement to sell, learned advocate has pointed out that the same was alleged to have been executed on

29.12.2007 before the Notary by the defendant nos. 1 to 7 in favour of the original plaintiff wherein specific condition was incorporated to obtain permission from the competent authority. He has therefore, submitted that the original plaintiff was aware about the fact that the subject land was a new tenure land and without prior permission of the authority, such transaction could not have been entered upon. Learned advocate has further pointed out that such permission was obtained only on 19.1.2013 and thereafter the registered sale deed was executed in favour of the present appellant - original defendant no.8. Thus, he has submitted that the present appellant being a bonafide purchaser has entered into a sale transaction after duly complying the provisions of the Act. Despite the aforesaid legal position, learned Judge by impugned judgment and decree has allowed the suit of the present respondent no.1- original plaintiff thereby granting specific performance of the alleged agreement to sell by further directing rest of the defendants to accept the remaining amount of consideration and execute the registered sale deed. In the process, learned Judge has declared the registered sale deed no.1226/2013 executed in favour of original no.8- present appellant to be illegal and null and void. Learned advocate has submitted that pursuant to the aforesaid sale deed, the present appellant has been in actual possession of the subject land since date of execution of the sale deed and by virtue of impugned judgment and decree, the applicant - original appellant shall be dispossess once the impugned judgment and decree is sought to be enforced. He has therefore, urged this Court to admit the appeal as well as to protect his possession, pending this appeal.

2. Considering the aforesaid submissions of the learned advocate for the appellant and the law, prima facie the Court finds that the learned Judge committed serious error in facts as well as in law by granting decree of specific performance in respect of an agreement to sell which has been executed in violation of Section 43 of the Tenancy Act. On the other hand, the learned Judge failed to appreciate that the sale deed was entered upon by the present appellant after obtaining due permission from the competent authority as envisaged under Section 43 of the Tenancy Act, 1948. The appeal deserves consideration. Hence, appeal is **admitted**.

Order in Civil Application:

1. Issue Rule upon the respondents, making it returnable on 24.07.2025.

2. Considering the aforesaid submissions of the learned advocate for the applicant, by way of ad-interim relief, the impugned judgment and decree passed by the learned Judge is stayed pending adjudication of the present application seeking stay.

RATHOD KAUSHIKSINH

(NISHA M. THAKORE,J)