

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/SECOND APPEAL NO. 166 of 2023
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2023
In
R/SECOND APPEAL NO. 166 of 2023
With
R/SECOND APPEAL NO. 167 of 2023
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2023
In
R/SECOND APPEAL NO. 167 of 2023**

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MAHAMMADBHAI MEMDUBHAI MOMIN

Versus

MAHOBATSINGH PRAGJIBHAI CHAUHAN

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Appearance:

MR. KAMAL TRIVEDI, learned SENIOR ADVOCATE with MR. VANDAN BAXI , learned advocate with MS. ANKEETA RAJPUT, learned advocate for NIMIT Y SHUKLA(8338) for the Appellant Nos. 1,2 IN SECOND APPEAL NO.166 OF 2023 WITH CIVIL APPLICATION NO.1 OF 2023

MR. SUDHIR NANAVATI, learned SENIOR ADVOCATE for NIMIT Y SHUKLA(8338) for the Appellant Nos. 1,2 IN SECOND APPEAL NO.167 OF 2023 WITH CIVIL APPLICATION NO.1 OF 2023

for the Respondent(s) No. 1,1.1,1.3,2,3,4,5,6,7

MR. MEHUL S. SHAH, SENIOR ADVOCATE WITH MR. JENIL M SHAH(7840) for the Respondent(s) No. 1.2

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CORAM: HONOURABLE MR. JUSTICE RAJENDRA M. SAREEN

Date : 05/05/2023

COMMON ORAL ORDER

These are the second appeals, wherein the appellants have challenged the judgment dated 6th April, 2023 passed by the first appellate Court i.e. 7th Addl. District Judge,

Ahmedabad (Rural) at Ahmedabad in Regular Civil Appeal no.85 of 2005 with Regular Civil Appeal no.86 of 2005, wherein the decree passed in favour of the present appellants in special Civil Suit no.111 of 1996 with Regular Civil Suit no.69 of 1996 was reversed.

Heard Mr. Kamal Trivedi, learned Senior Advocate with Mr. Vandan Baxi, learned advocate with Ms. Ankeeta Rajput, learned advocate for the appellants in Second Appeal no.166 of 2023, Mr. Sudhir Nanavati, learned Senior Advocate with Mr. Nimit Y. Shukla, learned advocate for the appellant in Second Appeal no.167 of 2023 and Mr. Mehul S. Shah, learned Senior Advocate with Mr. Jenil M. Shah, learned advocate for respondent no.1.2 on caveat.

As such there are two contradictory findings and observations of two different lower Courts and the issues involved in both the cases, which as per the learned Senior Advocates for the respective parties, are of a nature which requires documentary evidence to be seen by this Court at the time of admission of the appeals. As such when the appeals are filed against the contrary view of the first appellate Court and when the case is based upon the documentary evidence along with the oral evidence, it requires consideration and extensive hearing of the issues between the parties before admitting the appeals.

Under the circumstances, issue **Notice** returnable on **21st June, 2023**. Mr. Jenil Shah, learned advocate waives service of notice on behalf of the respondent no.1.2.

R. & P. be called for from the concerned Trial Court. Moreover, the learned Senior Advocates for both the parties are at liberty to file paper-book with regard to the documentary evidence and oral evidence before the Registry by the returnable date.

Order in Civil Applications :-

Issue ***Notice*** returnable on ***21st June, 2023***. Mr. Jenil Shah, learned advocate waives service of notice on behalf of the respondent no.1.2.

The order of First Appellate Court passed below Exh.124 dated 6th April, 2023 in both the appeals staying the operation, implementation and execution of the judgment and decree till today is extended till the returnable date.

It is also directed to the parties to maintain *status-quo* with respect to the title and possession of the property till the returnable date.

(RAJENDRA M. SAREEN, J.)

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