

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/FIRST APPEAL NO. 1287 of 2025**

**With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2025
In R/FIRST APPEAL NO. 1287 of 2025**

=====

REVABHAI NATHABHAI MATIYA & ORS.

Versus

LHOF DECD. LABHUBEN TAPUBHAI MANDALI W/O BACHUBHAI MAKWANA
& ORS.

=====

Appearance:

MR. NISHIT P GANDHI(6946) for the Appellant(s) No. 1,2,3,4

MR. ZALAK B PIPALIA(6161) for the Appellant(s) No. 1,2,3,4

=====

CORAM:HONOURABLE MS. JUSTICE NISHA M. THAKORE

Date : 28/04/2025

ORAL ORDER

ORDER IN FIRST APPEAL:

1. Heard Mr. Nishit P. Gandhi, learned advocate on record for the appellants.

2. While inviting the attention of this Court to the issues framed by the learned trial court, learned advocate has submitted that though the learned trial court has believed the case of the plaintiffs with regard to the existence of the agreement to sell, whereby the defendant no.1 had agreed to sell the suit property to the plaintiffs for an amount of Rs.77 Lakhs and the earnest money of Rs.25 Lakhs

towards the aforesaid consideration paid to the defendant no.1 being proved, the learned trial court has not entertained the suit of the plaintiffs on the ground that the plaintiffs have failed to prove their case by establishing their readiness and willingness to perform their part of contract.

2.1 According to the learned advocate for the appellants, the learned trial court miserably failed to appreciate the evidence of the plaintiffs in its right perspective, as against the documentary evidence brought on record, more particularly, the statement of the account of the plaintiff no.1, which goes to suggest that the plaintiff was financially sound to make the payment of the remaining amount of consideration as agreed. Learned advocate for the appellants has further submitted that performance of the agreement to sell on the part of the plaintiffs depends upon the measurement of the subject land, which was to be undertaken by the defendant no.1. In absence of the aforesaid exercise being undertaken, the final amount of sale consideration could not have been arrived upon. It is submitted by learned advocate for the appellants that the time was not essence of the agreement to sell, as can be gathered from the terms and conditions of the agreement. He has, therefore, submitted that the learned trial court committed serious error in answering the issue of

readiness and willingness on part of the plaintiffs against them.

3. Considering the aforesaid submissions of the learned advocate for the appellants, the appeal deserves consideration. Hence, **Admit.**

4. Registry is directed to call for record and proceedings from the concerned trial court, before the next date of hearing.

ORDER IN CIVIL APPLICATION FOR STAY

1. Heard Mr. Nishit P. Gandhi, learned advocate on record for the applicants.

2. It is submitted by learned advocate for the applicants- original appellants that impugned judgment and decree has been stayed by the learned trial court for a period of 30 days. The reliance was placed on the certified copy of the order dated 29.03.2025 passed by the learned trial court on pursis at Exh.93.

3. At this stage, learned advocate for the applicants has referred to the order dated 25.03.2019 passed by the learned trial court below Exh.5, whereby considering the contents of the pursis submitted by the defendant no.2, they were directed to not to transfer the suit

property till final disposal of the suit.

4. Considering the aforesaid submissions, Issue **Rule**, returnable on **14.07.2025**.

5. In the meanwhile, respondent no.2 is directed to not to transfer the suit property in any manner, till the next date of hearing.

SUYASH SRIVASTAVA

(NISHA M. THAKORE,J)