

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SECOND APPEAL NO. 137 of 2020**

With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2020
In R/SECOND APPEAL NO. 137 of 2020

=====

HARSHADBHAI MAGANBHAI KAPADIA

Versus

PRAVINBHAI PAULBHAI MAHIDA

=====

Appearance:

MR MRUGEN K PUROHIT(1224) for the Appellant(s) No.

1,10,11,12,13,14,15,16,17,18,19,20,21,22,23,24,25,26,27,28,29,30,31,32,
33,34,4,5,6,7,8,9

for the Respondent(s) No. 12

MR PAWAN A BAROT(6455) for the Respondent(s) No.

1,10,11,2,3,4,5,6,7,8,9

=====

CORAM: HONOURABLE MR. JUSTICE BHARGAV D. KARIA

Date : 02/09/2020

ORAL ORDER

Heard learned advocate Mr. Mrugen Purohit for the appellants and learned advocate Mr. Yatin Soni assisted by learned advocate Mr. Pawan Barot for the respondents through video conference.

Order in Second Appeal:

Admit.

Following substantial questions of law are admitted for consideration by this Court :

“(i) Whether the appellate court has properly framed the point of determination which involved in the First Appeal as required under Order XLI Rule 31 of the Code of Civil Procedure, 1908?

(ii) Whether the Courts below were justified in holding that the writing/agreement dated 27th January, 1995 required to be registered under Sections 17 and 49 of the Registration Act, 1908. More particularly such writing recognized the right of way and only granting permission to use internal road of defendant's society?

(iii) Whether the courts below was justified in dismissing the suit and confirming the judgment on the ground that other member of the society have not been impleaded as party and therefore the suit is barred on the ground of non-joinder of party?

(iv) Whether the courts below were justified in holding that the executer of the writing/document dated 27th January, 1995 who are erstwhile owner of the property, the defendants plots have no authority to execute such writing and the same is not binding to the defendants' society?

(v) Whether the court below committed a grave error in holding that plaintiffs failed to prove that the defendants are creating any obstruction in their right of way?

(vi) Whether the courts below committed an error in holding that the plaintiffs' suit is barred on the ground of non-joinder of parties?”

Order in Civil Application:

Learned advocate Mr. Soni prays for time to file reply to the application for stay.

Stand over to 10th September, 2020.

To be listed on top of the Board.

(BHARGAV D. KARIA, J)

RAGHUNATH R NAIR