

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SECOND APPEAL NO. 350 of 2024**

With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2024
In R/SECOND APPEAL NO. 350 of 2024

=====

SAJUBEN ARJANBHAI DHANA MYATRA & ORS.

Versus

GABHA BIJAL DANGAR & ORS.

=====

Appearance:

MR P S DATTA(11324) for the Appellant(s) No. 1,2,3,4,5

=====

CORAM: HONOURABLE MR. JUSTICE DIVYESH A. JOSHI

Date : 12/12/2024

COMMON ORAL ORDER

1. Heard Mr. P.S. Datta, learned advocate for the appellants.
2. Mr. P.S. Datta, learned advocate for the appellant has submitted that the appellants herein are the original plaintiffs and the respondents herein are the original defendants. He further submits that the suit is filed for partition, declaration as well as cancellation of the registered sale-deed. He has further submitted that at the time of institution of the suit, the plaintiffs have stated in a very categorically terms that they are in possession of the suit property and the said suit-property is belonging to their forefathers. He has further submitted that being the legal heirs of deceased Jalubha Hathisingji Amar (Jadeja), they are entitled to get 1/8th share in the said property, however, behind their back and without informing them, the mother and brothers have mutated their

named in the revenue record and then-after, subsequently, on the basis of certified entries of revenue record, they have executed registered sale-deed in favour of third party and have created third party right. The authority concerned has also issued notice under Section-135D to the plaintiffs and their names were also not mutated in the revenue record. He further submitted that at the time of execution of the registered sale-deed, the defendants have stated that they are the absolute owner and occupant of the said property and the names of legal heirs are mutated in the revenue record and on the strength of the revenue entry, they became the owner and occupant of the property, but in-fact, the names of the sisters have not been mentioned in any proceedings nor in the revenue records. He has further submitted that as soon as notice is served, the defendants have appeared through their advocate and filed an application under Order VII Rule 11 of CPC. and the said application has been entertained by the learned concerned court and at the time of deciding said application, the learned concerned court has observed in a specific terms that nowhere in the suit, the plaintiffs have contended that they are in possession of the suit-property. Mr. Datta, learned advocate further submitted that the said observations made by the learned concerned court is quite contrary to the facts narrated in the plaint itself. He has read the averments made in the plaint and submitted that at the time of institution of plaint, the plaintiffs have narrated the fact that they are in possession of the suit property, therefore, the said observation made by the learned concerned court is against the actual averments made by the plaintiff in the suit itself, therefore, the order passed by the learned concerned

court is required to be quashed and set aside. He has further submitted that he has challenged the said order by way of preferring appeal before the learned appellate court, despite the fact that the said fact had been brought to the notice of the learned appellate court. The learned appellate court has reiterated the said fact as narrated in the order of the learned trial court and given the same observations/findings, which clearly goes on to show that without application of mind, the orders have been passed by both the learned court.

3. Having considered the submissions canvassed by the learned advocate for the appellant and having considered the material on record, prima-facie, it seems that there is merit in the present second appeal. Hence, **Issue Notice** to the opponents, returnable on **24.01.2025**.

ORDER IN CIVIL APPLICATION:-

In the meantime, there shall be an ad-interim order in terms of Para-7(B).

A. B. VAGHELA

(DIVYESH A. JOSHI,J)