

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SECOND APPEAL NO. 334 of 2026**

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RAJNIKANT DAHYABHAI PATEL
Versus
RAJNIKANT BHAILALBHAI PATEL

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Appearance:
MR MEHUL SHAH SENIOR ADVOCATE WITH MR. J. Z. SHAIKH(14308) for
the Appellant(s) No. 1

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CORAM:HONOURABLE MR.JUSTICE L. S. PIRZADA

Date : 05/06/2026

ORAL ORDER

1. The present Second Appeal has been preferred by the present appellant - original plaintiff under Section 100 of the Code of Civil Procedure, 1908.

2. Learned Senior Advocate Mr. Mehul Shah assisted by learned advocate Mr. J.Z. Shaikh for the appellant submitted that the present appellant - original plaintiff has filed Special Civil Suit no. 21 of 2011 against the defendant for the specific performance of an agreement dated 29.04.2010 and the said Civil Suit was decreed by judgment and decree dated 05.03.2022 by the 5th Additional Senior Civil Judge, Vadodara. It is submitted that being aggrieved and dissatisfied by the said judgment and decree, the defendant has preferred Regular Civil Appeal No. 58 of 2022 before the 6th Additional District Judge, Vadodara whereby, vide judgment dated 08.05.2026, the 6th Additional District Judge, Vadodara has allowed the appeal of the original defendant and the judgment and decree passed by the 5th Additional Senior Civil Judge, Vadodara in Special Civil Suit no. 21

of 2011 was quashed and set aside. It is submitted that on the very same day before the Appeal Court, an Exh.60 application was preferred to stay the execution and operation of the judgment passed by the Appeal Court and the Appeal Court has stayed the execution and operation of the said judgment till 07.06.2026. It is submitted that pending the appeal, there was an order of status quo. It is further submitted that the main ground on which the appeal has been allowed and the judgment and decree of the trial Court was set aside was that by praying for specific performance of an agreement, a separate prayer for possession has not been sought. Only on this ground the judgment of the trial Court was set aside. It is submitted that as per the agreement, Rs.10,00,000/- was the sale consideration and the total amount was given to the defendant at the time of agreement. However, the Appeal Court has recorded that it was a token amount and also on this ground, the judgment and decree was quashed and set aside. It is submitted that there is a substantial question of law involved in the present appeal. The present appeal is required to be admitted and the interim relief granted by the Appeal Court is required to be extended.

3. Considering the submissions made by the learned senior advocate for the appellant, perusing the judgment passed by the trial Court and the First Appellate Court, there is substantial question of law and hence, the present appeal requires consideration.

4. The present Second Appeal is admitted. **NOTICE** of admission, returnable on 22.06.2026.

5. The following substantial questions of law have been framed as under:

1) Whether the learned First Appellate Court has erred in law in treating the amount of Rs. 10,00,000/- mentioned in Exh.69 as merely token earnest money despite there being no recital in the agreement to sell indicating the said amount to be part consideration, advance payment or token amount?

2) Whether the learned First Appellate Court has committed substantial error of law in drawing adverse inference against the plaintiff regarding payment of consideration despite admitted execution and admitted signatures upon Exh.69 agreement to sell and Exh.69A power of attorney by the defendant?

3) Whether the learned First Appellate Court has committed substantial error of law in holding that separate prayer for possession was mandatory in the present suit for specific performance despite settled principles under Section 22 of the Specific Relief Act that relief of possession is ancillary and inherent in a decree for specific performance?

4) Whether the learned First Appellate Court has committed substantial error of law in doubting the enforceability of Exh.69 merely on the ground of alleged inadequacy of consideration despite settled principles of law that inadequacy of consideration

itself does not invalidate a contract?

Direct service is permitted.

ANUSRI

(L. S. PIRZADA, J)