

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**FIRST APPEAL NO. 1775 of 2017**

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SAWAISINH DEVISINGH CHAUHAN....Appellant(s)

Versus

YASHWANTSINH MAHANSINH RATHOD....Defendant(s)

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Appearance:

MR P J YAGNIK, ADVOCATE for the Appellant(s) No. 1

DARSHAN A DAVE, CAVEATOR for the Defendant(s) No. 1

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CORAM: HONOURABLE MS.JUSTICE BELA M. TRIVEDI**Date : 14/06/2017****ORAL ORDER**

1. After notifying the matter today at 2:30 p.m., and after hearing the learned advocates for the parties, following further order is passed in continuation of the order passed yesterday i.e. on 13.06.2017.

2. During the course of hearing of the First Appeal, it had transpired from that paper-book filed by the learned advocate Mr. Darshan Dave for the respondent - original plaintiff that during the course of trial of the Suit, the appellant - original defendant had examined four witnesses over and above examining himself. The four witnesses examined by the defendant were Jignesh Savaisinh, Sajjansinh Jaikishan Sinh, Smt. Ansuyaben w/o Sajjansinh and Ms. Monaben d/o

Sajjansinh.

3. All the said witnesses had filed their respective affidavits in lieu of the examination-in-chief under Order XVIII Rule 4 of CPC. All the four witnesses appear to have been identified by some Advocate Mr. N.C. Chauhan. However, from the judgment, it appears that the Advocate Mr. J.G. Panchal had appeared for the appellant - defendant in the suit. On the bare perusal of the said affidavits filed by the said witnesses in lieu of their examination-in-chief, it appears that all the paragraphs from paragraph 5 onwards were copied in all the said affidavits without any application of mind. The concerned Advocate who had prepared the said affidavits, had not bothered to see the relevance of such paragraphs in the affidavits of said witnesses and the said witnesses also had not bothered to read their affidavits before placing them on record in the judicial proceedings. Thus, there appears to be gross negligence on the part of the concerned Advocate who had prepared the said affidavits and placed them on record, and also gross negligence on the part of the concerned witnesses in putting their signatures on such affidavits without reading them and in permitting them to be used as evidence in the judicial proceedings.

4. In view of the above, following directions are given : -

(a) The said witnesses i.e. Sajjansinh Jaikishan,

Smt. Ansuyaben W/o Sajjansinh and Ms. Monaben D/o Sajjansinh, all residing at B-471/27-84, Gujarat Housing Board, opposite temple of Ambe Mata, Bapunagar crossroads, Ahmedabad, are hereby directed to remain present before this Court on the next date i.e. 28.06.2017, along with the affidavit as to under whose instructions and under what circumstances, such affidavits were filed in the trial Court.

(b) The learned advocate Mr. J.G. Panchal appearing for the defendant Savaisinh Devisinh Chauhan (who is the appellant herein) is also directed to remain present before this Court on 28.06.2017 to apprise the Court as to who had prepared and filed the affidavits of the witnesses on behalf of the defendant in the suit, to be used as evidence.

(c) The concerned Judge also does not appear to have dealt with the said evidence of the witnesses examined by the defendant in the impugned judgment and decree passed in Special Civil Suit No. 403 of 2011. There is no reference of the evidence of the said witnesses examined on behalf of the defendant in the said judgment. If the entire evidence on record was perused properly, such glaring mistakes and casual approach on the part of the defendant, his witnesses and his Advocate would not have gone unnoticed by the Court. Hence, the concerned Judge Mr. Chaitanya R. Barot, Principal Senior Civil Judge, Gandhinagar is also directed to send his remarks in this regard.

(d) The Office is directed to issue Notices to the afore stated witnesses at the address stated hereinabove, to be served through the District Court, Gandhinagar and to issue notice to the Advocate Mr. J.G. Panchal, to be served through the District Court, Gandhinagar, for remaining present before this Court on **28.06.2017**.

(e) The Office is also directed to send copy of this order to the concerned Judge Mr. Chaitanya R. Barot, Principal Senior Civil Judge, Gandhinagar, who shall send his remarks so as to reach to this Court on or before 28.06.2017. The Office shall send copy of this order to each of the witnesses, Advocate and the Judge along with the notices.

5. Put up on **28.06.2017**.

(BELA M. TRIVEDI, J.)

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