

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SECOND APPEAL NO. 152 of 2021****With****CIVIL APPLICATION (FOR STAY) NO. 1 of 2021****In R/SECOND APPEAL NO. 152 of 2021**

=====

LH OF DECD BHUPENDRASINH ALIAS PRABHATSINH BHARATSINH
CHAUHAN

Versus**PRAVINSINH SAJANSINH PARMAR SINCE DECD THROUGH LH**

=====

Appearance:

DELETED(20) for the Appellant(s) No. 1.3

MR ZUBIN F BHARDA(159) for the Appellant(s) No. 1,1.1,1.2

for the Respondent(s) No. 1,1.1,1.2,1.3,1.4,2,3,3.1,3.2,3.3,4,4.1,4.2

=====

CORAM: HONOURABLE MR. JUSTICE N.V. ANJARIA**Date : 25/08/2021****ORAL ORDER**

Heard learned advocate Mr. Zubin Bharda for the appellants.

2. The present Second Appeal is preferred by the original plaintiff against common judgment and decree dated 15.7.2021 passed by learned 6th Additional District Judge, Ankleshwar at Bharuch in Regular Civil Appeal No. 229 of 2013 and 232 of 2013 in so far as judgment and decree related to Regular Civil Appeal No. 229 of 2013 is concerned, whereby the appeal was dismissed and judgment and decree dated 31.3.2010 of learned Principal Civil Judge in Regular Civil Suit No. 8 of 1997 partially allowing the suit, came to be confirmed.

3. Learned advocate for the appellant submitted amongst other contentions to assail the impugned judgment and decree of the lower first appellate court that the trial court exceeded its powers in granting relief of possession in favour of the respondents, when in the suit prayer relief for

possession was not asked for. He further submitted that the entire judgment and award of the first appellate court is based on the entire misreading of the evidence.

4. Considered the contents of the judgment and decree passed by the courts below. In the facts of the case the present appeal is required to be admitted.

5. The appeal is admitted on the substantial questions of law which arise for consideration,

(i) Whether in the facts and circumstances of the case, the lower appellate court is justified in concluding that the appellants have failed to prove that land bearing Block No. 173 situated in village Jhagadia admesasuring 2-58-00 Hectors is in their possession and that they are growing bananas in the land shown in the map at Sr. Nos. A, B, C, N, K, L, M, when the trial court has reached a specific conclusion that the respondents, who were trying to remove the crop of banana from land bearing Block No. 173 are required to be restrained from the land bearing Block No. 173 to the extent of 4 Acres and 12 Gunthas, which the trial court concluded was not only in possession of the appellants but also the appellants have been held to be its owners ?

(ii) Whether in the facts and circumstances of the case, the courts below have erred in not accepting the case of the appellants that they had become owners of the suit property admeasuring 2-58-00 Hectors by way of adverse possession ?

(iii) Whether in the facts and circumstances of the case, the lower appellate court has erred in rejecting the finding recorded by the

trial court that the appellants have in part proved that the respondents – original defendants are trying to disposes from the western side of the suit property ?

(v) Whether in the facts and circumstances of the case, the appellate court has exceeded its powers in granting the relief of possession in favour of the respondents at the appellate stage in absence of any suit filed by the respondent seeking possession ?

Order in Civil Application

Heard learned advocate Mr. Zubin Bharda for the applicant.

2. Present Civil Application is filed seeking stay of the impugned judgment and order of the first appellate court. Second Appeal is admitted as per order of even date on the substantial questions of law framed and mentioned in the order.

3. Rule, returnable on 6.10.2021.

By way of ad-interim relief, parties shall maintain *status quo* with regard to the status of the property in question which shall not be subjected to creation of any interest or encumbrance by either of the parties with further stipulation that the appellants shall continue to deposit Rs. 10,000/- which they have been depositing every year pursuant to the order passed by this court in Civil Revision Application No. 1709 of 1999.

C.M. JOSHI

(N.V.ANJARIA, J)