

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SECOND APPEAL NO. 310 of 2023**

With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2023
In R/SECOND APPEAL NO. 310 of 2023

With
CIVIL APPLICATION (FOR VACATING STAY) NO. 2 of 2023
In R/SECOND APPEAL NO. 310 of 2023

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MUKTABEN GUNVANTRAY PATEL & ORS.

Versus
LILAVATIBEN NAGINDAS KOTHARI & ORS.

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Appearance:

JENIL M SHAH(7840) for the Appellant(s) No. 1,2,3,4,5,6

MR RD DAVE(264) for the Respondent(s) No. 1,2.1,2.2,2.3,3,4,5

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CORAM: HONOURABLE MR. JUSTICE J. C. DOSHI

Date : 29/01/2026

ORAL ORDER

1. The present Second Appeal is **admitted**, as it gives rise to the following substantial questions of law:-

“a) Whether the Lower Court erred in considering the true scope and nature of Order 41 Rule 22 of the Code of Civil Procedure, 1908?

b) Whether the decree of specific performance of the contract is liable to be granted when the execution of the agreement to sell is proved and the receipt of the earnest money is also an established position on record?

c) Whether the Lower Court failed to consider the true scope and nature of S.115 of the Indian Evidence Act, 1872?

d) Whether the Lower Court failed to consider the true scope and nature of S.53A of the Transfer of Property Act, 1882 ?

e)Whether the judgement rendered in Special Civil Suit No. 69/1971 operates as res judicata in the present suit?”

2. The interim relief granted earlier shall continue to operate until further orders.
3. The amount of costs imposed by the learned Court below shall be deposited before this Court within a period of two weeks from today. Upon such deposit, the same shall be invested in a Fixed Deposit Receipt (FDR), which shall abide by the outcome of the Second Appeal.
4. Written submissions tendered by the learned advocates for both sides are taken on record.
5. The matter is directed to be listed for final hearing on 16.02.2026 in the second half at 2:30 p.m.
6. All connected Civil Applications stand disposed of.

MANISH MISHRA

(J. C. DOSHI,J)