

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 19308 of 2021**

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LHRS OF DECD. SHRI JIVRAJ VIRABHAI
Versus
PANACHAND LADHA MARU

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Appearance:

MR DHAVAL SHAH(2354) for the Petitioner(s) No.

1,1.1,1.2,1.3,1.4,1.5,2,2.1,2.2,2.3,2.4,2.5,2.6,2.7,3,3.1,3.2,3.3,3.4,3.5,3.6,4
for the Respondent(s) No. 1,2,2.1,3,3.1,3.2,3.3,3.4,3.5,4,4.1

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CORAM:HONOURABLE MR. JUSTICE B.N. KARIA

Date : 22/12/2021

ORAL ORDER

By preferring present petition, petitioners have challenged the order dated 4th September 2021 passed below application Ex. 115 by the learned 3rd Additional Senior Civil Judge, Jamnagar in Regular Civil Suit No. 81 of 2011.

Heard learned advocate for the petitioners.

It was submitted by learned advocate for the petitioners that impugned order passed by the court below is contrary to the object of Section 10 of the Code of Civil Procedure entertaining and adjudicating upon parallel litigation in respect of the said cause of action and same subject matter and relief prayed by the respondent herein in Regular Civil Suit No. 81 of 2011. It was further submitted that Section 10 of the CPC provides that no court shall proceed with the trial of any suit in

which matter in issue is also directly and substantially in issue in the previously instituted suit between the same parties where such suit is pending in the same court having jurisdiction to grant relief as prayed. It was further submitted that the parties of both the suits are identical and both the suits arisen out of the common property, and therefore, matter in issue in the substantially instituted suit ie., Regular Civil Suit No.81 of 2011 is directly and substantially in issue in the previously instituted suit ie. Regular Civil Suit No. 264 of 2010, and therefore, it was imperative on the part of the court below to stay substantially instituted suit, which court below has committed grave error. It was further submitted that court below has closed the rights of the present petitioners and decided to proceed with the subsequent Regular Civil Suit No. 81 of 2011. In support of his arguments, learned advocate for the petitioners has placed his reliance on the judgments reported in AIR 1997 Del 232 and AIR 1981 Guj. 110.

Issue requires consideration.

Notice returnable on 19.01.2022.

Court below may not pass final judgment in Regular Civil Suit No. 81 of 2011 till returnable date.

(B.N. KARIA, J)

K. S. DARJI