

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SECOND APPEAL NO. 234 of 2021

With

**CIVIL APPLICATION (FOR STAY) NO. 1 of 2021
In R/SECOND APPEAL NO. 234 of 2021**

With

**CIVIL APPLICATION (FOR BRINGING HEIRS) NO. 2 of 2021
In R/SECOND APPEAL NO. 234 of 2021**

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FAKIRMAMAD HARUN THEBA EXPIRED THROUGH LHR

Versus

SHRIMATI CHANDANBEN NAROTAM SWALI

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Appearance:

MR AR THACKER(888) for the Appellant(s) No.

1,1.1,1.2,1.3,1.4,1.5,1.6

SHIVANG A THACKER(7424) for the Appellant(s) No.

1,1.1,1.2,1.3,1.4,1.5,1.6

for the Respondent(s) No. 1,1.1

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CORAM:HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

Date : 24/11/2021

ORAL ORDER

ORDER IN SECOND APPEAL

1. Heard Mr. Shivang A. Thacker, the learned counsel appearing for the appellants.

2. Second Appeal is Admitted considering the following substantial questions of law:

(A) In the facts and circumstances of the case, whether the Learned First Appellate Judge could have decided the issue regarding status of the Appellants for being tenant or agriculturist in view of the provisions of S.124 of The Gujarat Tenancy and Agricultural Land (Vidarbha Region & Kutch Area) Act, 1958?

(B) In the facts and circumstances of the case,

whether the Learned First Appellate Judge could have decided the issue regarding status of the Appellants for being tenant or agriculturist in view of decision in 1993 (1) GLH 347 and 2012 (0) GLHEL-HC 229549?

(C) In the facts and circumstances of the case, whether the Suit without claiming declaration of ownership and title seeking only possession is maintainable?"

3. Issue **Notice** of admission to the otherside, making it returnable on **05.01.2022**.

ORDER IN CIVIL APPLICATION (FOR STAY) NO.1 OF 2021

Issue **Notice** returnable on **05.01.2022**.

The execution, operation and implementation of the judgment and decree passed by the learned Civil Judge (J.D), in Regular Civil Suit No.49 o 1997 dated 29.11.2003 and confirmed by the learned 6th Additional District Judge, Kuchchh at Bhuj in Regular Civil Appeal No.74 of 2003 dated 02.06.2021 shall remain stayed till the next returnable date.

ORDER IN CIVIL APPLICATION (FOR BRINGING HEIRS) NO.2 OF 2021

1. This is an application for bringing the legal heirs of applicant (original appellant) on record.

2. Having heard Mr. Shivang Thacker, the learned counsel appearing for the applicants and having gone through the averments made in this application, the legal heirs of late Fakirmamad Harun Theba i.e. applicants - appellants nos.1.1 to 1.6 are ordered to be brought on record. Cause title be

amended accordingly.

3. The civil application is allowed accordingly.

(VAIBHAVI D. NANAVATI,J)

NEHA