

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/FIRST APPEAL NO. 4217 of 2018**

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MUKESHKUMAR JIVRAJBHAI KALA
Versus
ISHWARBHAI HARIBHAI RABARI

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Appearance:

MR TUSHAR L SHETH(3920) for the PETITIONER(s) No. 1
for the RESPONDENT(s) No. 1,10,2,2.1,2.1.1,2.2,2.2.1,2.3,3,4,5,6,7,8,9

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CORAM: HONOURABLE MR.JUSTICE B.N. KARIA**Date : 20/11/2018****ORAL ORDER****ADMIT.**

Heard learned advocate Mr. Tushar L. Sheth for the
appellant.

This appeal has been preferred by the original plaintiff
No.1 against the judgment and decree passed by the learned
City Civil Court, Ahmedabad in Civil Suit No. 4388 of 1994. It
was the case of plaintiff for permanent injunction praying
restraining the defendants from entering into Plots No. 1, 6, 7,
10 and 11 of Survey No. 82 of Ghodasar, District: Ahmedabad
and to restrain the defendants from putting up construction
over the said plots as well as restrain from transferring the suit

land which was purchased by the plaintiffs by paying earnest money and thereafter, the remaining amount was also paid by the plaintiffs. The learned trial Judge, after recording evidence, dismissed the suit on 31.08.2018 on the ground that the agreement to sell executed in favour of the plaintiffs was not registered.

Learned advocate appearing on behalf of the appellant submitted that the agreement to sell was executed prior to amendment of Section 53(A) of the Transfer of Property Act 1982 brought by the Act 48 of 2001 to take effect from 24th September 2001, and therefore, the agreement to sell produced on record, executed in favour of the plaintiff was therefore do not have to be stamped or registered. In support of his arguments, learned advocate for the appellant has relied upon a judgment of Delhi High Court in case of **Smt. Gurmeet Kaur v. Shri Harbhajan Singh and Anr**, reported in 2017 SCC Online Del. 8529 and of the **Calcutta High Court in case of Akd Rabin Mazumdar & Anr. v. M/s. Mandira Associates & Ors**, wherein, it is held that subsequent to the agreement after amendment in Section 53(A) of the Transfer of Property Act w.e.f. 24th September 2001. That, an agreement

to sell would not confer right in terms of the doctrine of part performance, if such agreement to sell is not registered.

As per the submissions made by learned advocate for the appellant, the agreement to sell was executed in favour of the plaintiff on 12.12.1985, which is also admitted by the defendant in his written statement. That, the defendant never appeared before the trial court and did not produce any evidence and even not cross examined by the plaintiffs' side. The issue requires consideration. Hence, notice for admission returnable on **18th December 2018**.

(B.N. KARIA, J)

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