

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SECOND APPEAL NO. 297 of 2021****With****CIVIL APPLICATION (FOR STAY) NO. 1 of 2021****In R/SECOND APPEAL NO. 297 of 2021**

=====

INDRASINH SARDARSINH GOHIL**Versus****GOHIL BHADUBHA KAKUBHA**

=====

Appearance:**MR RAJESH O GIDIYA(5222) for the Appellant(s) No. 1,2
for the Respondent(s) No. 1,2,3,4**

=====

CORAM:HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI**Date : 17/12/2021****ORAL ORDER****ORDER IN SECOND APPEAL**

1.This is an appeal under Section 100 of the Code of Civil Procedure filed by the appellant being aggrieved and dissatisfied by the judgment and decree dated 30.09.2021 passed by the learned 2nd Additional District Judge, Bhavnagar at Talaja in Regular Civil Appeal No.12 of 2020 (Old Regular Civil Appeal No.21 of 2019), whereby rejected the appeal and confirmed the judgment and decree dated 07.08.2019 passed by the learned 2nd Additional Civil Judge, Talaja in

Regular Civil Suit No.12 of 2013.

2. Heard learned advocate Mr.Rajesh O. Gidiya for the appellant.

3. The **Second Appeal is Admitted** considering the following substantial question of law :

(A) Whether in the facts and circumstances of the case, both the learned Courts below were justified in considering the provision of the Civil Procedure Code, 1908 as well as Indian Evidence Act, 1872 while deciding the issue involved in the present matter?

(B) Whether both the learned Courts below have committed substantial error of law in not considering the principle that the possession follows the title, the appellants herein had established their possession, which would give rise to the lawful title of the appellants as the possession of the appellants was already proved on the basis of the executing registered sale deed No.227 on dated 08.04.1969 as well as documentary evidence on record?

(C) Whether both the learned Courts below were justified in ignoring the executing registered sale deed No.227 on dated 08.04.1969 produced below Exh.31 by the appellants, which is genuine document?

(D) Whether the impugned judgments and orders of both the learned Courts below are bad in law and vitiated due to error of the record and non-consideration of the evidence of the executing registered sale deed No.227 on dated 08.04.1969, which was produced at Exh.31?

(E) Whether in the facts of the present case the mutation of a land in the revenue record

does not create or extinguish the title over such land nor it has any presumption value on the title as held in the judgment of the Hon'ble Supreme Court reported in (2019) 3 SCC 191 and (2021) 3 SCC 675?

(F) Whether both the learned Courts below have committed an error by holding that the plaintiffs are in adverse possession of the land in question though they are in possession of the land in question since 1969 and they were cultivating the land in question?

(G) Whether in the facts and circumstances of the case, both the learned Courts below had adopted hyper technical approach?

(H) Whether the judgment and decree passes by the Courts below are frivolous, vexatious and required any interference by this Hon'ble Court?

(I) Whether under the facts and circumstances of the case, the judgment and decree passed by both the learned Courts below are liable to be set aside?

ORDER IN CIVIL APPLICATION

Issue **NOTICE** returnable on **4th February, 2022**.

In the meantime, both the parties are directed to maintain status-quo with regard to nature structure and character of the suit property as on today.

Direct service is permitted.

(VAIBHAVI D. NANAVATI,J)