

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SECOND APPEAL NO. 246 of 2021****With****CIVIL APPLICATION (FOR STAY) NO. 1 of 2021****In****R/SECOND APPEAL NO. 246 of 2021**

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NENAJI MANGAJI THAKOR**Versus****AMRATJI BHIKHAJI THAKOR**

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Appearance:**MR RD DAVE(264) for the Appellant(s) No. 1,2,2.1,2.2,2.3,3,4
for the Respondent(s) No.****1,10,11,12,12.1,12.2,12.3,12.4,2,3,4,5,6,7,8,9**

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CORAM:HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI**Date : 17/11/2021****ORAL ORDER**

Heard Mr. R.D. Dave, the learned counsel appearing for the appellants-applicants.

ORDER IN SECOND APPEAL:

The following substantial questions of law arise in this Appeal for consideration of this Court:

A) Whether second suit being Special Civil Suit No.108/2005 is maintainable when the parties arrived at settlement in previous suit being Special Civil Suit No.105/2003 which was permitted to be withdrawn unconditionally upon purshis of

plaintiff Exbt.45.

- B) Whether present suit being Special Civil Suit No. 108/2005 is barred under order 23, rule 1 and rule 3A of Code of Civil Procedure ('Code' for short).*
- C) Whether both the courts below committed gross error of law in not appreciating evidence on record that after disposal of previous suit upon settlement, all the parties entered into Consent Agreement dated 10.2.2005 whereby plaintiffs have admitted and acknowledged having executed sale deed and Power of Attorney for the suit land in favour of defendants. Therefore, the contentions and alleged cause of action challenging Power of Attorney and subsequent sale deeds will not survive and there is no cause of action for second suit.*
- D) The plaintiffs have repeatedly unconditionally admitted in the memo of Special Criminal Application No. 532/2005 filed by plaintiffs against advocate that further amount of sale consideration of Rs. 10,50,000/- have been received by Mr. Bharatbhai M. Nayak (now deceased). However, the advocate Mr. Bharatbhai M. Nayak has not paid sale consideration to the plaintiffs and therefore, prayed for registration of criminal complaint against their advocate Shri. Bharatbai M. Nayak. This petition came to be disposed by this Hon'ble Courts vide order dated 19.12.2006 directing the plaintiffs to approach DSP, Gandhinagar with the plaint. It, however, appears that plaintiffs have given statement before the Investigating Officer that plaintiffs have received sale consideration. I.O. filed 'C' summery report*

before Ld. Magistrate which was accepted after hearing complainants and Cri. Case was disposed of. Under the circumstances also in view of clear admission on oath by the plaintiffs having received sale consideration, second suit ought not to have been entertained by the trial court and lower appellate court has also committed serious error in not considering this important aspect and thereby committed jurisdictional errors.

E) *Whether the plaintiffs are guilty of suppression of most important and relevant facts, evidence and documents whereby plaintiffs have not stated and not produced the documents of subsequent agreement of consent dated 10.2.2005, and only produced Index.*

F) *Both the courts below have committed jurisdictional error in holding that plaintiffs have unconditionally withdrawn previous Special Civil Suit No. 150/2003. In fact, there is no such permission granted by the trial court permitting conditional withdrawal of suit so as to bring second suit. It was only pursis filed by the plaintiffs which does not amount to grant of permission for second suit.*

G) *Whether the plaintiffs have abused the process of law by repeatedly filing civil suit by suppressing most relevant and important documents.*

H) *Whether both the courts below have committed error in deciding suit and appeal against the appellants/defendants.*

I) *Whether both the courts below committed serious error in holding that Power of Attorney dated*

10.8.2001 is bogus and forged without sending Power of Attorney for examination to the Forensic Science Laboratory by hand writing expert and erred in accepting the version of plaintiffs only.

J) Whether both the courts below have committed serious error in deciding the cases.

In view of the above substantial questions of law, the appeal requires consideration and hence, the same is ***Admitted***.

ORDER IN CIVIL APPLICATION:

Issue ***Notice*** returnable on ***12.01.2022***.

The parties are directed to maintain the status-quo as on today with regard to the nature, structure and character of the suit property till the next date of hearing.

(VAIBHAVI D. NANAVATI,J)

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