

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SECOND APPEAL NO. 301 of 2021****With****CIVIL APPLICATION (FOR STAY) NO. 1 of 2021****In R/SECOND APPEAL NO. 301 of 2021**

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S R BUILDERS PRIVATE LIMITED THROUGH DIRECTOR SHRI RAJESH
JAIN

Versus

ARVINDBHAI BHAILAL PATEL

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Appearance:

MR RASHESH S SANJANWALA, SENIOR ADVOCATE with MR DHRUV K
DAVE(6928) for the Appellant(s) No. 1
for the Respondent(s) No. 1

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CORAM: HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

Date : 17/12/2021

ORAL ORDER

Order in Second Appeal :-

This second appeal is filed under Section 100 of the Civil Procedure Code, 1908 at the instance of the appellant (original plaintiff) being aggrieved and dissatisfied by the judgment dated 30.9.2021 passed in the Regular Civil Appeal No.01 of 2019 by the learned Principal District Judge, Vadodara confirming the judgment and decree dated 23.10.2018 passed by the learned 17th Additional Senior Civil Judge, Vadodara in Special Civil Suit No.196 of 1998.

Heard Mr. Rashesh S. Sanjanwala, the learned Senior Advocate assisted by Mr. Dhruv K. Dave, the learned advocate for the appellant.

The following questions of law arises for consideration of this Court :-

“(a) Whether the Plaintiff has proved a case under section 20 of the specific relief act, 1963 for decree and entitlement of the same by the plaintiff ?

(b) Whether the Plaintiff has proved a case to exercise discretion to decree specific performance as per section 20(3) of the specific relief act, 1963 for decree and entitlement of the same by the plaintiff ?

(c) Whether the Plaintiff has proved the plaint for specific performance under section 10 of the Specific relief Act, 1963 ?

(d) Whether the learned Trial Court and learned Appellate Court were justified by not framing a specific issue of time barred of the suit before the learned Trial Court, which otherwise caste duties upon the learned Trial Court under Order 14 rule 4 ?

(e) Whether the learned Trial Court and learned Appellate Court were justified striking out of issue under Order 14 Rule 5 of the Code of the Civil Procedure Code, 1908 and further editing a specific issue of the time barred of the suit before the learned Trial Court, which otherwise caste duties upon the learned Trial Court under Order 14 rule 4 ?

(f) Whether the learned Trial Court and learned Appellate Court was justified by not giving findings on possession and

further by deciding the issue of possession under the specific provisions of the Specific Relief Act, 1963 ?

(g) Whether the learned Trial Court (Original Civil Court) settle an issue that parties have acted under the provisions of the Indian Contract Act ?

(h) Whether the learned Trial Court was proper to decide the suit in whole, where the defendant has raised preliminary of denial of agreement to sell and time barred issue ?

(i) Whether the learned Courts below have erred by believing that the suit of the plaintiff is bar by law of limitation under the Limitation Act, 1963 and the suit lacks for proper cause of action ?

(j) Whether the learned appellate court was proper by giving a finding that the defendant is in possession of the suit premise where a plea of possession (Specific Relief Act, 1963) is raised in the pleadings by the plaintiff ?

(k) Whether learned appellate court considered and framed one of the point for determination i.e. question of law of limitation, cause of action and Court Fees; whether the findings by the learned appellate court are as per the provisions of the Limitation Act, 1963 ?

(l) Whether learned appellate court was justified to add and amend the issues by invoking section 96 read with order 41 of the Code of the Civil Procedure Code, 1908

(m) Whether learned Courts below were justified by rejecting the suit and by believing the defendant's plea of the suit beyond the prayers of the plaintiff;

(n) Whether the Plaintiff has proved a case under section 53 A of the Transfer of Property Act, 1882 and whether the learned Trial Court and learned Appellate Court consider the case of the plaintiff under the provisions of the Transfer of Property Act, 1882.

(o) Whether the version of the Ex-Director of the applicant company be believed by the learned Trial Court and the learned Appellate Court who had deposed in favor of the opponent-defendant and the law of estoppel under the provision of the Indian Evidence Act, 1872.

(p) Whether the lower appellate court has committed serious error of law in not considering various judgements delivered by the Hon'ble Supreme Court.”

The appeal is admitted.

Order in Civil Application :-

Heard Mr. Rashesh S. Sanjanwala, the learned Senior Advocate assisted by Mr. Dhruv K. Dave, the learned advocate for the applicant.

Notice returnable on 11.2.2022.

Status-quo as regards nature, structure and character of the suit land as on today to be continued till the next date of hearing.

Direct service is permitted.

K.K. SAIYED

(VAIBHAVI D. NANAVATI,J)