

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CIVIL REVISION APPLICATION NO. 585 of 2025**

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MAHENDRABHAI JAYANTIBHAI PATEL & ORS.

Versus

BIPINCHANDRA JAYANTILAL PATEL & ORS.

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Appearance:

MR RASESH H PARIKH(3862) for the Applicant(s) No. 1,2,3,4

MR. NITIL V SHAH(14440) for the Applicant(s) No. 1,2,3,4

MAULIK H VAGHELA(7810) for the Opponent(s) No. 1

MR PRATHAM P JOSHI(12796) for the Opponent(s) No. 1

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CORAM: HONOURABLE MR.JUSTICE SANJEEV J.THAKER

Date : 30/09/2025

ORAL ORDER

1. The present Revision Application is filed challenging the order passed in Special Civil Suit No.359 of 2023, whereby, application below Exhibit-35 under the provisions of Order VII Rule 11 of the Code of Civil Procedure has been rejected by the 6th Additional Senior Civil Judge, Ahmedabad (Rural) by order dated 12.09.2025.

2. Learned senior advocate Mr. Mihir Thakore for the defendant has mainly argued that if the plaint and documents filed in Special Civil Suit No.359 of 2023 are taken into consideration, the suit that has been filed is for specific performance of an agreement dated 05.11.2020, executed between the plaintiff and defendant No.1 and the fact remains that the suit property which has already been purchased by the petitioner by registered sale deed dated 24.08.2001 from the original owners.

3. Learned senior advocate Mr. Mihir Thakore has argued that thereafter the original owners executed sale deed in favour of original defendant on 21.09.2001 with respect to half of the suit property and the other half was sold by a registered sale deed on 15.02.2001 and the fact remains that on 21.09.2001, the original owners did not have any right, title, interest in the suit property.

4. Learned senior advocate has also brought to the notice of this Court that in the document produced on 3/1, dated 05.11.2020, there is a specific mention of the fact that the sale deed has been registered and executed on 06.10.2001 and on 24.08.2001 in favour of petitioner. Moreover, in the said settlement document, dated 05.11.2020, there is also mention of litigations pending with respect to the suit property.

5. In view of the fact that the said agreement there is a reference of litigation, though the documents pertaining to said litigation have not been produced alongwith the plaint though have referred in the said document, the same can be looked into by this Court while deciding the application under Order VII Rule 11 of the Code of Civil Procedure. Learned senior advocate has relied on the plaint of Civil Suit No.313 of 2001, filed by the petitioners are not original owner who are defendant

No.2 to 6 and the original defedendant herein who is defendant No.7 in the said proceeding and the relief that has been sought in the said suit are to restrain the defendants including the original defendant of Civil Sit No.359 of 2023 from transferring, assigning or creating any third party right and challenged the sale deed executed in favour of original defendant to be declared illegal and void and it has been argued that the trial Court while deciding the Exhibit-5 application, whereby, by an order dated 23.09.2003, the Court has granted interim relief in terms of para-17(A) of the Injunction Application, therefore, in view of the fact that the original defendant was also restrained from creating any third party right in the suit property, original defendant could not have executed the agreement, dated 05.11.2020. It has been argued by learned senior advocate that though the said suit has thereafter withdrawn on 13.08.2022, the fact remains that agreement entered into between the parties is during the period when the Court had restrained the defendant No.7 from entering into any agreement and creating any third party right. Therefoe, in view of the fact that the agreement that has been entered on 05.11.2003 disqualified the defendant from entering into agreement and the same is in violation of the order of the trial Court, therefore, no cause of action has arisen for the plaintiff to file the suit for seeking specific performance of agreement

dated, 05.11.2020.

6. Moreover, learned senior advocate has also argued that thereafter the original defendant has also filed withdrawal purshis alongwith the Civil Suit No.313 of 2001 whereby has stated that the settlement had arrived at and had confirmed the sale deed executed in favour of the present petitioner. Therefore, the trial Court could not have rejected the application filed under the provision of Order VII Rule 11 of the Code of Civil Procedure, and therefore, it has been argued that the present application be allowed.

7. Learned advocate for the respondent has mainly argued that the trial Court has rightly rejected the application under Order VII Rule 11 of the Code of Civil Procedure in view of the fact that an agreement that has been entered into between the plaintiff and original defendant is in view of the fact that he had become the owner of the suit property by way of registered sale deed dated 21.09.2001, and therefore, it cannot be said that no cause of action has been arisen for the plaintiff to file the present suit. Moreover, it has also been aruged that the present petitioners have also intiaded proceedings challenging the settlement deed dated 05.11.2020, and therefore, also the matter cannot be decided under the provision of Order VII Rule 11 of

the Code of Civil Procedure and in view of the same, the order passed by the trial Court does not require to be enterfered.

8. Having heard learned advocate for the parties and having considered the plaint and the order that has been passed by the trial Court, the fact remains that the petitioners have become the owner by way of registered sale deed dated 24.08.2001. The original defendant has purchased the suit property by way of registered sale deed dated 21.09.2001 and 15.10.2001, therefore, the fact remains that on the date when the original sellers have sold the property to original defendant there was a registered sale deed in favour of the petitioners and it has come on record that by way of Civil Suit No.313 of 2001, the original defendant, who was respondent No.7 in the said proceeding was restrained by an order of trial Court in the said proceedings, not to transfer, assign, or create any third party right in the suit property and the said order was in operation on 05.11.200 when the agreement was entered into between the plaintiff and original defendant, therefore, the original defendant was disqualified and restrained by entering into agreement in view of the restraining order passed by the trial Court in Civil Suit No.313 of 2001.

9. The fact of filing of Civil Suit by the petitioner challenging the settlement deed, was not produced before the

trial Court and the same is subsequent event and while deciding the application under Order VII Rule 11 of the Code of Civil Procedure, the Court can look at the plaint and the document annexed with the plaint and if any document referred in the plaint and the document can be referred and in view of the same, the fact remains that the original defendant himself has confirmed the sale deed executed in favour of the petitioners in the withdrawal purshis filed in Civil Suit No.313 of 2001 and it has also come on record that the original defendant has also stated in the withdrawal purshis that he has cancelled the sale deed which was executed in his favour by registered deed dated 10.02.2022, therefore, the present matter requires consideration.

10. Hence, **Notice** returnable on **02nd December, 2025**. In the meantime, interim relief in terms of para-7(C) is granted till the next date.

(SANJEEV J.THAKER,J)

Manoj Kumar Rai