

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SECOND APPEAL NO. 462 of 2024****With****CIVIL APPLICATION (FOR STAY) NO. 1 of 2024****In****R/SECOND APPEAL NO. 462 of 2024****With****R/SECOND APPEAL NO. 470 of 2024****With****CIVIL APPLICATION (FOR STAY) NO. 1 of 2024****In****R/SECOND APPEAL NO. 470 of 2024**

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JITENDRAKUMAR RAMESHBHAI @ MATHURBHAI PATEL**Versus****SHANTABEN WD/O NARANBHAI BAVAJIBHAIP ATEL (SINCE DECD.
THROUGH LHS) & ORS.**

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Appearance:**MR RASESH H PARIKH(3862) for the Appellant(s) No. 1****MR.HEMANG H PARIKH(2628) for the Appellant(s) No. 1**

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CORAM:HONOURABLE MR. JUSTICE DIVYESH A. JOSHI**Date : 24/10/2024****COMMON ORAL ORDER**

Learned senior counsel Mr. H.M. Parikh assisted by learned advocate Mr. Sagar B. Pandya for learned advocate Mr. H.H. Parikh appearing for the appellant submits that the appellant herein is the original plaintiff who preferred Regular Civil Suit No.16 of 2015 (Old No.19 of 2011) for declaration and permanent injunction, whereas during the pendency of the aforesaid suit, the respondents herein also preferred Regular Civil Suit No.18 of 2015 (Old No.09 of 2014) for declaration and getting possession of the suit property. As the issue involved in both the suits were interrelated, they were heard together and

and decided by common judgment and decree, whereby both the suits filed by the appellant as well as the respondents were partly decreed. Being dissatisfied with the said judgment and decree dated 28.02.2019, the appellant herein preferred two separate appeals being Regular Civil Appeal No.19 of 2019 and Regular Civil Appeal No.18 of 2019 before the first appellate court for quashing and setting aside the judgment and decree passed by the learned trial court dated 28.02.2019 in Regular Civil Suit No.16 of 2015. However, the said appeals also came to be dismissed by the appellate court vide order dated 21.09.2024, confirming the judgment and decree dated 28.02.2019 passed by the trial court. Learned senior counsel Mr. Parikh submits appellant herein is the lawful owner of the land in question, who purchased the said land from one Shantaben Naranbhai Patel, who inherited the land in question by way family partition, and after the said partition of the land, she became the absolute owner of the parcel of land sold to the appellant herein by executing a registered agreement to sell upon part payment of total sale consideration. Thus, after the family partition, Shantaben became the absolute owner of the land in question and, therefore, she had all right to sell the parcel of land of her share to anyone and, therefore, the findings recorded by the appellate court that the said agreement to sell is not binding to the defendant nos.2 to 8 are absolutely erroneous as neither they are the owners of the land in question nor were in possession of the land in question and, therefore, there is no questions of being bound by the agreement to sell, and the suit instituted by the respondents against the appellant-plaintiff was not maintainable in law. Moreover, the trial court in its findings stated that the

appellant-plaintiff has proved that the defendants had agreed to sell the suit property to him for a total sale consideration of Rs.2,50,000/-, and after accepting an amount of Rs.1,00,000/- as a earnest money, agreement to sell came to be executed in favour of the appellant, which has been later confirmed by the first appellate court, which insinuates that there was a legally enforceable agreement to sell between the present appellant and the deceased Shantaben. Learned senior counsel Mr. Parikh submits that the appellant was in possession of the suit land since 1998, i.e, from the date of executing of the agreement to sell, which is a registered agreement to sell, and the plaintiff was always ready and willing to perform his part of contract and, therefore, decree for specific performance of contract is required to be passed under Section 16 of the Specific Relief Act. Apart from this, the first appellate court has failed to appreciated the fact that the learned trial court has recorded a finding that the appellant had proved that defendants/respondents have refused to execute a registered sale deed in favour of the appellant-plaintiff and, therefore, there is a breach of contract committed by the defendants/respondents. Learned senior counsel Mr. Parikh submits that the suit filed by the respondents-defendants against the appellant-plaintiff was not maintainable on law as well as on facts as the challenge in the said suit was to the agreement to sell entered into between the appellant and Shantaben somewhere in the year 2008, whereas the suit was filed somewhere in the year 2014 and, therefore, there is a gross delay in preferring the suit, as for cancellation of deed, the prescribed period for filing a suit under the provisions of the Limitation Act is three years. Thus, the judgment and

decree passed by the first appellate court, confirming the findings of the trial court, requires interference.

Hence, issue notice, making it returnable on 18.12.2024.

Till then, let there be an ad-interim relief in terms of Para-8(A).

Direct service is permitted.

(DIVYESH A. JOSHI,J)

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