

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 12 of 1987

with

CIVIL APPLICATION No 52 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?No
2. To be referred to the Reporter or not?No
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge?No

Gomati Co-op Housing Society Ltd.....Appellant

Versus

Ratansinh Becharbhai Rathod & ors.....Respondents

Appearance:

1. Appeal from Order No. 12 of 1987
MR PV HATHI for Petitioner
MR SN SOPARKAR for Respondent No. 1
2. Civil ApplicationNo 52 of 92
MR PV HATHI for Petitioner
MR SN SOPARKAR for Respondent No. 1

CORAM : MR.JUSTICE K.R.VYAS

ORAL JUDGEMENT

The appellant Society has filed this Appeal From Order on being aggrieved by the order dated 13-11-1986 passed by the 2nd Joint Civil Judge (S.D.), Bhavnagar, rejecting the application, Ex.5, for interim injunction filed in Special Civil Suit No.215/85.

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The appellant Society had filed the said Suit for specific performance of an agreement to sell of the land in dispute dated 3-1-1986 and for permanent injunction against the defendant-respondents, as they had failed to execute the document of sale and as they were trying to sell the disputed land to others. The said suit is contested by the respondents mainly on the ground that the agreement was executed by the promoters on behalf of a non-existent society and, therefore, the said agreement was a nullity and could not be enforced. The learned civil Judge, after considering the oral and documentary evidence on record, has rejected the application in view of the judgment of this Court in Ramji Mandir Narsinhji & ors vs Narsinh Nagar Alias Tekri Co-op Housing Society Ltd. (1979) 20 GLR 801, wherein it has been observed as under:

"A contract between a non-existent society on whose behalf someone purports to act is a nullity and gives rise to no cause of action. In view of section 37 of the Gujarat Co-operative Societies Act, it is clear that the Co-operative Society becomes a legal person after it is registered and it is after its registration that it acquires the capacity to enter into a contract. No provision of the Act has been pointed out under which the promoters of a society can act on

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behalf of the society before it has been registered and has come into existence.

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Therefore, the agreement of lease entered into between

the defendant trust on one hand and a non-existent co-operative society on the other hand was a nullity and gave no rise to cause of action for the society. It, therefore, cannot be specifically enforced against the defendants."

In view of the said judgment, the learned trial judge came to the conclusion that the plaintiff has failed to prove its prima-facie case and has, therefore, rejected the application Exh. 5 for interim injunction.

Mr. P.V. Hathi learned advocate appearing for the respondent contents that the said judgment requires to be reconsidered as the several provisions of the Gujarat Co-Operative Societies Act were not considered and the number of other cases decided on the basis of similar statutes lay down a different principle. It was also further contended that Appeal No. 1362/80 against said judgment in Ramji Mandir's case (supra) is filed and is pending for disposal before the Supreme Court. He also further contended that the Division Bench of this Court in the said reported case had come to that conclusion at the final stage of the litigation

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and not at the interim stage as has been done in the present case and that the learned Judge has virtually non-suited the plaintiff society at the interim stage.

Though it is true as pointed out by the Advocate for the appellant that appeal against the said Division Bench judgment, being Appeal No. 1362/80 is pending in the Apex Court, but so long as the legal position as it stands today, I am bound by the said judgment of the Division Bench and I do not see any compelling necessity to defer from the said view in the present proceedings. The finding of the learned trial judge based on the said Division Bench judgment cannot be said to be in any way illegal or improper. Further, the learned judge has only rejected the application Exh.5 and has not passed any final orders on the suit itself. It, therefore, cannot be contended that the learned Civil Judge has non-suited the plaintiff society. The order of the learned Civil Judge does not call for any interference at this stage and, hence, the appeal requires to be dismissed.

Mr. P.V. Hathi, lastly prays that in order to avail of the remedy of appeal by questioning the said judgment of the Division Bench of this Court in Ramji Mandir's case (supra)

the appellant society may be granted time by continuing the interim relief granted by this Court in Civil Application No. 52 of 1987 filed in the present appeal for a period of three months. The request is reasonable.

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In the result, the appeal is dismissed with no order as to costs. However, interim injunction granted in Civil Application No. 52/87 shall continue for a period of three months from today. Subject to this, rule is discharged in Civil Application No. 52/87 with no order as to costs.

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