

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 22 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
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?
5. Whether it is to be circulated to the Civil Judge?

VINUBHAI POPATLAL DAVE

Versus

PATEL BHOLABHAI CHATURBHAI & OTHERS

Appearance:

None present for the petitioner

None present for the respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 30/09/96

ORAL JUDGEMENT

1. The matter was called out for hearing in the first round then in the second round and lastly in the third round, but none appeared on behalf of the petitioner.

2. Perused the papers of the Special Civil Application. The challenge is made by the petitioner to the order which has been passed by the Civil Judge (S.D.) Mehsana dtd. 24th December, 1985 annexure 'C'. By this

order the Civil court has granted ad-interim injunction. This writ petition is not maintainable against the order of the Civil Court granting the interim injunction as the petitioner has remedy against the same in the Civil Procedure Code, 1908. Reference in this respect may have to the decision of the Supreme Court in the case of Swetamber Sthanakwasi Jain Samiti vs. Alleged Comtt. of Management reported in JT 1996 (3) SC 21 and in the case of Durga Prasad vs. Naveenchandra & Others reported in 1996 (3) SC 564. The Supreme Court held in the aforesaid cases that the High Court should not permit extraordinary jurisdiction to be converted into Civil Court under the ordinary law. When a suit is pending, the miscellaneous orders passed by the Trial court cannot be challenged by way of a writ petition under Article 226 of the Constitution of India. Exactly the same has been done in the present case. Otherwise also, the operation of the said order has been stayed by this Court and by now the civil suit itself would have been decided or the interim injunction granted would have been finally heard and appropriate order would have been passed. Last but not the least, the suit pertains to the challenge of the order of the respondent Government appointing the Administrator of the Society and thereafter further elections would have been held.

3. Taking into consideration the totality of the facts of the case, this Special Civil Application does not survive and the same is dismissed. Rule discharged. Interim relief, if any, granted is vacated.

zgs/-