

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 589 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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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?
(No. 1 to 5 NO)

GOPALDAS HOTHCHAND BHOJWANI

Versus

KHUSHALDAS RAJUMAL SINDHI

Appearance:

NANAVATY ADVOCATES for Petitioner

MS SEJAL K MANDAVIA for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 31/03/97

ORAL JUDGEMENT

The Appeal From Order is at the admission stage.
The same has been admitted after hearing the counsels and
is taken for final hearing.

The Appellant before me happens to be the
original plaintiff. He has filed the money suit against

the defendants. The amount is handsome because according to the plaintiff, the respondent/defendants had taken some amount and against that the respondent/defendants had given four cheques, each for an amount in sum of Rs.1,00,000-00. These cheques have not been honoured.

The Application at Exhibit-28 has been captioned as an application under Order 39, Rule-1 and 2 of the Civil Procedure Code. This description at the caption does not appear to be according to law, but there is the remedy open for the appellant/plaintiff, who could go before the Court below with a request for attachment before judgment. Despite the misquoting of the provisions of law, it appears that the case of the appellant/ plaintiff requires to be considered on merits.

There is no dispute that the respondent/ defendants had given four cheques, each of Rs.1,00,000-00 and that all the cheques have bounced. It appears that, so far as the property described as Lot No.1 is concerned there has been a mortgage or hypothecation in favour of a local bank. In the same way, so far as the property described at Lot No.2 is concerned, there has been an agreement to sell. This aspect of the case would lead the Court to come to the conclusion that the interest of the appellant/plaintiff requires to be safeguarded. The decree which the appellant/plaintiff might probably get in future should not be frustrated.

Therefore allowing the Appeal in part and reversing the orders of the Court below after hearing the learned counsel for the parties, I say that the property described at Lot No. 3 in the Application at Exhibit-28 shall not be transferred, or alienated in any way by the respondent/defendants till the suit against them is decided by the trial Court.

Appeal stands allowed to the above said extent. The orders of the Court below shall stand modified. There shall be no order as to cost.
