

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.2736 OF 2003

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
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 concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

BHUPENDRABHAI CHATURBHAI PATEL

Versus

SMT.HANSABEN (DHANLAXMI) BACHUBHAI PATEL

Appearance:

1. Special Civil Application No. 2736 of 2003
MR. JITENDRA M. PATEL for Petitioner
MR. NILESH M. SHAH for Respondent

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 29/04/2005

ORAL JUDGEMENT

1. By way of this petition, the petitioner has challenged the order dated 2nd August, 2002 passed by the learned 5th Joint Civil Judge (S.D.), Vadodara below Application-Exh.15 in Special Civil Suit No.947 of 2001 whereby the application preferred by the petitioner, original defendant, under Order-II, Rule-2 of the Code of Civil Procedure was rejected.

2. Having heard the learned Counsel for the parties and considering the relevant documents on record, it is clear that the petitioner has raised the contention that in view of the earlier suit, being Special Civil Suit No.560 of 1993, which was for the prayer in respect of the same property, between the same parties and by the same plaintiff, the other suit, being Special Civil Suit No.947 of 2001, is preferred, which is not maintainable in view of the provisions of Order-II, Rule-2 of the Code of Civil Procedure, and, therefore, the petitioner filed the application for rejecting the suit. This Court is of the view that instead of deciding the petition on merit, it will be appropriate to club both the suits together and be decided by the trial Court so as to avoid different decisions. In that view of the matter, the trial Court is directed to club both the aforesaid suits together and decide the same within a period of six months, if the suits are ripe for hearing, otherwise within a period of one year, from the date of receipt of writ of this Court.

3. With the above observations and directions, the petition stands disposed of. Rule is made absolute to the aforesaid extent only. Interim relief granted earlier is vacated. Office is directed to send writ of this order forthwith.

[K.S.Jhaveri, J.]

kamlesh*