

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**APPEAL FROM ORDER No. 383 of 2008  
With  
CIVIL APPLICATION No. 14319 of 2008  
In  
APPEAL FROM ORDER No. 383 of 2008**

**For Approval and Signature:  
HONOURABLE MR.JUSTICE M.R. SHAH**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**BALWANTBHAI H PATEL RANGOLI FARM - Appellant(s)  
Versus  
RAMESHBHAI LALBHAI PATEL & 6 - Respondent(s)**

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= **Appearance :**

MR RD DAVE for Appellant(s) : 1,

MR RA MISHRA for Respondent(s) : 1,

MR HARIN P RAVAL for Respondent(s) : 2, 7,

MR ASHISH H SHAH for Respondent(s) : 2, 7,

NOTICE SERVED BY DS for Respondent(s) : 3 - 6.

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**CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**

**Date : 30/12/2008**

**ORAL JUDGMENT**

1. Heard. Shri R.D. Dave, learned advocate

appearing on behalf of the appellant-plaintiff, Shri R.A. Mishra, learned advocate appearing on behalf of the respondent No.1 and Shri Ashish Shah, learned advocate appearing on behalf of the respondent Nos. 2 to 7.

2. Present Appeal from Order is preferred by the appellant-plaintiff challenging the impugned order dated 17.11.2008 passed by the learned 5<sup>th</sup> Additional Civil Judge, Ahmedabad (Rural) below application Exh. 5 in Special Civil Suit No. 125 of 2008 as well as the order dated 18.10.2008 passed below application Exh. 28 in the aforesaid Special Civil Suit No. 125 of 2008.
3. The appellant-plaintiff had instituted Special Civil Suit No. 125 of 2008 in the Court of learned Civil Judge (S.D.), Ahmedabad (Rural) for declaring the sale deed with respect to the land bearing Survey Nos. 295/2, 175/2/3, 193/2/1, 193/2/1, 193/2/3, 193/2/4, 226/1, 226/2 and agreement to sell of the Banakhat with respect to the land bearing Survey Nos. 295/1/2, 229/1, 226/1, 193/2/3. 193/4/1 and 175/2 as illegal. A permanent injunction is also sought restraining the defendant No.1 and its agents and servants in any way transferring / assigning the disputed land in question and / or dealing with the same. The permanent injunction is also sought restraining the defendant No. 2,4 and 7 from executing the sale deed with respect

to the lands for which Banakhat are executed. In the said suit, the appellant-plaintiff submitted application Exh. 5 for interim injunction restraining the defendant No.1 from transferring/ assigning / alienating the disputed lands in question for which the sale deed are executed. It was further prayed for an interim injunction against the defendants No. 2,4 and 7 restraining them from getting the sale deeds executed in their favour, for which Banakhat are executed.

4. That the learned 5<sup>th</sup> Additional Civil Judge (S.D.), Ahmedabad (Rural) by impugned order dated 17.11.2008 dismissed the application Exh. 5 mainly on the ground that so far as the lands bearing survey Nos. 295/2, 226/1, 226/2, 229/1, 193/2/1, 193/2/2, 193/2/3, 193/2/4, 175/2/3 and 4/1 are concerned there is a consent decree before the Lok Adalat and City Civil Court at Ahmedabad in favour of original defendant No.1 and therefore, unless and until the said consent decrees passed in Civil Suit Nos.839 to 845 of 2007 are set aside no injunction can be granted. It appears that learned trial Court has not granted injunction with respect to other lands on the ground that one another suit being Special Civil Suit No. 76 of 2007 had been filed by the plaintiff and in that suit application Exh. 5 has been partly allowed and, therefore, with respect to the said land injunction is not

required to be granted and with respect to the rest of the land, for which the injunction has not been granted, the same cannot be granted. Being aggrieved and dissatisfied with the impugned order passed by the learned trial Court passed below Exh. 5 in Special Civil Suit No. 125 of 2008, the appellant-plaintiff has preferred the present Appeal from Order.

5. Shri R.D. Dave, learned advocate appearing on behalf of the appellant-plaintiff has vehemently submitted that the learned trial Court has committed an error in not granting injunction as prayed and in rejecting the application Exh. 5 mainly on the ground of consent decrees in Civil Suit Nos. 839 to 845 of 200, which were filed by the original defendant against opponent Nos. 2, 4, 5, 6 and 7 which were filed in collusion with each other in the City Civil Court, Ahmedabad seeking injunction against said defendant not to transfer and /or alienate in any manner the lands in question which are sold to him and in which admittedly the appellant and the defendant No. 3 were not parties to the said suit. It is submitted that aforesaid aspect has not been considered by the learned trial Court. It is further submitted that the learned trial Court has also materially erred in refusing to grant injunction relying upon the order passed below Exh. 5 Special Civil Suit No. 76 of 2007. It is submitted that as such the appellant-plaintiff

had filed Special Civil Suit No. 76 of 2007 against the opponent in the Court of learned Civil Judge (S.D.), Ahmedabad (Rural) seeking declaration for partition and also for injunction and initially the injunction was granted below Exh. 5. However, subsequently, it was modified and the stay was vacated in respect of the property for which sale deed was executed in favour of the opponent No. 1 and the said injunction came to be continued in respect of rest of the properties. It is submitted that being aggrieved and dissatisfied with the said order below application Exh. 5 the appellant had preferred Appeal from Order No. 64 of 2007 before the learned Civil Judge (S.D.), Ahmedabad (Rural) which is pending for hearing. It is submitted that it appears that at the relevant time the sale deed in favour of opponent No. 1 was not challenged, which is subsequently challenged in the present suit and the Special Civil Suit No. 76 of 2007 was only with respect to the partition and, therefore, learned trial Court has materially erred in dismissing the application Exh. 5 on the aforesaid grounds and not considering the application Exh. 5 on merits in detail considering the case of the plaintiff in the suit. Therefore, it is requested to allow the present Appeal from Order and in the alternative to remand the matter back to the learned trial Court for deciding the application Exh. 5 afresh.

6. Shri R.A. Mishra, learned advocate appearing on behalf of the respondent No.1 and Shri Ashish Shah, learned advocate appearing on behalf of the respondent No. 2 to 7 have tried to support the impugned order passed by the learned trial Court dismissing the application Exh. 5, however they are not in a position to satisfy the Court with respect to the decree passed in the aforesaid Civil Suit in view of the fact that admittedly the appellant-plaintiff and the defendant No.3 were not parties to the said suit and, therefore, how the said decree can be binding upon them. In the alternative they submitted that if this Court proposes to remand the application Exh. 5 to the learned trial Court for deciding the same afresh, in that case, suitable direction be issued to learned trial Court to decide and dispose of the application Exh. 5 at the earliest and within stipulated time.

7. Heard the learned advocates appearing on behalf of the respective parties.

8. At the outset, it is required to be noted that the present suit being No. 125 of 2008 has been instituted by the appellant-plaintiff challenging the sale deed in favour of the defendant No.1 with respect to the disputed land in question and also challenging the Banakhat in

favour of the defendants No. 2,4,5 and 7 with respect to the rest of the land. It is to be noted that earlier the appellant had instituted Special Civil Suit No. 76 of 2007 for partition of the disputed land in question and in the said suit application Exh. 5 was submitted and in the said suit injunction has been granted with respect to the lands which were not sold and vacated the injunction with respect to the land sold in favour of the defendant No.1. It is to be noted that in the said suit the sale deeds/transaction in favour of defendant No.1 are not challenged which are now challenged in the subsequent suit. Thus, the aforesaid aspect has not been considered by the learned trial Court while deciding the application Exh.5. It appears that learned trial Court has dismissed the application Exh. 5 by submitting that in the application Exh. 5 in Special Civil Suit No. 76 of 2007 injunction has been granted with respect to the some of the land and, therefore, the same is not to be granted again, however learned Judge has not considered anything with respect to the rest of the land sold in favour of defendant No.1.

9. On considering the impugned order it appears that what is weighed with the learned trial Court while dismissing the application Exh. 5 is mainly on the ground that consent decrees passed by the learned Civil Judge (S.D.), Ahmedabad

(Rural) in favour of defendant No.1 being Civil Suit No. 839 to 845 of 2007 and the learned trial Court has observed that unless and until the said consent decrees are set aside no injunction can be granted. However, it appears that learned trial Court has not considered the fact that in the said suit appellant and defendant No.3 were not parties at all and, therefore, when they are not parties to the said suit, the said decrees are not binding upon them. The learned trial Court has also not considered the fact that it is the contention on behalf of the appellant-plaintiff that the aforesaid suit came to be filed by the defendant No.1 herein against the defendants No. 2,4,5 and 7 in collusion with each other and the said suits were only for permanent injunction restraining the defendants No. 2,4,5 and 7 from disturbing his possession on the basis of the sale deed in his favour, in which admittedly plaintiff and defendant No.3 are not parties to the same. Therefore, it appears that the learned trial Court has materially erred in relying upon the above consent decrees and holding that unless and until those decrees are set aside no injunction can be granted. Under the circumstances, it appears that the said aspect on merits are not considered by the learned trial Court at all while deciding the application Exh. 5 and, therefore, the impugned order passed by the learned trial Court passed



below application Exh. 5 deserves to be quashed and set aside and the matter is to be remanded to the learned trial Court for deciding the same afresh. Consequently, earlier order passed by the learned trial Court passed below application Exh. 28 also deserves to be quashed and set aside, which was filed during the pendency of the application Exh.5.

10. For the reasons stated above, Appeal from Order succeed in part. The impugned order dated 17.11.2008 passed by the learned 5<sup>th</sup> Additional Civil Judge, Ahmedabad (Rural) below application Exh. 5 in Special Civil Suit No. 125 of 2008 as well as the order dated 18.10.2008 passed below application Exh. 28 in the aforesaid Special Civil Suit No. 125 of 2008 is hereby quashed and set aside and the matter is remanded to the learned trial Court for deciding the application Exh.5 afresh in accordance with law and on merits and considering the observation made hereinabove and after considering the submissions made on behalf of both the parties. Learned trial Court is directed to decide and dispose of the application Exh. 5 at the earliest but not later than 4 months from the date of receipt of the present order. Until application Exh. 5 is decided and disposed of the parties are directed to maintain status quo. It is observed that learned trial Court to decide and dispose of the application Exh. 5 on

remand in accordance with law and on merits without in any way being influenced by the order of status granted by this Court till final disposal of the application Exh. 5. Appeal from Order is accordingly allowed to the aforesaid extent.

CIVIL APPLICATION NO. 14319 OF 2008

In view of the order in Appeal from Order, no order in Civil Application and is accordingly disposed of.

(M.R.SHAH,J.)

kaushik