

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**FIRST APPEAL NO. 635 of 2015****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE KS JHAVERI****and****HONOURABLE MR.JUSTICE G.B.SHAH**

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1	Whether Reporters of Local Papers may be allowed to see the judgment?	YES
2	To be referred to the Reporter or not?	NO
3	Whether their Lordships wish to see the fair copy of the judgment?	NO
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?	NO

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GHANSHYAMSINH PRAVINSINH JADEJA & 4....Appellant(s)**Versus****BHARATBHAI KANJIBHAI PATEL....Defendant(s)**

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Appearance:**MR ASHISH M DAGLI, ADVOCATE for the Appellant(s) No. 1 - 5****APURVA K JANI, ADVOCATE for the Defendant(s) No. 1**

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CORAM: HONOURABLE MR.JUSTICE KS JHAVERI**and****HONOURABLE MR.JUSTICE G.B.SHAH**

Date : 30/06/2015

**ORAL JUDGMENT
(PER : HONOURABLE MR.JUSTICE KS JHAVERI)**

1. By way of this appeal, the appellants – original defendants have challenged the judgment dated 23/12/2014 passed by the learned Additional Senior Civil Judge, Morbi (*hereinafter referred to as “the learned trial Judge” for brevity*) in Special Civil Suit No. 9 of 2011 whereby, the learned trial Judge directed the appellants to pay Rs.30,51,000/- with simple interest @ 10% *per annum* and also challenged the judgment and findings recorded by the learned trial Judge insofar as Issue Nos. 1, 2, 4, 5 and 6 are concerned.
2. Admit. Mr. Jani, learned advocate appearing for the respondents – original plaintiffs, waives service of notice of admission. At the request of learned advocates appearing for the parties, the matter is taken up for final hearing today.
3. Facts in nutshell of the case on hand are that the respondent herein – original plaintiff filed Special Civil Suit No. 9 of 2011 for specific performance of contract and for permanent injunctions in

respect of land bearing Revenue Survey No. 269 *paiki* 3 about 109 bighas, in all 43 acres and 16 gunthas situated at village: Dhunda (Sajjanpar), Tal.: Morbi. It was the case of the original plaintiffs that as the defendant Nos. 1 and 2 thereto intended to sell the property, they approached the plaintiffs – respondent herein and on 29/01/2010 deal was finalized and token amount of Rs.51,000/- was paid and thereafter, on 03-04/02/2010, a detailed Agreement to Sell was executed for total sale consideration of Rs.30,51,000/- which was to be effected by 03/08/2010. Since, the land in question was originally a Vidi land and was required to be converted into agricultural land from the revenue department, time likely to consume in such procedure, was agreed to be excluded and all the expenses were agreed to be borne by the defendants therein. However, since the said Agreement to Sell was not effected, on 11/09/2010, a public notice was given in the newspaper and thereafter, the respondent herein – original plaintiff filed the aforesaid suit for specific performance and for injunction, which came to be partly allowed and hence, this appeal.

4. Learned advocate Mr. Ashish M. Dagli represents the appellants – original defendants, whereas, learned advocate Mr. Apurva Jani,

represents the respondent – original plaintiff.

5. At the outset, Mr. Dagli, learned advocate appearing for the appellants – original defendatns, stated that the parties have arrived at a compromise and the matter is accordingly settled between the parties. Copies of Compromise Deeds, executed by each of the appellants, are on record and for ready perusal, one of the same, is reproduced hereunder:

“This agreement is made between Ghanshyamsinh Pravinsinh Jadeja, Male, Aged about 60 years, residing at: Ananat Society, Block No. 8, Trajpar (Khari) Juna Ghuntu Road, Morbi (herein after referred to as First Party) and Bharatbhai Kanjibhai Patel through his Power of Attorney Holder Dilipbhai Kanjibhai Patel, Male, Aged about 51 years, residing at 2, Harinagar, Ravapar Road, Morbi (herein after referred to as Second Party) as under:

1. *That the Second Party had instituted a Special Civil Suit No. 9 of 2011 before the Court of Hon'ble Addl. Senior civil Judge, Morbi against five persons including the First Party who was Respondent No.1 in the said civil suit.*

2. *That the said civil suit was mainly filed for Specific Performance of contract dt.03.02.2010 with consequential / incidental reliefs thereto in respect of sale of the land being vidi land of land account No. 626 situated at Dhunda (Sajjanpar) Village Revenue Survey No. 269 paiki 3 admeasuring 109 bighas (herein after "said land").*
3. *That the said suit came to partly allowed by the Ld. Judge vide its order dt. 23.12.2014 passed in Special Civil Suit No. 9 of 2011 mainly to the effect that the plaintiff was entitled to the earnest money of Rs.30,51,000/- from the defendants with 10% interest till the payment.*
4. *That being aggrieved and dissatisfied with the said order dt.23.12.2014, the defendants in the said civil suit including the First Party herein, have preferred an appeal before the Hon'ble High Court of Gujarat which came to be registered as First Appeal No. 635 of 2015.*
5. *That after filing of the aforesaid appeal, the parties of the suit/appeal have arrived at a compromise to the effect that the Second Party*

herein, has been paid the earnest money along with interest by the First Party and Mr. Dilipsinh Pravinsinh Jadeja and that there remained to further claim over the said land by the second party.

6. *That a deed of cancellation of the agreement dt.03.02.2010 has also been executed between First Party and Mr. Dilipsinh Pravinsinh Jadeja of one part through their power of attorney Shri Durlabhjibhai Laljibhai Rangpariya, resident of Morbi and the second party herein of the other part on dt.29.03.2015 which is registered before Notary advocate Mr. D. M. Parekh at Serial No. 8205 on dt.29.03.2015.*

7. *That this is to confirm that no claim of the Second Party remains in respect of the said land.”*

6. In view of the aforesaid compromise arrived at between the parties, Mr. Dagli, the learned advocate appearing for the appellants requested to allow the present petition accordingly and modify the judgment and decree of the trial Court in view of the Consent Terms/Compromise Deeds, to which, Mr. Apurva

Jani, learned advocate appearing for the respondent herein – original plaintiff, has no objection.

7. In aforesaid view of the matter, since the matter has already been settled between the parties and since the learned advocates for the parties have no objection, without going into the merits of the case, present First Appeal is partly allowed and the judgment and decree dated 23/12/2014 passed by the learned Additional Senior Civil Judge, Morbi in Special Civil Suit No. 9 of 2011 is modified in terms of the aforesaid Compromise Deed/Consent Terms and the parties will be governed by the same.

- 7.1 It is clarified that we have not expressed any opinion on merits.

[K. S. Jhaveri, J.]

[G. B. Shah, J.]

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