

(2010) 11 GUJ CK 0078
In the Gujarat High Court

Case No : Appeal From Order No. 152 of 2008 and Civil Application No. 5768 of 2008

Farukh Gafar Memon and Others

APPELLANT

Vs

Jayantibhai Chimanbhai Patel and Another

RESPONDENT

Date of Decision : 15-11-2010

Acts Referred:

Citation : (2010) 11 GUJ CK 0078

Hon'ble Judges : K. S. Jhaveri, J

Bench : Single Bench

Advocate : Dhara M. Shah, for the Appellant; Ketty A. Mehta, for Respondent 1 and Saurabh J. Mehta, for Respondent 2, for the Respondent

Final Decision : Allowed

Judgement

K.S. Jhaveri, J.—By way of this appeal, the appellants have challenged the judgment and order dated 17th March, 2008 passed by the learned 2nd Additional Senior Judge, Surat below Exhibit 5 rejecting the claim of the appellants.

2. Brief facts giving rise to this appeal are as under:

It is the case of the appellants that the land situated at Survey No. 9, T.P. Scheme No. 7, Final Plot No. 99 and 116 at Village Anjana, Taluka Choryasi Sub-District, District Surat is originally owned by Hasammiya Ajammiya, Gulam Yasin Ahmedmiya, Ibrahimmiya Ahmedmiya and Kheranbibhi daughter of Jafermiya Vajirmiya. On 13-02-1985, the original owners entered into a Sata Khat with Hareshkumar Jyantilal Jariwala and on 13-03-1985 a Power of Attorney was given to one Rajendra Jyantilal Jariwala. Since Hareshkumar Jyantilal Jariwala and Rajendra Jyantilal Jariwala were not agriculturists, the Sata Khat was void ab-initio and therefore, both Hareshkumar Jyantilal Jariwala and Rajendra Jyantilal Jariwala entered into Agreement to Sell on 20-05-1988 with one Mr. Jyantilal Chimanbhai Patel. Since Hareshkumar Jyantilal Jariwala could not pay the

amounts as agreed between the parties, the original owners published a public notice in the newspapers on 13-04-1989 whereby the original owners cancelled the Agreement to Sell with Hareshkumar Jyantilal Jariwala.

3. It is the case of the appellants that the original owners i.e. Hasammiya Ajammiya and others entered into an agreement with Javerbhai Narottambhai Patel whereby Agreement to sell was made in favour of Javerbhai Narottambhai Patel and others on 20-12-1988, who in turn gave General Power of Attorney to one Mr. Manjibhai Popatbhai. A possession receipt was given to the power of attorney holder Mr. Manjibhai Popatbhai by Javerbhai N. Patel and others. On the basis of being a power of attorney holder, Manjibhai Popatbhai entered into an Agreement to Sell with the present appellants in 1993 and respondent No. 2 herein, i.e. Manjibhai Popatbhai Patel has given possession receipt to the present appellants in 1993. Thereafter, the present appellants have carried out construction upon the said land and at present, all the appellants are residing at the respective addresses on the said plot.

4. Further, it is the case of the appellants that in the year 1989, Hareshkumar Jyantilal Jariwala and Rajendra Jyantilal Jariwala filed a Civil Suit for specific performance against the original owner. It is the say of the appellants that the original owners gave a statement before the Court that they have sold the land to the present appellants. Thereafter, in the said Suit the parties of the suit entered into a settlement whereby a compromise decree was passed by the Court and further ordering that the Sale Deed may be executed in favour of Jayantilal Patel - respondent No. 1 in the present appeal.

5. Further, Manjibhai Popatbhai - the power of attorney holder of Javerbhai N. Patel and from whom the present appellants have purchased the said property, filed a Special Civil Suit No. 87/2006 for specific performance against Mr. Jyantilal Patel, i.e. respondent No. 1 - Hareshkumar Jyantilal Jariwala and Rajendra Jyantilal Jariwala and the original owner of the land - Hasammiya Ajammiya and others, wherein the trial Court rejected Exhibit 5 in the said suit against which Manjibhai Popatbhai filed Appeal from Order before this Court and this Court disposed of the same with a direction to decide the Exhibit 5 afresh to the Trial Court. The said Civil Suit is pending before the Trial Court.

6. It is the case of the appellants that they apprehended that the respondents herein may take away the possession of the property which is at present owned and possessed by the present appellants. Therefore, the present appellants filed Special Civil Suit No. 397/2006 before the Principal Senior Civil Judge, Surat, wherein the learned Judge rejected the application below Exhibit of the present appellants and hence, the appellants have filed the present appeal from order.

7. From the above narration of events, it comes on record that the Suit being Special Civil Suit No. 379/2006 is pending before the Court of the learned 2nd Additional Senior Civil Judge, Surat. Therefore, any observations that may be made by this Court on the merits of the case may prejudicially affect the rights /

interests of other party before the Trial Court in the suit proceedings.

8. In view of the above, I am of the opinion that it would be appropriate that the Trial Court concerned decides the suit expeditiously.

9. In view of the above, the Court of the learned 2nd Additional Senior Judge, Surat is directed to expedite the hearing of Special Civil Suit No. 379/2006 and decide the same on merits in accordance with law within a period of three years from the date of receipt of writ of this Court. It is made clear that this Court has not entered into the merits of the case and has passed the aforesaid order in view of the fact that the main suit between the parties is pending before the Trial Court. Therefore, the Court below shall decide the said suit within the time limit stipulated hereinabove on merits in accordance with law.

10. With the above direction, this appeal from order is disposed of. Since the main appeal has been disposed of, the above Civil Application would not survive and is accordingly disposed of.