
(2009) 12 GUJ CK 0035
In the Gujarat High Court

Case No : Appeal From Order No. 365 of 2008 and Civil Application No. 13495 of 2008 in Appeal From Order No. 365 of 2008 and Civil Application No. 2180 of 2009 in Appeal From Order No. 365 of 2008

Haji Yusufbhai Siddiqbhai

APPELLANT

Vs

New Stars Developers Organizer and Others

RESPONDENT

Date of Decision : 07-12-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 43 Rule 1

Registration Act, 1908 — Section 17, 49

Specific Relief Act, 1963 — Section 14 , 16, 41

Citation : (2010) 1 GLH 429

Hon'ble Judges : K.A. Puj, J

Bench : Single Bench

Advocate : S.M. Shah and H.R. Prajapati, for the Appellant; B.B. Naik, for Respondent 1, Mihir Thakore and Parthiv B. Shah for Respondents 2.2.1, 2.2.2, 2.2.3, 2.2.4, 2.2.5, 2.2.6, for the Respondent

Judgement

K.A. Puj, J.—The appellant - ori. plaintiff has filed this Appeal From Order under Order-43, Rule-1(r) of the CPC challenging the order and judgment dated 14.7.2008 passed by the learned Senior Civil Judge (S.D.), Vadodara below an application Ex.5 in Special Civil Suit No. 59 of 2008 whereby the said application Ex.5 was rejected.

2. This Court has passed an order on 8.12.2008 and observed therein after recording the statement made by Shri B.B. Naik, learned Senior Advocate appearing on behalf of respondent No. 1 and Mr. Mihir Thakore, learned Senior Advocate appearing on behalf of the respondent No. 2 at the bar that the respondent Nos. 1 and 2 shall not be any alienation of the disputed property in question and they, their agents or servants shall not put up any construction on the disputed land in question. The respondent No. 2 has filed affidavit-in-reply on 23.12.2008. This Court has passed further order on 24.2.2009 taking note of the grievance vindicated by Mr. H.R. Prajapati, learned advocate appearing for the

appellant that inspite of the statement made before the Court, the concerned respondent have continued to put up construction and hence one another suit was required to be filed and panchnama was also drawn. The Court, therefore, observed that it would be open for the appellant to submit an appropriate application and if such an application was made it would be considered in accordance with law and on merits. Pursuant to the said order the appellant filed Civil Application No. 2180 of 2009 requesting this Court to take appropriate action against the respondent Nos. 1 and 2 for deliberate, willful and intentional defiance of the directions given by this Court by an order dated 8.12.2008, 23.12.2008 and subsequent order passed in Appeal From Order. The appellant has also prayed for stay against the respondent Nos. 1 and 2 restraining them from further carrying out any activity on the land in question pending the admission and final disposal of the Appeal From Order. The respondent No. 1 has filed affidavit-in-reply to this Civil Application on 9.3.2009 disputing the averments and allegations made in the Civil Application. Similarly the respondent No. 2 has also filed affidavit-in-reply on the same date.

3. In the above background of the matter, this Appeal From Order as well as Civil Applications are taken up for final hearing.

4. It is the case of the appellant that the appellant is the ori. plaintiff and the respondents are the ori. defendants in the suit. The appellant has filed Suit for specific performance of the agreement executed between the appellant and the respondent No. 2 and also the agreement dated 10.8.2007 executed between the appellant and the respondent No. 1. The declaration was also sought to the effect that the sale deed executed in favour of the respondent Nos. 4 to 16 be declared as illegal and void and any transaction entered into by the respondent Nos. 4 to 16 with any other person be also declared illegal and void. The appellant has also prayed for the declaration that the transaction, if any, entered into by the respondent Nos. 1 and 2 with any other person or institution is not binding to the appellant and such transaction also be declared illegal and void.

5. The appellant has pleaded in the plaint that the suit property was agreed to be sold by the respondent No. 2 at the rate of Rs. 100/- per sq.ft. and, therefore, an agreement of sale was executed for which the appellant had paid Rs. 15 lacs to the power of attorney holder of the heirs of deceased and owner, Shri Farukbhai Inayat Ali Talib. It is also pleaded in the suit that the respondent No. 1 and heirs of the respondent No. 2 are having good relation and respondent No. 2 is engaged in the business of construction and, therefore, the respondent No. 1 desired to develop the land. Therefore, the respondent No. 1 contacted the appellant and requested him to waive his right and interest upon the suit land and for that purpose the respondent No. 1 had offered Rs. 75 lacs. It is further pleaded that since the dispute of tenancy with respect to the suit land was going on and since offer was attractive the appellant accepted the offer. To the offer made to the appellant, the respondent had clarified that the amount which may be paid to the persons in respect of their claim made in Regular Civil Suit No.

514 of 2007 and 716 of 2007 was to be given credit to which the appellant has agreed. The appellant has further submitted in the suit that as per the agreement between the appellant and respondent No. 1, out of Rs. 75 lacs an amount of Rs. 2,87,000/- was given to the parties of those Civil Suit by different cheques. The amount of Rs. 8,000/- was expended for the Court fees expenses and amount of Rs. 30,000/- was paid to the advocate and thereby total amount of Rs. 15,08,000/- was considered to have been paid to the appellant and, therefore, deducting the said amount from Rs. 75 lacs the amount of Rs. 59,92,000/- was due and payable by the respondent No. 1 to the appellant. It is also pleaded in the suit that the agreement dated 10.8.2007 was executed between the appellant and the respondent No. 1 wherein the respondent No. 1 agreed that the remaining amount of Rs. 59,92,000/- would be paid to the appellant by cheque on or before 13.8.2007 and if the amount were not paid on or before that date the agreement of sale executed between the appellant and respondent No. 2 as well as right and interest of the appellant in the suit would continue.

6. It is also the case of the appellant that the respondent No. 1 failed to make payment on 13.8.2007. On the contrary, the respondent No. 2 has executed development agreement dated 15.4.2007 and on the basis of development agreement the respondent No. 1 is developing the land. Since the respondent No. 1 has failed to act in accordance with the agreement dated 10.8.2007 the appellant has filed suit for specific performance. In the said suit an application Ex.5 was filed for temporary injunction restraining the respondents from carrying out further construction and transferring the developed property by way of gift, mortgage or any other way pending the suit. The said application was rejected by the learned trial Judge on 14.7.2008 and it is this order which is under challenge in the present Appeal From Order.

7. Mr. S.M. Shah, learned advocate appearing with Mr. H.R. Prajapati for the appellant, has submitted that the original agreement to sale executed between the appellant and the respondent No. 2 was handed over to the respondent No. 1 at the time of executing the agreement of sale dated 10.8.2007 and this fact was specifically mentioned in the agreement dated 10.8.2007. Mr. Shah further submitted that the appellant was vitally concerned with the suit land and it is only because of that the respondent No. 1 had agreed to pay Rs. 75 lacs to the appellant and out of Rs. 75 lacs an amount of Rs. 15,08,000/- was paid to the appellant. If the appellant was not concerned with the suit land, there was no need for the respondent No. 1 to make payment of Rs. 15,08,000/- out of Rs. 75 lacs by cheque and there was no need to execute agreement dated 10.8.2007. Mr. Shah further submitted that the appellant had produced hand-writing expert's report dated 18.4.2008, which has specifically opined that the signature in the agreement of sale dated 10.8.2007 is of Rafik Husenkhan. He has further submitted that the appellant has successfully pointed out that the respondent Nos. 1 and 2 are developing the land and they executed sale deed for part of the suit property in favour of the respondent Nos. 4 to 16 and hence it was

necessitated to restrain respondent Nos. 1 and 2 from further selling away the shops, flats, tenaments etc.

8. Mr. Shah further submitted that the learned Trial Judge has not considered all the issues raised before him nor even given any finding on those issues. Even for the purpose of deciding the interim injunction application, he has to record his prima facie satisfaction on those issues. Since the appellant relies on the agreement dated 10.08.2007 which was executed between the appellant and the respondent No. 1 and since there is reference in that agreement with regard to the earlier agreement entered into between the appellant and the respondent No. 2 and only on receipt of the amount of Rs. 75 Lacs, the appellant had agreed to relinquish his share in the suit property, this entire transaction is binding on the respondent No. 2 and till the amount is paid to the appellant by the respondent No. 1, they are not entitled to deal with the suit property. Mr. Shah has further submitted that there is dispute with regard to the possession of the suit property and it is the case of the appellant that only after receipt of the amount of Rs. 75 Lacs, the appellant was to hand over the possession to the respondent No. 1 and thereafter, the construction was to be carried out. Since this has not been done, the appellant is believed to be in possession of the suit property. He has, therefore, submitted that when the possession of the suit property is in dispute in the suit, the order of status-quo is required to be passed as a matter of course. In support of this submission, he relied on the decision of this Court in the case of Ibrahim Shah Mohamad Vs. Noor Ahmed Noor Mohamed, wherein it is held that the Court should always lean towards seeing that there is no multiplicity of proceedings and also that the proceedings should go on as far as possible so smooth that the decision can be arrived at between the parties who are on record, as early as possible. The Court, therefore, thought it fit in the said case to grant interim injunction. He further relied on the decision of the Apex Court in the case of Maharwal Khewaji Trust (Regd.), Faridkot Vs. Baldev Dass, wherein it is held that unless and until a case of irreparable loss or damage is made out by a party to the suit, the Court should not permit the nature of the property being changed which also includes alienation or transfer of the property which may lead to loss or damage being caused to the party who may ultimately succeed and may further lead to multiplicity of proceedings.

9 Mr. Shah has further submitted that simply because the agreement executed between the appellant and the respondent No. 1 on 10.08.2007 is an unregistered document, the appellant may not be prevented from claiming specific performance of that agreement. It is true that an agreement to sell or an agreement of relinquishment of interest is required to be registered as per the amended Section 17 of the Registration Act No. 7/1982. But as per the decision of the Division Bench of this Court in the case of Kaushik R. Thakore v. Allied Land Corporation 1987 (1) GLH (UJ) 22, a view is taken by the Court that since there is no corresponding amendment in Section 49 of the Registration Act, 1908, the suit of the plaintiff would not fail on the ground of non-registration of agreement to sale which is otherwise compulsorily required to be registered by

amendment of Section 17. This position of law having been well settled by the Division Bench of this Court, the learned Single Judge of this Court in the case of Nitinkumar Laxmidas and Others Vs. Smt. Savitaben Pranshanker and Others, has taken the view that when a suit is filed for specific performance by the prior purchaser against his vendor and subsequent purchaser, there would be change in the form of decree, but it cannot be said that such a suit is not maintainable. The proper form of decree will be to direct specific performance of the contract between the vendor and the prior transferee and to direct the subsequent transferee to join in the conveyance so as to pass on the title which resides in him to the prior transferee. He does not join in any special covenants made between the prior transferee and his vendor; all he does is to pass on his title to the prior transferee. Mr. Shah has, therefore, submitted that the suit filed by the appellant against the respondent No. 1 and 2 for specific performance of the contract is maintainable and till the suit is finally decided, the appellant's interest in the suit property is required to be protected by granting order of status-quo.

10. Mr. Mihir Thakore, learned Senior Advocate appearing with Mr. Parthiv Shah for the respondent No. 2, has submitted that the appellant has filed suit for specific performance of contract on the basis of agreement to sale dated 10.8.2007. The bare reading of the said document makes it crystal clear that there is no privity of contract between the appellant and the respondent No. 2. Even assuming without admitting that the so called document is executed between the appellant and the respondent No. 1, then also, it is clear that the appellant has entered into the said agreement for relinquishing his right. Therefore, the appellant cannot file suit for specific performance of contract. He has further submitted that from perusal of the so called document, it clearly appears that the appellant has relinquished/released his right for an amount of Rs. 75 lacs. As per the settled legal position, and combined reading of Sections 14 and 41 of the Specific Relief Act, makes it clear that the Court cannot grant injunction in a case where the non-performance can be duly compensated by awarding damages. He has, therefore, submitted that since the appellant has relinquished his right of so called agreement to sale in favour of respondent No. 1 for an amount of Rs. 75 lacs, no injunction can be granted.

11. Mr. Thakore further submitted that the appellant is a land grabber and is involved in such activity since long, number of criminal complaints are filed against the appellant for indulging in the activity of land grabbing. This Court has also recorded such finding while releasing him on anticipatory bail in connection with the complaint filed against him. He has further submitted that the Court is not bound to grant such specific performance merely because it is lawful to do so. The Court is under an obligation to see that the litigation may not be used as an instrument of oppression to have an unfair advantage. Mr. Thakore further submitted that the appellant has been trying to take undue advantage as soon as the respondent No. 2 started developing the land and he filed one after another suits. Initially, Regular Civil Suit No. 517 of 2007 came to be filed at the instance

of the appellant. Thereafter, Regular Civil Suit No. 726 of 2007 came to be filed at the behest of the appellant. Thereafter, Special Civil Suit No. 481 of 2007 came to be filed at the behest of the appellant. The plaintiff of the said suit had filed suit for specific performance of contract and he has joined the present appellant as party for the reasons best known to him. Since that plaintiff did not succeed in getting an ex parte injunction, in Special Civil Suit No. 481 of 2007 the appellant had filed the present suit and initially obtained ex parte injunction. The respondent No. 3 did not pursue the Special Civil Suit No. 481 of 2007. After some delay the respondent No. 3 filed application for joining the purchaser of the suit property which application came to be rejected. Being aggrieved, the respondent No. 3 filed Special Civil Application No. 9560 of 2008 before this Court. The proceeding of the said Special Civil Application came to be stayed by the Apex Court on 1.12.2008. Despite the fact that the present Appeal From Order was filed on 14.8.2008, the same was circulated before this Court on 8.12.2008. Based on this events Mr. Thakore submitted that the appellant is trying to take unfair advantage of process of this Court.

12. Mr. Thakore further submitted that the appellant is involved in forging/creating concocted documents on the basis of copies of some documents supplied to the respondent No. 2 at the time of hearing of the application. Mr. Thakore submitted that some of these documents were not available at the time of suit proceedings and some have recently come to the possession of the respondent No. 2 after detailed investigation.

13. Mr. Thakore further submitted that the main challenge of the suit for specific performance filed by the appellant is that there is no privity of contract between the appellant and the respondent No. 2. He further submitted that there can be no decree for specific performance of an agreement which is not concluded. He has further submitted that the appellant has not produced any agreement to sale executed between the appellant and the respondent No. 2, not even stated as to on which date the same was executed. Thus, it is clear that there is no concluded contract between the appellant and the respondent No. 1 and hence no injunction can be granted in favour of the appellant. He has further submitted that even if the appellant's case is believed, then also, the appellant is entitled to get Rs. 75 lacs only and as per his own case, the appellant has to now receive Rs. 59,92,000/-. He has submitted that when adequate efficacious remedy is available no injunction can be granted. He has further submitted that the appellant was to get the alleged amount by 13.8.2007, whereas the appellant has filed the suit in the year 2008. Hence, there is considerable delay of six months in preferring the suit before the trial Court. He has further submitted that the appellant is further trying to get delayed the proceedings of the Civil Suit. Though the Appeal From Order was filed before this Court in July, 2008 the same came to be circulated for hearing only on 8.12.2008 after about five months from the date of passing order by the trial Court. He has, therefore, submitted that the conduct of the appellant shows that he has allowed the situation to move to the extent from which it has come to irreversible situation. The appellant has

allowed the construction to raise almost of finishing level. Because of delay on the part of the appellant, before filing of the suit, third party rights were already created and after the injunction application came to be rejected and before the present Appeal was circulated, further rights are also transferred in favour of bonafide purchasers. He has, therefore, submitted that this is a fit case where the High Court should not exercise its power in favour of the appellant.

14. Mr. Thakore further submitted that it is nowhere reflected in the so called document dated 10.8.2007 as to on which date the respondent No. 2 has entered into an agreement to sale with the appellant, what were the terms and conditions of the agreement to sale, mode of payment of consideration is not mentioned and what were the contractual obligations upon the appellant as per the agreement to sale. He has, therefore, submitted that the respondent No. 2 had never entered into so called agreement to sale and the entire story which is pleaded by the appellant is false and baseless.

15. Mr. Thakore has further submitted that the alleged agreement produced by the appellant for specific performance of the contract does not indicate that the respondent No. 2 is a party to the said contract. He has, therefore, submitted that as per the settled position of law, the party to the contract cannot seek performance of the contract against the person who is not a party to the contract.

16. Mr. Thakore further submitted that the main relief as prayed for by the appellant in the suit itself is not capable of being granted as the appellant has not even produced xerox copy of the said agreement to sale on which the entire proceedings are based and initiated. The only say of the appellant is that the original copy of the agreement to sale which was entered into between the appellant and the respondent No. 2 is taken away by the respondent No. 2. It is absolutely unbelievable that the person entering into agreement to sale having paid huge consideration of Rs. 15 lacs would not keep even xerox copy of the agreement to sale. He has, therefore, submitted that the averments and contentions raised by the appellant in the Appeal are false and far from truth and hence the same may be rejected by the Court.

17. Mr. Thakore further submitted that even reading the entire plaint as it is, the appellant has not stated any where in the plaint that he is ready and willing to perform his part of the contract. If no such averment is made in the plaint and if the plaintiff does not plead his readiness and willingness to perform his part of the contract the specific performance of the contract cannot be enforced in favour of such person. For this submission Mr. Thakore relied on the provisions contained in Section 16 of the Specific Relief Act. Explanation (ii) of Section 16 says that the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction. Mr. Thakore has, therefore, submitted that the order passed by the trial Court does not call for any interference of this Court.

18. So far as Civil Application No. 2180 of 2009 is concerned, learned advocate

appearing for the applicant has submitted that since the respondent continued to carry on construction work on the disputed land despite assurance given to this Court which has also been recorded in the order, the applicant was constrained to file present Civil Application. He has further submitted that the appellant filed Special Civil Suit No. 102 of 2009 before the learned Additional Senior Civil Judge, Vadodara. In that suit, the trial Court passed an order of making panchnama on 18.2.2009. He has submitted that when the Court Commissioner and others reached at the disputed land of the suit, there was a mob of about 400 persons working at the site of disputed land and they tried to oppose the Court Commissioner at the instance of the respondent No. 1. He has further submitted that seeing the police personnels, those persons run away and the Court Commissioner carried out panchnama on 21.2.2009. The Court Commissioner has noticed that certain construction work was being carried on by the respondent No. 1. He has submitted that in view of the panchnam prepared by the Court Commissioner, there is clear and deliberate defiance of the order of this Court passed in Appeal From Order. He has, therefore, submitted that the necessary actions are required to be taken against the respondent Nos. 1 and 2 for deliberately defying the order of this Court.

19. An affidavit-in-reply is filed by the respondent No. 1. Mr. B.B.Naik, learned Senior Advocate appearing for the respondent No. 1 has submitted that the application moved by the appellant is nothing but clear abuse of process of Court. If the panchnama prepared in Special Civil Suit No. 102 of 2009 is perused many manipulations are found and hence the appellant has deliberately not produced xerox copy of the panchnama. He has further submitted that there is no finding of Court Commissioner that the construction work was going on and which was being done by the respondent. From the plain reading of the panchnama, it is clearly reflected that the Court Commissioner has every where stated that it is the say of the applicant that the constitution which is going on is done by the respondent. Mr. Naik has further pointed out the discrepancy found in the typed copy of the panchnama and certified copy of the panchnama. He has submitted that wherever there are manipulations, only that part of the panchnama shows that construction is done by the respondent. Mr. Naik further submitted that after the statement is made on behalf of the respondent before this Court no construction is made by the respondent. He has, therefore, submitted that there is no breach committed by the respondent as alleged.

20. An affidavit-in-reply is filed by the respondent No. 2 wherein very serious allegations are made against the appellant. It is stated that the appellant is a head-strong person in the City of Vadodara and as many as six to seven criminal complaints are registered and pending against the appellant. The appellant is involved in many anti-social activities. He is creating and forging documents for which the complaints are registered against him. The appellant has got almost 15 to 20 sale deed executed in his favour or in favour of his relatives. A dispute regarding discrepancy in the typed copy of panchnama as well as certified copy of panchnama was also raised by the respondent No. 2. It is, therefore,

submitted that this panchnama cannot be pressed into service by the appellant especially when there are various discrepancies and its reliability is very much in doubt.

21. Having heard learned advocates appearing for the parties and having gone through the impugned order and judgment passed by the learned Trial Judge below an application Exh.5 along with the documents produced before the Court and in light of the decided case law on the subject, the Court is of the view that the Trial Court is justified in not granting any interim relief in favour of the appellant ? original plaintiff and in rejecting the application Exh.5 for interim injunction. The appellant has filed the suit for specific performance, praying for relief against respondent Nos. 1 & 2. The respondent No. 2 is the owner of the suit property and it is the case of the appellant that the earlier agreement to sell was executed in his favour and he has paid Rs. 15 Lacs by way of Earnest money. However, this has not been produced on record. It is also not known as to on which date, this agreement has been executed and what are the terms and conditions for payment of the sale consideration. The appellant's suit is based only on subsequent agreement which is alleged to have been executed between the appellant and the respondent No. 1 under which, the respondent No. 1 has agreed to pay Rs. 75 Lacs to the appellant in lieu of releasing his Banakhat rights in the suit property. This agreement itself is in dispute and the respondent No. 1 has denied to have executed any such agreement. In any case, the respondent No. 2 who is the owner of the suit property is not a party to this agreement. The respondent No. 2 is, therefore, not bound by any of the terms and conditions of the agreement dated 10.08.2007, even if it is assumed to be real or genuine. The Clauses of the agreement dated 10.08.2007 are such which do not inspire the confidence of the Court. These clauses create doubts and suspicion in the mind of everyone. It is averred in the agreement that an amount of Rs. 15,08,000/- has already been paid by the respondent No. 1 to the appellant and the balance amount was to be paid within three days i.e. on or before 13.08.2007 and if the amount were not paid by the said date, the said agreement stood cancelled and the rights and interests of the appellant in the suit property would revive. It is very difficult for any Court to grant any injunction on the basis of this agreement. It has to be established first as to whether the respondent No. 2 has executed any agreement in favour of the appellant. Unless and until this agreement is produced before the Court and the terms and conditions of such agreement are known to the Court, the Court cannot believe that such agreement was ever executed in favour of the appellant. A mere recital in subsequent agreement, the existence of which is yet to be established, would not entitle the appellant to come before the Court and pray for interim relief restraining the respondents from dealing with the suit property.

22. In the case of *Vimlesh Kumari Kulshrestha v. Sambhajirao and Anr.* 2008 (1) G.L.H. 502, the Apex Court has gone to that extent that the agreement for sale being uncertain could not be given effect to.

23. There is one more reason for not granting any interim relief in favour of the appellant. On the basis of the agreement dated 10.08.2007, it is the stand of the appellant that he has agreed to relinquish his interest or right in the suit property on receipt of an amount of Rs. 75 Lacs from the respondent No. 1. The suit for specific performance cannot be decreed in favour of the appellant - original plaintiff when the amount is determined and even if the appellant succeeds in the suit, he will be entitled to that quantified amount. The appellant was not interested in retaining the suit property with him and precisely for this reason, he has entered into an agreement with the respondent No. 1 on 10.08.2007. Looking to his intention to release his interest or right in the suit property in favour of the respondent No. 1, he can, at the most, claim the amount of compensation or damages from the respondent No. 1. He is, therefore, not entitled to ask for any interim injunction restraining the respondents from dealing with the suit property or from carrying out any further construction on that suit property. The appellant's claim in the suit is surrounded by so many dubious circumstances that the decree with regard to the damages and/or compensation may not be conclusively inferred at this stage. It is only at the end of the trial, the appellant's right in the suit property can be determined and the amount of damages or compensation can be crystalized. It is, therefore, not suggested by the appellant nor even the Court finds it appropriate to direct the respondents to deposit some amount to secure the interest of the appellant.

24. Since the Court decides this Appeal From Order only on the above two issues, the Court does not find it necessary to deal with the other issues raised by the parties in the present proceedings. The Appeal From Order, therefore, fails.

25. So far as Civil Application No. 2180 of 2009 is concerned, the appellant has alleged in the Civil Application that the respondents have committed breach of the statements made before the Court to maintain status-quo and not to carry out any further construction and yet the construction was alleged to have been made by them. For this purpose, the appellant has relied on the Commissioner's report obtained by him in subsequent suit filed by the appellant. This Commissioner's report itself is in dispute. Several discrepancies were found in that report and the respondents have strongly objected to the said report. The respondent Nos. 1 & 2 in their affidavits-in-reply filed to the Civil Application have categorically denied that they have committed any breach of the statement made by their Counsel on their behalf. Since the appellant has failed to produce any documentary evidence in the present proceedings except the Commissioner's report in another suit which is itself in dispute, the Court is not inclined to accept the averments and allegations made by the appellant in the civil application. Even otherwise, the Court has taken the view in Appeal From Order that there is no justification on the part of the appellant to ask for any interim relief restraining the respondents from dealing with and/or carrying out any construction on the suit property and hence no relief can be granted in the present civil application. This civil application is accordingly rejected.

26. Since the Appeal From Order is dismissed, Civil Application No. 13495 of 2008 filed by the appellant for stay along with the appeal, no longer survives and it is accordingly rejected.

27. In the result, Appeal From Order as well as both the Civil Applications preferred therein by the appellant are accordingly disposed of without any order as to costs.

28. On pronouncement of the judgment Mr. A.B. Munshi instructed by Mr. H.R. Prajapati, learned advocate appearing for appellant requests that the statement made on behalf of the learned advocate appearing for the respondent during the pendency of the Appeal may be continued for four weeks. Mr. Parthiv Shah, learned advocate appearing for the respondent strongly objects to this request. Having regard to the facts and circumstances of the case and since the Court has dismissed the Appeal From Order, there is no question of continuing such statement. The request is, therefore, rejected.