IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SECOND APPEAL NO. 226 of 2025

With
CIVIL APPLICATION (FOR INTERIM RELIEF) NO. 1 of 2025
In R/SECOND APPEAL NO. 226 of 2025

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE SANJEEV J.THAKER Sd/-

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Approved for Reporting	Yes	No
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LH OF DECD GULAMRASUL RAHEMANBHAI & ORS.
Versus
NARANBHAI UKABHAI PATEL & ANR.

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Appearance:
MR MA KHARADI(1032) for the Appellant(s) No. 1,1.1,1.2,1.3,2,2.1

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CORAM:**HONOURABLE MR.JUSTICE SANJEEV J.THAKER**

Date : 01/09/2025

ORAL JUDGMENT

1. The present second appeal has been filed under Section 100 of the Code of Civil Procedure, 1908 (for short "the Code") challenging the judgement and decree passed by the 12th Additional District Judge, Vadodara, in Regular Civil Appeal No.206 of 2022, dated 25.11.2024, confirming the judgement and decree passed by the 7th Additional Senior Civil Judge Vadodara in Special Civil Suit No.532 of 2011.

2. For the sake of brevity and convenience the parties are referred

to as per their original status as that in the suit.

3. The brief facts arising in the present Second Appeal are that the defendants had entered into an agreement to sell with the plaintiffs dated 26.05.2004, whereby the total sale consideration was Rs.10,25,000/- and on the date of execution of agreement to sell an amount of Rs.7,65,000/- was paid as earnest money by the plaintiffs and thereafter, the plaintiff paid amount of Rs.25,000/- by cheque no.318421 of Syndicate Bank dated 09.06.2008 and further amount of Rs.25,000/- by cheque no.318423 of Syndicate Bank dated 26.06.2008 and as the defendants did not accept the remaining amount of sale consideration, the plaintiff filed suit for specific performance. The defendant filed their appearance and filed written statement vide exhibit 27. The Trial Court framed issues vide Exhibit 28 as under:-

> *"1. Whether the plaintiff proves that the defendant agreed to sell the suit property to him for a consideration of Rs. 10,25,000/- and after accepting Rs.7,65,000/- as an earnest money has executed an agreement of sale in favour of the plaintiff on 26/05/2004?*
>
> *2 Whether the plaintiff proves that he is in actual possession of the suit property?*

3. Whether the plaintiff proves that he was and is ready and willing to perform his part of agreement?

4.Whether the defendant proves that plaintiff has no such right to file this suit?

5. Whether the plaintiff is entitled to get relief as prayed for?

6. What order and decree?"

4. After considering the oral evidence filed by the plaintiff, vide Exhibit 32 and documentary evidence produced by the plaintiff vide Exhibits 33 to 46 and also the oral evidence of the defendant, vide Exhibit 54 and after giving finding on all the issues, the Trial Court allowed the said suit and directed the defendant to enter his name in the revenue record, property card and perform his part of the agreement to sell within 60 days and accept the remaining amount of sale consideration of Rs.2,10,000/- and execute registered sale deed of the suit property in favour of the plaintiff. Aggrieved by the said judgement, the defendant filed Regular Civil Appeal No.206 of 2022 and after reappreciating the evidence the Regular Civil Appeal was dismissed and the judgement and decree passed by the Trial Court in Special Civil Suit no.532 of 2011 was confirmed, hence, the present second appeal.

5. Learned advocate for the defendant has mainly argued that if the agreement to sell produced vide Exhibit-33 is taken into consideration, the fact remains that the said agreement to sell specifically states that an amount of Rs.7,65,000/- was paid at the time of execution of agreement to sell i.e. dated 26.05.2004 and the remaining amount of Rs.2,60,000/- was to be paid by the plaintiff within a period of six months. It has also been specifically stated in the said agreement to sell that if the plaintiff fails to pay the entire amount of Rs.2,60,000/- within a period of six months, the agreement to sale will be considered cancelled and the amount of sale consideration that has been received by the plaintiff will be forfeited and therefore, after a period of six months, the said agreement to sell has by efflux of time being cancelled and a specific performance of cancelled agreement could never be executed and in view of the said fact, the Trial Court could not have allowed the said suit and the First Appellate Court could not have confirmed the judgement and decree passed by the Trial Court.

6. Learned advocate for the defendant has also argued that, it is an admitted position that the plaintiff is a tenant in the suit premises and therefore, the amount that has been received on 09.06.2008 and 26.06.2008 was only against the rent that was to be paid by the plaintiff and also for the repairs that were

carried out in the suit property and therefore, just by receiving the said amount, it cannot be said that the time of execution of agreement to sell was extended on receiving the said amount and therefore, the Trial Court could not have allowed the said suit.

7. Moreover, when the agreement to sell specifically states that the amount had to be paid within a period of 6 months from 26.05.2004 and that if the said amount is not paid within a period of 6 months, from 26.05.2004, the agreement would be considered cancelled and as, no further agreement has been executed, after the said period of 6 months, therefore, the plaintiff could not have sought for the specific performance of the said agreement, even if, after a period of 6 months the defendant has accepted the amount of Rs.25,000/- and Rs.25,000/-, and therefore, it has been argued that there are substantial questions of law involved in the present second appeal which are as under:

> *"(A) Whether the Courts below were right in granting a decree of specific performance where the transaction itself is based upon an unregistered document in the nature of an agreement to sell?*
>
> *(B) Whether the appellate court was right in upholding the decree passed by the learned trial Court where suit itself was instituted after*

the period of seven years and the same was taken as a defence also by the defendants and without considering the provisions of section 3 of the limitation?

(c) Whether the Courts below were right in a decree of granting specific performance relying upon an agreement to sell where time was an essence of the contract and the execution of the same was sought after a period of more than seven years after the execution of the agreement to sell?

(D) Whether the lower appellate Court was right in concluding that the agreement to sell which on non-compliance on the part of the purchaser had become invalid can be revived only on cheques given by the purchasers without any writing considering the evidence, which leads to or two without the fact that such cheques were given to the seller towards the rent, the suit maintenance and taxes of premises?"

8. Therefore, it has been argued that the present Second Appeal is required to be admitted on the said substantial questions of law.

9. Having heard learned advocate for the defendant and having considered the judgement and decree of the Trial Court and confirmed by the First Appellate Court, the following are the admitted facts:

1. The plaintiff is a tenant in the property.

2. Even before the agreement to sale, the plaintiff was in possession of the property as a tenant of the suit property.

3. An agreement to sale is executed between the plaintiff and the defendant on 26.05.2004 for sale consideration of Rs.10,25,000/-.

4. On the date of agreement to sell, an amount of Rs.7,65,000/- is paid by the plaintiff to defendant.

5. The terms of agreement to sale specifically states that remaining amount of Rs.2,60,000/- is to be paid within a period of 6 months from the execution of agreement to sale.

6. It has also been stated in the agreement to sale that remaining amount was to be paid by the plaintiff after the name of the defendants are mutated in the revenue record, the said agreement also states that, at the time when the agreement to sale was executed, the property was in the name of father of the defendant.

7. The defendant has also admitted that the defendant has received an amount of Rs.25,000/- on 09.06.2008 and Rs.25,000/- on 26.06.2008.

8. The agreement also specifically states that, if there is any dispute by the third party, or by any other legal heir claiming right in the property, the period of agreement to sell would be extended and that the time would not be essence of the contract.

10. In view of the said fact, the fact remains that after a period of 6 months i.e. after 26.11.2004, the defendant himself has received an amount of Rs.25,000/- on 09.06.2008 and Rs.25,000/- on 26.06.2008, though the defendant has raised a claim that the said amount was paid by the plaintiffs towards the rent and repairs in the suit property, but there is no iota of evidence produced by the defendant, that, defendant has in his books shown this amount towards the rent.

11. With respect to the contentions of the defendant that time is the essence of the contract, though the agreement to sell states that remaining amount of sale consideration of Rs.2,60,000/- is to be paid within a period of 6 months but in the present case, the Court will have to look at the conduct of the parties and not the terms used in the agreement to sell, if by conduct the parties have given a go by to the terms of the agreement, thereafter they cannot come forward with the case that the agreement was in existence only for 6 months and mere incorporation in the agreement to sale clause, will not suffice. In the present case, even from the oral and documentary evidence, it can be clearly proved by conduct of the parties that the time was not the essence of the contract.

12. Moreover, in a case of sale of immovable property, there is no presumption as to time being the essence of the contract and even if it is not an essence of the contract, the Court can infer

that it has to be performed within a reasonable time, if the conditions are from the express terms of the contract, from the nature of property and from surrounding circumstances, for essence, the object of making the contract.

13. Moreover, in the case of immovable property, the party to such contract, can by giving evidence prove that in the facts of the case time was not the essence of the contract and in the present case the defendant has admitted of receiving an amount of Rs.25,000/- in the year 2008 and therefore, by the said act it cannot be said that the time was the essence of the contract.

14. In the present case, the defendant admitted that the plaintiff is old tenant in the suit premises and defendant has also admitted of receiving an amount of Rs.25,000/- on 09.06.2008 and Rs.25,000/- on 26.06.2008. All throughout, the plaintiff has proved that he was ready and willing to perform his part of contract.

15. Generally, time is not essence in agreement for sale of immovable property. In deciding whether to grant the remedy of specific performance, specially in suits relating to sale of immovable properties, the Courts must be cognizant of the conduct of the parties, the escalation of the price of the suit property and whether one party will unfairly benefit from the decree. The remedy provided must not cause injustice to a party, specifically when they are not at fault. The plaintiff had

always been ready and willing to perform his part of the contract and was also ready and willing to pay remaining amount of sale consideration and execute the sale deed but it is the defendant, who did not comply or act in furtherance to the agreement and therefore, the Trial Court has passed an order for specific performance and the same has rightly been confirmed by the First Appellate Court.

16. In view of the facts herein above, the Trial Court and the Appellate Court have rightly held that there is a valid contract between the parties with respect to the suit property and that the plaintiff has been ready and willing to perform his part of contract all throughout and the plaintiff has in fact performed his part of contract by showing his readiness and willingness of paying the sale consideration and it will be equitable to grant relief for specific performance of the contract to the plaintiff and defendant will not suffer any kind of hardship. Moreover, the judgement passed by the First Appellate Court is after reappreciating the entire evidence on factual aspect and there is no need to interfere with the said order.

17. It is required to be noted that in Second Appeal, the scope is very limited and the Court cannot re-appreciate the evidence. In the case of **Navaneethammal v. Arjuna Chetty** reported in **1996 (6) SCC 177**, the Hon'ble Apex Court has observed as

under:-

> *"11. This Court, time without number, pointed out that interference with the concurrent findings of the courts below by the High Court under Section 100 CPC must be avoided unless warranted by compelling reasons. In any case, the High Court is not expected to reappreciate the evidence just to replace the findings of the lower courts."*

18. In the case of **Jaichand (Dead) through Lrs and Other v. Sahnulal and Another** reported in **2024 SCC OnLine SC 3864**, the Hon'ble Apex Court has observed as under:-

> *"28. It is thus clear that under Section 100 CPC, the High Court cannot interfere with the findings of fact arrived at by the first Appellate Court which is the final Court of facts except in such cases where such findings were erroneous being contrary to the mandatory provisions of law, or its settled position on the basis of the pronouncement made by the Apex Court or based upon inadmissible evidence or without evidence."*

19. Under the circumstances, this Second Appeal is devoid of any substantial question of law. Both the learned Trial Court and first appellate Court have rightly decided the issue between the parties in the right perspective and as stated above no substantial question of law arises in the present appeal. The defendants have failed to prove their case

before the learned trial Court as well as before the first appellate Court. This Court does not find any substance in the present Second Appeal as the same is devoid of any merit both on facts and law and the same is dismissed.

Sd/-
(SANJEEV J.THAKER,J)

URIL RANA

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: RANA URIL K(HC01406), PRIVATE SECRETARY, at High Court of Gujarat on 01/09/2025 18:24:40