Reserved On : 08/07/2025
Pronounced On : 31/07/2025

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 6880 of 2025

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE MAULIK J.SHELAT Sd/-

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Approved for Reporting	Yes	No
	✓	

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NITABEN KAMLESHBHAI SHAH
Versus
AMRISHBHAI RAMBHAI PATEL & ORS.

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Appearance:
GANDHI LAW ASSOCIATES(12275) for the Petitioner(s) No. 1
MR BHAVESH BABARIYA(6788) for the Respondent(s) No. 2
MS. KOMALBEN M DESAI(17410) for the Respondent(s) No. 1

CORAM:**HONOURABLE MR. JUSTICE MAULIK J.SHELAT**

CAV JUDGMENT

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1. Rule returnable forthwith. Learned advocate Mr. Komalben M. Desai waives service of the Rule on behalf of respondent No. 1, and Mr. Bhavesh Babariya waives service of the Rule on behalf of respondent No. 2. The presence of the other respondents is not required for the adjudication of the issue germane in the present writ application. With the consent of learned advocates appearing for the respective parties, the matter was finally heard.

2. At the outset, Learned advocate Mr. Kunal Vyas, appearing for the petitioner, tenders an additional affidavit on behalf of the petitioner, sworn on 07.07.2025.

3. Per contra, Learned Senior Counsel Mr. P.K. Jani and Learned Senior Counsel Ms. Trusha Patel, appearing for the caveators, have strong objections to the submission of documents annexed with such an additional affidavit of the petitioner, which, according to them, are not part of the record of Special Civil Suit No. 1100 of 2011, which is the subject matter of the present writ application.

4. As such, the documents which are annexed with the additional affidavit are part of Special Civil Suit No. 399 of 2008, pending before the Principal Senior Civil Judge, Ahmedabad (Rural), wherein the Caveators are party to the suit; thus, this Court allows the petitioners to submit such documents by taking on record the said additional affidavit.

5. As far as possible, the parties will be referred to as per their designation given hereinafter.

6. The present writ application has been filed under Article 227 of the Constitution of India, arising out of the order dated 11.04.2025 passed by the Trial Court in an application filed under Section 10 of the Code of Civil Procedure, 1908 (hereinafter referred to as the "CPC") by the petitioner - defendant No. 14, below Exh. 353 in Special Civil Suit No. 1100 of 2011 (hereinafter referred to as "the present suit"), seeking the following reliefs:-

> *"A. Your Lordships may be pleased to issue Writ in the nature of Certiorari and/or any other appropriate Writ, Order or Direction quashing and setting aside the impugned Order dated 11.04.2025 (Annexure-A) passed by the Learned Ld. Principal Senior Civil Judge,*

Ahmedabad (Rural) below Exhibit 353 in Special Civil Suit No.1100 of 2011 in the interest of justice;

B. Pending admission, hearing and final disposal of the petition, your Lordships may be pleased to stay further proceedings in Special Civil Suit No. 1100 of 2011, which is pending before the Ld. Principal Senior Civil Judge, Ahmedabad (Rural);

C. An ex-parte ad-interim order in terms of para (B) above may be granted in the interest of justice;

D. Pass such other and further order or orders as may be thought fit in the interest of justice."

THE BRIEF FACTS OF THE CASE

7. The petitioner in the present proceedings is the original defendant No. 14 (hereinafter referred to as the ***"subsequent purchaser"***), whereas respondent nos.1 & 2 herein are the original plaintiffs – Agreement to Sell Holders (hereinafter referred to as ***"ATS Holders"***), who filed Special Civil Suit No. 1100 of 2011, which is the subject matter of the present writ application. The respondent no. 3 - Son of Prabhudas Vallabhdas Modi (hereinafter referred to as the ***"Donee"***), and Respondent Nos. 4 to 7 and 16 – Legal heirs of Prabhudas Vallabhdas Modi (hereinafter referred to as ***"legal heirs"***), Respondent No. 8 – Power of Attorney of Prabhudas Vallabhdas Modi (hereinafter referred to as the ***"PoA"***), and

Respondent nos. 9 to 14 - Purchasers (hereinafter referred to as the *"Purchasers"*), and respondent No. 15 – subsequent purchaser (hereinafter referred to as the *"Co-subsequent purchaser"*), who are as such original defendant nos. 1 to 3, 5 to 13, 15, and defendant no. 4, respectively.

8. To better understand the contours of the controversy germane in the matter, I would like to narrate the facts and compartmentalize them as follows:-

TRANSACTIONS THAT TAKEN PLACE BETWEEN THE PARTIES.

9. One Prabhudas Vallabhdas Modi was the original owner of the property (hereinafter referred to as the *"Original Owner"*) situated at Village Makarba, District Ahmedabad, at Survey No. 69/2, admeasuring 6475 sq. mts., and Survey No. 693, admeasuring 5364 sq. mt. (hereinafter referred to as the *"suit land"*).

9.1. Whereas, defendant nos. 1 to 6 are the legal heirs of the said Prabhudas Vallabhdas Modi. The power of attorney was executed by Prabhudas Vallabhdas Modi in favour of defendant

no. 7 - PoA on 10.02.2007. Defendant nos. 8 to 13 (purchasers) purchased the suit land by way of a registered sale deed executed on 04.07.2008, which was executed by defendant no. 7 -PoA.

9.2. The plaintiffs have entered into an Agreement to Sell (herein after referred as ***"ATS"***) with defendant nos. 8 to 13 – ATS holders on 08.07.2008 in relation to the suit land.

9.3. The original owner - Prabhudas Vallabhdas Modi appears to have executed a Gift Deed on 28th March 2008 in favour of defendant no. 1 - Donee in relation to the suit land, but the same was presented for its registration on 25.07.2008 to the Sub-Registrar, Ahmedabad (Paldi) and in fact registered on 28.07.2008, i.e., subsequent to the registered sale deed executed by defendant no. 7 -PoA in favour of defendant nos. 8 to 13 – purchasers on 04.07.2008.

9.4. Defendant no. 1 - Donee appears to have by way of registered sale deed on 13.05.2013 in favour of defendant nos. 14 and 15 – subsequent purchasers, thereby sold the suit land

having executed such sale deed on 28.09.2010 .

9.5. Thus, by virtue of the aforesaid transactions that have taken place to date, on one hand, defendant nos. 8 to 13 - purchasers are claiming to be the owners of the suit land, and on the other hand, defendant no. 1 - Donee, as well as defendant nos. 14 and 15 – subsequent purchasers, also claimed ownership by virtue of the Gift Deed and sale deed, respectively.

THE CIVIL SUITS FILED BETWEEN THE PARTIES.

SPECIAL CIVIL SUIT NO. 399 OF 2008 – PREVISIOUSLY INSTITUTED SUIT

10. The purchasers filed Special Civil Suit No. 399 of 2008 against Prabhudas Vallabhdas Modi (who later died), Chellabhai Herjibhai Desai (defendant no. 7 - PoA of Prabhudas Vallabhdas Modi), and Ashok Prabhudas Modi (Defendant No. 1 – Donee), wherein the later on, ATS holders have been joined as party defendants. Whereas, the subsequent purchaser – petitioner herein also filed an application to be joined in the suit as co-defendant, which appears to have been filed on 17th June 2013 but, it is still pending for its

adjudication.

10.1. The aforesaid suit has been filed by the purchasers, seeking a declaration and cancellation of the Gift Deed executed by Prabhudas Modi in favour of his son - Donee (Ashok Modi). The reliefs, which are prayed for in the previously instituted suit, can be summarized as under:-

a. The sale deed which was executed by Prabhudas Modi and his power of attorney jointly in favour of the purchasers by collecting sale consideration, which registered with the Sub-Registrar on 04.07.2008 in relation to the suit land, be declared as complete, true, correct and legal, stand in favour of the purchasers.

b. The defendants to the suit shall be prohibited from interfering with the possession of the suit property possessed by the purchasers and not to disturb their possession by any means.

c. The Gift Deed, presented on 25.07.2008 and registered on 28.07.2008 with the Sub-Registrar, Ahmedabad (Paldi), which is subsequent to the sale deed executed in favour of the purchasers on 04.07.2008, be declared fraudulent, without consideration, null and void, and executed without any right or

interest, and consequently, the Sub-registrar, Ahmedabad (Paldi) may take note of the order of this Court.

SPECIAL CIVIL SUIT NO. 455 OF 2009 – CURRENTLY WITHDRAWN

11. The Donee had filed Special Civil Suit No. 455 of 2009 against the owner of the suit property, his power of attorney, one of the legal heirs of the original owner, and against the purchasers of the suit land. It is the case of the Donee that once the owner of the suit land (Prabhudas Modi) executed the Gift Deed dated 28.03.2008 albeit, was registered on 28.07.2008, the power of attorney of the owner of the suit land had no right, title, or interest to execute the sale deed in favour of the purchasers, which was registered on 04.07.2008. According to the case of the Donee, none of the original defendants have any right, title, or interest in the suit land.

12. It appears that the subsequent purchasers of the suit land were joined as defendants in the suit. It further appears that despite there being an objection from the subsequent purchaser not to permit the Donee to withdraw the suit and to transpose

the subsequent purchaser as a plaintiff in the suit, the Donee withdrew the aforesaid suit unconditionally on 15.04.2023, which was permitted to do so by the Trial Court. The Trial Court did not accept such a request of subsequent purchaser, thereby, disposed of the aforesaid suit as withdrawn.

13. The petitioner herein – the subsequent purchaser – has challenged the order dated 15.04.2023 passed by the Trial Court by filing Special civil application no.7797 of 2023, which is pending for its adjudication.

14. The reliefs, which are prayed for in the suit, can be summarized as under:-

a. The considering facts of the plaint give declaration that the plaintiff – the Donee is the absolute owner and possessor of the suit land and as such, the defendants of the suit, including the purchasers, had no right, title, and interest in the suit land.

b. The registered sale deed executed on 04.07.2008 by the power of attorney of the owner of the land in favour of

the purchasers in relation to the suit land be declared null and void, illegal, and without any authority to execute such deed.

c. The defendants to the suit shall be prohibited from transferring, alienating, creating any right in favour of a third party and also not to interfere with the possession of the suit property possessed by the purchasers and not to disturb their possession by any means.

15. But, as on date, the status of the aforesaid suit would be as disposed of being withdrawn.

SPECIAL CIVIL SUIT NO. 1100 OF 2011 – PRESENT SUIT

(SUBJECT MATTER OF THE PRESENT WRIT APPLICATION)

16. The ATS holders also filed the suit against the Donee, the legal heirs of the original owner of the suit land, the PoA, and the Purchasers, and later on, the subsequent purchasers were joined in the suit.

17. The suit is basically filed seeking specific performance of the Agreement to Sell dated 08.07.2008 executed by the ATS

Holders with the purchasers, and also sought a declaration and injunction.

18. As referred to hereinabove, during the pendency of the suit, the subsequent purchasers have been joined in the suit; their sale deed, executed by the Donee on 29-09-20210 but registered on 13-05-2013, is challenged in this very suit by way of an amendment of the suit.

19. The parties to the suit, after submitting their pleadings and on the framing of issues, as per the direction issued by this Court, the trial of the suit commenced, whereby the plaintiffs and defendant nos. 1 to 13 of the suit have already submitted their oral evidence. Now, the suit is at the stage of recording of the evidence of the subsequent purchasers, i.e., defendant no. 14 - the petitioner, and defendant no. 15 – respondent no. 15.

20. At that stage, the impugned application under Section 10 of the CPC came to be filed by defendant no. 14 – the subsequent purchaser below Exh. 353 in the suit, which was

objected to by the ATS Holders – the plaintiffs.

21. After hearing the parties, the Trial Court rejected the application filed under Section 10 of CPC vide its order dated 11-04-2025 below Exh. 353 in Special Civil Suit No. 1100 of 2011.

22. Being aggrieved and dissatisfied with the impugned Order dated 11.04.2025, whereby the application of the petitioner filed below Exh. 353 under Section 10 of the CPC for a stay of Special Civil Suit No. 1100 of 2011 came to be rejected, the Petitioner approaches this Court by way of present writ application on the grounds that the said order is bad in law and contrary to settled legal principles.

23. The reliefs, which are prayed for in the present suit, can be summarized as under:-

a. The defendant no. 8 to 13 (purchaser) on basis of the Agreement to Sell dated 08.07.2008 executed by them in favour of plaintiffs (ATS Holders), by accepting balance sale consideration, be directed to execute registered sale

deed in relation to suit land in favour of plaintiffs (ATS Holders) or in favour of any person they wishes, and defendant no. 1 to 7 become confirming parties to such sale deed.

b. The execution of sale deed dated 28.09.2010 by defendant no.1 (Donee) in favour of defendant no. 14 & 15 (subsequent purchaser) having being registered on 13.05.2013 be declared as illegal, null, void, fraudulent, and bogus, and sought a decree that the subsequent purchasers be joined as a confirming party in sal deed order to be registered in favour of the ATS Holders.

c. Further sought a declaration that any agreement entered into between the Donee and the purchasers, prejudicing the rights and interests of the ATS Holders, is not binding on them as they are not empowered to execute such an agreement. Be declared that the original defendants, inter se, entered into an agreement in Special Civil Suit Nos. 399 of 2008 and 455 of 2009, are not binding on the ATS Holders as it is void ab initio.

d. Seeking declaratory decree that the registered Gift Deed dated 28.07.2008 executed in favour of defendant no. 1 is void, got-up, null, and void.

e. The defendants to the suit shall be prohibited from transferring, alienating and creating any right in favour of third party and also not to interfere with the possession of the suit property possessed by the purchasers and not to disturb their possession by any means.

SPECIAL CIVIL SUIT NO. 377 OF 2022 – CONSENT DECREE PASSED

24. The suit was filed by two of the purchasers, namely, Rajesh Nitinbhai Raval and Siraj J. Modan (*respondent nos. 12 and 14 herein in the present writ application*), against the rest of the purchasers, except Shashikantbhai Vasudevbhai Patel (Respondent No. 13 in the writ application), the ATS holders, and the Donee.

25. The suit is filed seeking specific performance against the ATS Holders, whereby it was prayed that the ATS Holders be

directed to pay the balance sale consideration, i.e., 9 crores, as per the ATS dated 08.07.2008 or, alternatively, declare that the possession of the defendants on 75% of the suit land is illegal, and thereby, the suit may be decreed by directing the defendants to return the possession of the suit land, and also sought a prohibitory injunction.

26. It appears that there was a compromise arrived at between the parties to the suit before the Hon'ble Supreme Court of India, which is recorded in its order dated 14.02.2023 passed in Special Leave to Appeal (C) No. 21828 of 2022, whereby it has been observed that on the basis of the compromise and settlement arrived at between the parties, the last portion of order passed the Trial Court on 06.02.2023 would be treated as a decree. Nonetheless, it has been specifically observed that the said decree would not be binding on third parties.

27. Thus, a formal decree was passed by the Trial Court on 09.03.2023 in the aforesaid suit. The sum and substance of such a compromise would be as follows:-

27.1. *The Donee is accepting the registered sale deed dated 04.07.2008 in favour of the purchasers and agrees to withdraw his Special Civil Suit No. 455 of 2009 and, also, would not dispute the ATS dated 08.07.2008 executed in favour of the ATS holders.*

27.2. *It has been agreed between the purchasers and the ATS holders, except for one of purchase (respondent no. 13 herein), that the price agreed as per the ATS would be received from the ATS holders by the purchasers, except for respondent no. 13 herein, whose share of land and amount will be excluded, and on receipt of such consideration, a sale deed will be executed in favour of the ATS holders and in favour of any person to whom they desire it to be executed.*

27.3. *It has been specifically agreed that the purchasers, except for respondent no. 13, are bound to perform as per the terms of the ATS dated 08.07.2008 executed by them in favour of the ATS holders. They accept the possession of the ATS holders and, in future, they would not raise*

any dispute as regards the ATS, the sale consideration, and the possession of the suit land.

SPECIAL CIVIL SUIT NO. 121 OF 2023 – PETITIONER – SUBSEQUENT PURCHASER – PLAINT REJECTED – FIRST APPEAL PENDING

28. The suit was filed by the subsequent purchasers against Donee, PoA, purchasers, and ATS Holders, wherein the following principal reliefs have been prayed for:-

> *"(A) This Hon'ble Court be pleased to declare that in the facts and circumstances of the present case, the Defendants have no right whatsoever to execute any Sale Deed in the context of subject land either absolutely or during pendency of various Suit Nos. 399 of 2008, 455 of 2009, 1110 of 2011, 391 of 2013, 298 of 2014 and 574 of 2014 before various Courts;*
>
> *(B) This Hon'ble Court be pleased to hold and declare that only the Plaintiffs have right, title and interest in the subject land;*
>
> *(C) That this Hon'ble Court be pleased to hold and declare that the Plaintiffs were in possession of the subject land and the same has been taken over illegally only on 31.03.2023 by the Defendants, their servants, agents, assigns, etc. and be further pleased to direct the Defendants, their servants, agents, assigns, to restore possession;*
>
> *(D) This Hon'ble Court be pleased to grant a permanent injunction restraining the Defendants, their servants, agents and anybody claiming through them from taking any action whatsoever or executing any documents, filing any applications or taking any steps for transferring, selling, leasing, gifting, alienating or in any other manner creating third party interests in the subject land or*

encumbering the subject land or parting with possession thereof in favour of any third party;

(E) This Hon'ble Court be pleased to grant a permanent injunction restraining Defendant Nos. 2 to 9 from taking any steps for transferring, selling, leasing, gifting, alienating or in any other manner creating third party interests in the subject land or encumbering the subject land or handing over physical possession of the subject land in favour of Defendant Nos. 10 and 11 or any person claiming through them;

(F) This Hon'ble Court be pleased to grant a permanent injunction restraining the Defendants from raising any temporary or permanent construction thereon or for working the land, changing the topography, making compound walls, digging holes and pits;

(G) The Hon'ble Court may be pleased to award costs of this Suit to the Plaintiff;

(H) The Hon'ble Court may be pleased to pass such further and other relief(s) as the nature and circumstances of the case may require."

28.1. The aforesaid plaint was rejected by the Trial Court as per Order VII Rule **11** of the CPC on **11.04.2023,** against which First Appeal No. **1850** of **2023** was filed by the subsequent purchasers, which is claimed to be pending, wherein an order of status quo has been granted, which is operating as of date.

SUBMISSION OF PETITIONER – DEFENDANT NO.14 – SUBSEQUENT PURCHASER

29. Learned Senior Counsel Mr. Mihir Thakore, with Learned

Senior Counsel Mr. Devan Parikh for the petitioner, would submit that the impugned order passed by the Trial Court is contrary to Section 10 of the CPC and requires to be quashed and set aside.

29.1. Learned Senior Counsel would further submit that despite drawing the attention of the Trial Court to the fact that the previously instituted suit, filed by the purchasers against the Donee and others, being Special Civil Suit 399 of 2008, and also the one filed by the Donee against the purchasers and others, being Special Civil Application No.455 of 2009, have a direct bearing on the issues germane to the present suit, the Trial Court has not properly appreciated these facts, thereby committing a jurisdictional error in rejecting the impugned application.

29.2. Learned Senior Counsel would further submit that the purchasers have filed Special Civil Suit No. 399 of 2008 and sought a declaration that the Gift Deed executed by the owner of the suit land in favour of the Donee is null and void and have also sought a declaration that their sale deed dated

04.07.2008 is legal and valid; therefore, the present suit cannot be proceeded with by the ATS Holders. It is submitted that when the purchasers' title is not clear, which is a sine qua non to get specific performance from the purchasers, the suit filed by the ATS Holders, wherein also the same relief is sought for seeking a declaration that the Gift Deed executed by the owner in favour of the Donee be declared null and void, cannot be proceeded with further, being a subsequent suit, and requires to be stayed by the Court.

29.3. Learned Senior Counsel would further submit that the Trial Court has not appreciated the plain language of Section 10 of the CPC, which is a mandatory provision, whereby no court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between the parties under whom they claim, litigating under the same title, where such a suit is pending.

29.4. Learned Senior Counsel would submit that unless and until the previously instituted suit by the purchaser gets

decided and the cloud over their title is cleared by a court of law, till then, the present suit cannot proceed, wherein also the same issue is raised by the ATS Holders. It is submitted that the Trial Court has completely lost sight of the crucial fact that the Gift Deed is already challenged in the previously instituted suit, i.e., Special Civil Suit No. 399 of 2008, as well as the present suit, i.e., Special Civil Suit No. 1100 of 2011; as per Section 10 of the CPC, the subsequent suit is required to be stayed.

29.5. Learned Senior Counsel would further submit that there are catena of decisions, which has clarified such a position of law, and despite clearly stating such fact in the impugned application, the Trial Court has erroneously rejected the impugned application on non-existent grounds, thereby, committed jurisdictional error.

29.6. Learned Senior Counsel would further submit that mere delay in filing the impugned application would not, *ipso facto*, disentitled the petitioner to request the Trial court to stay the present suit. It is submitted that as per Section 10 of the CPC,

its mandatory in nature and does not remotely indicate that such type of application must be filed at the first instance and not in the midst of the trial. It is respectfully submitted that when there is a mandatory provision of law, the Trial Court was required to adhere to it, and on the ground of delay, the impugned application could not have been rejected.

29.7. Learned Senior Counsel would further submit that, as such, at the time of taking the oral evidence of the petitioner, having gone through the documents of the previously instituted suits and the present suit, she has noticed that the issue germane in the present suit is directly and substantially in issue in a previously instituted suit.

29.8. Learned Senior Counsel would further submit that the parties in both suits are, for all practical purposes, the same. Although the specific names in the party arrays may differ, they are all litigating under the same title, which is a key condition for the applicability of Section 10 of the CPC. It is submitted that the title of the petitioner to the suit property originated from the Donee, the recipient of the contested gift.

Conversely, the plaintiffs in the present suit derive their alleged rights from the purchasers, who are the plaintiffs in the previously instituted suit, i.e., Special Civil Suit No. 399 of 2008 filed to get their title clear.

29.9. Learned Senior Counsel would further submit that although, Special Civil Suit Suit No. 455 of 2009, filed by the Donee, was withdrawn by him, but such withdrawal is already challenged before this Court, and the matter is sub-judice, wherein the petitioner has already prayed for her transposition from defendant to as co-plaintiff. According to both Learned Senior Counsel, unless and until the issue germane in the previously instituted suit can be decided by the Trial Court as regards the title of the suit land by giving a declaration either in favour of the Donee or the purchasers, the present suit requires to be stayed.

29.10. Learned Senior Counsel would further submit that merely because the nature of the suit may be different, i.e., the previously instituted suit is for declaration and the present suit is for seeking specific performance of the ATS, wherein

also the Gift Deed executed in favour of the Donee by the owner of the land is questioned being challenged, in such circumstances, the previously instituted suit is required to be first proceeded, and accordingly, the subsequent suit, i.e., the present suit, can then after be tried by the Trial Court.

29.11. Learned Senior Counsel would further submit that it is by now well settled that in a previously instituted suit, any issue, if decided between the parties, would operate as res judicata in subsequent suit between the same parties; in such a situation, the subsequent suit is required to be stayed. It is submitted that the provisions of Section 10 of the CPC would not entitled any Court to proceed with the trial of any suit in a case where the issue germane in the suit is directly and substantially an issue in the previously instituted suit between the same parties, and if allowed to do so, there would be a chance of contradictory findings in the two suits having similar facts. So, to avoid such an anomalous situation, the provision of Section 10 was drafted and is to be applied. It is further submitted that in the previously instituted Suits i.e., Special

Civil Suit Nos. 399 of 2008 and 455 of 2009, the common issue in relation to the validity of the Gift Deed and the Sale Deed in question is already germane and has been framed by the concerned court, whereas in the present suit also (Special Civil Suit No. 1100 of 2011), the validity of the Gift Deed is one of the issue, and, in that view of the matter, the provisions of Section 10 would be applicable to the case on hand; thereby, the present suit (Special Civil Suit No. 1100 of 2011) is required to be stayed to avoid any conflicting decisions on the aforesaid issue.

29.12. Learned Senior Counsel would further submit that need arose to file the impugned application due to the conduct of the parties, including the Donee, who have settled the dispute between them including plaintiffs by getting consent decree in Special Civil Suit No. 377 of 2022 and so also Donee withdrawn his suit i.e., Special Civil Suit No. 455 of 2009, which damaged the interest of defendant no. 14. As such, the plaintiffs, being a party to all these suits, cannot object to making reference to them while adjudicating the present writ

application. It is submitted that this Court is required to see the contours of the issue involved in all these suits which are filed between the parties. If the present suit is allowed to continue, the previously instituted Special Civil Suit No. 399 of 2008, and so also, Special Civil Suit No. 455 of 2009, would be rendered otiose, which would be contrary to the object of Section 10 of the CPC.

29.13. Learned Senior Counsel would submit that as per various decisions of the Supreme Court or different High Courts, including this Court, it has been commonly observed by various courts, including the Supreme Court, that in a given case when there are overlapping issues in previously instituted suit and current suit, but in both suits, the issue is directly and substantially the same, the subsequent suit is required to be stayed.

29.14. To buttress their argument, Learned Senior Counsel would rely upon the following decisions:-

(i) The New Red Bank Tea Co. Pvt. Ltd vs Terai Tea Co. Pvt. Ltd reported in (2019) 18 SCC 141;

(ii) Balbir Singh Wasu vs. Lakhbir Singh and Others reported in (2005) 12 SCC 503;

(iii) Gupte Cardiac Care Centre and Hospital vs. Olympic Pharma Care (P) Ltd. Reported in (2004) 6 SCC 756;

(iv) Kunulal Krishnalal Trivedi vs. Karanlal Krishnalal Trivedi, reported in (1997) 3 GLR 1948;

(v) Jai Kishan Garg vs. Randhir Singh, reported in 2024 SCC Online SC 3935;

(vi) Sagar Shamsher Jung Bahadur Rana and Another vs. The Union of India and others reported in 1978 SCC OnLine Del 220;

(vii) P.V.Shetty vs. B.S.Giridhar, reported in (1982) 3 SCC 403.

30. Making the above submissions, learned Senior Counsel requests this Court to allow the present writ application.

SUBMISSION OF RESPONDENT NOS. 1 AND 2 - Plaintiffs.

31. Learned Senior Counsel Mr. P.K. Jani with Learned Senior Advocate Ms. Trusha Patel, with Learned advocate Mr. Bhavesh Babariya and Ms. Komal Desai for respondent nos. 1 and 2 respectively, would submit that the impugned application filed by defendant no. 14 with an ill intention to derail the trial of the suit, which was already ordered to be expedited by this Court, and in that view of the matter, the

Trial Court has correctly rejected impugned application.

31.1. Learned Senior Counsel would further submit that the timing of filing the impugned application also requires to be taken note of by this Court, inasmuch as defendant no. 14 was already joined in the suit before more than 10 years back, has participated in the trial of the suit, and has cross-examined the plaintiff and other defendants, and when her turn came to lead her evidence, i.e. the examination-in-chief, at that stage, not wants to enter into the witness box, defendant no. 14 filed the impugned application. Such an attempt on the part of defendant no. 14 requires to be deprecated, which is in fact against speedy trial and justice, and this Court should reprimand defendant no. 14 for trying to come in the way of the administration of justice.

31.2. Learned Senior Counsel would further submit that defendant no. 14 is quite aware of all the previously instituted suits which are referred to in the impugned application and, in fact, though she filed an application in June 2013 to be joined in Special Civil Suit No. 399 of 2008, till date, she has not

bothered to pursue her application; thus, defendant no. 14 is so far not joined in the previously instituted suit. It is submitted that the conduct of defendant no. 14 disentitle her to claim any relief as prayed for in the impugned application.

31.3. Learned Senior Counsel would further submit that even the ingredients of Section 10 are not made out in the impugned application, inasmuch as all parties to the present suit and in the previously instituted suit are not common; thereby, the impugned application itself is misconceived and was deliberately filed to derail the outcome of the present suit. It is submitted that defendant nos. 14 and 15 of the present suit are not joined in the previous suit, i.e., Special Civil Suit No. 399 of 2008; thereby, the impugned application was not at all maintainable and was correctly rejected by the Trial Court.

31.4. Learned Senior Counsel would further submit that the cause of action in both suits is completely different and has no direct bearing on each other. It is submitted that the present suit is filed by the ATS holders seeking specific performance of the ATS executed by the plaintiffs with the purchasers,

whereas the previously instituted Special Civil Suit No. 399 of 2008 was filed by the purchasers against the Donee, challenging the Gift Deed executed by the owner in favour of the Donee. It is submitted that merely because one of the prayers made in the both these suits is common, i.e. having questioned the Gift Deed in question, this would not entitle defendant no. 14 to claim that the issue germane in the previously instituted suit and the present suit is directly and substantially the same.

31.5. Learned Senior Counsel would further submit that the parties to the previously instituted suit have no objection if the present suit gets continued, when defendant no. 14, who is not a party to the previously instituted suit, cannot raise such plea by filing the impugned application.

31.6. Learned Senior Counsel would further submit that in the present suit, the plaintiff is required to challenge the Gift Deed executed by the owner in favour of the Donee due to the fact that there was a likelihood of settlement between the purchasers and the Donee, and to get a declaration that any

settlement, which may take place between the purchasers and the Donee in their duly instituted suits against each other would not be binding on the plaintiffs; consequently, plaintiffs have challenged the Gift Deed in question.

31.7. Learned Senior Counsel would further submit that while filing the impugned application, there was no reference made to the consent decree passed by the Trial Court in Special Civil Suit No. 377 of 2022; then at this stage, such new plea cannot be allowed to be raised, inasmuch as the impugned application was filed on 11.09.2024, whereas the consent decree in the aforesaid suit was passed on 09.03.2023.

31.8. Learned Senior Counsel would further submit that the petitioner's allegations of collusive actions, including a consent decree and the withdrawal of another suit, are matters that must be adjudicated during the trial itself, where evidence can be presented and examined. These claims cannot serve as a basis to stay the entire suit.

31.9. Learned Senior Counsel would further submit that,

considering the language of Section 10 of the CPC, it is required to be strictly construed, as it is an exception to Section 9 of the CPC, and defendant no. 14 is required to fulfill all the conditions stipulated in Section 10 of the CPC by submitting the impugned application, which she failed to prove on record.

31.10. Learned Senior Counsel would further submit that in the present suit, which has been amended, the sale deed executed by the Donee in favour of defendant nos. 14 and 15 is also challenged; thereby, defendant nos. 14 and 15, having not been joined in the previously instituted suit, cannot be permitted to defend the title of their predecessor, i.e., the Donee.

31.11. Learned Senior Counsel would further submit that it is an undisputed fact that in none of the previously instituted Suits, i.e., Special Civil Suit No. 399 of 2008 or Special Civil Suit No.455 of 2009 (which is now withdrawn), trial commenced and as no evidence led by any of the parties to the previously instituted suit. It is submitted that except for

the framing of issues, it has not progressed further. Whereas, in the present suit, the trial is virtually going to an end, once defendant nos. 14 and 15 lead their evidence; it would be inappropriate to stay the present suit at the instance of defendant no. 14, who conveniently allowed the present suit to travel upto the stage of the recording of her evidence. It is respectfully submitted that, considering the entire set of facts and circumstances on hand, propriety demands that the present suit should be allowed to progress further and, in fact, deciding the present suit early may be helpful to every party to the present suit.

31.12. Learned Senior Counsel would further submit that this Court, in its limited jurisdiction, while exercising its power under Article 227 of the Constitution of India, is not required to interfere with every order passed by Civil Court in a routine manner, and as such, it is a settled legal position of law that a mere error of law while passing order by civil Court would not be a ground to interfere with the order unless it is so erroneous, perverse, arbitrary, contrary to the settled position

of law or without jurisdiction, which is not the case on hand; thereby, this Court should not interfere with the impugned order.

31.13. To buttress their arguments, Learned Senior Counsel would further rely upon the following decisions:-

(i) Usha V. Shahjad Bi @ Sejad reported in 2024(3) Civcc 138

(ii) Guru Granth Saheb Sthan Meerghat Vanaras Versus Ved Prakash reported in 2013 (7) SCC 622

(iii) Aspi Jal Versus Khushroo Rustom Dadyburjor reported in 2013 (4) SCC 333

(iv) National Institute of Mental Health and Neuro Sciences Verusus C. Parameshwara reported in 2005(2) SCC 256

(v) British India Corporation Limited Versus Rashtraco Freight Carriers reported in 1996 (4) SCC 748

(vi) Mohammad Yunus Versus Mohd Mustaqim reported in 1983(40 SCC 566

(vii) Paras Agri Business Private Limited Vs. Proprietor of M/s. J.V. Enterprise Tulsidas Mohanbhai Kakkad, reported in 2023 (0) GUJHC 18195 (Para 11, 15, 16)

(viii) ***Sangam Prints Private Limited Vs. Arman Industries Private Limited, reported in 2019 (0) JX (Guj) 1127 (Para 32 and 41)***

(ix) Shreyas Ratilal Shah Vs. Chistiya Khankah (Dargah) Kabrastan and Masjid Public, reported in 2013 (3) GLR 2407 (Para 8 to 16)

(x) HDFC Bank Limited Vs. Ashima Limited, reported in 2019 (4) GLR 2649 (Para 19 and 21)

(xi) Sohal Engineering Works Vs. Rustom Jehangir Vakil Mills Company Limited, reported in 1981 (0) GLR 491 (Para 13)

31.14. Making the above submissions, Learned Senior Counsel would request this Court that the petition, being devoid of merit, requires to be dismissed.

32. No other and further submissions were made by any of Learned Senior Counsel appearing for the respective parties.

POINTS FOR DETERMINATION

32.1. *Whether, in the facts and circumstances of the case, the ingredients of Section 10 of the CPC made out in the impugned application filed below Exh. 353 in Special Civil Suit No. 1100 of 2011 by petitioner - defendant no.14?*

32.2. *Whether the issue germane in the present suit i.e., Special Civil Suit No. 1100 of 2011 is directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they claim, litigating under the same title, pending before the same Court or not?*

ANALYSIS

33. Before adverting to the issues germane in the matter, the following provision of law and the case laws applicable and helpful to resolve the issues need to be considered.

34. Section 10 of the CPC, in which the impugned application came to be filed, reads as under:-

> *"10. **Stay of suit.**—No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in 1 [India] have jurisdiction to grant the relief claimed, or in any Court beyond the limits of 1 [India] established or continued by 2 [the Central Government 3 ***.] and having like jurisdiction, or before 4 [the Supreme Court].*
>
> 34.1. *Explanation.—The pendency of a suit in a foreign Court does not preclude the Courts in 1 [India] from trying a suit founded on the same cause of action."*

35. To apply the rigors of Section 10 of the CPC, the following conditions need to be satisfied by the applicant.

(i) There must be two suits instituted between the same parties, or between the parties under whom they or any of them claim, litigating under the same title.

(ii) The matter in issue in the subsequent suit must be directly and substantially in issue between the same parties, or between the parties under whom they or any of them claim, litigating under the same title, in a previously instituted suit.

(iii) The previously instituted suit must be pending in the same court in which the subsequent suit is brought, or in any other court in India, or in any court beyond the limits of India established or continued by the Central Government, or before the Supreme Court, having the jurisdiction to grant the relief claimed.

(iv) The court, in which, the previously instituted suit must have the jurisdiction to grant the relief claimed in the subsequent suit.

36. There are several decisions cited by the respective learned senior advocates appearing for the parties on the applicability of Section 10 of the CPC. Nonetheless, out of which, I would like to rely upon the following few decisions of Hon'ble Supreme Court and this Court, wherein the law on the issue of

the applicability of Section 10 has been clarified/summarized.

37. Firstly, it would be apt to refer to the decision of the Hon'ble Supreme Court in the case of ***National Institute of Mental Health and Neuro Sciences v. C. Parameshwara*****, reported in (2005) 2 SCC 256**, wherein it was held in para 8, thus:-

> ***"8.*** *The object underlying Section 10 is to prevent courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the same matter in issue. The object underlying Section 10 is to avoid two parallel trials on the same issue by two courts and to avoid recording of conflicting findings on issues which are directly and substantially in issue in previously instituted suit. The language of Section 10 suggests that it is referable to a suit instituted in the civil court and it cannot apply to proceedings of other nature instituted under any other statute. The object of Section 10 is to prevent courts of concurrent jurisdiction from simultaneously trying two parallel suits between the same parties in respect of the same matter in issue.* ***The fundamental test to attract Section 10 is, whether on final decision being reached in the previous suit, such decision would operate as res judicata in the subsequent suit. Section 10 applies only in cases where the whole of the subject-matter in both the suits is identical.*** *The key words in Section 10 are "the matter in issue is directly and substantially in issue" in the previous instituted suit.* ***The words "directly and substantially in issue" are used in contradistinction to the words "incidentally or collaterally in issue". Therefore, Section 10 would apply only if there is identity of the matter in issue in both the suits, meaning thereby, that the whole of the subject-matter in both the proceedings is identical."***
>
> (emphasis supplied)

38. Secondly, it would be apt to refer to the decision of the Hon'ble Supreme Court in the case of ***Aspi Jal Vs. Kushroo***

Rustom Dadyburjor, reported in ***(2013) 4 SCC 333***, wherein it was held thus:-

> **"9.** Section 10 of the Code which is relevant for the purpose reads as follows:
>
> > *"**10.Stay of suit**.—No court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other court in India having jurisdiction to grant the relief claimed, or in any court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.*
> >
> > *Explanation.—The pendency of a suit in a foreign court does not preclude the courts in India from trying a suit founded on the same cause of action."*
>
> *From a plain reading of the aforesaid provision, it is evident that where a suit is instituted in a court to which provisions of the Code apply, it shall not proceed with the trial of another suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties.* ***For application of the provisions of Section 10 of the Code, it is further required that the Court in which the previous suit is pending is competent to grant the relief claimed. The use of negative expression in Section 10 i.e. "no court shall proceed with the trial of any suit" makes the provision mandatory and the court in which the subsequent suit has been filed is prohibited from proceeding with the trial of that suit if the conditions laid down in Section 10 of the Code are satisfied. The basic purpose and the underlying object of Section 10 of the Code is to prevent the courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigations in respect of same cause of action, same subject-matter and the same relief. This is to pin down the plaintiff to one litigation so as to avoid the possibility of contradictory verdicts by two courts in respect of the same relief and is aimed to protect the defendant from multiplicity of proceeding.***

10. *The view which we have taken finds support from a decision of this Court in* ***National Institute of Mental Health & Neuro Sciences v. C. Parameshwara [(2005) 2 SCC 256]*** *in which it has been held as follows: (SCC pp. 259-60, para 8)*

> *"8. The object underlying Section 10 is to prevent courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the same matter in issue.* ***The object underlying Section 10 is to avoid two parallel trials on the same issue by two courts and to avoid recording of conflicting findings on issues which are directly and substantially in issue in previously instituted suit.*** *The language of Section 10 suggests that it is referable to a suit instituted in the civil court and it cannot apply to proceedings of other nature instituted under any other statute.* ***The object of Section 10 is to prevent courts of concurrent jurisdiction from simultaneously trying two parallel suits between the same parties in respect of the same matter in issue. The fundamental test to attract Section 10 is, whether on final decision being reached in the previous suit, such decision would operate as res judicata in the subsequent suit. Section 10 applies only in cases where the whole of the subject-matter in both the suits is identical. The key words in Section 10 are 'the matter in issue is directly and substantially in issue' in the previous instituted suit. The words 'directly and substantially in issue' are used in contradistinction to the words 'incidentally or collaterally in issue'. Therefore, Section 10 would apply only if there is identity of the matter in issue in both the suits, meaning thereby, that the whole of the subject-matter in both the proceedings is identical."***

11. *In the present case, the parties in all the three suits are one and the same and the court in which the first two suits have been instituted is competent to grant the relief claimed in the third suit. The only question which invites our adjudication is as to whether "the matter in issue is also directly and substantially in issue in previously instituted suits". The key words in Section 10 are "the matter in issue is directly and substantially in issue in a previously instituted suit". The test for applicability of Section 10 of the Code is whether on a final decision being reached in the previously instituted suit, such decision would operate as res judicata in the subsequent suit.* ***To put it differently one may ask, can the plaintiff get the same relief in the subsequent suit, if the earlier suit has been dismissed? In our opinion, if the answer is in the affirmative, the subsequent suit is not fit to be stayed. However, we hasten to add then when the matter in***

controversy is the same, it is immaterial what further relief is claimed in the subsequent suit.

12. *As observed earlier, for application of Section 10 of the Code, the matter in issue in both the suits have to be directly and substantially in issue in the previous suit but the question is what "the matter in issue" exactly means? As in the present case, many of the matters in issue are common, including the issue as to whether the plaintiffs are entitled to recovery of possession of the suit premises, but for application of Section 10 of the Code, the entire subject-matter of the two suits must be the same.* ***This provision will not apply where a few of the matters in issue are common and will apply only when the entire subject-matter in controversy is same. In other words, the matter in issue is not equivalent to any of the questions in issue.*** *As stated earlier, the eviction in the third suit has been sought on the ground of non-user for six months prior to the institution of that suit. It has also been sought in the earlier two suits on the same ground of non-user but for a different period.* ***Though the ground of eviction in the two suits was similar, the same were based on different causes. The plaintiffs may or may not be able to establish the ground of non-user in the earlier two suits, but if they establish the ground of non-user for a period of six months prior to the institution of the third suit that may entitle them the decree for eviction. Therefore, in our opinion, the provisions of Section 10 of the Code is not attracted in the facts and circumstances of the case.***

13. *Reference in this connection can be made to a decision of this Court in* ***Dunlop India Ltd. v. A.A. Rahna [(2011) 5 SCC 778 : (2011) 3 SCC (Civ) 148]*** *in which it has been held as follows: (SCC pp. 802-03, para 35)*

> *"35. The arguments of Shri Nariman that the second set of rent control petitions should have been dismissed as barred by res judicata because the issue raised therein was directly and substantially similar to the one raised in the first set of rent control petitions does not merit acceptance for the simple reason that while in the first set of petitions, the respondents had sought eviction on the ground that the appellant had ceased to occupy the premises from June 1998, in the second set of petitions, the period of non-occupation commenced from September 2001 and continued till the filing of the eviction petitions. That apart, the evidence produced in*

> *the first set of petitions was not found acceptable by the appellate authority because till 2-8-1999, the premises were found kept open and alive for operation. The appellate authority also found that in spite of extreme financial crisis, the management had kept the business premises open for operation till 1999. In the second round, the appellant did not adduce any evidence worth the name to show that the premises were kept open or used from September 2001 onwards. The Rent Controller took cognizance of the notice fixed on the front shutter of the building by A.K. Agarwal on 1-10-2001 that the Company is a sick industrial company under the 1985 Act and operation has been suspended with effect from 1-10-2001; that no activity had been done in the premises with effect from 1-10-2001 and no evidence was produced to show attendance of the staff, payment of salary to the employees, payment of electricity bills from September 2001 or that any commercial transaction was done from the suit premises.* ***It is, thus, evident that even though the ground of eviction in the two sets of petitions was similar, the same were based on different causes. Therefore, the evidence produced by the parties in the second round was rightly treated as sufficient by the Rent Control Court and the appellate authority for recording a finding that the appellant had ceased to occupy the suit premises continuously for six months without any reasonable cause."***
>
> *(emphasis supplied)*

39. Thirdly, the division bench of this Court in the case of ***Sangam Prints Private Limited (supra)***, authored by the Hon'ble Mr. Justice J.B. Pardiwala (as His Lordship then was) observed and held thus:-

> *"31. We are of the view, having regard to the facts of the two suits, the reliefs prayed for in the two suits and the causes of action pleaded in the two suits, that the conditions necessary to invoke Section 10 of the CPC could not be said to be fulfilled.*

> *32. It is not in dispute that the causes of action in the two suits are altogether distinct and different. Although the agreement of sale in both the suits is common, yet that by itself is not sufficient to invoke Section 10 of the CPC. As held by the Supreme Court in the case of Aspi Jal (supra), the entire subject matter of the two suits must be the same. Section 10 of the CPC will not apply where few of the matters in issue are common and will apply only when the entire subject matter in controversy is same. In other words, the matter in issue is not equivalent to any of the questions in issue.*
>
> *33. The Supreme Court, in British Indian Corporation Limited (supra), has laid much emphasis on the causes of action pleaded in the two suits. **If the causes of action are entirely different, even then Section 10 of the CPC will not be applicable. A suit is always based on a cause of action.** A cause of action means, "every fact, which, if traversed, it would be necessary for the plaintiff to prove, in order to support his right to a judgment of the court". In other words, it is a bundle of facts, which taken with the law applicable to them, gives the plaintiff a right to relief against the defendant."*
> (emphasis supplied)

40. Fourthly, a Coordinate Bench of this Court, in the case of ***Shreyas Ratilal Shah*** *Versus* ***Chistiya Khankah (Dargah) Kabrastan & Masjid Public & 1*** reported in ***2013 (3) GLR 2407; 2013 (3) GLH 169***, after going through the previous decision of the Hon'ble Supreme Court in the case of ***C. Parameshwara (supra)*** as well as other previous decisions of this Court, held thus:

> ***"[11]*** *Thus, following aspects are made crystal clear by the Hon'ble Supreme Court:*
>
> *(I) The object underlying Section 10 is to prevent Courts of concurrent jurisdiction from simultaneously trying two parallel Suits in respect of the same matter in issue.*
>
> *(II) Conflicting findings on issues which are directly and substantially in issue in previously instituted Suit are sought to be avoided.*

(III) It is referable to a Suit institute d in the Civil Court and it cannot apply to proceedings of other nature instituted under any other statute.

(IV) The fundamental test to attract Section 10 is, whether on final decision being reached in the previous Suit, such decision would operate as resjudicata in the subsequent Suit.

(V) Section 10 applies only in cases where the whole of the subject matter in both the Suits is identical i.e. all the issues must be identical

(VI) The words "directly and substantially in issue" are used in contradistinction to the words "incidentally or collaterally in issue". (emphasis supplied)

41. Thus, there is a broad proposition of law propounded by various decisions of the Hon'ble Supreme Court, followed by this Court, which may be summarized thus:-

(i) That for the application of Section 10 of the CPC, the matter in issue in the present suit has to be directly and substantially in issue in the previously instituted suit and the entire subject matter of the two suits must be the same.

(ii) Section 10 of the CPC will not apply where a few of the matters in issue are common, but it will apply only when the entire subject matter in controversy is the same in both suits.

(iii) The 'matter in issue' would not be considered equivalent to any of the 'questions in issue'.

(iv) It can be deduced that the words 'directly and substantially in issue' are used in contradistinction to the words 'incidentally or collaterally in issue'.

(v) Section 10 of the CPC would apply only if there is an identity of the matter in issue in both suits, meaning thereby that the whole of the subject matter in both suits is identical.

(vi) Underlying object of Section 10 of the Code is to prevent the courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigations in respect of same cause of action, same subject-matter and the same relief.

42. Keeping the aforesaid in principles in the mind, now, adverting to the facts of the present case, as referred the facts of all suits in nutshell herein above, it is an undisputed fact that the present suit is filed seeking specific performance of an ATS executed by an ATS-holder with the purchaser and, thereby, the principal prayer made in the suit is the prayer seeking specific performance of such ATS. It is true that there

are other consequential reliefs sought in the suit, including a declaration that the gift deed in question is null and void. Whereas, in the previously instituted suit, the declaratory relief sought for is in relation to the gift deed in question to be declared null and void, and also for a declaration that the sale deed executed by the power of attorney of the Owner in favour of the purchaser is legal and valid.

43. Having analyzed the facts, which are recorded hereinabove, and so also appreciated the submissions of learned senior counsels appearing for the respective parties, it clearly appears that the cause of action of the present suit and the previously instituted suit are completely different, as such both suits have been filed on different causes of action, claiming a different set of reliefs. Of course, one of the reliefs as claimed in the present suit and the previously instituted suit, i.e., Special Civil Suit No. 399 of 2008, would be common, i.e., the challenge to the gift deed in question.

44. So, the question that needs to be examined is as to whether it can be said having claimed by Defendant No. 14

that the issue in the previously instituted suit is directly and substantially in issue in the present suit? In my view, for the following reasons, it would not be.

44.1. The fact remains that the cause of action to file the present suit, as mentioned in para 7/7A of the plaint, is that the purchaser, having executed an ATS in favour of the ATS-holder, failed to execute the sale deed and tried to damage the interest of the ATS-holder by colluding with other defendants, including became a confirming party in the registered sale deed of subsequent purchaser (including petitioner) executed by the Donee in favour of the subsequent purchaser on 28.09.2010, presented on 13.05.2013 and certified by the Sub-Registrar on 18.05.2013.

44.2. So, the cause of action to file the present suit arose to the ATS Holder due to the non-fulfillment of the obligation of the purchasers under the ATS. The ATS Holder is required to prove their readiness and willingness to get the principal prayer made in the present suit i.e. performance of ATS by purchasers, and once such prayer will be accepted by the Trial

Court, the question of the examination of other reliefs will arise.

44.3. Thus, in view of the aforesaid, the issue directly and substantially involved in the present suit is the right of the ATS holder to seek a decree of specific performance of the ATS.

44.4. Whereas, in the previously instituted suit filed by the purchaser against the Donee (being Special Civil Suit No. 399 of 2008), which challenged the gift deed in question executed by the owner in favour of the Donee, whereby sought a declaration that such gift deed be declared null and void, and also sought a declaration that the sale deed dated 04.07.2008 executed by the PoA in favour of the purchaser is to be declared valid in law.

44.5. Thus, in the previously instituted suit, the issue directly and substantially involved would be the declaratory reliefs in relation to the gift deed in question and also the sale deed executed in favour of the purchaser in question.

44.6. So far as Special Civil Suit No. 455 of 2009, filed by the Donee against the purchaser challenging the registered sale deed dated 04.07.2008 executed by the power of attorney holder in favour of the purchaser, is concerned, the same has been withdrawn. Although such withdrawal has been challenged by the petitioner before this Court by way of a writ application, which is pending as on date, her claim to be transposed as a plaintiff in the suit is also challenged and is pending at large before this Court in an independent writ application.

44.7. Nonetheless, when the impugned application came to be filed and decided by the Trial Court and is to be decided by this Court, the aforesaid suit is no longer alive on the file of the Court; thereby, it cannot be considered as a previously instituted suit pending to be considered for the applicability of Section 10 of the CPC in the matter. Further also, in said suit as well, declaratory reliefs sought for which was just opposite to what is claimed in previously instituted suit.

44.8. Having referred herein above, it is as such clear

like as day that cause of action to file previously instituted suits and present suit, both are different and distinct to each other. The entire subject matter in controversy is not the same in any of the suits.

44.9. Furthermore, there are subsequent events, which have taken place after the filing of all these suits that also need to be referred to and considered by this Court, in light of the fact that neither the previously instituted suit, i.e., Special Civil Suit No. 399 of 2008, nor Special Civil Suit No. 455 of 2009 has progressed any more, inasmuch as none of the plaintiffs to the aforesaid suits have any inclination to proceed with the suits. Having so above referred facts, the Donee has already unconditionally withdrawn Special Civil Suit No. 455 of 2009, thereby giving up his claim to question the legality and validity of the sale deed executed in favour of the purchaser and also giving his consent in Special Civil Suit No. 377 of 2022, whereby a consent decree was drawn by the Trial Court, whereby the Donee has not only accepted the sale deed executed in favour of the purchaser but also agreed that the

Donee would not have any dispute and will not raise any dispute in relation to the ATS executed between the ATS-holder and the purchaser.

44.10. It has remained undisputed that the petitioner (Defendant No. 14), though she filed an application to be joined as a co-defendant in the previously instituted suit i.e. Special Civil Suit No. 399 of 2008 by filing an application in June 2013, till date, not taken any steps to get it adjudicated, and as such, it has remained pending on the file of the previously instituted suit since last more than 12 years.

44.11. Moreover, as recorded hereinabove, none of the parties to the said suit has shown their inclination to commence the trial of the previously instituted suit, though it is pending in the same court where the present suit is pending, wherein the trial has already commenced and reached the stage of recording the oral evidence of Defendants No. 14 and 15, i.e., the subsequent purchasers, who are the last defendants to lead their evidence in the present suit.

44.12. In light of the aforesaid peculiar facts and circumstances, this Court cannot be oblivious of the fact that Defendant No. 14, for reasons best known to her, is neither interested to be joined in the previously instituted suit nor ready to file her oral evidence in the present suit, wherein she was made party, but to derail the trial of the present suit, at such a belated stage, the impugned application came to be filed. The conduct of Defendant No. 14 and the timing of filing impugned application, especially when the present suit has travelled a lot, need to be considered by the Court while adjudicating the impugned application.

44.13. It would be apt to refer to and rely upon the observation made by the Hon'ble Supreme Court in the case of ***Pukhraj D. Jain v. G. Gopalakrishna, reported in*** **(2004) 7 SCC 251**, wherein it has been held thus:-

> ***"4.*** *We have heard learned counsel for the parties and have perused the records. In our opinion, the view taken by the High Court is wholly erroneous in law and must be set aside. The proceedings in the trial of a suit have to be conducted in accordance with provisions of the Code of Civil Procedure. Section 10 CPC no doubt lays down that no court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties or between parties under whom they or any of them*

> *claim litigating under the same title where such suit is pending in the same or any other court in India having jurisdiction to grant the relief claimed.* ***However, mere filing of an application under Section 10 CPC does not in any manner put an embargo on the power of the court to examine the merits of the matter****. The object of the section is to prevent courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the same matter in issue.* ***The section enacts merely a rule of procedure and a decree passed in contravention thereof is not a nullity. It is not for a litigant to dictate to the court as to how the proceedings should be conducted, it is for the court to decide what will be the best course to be adopted for expeditious disposal of the case****. In a given case the stay of proceedings of later suit may be necessary in order to avoid multiplicity of proceedings and harassment of parties. However, where a subsequently instituted suit can be decided on purely legal points without taking evidence, it is always open to the court to decide the relevant issues and not to keep the suit pending which has been instituted with an oblique motive and to cause harassment to the other side."*
>
> (emphasis supplied)

44.14. What is culled out from the aforesaid pronouncement that it is not for a litigant to dictate to the Court as to how the proceedings should be conducted; it is for the Court to decide what will be the best course to be adopted for the expeditious disposal of the case.

44.15. Thus, what is observed hereinabove including the conduct of the petitioner-defendant No.14 would not entitled her to stall the present suit proceeding by placing reliance upon Section 10 of CPC. As such, Section 10 of CPC would only lay down rule of procedure but thereby, it would not be

vested right in favour of the party to the suit whereby, the Court feels helplessness to overcome the mischief played by the party to stall the trial of the suit.

44.16. Even otherwise, view the matter from any angles, it would suggest that the issue as regards the challenge of the gift deed in question, and also the sale deed executed in favour of the purchaser by the PoA of the owner, is not directly and substantially an issue in the present suit, as it is filed for seeking specific performance of the ATS. As observed herein above, the cause of action to file both these suits are completely different and distinct. Such an issue in the present suit is an incidental or collateral issue but surely not directly and substantially in issue, which is the sine qua non to stay the present suit.

44.17. At this stage, while examining impugned application, the Court is not concern with entitlement of plaintiffs to get principle relief as prayed in present suit, as it would be available subject to clear title of purchaser as alleged, which according to petitioner, is sine qua none to

grant such relief.

44.18. Apart from the aforesaid, this Court, within its limited jurisdiction while exercising its power under Article 227 of the Constitution of India, is not required to interfere with an order passed by a Civil Court in a routine manner, and as such, it is a settled legal proposition of law that a mere error of law would not be a ground to interfere with the order unless it is so erroneous, perverse, arbitrary, contrary to the settled position of law, and or without jurisdiction, which is not the case on hand. As such, the petitioner could not make out any such fallacy in the impugned judgment/order. Thus, this Court would not like to interfere with the impugned order, for reasons as stated hereinabove. ***[See Sameer Suresh Gupta TR PA Holder vs. Rahul Kumar Agarwal, reported in (2013) 9 SCC 374 (Para 6 and 7) and Garment Craft v. Prakash Chand Goel, reported in (2022) 4 SCC 181 (Para 15 and 16)].***

44.19. The upshot of the aforesaid observation, discussion, and reasons, I am in complete agreement with the view taken by the Trial Court while rejecting the impugned application

filed under Section 10 of the CPC by Defendant No. 14, and as such, none of the submissions so canvassed by the learned senior counsel for the petitioner – Defendant No. 14 has impressed this Court to interfere with impugned order.

44.20. Before parting, in light of the aforesaid discussion, I would like to observe that considering the controversy and dispute germane in both the suits, i.e., Special Civil Suit Nos. 399 of 2009 and 1100 of 2011, wherein the parties to the suit are also common, except for Defendants No. 14 and 15 of present suit, who are yet to be joined in the previously instituted suit, which is pending in the Court, and to avoid any multiplicity of proceedings between the parties, it would be desirable to consolidate both suits.

44.21. Such recourse is permissible in law, and in fact, this Court, while exercising its supervisory jurisdiction under Article 227 of the Constitution of India, read with its power under Section 151 of the CPC for the ends of justice between the parties, can order for the consolidation of the suits.

44.22. The Division Bench of this Court in ***Sangam Prints Private Limited (supra)*****,** while rejecting the prayer of staying the suit**,** having not found any substance in the application filed by the party concerned under Section **10** of the CPC**,** took such recourse and ordered to consolidate the suits**.** The relevant observation made in the aforesaid decision reads as under:-

> *"*34. The principle that the provisions of Section 10 of the CPC are mandatory in character, as such, is not in dispute. The question is, whether the provisions of Section 10 of the CPC denude the courts of its jurisdiction to follow any other procedure which would serve the ends of justice.
>
> *40. Mr. Majmudar submitted that if this Court is of the view that the causes of action in the two suits are altogether different, then the two suits even cannot be ordered to be consolidated. We do not find any merit in such contention. The very same contention was canvassed before this Court in the case of Zakinaben D/o Gulamhusen Kamruddin Lokhandwala through POA Mannan Saifibhai Lokhandwala v. Babubhai Alimohmad Kapadia, reported in AIR 1999 Gujarat 118, wherein a learned Single Judge of this Court, while negativing the contention, observed as under:*
>
> > *"So far as the last reasoning is concerned, viz. cause of action being different, this is also not a good reasoning for refusing consolidation of suits.* ***When the two suits are filed, on some of the relief claimed, the cause of action is bound to differ. However, only on this ground the prayer for consolidation cannot be refused. The words "in the ends of justice" used in Section 151, C.P.C. and further words "to prevent abuse of the process of the Court"*** *in the said section mean that if it is desirable in the interest of justice to consolidate the suits and it is further desirable to prevent abuse of the process of the Court order for consolidation can be passed. Abuse of the process of the Court can be prevented by not compelling the parties to adduce*

> *the same or similar evidence in the two suits twice. Likewise if the evidence slightly differs and the main evidence remains the same it would amount to abuse of the process of the Court to compel the parties to adduce separate evidence in the two suits. The ends of justice also required that the interest of the parties should be kept in mind and it is not only in the interest of justice, but also in the interest of parties to avoid multiplicity of evidence and to avoid unnecessary contradiction in the evidence if the same is recorded after lapse of some time. Naturally the evidence in the two suits cannot be simultaneously recorded on one and the same date and if the evidence in the two suits is recorded on different dates unnecessary contradictions in examinationin-chief and cross-examination are bound to occur."*
>
> *41. In the overall view of the matter, we have reached to the conclusion that the court below committed no error, not to speak of any error of law, in rejecting the application Exh.80 warranting any interference at our end in exercise of our supervisory jurisdiction under Article 227 of the Constitution of India.*
>
> *42. We, however, in the wake of the aforesaid discussion, would like to pass an order for consolidation of the two suits. We take notice of the fact that the subsequent suit, i.e. the Commercial Civil Suit No.110 of 2016 is pending as on date in the court of the learned Judge, Commercial Court, Vadodara, whereas the Regular Civil Suit instituted first in point of time being Regular Civil Suit No.202 of 2011 is pending in the court of the Principal Senior Civil Judge, Surat*
>
> *43. We order transfer of the Regular Civil Suit No.202 of 2011 from the court of the Principal Senior Civil Judge, Surat, to the court of the learned Judge, Commercial Court, Vadodara. On the Regular Civil Suit No.202 of 2011 being transferred to the Commercial Court at Vadodara, the same was thereafter be consolidated. Both the suits shall be consolidated for the purpose of trial. The learned Judge, Commercial Court, Vadodara, may frame consolidated issues taking into consideration the pleadings in both the cases and thereafter sat down the cases for consolidated trial."*
>
> (emphasis supplied)

CONCLUSION

45. In light of the aforesaid, the ingredients of Section 10 of the CPC are not made out by Defendant No. 14 in her

impugned application filed below Exh. 353 in Special Civil Suit No. 1100 of 2011, and it was, as such, filed belatedly just to derail the trial of the present suit.

45.1. Having so observed hereinabove, in clear terms, it can be held that the issue germane in Special Civil Suit No. 1100 of 2011 is not directly and substantially in issue in the previously instituted suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, pending in the same Court.

45.2. Considering the peculiar facts and circumstances of the present case and for the foregoing reasons, I would like to pass an order of consolidation of both suits, i.e., Special Civil Suit No. 1100 of 2011 and Special Civil Suit No. 399 of 2008, which are pending before the same Court i.e. Principal Senior Civil Judge, Ahmedabad (Rural).

45.3. The Trial Court shall consolidate the suits accordingly and proceed with trial of the suits in accordance with the law.

46. It is expected that the parties to the suits will extend

their cooperation and support to the Trial Court for the expeditious adjudication of the suits, and as such, in the past, this Court has already directed the Trial Court to complete the adjudication of the present suit at the earliest.

47. With the aforesaid conclusion, as such, I do not find any merit in the present writ application, inasmuch as there is neither any illegality, irregularity, nor any gross error of law and or any jurisdictional error committed by the Trial Court while rejecting the impugned application filed below Exh. 353 in Special Civil Suit No. 1100 of 2011. Consequently, the impugned order is hereby confirmed. Rule is discharged, albeit subject to the aforesaid directions. No order as to costs.

Sd/-
(MAULIK J.SHELAT,J)

MOHD MONIS

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: MOHD MONIS(HC01900), PRIVATE SECRETARY, at High Court of Gujarat on 31/07/2025 13:22:45