

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1291 OF 2025

Gujrat Enterprises & Anr

..Petitioners

Versus

Bhanuram Maganlal Purohit & Ors

...Respondents

Mr. Saurabh Oka, for the Petitioner.

CORAM: N. J. JAMADAR, J.

DATED : 30th JANUARY 2025

P.C.:

- 1.** Heard learned Counsel for the Petitioner.
- 2.** The challenge in this Petition is to an Order passed by the learned Civil Judge on an Application (Exhibits “172” and “174”) dated 18th December 2024 whereby the Applications preferred by the Petitioners Defendant Nos. 22 and 23 to delete them from the array of the Defendants came to be rejected.
- 3.** Respondent No.1 instituted a Suit for specific performance of the Agreement dated 12th February 2017, which was registered on 13th February 2017 and for ancillary and consequential reliefs.
- 4.** The Petitioners-Defendant Nos. 22 and 23 are concerned with prayer clause (g) and (h) whereby the Plaintiff has sought declarations

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that Agreement dated 15th November 2005 and the substitution Power of Attorney of even date executed by Defendant No.20 in favour of Defendant No.22 in respect of piece and parcel of land at Sr. Nos. 10 and 11 of the properties, are null and void, and, consequently, the Agreement dated 29th May 2006 coupled with substitution Power Attorney of even date between Defendant Nos. 22 and 23 in respect of piece and parcel of land at Sr. No. 10 are also null and void.

5. During the pendency of the Suit, the Plaintiff has purportedly executed a Release Deed in favour of Defendant Nos. 22 and 23 releasing his right, title and interest in the property bearing old Survey No. 218, new Survey No. 192 Hissa No. 19 admeasuring 10.9 gunthas and old Survey No. 223 new Survey No. 191 Hissa No. 3 admeasuring 5.6 gunthas. In the said Release Deed, the Plaintiff undertook to withdraw the claim in respect of said property.

6. The Petitioners-Defendant Nos. 22 and 23 filed Applications contending that in view of the composition, the cause of action against Defendant Nos. 22 and 23 does not survive and they be deleted from the array of Defendants.

7. The Plaintiff resisted the Application.

8. The learned Civil Judge was persuaded to reject the Application on the premise that the Plaintiff has not admitted the documents on the

strength of which the Applicants are seeking deletion from the array of the Defendants.

9. The learned Counsel for the Petitioners submitted that since the Plaintiff had executed a registered Release Deed and undertook to withdraw the Suit against Defendant Nos. 22 and 23, no cause of action survived against Defendant Nos. 22 and 23. The learned Civil Judge has approached the matter from an incorrect perspective.

10. Evidently, the instrument came to be executed during the pendency of the Suit. It does not appear that permission of the Court was obtained prior to the execution of the said instrument. The transfer of or otherwise dealing with, the subject property during the pendency of the Suit, would be governed by the principle of *Lis Pendence*. In these circumstances, it cannot be said that the presence of Defendant Nos. 22 and 23 is not necessary for a complete and effectual adjudication of the dispute.

11. Had the Plaintiff and Defendant Nos. 22 and 23, approached the Court and filed consent terms different considerations would have come into play. A party cannot be deleted on the strength of an instrument, the legality and validity of which is disputed.

12. Petition dismissed.

[N. J. JAMADAR, J.]