

**IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE AT
DHANDHUKA, AHMEDABAD (RURAL)**

Order Below Exh.5 in Regular Civil Suit No.35/2022

1. **Main Dispute:** Herein the present case, the plaintiff has preferred the present suit for declaration and permanent injunction in respect of the old tenure agricultural land viz. New Block/Survey No.329 (Old Block/Survey No.164/1) ad-measuring 2-51-26 Hec. Are. Sq. Mtr. situated at the Sim of Moje Village Ratanpur, Taluka Dhandhuka, Dist. Ahmedabad (hereinafter referred as "suit property" in the present suit). It is hereby alleged by the plaintiff that she is legally entitled in the suit property in the capacity of the legal heirs of the Late Divyeshvarbhai Chaturbhai though making forged documents in collusion with the Talati-cum-Mantri at Ratanpur in respect of the aforesaid suit property, defendants has mutated the entry No.468 dated 02/01/1996 in revenue record in favour of defendant no.2 and thereby she become the sole owner of the suit property. In this way, the defendant No.2 has tried to snatch away the proportionate share of the plaintiff and acted against the right, title and interest of

the plaintiff.

2. The brief facts of the present suit preferred by the plaintiff are as under:-

It is narrated by the plaintiff that her self and the defendants are the legal heirs of the Late Divyeshvarbhai Chaturbhai wherein the plaintiff and defendant Nos.1 to 4 are the straight line legal heirs. Further stated that the Late Divyeshvarbhai Chaturbhai was the actual owner and possessor of the old tenure agricultural land viz. New Block/Survey No.329 (Old Block/Survey No.164/1) ad-measuring 2-51-26 Hec. Are. Sq. Mtr. situated at the Sim of Moje Village Ratanpur, Taluka Dhandhuka, Dist. Ahmedabad. As the defendant No.2 has lodged complaint before the District Collector regarding the land bearing Survey No.419 situated at Moje Ganf, Tal. Dholera, Dist. Ahmedabad and hence the same was forwarded to the S.I.T., Revenue Branch, Office of the Director General of Police, Ahmedabad. In this regard, the brothers of the plaintiff has made inquiry regarding the revenue record and they came to know that the defendant No.2 has misused the signature of the Late Divyeshvarbhai Chaturbhai which were taken on

blank pages, in collusion with Talati-cum-Mantri, Ratanpur and thereby mutated the entry No.468 in revenue record dated 02/01/1996. Further asked that the plaintiff is the family member of the Late Divyeshvarbhai Chaturbhai, hence, she has the right, title and interest in the properties of the deceased. In this way, she is entitled for the suit property also. Further, it has been said by the plaintiff that the suit property was the ancestral property running in the name of the Late Divyeshvarbhai Chaturbhai and after his death, there are five linear legal heirs of the suit property. Therefore, the present suit has been filed by the plaintiff for the declaration of the share of the plaintiff along with the present application asking the relief that the Status-quo should be granted for any kind of transferring the suit property by any means against the defendant Nos.2 and 5 to 7 and by other persons.

3. On duly served to the notice to the defendants, the defendant No.1 was remained present before the Court through his Ld. Advocate and filed his written statement vide Exh.31 wherein he denied all the facts as

narrated by the plaintiff in her plaint. It is contended that the plaintiff has not right to file such type of suit and further stated that all the facts as mentioned by the plaintiff are false and fabricated hence, it is required to be rejected. It is further contended that the suit of the plaintiff is also barred by the mis-joinder of the parties and non-joinder of the parties. In fact, Late Diveyeshvar Chaturbhai has also the owner of another land than the suit property and all the properties are distributed between the plaintiff and the defendants and thus, they have already got their share from their ancestral property. Also urged that the plaintiff is very well aware that the suit properties has been distributed between them and for that the entry made in revenue record vide Entry No.468 dated 02/01/1996. At that time, the plaintiff had objection regarding distribution so some amount was given to the plaintiff in the year 1996 and such facts is transpires from the document at Mark 3/14. Thus, the plaintiff has got his share in cash regarding her proportionate share though she has filed the present false suit. Further stated that the plaintiff has not raised any objection till

the period of 24 years, when her mother was alive too, after partition and also her father late. Shri Diveyeshvar Chaturbhai was also alive for the 9 years form the said partition. But the plaintiff has filed the present suit due to huge price rise of the lands of Dholera. At this stage, the distribution of all the properties as well as suit property of the deceased Diveyeshvar Chaturbhai was done in the year 1996 and the plaintiff is very well aware regarding such fact. So, after a long period of 27 years, the plaintiff has not right to demand her 1/5 share because deceased Diveyeshvar has given her share in cash instead of agricultural land. Therefore, the plaintiff's suit is out of time limit.

3.1 On the other side, at the relevant time, the defendant No.4 was duly served but till date he has neither come before the Court nor filed any adjournment so his right to reply has been closed and the matter proceeded against him as ex-parte.

3.2 Further, the Ld. Advocate for the defendant Nos. 2 to 3 and 5 to 7 has filed a pursis vide Exh.32 stating that please consider their answer same as of defendant No.1 against the

present suit of plaintiff.

4. The plaintiff has argued as per the present application, which is not repeated here for the convenience and for the sake of brevity. The plaintiff has mainly relied upon the documentary evidences vide Mark 3/1 to 3/13 which have been prima-facie perused and referred in the reasoning where necessary while the defendants have not produced any documents produced regarding the present suit.
5. Considering the above facts, the following issues are necessary for the determination of present application under order 39 rule-1,2 of The Civil Procedure Code:-
 - 1) Whether the plaintiff proves her prima-facie case?
 - 2) Whether balance of convenience is in favour of plaintiff ?
 - 3) Whether irreparable injury or loss will be caused to the plaintiff if an injunction as prayed for is not granted?
 - 4) What order ?
6. My findings to the above issues are as under:
 - 1) In affirmative.

- 2) In affirmative.
- 3) In affirmative.
- 4) As per final order.

-: R E A S O N S :-

Issue Nos. 1 to 3 :-

7. In order to avoid repetition of the facts as well as the arguments of the parties, I have discussed the Issue Nos.1 to 3 together as under :

Before deciding the present application which is filed by the plaintiff under Order-39, Rule 1-2 of C.P.C., it is necessary to consider the three essential ingredients and golden principles for grant of injunction are present or not. These three principles are (i) the existence of a prima facie case (ii) Balance of convenience and (iii) Irreparable loss and injury. It must exist as a chain. If there is a one missing link in the chain then the injunction can not be granted, even in granting an ex-parte order of injunction, a Court is duty bound to give reasons and on this point the law has been laid down by the Hon'ble Apex Court. Now keeping in mind the ratio laid down by the Hon'ble Apex Court in

the case of **Maria Margardia Sequeria Fernandes and Ors. which is reported in AIR 2012 SC -1727**. Hon'ble Apex Court has held that:- *"it is duty and obligation of the Court to critically examine the pleadings and documents and pass an order of injunction while taking pragmatic realities."*

8. Now, with this back ground, if we peruse the averments made in the plaint as well as in the present application, it appears that the plaintiff has filed the present suit for declaration and for permanent injunction in respect of the suit property.

8.1 It is the case of plaintiff that herself and the defendant Nos.1 to 4 are belong to the same Family and their Late father Diveyeshvar Chaturbhai, who was possessed the suit-property as scripted in the Para No.2 of the present application. It is also alleged by the plaintiff that the name of the defendant no.2 was entered fraudulently as the sole owner in the suit property in collusion by the other defendants and later on the name of the legal heirs of the defendant no.2 was entered in the suit property without obtaining her consent or without informing her, by this way, the

defendants have encroached her legal right from the suit property. On perusal of the record of the present suit, the plaintiff has produced a Pedigree at Mark 3/1 in which it clearly appears that herself and the defendant Nos.1 to 4 are belonging to the same family and they are legal heirs of the Late Diveyeshvar Chaturbhai. Further, considering the mutation entry produced by the plaintiff at Mark 3/2 to Mark 3/7, it appears that the suit property was originally belongs to Late Diveyeshvar Chaturbhai and the entry was also made vide Entry No.468 dated 02/01/1996 in which the suit property was transferred to the defendant No.2 while considering the Village Form No.7, the name of the defendant No.2 as well as the defendant Nos.5 to 7 appears as the possessor of the suit property. Now the plaintiff has narrated that she is clearly entitled in the suit property as the other heirs are entitled though they have fraudulently transferred the suit property without her knowledge and hence, the present suit is filed asking her right in the suit property. Now, the defendants have contended the claim of the plaintiff stating that the partition was already held in the year 1996

and through this partition, the suit property was possessed by the defendant No.2. Therefore, right now, the plaintiff has no any legal right, title or interest in the suit property.

Whether the suit property were partitioned or not ? Whether the present suit property was possessed by the defendant No.2 through the partition between the family of Late Diveyeshvar Chaturbhai or not ? Whether any fraudulent act has been done for the suit property or not ? These questions are the question of evidence and without considering the evidences, it is not pertinent to decide such issues in the present application but considering the records of the case, at this juncture, the right of the plaintiff cannot be denied in the suit property. Therefore, prima-facie at this juncture, the right of the plaintiff cannot be curtailed from the suit property.

9. Therefore right now, the Court has to protect the rights of the party who actually deserves it. So, considering the ratio laid-down in the case of *Dorab Cawasji Warden v. Coomi Sorab Warden and others* (1990) 2 SCC 117,

"The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm"

10. While perusing the facts raised by both the sides, in accordance with the above discussed judgment, no any party has to suffer any damage or harm on preserving the the status quo on any kind of transfer by any means of the suit property.
11. Further, while considering the ratio laid down

in the case of "Gujarat Bottling Co. Ltd. and others v. Coca Cola Co. and others (1995) 5 SCC 544 at 574, the Hon'ble Apex Court has highlighted that:-

"The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection has, however, to be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the 'balance of convenience' lies."

12. Moreover, looking to the entire records of the case, I am of the opinion that at this juncture i.e. at the time of deciding the present application which is in nature of interlocutory kind of application, it is not

desirable to evaluate evidence produced by the parties but at this juncture, a Court can only prima-facie peruse the documents and on the basis of this, Court can find out whether the prima-facie case is made out or not ? and therefore, on the back drop of the legal provisions of Order-39, R-1 & 2 of C.P.C. and the ratio laid down by the Hon'ble Apex Court in their numbers of judgments, at this stage, as the plaintiff have challenged the legality of the mutation entries, is required to be adjudged by giving the parties to adduce their evidence and therefore, at the time of deciding this application, I am of the opinion that plaintiffs have made out their prima-facie case in respect of suit property. Moreover, the parties who have indulged themselves in the said partition are required to be restrained from indulging of multiplicity of proceedings when the matter is '**lis pendence**'. Further, considering the maxim that "**Pendenate lite nihil innovature**", the Court has to try to prevent such multiplicity of cases from the same subject matter. Therefore, looking to the pleadings of the parties and the documentary evidence produced

by them, at this stage, parties are required to be maintained status-quo for any kind of transferring of the suit-property.

Therefore, I answer the Issue Nos. 1 to 3 in affirmative and pass the following final order in respect to the Issue No.4.

-: O R D E R :-

- I. The present application filed by the plaintiff is hereby allowed.
- II. The defendant no. 2 and 5 to 7 are hereby directed to maintain status-quo in respect of any kind of the transferring like; sale, mortgage, lease or gift or by any other means the possession and ownership of the suit-property till final disposal of the suit.
- III. Looking to the facts and circumstances of the case, there shall be no order for costs.

Signed and Pronounced in the open Court on this 25th day of November, 2023.

Date : 25/11/2023 [YunusAhmed IqbalHussain Shaikh]
Place: Dhandhuka Principal Senior Civil Judge,
 Dhandhuka, Ahmedabad (Rural)
 (Code no. GJ00967)