

ORDER BELOW EXHIBIT-5

1. The present order disposes of the application filed by the plaintiff under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908, whereby the plaintiff has prayed for temporary injunction restraining the defendants from transferring, alienating, creating third party rights, changing the nature of the suit property, or otherwise disturbing the alleged share and possession of the plaintiff over the suit properties being Revenue Survey No. 667/79 peki 3 admeasuring 1-67-88 and Revenue Survey No. 667/66 peki 1 admeasuring 0-63-74 pending final disposal of the suit.
2. The case of the plaintiff, in brief, is that the suit properties b are ancestral and joint family properties of the parties. It is averred that one Late Ukabhai Makhwana, father of the parties, had executed a Will dated 08-01-1980, wherein it was stated that after his death and after the death of his wife, two houses would go to his son Ghusabhai Ukabhai Makhwana and the agricultural properties would go to his son Late Kalubhai Ukabhai Makhwana, whereas the third son Jayrambhai Ukabhai Makhwana was not allotted any property. It is further the case of the plaintiff that even after execution of the Will, the parties continued to reside and cultivate jointly and thereafter mutually agreed to divide the properties equally between themselves. According to the plaintiff, a settlement deed dated 18-01-2010 was executed between the plaintiff and defendants whereby it was agreed that the suit properties would be equally divided between the parties.
3. It is further the case of the plaintiff that as disputes were being created by Jayrambhai regarding claim over the properties, the parties jointly filed Probate Case No. 38/2018 seeking probate of the Will dated 08-01-1980 and the competent Court granted probate by order dated 28-09-2021. The plaintiff has further contended that despite the probate proceedings, the properties were never partitioned by metes and bounds and all properties continued to remain jointly managed and cultivated in the names of both sides.
4. It is further stated that thereafter the legal heirs of Late Kalubhai Ukabhai filed proceedings before the revenue authorities for mutation of their names in the suit

properties on the basis of succession and Will, pursuant to which Mutation Entry No. 9063 came to be mutated. The plaintiff raised objections before the Prant Officer, Lathi in Case No. 08/2025; however, the objections came to be rejected and the mutation entry was certified, resulting in deletion of the plaintiff's name from the revenue record. Against the said order, Revenue Appeal No. 62/2025 has been preferred before the Collector Shri, Amreli which is stated to be pending.

5. The plaintiff has further relied upon another settlement deed dated 17-05-2025 allegedly executed between the parties, which according to the plaintiff reaffirmed the earlier understanding of equal division of the suit properties. It is stated that in view of the said settlement, the plaintiff withdrew earlier Regular Civil Suit No. 22/2025. According to the plaintiff, despite the aforesaid settlement deeds and joint possession, the defendants are now attempting to exclusively claim ownership over the suit properties on the basis of the Will and probate order and may transfer or alienate the properties, thereby causing irreparable loss to the plaintiff. Hence, the present application for temporary injunction.
6. Furthermore, defendants have been duly served with the notice and he has filed his appearance through Ld. Advocate Shri B.R. Mehta and filed written reply vide Exhibit-14 to this application of the plaintiff and has denied the contentions mentioned in the temporary injunction application of the plaintiff. The defendants have mainly contended that the plaintiff has no locus standi to institute the present suit. It is contended that Late Ukabhai Makhwana had executed a valid Will dated 08-01-1980 in favour of Late Kalubhai Ukabhai Makhwana with regard to agricultural lands and in favour of Ghusabhai regarding houses, and the said Will has already been probated by competent Court in Probate Case No. 38/2018 vide order dated 28-09-2021. According to the defendants, once probate has been granted, the Will attains conclusiveness regarding its due execution and genuineness and therefore the plaintiff cannot claim any right contrary to the Will.

7. The defendants have further denied execution of the alleged settlement deed dated 18-01-2010 and contended that Late Kalubhai was illiterate and unable even to sign. It is further contended that the alleged settlement deed dated 17-05-2025 does not bear the signature of Defendant No. 4 and therefore cannot bind all parties. It is also contended that the suit properties were self-acquired and separate properties of Late Ukabhai Makhwana and not ancestral properties. It is further submitted that Mutation Entry No. 9063 has already been certified by the competent revenue authority and the objections of the plaintiff have been rejected. The defendants therefore contend that the plaintiff has failed to establish any prima facie right and the present application deserves rejection.

8. The plaintiff has submitted following list of documents with their plaint:-

Sr. no.	Mark no.	Document
1.	3/1	અમારા પિતા ઉકાભાઈ કલ્યાણભાઈ મકવાણાનું વિલ
2.	3/2	વાદ વાળી જમીન ના ૭, ૧૨, ૮-અ તથા હક્ક પત્રકે પડેલ નોંધો
3.	3/3	અમો વાદી અને પ્રતિવાદી ગુજ. કાળુભાઈ ઉકાભાઈ વચ્ચે થયેલ સમજુતી કરાર
4.	3/4	રે.દિ.મુ.નં.૩૮/૨૦૧૮ ના કામે થયેલ હુકમ તથા હુકમનામુ
5.	3/5	પ્રતિવાદીઓએ કરેલ કુલમુખત્યારનામુ
6.	3/6	પ્રતિવાદીઓએ કરાવેલ વારસાઈ નોંધ નં.૯૦૬૩ સામે અમો વાદીએ કરેલ વાંધા અરજી
7.	3/7	અમો વાદીએ આપ નામ. કોર્ટ સમક્ષ કરેલ પાર્ટીશન ના દાવા રે.દિ.મુ.નં.૨૨/૨૦૨૫ ની નકલ
8.	3/8	અમો વાદી તથા પ્રતિવાદીઓ વચ્ચે થયેલ સમજુતી કરાર
9.	3/9	પ્રતિવાદીઓએ કરાવેલ વારસાઈ નોંધ નં.૯૦૬૩ સામે વાદીએ મહે.પ્રાંત અધિકારી લાઠી સમક્ષ કરેલ તકરારી કેસ

		નં.૦૮/૨૦૨૫ માં અમારા વાંધાઓ પરત ખેંચ્યા અંગેની અરજી
10.	3/10	મહે.પ્રાંત અધિકારી લાઠી સમક્ષ ચાલેલ તકરારી કેસ નં.૦૮/૨૦૨૫ ના કામે થયેલ હુકમ
11.	3/11	મહે.પ્રાંત અધિકારી લાઠીએ તકરારી કેસ નં. ૦૮/૨૦૨૫ ના કામે કરેલ હુકમના આધારે મહે.મામલતદાર સાહેબ લાઠી નો અમો વાદીનું નામ વાદવાળી જમીનના રેવન્યુ રેકર્ડમાંથી નામ કમી કરતો હુકમ
12.	3/12	વાદીનું આધાર કાર્ડ

9. The defendants have submitted following documents with their written reply.

Sr. no.	Mark no.	Document
1.	15/1	દિ.પ.અ.નં.૬૩/૨૦૧૦ નવો દાવા નંબર રે.દિ.મું.નં.૩૮/૨૦૧૮ ના વીલના પ્રોબેટના હુકમની ખરી નકલ
2.	15/2	હકકપત્રકની નોંધ નં.૨૨૭૫ ના સાધનીક કાગળો (૪ કાગળો)
3.	15/3	દિ.પ.અ.નં. ૬૩/૨૦૧૦ ના કામે હાલના વાદીની અને ઉલટ તપાસની ખરી નકલની ઝેરોક્ષ નકલ (આઠ પાના)
4.	15/4	નાયબ કલેક્ટરશ્રી લાઠીના તકરારી કેસ નં. ૦૮/૨૦૨૫ ના હુકમની ખરી નકલ (સાત પાના)
5.	19/1	અમરેલી સીવીલ કોર્ટે રે.દિ.મું.નં. ૩૮/૨૦૧૮ ના કામે કરેલ હુકમનામાની ખરી નકલ
6.	19/2	થર્ડ એડીશનલ ડીસ્ટ્રીક્ટ જજ સાહેબ અમરેલીએ કરેલ રે.દિ.અપીલ નં. ૨૩/૨૦૧૮ ના હુકમનામાની ખરી નકલ
7.	19/3	નામદાર અમરેલી સીવીલ કોર્ટે ઈસ્યુ કરેલ પ્રોસેસની ખરી નકલ

10. Have heard both the Ld. Advocates on injunction application. The arguments were in line with the averments of the application vide Exhibit-5 and written reply vide Exhibit-14.
11. In the interest of justice following issues are framed: -
 - i. Whether plaintiff has a prima facie case?
 - ii. Whether plaintiff will suffer irreparable loss which cannot be compensated in money if injunction order is not granted in his favour?
 - iii. Whether the balance of convenience is in favour of plaintiff?
 - iv. What order?
12. Answers of the aforesaid issues are mentioned herewith: -
 - I. In the affirmative.
 - II. In the affirmative.
 - III. In the affirmative.
 - IV. As per final order.

REASONS

13. At the outset, it may be mentioned that for the sake of convenience, all the above issues have been discussed together. The issuance of injunction is governed by Order 39 Rule 1 & 2. The grant of injunction is a very serious matter and Court should always take good care to grant an injunction in cases only where such an injunction is essential. It being equitable relief, it would be refused to the person who himself has failed to do equity. The first rule is that the applicant must make out a prima facie case in support of the right claimed by him. The existence of a prima facie right and infraction of such right is a condition precedent for grant of temporary injunction.
14. Now, the plaintiff has produced revenue records prima facie indicating his name in respect of the suit property. Furthermore, it is not in dispute that Late Ukabhai Makhwana executed a Will dated 08-01-1980 and probate of the said Will has been granted by competent Court vide order dated 28-09-2021 in Probate Case No. 38/2018. It is true that grant of probate constitutes judicial recognition of due execution and genuineness of the Will. Under Sections 41

and 273 of the Indian Succession Act, probate has evidentiary value and operates in rem regarding validity of the Will. However, the present suit is not solely founded upon challenge to the Will. The plaintiff has specifically pleaded that after execution of the Will and even after death of Late Ukabhai Makhwana, the parties continued in joint possession and subsequently entered into family settlements dated 18-01-2010 and 17-05-2025 agreeing for equal division of the properties.

15. The law relating to family settlement is well settled. The Hon'ble Supreme Court in **Kale and Others v. Deputy Director of Consolidation**¹, has recognized that bona fide family arrangements entered into to preserve family peace and avoid disputes are enforceable in law and Courts lean in favour of upholding such settlements. The plaintiff has produced copies of the alleged settlement deeds. Though the defendants have disputed the genuineness and validity of the said documents and have contended that Late Kalubhai was illiterate and incapable of signing, such disputed questions cannot be conclusively adjudicated at the interim stage without full-fledged evidence. Further, it is an admitted position that the plaintiff had previously instituted Regular Civil Suit No. 22/2025 and thereafter withdrew the same on the basis of alleged settlement dated 17-05-2025. This circumstance prima facie indicates existence of continuing disputes and negotiations between the parties regarding the suit properties. It also emerges from record that revenue proceedings regarding Mutation Entry No. 9063 are still under challenge before the Collector in Revenue Appeal No. 62/2025. It is settled law that mutation entries neither create nor extinguish title and are primarily for fiscal purposes.
16. The contention of the defendants that the probate order conclusively extinguishes all possible future arrangements between parties cannot be accepted at this interlocutory stage. Even after succession through Will, parties are legally competent to enter into family arrangements or settlements regarding enjoyment or division of properties. The defendants have also contended that the alleged settlement deed dated 17-05-2025 does not contain

¹ (1976) 3 SCC 119

signature of Defendant No. 4. Such contention again pertains to evidentiary appreciation which requires trial.

17. Now, at this juncture neither this court can go into the merits of the case, nor can it decide as to the question of ownership of both the sides. In the case **Martin Burn Ltd. V. R.N. Banerjee [AIR 1958 SC 79]** the apex court has clearly stated that, *“a prima facie case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the same were believed. While determining whether a prima facie case had been made out the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence.”* It is no part of the courts function at this stage to try to resolve a conflict of evidence nor to decide complicated questions of fact and of law which call for detailed arguments and mature considerations. These are matters to be dealt with at the trial. In other words, court should not examine the merits of the case closely at this stage because it is not expected to decide the suit finally.
18. Furthermore, in the case **Kashi Nath Samsthan V. Shrimad Sudhindra Thirtha Swamy [(2010) 1 SCC 689]** the apex court held that, *“prima facie case must precede an order of injunction. Only when prima facie case is established then only the court will consider other factors. If the applicant fails to prove prima facie case, he is not entitled to temporary injunction.”*

Thus, considering the pleadings and documents on record, this Court is of the opinion that the plaintiff has raised substantial triable issues regarding subsequent family settlement, joint enjoyment, and alleged equal division of the properties. Hence, a prima facie case exists requiring preservation of the suit property till final adjudication.

19. Now, the existence of the prima facie case alone does not entitle the applicant for temporary injunction. The plaintiff must further satisfy the Court about the second condition by showing that he will suffer irreparable injury if the injunction as prayed is not granted, and that there is no other remedy open to him by which he can protect himself from the consequences of apprehended injury. In other words, the court must be satisfied that refusal to grant

injunction would result in “irreparable injury” to the party seeking relief and he needs to be protected from the consequences of apprehended injury. Furthermore, granting of injunction is an equitable relief and such a power can be exercised when judicial intervention is necessary to protect rights and interests of the applicant. In the case **Manohar Lal Chopra v. Seth Hiralal**² it was observed by the Apex Court that, “*the expression irreparable injury, however, does not mean that there should be no possibility of repairing the injury. It only means that the injury must be a material one, i.e. which cannot be adequately compensated by damages. An injury will be regarded as irreparable where there exist no specific or fixed pecuniary standards for measuring damages.*”

Now, in the present case, The suit pertains to immovable property and alleged family rights. Creation of third-party interests during pendency of the proceedings may result in complications incapable of being adequately compensated in monetary terms. If the properties are alienated and ultimately the plaintiff succeeds in establishing rights arising from family settlement, serious prejudice would be caused to the plaintiff and multiplicity of litigation would ensue. Hence, irreparable injury would be caused to the plaintiff if interim protection is refused.

20. The third condition for granting interim injunction is that the balance of convenience must be in the favour of applicant. In other words, the court must be satisfied that the comparative mischief, hardship or inconvenience which is likely to be caused to the applicant by refusing the injunction will be greater than that which is likely to be caused to the opposite party by granting it. It is by considering the comparative inconvenience that the court will exercise the discretion. The balance of convenience has to be assessed by comparing the hardship likely to be caused to either party. In the present case, the suit properties are immovable agricultural lands. If during pendency of the suit the properties are transferred or third-party rights are created, multiplicity of proceedings may arise and the final adjudication of rights may become

² AIR 1962 SC 527

complicated. On the other hand, if temporary injunction is granted, the defendants would merely be restrained from alienating the properties during pendency of the suit. The defendants would not suffer irreparable prejudice because they would continue to remain in possession and enjoyment of the suit properties subject to outcome of the suit. Therefore, balance of convenience lies in favour of maintaining status quo regarding alienation and transfer of the suit properties. Therefore, the balance of convenience tilts in favour of preserving status quo.

21. Furthermore, at the same time, this Court is conscious that the defendants are presently recorded in revenue entries pursuant to Mutation Entry No. 9063 and also rely upon a probated Will. Therefore, at this interim stage, the Court is not inclined to grant any injunction regarding possession or cultivation of the properties. The relief deserves to be restricted only to preservation of the property against alienation and creation of third-party rights. In view of the aforesaid discussion, this Court finds that the plaintiff has succeeded in establishing a prima facie case, balance of convenience and likelihood of irreparable injury for limited interim protection. Hence, issues no. 1,2 and 3 are decided in the affirmative and for issue no. 4 following final order is passed.

--FINAL ORDER--

1. The application below Exhibit-5 filed by the plaintiff under Order XXXIX Rules 1 and 2 of CPC is hereby **partly allowed**.
2. The defendants, their agents, servants or any person claiming through them are hereby restrained from transferring, alienating, selling, mortgaging, gifting, or creating any third-party rights in respect of the suit properties being; Revenue Survey No. 667/79 peki 3 admeasuring 1-67-88; and Revenue Survey No. 667/66 peki 1 admeasuring 0-63-74, situated near Luvariya Gate, Lathi, District Amreli, till final disposal of the suit.
3. It is clarified that this order shall not prevent the defendants from carrying out ordinary agricultural activities and cultivation over the suit properties.

4. It is further clarified that observations made herein are purely prima facie in nature and shall not influence final adjudication of the suit on merits.

5. No order as to costs.

The order was signed and pronounced in the open court today.

Date : 19-05-2026

Place : Lathi.

(Ravish Anil Nagpal)

Principal Civil Judge and

J.M.F.C, Lathi, Amreli.

[Judge Code No. GJ01553]

(Self Typed)