

(1)

RCS NO.- 166/2024
ORDER BELOW EXH.05

=====

ORDER BELOW EXH.05 IN RCS NO.166/2024.

=====

Heard learned Advocate for the parties, read the application and gone through the record etc...

(1) Plaintiffs have instituted present suit against the defendant for declaration and permanent injunction. Along with the suit, the plaintiffs have filed interim injunction application vide Exh.05, the brief facts of which are as under :-

(1/1) It is the say of the plaintiffs that they have possession, occupation of the land bearing Block / Survey No.495/4, Hec.0-77-90 Aare Aakar Rs.6-69 Ps., Khata No.653 of Mouje Village Kathol, Tal. Borsad, Dist. Anand over the years (Hereinafter referred as suit / disputed land / property). The plaintiffs further submit that the ancestors of the plaintiffs were originally cultivating the suit land as protected tenants. Thereafter, the name of the plaintiffs ancestor came to be recorded as a protected tenant vide Mutation Entry No.974. Further submit that the ancestor of the defendant Chandrasang Laxmansang had, after receiving an amount of Rs.1200/- in cash from the plaintiffs ancestor, executed lawful registered mortgage deed in respect of the said land on 12/07/1944, which was entered vide Mutation Entry No.835 and the same was duly certified. Further submit that the defendant's ancestors had mortgaged the said land to one Jinabhai Dahyabhai and upon repayment of the mortgage amount of Rs.500/-, the plaintiffs ancestor,

(2)

RCS NO.- 166/2024
ORDER BELOW EXH.05

Jinabhai Bavabhai, redeemed the said mortgage. The said transaction was recorded vide Mutation Entry No.1322 and the same was duly certified. Thus, the name of the plaintiffs ancestors has been continuously recorded in the revenue records as owner of the said land and the plaintiffs have been in possession and enjoyment of the same since the year 1950-51 till date.

(1/2)

Moreover, since the possession of the said land was already with the plaintiffs ancestors by way of mortgage, the defendant executed a sale deed in favour of the plaintiffs ancestors on 19/04/1966 and thereby sold the said land to them. However, despite the same, the defendant has fraudulently caused inheritance entries to be recorded and has wrongly got his name entered in the revenue records as owner of the said land. Therefore, the plaintiffs have instituted the present suit against the defendant seeking a declaration that the plaintiffs are in possession of the suit land as lawful owners. The plaintiffs have further prayed for a permanent injunction restraining the defendant or any person claiming through him from causing any damage to the structures standing on the plaintiffs land from dispossession or attempting to dispossess the plaintiffs from the suit land and from obstructing the plaintiffs in carrying out agricultural activities therein. The plaintiffs have also sought to restrain the defendant from making or causing any illegal mutations in the revenue record of the suit land and from creating any third-party interest by way of mortgage, gift or sale in respect of the suit land. Accordingly, the

(3)

RCS NO.- 166/2024
ORDER BELOW EXH.05

present application has been filed for grant of injunction against the defendant. Further submit that the plaintiffs have a prima-facie case, the balance of convenience lies in their favour and the question of irreparable loss is also lies in their favour. Further submit that if the temporary injunction, as prayed for, is granted to the plaintiffs, no prejudice or irreparable loss will be caused to the defendant; however, if the same is not granted, the plaintiffs shall suffer irreparable loss, which cannot be compensated in terms of money.

(2)

After that, learned Advocate for the defendant appear before this Court and filed his written statement vide Exh.14, in which he has stated that the present application of the plaintiff is liable to be dismissed as particulars mentioned in the present application is false and frivolous. Defendant submit that the suit property was standing in the name of his father Chandrasang Laxmansang, who had mortgaged the same to one Jinabhai Dahyabhai Padhiyar for a sum of Rs.800/- by way of registered mortgage deed. Upon such registered mortgage being recorded, the name of Jinabhai Dahyabhai came to be entered in the revenue records in the column of possession. Further submit that the said mortgage was redeemed by his father long ago and the actual possession of the land was resumed by him; however, as the reconveyance deed in respect of the suit land remained to be executed, the name of Jinabhai Dahyabhai continued in the revenue records. After his demise, the names of his lawful heirs came to be entered vide Mutation Entry No.4930. Moreover, defendant executed

(4)

RCS NO.- 166/2024
ORDER BELOW EXH.05

reconveyance deed in respect of the suit land on 17/07/2009, which was duly recorded in the revenue records vide Mutation Entry No.5436 and accordingly, the suit land has been entered in the name of the defendant as the lawful owner.

(2/1)

Defendant further submit that adjacent to the suit land, the plaintiff owns another land of land bearing Survey No.496/2, upon which the plaintiff has constructed a residential house and is residing therein. Thus, no structure belonging to the plaintiff exists on the suit land. Moreover, the plaintiff intends to purchase the defendant's land; however, since the defendant is unwilling to sell the same, the plaintiff has concocted false facts and created bogus agreements and has instituted present suit with a view to illegally take possession of the defendant's land. It is further submitted that the plaintiffs suit is barred by non-joinder of parties. Moreover, neither the defendant nor his ancestors has ever granted any consent to the plaintiffs or their ancestors to cultivate the suit land. On the contrary, the plaintiffs, having no right, title are attempting to illegally encroach upon and take possession of the defendant's land and with such intention, the plaintiff issued legal notice to the defendant through an Advocate on 25/05/2022. The said notice was duly replied by the defendant on 31/05/2022 along with counter-notice. Moreover, the plaintiffs have no prima-facie case, the balance of convenience does not lies in their favour and no cause of action, as alleged in the plaint and in the application for injunction, has arisen. Hence, the

(5)

RCS NO.- 166/2024
ORDER BELOW EXH.05

plaintiffs are not entitled to any relief as prayed in the suit and in the application for temporary injunction. Therefore, the suit of the plaintiffs as well as the application for injunction application deserves to be dismissed with costs.

(3)

The plaintiff has filed an application under Order 26 Rule 09 of the C.P.C. for drawing of Panchnama and map of the suit property. The application was allowed and the Court Commissioner duly appointed by this Court to carry out Panchnama and map. Thereafter, the Court Commissioner has produced Panchnama and map of the suit property vide Mark 10/2 and 10/3 respectively.

(4)

After that, the plaintiff has filed counter-affidavit vide Exh.17.

(5)

Plaintiffs have produced documentary evidence vide Mark - 3/1 to 3/32 to prove their case, which is taken into consideration.

(6)

Defendant has produced documentary evidence vide Mark - 16/1 to 16/11 and Mark - 22/1 to 22/3 to prove his case, which is taken into consideration.

(7)

Considering the arguments made by the parties, documentary evidences, written objection etc., following issues are framed for the fair determination of the application.

1. Whether the plaintiff proves that he has prima facie case ?
2. Whether the plaintiff proves that balance of convenience is in his favour ?
3. Whether the plaintiff proves that if the interim relief

(6)

RCS NO.- 166/2024
ORDER BELOW EXH.05

is rejected, he is going to suffer irreparable loss which cannot be compensated in terms of money ?

4. What Order ?

(8)

My reply to above issues are as under :-

1. In Negative.
2. In Negative.
3. In Negative.
4. As per Final Order.

(9)

Contentions were made by learned Advocate for the plaintiffs and the defendant, which is heard. The plaintiffs have submitted written argument vide Exh.20 and the defendant has submitted written argument vide Exh.23. Written argument submitted by both the parties are carefully taken into consideration.

:-: REASONS :-:

Since the above issues are inter-connected and incorporated with each other, for the sake of brevity they are discussed together as under :-

(10)

First of all, as per Mark - 3/12, Padhiyar Jinabhai Dahyabhai became mortgagor of the suit land and the land was given in mortgage by Thakor Chandrasinh Laxmansinh for the consideration of Rs.500/-. Thus, mutation entry was mutated in name of Jinabhai Dahyabhai. Then after, he was cultivating the land. It appears from Mark - 3/9 that the suit land was free from mortgage and once again Jinabhai Bavabhai became owner of the suit property. On perusal of Mark - 3/14, it appears that Jadav Motibhai had executed a deed in favour of Punjabhai

(7)

RCS NO.- 166/2024
ORDER BELOW EXH.05

Bavabhai. Thus, the land became free from mortgage. On perusal of documentary evidence produced by the plaintiff, it transpires that the land was mortgage and freed from time to time. At this juncture, the plaintiff claim to be in possession of the suit land. On the other hand, the defendant claim that after reconveyance deed, he became owner of the property. It also appears from Mark - 16/9 that name of Padhiyar Jinabhai's heirs have executed a deed of conveyance and the land was given to Thakor Chandrasang Laxmansang. But, as per the plaintiff, the defendant has with malafide intention enter his name in revenue record. Though, the land is already become free from mortgage. On perusal of Mark - 3/12, it transpires that Thakor Chandrasang Laxmansang has given in mortgage to Padhiyar Jinabhai Dahyabhai. Then after, once again, reconveyance deed was executed. It appears from Mark - 3/14 that Jadav Motibhai Chandreshsinh has made an agreement and hand over possession of the suit land to Punjabhai Bavabhai. Thus, prima-facie it appears that after reconveyance deed the heirs of Punjabhai Bavabhai and deceased Jivabhai Punjabhai's heirs put into possession. But, it appears from Mark - 3/1 that in Village Form No.7, there is a name of Jadav Motisinh Chandrasinh appears and he had obtained a loan from Gujarat State Co-Operative Agriculture and Rural Development Bank. In Village Form No.8/A, which has been produced by defendant vide Mark - 16/2, in which name of Jadav Motisinh Chandrasinh appears. It transpires from Mark - 16/9 that name of

(8)

RCS NO.- 166/2024
ORDER BELOW EXH.05

Padhiyar Jivabhai Dahyabhai was deleted and name of mortgagor Chandrasinh's heirs were entered into revenue record. Now, at this juncture, without recording of evidence it is not good to hold that the plaintiff has prima-facie case. Because, who has mortgage the property to whom and finally who has got the property free from mortgage. Thus, the plaintiff has no prima-facie case. So far as, balance of convenience is concern, if the application is rejected, the plaintiff is not going to suffer any irreparable loss, which cannot be compensated in terms of money. Thus, the plaintiff has failed to prove that they have prima-facie case, balance of convenience is in favour of the plaintiff or most important aspect of the loss, which cannot be compensated in terms of money. Therefore, I reply to issue no.1 to 3 in Negative and following order is passed in the interest of justice.

-:: O R D E R ::-

1. The present application is hereby Rejected.
2. Cost shall follows the suit.

Signed and Pronounced in open Court today
on 30th March of 2026.

Date: 30/03/2026
Place: Borsad

(Manish Dilipbhai Nandani)
Principal Sr. Civil Judge, Borsad
Code-GJ00847