

Order below exhibit-5**PLAINTIFF'S CASE**

This is an application filed by the Plaintiffs under Order-39 Rule-1,2 read with Section-151 of the Code of Civil Procedure, 1908 with contention of plaintiff that The property described herein is situated within the jurisdiction of this Hon'ble Court at village Mosam, Taluka Vagra, District Bharuch. The said property bears old Survey No. 294(B) and new Survey No. 499, having an area of approximately 5-09-80 hectares as per the new record. The property was originally owned by Late Ranchhodbhai Nathabhai, who passed away on 25/02/2006. His wife Kashiben had predeceased him on 22/04/2001. Among their legal heirs were Defendant Nos. 1 to 4 and the plaintiffs' mother, Ghanuben alias Dhaniben, who was the daughter of Ranchhodbhai Nathabhai and wife of Girdharbhai. She had passed away earlier on 18/03/1999. After her death, the present plaintiffs became her legal heirs. Accordingly, the suit property is jointly owned and possessed by the plaintiffs and Defendant Nos. 1 to 4, and the plaintiffs hold a collective 1/5th share in the said property.

After the death of Ranchhodbhai Nathabhai, Defendant Nos. 1 to 4 fraudulently mutated the revenue record

by concealing the name of the plaintiffs' mother, thereby getting the succession entry recorded only in their names through Mutation Entry No. 3411 dated 03/04/2014. Upon learning about this entry, Plaintiff Nos. 1 and 2 challenged the same by filing H.K.5 Appeal No. 256/2014 before the Deputy Collector, Bharuch. The learned Deputy Collector, by order dated 31/07/2015, partly allowed the appeal and directed the revenue authorities to obtain necessary documents regarding the plaintiffs' mother and to enter the names of the remaining legal heirs by making a fresh entry in the record of rights. Accordingly, Mutation Entry No. 3484 was recorded on 17/10/2015 in the village Form No. 6 register. However, due to an unexplained error on the part of the Mamlatdar, the name of the plaintiffs' mother was not entered in the revenue record as directed, and consequently the plaintiffs' names were also not reflected in the revenue record, leaving only the names of Defendant Nos. 1 to 4 recorded.

Despite having full knowledge that the plaintiffs' mother had a lawful share in the suit property, Defendant Nos. 1 to 4 executed a registered sale deed dated 03/10/2023 bearing document No. 3232/2023 in favour of Defendant No. 5, without partitioning the plaintiffs' share. Defendant No. 5, being the purchaser, was also bound by the legal principle of

"buyer beware" and ought to have obtained proper title clearance before purchasing the property. However, in collusion with Defendant Nos. 1 to 4, Defendant No. 5 purchased the property and thereby attempted to defeat the lawful rights of the plaintiffs. The said sale deed was executed without the knowledge or consent of the plaintiffs and without paying them any consideration, and therefore the same is not binding upon them to the extent of their 1/5th share. When Plaintiff No. 1 personally met Defendant No. 5 on 12/05/2024 and requested him to separate and allot the plaintiffs' share, Defendant No. 5 became angry and threatened to sell the property to a third party, stating that he would not give them any share. If the property is transferred to a third party, the plaintiffs would be forced into multiple litigations and would suffer irreparable loss which cannot be compensated in monetary terms. Therefore, the present application has been filed seeking an interim injunction restraining Defendant No. 5 from transferring or creating any third-party interest in the suit property in any manner during the pendency of the proceedings.

**DEFENDANT'S CASE**

The summons was issued by the Court and it was duly served to the defendant. The defendants appear

through counsel and filed reply vide Exhibit-16. where defendants submitted that, except for the facts expressly admitted in their written statement, all other averments made by the plaintiffs are denied. According to the defendants, the present suit has been filed on false and misleading facts and is not maintainable in law. It is further contended that the suit suffers from the defects of **misjoinder and non-joinder of necessary parties**, since the plaintiffs have failed to implead all the legal heirs of late Nathabhai as parties to the proceedings. The defendants also contend that the suit is barred by the principle of **res judicata**, as a prior partition suit being Regular Civil Suit No. 376 of 2011 was already filed among the heirs of Nathabhai regarding partition of the property, which was ultimately disposed of by a compromise decree. The present plaintiffs were aware of the said proceedings but neither joined the suit nor challenged the decree, which has since attained finality. Therefore, the plaintiffs cannot now institute a fresh suit raising the same dispute. It is also argued that the matter pertains to entries in the revenue record and is governed by the provisions of the revenue laws; hence the present suit before the civil court is barred for want of jurisdiction.

The defendants further deny the plaintiffs' claim that the suit property originally belonged to Ranchhodbhai Nathabhai and that the plaintiffs' mother, Dhanuben alias Dhaniben, was a lawful heir entitled to a share. According to the defendants, the original owner of the property was Nathabhai, and the revenue records reflected the names of Bai Kashiben Harji Natha, Kamalaben Harjinatha, Naran Jadav Makwana, and Ranchhodbhai Nathabhai as occupants. While the defendants do not dispute the status of Defendant Nos. 1 to 4 as heirs, they state that they have no knowledge that the plaintiffs' mother was a legal heir or that she had any connection with the family, as she had never remained in contact with them or participated in family affairs. They also deny that any mutation entry was fraudulently made by suppressing her name or that they had any knowledge about the revenue appeal referred to by the plaintiffs. According to them, the plaintiffs have filed the present suit after a long delay only with an intention to harass the defendants and to gain wrongful monetary advantage.

The defendants further submit that since the plaintiffs' mother never had any right, title, or interest in the suit property and her name was never entered in the revenue record, Defendant Nos. 1 to 4, being the lawful occupants and possessors of the

property, were fully entitled to transfer the property. Accordingly, they executed a registered sale deed in favour of Defendant No. 5, who is a **bona fide purchaser for value** and who purchased the property after verifying the revenue records. The defendants deny the allegation that Defendant No. 5 threatened the plaintiffs or that any such meeting took place. They also contend that the present suit has been filed without any valid cause of action and is barred by limitation. Additionally, the plaintiffs have sought cancellation of the registered sale deed but have paid insufficient court fees in relation to the sale consideration of ₹19,44,000. The defendants therefore submit that the plaintiffs are not entitled to any interim injunction or other relief, particularly when Defendant No. 5 is in lawful possession of the property and enjoys full rights to use, enjoy, or transfer it. Hence, the defendants pray that both the suit and the application for temporary injunction be dismissed with costs in the interest of justice.

**ARGUMENTS FOR PLAINTIFF**

The plaintiffs and their counsel were called out many times but none of them appeared for arguments hence their right was forfeited.

**ARGUMENTS FOR DEFENDANT**

Defendant's Counsel for defendant submitted that the plaintiff has not sought any interim relief against the defendant no.1 to 4. Counsel submits that the defendant no.5 is a bonafide purchaser of the property and has also the right to use his property in his own way and now injunction can be granted against a lawful owner of the property.

**CONCLUSION**

This is an application for temporary injunction and there are three basic principles for granting or refusing to grant temporary injunction i.e. Prima facie case in favour of the party seeking injunction, Balance of convenience in favour of such person and last there must be an irreparable loss which are likely to be caused to the party if injunction is not granted to such person. Thus an injunction being an equitable remedy is always at the discretion of the court. However, such discretion must be based on sound judicial principles and guided by rules of Equity and the peculiar facts and circumstances of the case. Apart from three basic principles, the court is also required to see the conduct of parties seeking equitable relief of temporary injunction.

Looking at the pleadings and documents placed on record, it appears that the suit property has been

transferred in favour of Defendant No.5 by a registered sale deed executed by Defendant Nos.1 to 4. The revenue records presently reflect the name of Defendant No.5 as owner and possessor of the property. The plaintiffs have not sought any interim relief against Defendant Nos.1 to 4 who were the executants of the sale deed, and the question regarding the alleged share of the plaintiffs and the validity or otherwise of the sale deed requires detailed evidence which can only be adjudicated at the time of trial. At this stage, the material placed on record does not conclusively establish a prima facie right of the plaintiffs in the suit property.

Further, the balance of convenience also does not lie in favour of the plaintiffs. Defendant No.5, being the purchaser under a registered sale deed and being in possession of the property, cannot be restrained from dealing with his property unless a strong prima facie case is made out by the plaintiffs. The plaintiffs have also failed to demonstrate that they would suffer irreparable loss which cannot be compensated by other legal remedies in case they ultimately succeed in the suit.

In *Dalpat Kumar v. Prahlad Singh*, (1992) 1 SCC 719, it was held that *mere assertions without evidence cannot establish irreparable injury.*

Taking into consideration the submissions of the plaintiff and documents produced on record, it transpires to this court that the plaintiff has not established prima facie case. So in view of the aforesaid reasons, this court inclined to pass the following order in the interest of justice.

FINAL ORDER

- The application for temporary injunction is hereby rejected.
- Cost shall be the cost in the cause of the suit.

Date:- 16-03-2026

Additional Civil Judge

Place-Vagra

Vagra, Bharuch