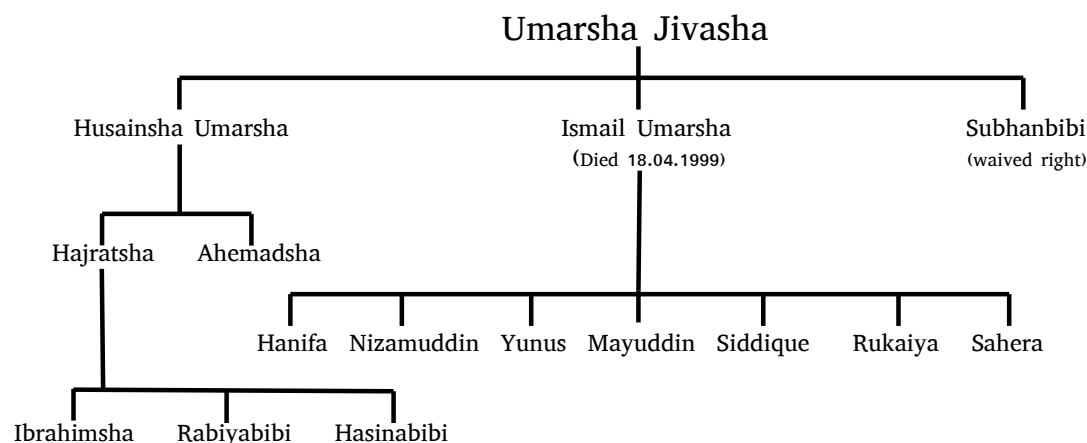


R.C.S. No. 45 of 2021**ORDER BELOW APPLICATION AT EXHIBIT - 5**

Ld. Advocate for the plaintiffs	Mrs. F. A. Motiwala
Ld. Advocate for defendants no. 1 to 10	Mr. H. I. Shah

1. The brief facts of the present application are that the plaintiffs have filed the present suit for partition, permanent injunction, declaration and cancellation of registered sale deed no. 35 dated 07/01/2020 with respect to an agricultural property situated at village Pakhajan, Taluka : Vagra, District: Bharuch bearing block no. 582, new survey no. 105 (Old survey no. 517). (Hereinafter referred to as suit property for the sake of brevity) executed by defendants no. 1 to 6 in favour of defendant no. 7.
2. Plaintiffs have contended that defendant no. 1 is the sister in law of plaintiff no.1 and paternal aunt of plaintiffs no.2 to 7. Defendants no.2 to 7 are the heirs of Hanifaben Ismailsha who was second wife of plaintiff no. 1's father in law Ismailsha Umarsha. Defendants no. 6 to 9 are the heirs of Hajratsha Husseinsha who is the brother of Ismailsha Umarsha. Defendant no. 10 is the purchaser of the suit property. For the better understanding of the relation between the parties, family pedigree of deceased Umarsha Jivasha is produced as under ;

Family pedigree

3. It is pleaded by plaintiffs that on the demise of Ismail Umarsha on 18/04/1999, the names of defendants no. 1 to 6 and one Hanifaben and Siddique were entered in the revenue record as the heirs of the deceased and the entry to that effect was entered in the revenue record by way of mutation entry no. 4934. It is alleged by the plaintiffs that at the time of entering mutation entry no. 4934 the name of husband of plaintiff no.1 and father of plaintiffs no. 2 to 7 late Makbul Ismailsha was concealed from the revenue authorities though the husband of plaintiff no. 1 was also one of the sons of Ismail Umarsha. It is also stated by the plaintiffs that out of 7 persons whose names were entered in the revenue record by way of mutation entry no. 4934, name of Hanifaben Ismail and Siddique Ismail were deleted from revenue record by way of mutation entry no. 6967 and 6972 respectively. Plaintiffs have further pleaded that late Makbul Ismail used to stay at Mumbai since many years and during last few days of his lifetime he was brought to village: Valan where he died on 03/07/2004. Plaintiffs have further contended that whenever Makbul Ismail would come to his native, his relatives would give him confidence that his right over ancestral properties would never be curtailed and he also kept faith in the words of his relatives.

As the plaintiffs are staying at Mumbai since many years, they have never gone through the revenue record of the suit property. Recently, plaintiff no. 1 started staying at village: Pakhajan and obtained certified copy of revenue record of the disputed property and found that the name of her husband late Makbul Ismail suppressed by defendants number 1 to 6 while mutating their own names in the revenue record. Plaintiffs has also undertaken proceedings before revenue authorities challenging the mutation entry no. 4934 and also mutation entry no. 7074 in the name of defendant no.10.

4. Plaintiff has stated that on obtaining revenue record of suit property he came to know that all the defendants have colluded with each other and executed registered sale deed in favour of defendant no. 10. The said registered sale deed is bogus, sham, void and executed with the ulterior motive of defeating the rights of the plaintiff.
5. Plaintiffs have further pleaded that the cause of action to file the suit arose when defendants no. 1 to 6 executed registered sale deed in favour of defendant no. 10 and when the said fact came to the knowledge of plaintiffs on obtaining certified copies of the revenue record and plaintiffs came to know that the name of their ancestor Makbul Ismail was concealed by defendants.
6. In the present application the plaintiffs have claimed following interim relief ;

That during the pendency of the suit, defendants be restrained from transferring the suit property or creating any charge over

the suit property and any other relief which the court deems fit to grant in the interest of justice.

7. The summons/notice of the suit was duly served upon the all the defendants and they all appeared through their Lr. Advocate Mr. H. I. Shah. Defendants no. 1 to 9 have filed their written statement vide exhibit-29. It is the contention of defendants no. 1 to 9 that the suit is barred under the law of limitation as the plaintiffs have challenged mutation entry no. 4934 which took place in the year 2000 and therefore, the suit that is filed after 21 years is expressly barred under limitation act. That the plaintiffs have filed suit after 17 years of the death of their ancestor and therefore, also the suit is barred by limitation. It is the specific defense of defendants no. 1 to 9 that the ancestor of the plaintiffs had relinquished his right over the suit property in the year 1989 in the lifetime of his father by accepting cash in lieu of his share in the property and a writing to that effect was executed by him in presence of panchas. The ancestor of plaintiffs late Makbulsha knew that he has no right over the disputed property and for that reason he never questioned the defendants during his lifetime. However, the present suit is filed by the plaintiffs to take undue advantage of the price escalation of land. It is also averred by defendants no. 1 to 9 that the revenue authorities have rejected the claim of plaintiffs.
8. Defendant no. 10 has filed his written statement vide exhibit-36. In the written statement the said defendant has re-iterated the contentions taken by other defendants in their written statement. Defendant no. 10 has also taken the defense of bona fide purchaser of suit property for value without notice. He has stated

that he purchased the suit property after going through all the papers relating to suit property. Lastly, defendant no. 10 has prayed to reject the suit with exemplary cost.

9. Heard Lr. Advocate for the plaintiffs Mrs. F. A. Motiwala who in support of the present application has submitted that the registered sale deed no. 35/2020 dated 07/01/2020 is not binding to the plaintiffs as the said sale deed is against the interest of the plaintiffs. It is also argued that the defendants no. 1 to 6 have concealed the name of the father of the plaintiffs and entered their name in the revenue record and sold the suit property in favour of third person. Thus, the act of defendants is prima facie illegal and void. The defendants may take undue advantage and alienate the suit property. Therefore, if the injunction as prayed for is not granted it would result into multiplicity of proceedings. Lr. Advocate has prayed to allow the present application. In support of her arguments she has relied on following judgments.

Sr. No.	Citation	Ratio held and relevant para.
1.	Pralhad Shankarrao Tajale v/s State of Maharashtra (AIR 2018 SC 1313)	liberal approach should be adopted and delay should be condoned.
2.	Babubhai Makanbhai Patel v/s State of Gujarat AIR 2019 GUJ. 41	entries in the revenue record are for fiscal purpose. Final rights of the parties are to be decided by civil court.
3.	Darpan (Ghatlodia) Cooperative Housing Society v/s Dahyabhai Maganbhai Rabari (APPEAL FROM ORDER NO. 306/2019 J. DATE MARCH 31 2022.)	In case where there are chances of multiplicity of proceedings, injunction can be granted.
4.	Hetal Chirag Patel v/s State of Gujarat-2018 (7) SCC 703	Delay should be condoned if sufficient cause is shown.
5.	Suraj Bhan v/s Financial	Mutation entry do not confer

	Commissioner-2007(6) SCC 186	any title over the property.
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10. Lr. Advocate for defendants Mr. H. I. Shah has repeated all the contentions taken in the written statement. It is submitted that defendant no. 10 being a bonafide purchaser would suffer great loss if is injuncted from dealing with the suit property. He has also submitted that the injunction application should be rejected on the ground of delay and latches.

11. Perused the application, the record of the suit and heard Lr. Advocate for the respective sides at length. As the plaintiff has sought interim injunction pending the final disposal of the suit it is apposite to discuss general principles of granting and non-granting of the interim injunction application. 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 lastly there must be a irreparable loss which are likely to be caused to 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. In addition to these three basic principles for granting or refusing to grant injunction, the conduct of the person seeking injunction should also be taken in to consideration because the granting of injunction is an equitable relief and is drastic or serious order and there are two basic maxims of equity which are important to be consider at the time of deciding injunction application which are “He who seeks equity

must do equity” and “He who seeks equity must come with clean hands”.

12. Applying the above settled legal principles to the facts of the present case, the plaintiff has claimed the relief of declaration of their right, partition and permanent injunction and have also challenged the registered sale deed no. 35/2020 dated 07/01/2020 executed in favor of defendant no. 10 i.e. even before the institution of suit. It is worth to note that in the plaint, the plaintiffs have averred that the registered sale deed executed by defendants no. 1 to 6 have executed the sale deed in favour of defendant no. 7. However, perusing the sale deed produced vide mark 3/23 it is evident that it is executed by defendants no. 1 to 9 in favour of defendant no. 10. Therefore, prima facie there is variance between pleading and documentary evidence of the plaintiffs. It is also pertinent to mention that the registered sale deed in favour of defendant no. 10 was executed even before the filing of the suit or the revenue proceedings undertaken by the plaintiff. Therefore, it seems that the said sale deed was never executed with an intention of defeating the rights of the plaintiffs in the suit property. In addition of above the name of defendants no. 1 to 9 was entered in the revenue record in the year 2000, and sale transaction with defendant no. 10 took place in the year 2020. Therefore, even after due diligence defendant no. 10 could not have ascertained about the right of persons other than those mentioned in the revenue records of the suit property as plaintiffs as well as defendants no. 1 to 9 are in no way related with defendant no. 10. Further, when the defendant no. 10 has paid the consideration amount to the vendors of the sale deed, till the Registered Sale Deed is set aside the defendant no. 10 cannot be

robbed off his right that flows from the registered instrument. I have to my benefit judgment rendered by Hon'ble Supreme Court in the case of Rattan Singh, Inder Pal Singh v/s Nirmal Gill (Civil Appeal no. 3681/2020) wherein Hon'ble court held as under :

(32) The record reveals that the disputed documents are registered. We are, therefore, guided by the settled legal principle that a document is presumed to be genuine if the same is registered, as held by this Court in Prem Singh and Ors. v. Birbal and Ors., (2006) 5 SCC 353.

In view of the judgment cited above there is a presumption of genuineness when the document is registered.

13. As narrated in the general principles governing the grant or non-grant of interim injunction application, apart from other factors delay and conduct on the part of the party who seeks such equitable relief also needs to be looked into. As noted above, plaintiffs are claiming their rights over the suit properties after a period of 17 years after the passing of their ancestor. Though there is no limitation for filing a suit for partition, the fact remains that the plaintiffs are claiming their right over the suit property after 17 years of the passing of their ancestor and before the right of partition was exercised by the plaintiffs the suit property was disposed in favour of defendant no. 10. On the aspect of conduct of the parties seeking equitable relief of injunction, Hon'ble Apex Court in the case of Kishorsinh Ratansinh Jadeja v/s Maruti Corp. reported in 2009 (5) SCALE 229 held as under :

(25.) The question of conduct of the Respondent No.1 also becomes relevant, inasmuch as, having slept over its rights for more than 19 years, it will be inequitable on its prayer to restrain the owners of the property from dealing with the same, having particular regard to the fact that a large portion of the land has

already been conveyed to as many as 280 purchasers who are in the process of erecting constructions thereupon.

14. Further, in the present case, defendant no. 10 had acquired right by way of a registered instrument and after paying the consideration amount to the vendors of the document. After the execution of sale deed in his favour he is the one who is dealing with the suit property in exercise of his right as the owner and possessor of the suit property. Therefore, it would be highly inequitable to restrain defendant no. 10 in enjoying the property purchased by him. In this regard it would be profitable to note the judgment of Hon'ble Apex Court in the case of Mandali Ranganna v/s T. Ramachandra reported in AIR 2008 SC 2291. Relevant para of the said judgment is as under ;

(18.) While considering an application for grant of injunction, the court will not only take into consideration the basic elements in relation thereto, viz., existence of a prima facie case, balance of convenience and irreparable injury, it must also take into consideration the conduct of the parties.

Grant of injunction is an equitable relief. A person who had kept quiet for a long time and allowed another to deal with the properties exclusively, ordinarily would not be entitled to an order of injunction. The court will not interfere only because the property is a very valuable one. We are not however, oblivious of the fact that grant or refusal of injunction has serious consequence depending upon the nature thereof. The courts dealing with such matters must make all endeavours to protect the interest of the parties. For the said purpose, application of mind on the part of the courts is imperative. Contentions raised by the parties must be determined objectively.

15. Plaintiffs have stated that they have apprehension that if defendant no. 10 alienates the suit property in favour of third party or creates charge over the property, then there are chances of multiplicity of proceedings as the plaintiff would have to join the new purchaser in the suit. However, in view of section 52 of Transfer of Property Act there is a bar in creating third party rights over a property with respect to which a litigation is pending. Therefore, such apprehension on the part of the plaintiff is also misplaced.

16. Plaintiffs have relied on the judgments of Hon'ble Apex Court and Hon'ble High Court to substantiate their case. I have gone through the said judgments. In the judgment of Pralhad Shankarrao Tajale (supra) and Hetal Chirag Patel (Supra) Hon'ble court has held that the court should adopt liberal approach in condoning delay. However in view of section - 5 of Limitation Act it is not applicable to suits. Then the plaintiffs have produced judgments of Babubhai Makanbhai Patel (supra) and Suraj Bhan (supra) to substantiate that revenue entries do not confer any title over the property and they are only for fiscal purpose. However, in the present case defendant no. 10 has obtained his right through a registered instrument and therefore, above judgments are not helpful to the plaintiffs. Lastly, the plaintiffs have relied on the judgment of Hon'ble High Court in the case of Darpan (Ghatlodia) Cooperative Housing Society wherein Hon'ble High court has held that in case there is possibility of multiplicity of proceedings injunction should be granted. However, looking to the facts of that case, it was a suit for specific performance wherein after entering into agreement to sale with plaintiff the defendants sold the disputed property in favour of third parties and in that reference

Hon'ble High Court granted injunction. However, the facts of the present case are different and therefore, the above judgment would not come to the aid of plaintiffs.

17. In view of above facts and legal position, Prima-facie the title acquired by defendant no. 10 before the filing of the suit is to be believed and it would be highly inconvenient for defendant no. 10 if any restrictions are put on his right as registered owner of suit property and would be unjust to restrain defendant no. 10 in exercising his right as rightful owner and possessor of suit property. Apart from it, the conduct of the plaintiffs while seeking the equitable relief of injunction also dis-entitles them from obtaining such relief. In view of the above reasons and legal position none of the ingredients necessary to grant injunction are in favour of the plaintiffs. Hence, I pass following order under the application.

- : : O R D E R : : -

1. The present application is hereby rejected.
2. Cost of the application shall follow the cost of the suit.

Pronounced and signed in open court today on 24th day of April in the year of 2023.

Date :- 24/04/2023
Place :- Vagra

(V. P. Mehta)
Additional Civil Judge,
Vagra
UIC : GJ01538