

ORDER BELOW EXHIBIT - 42

1. The present application seeking Temporary Injunction is filed by plaintiff seeking declaration that plaintiff is successor of the deceased Surendralal Shah and have respective share in agricultural land bearing survey no. 886, 77, 111 and 556 situated in Kerwada village of Amod Taluka. Relief of partition has also been sought and it is prayed to declare that the release deed dated 05/06/2022 executed by defendant no. 1.1 and 1.2 is in nullity. Perpetual injunction in that regard has also been sought.
2. At the outset I deem it fit to reproduce hereinafter the pronouncement made by Hon'ble Supreme Court of India in the case of Makers Development Services (P) Ltd. Vs. M. Visvesvarya Industrial Research & Development Center, (2012) 1 SCC 735 : (2012) 1 SCC (Civ) 379 wherein it is held to the effect that,

“While passing an interim order of injunction under Order 39 Rules 1 and 2 CPC, the court is required to consider three basic principles namely (a) prima facie case, (b) balance of convenience and inconvenience and (c) irreparable loss and injury. While granting injunction must also take into consideration the conduct of the parties.”

3. To decide whether there is prima facie case or not, it is important to analyze the averments made in the plaint and contentions raised in the written statement along with the documents produced therewith respectively. Plaintiff has produced copies of revenue record of suit properties, one relinquishment deed, hand writing expert's opinion, written complaint given to PSI, Amod and Dy.S.P Jambusar respectively. On the other hand defendant has stated in his written statement that relinquishment deed was willingly executed on 03/06/2002 in favour of defendant no. 1/1. Defendant has produced revenue record of the suit properties and a copy of the relinquishment deed. All these documents have been duly considered by this court in arriving at just decision in the present application.
4. In such factual matrix, this court is of the opinion that upon conjoint perusal of the handwriting expert opinion and the WhatsApp conversations made between the members of Shah Family, it transpires that the genuineness of relinquishment deed is in question and hence the issue regarding whether plaintiffs have right, title, interest in the

suit properties or not can be decided only after leading evidence by both the parties. Till then, injunction is required to be granted to avoid multiplicity of litigation. Now, to decide whether balance of convenience tilts in favour of plaintiff or not, upon perusal of record of this suit, it transpires that plaintiff is likely to suffer if the injunction is not granted. Considering the principles of equity, there is need of court's interference to protect the party from the apprehended species of injury before the legal right would be established at the end of trial, therefore, balance of convenience does tilts in the favour of plaintiff.

5. Finally, to decide whether irreparable loss will be caused to plaintiff or not, I take resort to the averments of plaint in which the plaintiff has contended that defendants have fraudulently executed a relinquishment deed. Now, in such event loss or injury is that can be caused to plaintiff is not of the type which can not be compensated by money and hence it does not fall in the category of irreparable loss because irreparable loss refers to a loss which can not be made good or compensated by damages or monetary

compensation.

6. Hence, after carefully going through the material available on record, I have come to the conclusion that plaintiff does have a prima facie case. At this stage, in factual aspect of this suit, plaintiff is in position to avail temporary injunction as balance of convenience is in plaintiff's favour. Hence, in light of the discussions made in preceding paragraphs, I pass the following order.

O R D E R

- This application for temporary injunction is hereby partly allowed.
- Both parties are directed to maintain *Status Quo* of the suit property *qua* possession and title.

Pronounced in the open court today on 18th day of September, in the year 2024.

Place :- Amod

Date :- 18/09/2024

K. M. Gadhvi
Principal Civil Judge, Amod
Judge Code :- GJ01555