

1. The plaintiff's has filed this suit for declaration, permanent injunction and for partition. The plaintiff has also filed present application for requesting that a temporary injunction may be granted as to restraining the defendant's, their servants, agents etc. for transfer, mortgage, gift of the disputed property to anybody in anyway, also not to put this land for mortgage, lien as a security in any schedule bank, or co-operative society or shroff or establishment and not to take loan or lend money or debt from that and arise encumbrance on this land. The plaintiff has filed documents vide marks 3/1 to 3/8, Plaintiff also filed the reply of W.S and temporary injunction application presented by defendant as counter affidavit vide Exh.16. As this court passed the order below Exh.5 the facts of this application are not repeated.

2. This court has issued a notice to the defendants. The summons/notice were duly served to the defendants, and defendant's have filed their written statement and reply of Exh.5 application vide Exh.15. Defendant's stated that the W.S. of defendant's are true, further the defendant's contending inter-alia that averment made in the suit as well as in temporary injunction and counter affidavit by plaintiff are not true, and the suit was liable to be dismissed with cost. The plaintiff has no prima facie case, as the balance of convenience is not in favour of the plaintiff, as no irreparable injury will be caused to the plaintiff; if a temporary injunction is not granted to them, and the plaintiff has not entitled to get relief prayed in temporary injunction application. The defendant's has produced the documents vide marks 21/1 to 21/13.

3. I have heard the argument of learned advocate Mr.R.C.Parmar for the plaintiff and learned advocate Mr.S.N.Khilji for defendant's at length.

4. For the deciding this application following points arise for my determination.

1. Whether the plaintiff has a prima facie case in his favour?

2. Whether the balance of convenience is in favour of the plaintiff ?

3. Whether an irreparable injury will be caused to the plaintiff, if an ad-interim injunction is not granted?

4. What Order?

5. My findings to the above points are as under.

1. In the Affirmative.

2. In the Affirmative.

3. In the Affirmative.

4. As per final order.

:-REASONS:-

6. As all the three issues are interconnected with each other and in order to avoid the repetition of the facts, all the three issues are dealt and discussed together.

The plaintiff 's submitted in his argument as well as in plaint and temporary injunction application and counter affidavit are that,the whole land bearing block no.53 which is located in the precinct of Village-Vanthewad,Taluka-Jhagadia Dist.-Bharuch and the land bearing Survey Nos.9 and 105 located in the precinct of Village-Kharia,Taluka-Jhagadia Dist.-Bharuch and the houses bearing house property no.496/b and 496/k loacted at the precinct of gram panchayat Jhagadia at Jhagadia,and the equipments of farming etc.,all this properties are our deacedesd father Vitthalbhai Narotambhai Bhagat ancestor property and in their existence they prepared one partition deed on 21/10/1990,and according to that deed the property located in the precinct of village Kharia bearing block survey no.9 and block survey no.105 with that the well-motor-machine on this land and the houses bearing property no.496/b and 496/k gound floor with the vada and the equipments of farming,cattles comes in share of our plaintiff no.1,and the land bearing block 53 located in the precinct of village Vanthewad in which eastern side of this land admeasuring 3-00 guntha land with well and the first floor of house bearing panchayat property no.496/b comes in the share of defendant,and the western side of land bearing block 53 located in the precinct of village Vanthewad admeasuring 3-10 guntha land comes in the share of our rival parties parents (Herein after referred as disputed suit property).And according to that one written deed was made on 10 Rs of stamp paper,and by this partition deed no share will be given to plaintiff's no.2 and 3,on this written deed our late father Vitthalbhai Narotambhai Bhagat made signature,with that one Mr.Dalsukhbhai Ishvarbhai Rajvadi and Ramanbhai Narottambhai Bhagat made signature as a witness and as a lagal heirs we plaintiff's and defendant made signature on that.And that partition was consented by we both the rival parties,and according to that partition we are having administration as well as possession on respective land.After this partition our father was demise,and the legal heirs entry was made on 26/06/2006 with entery no.894 in record of rights,our mother name Dahiben Bhagat name was also entered,but with that defendant also made one another entery on 26/06/2006 with entery no.895,and according to that entery they made entery that we plaintiff's having no right over the property,means we relinquish our right from the property.In real facts in the land bearing block no.53 H.2-53 Aare out of which western side of land admeasuring Acre.3-10 guntha land comes in the lagal share of our father and mother,we never relinquish our legal right from this property,or waive our right from this property,though the defendant had made entery no.895 that we plaintiff's had having no any right over this property and without any valid consideration or share we waive right in the favour of our mother Dahyiben and defendant Rajeshbhai Bhagat.For this the defendant had made one deed on affidavit on 13/03/2006,which is farud and deceptive,and they made this affidavit with fraud and deceitful act which is nothing but treacherous made by him with us,we never relinquish our right from the disputed suit property also we never made any kind of affidavit regarding the disputed suit property,we plaintiff's no.2 and 3 generally made signature in english,the signature of our plaintiff's which are found on the partition deed which was made on 21/10/1990 that is correct signature,we are not made signture on the fraud deed of affidavit which was made on 13/03/2006,thus the duplicate signature was made by them of us so the foregery had been committed by the defendant to make fraud document for making such enteryno.895,also their is no signature was made up of any witness on this deed which is also identical,also this documet is not notarised or not a registered one,also three persons not made affidavits on one paper only for that individual affidavits are required,also not a competent authority signature are found on this affidavit,which all shows that this document is prepared with fraud and falseness, also by the entery no.894 we all plaintiff's having the legal shares in the property,thus without the due procedure the other's entery can not be certified,the defendant is serving at Gandhinagar in Sachivalya on big post thus he is having influence over the revenue officers thus with making connivance with them by this said fraud document without any verification they made entery no.895 also certified the same,as per legal provision of Bombay Land Revenue Code,as per Section 135-D of said act they have not issue any notice to us before making this mischevious entery no.895,also any reply of us before Talati cum Mantri or any revenue authority not had been taken,thus the endroement which are made in the endroement column of entery no.895 is

totally manipulated,illegal and fraud,we plaintiff are not having the knowledge about this entry no.895,but when we go to Mamlatdar office for drawing the copy of village form no.7/12 than it's come in our knowledge thus we immediate file the Haq5/Appeal no.64/2011 in deputy collector Jhagadia against this fraud entry no.895 with this we had also filed the application of delay condon for filing this application,but the plaintiff serving in secretariat thus having influence with the authority thus our delay condon application was rejected,also stated in order that for relinquishment of rights writing deed over the disputed property and fraud documents and wrongful entry all will be decided by the competent Court only,against this order we had filed the appeal in Collector Bharuch Appeal/Revision Application No.Haq5/Delay-Appeal no. Vantevad-vashi 1641 to 1647,that application was also rejected on the ground of delay,thus it's clearly shows that this all orders was made with the connivance of defendant only.Thus we are not having any hope to get justice from revenue authority thus we institute this suit along with this application.Thus the wholesome property bearing block no.53 entered in the name of defendant only,and we plaintiff's are also having the legal right and share in the western side of property admesuring 3-10 guntha and if defendant alienated or sale this property than our right is extinguished thus for protection of our right, we filed this suit for protection of our legal and lawful right over this suit property and filed this application for seeking the temporary injunction on said suit property up to the disposal of suit, in support of their averment they submitted the document vide marks 3/1 to 3/8,also they filed the counter affidavit in which also they submitted that whatever story is plot by defendant in WS is totally wrong and manipulated anyhow defendant wants to grab this land,there is no bar of limitation of suit thus there is no need to filed the delay condon application we institute suit within the time limit as per law,there is no bar of principal of estoppel as well as the ingredients of O.7 R.11 is not applied in this case,thus if Court will not interfere or granted injunction than the fraud document which was made by defendant on 13/03/2006 by making the duplicate signature of our's plaintiff he became the whole owner of suit property also the revenue entries are use for fiscal purpose and by that entry no one can having the title,for the title of land he must established the title,also the ingredients of O.39 R1&2 of C.P.C.,1908. favours our case so prayed for granting the temporary injunction in favour of them.

While other side the defendant's averred that whatever averments made by the plaintiff is totally manipulated,illegal and against the law,the defendant's stated vehemently that the plaintiff's has not moved the order against the revenue court in further appeal,thus in between they had filed this suit in this court thus this suit is a prematured suit,the plaintiff has filed this suit after rejection of their application u/s 5 of Limitation Act by revenue Court thus this suit not be maintainable,there is bar of limitation to this suit they have not filed this suit within the three years of time limit as prescribed in law,under the provision of O.7 R.11 of C.P.C.,1908 this suit must be rejected,the plaintiff also plot wrong story thus under provision O.6 R.1 of C.P.C.,1908 the suit must be rejected,once the plaintiff's had relinquished their right than as per the principle's of estoppel and res-judicata the suit must be not maintainable,they are having no title over the suit property thus they are having no right over the suit property and no right to institute this suit,for the entry no.894 and 895 the revenue Court has passed the orders thus plaintiff's wrongly raise the dispute,the revenue Court had made entry as per our averment and by observing the documents,thus the entries in revenue records entry no.894 and 895 are true,the deed which was made in 2006 are correct and if plaintiff's having question against this deed than they must institute this suit within the three years after 2006 but they fails,as per Hindu Succession act they had relinquish their right,the averment which was made by the plaintiff's that the plaintiff no.2 and 3 made signature in english is totally wrong and manipulated,they have never instituted the Criminal case u/s 467,468 and 420 and 406 of I.P.C.,1860 against us for making the forge document,as per registration act for the relinquishment of right it is not required to registered this document,the plea raised by plaintiff first time due to rise in the price of the land now a days,they are having no share of 1/4 in the suit property,also our mother Dayiben demise on 05/07/2009 the name of successor was already entered by entry no.894 though the plaintiff's son had make wrong

avermment against the Mamlatdar Jhagaida and made one entry no.1066 for sucession,plaintiff knows our residence address that we reside at Gandhinagar though they given our address of Rakha Falia Jhagadia,and the receipt of R.P.A.D.taken by the son of plaintiff's no.1,and entered the name of plaintiff's in our property,and they plot the wrong story that our name was entered in the record by entry no.894 but that entry was not established and with the connivance of Mamlatdar and Circle officer they again made the succession entry,and our mother name Dahiben is deducted due to demise of her by the entry no.1015,thus by wrong averment they made this entry,thus we had filed the R.T.S.appeal in deputy Collector,Jhagadia,in that they passed the order that previously the sucession entry was already made and after demise only the name is deducted no need to made again succession entry thus dismissed the entry no.1066,this land in our possession and we are having the legal right over the suit property,once they relinquished their right now they have no legal right over the suit property,after that much of years they raised this question that is also identical, whatever story plot by plaintiff's in plaint is totally wrong and plaintiff's not comes with clean hands and in support of his averment they presented the documets vide marks 21/1 to 21/13,thus prayed for rejection of said suit,along with the said temporary injunction.

7. After perusing all the documents presented by both the parties and after hearing the arguments of both the parties,if first we see the legal requirement of granting the temporay injunction than, As we know that,Under Order XXXIX Rule 1 of the Code of Civil Procedure, injunction can be granted in favour of Plaintiff if it is proved that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree or that the defendant threatens or intends to remove or dispose of his property with a view to defraud his creditors or that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, in which event the Court can grant injunction as what has been set out in the said rule. Under Order XXXIX Rule 2 if it is a suit for restraining the Defendant from committing breach of contract or other injury of any kind, the Court may grant injunction to restrain the defendant from committing the breach of contract or injury complained of or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right. It is therefore clear that for a Plaintiff to get an injunction the Plaintiff must make out a case that there is an obligation existing in its favour whether expressly or by implication. Obligation has been defined to mean a duty enforceable under law. Therefore the Plaintiff must first make out a case when it seeks injunction that there is obligation existing in its favour. If that be, the case, then only can it apply for temporary injunction which would be regulated in terms of Order XXXIX of the Code of Civil Procedure.

After perusing the documents which are presented by rival parties the main triable issues at this satge is that whether the plaintiff's relinquish their right from the suit property,whether the entry no.895 is correct one and whether the plaintiff's having the right as well as the share over the disputed suit property it is true that at this satge without taking the evidence for this all issues the questions will be not answered,but for establishment of the ingredients Order XXXIX R.1&2 of the Code of Civil Procedure,1908 they must be prima facielly investigated symmetrically,also the question of law which is arised by defendant at this satge regarding the limitation and bar of principle's of res-judicata and estoppel is prima facielly appreciated,now first up all we see that it is admitted position that the property is distributed between the rival parties by the partition deed on 21/10/1990 and as per consent of all parties which is presented vide mark 3/3,by plain reading of deed it is crystal clear that, the western side of land bearing block 53 located in the precinct of village Vanthewad admeasuring 3-10 guntha land comes in the share of rival parties parents and that land is a disputed suit land,that lands come in the share of rival parties mother and father means plaintiff's also having the equal share and equal right over the suit property prima facielly,after demise of their father the sucession entry was made with entry no.894 on date 26/06/2006 and on same date the plaintiff's had relinquished their right from the disputed suit property such entry was made on same date 22/06/2006 by entry

no.895,the plea taken by the defendant that by the deed which was on affidavit made by rival parties on 13/03/2006 the plaintiff's had relinquish their right but denial for same by plaintiff's that they have never relinquish their right from the suit property and which is presented by the plaintiff's by 3/4,plaintiff's averred that no agreement deed on affidavit had made by them and that deed is also not registered one which is required by the law,also no witnesses signature is made on the said agreement deed,also our duplicate signature was made on this agreement deed,also it is not notarised also no competent authority signature was made on that,now this document is in question and by this document only the entry no.895 had been made,now prima facie if we see the law on this point and if we read the Section 17 of the Registration Act,1908 Documents of which registration is compulsory (1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:—" only relevant provision is mentioned that is sub section 1 (b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;

In the case of **Santosh w/o. Motiram Solanke & Ors. v.Arjun s/o. Asaram Solanke & Ors.2013 0 Supreme(Mah) 1209** in which Hon'ble High Court of Judicature at Bombay (Aurangabad Bench) opined that that-Registration Act, 1908—Section 17—Mandatory registration of document—Held, agreement of relinquishment of share has to be registered compulsorily after payment of proper stamp duty.

At this stage, I have considered the submission made by the defendant advocate.I have also perused the material on record and in particular, document dated 13th March, 2006,which is presented on the record vide mark 3/4. By that document,it's shows that plaintiff's had relinquished their share in the western side of land bearing block 53 located in the precinct of village Vanthewad admeasuring 3-10 guntha.. In my view, by that document itself, plaintiff's had relinquished their share in the western side of land bearing block 53 located in the precinct of village Vanthewad admeasuring 3-10 guntha. If that be so, as per Section 17 of the Act, said document is required to be compulsorily registered and proper stamp duty is required to be paid thereon. But defendant fails to do so thus prima facie the plea of plaintiff is stands, and the evidentiary value of this document is negated at this stage also this document is in triable issue and as per contention of plaintiff's they have not made the signature on the document whether this document is forge one or not at this stage without taking the evidence it is not decided,also the veracity of this document is also not decided at this stage,also this document is not registered one thus also their is no value in the eyes of law,it must be proved at the stage of trial.Thus strongly attracted prima facie the case of plaintiff's.

Also in the case of **V. N. Sarin v. Ajit Kumar Poplai and another 1966 0 AIR(SC) 432** Hon'ble Apex Court held that- "having regard to the basic character of joint family property, it cannot be denied that each coparcener has an antecedent title to the said property, though its extent is not determined until partition takes place. That being so, partition really means that whereas initially all the coparceners have subsisting title to the totality of the property of the family jointly, that joint title is by partition transformed into separate titles of the individual coparcener in respect of several items of properties allotted them respectively. If that be the true nature of partition, it would not easy to uphold the broad contention, that partition of an undivided Hindu Family property must necessarily mean transfer of the property to the individual coparceners.

Hon'ble Apex Court observed in same judgement in para 10 as under:-

"..... Prima facie, it is not easy to accept this contention. Community of interest and unity of possession are the essential attributes of coparcenary property; and so, the true effect of partition is that each coparcener gets a specific property in lieu of his undivided right in respect of the totality of the property of the family. In other words, what happens at a partition is that in lieu of the property

allotted to individual coparceners they, in substance, renounce their right in respect of the other properties; they get exclusive title to the properties allotted to them and as a consequence, they renounce their undefined right in respect of the rest of the property. The process of partition, therefore, involves the transfer of joint enjoyment of the properties by all the coparceners into an enjoyment in severality by them of the respective properties allotted to their shares. Having regard to this basic character of joint Hindu family property, it cannot be denied that each coparcener has an antecedent title to the said property, though its extent is not determined until partition takes place. That being so, partition really means that whereas initially all the coparceners have subsisting title to the totality of the property of the family jointly, that joint title is by partition transformed into separate titles of the individual coparceners in respect of several items of properties allotted to them respectively. If that be the true nature of partition, it would not be easy to uphold the broad contention raised by Mr. Purshottam that Partition of an undivided Hindu family property must necessarily mean transfer of the property to the individual coparceners. As was observed by the Privy Council in **Girja Sal v. Sadashiv Dhunadiraj and Others**.⁴³ **Ind App 151 at p. 161** "Partition does not give him (a coparcener) a title or create a title in him; it only enables him to obtain what is his own in a definite and specific form for purposes of disposition independent of the wishes of his former cosharers".

Now, if we connote the facts of this case, then when the father of rival parties are alive at that time the partition of the properties are made, and the both the parties having consent regarding the partition of the properties. They are having only dispute regarding the property which comes in the share of their parents which is the western side of land bearing block 53 located in the precinct of village Vanthewad admeasuring 3-10 guntha, after demise of their father the entry was made in record of right as a straight line successor of by the entry no.894 and on the same date the plaintiff's had relinquish their right such entry had been made by entry no.895 in record of right, this disputed entry was made by the revenue authorities by the document presented vide mark 3/4 which is in question, the defendant cannot deny the coparcener who are plaintiff's not has an antecedent title to the said disputed property, and the extent of disputed property is not determined at this stage without taking the evidence, and this all are the question of evidence and question of trial. It is true that partition of an undivided Hindu family property must not necessarily mean transfer of the property to the individual coparceners, but for the relinquishment of right when it is reduced in writing in deed form than it must be registered as per the Registration Act, 1908 and defendant fails to do in this case. Ld. advocate of defendant has presented the authority of Hon'ble Gujarat High Court that is **Shashikant Natvarlal Patel v. Arvindbhai B Gohil** 2010(1) G.L.H.302 and in support of his submission he submitted that Hon'ble Court has held in this decision that once the family partition matter has been settled, it should not be allowed to be re-opened by the frivolous or untenable grounds. Also the registration of the document is not required.

I most humbly submitted that with due care and with great respect I have read this presented authorities, the defendant Ld. advocate had erred to understand the ratio decidendi held by Hon'ble Court. Hon'ble Court laid down the ratio in said judgement that the family partition matter has been settled, it should not be allowed to be re-opened by the frivolous or untenable grounds, further held that The family arrangement must be bonafide and effected to resolve family disputes-It must be a fair and equitable division or allotment of properties between the various members of the families-It must be done voluntarily-It is to be made amicably it should not be induced by fraud, coercion or undue influence-it may be made orally without any registration unless the creation of the family arrangement is reduced to writing-It would not be registrable when it is memorandum or a piece of evidence of the family arrangement already made.

Also in the case of **Kale v. Dy. Director of Consolidation** AIR 1976 SC 807, Hon'ble Apex Court has held as under :

- (1) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family.
- (2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue

influence;

(3) The family arrangements may be even oral in which case no registration is necessary;

(4) It is well settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the Court for making necessary mutation. In such a case, the memorandum itself does not create or extinguish any rights in immoveable properties, and therefore, does not fall within the mischief of Sec. 17(2) (sic.) (Sec. 17(1)(b)) of the Registration Act, and is therefore, not compulsorily registrable;

(5) The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has not title, but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owners, then the antecedent title must be assumed and the family arrangement will be upheld and the Court will find no difficulty in giving assent to the same;

(6) Even if bona fide disputes, present or possible, which may not involve legal claims are settled by a bona fide family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement.

And, Hon'ble Calcutta High Court in the case of **Premal Seal & Ors. v. Smt. Basanti Seal & Ors., AIR 2004 Cal. 246**, has gone to that extent that the Courts have taken a very liberal and broad view of the validity of the family settlement and have always tried to uphold it and maintain it. The central idea in the approach made by the Courts is that if by consent of parties a matter has been settled, it should not be allowed to be reopened by the parties to the agreement on frivolous or untenable grounds. At the same time, the family arrangement must be bona fide and effected to resolve family disputes. It must be a fair and equitable division or allotment of properties between the various members of the family. It must be done voluntarily. It is to be made amicably. It should not be induced by fraud, coercion or undue influence. It may be made orally without any registration unless the creation of the family arrangement is reduced to writing. It would not be registrable when it is a memorandum or piece of evidence of the family arrangement already made.

Now by this above authoritative pronouncement by Hon'ble Apex Court and High Court's it is crystal clear that the family arrangement must be bona fide, It must be a fair and equitable division or allotment of properties between the various members of the family, It must be done voluntarily. It is to be made amicably, It should not be induced by fraud, coercion or undue influence.

If we connote the facts of this case with above ratio decidendi than the main plea taken by the plaintiff's is that they have never relinquish their right from the disputed properties, also for making the entry no.895 the defendant had drawn fraud document, they are not made signature on that document, they are never given any consent for this document, means the partition of this disputed properties had been not carried out as per the wish of plaintiff's, also they had not renounce their right from this disputed property, and the document is not in the form of memorandum it is reduce in writing, and deed is for the relinquishment of right than it is required to be registered as per the Section 17 of Registration Act, 1908. Also at this stage without taking the evidence the veracity of documents is not tested, it is a question of trial and question of evidence but prima facie strongly favours the case of plaintiff's.

The defendant's ld. advocate vehemently argued that there is a bar of limitation to the suit, within the three years they have not filed this suit as per the averment of defendant that the relinquishment deed carried out on 13/03/2006 means up to 13/03/2009 they have to file the suit but they fail to do so, so their suit should not be maintainable, also the application of delay condon are rejected by the revenue courts of Deputy Collector and Collector respectively, thus this suit must be rejected.

Now for this point it is required to see the provision of the Limitation Act, 1963. If we read the

Article 110. By a person excluded from a joint family property to enforce a right to share therein. Twelve years When the exclusion becomes known to the plaintiff. Under Schedule-I, Part-IX Suits Relating To Miscellaneous matters.

The question relating to proof of exclusion was considered by the Hon'ble Madras High Court in the case of **Marudanayagam v. Sola Pillai reported in AIR 1965 Madras 200**, and the law laid down is as under in para 11 that is:

(11) It is settled law that lapse of time is never in itself a bar to partition and the statute of limitation will operate from the time the plaintiff is excluded from his share and such exclusion became known to him. There can be no exclusion without a denial of the coparcener's right to a share and such denial may be express or implied. While partition is demanded and refused or if the coparcener is expelled from the joint family, that would be clear exclusion. Once the plaintiff established his claim to a share in the joint family properties by showing that the family was joint and that he was a coparcener entitled to a share in its properties, the onus is on the defendants to establish exclusion to plaintiff's knowledge for over 12 years prior to suit.

Also same view has been taken by Hon'ble Bombay, Calcutta and Madras High Court's in the cases of **Jivanbhat v. Anibhat ILR 22 Bom. 259; Ramnath Chatterjee v. Kusum Kamini Devi 4 Cal LJ 56 and the decision of a Division Bench of Madras High Court in Machiraju v. Simhachala 9 Mad LJ 129.**"

Also in the case of **Sri Veerayya Mahantayya Koppad and Others v. Smt. Geetha W/o Gangadhar Hiremath and Others 2008 1 AIR(Kar)(R) 551** Hon'ble Karnataka High Court laid down the law on this point that-Article 110 - Applicability - Exclusion of a co-sharer of joint family properties - When there is no foundation laid to prove factum of exclusion, limitation will not start unless it is shown that a person was excluded to enforce his rights to share such properties. And Period of limitation runs only from the time when exclusion becomes known to such co-sharer.

If we connote the facts of this case, then defendant has not clearly shows that from when the plaintiff who are co-sharer of the disputed property their right is excluded, once we accepted the plea of the plaintiff's that the right of plaintiff's from the joint family disputed properties by the deed in which plaintiff's relinquish their right which was drawn on the date 13/03/2006 than also the plaintiff's filed the suit within the prescribed limitation period as per provision of Article 110 of the Limitation Act, 1963. Here in this case the plaintiff's are raised the plea that they are not aware about such deed as well as they not made this deed thus the ingredients of Article 110 is attracted and applied in the given facts of the case. Thus the plea of defendant is not stand that their is a bar of limitation. and Prima facie strongly favours the case of plaintiff's by the presented documents. The question regarding the genuineness of document which is in dispute presented vide mark 3/4 is not determined at this stage without taking the evidence and it is a triable issue and it is a question of evidence and question of trial. Also at this stage Court must insist on documentary proof in support of the pleadings. While dealing with the Civil suits, at the threshold, the Court must carefully and critically examine pleadings and documents, for which defendant's fails while other side plaintiff's succeed. Also the revenue entries found in record of right are used for fiscal purpose by which the title is not decided. The other plea of defendant is not applied in the given facts and circumstances of case thus no need to discuss.

Hon'ble Apex Court in the case of **Mandali Ranganna & Ors., v. T. Ramachandra & Ors., AIR 2008 SC 2291**, the conduct of the parties are required to be considered while deciding the application for grant of injunction.

In the Case of **Kishorsinh Ratansinh Jadeja Vs. Maruti Corp. [2009] 0 AIR(SC) 2882**, Hon'ble Supreme Court held that- It is well established, that while passing an interim order of injunction under Order XXXIX Rules 1 and 2 CPC, the Court is required to consider three basic principles, namely,

- (i) prima facie case;
- (ii) balance of convenience and inconvenience; and
- (iii) irreparable loss and injury.

Here in this case by perusing the pleading and documents presented by rival parties it seems that the prima facie the deed which was drawn without the wish of other co-sharer who is a plaintiff's of the suit, and the defendant had not been denied that the plaintiff's are not having the antecedent title over the disputed suit property, also the extent of joint disputed family property is yet not decided, also without taking the evidence the genuineness of document is not decided at this stage, the document in which as per averment of defendant the plaintiff's renounce their right is not registered one, also the plaintiff's has averred that they not made signature on this disputed deed which is also triable issue, thus the plaintiff at this stage show prima facie case in his favour. By the material presented on the face of record the conduct of defendant must be considered at this stage.

In case of **Vellakutty vs. Karthyavani AIR 1968 Ker 179** Hon'ble Kerala High Court held that "it has been laid down that a prima facie case implies the probability of the plaintiff obtaining a relief on the materials placed before the Court at that stage. Every piece of evidence produced by either party has to be taken into consideration in deciding the existence of a prima facie case to justify issuance of a temporary injunction. Hon'ble Kerala High Court has further observed that the granting of injunction being a very serious matter in that it restrains the opposite parties from the exercise of their rights the Court does not issue the injunction unless it is thoroughly satisfied that there is a prima facie case in favour of the applicant.

Thus every piece of evidence produced by both party has to be taken into consideration in deciding the existence of a prima facie case to justify issuance of a temporary injunction, in this case by perusing the documents and pleading presented by both the parties it is manifest that the said disputed property is ancestral property of rival parties and plaintiff's is also co-sharer of this disputed suit property, prima facie it seems that by the wishes of plaintiff's they had not renounce their right, they are also having the antecedent title over the disputed suit property, also without taking the evidence the issues of this suit is not decided, but at this stage it is required to be satisfied the all three ingredients in favour of either party, here in this case at this stage the plaintiff's succeed in my view. As we know that the existence of the prima facie right and infringement of the enjoyment of his property or the right is a condition for the grant of temporary injunction, in this case there is existence of the prima facie right in favours of plaintiff's and not seems any kind of infringement of the enjoyment of disputed property for defendant thus temporary injunction must be granted in favour of him.

The phrase 'prima facie' is used to designate legal evidence that is enough to establish a fact unless refuted. The prima facie ought to be considered in relation to the available relevant material on record to examine the probability of plaintiff's ultimate success in the suit. The weakness of the plaintiff's case also necessarily falls for consideration in the ambit of prima facie case. **[AIR 1991 NOC 50 (MP)]**.

In this case also the plaintiff's succeed to show his prima facie case from the material which is available on record.

In **Mathura Rai v. Marachoo Kuer, AIR 1946 Pat 176** it is stated that in order to obtain an interlocutory injunction, it is not enough for the plaintiff to show that he has a prima facie case. He must further show the following ingredients:

- (1) In the event of withholding the relief of temporary injunction he will suffer an irreparable injury;

(2) in the event of his success in the suit in establishing his alleged legal right, the encroachment whereof is complained against, he will not have the proper remedy in being awarded adequate damages.

(3) in taking into consideration the comparative mischief or inconveniences to the parties, the balance of convenience is in his favour, or in other words, that his inconvenience in the event of withholding the relief of temporary injunction will in all events exceed that of the defendant in case he is restrained. This condition can, under circumstances, be so adjusted as not to deprive either party of the benefits he is entitled to in the event it turns out that the party in whose favour the order is made shall be in the wrong, by imposition of terms on one party or the other as condition of either granting or withholding the injunction;

(4) lastly, the plaintiff must show a clear necessity for affording immediate protection to his alleged right or interest which would otherwise be seriously injured or impaired.

Here in this case the land bearing block no.53 H.2-53 Aare out of which western side of land admeasuring Acre.3-10 guntha land comes in the legal share of rival parties father and mother, after the family partition which was made on 21/10/1990, and after demise of their father and mother the plaintiff's also became the co-sharer of the said disputed property, the document by which as per averment of the defendant that the plaintiff's renounce their rights is also in question and genuineness of that document is also not tested without taking the evidence, whether bonafidely plaintiff's had renounce their right or farud had been committed by the defendant is also not decided at this stage without taking the evidence, thus from the rival pleading and the material of the records and settled law if the defendant's are not restrain than plaintiff's rights are breached, in my view prima facie it seems that land bearing block no.53 H.2-53 Aare out of which western side of land admeasuring Acre.3-10 guntha land is joint family property thus in the event of withholding the relief of temporary injunction plaintiff will suffer an irreparable injury that cannot be adequately compensated by way of damages, also at this stage from the records taking into consideration the comparative mischief or inconveniences, the balance of convenience is in favour of plaintiff or in other words, that his inconvenience in the event of withholding the relief of temporary injunction will in all events exceed that of the defendant in case he is restrained. Here in this case the plaintiff shows a clear necessity for affording immediate protection to his alleged right or interest which would otherwise be seriously injured or impaired. So in my view plaintiff case is satisfied all the requirements and needs of O.39 R.1 and 2 of Civil Procedure Code, 1908 thus he succeed to seek temporary injunction in his favours. So in my view at this stage the title or ownership will be not decided, and after perusing all the material on the records and presented documents and on weighing competing possibilities or probabilities, in my view it's seems likelihood of injury to plaintiff at this stage, thus temporary injunction is granted in favours of plaintiff.

8. So, looking to all this facts and circumstances, the plaintiff favours to his prima facie case and balance of convenience and irreparable injury, Hence, I decided point no.1 to 3 in the affirmative and for issue no.4 I pass the following order.

:-ORDER:-

-The plaintiff seeking for a temporary injunction application vide Exh.5 for land bearing block no.53 H.2-53 are out of which western side of land admeasuring Acre.3-10 guntha land is hereby allowed.

-The order of cost of this application is decided as per the final order of this suit.

-Signed and pronounced in the open court on 12th day of September,2016 at Jhagadia.

Date:-12/09/2016
Jhagadia

Gadhvi Rajvratcharan Balwantdan
Principal Civil Judge,Jhagadia
(UIC Code-GJ01067)

My Self