

Order Below Exhibit 5
In
Regular Civil Suit No. 45 of 2023

[1] Present application has been preferred by the plaintiffs under Order 39 Rule-1,2 read with Section-151 of Civil Procedure Code and prayed for temporary injunction to restrain the defendants, from alienating the suit property as describe in para-2 of the plaint till final disposal of the suit.

[2] The notice of this application was issued to the defendant and it was duly served upon them. The defendant no. 1 to 5 have appeared before this Court through their Advocate and submitted reply vide Exh-15. Whereas co-defendant no.1,2,3 have appeared through Advocate and submitted their reply vide Exh-19. The plaintiff has produced list of documents vide Exh.3.

[3] Ld. Advocate for the plaintiff has submitted that the plaintiff has filed present suit for partition, cancellation of sale deed, declaration and perpetual injunction. It is further submitted that the suit property is ancestral property and it was in name of Lt.Maniben Magalal Ganchi who was grandmother of plaintiff and defendant no.1/1,1/2 and co-defendants. Thus plaintiff has also right and interest in suit property but defendant no.1/1 and 1/2 have entered only their name as legal heirs of Maniben vide mutation entry no.82 on 29/9/2005 by forged pedigree. The city survey record at Mark-4/11 to 4/19 clearly show this fact. It is further submitted that the suit property is of joint ownership of plaintiffs and defendant no.1/2, 1/3 as well co-defendants and belong to them jointly, though defendant no.1/2 and 1/3 have executed sale deed in favour of defendant no.2 and 3 without consent knowledge of other joint owners. It is further

submitted defendants are trying to alienate the suit property to third party and therefore, the present application is filed by the plaintiffs. It is further submitted that the plaintiff is having prima facie case, balance of convenience is also in her favor and she will suffer irreparable loss if temporary injunction would not be granted in their favor. Therefore, it is required to grant the present application.

[4] Ld. Advocate for the defendant no.1/1, 1/2 and 2 to 5 has submitted that the plaintiff has malafidely filed present suit. It is further submitted that the suit property was entered in name of defendant no.1/1 and 1/2 on the basis of affidavit done by their mother which is at Mark-4/21. Since then defendants are owner and occupier of the suit property. It is further submitted that defendant no.1/1 and 1/2 have sold suit property to the defendant no.2 and 3 vide sale deed at mark-4/3 in the year 2022. copy It is further submitted that the plaintiffs are creating pleading based on false facts. It is further submitted that the plaintiff has not challenged mutation entry no.82 of 2005 till filing of suit and challenging entry of the year 2005 in the year 2023. So, it is submitted that the plaintiff is not having prima facie case, balance of convenience is also not in her favour and she will not suffer any irreparable loss in absence of temporary injunction. Therefore, it is requested to reject this present application.

[5] Heard Ld. Advocate for the parties, perused the present application, reply of defendant side along with record of the case. It is well settled principle of law that at the time of adjudicating an application for temporary injunction, the court must be satisfied about the three basic principles for granting or refusing temporary injunction i.e.

- Whether the plaintiff has a prima facie case in his favour?
- Whether the plaintiff would suffer irreparable injury if his prayer for temporary injunction is not granted?

- Whether the balance of convenience is in favor of the plaintiff?

Further, an injunction being an equitable remedy, it 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 factors, the court is also required to see the conduct of party seeking equitable relief of temporary injunction. In addition to this 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.

[6] Looking to the record of the case, It transpires that plaintiff is claiming she is real sister of defendant no.1/1 1/2 and co-defendants are children of her Lt. Sister Gitaben. It further transpires that plaintiff is claiming her right over the suit property as legal heir of her grandmother Lt.Maniben Maganlal Ganchi. Now, it is the contention of plaintiff that the suit property is ancestral property as it was in name of Lt.Maniben Maganlal Ganchi her grandmother. The plaintiff side has produced documents at Mark-4/1 to 4/28 in support. By perusing mark-4/4 the copy of property card of the disputed suit property, it appears that name of Ganchi Maniben Maganlal was registered in it as occupier and after her demise name of Jiviben Dahyabhai, Ratilal Dahyabhai (Def-1/1), Ranatkumar Dahyabhai , Lalabhai Dahyabhai were entered in property card of disputed property vide entry no.82 on 29/09/2005. Now, it is the contention of the plaintiffs that this entry of inheritance was wrongly entered by the defendants by suppressing information of all legal heirs of Lt.Maniben Maganlal Ganchi. Further, it is the submission of plaintiff side that suit property i.e. Moje Deesa, City Survey no.2774, 74.9729 Sq.Mtr is ancestral property though defendant no.1/1 and 1/2 have suppressed name of plaintiff as legal heir and not entered her name in property card vide

mutation entry no.82. It further transpires from Mark-4/3 that disputed property sold by the defendant no.1/1 and 1/2 to the defendant no.2 and 3 vide registered sale deed no. 8477 on 07/12/2022. Now, the main dispute raised by the plaintiffs is that defendant no.1/1 and 1/2 could not sell the suit property alone as it was joint property of plaintiff and defendant no.1/1 and 1/2 and co-defendants, though defendant no.1/1 and 1/2 have illegally sold to defendant no.2 and 3. So, far as this contention is concerns it is settled law that co-parcener can sell his or her share from the joint immovable property. Further, if plaintiff is claiming her joint right in the suit property with pleading of ancestral property, then it is question of evidence. Further, as per plaintiff pleading as well mark-4/4 the alleged disputed mutation entry no.82 was certified in the year 2005. Moreover, present suit is filed by the plaintiffs in 2023. So, it transpires that plaintiffs have challenged mutation entry in favour of defendant no.1/1 and ½ after almost 18 years. It is very notable that as per plaintiffs pleadings the affidavit of pedigree was done by Jiviben i.e. mother of plaintiff. Further, looking to the Mark-4/4 it transpires that entry no.15347 of sale deed in favour of defendant no.1/1 and 1/2 was certified on 8/12/2022. Moreover, plaintiffs have not contended that when they came to know about disputed sale deed. Further, It is the submission of defendant no.2 and 3 that their name are on record of right of suit property, which appears from revenue record at Mark-4/4. Now, the main dispute of plaintiffs is regarding defendant no.1/1 and 1/2 had not right to sell suit property alone, which is required to establish by the plaintiffs during trial. Further, plaintiffs are not having possession of suit property. So, looking all these facts and contention of both sides and the documents relied by them, this Court is of the opinion that plaintiff cannot be said that she has having prima facie case in her favour for interim injunction. It also transpires that name of defendant no.2 and 3 is on record of right of the suit property. Moreover, the dispute raised by plaintiff is question of trial. Further, plaintiff has challenged mutation entry of the year 2005 in the year 2023. Looking to all

these aspect it can be said that plaintiffs has not established prima facie case in her favour. Therefore, it can be said that the plaintiff has failed to establish prima facie case for interim injunction. Further, considering principle balance of convenience and irreparable loss, it appears that defendant no.1 nad 3 are having registered sale deed and name of defendants are registered on record of the suit property. So, it appears that balance of convenience is also not in favour of plaintiff and plaintiff will not suffer any irreparable loss which cannot be compensated in terms of money in absence of interim injunction.

[7] So, in view of the above discussions, it transpires the plaintiff cannot be said to has established prima facie case for temporary injunction against the defendants, since the plaintiff failed. It is well settled law that no temporary injunction would be granted in favour of person who fails to show three aspects for interim injunction. Furthermore, it has been held by the Hon'ble Apex court in para-16 of its pronouncement in "**AMBALAL SARABHAI ENTERPRISE LIMITED – APPELLANT(S) VERSUS KS INFRASPACE LLP LIMITED AND ANOTHER**" reported in **2020 0 Supreme(SC) 4** that

“16. The cardinal principles for grant of temporary injunction were considered in Dalpat Kumar vs. Prahlad Singh, (1992) 1 SCC 719, observing as follows :

"5...Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non- interference by the Court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no

physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that "the balance of convenience" must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject matter should be maintained in status quo, an injunction would be issued. Thus the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit. ”

So, in view of aforesaid discussion and reasons and observation of Hon'ble Apex Court, the application for temporary injunction of the plaintiff side is liable to be rejected. Hence, this Court passes following order in the interest of justice.

:-ORDER:-

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

Signed and pronounced today on 15th day of March, 2024 in the open Court.

Date: 15/03/2024
Place : Deesa.

(Harshadbhai Shanabhai Chavda)
2nd Add. Civil Judge, Deesa.
Judge Code-GJ01534