

**Order below Exh.5**

1.Plaintiffs have preferred present suit for declaration, partition, cancellation of registered sale-deed dated 20.6.2011 and perpetual injunction, wherein the case of the plaintiffs in brief is that, plaintiffs ancestor-Mali Achalaji Talajii possessed land bearing survey no.14 and 11 situated at village : Shamserpura of Taluka : Deesa. On demise of Mali Achalaji Talaji his sons, Mali Umedji Achalaji etc, names were entered in the revenue record of the said survey numbers.

Thereafter on partition between the brothers, Mali Umedji Achalaji received (i) 21 acres and 11 gunthas of land of survey no.14,(ii) 15 acres and 16 gunthas land of survey no.11/1, and (iii) 4 acres and 09 gunthas of land of survey no.11/2.

On demise of Mali Umedji Achalaji his legal heirs names were entered in the revenue record of the said lands.

Thereafter partitions took between legal heirs of Mali Umedji Achalaji. Plaintiffs and defendant no.10 to 12 are daughters of Ghanshyambhai-Son of Mali Umedji Achalaji, whereas defendant no.13 is widow of Ghanshyambhai.

On partition plaintiffs and defendant no.10 to 13 were given share only in land belonging to survey no.14, and were not given share in land belonging to survey no.11.

As per entry no.411 land bearing survey no.14 was not of full ownership of Mali Umedji Achalaji but was taken on lease for 100 years by Mali Umedji Achalaji and on partition plaintiffs were not given any land of survey no.11 which was of full ownership, thus partition is illegal and fraudulent. Further, plaintiffs though were minor, were illegally shown as major and thereby defendant no.13 fraudulently executed sale-deed of the land belonging to plaintiffs & defendant no. 10 to 12 to defendant no.14 and hence the present suit and injunction application.

2. Defendants though served with the summons/notice of the present case, only defendant no.5, 10 to 13 have appeared through their Advocates, whereas others have not appeared.

Defendant no.5, 10 to 13 though having appeared through their Ld. Advocates have not filed their written statement.

3. Heard Ld. Advocate for the plaintiffs. Read the

plaint, injunction application and documents produced.

4. Now, as per the case of the plaintiff the land bearing survey no.14 is on lease of 100 years and entry no.367 shows that survey no.14 was taken on lease for 99 years from Hinduji Khumaji by Mali Umedji Achalaji hence prima-facie it can be said that as plaintiffs do not have ownership rights in the said land and hence prima facie plaintiffs fail to make out their ownership right in the said land and hence prima-facie fail to show their right to claim partition of the said land and also to claim cancellation of sale-deed dated in favour of defendant no.14

Now, so far as land bearing survey no.11 is concerned, it transpires that vide entry no.409 Ghanshyam etc. have waived their rights in land bearing survey no.11 as they have received rights in land bearing survey no.14. The said entry is of 23.4.1980. From said entry no.409 it transpires that the land bearing survey no. 11 was mutated in the names of mali geenaji Achalaji, Samaji Achalaji, Chamnaji Achalaji, Chunibai Umedji. Now, from the plaint it does not transpires that these persons or their legal heirs are parties to the present suit,

hence plaintiffs fail to make out their prima-facie case.

5. As per the above discussion plaintiffs fail prima-facie to make out their ownership rights in land bearing survey no.14, and plaintiffs fail to show that persons in whose favour the land bearing survey no.11 was mutated vide entry no.409 are parties to the present suit and no reason for not joining them as party to present suit is advanced and hence balance of convenience is not in favour of the plaintiffs.

Thus, as plaintiffs do not have prima-facie case in their favour or balance of convenience in their favour, their injunction application requires to be rejected and hence the following order.

**ORDER**

Plaintiffs injunction application exh.5 is hereby rejected.

No order as to costs at this stage.

Pronounced in open court on 12th December 2017.

Date : 12/01/2017

Sunil Padmakar Rahatkar

Principal Senior Civil Judge, Dessa

