

Order below Exh.5 Interim Injunction Application

Factual matrix of the Application:-

1. Brief facts of present application are; revenue Survey No.97 and 100 of village Deodar, Dist.B.K. which were of Acre-20.00 guntah + Acre 21.13 guntha. Its total area was Acre 41.13 guntha. Out of that , Acre 12.00 guntha land was given to Nai Revabhai Virabhai by Jagirdar Himmatsinh and remaining Acre 29-13 guntha land was given in the possession and ownership of Kala Rama. **For the said Acre 12 land, one deed was executed on 21.6.1995.** Nai Ravabhai Virabhai sold 12 Acre land out of S.No.100 to late Ambaram Valabhai, predecessor of defts.No.1 to 4. From then, Nai Ravabhai handed over even possession to them. **Accordingly, Mutation Entry No.415 of dtd.15.5.1967 was made and it was certified on 20.2.1968.** Hence, Nai Revabhai Virabhai ceased to be a farmer and late Ambrambhai was having right for the said 12 guntha land only. Therefore, widow of Revabhai Virabhai did not have any right in the suit property. But by mistake, names of widow of Revabhai Virabhai and his daughter were running in the record and to delete their name, Mutation Entry No.1000 was made on 19.12.1989. It was certified on 28.5.1990. Kalabhai Ramabhai expired on 20.11.2004 and his succession entry was made vide No.1798 on 14.7.2006 and names of his heirs were entered in the record. Rajiben d/o.Revabhai Virabhai challenged Mutation Entry No.1000, but it was rejected by the Dy.Collector, Deodar. Accordingly, other revenue proceedings are also rejected. After the death of Rajiben, her heirs filed R.C.S.No.1/2015. It was rejected on 1.1.2022 and hence, Appeal is filed against the said order which is pending. Heirs of Rajiben does not have any right for the sold land of revenue S.No.100. Deft.Nos.1 to 4 are trying to sale the suit property which is Hec.1 Are.14 Sq.mtrs.40.

1.1 It is further submitted that though plaintiffs have succeeded in the case, but deft.Nos.1 to 4 are trying to sale the suit land. Plaintiffs' right may be prejudiced and hence, cause of action is arose to file the present suit. Plaintiffs have asked to declare that defts. do not have any right in the suit property and to held that the deft.Nos.1 to 4 do not have right to sale the suit property and they be restrained from transferring it further. Reliefs of declaration and injunction are also asked. **Whereas by present interim injunction application, reliefs of interim injunction that defts. be ordered to not to make any kind of transaction in respect of the suit property and do not create any kind of hurdle in the possession and use of the suit property are asked.**

Reply by the Defendants:-

2. At Exh.21, defts. have submitted the written reply for the said application and suit. After denying the allegations, they have further submitted that plaintiffs have never raised any kind of objection during the last 60 years. It is clear from the plaint itself that plaintiffs were well aware regarding all the facts. But inspite of that, they never raised objection because they were knowing that they are not *bonafide*. Present suit is barred by rule of *Estoppel and res judicata*. Old Block No.100p Acre 12-00 guntha land of Ta.Deodar was of Oad Ambarabhai Balabhai who was ancestor of deft.Nos.1 to 4. He had purchased the land on 20.4.1961. Plaintiffs as well as their ancestor Kala Rama were very well aware about the transaction. Since then, its possession was handed over to the defts. Plaintiffs have intentionally not produced the abstract of 7 & 12. False maps and measurements are shown and submitted by the plaintiffs. Old Block No.100p2 which is given new Block No.270p Hec.R.A. 4-28-04 sq.mtrs. is made N.A. and its order is of dtd.12.9.2022. Plan and maps are also allowed. Out of the plots, plot No.42 to 87, 88 to 101, 174 to 219 and 18 shop plots are sold. Plaintiffs have never been in the possession as they are claiming. After making such submissions, they have requested to reject the application.

Documentary Evidences produced by Plaintiffs:-

3. With the present suit, at Exh.4, plaintiffs have produced 35 documentary evidences. They are;

- Mark 4/1 is copy of abstract of 8-A of block No.100/p/2(S.No.270) of Deodar (for Hec.4-Are.85-Sq.mtrs.63). Names of Oad Prahlad Ambaram, Oad Jayantiram Ambaram, Oad Natubhai Ambaram, Oad Gafurbhai Ambaram are shown in the document.
- Mark 4/2 is copy of abstract of 7 of block No.100/p/2 (S.No.270) of Deodar (for Hec.5-Are.92-Sq.mtrs.75). Names of Oad Prahlad Ambaram, Oad Jayantiram Ambaram, Oad Natubhai Ambaram, Oad Gafurbhai Ambaram are shown in the document.
- Mark 4/3 is copy of abstract of 12 of block No.100/p/2 (S.No.270). Names of Oad Prahlad Ambaram, Oad Jayantiram Ambaram, Oad Natubhai Ambaram, Oad Gafurbhai Ambaram are shown in the document.
- Mark 4/4 is copy of abstract of 8-A of block No.100/p/2 (S.No.270) of Deodar (for Hec.5-Are.92-Sq.mtrs.75). Names of Oad Prahlad Ambaram, Oad Jayantiram Ambaram, Oad Natubhai Ambaram, Oad Gafurbhai Ambaram are shown in the document.

- Mark 4/5 is copy of Mutation Entry No.53 of dtd.24.6.2016.
- Mark 4/6 is copy of Mutation Entry No.62 of dtd.28.5.1990.
- Mark 4/7 is copy of Mutation Entry No.62,etc. of dtd.7.10.1989.
- Mark 4/8 is copy of Mutation Entry No.415 of dtd. 7.10.1989.
- Mark 4/9 is copy of Mutation Entry No.942 of dtd.10.5.1989.
- Mark 4/10 is copy of Mutation Entry No.1000 of dtd.19.12.1989.
- Mark 4/11 is copy of Mutation Entry No.1432 of dtd.2.6.1999.
- Mark 4/12 is copy of Mutation Entry No.1671 of dtd.16.5.2004.
- Mark 4/13 is copy of Mutation Entry No.1776 of dtd.25.5.2004.
- Mark 4/14 is copy of Mutation Entry No.1798 of dtd.14.7.2006.
- Mark 4/15 is copy of Mutation Entry No.1799 of dtd.14.7.2006.
- Mark 4/16 is copy of Mutation Entry No.1902 of dtd.17.10.2007.
- Mark 4/17 is copy of Mutation Entry No.1912 of dtd.16.01.2008.
- Mark 4/18 is copy of Mutation Entry No.2186 of dtd.18.6.2011.
- Mark 4/19 is copy of Mutation Entry No.2002 of dtd.28.5.2009.
- Mark 4/20 is copy of Mutation Entry No.2208 of dtd.14.9.2011.
- Mark 4/21 is copy of Mutation Entry No.2441 of dtd.23.2.2012.
- Mark 4/22 is copy of Mutation Entry No.2287 of dtd.15.6.2012.
- Mark 4/23 is order of dtd.31.5.2013 in R.T.S.Appeal No.37/2012. By this order, application of Rajiben d/o. Revabhai Virabhai was rejected due to the limitation. By the said application, Mutation Entry No.1000 of dtd.28.5.1990 was challenged by the applicant. Rajiben is not party in present suit. And some of the oppnents are plaintiffs of present suit.
- Mark 4/24 is order of dtd.15.9.2014 in Revision Application No.87/2013. By this order, Revision Case was dismissed due to limitation and order of R.T.S.Appeal No.37/2012 was confirmed.
- Mark 4/25 is order of dtd.20.8.2016 in Revision Application No.142/2014 of Addil.Secretarty, Revenue Deptt.,(Dispute). By the said order also, order of the Collector Shri, B.K. was confirmed.
- Mark 4/26 is plaint of R.C.S.No.1/2015. Suit was filed by heirs of Rajiben d/o.Revabhai Virabhai against present some of the defts. The suit was in respect of 1

Acre land of Block No.100p.

- Mark 4/27 is order of interim injunction application passed in R.C.S.No.1/2015.
- Mark 4/28 is written statement of defts.No.1 to 6, 12 to 16 and 18 to 23 filed in R.C.S.No.1/2015.
- Mark 4/29 is sale deed of dtd.21.6.1955.
- Mark 4/30 is sale deed of dtd.25.10.1958.
- Mark 4/31 is sale deed of dtd.25.10.1958.
- Mark 4/32 is sale deed of dtd.20.4.1961.
- Mark 4/33 is judgement pronounced on 1.1.2022 of R.C.S.No.1/2015. Suit was rejected
- Mark 4/34 is Appeal Memo of R.C.S.No.2/2022.
- Mark 4/35 is survey map.

Documentary Evidences produced by Defendants:-

4. With the written statement, defendants have produced 10 documentary evidences. They are mainly ;

- Abstract of 7 & 12 of new S.No.261, 262, 263, 264, 265, 266 & 277
- Judgement of R.C.S.No.11/2016
- Sale deed of S.No.100p2

5. Heard Id.Advocates of the parties. They have argued accordingly. On behalf of plaintiffs, written submission is also produced at Exh.32. Taken that too into consideration.

Reasons and Appreciation:-

6. Present application is for interim injunction. Facts stated in the plaint are also noted in the interim injunction application. Plaintiffs have filed present application for the interim reliefs as stated above. Defts. have strongly objected the application as well as suit.

7. Present suit is in respect of suit property which is claimed by the plaintiffs to be their and it is the allegation of the plaintiffs that defts. have illegally grabbed certain parts of their lands which was never sold either to them or their ancestors. The oldest transaction shown on the record by the plaintiffs is prior to the period of 1967. **It is also admitted fact on record**

that out of Survey No.100, Acre 12-00 guntha land was sold to the predecessors of deft Nos.1 to 4 and its mutation entry is of dtd.15.5.1967. The area of land purchased was Hec.R.A.4-85-63 sq.mtrs. But in fact, they are in the possession of Hec.R.A.6-00-03 sq.mtrs. and it came in their knowledge through the survey measurement of dtd.18.12.2015. That means as per the claim of the plaintiffs, defts. are in the possession of more area of Hec.R.A.1-14-40 sq.mtrs. comparing to their purchased land and that is suit property. Prior to 15 days of filing of present suit, plaintiff No.3 inquired from the deft.No.1 and he came to know that he had sold the suit property to deft Nos.5 to 8.

7.1 Plaintiffs are shown to be the residents of village and Ta.Deodar. Suit property is also situated in Deodar. **But it is not clearly mentioned in the plaint that when the suit property was taken in the possession of the defts.? At one hand, it is the submission of the plaintiffs that they are in possession of the suit property and accordingly, relief is also asked in present interim injunction application also that as they are in possession, it may be secured from the defts. and that they do not create any kind of hurdle in their possession and use of the suit property. Thus, the question arises is that if plaintiffs are in the possession, how deft Nos.1 to 4 succeeded in selling that and that too, with possession as it is noted in the para 12 (6) of the plaint ?**

7.2 Cause of action of the present suit is noted in para 13 of the plaint and as per that , just prior to 15 days of filing of the present suit, plaintiffs came to know regarding the N.A. order and transactions. Present suit is filed on 11.4.2022. As per the written submission of the defts., N.A. order is of dtd. 12.9.2022 i.e. after filing of present suit. **But on behalf of defts. also, no such N.A. order is produced on record to establish that there is any N.A. order. Even plaintiffs have not produced it.**

7.3 As noted above, the documentary evidences produced till yet on record by both the parties, do not clear at this stage **as to who is in the possession of the suit property at present ?** When it is the submission of the defts. that they have executed sale deeds in respect of the suit property, they were having the duty to produce such sale deeds to establish that in whose favour and by which right ? they have executed the sale deeds. But it is not complied on record. However, when plaintiffs have come with the suit they have to establish their facts on their own even at this stage. But they have not submitted required evidences which they might have with them too. The same scenario is noted on the side of defts. too.

8. The documentary evidences produced till yet on the record, *prima facie* clear that there have been previous proceedings between the parties. The scenario on record is clumsy and ambiguous to understand even the *prima facie* right. **But it is clear that even plaintiffs may be entitled for the rights in the suit property.** And if defts. succeed in transferring the suit property, that will cause irreparable loss to the plaintiffs. *Per contra*, when defts. have submission that they have N.A. order and also they have also some of the plots, it was their legal duty to submit such documents on record. But they have not complied so. Such conduct itself gives reason to view their conduct doubtful.

9. Thus, it is clear that there are many ambiguous factors and facts in the present suit. They cannot be decided even *prima facie* without recording the entire evidence of both the parties. It cannot be decided whether present suit is filed with *bonafide* facts or not because from the evidences available on record till yet and also the submissions available on record till yet, it is not clear in toto. Also defts. have not cleared their role in black and white. Hence, **reliefs as asked by the plaintiffs cannot be allowed at this stage. But in the interest of justice and to secure the due process of law, it is required to pass order of status quo in respect of the suit property so that any further transactions do not take place. Because if it happens, it may fail the final judgment of the suit and final judgment shall be paper decree only.**

10. In view of the above discussions, following order is passed under Exh.5.

O R D E R

- 1) Application at Exh.5 is hereby partly allowed.
- 2) Both the parties are ordered to maintain status quo regarding the suit property till the final judgement of the suit.
- 3) No order as to costs.

Pronounced in the open Court today on 14th day of June, 2023.

Date:- 14.06.2023
Deodar.

(Dr.Manjudevi Shardaprasad Pande)
Principal Sr.Civil Judge,
Deodar,District : B.K.
Code No.GJ:00860