

RCS/20/2023RAJIBEN D/O. NAGJIBHAI JAGASHIBHAI PATELVS.HIRABHAI NAGJIBHAI PATEL AND OTHERSORDER BELOW EXH-5

1. Heard Ld. Ad. Mr. K. K. Choudhary for the plaintiff and Ld. Ad. Mr. N. V. Asal for the defendant. Perused the record of the case.
2. The instant application has been filed by the plaintiff seeking for the relief of interim injunction for restraining the defendant no.7 from alienating the land situated at village Chotil of Taluka Wav, bearing revenue survey no. 560 *paiki* 1, hectare 2-02-35 (in short referred to as “**suit land**” hereinafter) by way of sale, gift, mortgage or otherwise.

Short Facts:-

3. Short facts of the grievance of the plaintiff raised in the present application may be summarized as under;
 - I. That the plaintiff and defendant nos. 1 and 2 are Class-I heir of the deceased Nagjibhai Jagshibhai. Jagshibhai had two wives. Majiben the first wife of Jagshibhai passed away, and there after Jagshibhai married to Maliben who is defendant no.4 in the present suit. Jagshibhai had 2 sons namely Nagjibhai, father of plaintiff and defendant no. 1 and 2, and another son namely Varjangbhai who is defendant no. 3 herein. Defendant no. 6/1 is the son of predeceased daughter of deceased Jagshibhai. As such, the parties to the suit are class-I heir of deceased Jagshibhai.
 - II. The suit land was owned by deceased Nagjibhai vide entry no. 4. On 20/07/1988, Acre 10-8 Guntha land out of the suit land

was entered in the name of Somatabhai Jagshibhai and Maliben Jagshibhai vide revenue entry no. 218. However, neither Somatabhai nor Maliben can acquire any right from the said entry no. 218 for the reason that the revenue entries are only for the fiscal purpose. On 28/07/1989, deceased Nagjibhai gave 7 Acre land to defendant no.1 out of suit land as *Juvara Hakk*.

- III. After sad demise of Somatabhai Jagshibhai as unmarried, his Class-II heirs namely Nagjibhai Jagshibhai, Varjangbhai Jagshibhai, Dharmiben, Premaben, Maliben were entered in revenue record vide entry no. 353. However, Maliben challenged the said entry before revenue authority and the Collector, Banaskantha ordered to set aside the same. After sad demise of Nagjibhai Jagshibhai, an entry no. 1310 was mutated on 15/09/2021 and the same was certified by Deputy Collector, Tharad on 26/10/2021. Maliben challenged the said entry no. 1310 before Dy. Collector, Tharad vide RTS Case no. 65/21 but the objections were rejected and entry was confirmed. A revision came to be filed against the said order before the Collector, Banaskantha vide Revision No. 378/21, which was allowed and entry no. 1310 was also set aside.
- IV. It is say of the plaintiff that her name does not appear either in the entry no. 353 or in the entry no. 1310. Therefore, she claimed to be Class-I legal heir of the deceased Nagjibhai Jagshibhai as per Hindu Law.
- V. As such, despite the fact that Maliben was never an owner of the suit land and also that Maliben has no right over the suit land, defendant no.2 got up a forged and fabricated power of attorney and as a power of attorney holder of Maliben, defendant no. 2 executed a sale deed no. 967, dated 03/10/2022

in favour of defendant no.7 which is forged, null and void. Defendant no.2 has executed a forged sale deed in favour of defendant no. 7 without consent of the plaintiff. Defendant no. 7 is not the bona-fide purchaser of the suit land. Therefore, as a co-parcener, the plaintiff is before this court to claim her rights in the property of her father.

Written Statement:-

4. On due service of the process of the court, defendants appeared before the court through their learned advocates and defendant nos. 1, 3, 5 and 6(1) filed Written Statement at Exh-18, wherein they have admitted all the averments of the plaint without any exception and also stated that they have no objections if the present application is allowed by the court.
5. Whereas, defendant no.8 filed Written Statement at Exh-25 wherein he denied all the averments of the suit and submitted that the suit land was distributed among the family members as per the family settlement before 35 years and defendant no. 2 and 4 have been holding the land since the entry no. 218 dated 20/07/1988. Further, it is stated that the said entry was never challenged, therefore it carries presumptive value as per provisions under section 35 of the Evidence Act as well as under section 135(J) of the Land Revenue Code. It is contended that Somatabhai Jagshibhai was unmarried and he was passed away during year-2000, therefore as per section-8 of the Hindu Succession Act, mother-Maliben (defendant no.4) of the deceased Somatabhai was the only legal heir of class-I. Yet, entry no. 353 was mutated by entering names of class-II heirs which was not permissible. That's why the Collector, Banaskantha rightly set aside the entry no. 353 in Revision No. 342/2021. Further, it is stated that defendant no.4 was of the 94 years of age and as she wanted to sell her property,

she appointed defendant no.2 as power of attorney for the purpose of selling the property and on the basis of the said power of attorney, defendant no.2 executed a registered sale deed no. 948, dated 26/09/2022. On the aforesaid premise, it is further stated that the plaintiff has taken illegal objections to challenge the 35 year old family settlement, though she has never raised any objections during the long period. In such circumstances, it is also stated that the suit is time barred and law does not help the person who slept over his right for inordinate long time. Further, it is submitted that the defendant no. 7 is bona-fide purchaser of the suit land by way of registered sale deed no. 967/2022, dated 03/10/2022, and after that defendant no. 8 become bon-fide purchaser of the suit land by way of registered sale deed no. 167/2023, dated 15/02/2023 for consideration of rs. 421000/-. Therefore, at present the possession of the suit land is also with defendant no.8, hence plaintiff has no right in the suit land.

Submissions of plaintiff:-

6. It is argued by Mr. Choudhary that there is no dispute with respect to the relations of the parties qua the suit. He emphasised that the names of Somatabhai and Maliben in the revenue record were entered in illegal manner and against the principles of law for the reason that deceased Nagjibhai Jagshibhai was the permanent holder of the suit land, therefore there was no reason to enter the rights of his brother and step mother. Further, he argued that the order passed by Collector setting aside the entry no. 353 is also wrong because the Collector does not have such powers. Further, when class-I heir of the deceased are alive, class-II heirs do not get any right over the property of the deceased. However, orders passed by the Collector in Revision no. 65/2021 and in Revision no. 378/2021 clearly establishes the right of the plaintiff in the suit

land. It is also argued that the impugned power of attorney without possession does not confer any right to transfer property because it is without possession. Therefore, he submitted that the sale deed executed by power of attorney holder (defendant no.2) on behalf of defendant no. 4 in favour of defendant no. 7 is nothing but nullity.

7. It is also submitted by the plaintiff that the revenue entry cannot be considered as a proof of ownership. It is also argued that there is no likelihood of causing any hardship to defendant, whereas if the defendant would sell the suit land, it would create third party interest resulting in multiplicity of proceedings. On the aforesaid premise, it is urged that the plaintiff has strong prima facie case, balance of convenience also lies in her favour and if the interim injunction as prayed for is not granted, she shall suffer irreparable loss. It is submitted that the plaintiff should be protected by the interim relief till the disposal of the suit. At the end, he relied upon para-15 of the decision of the Honourable Punjab And Haryana High Court in case of **Surender Singh vs. Pirthi Singh and Ors**, decided on 02/04/2019.

Submissions of defendant:-

8. It is pertinent to note that the defendant nos. 1, 3, 5 and 6/1 have admitted the whole claim of the plaintiff without any exception.
9. On the other hand, it is argued by Mr. Asal appearing for the defendant no. 7, that the land in question was admeasuring total Acre 25-37 *Gunthas*. Further, he emphasized on the fact that the plaintiff herein has challenged the revenue entry no. 218, dated 20/07/1988 by way of the present suit inasmuch as the legal right of the defendants are concerned. He drew attention of this court on section 4 of the Indian Evidence Act, wherein the words “may presume”, “shall presume” and “conclusive proof” has been defined. He has also drawn attention on the provision under section

135-J of the Land Revenue Code which provides that a revenue entry carries statutory presumption with it. Further, it is argued that mutation of an entry no. 353 was made as per the provisions of section 17 of the Hindu Succession Act. He also contended that no condition of possession is required for the power of attorney and an agent can enter into any transaction on behalf of principal as per the powers given by way of power of attorney deed. It is further submitted that plaintiff has brought this suit in collusion with other defendants. Moreover, it is argued that the plaintiff has to demonstrate her legal right to make a strong prima facie case, however plaintiff has miserably failed to do so. In summing up, he urged this court to reject the present application being devoid of merit.

Issues involved: -

10. Following issues emerge for consideration in order to adjudicate the present application;
 1. Whether the plaintiff proves that he has strong prima facie case in his favour ?
 2. Whether the plaintiff proves that balance of inconvenience lies in his favour ?
 3. Whether the plaintiff proves that he will suffer irreparable loss if interim injunction is not granted ?

Answers to issues and Reasons there for: -

11. For the sake of brevity all these issues are discussed hereinafter altogether as they are inter-connected with each other.
12. It is pertinent to note here that the relief as prayed for by way of this application is discretionary and equitable in nature and it can be granted only if the plaintiff successfully establishes all the above

issues in his favour. Principles governing the aspect of interim injunction have been propounded by the Hon. Apex Court time and again, that the powers of court are discretionary in nature which can be exercised in appropriate cases where the court is of the prima facie opinion that all the necessary requirements have been established by the plaintiff.

13. Having heard both the side, and having perused the record, it appears that the plaintiff is before this court claiming to be class-I legal heir of the deceased Nagjibhai Jagshibhai Patel and claiming coparcenary rights in the suit property. According to the plaintiff, entry no. 218 was illegal and does not confer any rights upon defendant no.4 (died pending the suit) as she was class-II heir, because when class-I heirs are alive, class-II heirs do not get any share in the property of the deceased. It is pertinent to note that age of the plaintiff shown in the plaint is 51 years at the time of filing of the present suit, whereas the entry no. 218 was effected in the year 1988. It is undisputed fact that deceased Nagjibhai had never challenged the said entry during his lifetime. Even the plaintiff had not challenged the said entry at any point of time except the present suit in the year-2023. It can be clearly seen from the perusal of the record that the whole controversy arisen when the names of defendant no. 3, 5 and 6 were entered in revenue record vide entry no. 353, after the sad demise of Somtabhai Jagshibhai Patel. Defendant no.4 herein has challenged the said entry no. 353 for the reason that after death of Somtabhai Jagshibhai, her mother(defendant no.4) was the only class-I legal heir. Therefore, when class-I heir i.e. mother of deceased Somtabhai Jagshibhai was alive, class-II heirs could not have been entered in the revenue record. However, the said entry was set aside by the Collector, Banaskantha vide order dated 28/07/2022 passed in Revision no.

342/2021. Therefore, it transpires that the plaintiff herein had not claimed her right till the said order of the Collector. On this count also the suit suffers from delay and laches on the part of the plaintiff.

14. It appears from the perusal of the record that the whole controversy revolves around the entry no. 218 and 353 which have been challenged by the rival parties. On one hand, plaintiff has questioned the entry no. 218 by saying that the Late Samatabhai was not co-parcener of Late Nagjibhai, therefore the said entry is nothing but nullity. Whereas defendant has questioned the entry no 353 by saying that when class-I heir namely Maliben Jagshibhai was alive after the death of Samatabhai, other class-II heirs could not have been entered as legal heirs. In such circumstances, the whole contention of the plaintiff is based on the revenue entry no. 218 which was effected on 20/07/1988. Therefore, prima facie, plaintiff has challenged the sale deed no. 967 dated 03/10/2022 by laying foundation that the entry no. 218 is null and void. It appears that after lapse of almost 35 years, plaintiff has challenged it. Further, defendant no. 7 has sold the suit land to defendant no. 8 by way of two separate registered sale deed nos. 167/2023, dated 15/02/2023 and 107/2024, dated 06/02/2024. As the sale deed were executed after filing of the present suit, the purchaser of the suit property has also been arrayed as a party-defendant.
15. What amounts to prima facie case is nowhere defined in the Code. Therefore, in common parlance of the term it can be said that the relief of the plaintiff is based on the foundational facts which are supported by material on record at present and also that the plaintiff has a good case to go for trial. Therefore, at this juncture, the prime consideration is not to decide the case on merits but to arrive at *prima-facie* opinion whether the plaintiff has in his favour all the

issues viz. "prima facie", "balance of convenience" and "irreparable loss". As noted earlier, there is no dispute about relationship between the parties, but the rights of the parties can only be established and/or decided after affording opportunities to both the parties to lead their evidence. Therefore, at present, I am of the view that the plaintiff has not a prima-facie case against the defendant for grant of interim relief for the reason that he cannot be protected as against the person who is owner of the suit land. Moreover, the factors of balance of convenience and irreparable loss do not to appear to be in favour of the plaintiff as against the defendant considering the aforesaid facts and circumstances of the case.

16. Further, plaintiff has placed reliance on para-15 of the decision of the honourable Punjab And Haryana High Court in case of **Surender Singh vs. Pirthi Singh And Ors.**, wherein it is held that an absolute property owned by a female shall devolve according to rules as laid down under section 15 and 16 of the Act, and the words "sons" and "daughters" used in section 15(1)(a) of the Act include the children of a female whether born to her from first marriage or second marriage or even illegitimate. However, the plaintiff is before this court claiming her right as an heir of her father Late Nagjibhai Jagshibhai, therefore the said judgment is not applicable to the case on hand. Further, plaintiff has failed to indicate that how the aforesaid decision is helpful to her.
17. Moreover, as observed herein above, the plaintiff has challenged the entry of the year 1988, but the plaintiff failed to aver in plaint the fact regarding the knowledge of the said entry as to when she came to know about the disputed entry. It is also pertinent to note that the age of the plaintiff shown in the plaint is 51 years, therefore even if the stand of the plaintiff is that she was minor at the time of mutation of entry no. 218, then also she had lot of time to challenge

the said entry in accordance with law. It is settled law that the law does not help the one who slept over his rights for years together.

18. One more aspect is also required to be taken note judicially is that the present plaintiff has brought two separate suits for cancellation of two separate registered sale deed but for same land i.e. RCS no. 20/2023 and 21/2023. Further, plaintiff, along with Patel Varjang Jagshi, Hirabhai Jagshi, Dharmiben Jagshi and Mavjibhai Karnabhai, has also filed another two suit before this court being RCS nos. 15/2023 and 16/2023. Undisputedly, RCS nos. 15 and 16 of 2023 have been filed prior to the RCS nos. 20 and 21 of 2023. However, the plaintiff has not made any declaration to be fair and transparent on record, and thereby plaintiff has suppressed the fact of earlier suit filed by her along with other defendant. Therefore, the said conduct of the plaintiff cannot be ignored. It is also pertinent to note that the plaintiff has made a statement in plaint of RCS nos. 15/2023 and 16/2023 that Ramabhai Nagjibhai (defendant no. 2 herein) and Maliben Jagshibhai (defendant no.4 herein) are equally entitled to the suit land bearing revenue survey no. 73, however plaintiff has made total contrary statement in the present suit.
19. Considering the aforesaid, I am not convinced that the plaintiff has a strong prima facie case in her favour. So in view of the aforesaid discussion and reasons, I answer all the issues in **NEGATIVE** and resultantly I am not inclined to exercise discretionary power in favour of plaintiff by way of any interim relief. Hence, following order in the interest of justice;

-- ORDER --

- A) The present application at Exh-5 preferred by the plaintiff is hereby rejected.

B) Cost shall follow the event of the cause.

Order signed and pronounced today on 01st March, 2025 in an open court.

Date : 01-03-2025

DR.T.R.GHONIYA
PRINCIPAL CIVIL JUDGE
WAV- GJ01561.

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