

GJBK070004942023

RCS/64/2023

**Joshi Raniben W/o. Ramchandbhai And Ors.
Vs.
Joshi Ramchandbhai Jagmalbhai**

ORDER BELOW EXH-5

1. The present application has been filed by the plaintiff at Exh-5 for seeking interim injunction till the disposal of the suit.
2. Heard Ld. Ad. Mr. N R Solanki for the plaintiff. Perused the record of the case.
3. The plaintiff has brought this suit for declaration of their rights and share in the suit property bearing revenue survey no. 518/paiki 2 of village- Morikha, Ta. Wav, Dist. Banaskantha (herein after referred to as “**suit property**”) and also for perpetual injunction against alienation of the said property and for protection of their possession in the suit property.
4. It is pleaded by the plaintiff that plaintiff no.1 and defendant are husband and wife, whereas plaintiff no.2 and 3 are their daughters. Parties to the suit were residing under the same roof as a family. However, defendant started to behave in unusual manner and also started abusing the plaintiffs. As the defendant

owned suit property, plaintiff and defendant were cultivating the same and the names of the plaintiff nos. 1 to 3 were jointly entered into the revenue record and therefore plaintiffs and defendant are jointly holding the suit property. However, before 6 months, defendant started to reside separately from plaintiffs and he has been trying to grab the said land from plaintiffs and also been trying to alienate to third party so as to jeopardize the valuable rights of the plaintiffs. In order to win over the plaintiffs, defendant had designed a conspiracy and created a forged affidavit of the plaintiffs by affixing photographs of plaintiffs, with connivance of the notary public Mr. Rameshbhai Gangaram Pandya. It is case of the plaintiff that they had never visited the office of said notary public, nor did they sign any document, yet defendant has used the said forged document and relinquished the rights of the plaintiffs from the suit property. When plaintiff came to know about the aforesaid, they obtained the revenue record and filed a criminal complaint before the Wav Police Station, and also preferred an appeal before the Deputy Collector, Tharad which is still pending. Defendant has also executed an agreement to sell in favour of one Mr. Aditsing Ishaji Solanki vide Registered deed no. 184/2024, dated 05/03/2024.

5. Despite the fact that defendant herein has appeared before this court and also engaged a counsel to defend the suit, but has not filed his written statement, nor he made any submissions against the present application.

6. Having gone through the record and submissions made at bar, it is pertinent to note here that the relief as prayed for by way of this application is

discretionary and equitable in nature and can be granted only if the plaintiff successfully establishes that he has a prima facie case, and that balance of convenience lies in the favour of plaintiff and also that if the interim injunction is not granted to plaintiff, he will suffer irreparable loss. Principles governing the aspect of interim injunction have been propounded by the Hon. Apex Court time and again. 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.

7. It appears that the suit is for the declaration of rights of the plaintiffs in the suit property. It is further the case of the plaintiff that the deed for agreement to sell was executed to jeopardize the valuable rights of the plaintiffs in the said property. Further, it also appears from the record available with the court that the names of the plaintiffs were entered in the revenue record of the suit property. However, it is alleged that the defendant has then created forged document i.e. affidavit of plaintiffs to relinquish their rights from the suit property in favour of defendant. Moreover, plaintiffs have placed on record an agreement to sell (*banakhat*) executed by the defendant in favour of one Aditsing Ishaji vide registered deed no. 184 of 2024, dated 05/03/2024 before the Sub-Registrar Office, Wav. Therefore, at present, the inference can be drawn that the defendant has an intention to sell the suit property to third party and therefore he has executed the said deed. At this juncture, specifically when there is no written statement of the defendant has come forth on record, material available on record

suggests that if defendant sells the suit property to third party, then the rights and interests of the plaintiffs will be at stake. Under what circumstances the names of the plaintiffs have been entered and removed would be subject matter of evidence, but prima facie, the fact remains intact that the names of the plaintiffs have been removed from record of rights.

8. Therefore, on this count, defendants should be restrained from taking any further course injurious to the rights of the plaintiff. In the case on hand, it is undisputed that the defendant has entered into an agreement with respect to the suit property by way of registered deed no.184 dated 05/03/2024 that too after filing of the suit by plaintiff. Not only that, defendant executed the said deed even after due service of the process on him and after his appearance before this court which indicates the intention of the defendant to alienate the property before the rights of the parties are finally decided by this court.

9. 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 case", "balance of convenience" and "irreparable loss". As noted earlier, it is admitted fact that the defendant has executed a deed in favour of third party. Therefore, at present, I am of the view that the plaintiff

has established a prima-facie case against the defendant for grant of interim relief in the nature of *status quo* for the reason that the suit property should be protected against third party rights and multiplicity of proceedings. If the order of status quo is not passed, it would cause greater hardship as possibility of multiple transaction cannot be ruled out. Moreover, the factors of balance of convenience and irreparable loss also appear to be in favour of the plaintiffs as against the defendant considering the aforesaid facts and circumstances of the case.

10. So, in view of the aforesaid discussion and reasons, I am inclined to exercise discretionary power in favour of plaintiff by way of interim relief. Hence, following order in the interest of justice;

-- ORDER --

- A) The present application at Exh-5 preferred by the plaintiffs is hereby allowed in part.
- B) Defendant is hereby directed to maintain *status quo* with respect to the suit property, bearing revenue survey no. 518/*paiki* 2 of village-Morikha, Ta. Wav, Dist. Banaskantha, till final disposal of the suit or till further order.
- C) Cost shall follow the costs of the cause.

Order signed and pronounced today on 08th July, 2024 in open court.

Date : 08-07-2024

MR.T.R.GHONIYA
PRINCIPAL CIVIL JUDGE & J.M.F.C
WAV- GJ01561.