
REGULAR CIVIL SUIT NO. 14 of 2022
ORDER UNDER EXHIBIT NO. 5 (T.I.)

[1] The plaintiff has preferred an application for seeking temporary injunction against the defendants vide Exhibit No. 5 as per the provision of Order 39 Rule 1 and 2 of the Code of Civil Procedure, 1908.

[2] The present suit has been instituted by the plaintiff against the defendants for the declaration and permanent injunction with respect to the Ancestral Property, and for the Cancellation of the Document. It is stated that the land bearing survey no. 64, 11-Akar, 10 Guntha, Namely-Ladsarvalu, was owned and possessed by the deceased Dadu Raju Sipoi. It is stated that the name of the Harijan Bhoja Arajn was entered in the half share of the land in 1951-52 as a Ganotiya, as was cultivating the half share of the land. After the death of the Dadu Raju the name of only one son, Alisher Dadu was entered vide entry no. 72; and the name of another son Name-Jalal Dadu was not entered. The date of the entry no. 72 has not been stated.

2.1) It is stated in the year 1963 vide Tenancy case no 63 Date: 22-08-1963, the name of the Harijan Bhojabhai Arjanbhai has been omitted as Ganotiya and name of the Sipoi Alisher Dadu has been entered, vide Entry No. 538, Dated: 25-12-1963. It is stated that the Name of the Jalal Dadu has been left behind intentionally. It is

stated that the land is joint ancestral property of the parties. It is stated that 3-Akar, 31 Guntha of Survey no. 64, New Survey no. 686, was transferred to the Defendants by the Alisher Dadu vide Registered Sale Deed No. 326/1992, Dated: 01-04-1992. The Sign of the Jalal Dadu has not been taken as a witness to the said sale deed. The Entry No. 1487 Dated: 11-04-1992 was made without their consent and knowledge. Therefore the entry no. 72 is null and void since beginning. It is pleaded that mutation entries do not create or extinguish the title.

2.2) It is stated that on being known the entry no. 1487 has been challenged before the Revenue Court on Date: 10-12-2021. It is stated that the suit land bearing Old Survey no. 64, 6-Akar, 31-Guntha, is joint Ancestral property of the parties. Therefore if the present application is not allowed the defendant may sale the land, and that it will cause irreparable loss to the plaintiff. It is stated that till the partition of the land is not done to the meats and bounds the land is required to be protected. Accordingly prayed for the allowing the present application as prayed for.

[3] The notice/process has been served upon the defendants. The Defendant 1 (1/1 and 1/2) have not appeared and the suit has been ordered to be heard Ex-parte against them. The Defendant No. 2/1 to 2/6 has appeared through the Ld. Advocated and has filed the Reply (Written Statement) Vide Ex. 12. After denying the facts

narrated in the plaint, it is stated that the entry no. 72 was certified by the competent authority before 67 years and as per the law of evidence and Land Revenue Code the same has been presumed to be true until proved contrary.

3.1) It is stated that the revenue record was prepared as per the position of the parties and accordingly the name of the Deceased Alisher Dadubhai has been shown from 1955 to 1992-93, till the land was transferred to the present defendant and their after their name has been shown in the village form no. 12. The same has been remaining unchallenged till today. The taxes have been paid by the parties accordingly. It is stated that the RTS Appeal No. 40/2022 has been dismissed and the entry no. 1487 has been upheld by the revenue court.

3.2) It is stated that the present suit has been filed after lapse of 30 years as the sale deed was executed on Date: 01-04-1992. The inordinate delay has not been explained therefore the plaintiffs' suit is time barred and the same cannot be condoned. It is stated from the day the sale deed was executed by the Alisher the same has been possessed by the present plaintiff. The plaintiffs have no right in the suit property. The present suit has been filed with ulterior motive due to the increase of the Market rate of the land due to the Canal; accordingly prayed for the rejection of the application with cost.

[4] The argument of the parties has been heard, Ld. Advocate Mr. I. A. Shaikh on behalf of the plaintiff has submitted that- the father of the plaintiffs and the Defendant no. 1 were the real brother and the Co-defendants are the sister of the plaintiff. It is stated that the defendant no. 1 has not filed the Reply to the present suit. The other facts have been reiterated as per the pleadings. The plaintiff has the right in the suit property and the sale transactions were void ab initio, and they have prima facie case and balance of convenience is also lies in the favour of the plaintiff therefore the application is to be allowed.

4.1) Learned Advocates for the defendant no. 2/1 to 2/6 Mr. N. V. Asal has submitted that- the Padhinama Produced by the plaintiff is not true and that the Entry no. 72 has been made on Date: 01-03-1955 and the same has been challenged before the Revenue Authority in the years 2022. The name of the Alisher Dadu was shown the Revenue record till 1992, and the same had been transferred by Registered Sale Deed in the year 1992. The present suit has been filed in Collusion with the Defendant no. 1 and it has not filed the written statement in the present suit. The defendant no. 2 is a Bona fide purchaser and the land was never possessed or cultivated by the plaintiff. The plaintiff has not produced single evidence as to suggest that it has right in the suit property. They have not stated ant particular date or event when the cause of action has come into their knowledge.

The suit is barred by the law of limitation and the land is possessed by the present defendant since long time, not a single element is proved by the plaintiff; accordingly prayed for the rejection of the present application.

- [5] The plaintiffs have submitted the documents Vide Mark-4/1 to Mark-4/22; where in the padhinama and revenue entries and the revenue record of the property and the Sale deed no. 326/1992, Dated: 01-04-1992 has been produced.

The defendant no. 2 has produced the documents in support of the written statement vide Mark-13/1 to 13/33; wherein the sale deed executed in its favour and the revenue entries has been produced. I have perused the entire record of the suit.

- [6] Before discussing the factual aspects of the matter, the settled provisions of the law and the principles laid down by the Hon'ble superior courts with regard to Temporary Injunction are required to be taken into consideration. The Hon'ble Apex Court as well as different Hon'ble High Courts by catena of decisions lay down that, the grant of temporary injunction during the pendency of legal proceedings is a matter requiring the exercise of discretion of the Court. While exercising the discretion the Court applies the following tests-(i) whether the plaintiff has a prima facie case; (ii) whether the balance of convenience is in favour of the plaintiff; and (iii) whether the plaintiff would

suffer an irreparable injury if his prayer for interlocutory injunction is disallowed. The decision whether or not to grant an interlocutory injunction has to be taken at a time when the existence of the legal right assailed by the plaintiff and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. Relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before that uncertainty could be resolved, in the light of the said discussion following issues have come up before this court for determination of the present application.

:: ISSUES ::

1. Whether the plaintiff proves that it has prima facie case?
2. Whether the plaintiff proves that, the balance of convenience lies in its favour?
3. Whether the plaintiff proves that the refusal of the injunction will cause irreparable losses to it?
4. What will be the order?

[7] My answers to the above-mentioned issues are, as per the discussion and reasons herein after made, as follows: -

- 1 In the Negative.
- 2 In the Negative.
- 3 In the Negative.

4 As per final order.

Issue No. 1 to 3 : -

[8] In the light of the discussion and the averments made in the plaint and present application and reply filed by the defendant, along with the documents produced by the parties, the oral submission made by the Ld. Advocates for the parties and the relevant provisions of the law. For the purposes of avoiding unnecessary repetition of the facts and the circumstances of the application these issue are discussed and decided together.

8.1) The object of the interlocutory injunction, as held by the Hon'ble apex court, is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection has, however, to be weighed against the corresponding need to the defendants to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The Court must weigh one need against another and determine where the balance of convenience lies, **[Gujarat Bottling Co. Ltd. vs. Coca Cola Company 1995(5) SCC 545.]**

8.1) In the light of the discussed principles, the factual positions of the present applications are to be examined. The plaintiff

has stated that the land bearing survey no. 64, 11-Akar, 10 Guntha, Namely-Ladsarvalu, was owned and possessed by the deceased Dadu Raju Sipoi. It is stated that the name of the Harijan Bhoja Arajn was entered in the half share of the land in 1951-52 as a Ganotiya, as was cultivating the half share of the land. After the death of the Dadu Raju the name of only one son, Alisher Dadu was entered vide entry no. 72; and the name of another son Name-Jalal Dadu was not entered. In the year 1963 vide Tenancy case no 63 Date: 22-08-1963, the name of the Harijan Bhojabhai Arjanbhai has been omitted as Ganotiya and name of the Sipoi Alisher Dadu has been entered, vide Entry No. 538, Dated: 25-12-1963. It is stated that the Name of the Jalal Dadu has been left behind intentionally. It is stated that the land is joint ancestral property of the parties. It is stated that 3-Akar, 31 Guntha of Survey no. 64, New Survey no. 686, was transferred to the Defendants by the Alisher Dadu vide Registered Sale Deed No. 326/1992, Dated: 01-04-1992. The Sign of the Jalal Dadu has not been taken as a witness to the said sale deed. The Entry No. 1487 Dated: 11-04-1992 was made without their consent and knowledge. Therefore the entry no. 72 is null and void since beginning.

The pleadings in the written statement are to be taken into consideration. It is stated that the entry no. 72 was certified by the competent authority before 67 years and as per the law of evidence and Land Revenue Code the same has been presumed to be true until proved

contrary; the revenue record was prepared as per the position of the parties and accordingly the name of the Deceased Alisher Dadubhai has been shown from 1955 to 1992-93, till the land was transferred to the present defendant and their after their name has been shown in the village form no. 12. The same has been remaining unchallenged till today. The taxes have been paid by the parties accordingly. It is stated that the RTS Appeal No. 40/2022 has been dismissed and the entry no. 1487 has been upheld by the revenue court. It is stated that the present suit has been filed after lapse of 30 years as the sale deed was executed on Date: 01-04-1992. The inordinate delay has not been explained therefore the plaintiffs' suit is time barred and the same cannot be condoned. It is stated from the day the sale deed was executed by the Alisher the same has been possessed by the present defendants. The plaintiffs have no right in the suit property. The present suit has been filed with ulterior motive due to the increase of the Market rate of the land due to the Canal.

8.2) In light of the pleadings and reply filed by the defendant no. 2/1 to 2/6 it is to be noted that the alleged transaction were taken since long back in the year 1992 and the same has been remain unchallenged. The name of the father of the present plaintiff has been not shown in the revenue record since the year 1955. The documents produced by the parties, prima facie does not support the case of the

plaintiff. The oral submission and the pleadings like that the property was the Joint ancestral property of the plaintiff and the father of the defendant, also does not backed by the law, as the parties are governed by the Muslim Personal law; where in the application of the said concept has not been shown by the Ld. Advocate at this juncture. Moreover the defendant who has sold the land has not been appeared and also not filed the reply in the present suit also raise the arrow of suspicion as pleaded and argued ion behalf of the present defendant no. 2. The present defendant is prima facie appears to the bona fide purchaser at this juncture, from the revenue record, and the same is in his possession for the long period of the time. The plaintiff's pleadings are to be taken into consideration it has remain kept quiet with respect to other land of their grandfather and inconsistent pleadings have been made.

8.3) It is to be noted that, in light of the discussion made The two issues i.e. the balance of the convenience and irreparable losses are of the vital importance as to decide whether the present application is to be allowed or rejected. In light of the discussion as the plaintiff has not produced a single ground or prima facie evidence as to suggest that balance of convenience lies in their favour or rejection of the application will cause them irreparable losses. The revenue record suggest that the these transaction of the transfer of the suit property has been registered and certified by

the concerned authority therefore prima facie at this juncture it appears to be done after following the proper procedure. The name of the father of the present plaintiff has been not shown in the revenue record since the year 1955, and the alleged transaction were taken since long back in the year 1992 and the same has been remain unchallenged, The plaintiff's remain kept quiet with respect to other land of their grandfather and inconsistent pleadings have been made, and the defendant no. 1 has also not appeared before the court, are the factor which are taken into consideration.

8.3) Therefore in light of the rival contention of the parties and nature of the property and rights involved in the present suit and the application, it appears that the rights are involved in the present suit are required to be decided during the trial, as same are subject to the principle of law and other evidences. Therefore from the document on the record at this Juncture, without going to the merit of same, in light of the discussion here in above made, the plaintiff has failed to prove that they have prima facie case or that the balance of convenience lies in her favour, as discussed here in above the suit has been filed after the lapse of almost 35 years of sale transaction and the plaintiff has not suggested single cogent reason as to the fact that why the transaction remain unchallenged for the such a long period of time. Further with respect to irreparable losses it is to be noted that in light of the

facts and circumstance, as here in above discussed the plaintiff have not shown a single fact or produced any cogent prima facie evidence that the transaction was done without their or their fathers knowledge and how does the same has been come into their knowledge now. IF the present application is to be allowed it may cause irreparable losses to the present defendant restricting him from exercising lawful right over the suit property which has been purchased lawfully and the same has been entered in his name in the revenue record after completing the entire necessary requirement in the year 1992

8.4) The Ld. Advocate on behalf of the plaintiff has relied on the Judgements of the Hon'ble Courts. The same are to be taken into consideration respectfully.

1) R/Special Civil Application No.10065 of 2020, Rosanben Hajibhai Deraiya w/o Ganibhai Sorathiya Versus State of Gujarat. On being respectfully perusal; it appears that the Hon'ble High Court has allowed the condonation of delay of around 1 year before the revenue authority, as to challenge the Mutation entries. In the present suit the same is not under challenged and the present application is for injunction, therefore it is not be applicable to facts and circumstance. 2) Civil Application No. 12644 of 1999, Yuvraj Prithvirajsinhji s/o Maharao Madansinhji Versus Maharani Rajendrakunvarba Saheb & Ors. The Facts of the

case are not similar as in the said suit the suit was filed for the partition and the number of proceedings were pending between the parties, therefore the order for status quo has been justified. But in the present suit it is to be noted that no single prima facie evidence has been produced as to show that the plaintiff has right as to cause irreparable loss, and the defendants against whom right is claimed have not come before the court and the defendant no. 2 is prima facie appears to be a bona fide purchaser in possession of property from 1992, as the here in above discussed. Therefore without going into the repetition as the plaintiff has failed to prove that the balance of convenience lies in her favour or that the rejection of the present application would cause her any irreparable losses, as the legal definition of the word 'irreparable losses' have to be taken into consideration as it has been provided that, Irreparable injury, 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." In the canvas of the facts of present suit no such facts and circumstance exist as show that compensation for damages may not be an adequate remedy.

8.5) It is well settled that the injunction is a discretionary remedy. The court is not bound to grant such relief merely because it is lawful to do so. But the discretion of the court is not

arbitrary but sound and reasonable guided by judicial principles, (**Ganesh Daivajna Vs prakash 2000 (3) Mh. L.J. 347**). The exercise of discretion must be in a judicial manner depending on the circumstances of each case. No hard and fast rule can be laid down for the guidance of courts as regards the exercise of such discretion, (**Harcharanjit Vs Deeksha 2008 (3)Mh.L.J. 587 Bombay High Court**).

[9]In the light of the discussion herein above made, as the plaintiff has failed to prove that the balance of convenience lies in her favour as to grant her any relief in the present application, or that refusing the same may cause her irreparable losses i.e. the losses which cannot be compensated in terms of money. Accordingly, the issue no.1 to 3 are answered in Negative and following final order is passed in the larger interest of the justice with respect to the applications-

:: O R D E R ::

- 1.The Application is hereby rejected.
- 2.The Cost of the Application shall follow the final decision of the suit.

**Pronounced and signed today on 08th Day of
September, 2023.**

Date: 08/09/2023.
Place: Tharad.

[JITENDRA SINGH]
Additional Civil Judge,
Tharad. (UID-GJ01406) .