

**ORDER BELOW EXHIBIT 5**

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**Ld. Advocate Mr. K.K.Parmar for the plaintiff.**

**Ld. Advocate Mr.R.B.Chavda for the defendants.**

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- 1] Read the application and reply filed by the defendants. The plaintiff has filed present application under Order 39 rule 1 and 2 and section 151 of the Civil Procedure Code for seeking temporary injunction against the defendants.
  
- 2] The brief facts of the application of the plaintiff is that plaintiffs and defendant no.1 are lineal descendants of Late.Koli Kuvra Lebdas. It is also pleaded that land bearing Khata no.123 which include Survey no.225(old no.13/3), admeasuring 0-25-39 H.Aare.Sq.Mtrs, Survey no.489(old no.117/2), admeasuring 0-21-38 H.Aare.Sq.Mtrs and Survey no.187(old no.155), admeasuring 2-74-30 H.Aare.Sq.Mtrs situated at Gangun Village of Bhabhar Taluka **(for the sake of brevity hereinafter referred as the suit property)**. Was originally own and possess by the fore father of plaintiff and defendant no.1 namely **Late.Devlaji kuvraji Lebdasji**. It is further pleaded that **Manji Kuvra,Dehla Kuvra,Darga Kuvra** and were the lineal descendants of Late.Kuvraji Devlaji and **plaintiffs are lineal descendants of Late. Dehla Kuvra and Darga Kuvra**. While **defendant no.1 is lineal descendant of Late. Manji Kuvra**.Thus,plaintiffs and defendants no.1 is own and possess the suit property since long time. It is further pleaded that due to prevailing rules and regulation of govt.,after death of Kuvra Lebdas,name of elder son namely Manji Kuvra was inserted in the ROR and name of Dehla Kuvra and Darga Kuvra was not inserted. Later on as **Manji Kuvra was died**,name of his successors namely,**Vaniben,Shnkarji,Maganji and Bhudarji** was entered in the revenue record. Out of them Vaniben was

died. Thereafter, Shankarji and Bhudarji was died without any heirs. Therefore, there name was deleted from the revenue record. After that **sole descendant Maganji was died and his wife Daniben and defendant no.1 was entered in the revenue record.** Out of them Daniben was also died. Hence, only name of defendant no.1 was remained in ROR. It is further pleaded that as the plaintiffs are also a lineal descendants of Late.Kuvra Lebdas, defendant no.1 has executed a compromise deed and accepted that plaintiffs have also a equal share in the suit property. In response to said agreement they have also filed an application to enter their name in the ROR. Despite that as the price of suit property is increased, out of total land of suit property, defendant no.1 has sold out the land bearing survey no.187 to the defendant no.2 through register sale deed no.747/2023 dated.15/04/23 and effect of said was made in ROR vide entry no.1333. Thus, said sale deed is illegal and void ab initio and plaintiffs have challenged said revenue entry. It is also pleaded that as the name of defendant no.1 is in the entire suit property, he is trying to sold out remaining land. Therefore, to protect their rights, plaintiff is inclined to file the present suit for declaration as well as perpetual injunction. Along with the suit present application is filed for temporary injunction against defendant. Wherein, it is stated that plaintiff's case is prima facie case and balance of convenience is in favour of plaintiff and if injunction would be granted then defendants would not suffer irreparable loss and if not granted the plaintiff will suffer huge loss which cannot be compensated in terms of money. Hence, present application may be allowed.

- 3] The defendants after service of summons/notice have appeared before this court and filed their written statement at **Exh. 13.** In their written statement defendants have denied all material facts ascertained by the plaintiff's side. It is *inter alia* contended that suit filed by plaintiff is hopelessly barred by law. It is also contended that plaintiff has no cause of action to file a present suit. It is also contended that plaintiffs have no any

right over the suit property and defendant no.1 is sole owner of it. Thus, he has sold out the land bearing survey no.187 to defendant no.2. Thus, defendant no.1 is bonafide purchaser of the suit property. It is also contended that by using fraud plaintiff have executed compromise deed. It is also contended that Entry no.1333 was certify and revenue litigation filed by plaintiff was rejected. It is further contended that due Bharatmala Project and Narmada Canal the price of suit property is increased day by day. Thus, to harass the defendants and to take undue advantage plaintiff has filed present suit with malafide intentions. Hence the present application is required to be dismissed.

4] I have considered the arguments canvassed by the defendant side and have perused the written argument filed at Ex-17 filed by plaintiff side.

5] I have gone through the pleadings of the parties and documents produced along with and to decide present application following points arise for my determination:

1. Whether the plaintiff has prima facie case?
2. Whether balance of convenience is in favour of the plaintiff?
3. Whether if the injunction as prayed for is not granted in favour of plaintiff, he would suffer irreparable loss which would not be compensated in terms of money?
4. What order?

6] For the reasons stated below I answer above points as under:

1. In Affirmative.
2. In Affirmative.
3. In Affirmative.
4. As per final order.

**7] Issue No. 1**

Ld.Advocate for the plaintiff has submitted his written argument at Ex-17. In which it is argued out that plaintiffs are lineal descendants of Kuvra Leba and they have equal right in the suit property. It is also argued out that defendant no.1 has executed compromise deed in favour of the plaintiff and admitted that plaintiffs have right in the suit property. It is also argued out that plaintiff and defendant no.1 has submitted joint application before Mamlatdar for entering the name of plaintiff in the ROR. It is also argued out that plaintiffs are co-occupant of the suit property and defendant no.1 is trying to infringe their right. Is also argued out that while executing alleged sale deed,the defendant no.1 has not complied with provisions of T.P.Act. Thus, looking to the compromised deed produced at Mark.4/8,plaintiffs have prima facie case. Hence, present application may be granted.

On the other hand Ld.Advocate for the defendants has submitted that looking to the entry no.22 made in ROR, Manji Kuvra was the sole owner of the suit property. It is also argued out that Manji Kuvra has mortgaged the suit property to Chuna Gambhir and said entry was made in ROR vide entry no.132. It is also argued out that as Manji Kuvra was died,name of defendant no.1 along with other heirs of Maji Kuvra was entered in ROR vide entry no.296. It is also argued out that plaintiffs are not brothers of Manji Kuvra. It is also argued out that vide entry no.822 name of defendant no.1 remained in ROR. It is also argued out that as the remaining heirs of Manji Kuvra was died,only name of defendant no.1 remained in ROR and said entry was made vide entry no.1325. Thus, looking to the entire revenue record produced by defendant side,plaintiffs have no right over the suit property. It is also argued out the defendant no.2 has purchased the suit property with cleared title.Therefore, he is bonafide purchaser. Hence, plaintiff has showed his case prima facie and present application is required to be rejected.

Before considering the arguments of either side and to give answer to point No.1 for the sake of convenience the ratio laid down in **Gujarat**

**Electricity Board ,Gandhinagar v. Maheshkumar and Co., Ahmedabad 1995(5) SCC 545**) is required to be considered, wherein it as held that,..

**" Prima facie case " means that the Court should be satisfied that there is a serious question to be tried at the hearing, and there is a probability of Plaintiff obtaining the relief at the conclusion of the trial on the basis of the material placed before the Court. "**

In light of the above case law,if we peruse the documents produced by the plaintiff's side than Mark.4/1 Pedigree of Late.Kuvra Lebdas reveals that plaintiffs as well as defendants are lineal descendants of Late.Kuvra Lebdas. From Mark.4/2,it transpires that after death of Manji Kuvra names of Shnakrji Manji,Maganji Manji and Bhudar Manji were entered in ROR vide entry no.269. From Mrak.4/3,it transpires that name of defendant no.1 has entered in ROR vide entry no.822. Mark.4/4 to 4/6 are village forms no.7,12 and 8A of the suit property,which shows that name of defendant is on record as occupant of the suit property. A document at mark.4/7 is an affidavit solemnized before Mamlatdar for obtaining pedigree. A document at Mark.4/8 is a compromise deed executed between plaintiffs and defendant no.1 before notary. In which it is stated that plaintiffs are lineal descendants of Late. Kuvra Lebdas. Said deed is supports the pleadings of plaintiff and by said deed defendant no.1 had agreed to enter the names of plaintiffs in the suit property. A document Mark.4/14 is the order passed in RTS.Misc.Case no.1/2016 by which plaintiffs have denied to entered their name in the ROR. A document at Mark.4/15 is register sale deed no. 747/2023,by which defendant no.1 has sold out survey no.187 to defendant no.2. The defendant have also produced documents at Mark.15/1 to 15/14. A documents at Mark.15/1 to 15/3 are village forms no.7,12 and 8A,which shows that name of defendant no.1 is on ROR of the suit property. From document at mark.15/4,it transpires that vide entry no.22 name of Late Manji Kuvra was

entered in ROR. A document at Mark.15/5 shows that vide entry no.132,Late.Manji Kuvra was mortgaged suit property to Chuna Gambhir.From Mark.15/6 ,it transpires that after death of Manji Kuvra names of Shnakrji Manji,Maganji Manji and Bhudar Manji were entered in ROR vide entry no.269. From Mrak.15/7,it transpires that name of defendant no.1 has entered in ROR vide entry no.822. From Mark.15/8,it transpires that plaintiffs and defendant no.1 has entered in compromised and approach the Mamlatdar for entering the names of plaintiffs. A document at Mark.15/10 shows that as the heirs of Manji Kuvra namely Vaniben,Shnakarbhai and Bhudarbhai was died their names has been deleted from revenue record and entry no.1325 was made and certify. A document at Mark.15/12 shows that Entry no.1333 was made in respect to sale of survey no.187 to the defendant no.2 and same was confirmed vide order in RTS Case no.11/23. Said order is produced herein at Mark.15/14. Considering the documents produced by either side,it is crystal clear that plaintiffs and defendant no.1 are lineal descendants of Late.Kuvra Lebadas and defendant no.1 has accepted their right over the suit property through compromise deed produced at Mark.4/8. Thus, prima facie it appears that due to technicality of revenue entries,names of plaintiffs were not entered in the ROR. Therefore, this court has opinion that plaintiff has to given chance to prove his case in respect to compromise deed. So far plead taken by defendant is concern, if plaintiff has committed fraud and obtained the sign of defendant no.1 than its a question,which requires proofs. Hence, this court finds prima facie case in favour of plaintiff and answer Issue no.1 in Affirmative.

8] **Issue No. 2 and 3:**

Before answering the second and third issues the ratio laid down by Hon'ble Gujarat High Court in the case of **Ashok Bhanushankar Primary Shikshan sameetee 2000(2) GLH ( UJ ) 6** is also required to be considered.In which it was held that

“While considering the prayer for grant of

**temporary injunction or interim relief pending the suit , the court has to consider that the party praying for the same has made out prima facie case , that in case the interim relief as prayed for is not granted , it will result in causing irreparable injury to him which cannot be compensated in terms of money and lastly the balance of convenience also favours grant of the same . It is no more res integra that merely because the litigant<sup>9</sup> RCS No.23/2016 praying for temporary injunction or interim relief has prima facie case in his favour alone is not sufficient for grant of temporary injunction or interim relief unless on all the three aforesaid ingredients the court is satisfied and then only temporary injunction or interim relief as prayed for can be ordered , but not otherwise .”**

In view of the above referred case law and considering the aforesaid discussion it is clear that plaintiff has to established not only prima facie case but also to prove that balance of convenience is in his favour and if temporary injunction will not be granted then he will suffer irreparable loss. In the present case, it is prima facie found that compromise deed was executed by defendant no.1 in favour of plaintiffs. Thus, to prove said fact, evidence is required to be lead. Therefore, this court find balance of convenience in favour of plaintiff and if injunction as prayed for will not be granted for favour of plaintiff then he will suffer irreparable loss and there will be a multiplicity of proceedings. On the contrary if granted then defendants will not suffer any loss because at present name of defendants are on revenue record. Hence I answer **Issues no. 2 and 3 in affirmative** and to meet the end of justice I pass the following order.

**-:: ORDER ::-**

1. Present application filed by the plaintiff is hereby "**Allowed**".
2. The defendants are hereby temporary restrained to transfer or alienate the suit property in any manner till the final disposal of the present suit.
3. Cost of the present application will be followed final verdict of the case.

*Signed and Pronounced in the open court today on 12<sup>th</sup> day of April, 2024.*

Dt.12/04/2024

Bhabhar

(SUNILKUMAR PRANSHANKAR DAVE)

Principal Civil Judge,Bhabhar.

**(CODE NO.GJ- 01390 )**