

ORDER BELOW EXH-5

1. Plaintiffs have filed the present suit for cancellation of registered sale deeds and for declaration and permanent injunction. Plaintiffs have also preferred interim injunction application at Exh-5 and prayed to restrain defendants from transferring the suit land from creating charge over the suit land from illegally handing over possession of the suit land.

2. It is the case of plaintiffs that agriculture land ad-measuring 1-06-23 bearing survey no. 125-1 and 125-2 is the ancestral property of plaintiffs which will herein after referred as suit land. It is contended that the suit land was originally belonged to their ancestor and after his death their names were mutated in revenue record. It is contended that the suit land was owned by Mahadevji Kasurji first and after his death the suit land came into the hands of Deharaji Mahadevji, Ravaji Mahadevji and Mobtaji Mahadevji by way of inheritance

and their names mutated in revenue record. It is contended that after death of Deharaji Mahadevji on 30-06-1987 the suit land inherited to plaintiff no. 1/1 to 1/3 and their names were mutated in revenue record on 12-03-1988. It is contended that after death of Ravaji Mahadevji on 18-07-1982, names of his heirs i.e. plaintiff no. 2/1 to 2/8 were mutated in revenue record on 12-03-1988. It is contended that the plaintiffs have undivided interest in the suit land. It is averred that plaintiffs were often sent Sundaji to look after the suit land and to cultivate the suit land. It is alleged that defendant no.1 by committing cheating and inducement to Dadamben Deharaji, Kunvarji, Sundaji Deharaji and deceased Mobtaji Mahadevji made registered sale deed no. 1031/1989 of the suit land in his favour and got the thumb impression of the said persons. It is alleged that in this sale deed no consent of plaintiffs were taken and no their signatures have been taken. It is contended that as on today plaintiffs are in possession of the suit land. It is contended that defendant no.1 made the

sale deed of the suit land illegally as the suit land is undivided agriculture land of plaintiffs. It is contended that defendant no.2 is a son of defendant no.1 and his name entered wrongly in revenue record on 18-11-2006 and after that defendant no.2 sold 0-53-62 land out of the suit land to defendant no.3 on 12-03-2009. Thereafter, defendant no.3 sold that land to defendant no. 4 and 5 vide registered sale deed no. 1396/2013. it is stated that defendant no.2 sold the remaining land ad-measuring 0-52-61 to defendant no. 4 and 5 on 23-07-2014. It is contended that on 13-02-2013 when the plaintiffs have inquired in the office of Sub-registrar, they came to know about sale deed no. 1031-1989 and defendant no.1's name recorded in revenue record vide entry no. 511 and defendant no.2's name entered vide entry no. 898 being a son of defendant no.1 and defendant no.2 sold the suit land to defendant no.3 and for that entry no. 974 has been made and therefore, plaintiffs have filed RTS appeal no. 20-2013 and the same has been rejected and therefore, revision against that has been filed before prant officer

Deesa. It is contended that if the injunction will not be granted then the plaintiffs will suffer irreparable loss. It is contended that plaintiffs have prima facie case and balance of convenience in their favour and therefore injunction be granted.

3. Plaintiffs have produced certified copy of mutation entries at mark 4/1, form no. 7 of survey no. 125/1 at mark 4/2, form no. 7 of survey no. 125/2 at mark 4/3, copy of registered sale deed 1031/1989, entry no. 887 at mark 4/5, entry no. 898 at mark 4/6, sale deed no. 439/2009 at mark 4/7, entry no. 974 at mark 4/8, sale deed no. 1396/2013 at mark 4/9, entry no. 1136 at mark 4/10, sale deed no. 1200/2014 at mark 4/11, entry no. 1157 at mark 4/12, election card of Popatji Ravaji at mark 4/13.
4. Defendants have appeared through Ld. Advocate Mr.R. K. Mansuri and filed written statement and reply at exh. 11. In the written statement defendants have denied the averments and allegations made in plaint and injunction application.

Defendants have stated that they have purchased suit land by registered sale deeds and now the plaintiffs have no right, title or interest in the suit land. It is alleged that the plaintiffs have filed the present suit with malafide intention just only to get the money from them. It is contended that plaintiffs have not joined heirs of Mobtaji Mahadevji and therefore, the suit is barred due to non-joinder of necessary party. It is contended that defendant no.1 was in possession of the suit land for 26 years. It is contended that at present defendants no.4 and 5 are in actual possession of the suit land. It is contended that the suit is barred by law of limitation. It is contended that the plaintiffs have no prima facie case and balance of convenience is in favour of defendants. Defendants have prayed to reject injunction application.

5. Defendants have produced certified copy of plaint of RCS no. 24/1990 at mark 12/1, judgment of RCS no. 24/1990 at mark 12/2, certified copy of order passed in revision case no. 188/2014 at mark 22/1.

6. Ld. Advocate for the plaintiffs argued that the suit is for cancellation of registered sale deeds. It is admitted that the suit land is an ancestral property and originally owned by Mahadevji Thakore. It is argued that vide entry no. 457 names of legal heirs were mutated. It is contended that in the year 1988 their names were there and thereafter, without their knowledge four people executed sale deed of the suit land in favour of defendant no.1 and after that total three sale deeds have been executed. It is contended that in 2013 plaintiffs came to know about this fact. It is argued that no notice under sec. 135D have been issued to the plaintiffs while making entries in form no.6. It is argued that an application under order 7 rule 11 of CPC filed by defendants have been rejected. It is argued that plaintiffs names were there in the year 1988 and the suit land is ancestral property and they have undivided interest into the suit land and the suit land was sold without their knowledge and therefore their rights are

required to be adjudicated by this Court and thus, this is a conclusive case of evidence and therefore, trial is necessary and hence the plaintiffs have prima facie case. If the defendants will not be restrained from transferring the suit land then it will be sold endlessly and the plaintiffs will suffer irreparable loss. But, if the injunction will not be granted then there is no harm or injury to defendants. Therefore, it is prayed to allow the injunction application.

7. Ld. Advocate for defendants vehemently opposed the injunction application and argued that the first sale deed was made in the year 1989 and after that another 4 sale deeds have been made and now the plaintiffs have awoken. It is argued that registered sale deeds have been legally and validly executed and now, the plaintiffs filed the present suit with a malafide intention to get the money from them. It is contended that defendant no. 4 and 5 are in possession of the suit land and thus, balance of convenience is in favour of defendants. It is argued

that the collector has also rejected the revision. It is prayed to reject the injunction application.

8. After considering pleadings and arguments of both sides following points are necessary for determination of injunction application.

(1) Whether plaintiffs have prima facie case?

(2) Whether balance of convenience is in favour of plaintiffs?

(3) Whether plaintiffs will suffer irreparable loss, if injunction is not granted?

9. My answers to above stated points are as under.

(1) partly affirmative

(2) negative

(3) negative

REASONS

10. As above stated issues are connected to each and therefore, to avoid unnecessary repetition all the issues are discussed together as under:

11. It is the case of the plaintiffs that the suit land was owned by their fore father Mahadevji Kasurji and after his death eventually mutated in the names of plaintiffs and four people namely Mobtaji Mahadevji, Dadamben Dehalaji, Sundaji Dehalaji and Kursiji Ravjiji executed sale deed to defendant no.1 due to the inducement made to them and no consideration has been given to them and after that the suit land sold to defendant no.3 who sold it to defendant no. 4 and 5 and defendant no. 2 sold remaining suit land to defendant no. 4 and 5. Plaintiffs have produced the entries of form no. 6 at mark 4/1, perusing the same it appears that the suit land was running into the name of Dehala Mahadev, Ravji Mahadev and Mobta Mahadev vide entry no. 39 and after death of Dehala Mahadev names of Dadamben Dehalaji, Manguben Dahalaji, Somiben Dehalaji, Kantaben Dehalaji and Sundaji Dehaji were mutated as legal heirs of Dhaji Mahadevji vide entry no. 456 on 12-3-1988. Looking to entry no. 457, names of plaintiff no. 2/1 to 2/8 have been mutated in revenue record in place of Ravji Mahadev. Now, looking to the entry no.

511, it is stated therein that the suit land is running into the names of Dadamben Dehalaji, Mobtaji Mahadevbhai, Sundaji Dehalaji, Kurshiji Dehalaji and they sold the suit land to Kiritkumar Somalal Shah i.e. defendant no.1 by registered sale deed dated 24-07-1989 and the said sale deed has been produced at mark 4/4. Looking to entry no. 887 at mark 4/5, name of defendant no.2 has been entered by defendant no.1 on 3-7-2006. Perusing the sale deed at mark 4/7, it appears that defendant no.2 sold 0-53-62 out of the suit land to defendant no.3 on 12-03-2009 and entry no. 974 has been made on the base of the said sale deed. Now looking to the sale deed at mark 4/9, defendant no.3 has sold that suit land to defendant no. 4 and 5 on 29-07-2013 and entry no. 1136 have been made in from no. 6 accordingly. Perusing the sale deed at mark 4/11, it appears that defendant no.2 sold out the remaining suit land to defendant no. 4 and 5 on 23-07-2014 and entry no. 1157 made due to the said sale deed.

12. Thus, from the record, it is clear that the names of plaintiffs were there in the

year 1988 and in the year 1989 the suit land was sold without their signatures. But, it is the case of the plaintiffs that the defendant no.1 had induced Dadamben Dehalaji, Mobtaji Mahadevbhai, Sundaji Dehalaji, Kurshiji Dehalaji and got the registered sale deed in his favour in the year 1989. Therefore, this question that whether that sale deed made under inducement and cheating cannot be decided without recording evidence. It is alleged by defendants that no heirs of Mobtaji Mahadevji have been joined in the present suit and so the suit is hit by the non-joinder of necessary parties. Now, whether the suit is hit due to the non-joinder of necessary party or not that will be decided after recording evidence. At this stage, it is to be looked into that whether plaintiffs have prima facie case. Looking to the documents on record, it is shown by the plaintiffs that their names were there in the revenue record in the year 1988 and in the year 1989 the suit land had been sold without their signatures. It is on record that the suit land is an ancestral property and therefore, as per provision of Hindu Law,

they had undivided interest into the suit land then the question is why their signatures are not there. Thus, the plaintiffs have set up a case which requires adjudication by this Court. Whether the plaintiffs had right and interest in the suit land and they had been deprived from their rights, all these questions warrant trial by this Court. Thus, the plaintiffs have prima facie case to the extent about the above stated question. But, so far as the possession over the suit land is concerned, plaintiffs have made bare statement that they are in possession of the suit land but have not produced any material on record to show at first instance that they are in possession of the suit land.

13. Ld. advocate for plaintiffs in support of his argument cited **AIR 2001 Supreme Court 2367 Anand Prasad Agarwalla v. Tarkeshwar Prasad and others,** in this judgment it has been held by Hon'ble Apex Court that the Court cannot hold mini trial at stage of grant of temporary injunction and examine various aspects of case under which sale certificate had been issued. In the case

before Hon'ble Apex Court sale certificate has been issued in favour of respondents and they found in possession while in the case at hand, plaintiffs have not put a single document to show that they are in possession of the suit land. Thus, the facts and circumstances of the case at hand is different from the facts and circumstances of the case before Hon'ble Apex Court. Furthermore, in that case trial court has held mini trial to examine various aspects of case under which sale certificate had been issued while in the case at hand plaintiffs failed to show at the first sight that they are in actual possession of the suit land and therefore, this judgment is not applicable to the case at hand.

14. Ld. advocate for plaintiffs has relied on **2000(3) GLR P-2759 Adani Exports Ltd. V. Hindustan Organic Chemicals**, in this Judgment, it has been held by our own Hon'ble Gujarat High Court that what are the principles regarding grant of injunction application. It has been held that for prima facie case, Court should not examine the merits of the case to

ascertain whether plaintiff is likely to succeed, it is enough if plaintiff shows a fair question which can be raised. It has been held that plaintiff has to show the existence of right which he alleged and can satisfy the Court that the property in dispute should be preserved in its present actual condition until such question is disposed of. These are the guiding principles for the grant of interim injunction application and so the ratio laid down in the said judgment is applicable to the case at hand.

15. Ld. advocate for plaintiffs has cited **1992(1) CCC page No. 73, Dalpat Kumar & Anr v. Prahlad Singh & Ors.** In this Judgment, it has been held by Hon'ble Apex Court what are the factors be looked into for grant of injunction against dispossession. It has been held that "in other words, the Court on exercise of the power of granting ad interim injunction, is to preserve the subject matter of the suit in the status quo for the time being. It is settled law that grant of injunction is a discretionary relief. The exercise there of is subject to the Court

satisfying that (1) there is a serious disputed question to be tried in the suit and that an act, on the facts before the Court, there is probability of his being entitled to the relief asked for by the plaintiff. (2) the Court's inference is necessary to protect the party from the species of injury. (3) that the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be grater than that would be likely to arise from granting it." In this Judgement, it has been also held that "the existence of the prima facie right and infraction of the enjoyment of his property or the right is a condition for the grant of temporary injunction." In the case at hand, it has not been shown by the plaintiffs that they are in enjoyment and in possession of the suit land. It has been further held in this judgment that satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court has further has to satisfy that non-inference by the Court would result in 'irreparable injury'. In the case at hand the plaintiffs are not in the possession

of the suit land, therefore, there is no question about irreparable injury to them by withholding the relief of injunction. Plaintiffs have relied on the judgment about granting of injunction against dispossession. So, they must show that they are in possession, but nothing on record produced by them that they are in possession of the suit land. Thus, this judgment is not helpful to the plaintiffs.

16. Plaintiffs have stated that they are in possession of the suit land. They contended that their relative Sundaji was looking after the suit land. But they have not produced any affidavits of Sundaji or other neighbour land holders to show that plaintiffs are in actual possession of the suit land. As against this there are sale deeds in favour of defendants and it is clearly mentioned therein that the possession has been handed over to the defendant no.1 and after that from defendant no.2 to defendant no.4 and 5. Moreover, defendants have produced the certified copy of plaint of RCS no. 24/1990 at mark 12/1 and judgment passed therein at mark 12/2. Perusing the same,

it appears that the defendant has filed suit for declaration and restraining defendants from dispossessing him. Though that suit was not against the present plaintiffs, but, it was held by this Court that the present defendant no.1 (plaintiff in that suit) is in actual possession of the suit land since long and protected possession of defendant no.1 by passing permanent injunction against defendants. In the case at hand, plaintiffs have not applied for report of court commissioner. It is also not shown by plaintiffs that if they are in possession then what they had cultivated in the suit land. Thus, the plaintiffs have failed to show that they are in possession of the suit land.

17. Now, in order to decide the injunction application, the conduct of the parties of also required to be consider. In the case at hand it is stated by plaintiffs that they came to know about the sale deeds in on 13-02-2013. now the first sale deed is of the year 1989 and mutation entry has been also made in accordance with the sale deed vide entry no. 511 on 18-08-1989. Therefore, it is quite difficult to

believe that upto 2013 plaintiffs have never checked his revenue record. Moreover, plaintiffs have merely stated that they came to know about the sale deed on 13-02-2013 when they inquired into the office of sub-registrar. But, plaintiffs have not stated that how they came to know about the sale deed. It is settled principle of law that when there are delay, laches and acquiescence by the plaintiff and he failed to explain delay then the injunction cannot be granted. It is settled principle of law that, "in exercising discretionary power, one of the considerations which a court would keep in mind is whether the plaintiff is guilty of unexplained delay, laches and acquiescence or voluntarily allowed his right to be infringed. If it is so, the Court may not exercise discretion and may refuse to grant equitable relief."

18. Now, keeping in mind above stated settled law and now looking to the averments made in plaint and injunction application. It is averred by plaintiffs that they came to know about the disputed sale deed on 13-02-2013 but, they have filed the suit on

16-10-2015. Thus, even for a moment if it is assumed that the plaintiffs came to know on 13-02-2013 about the sale deed then also they have filed the suit after 2 years and 8 months and during that period defendant no.3 had sold out the suit land to defendant no. 4 and 5 on 30-07-2013 and defendant no.2 sold the remaining part of the suit land with him to defendant no. 4 and 5 on 23-07-2014. Thus, the plaintiffs have already aware about the disputed sale deeds of the year 1989 and 2009 on 13-02-2013, but they slept over their rights and thus, allowed the defendants to execute another two sale deeds. Now, this delay, laches and acquiescence of 2 years and 8 months have not been explained by defendants. Therefore, now, they are not entitled for equitable relief as per the settled law discussed herein above.

19. Thus, from all above discussion and reasons, if the injunction as prayed for will not be granted to plaintiffs then they will not suffer any irreparable loss as they are not in possession of the suit land. But, if the injunction will be granted then the defendants will not be

able to enjoy their rights over the suit land. Thus, the balance of convenience is not in favour of plaintiffs. If any alienation is made it would be subject to doctrine of *lis pendense* under section 52 of the Transfer of Property Act. Therefore, in wide interest of justice, this Court passes following order.

O R D E R

1. The temporary injunction application at exh-5 is hereby rejected.
2. No order as to cost.

Order passed and pronounced in an open Court on this 27th day of Month May of the year 2016.

Date:27/05/2016

place:Shihori

(Sandeep Manharkumar Christy)
Principal Civil Judge, Shihori
GJ00929