

ORDER BELOW Exh. : 5 IN R. C. S No.16-2018

1) This is an application filed by the plaintiff under Order-39, Rule-1 & 2 read with Section 151 of the Code of Civil Procedure, 1908 (in short 'C.P.C.') for seeking interim injunction from restraining the defendants from transferring or from making any type of alienation of the **suit-property** in any way or from creating any charge over the **suit-property** till the final disposal of the suit.

. The **suit-property** consists various parcels of agricultural land of different 11 survey nos. situated at Mankani & Modasar as shown in para-14 of the present application.

. It is pertinent to note that the present suit is filed by the Power of Attorney Holder [Ranjitsinh Himatsinh Rathod] of the plaintiff No.1-Kamleshbhai Shankarbhai Baria & No.2 Shilpaben Shankarbhai Baria.

2) As the Court is going to decide the present interim injunction application and as the arguments by the respective side are made at length, at this stage, the facts of the present application are not mentioned to avoid fruitless repetition.

3) The plaintiffs have submitted documents at Mark 4/1 to 4/21, no any affidavit of the plaintiff is attached along-with the present application.

Whereas the defts. have produced their W.S. vide Exh.11 and affidavit of the deft. No.1 is attached along-with their W.S.

4) First of all, Ld.Advocate Mr.J.A. Vaghela for the plaintiffs has argued as per their plaint & contended that plaintiffs are children of son of the deft. No.1, i.e. they are linear class-I legal heirs of the deft. No.1. It is contended that marriage of their mother, i.e. Sumitraben was solemnized with the son of the deft. No.1 and out of that wed lock, plaintiffs are born. It is further contended that divorce with their mother was taken place by the son of the deft. No.1 in presence of witnesses by divorce deed dtd.04-08-1994. And, at that time, plaintiffs were minor, whole responsibility was agreed to be taken by mother and as per condition mentioned in deed of divorce dtd.04-08-1994, whole responsibility would be of the father, i.e. son of the deft. No.1 on being become

major [plaintiffs]. But, the son of deft. No.1, i.e. their father died on dtd.09-02-2009 and, hence, their father could not accept their responsibility and deft. No.1 is a witness to the deed of divorce and has having knowledge as to whole facts. Therefore, the suit-property is ancestral property, they are entitled to get share in the same. Ld.Adv.Mr.Vaghela has highly relied upon the pedigree & leaving certificates whereby it prima facie establishes that plaintiffs are linear class-I successors of the deft. No.1 legal heirs. As per divorce deed at M-4/13, specific fact that on being become mature, plaintiffs shall have right in the properties of their father, i.e. son the deft. No.1. Hence, they have strong prima facie case and if no interim injunction will be passed, defts. alienate the suit-property in any way. Hence, two other factors are also in favour of them. Therefore, it is requested to grant the present application.

- 5) *Per contra*, the Ld.Adv.Mr.R.S. Parmar for the defts. highly argued as per their W.S. and he has first taken objection against the pedigree, because it has been executed before the Notary, which is only affidavit as to pedigree. Therefore, the plaintiffs are denied to be the class-I successors of the deft. No.1. Hence, the plaintiffs have no *locus standi* to file the present suit. It is further contended that the suit-property is of the defts. & other co-owners and their names have been run in the revenue record. Further, there is no any relation of the plaintiffs with the deft. No.1 and defts. have nothing to do with them. Further, no ever time plaintiffs resided with them, on the contrary they lived with their mother at Vadodara.

It is further argued that after sad demise of first wife of the deft. No.1, he made second marriage with Vestiben in simple manner. And it was also second marriage of Vestiben likewise deft. No.1. And, father of the plaintiffs (Shankarbhai) was the son of Vestiben from her earlier marriage. Meaning thereby, father of the plaintiffs was not real son of the deft. No.1. On the contrary, deft. No.1 took care & caused to be arranged his marriage. After marriage of father of the plaintiffs, he went Vadodara & made his properties at Vadodara. It is further argued that marriage of father of the plaintiffs was made with Sumitraben, r/o.Duma, Tal.Jambugoda and out of their marriage, plaintiffs were born. As there was mis-matching nature, father of the plaintiffs & Sumitraben took divorce and being an elder, deft. No.1 put his signature in

the divorce deed. And as per the deed of divorce, plaintiffs shall have right in their father's properties not in the properties of witness, such as deft. No.1. Therefore, by suppressing material facts, present suit is filed by the plaintiffs, no any *locus standi* is with them to file the present suit, is requested to be rejected with costs.

- 6) This is an application for temporary injunction and there are three basic principles for granting injunction i.e. *Prima facie* case in favour of the party seeking injunction, Balance of convenience in favour of such person and last there must be a irreparable loss which are likely to be caused to party if injunction is not granted to such person. Thus an injunction being an equitable remedy is always at the discretion of the Court. However, such discretion must be based on sound judicial principles and guided by rules of Equity and the peculiar facts and circumstances of the case. In addition to this three basic principles for granting or refusing to grant injunction, the conduct of the person seeking injunction should also be taken in to consideration because the granting of injunction is an equitable relief and is drastic or serious order and there are two basic maxims of equity which are important to be consider at the time of deciding injunction application which are "He who seeks equity must do equity" and "He comes to equity must come with clean hand". What is *prima facie* case, is beautifully held in the case of Dalpat Kumar vs. Prahlad Singh, AIR 1993 SC 276, wherein held that *prima facie case is not to be confused with prima facie title, but it is substantial question which raised bona fide, which needs investigation and a decision on merits*.
- 7) Looking to the facts and circumstances of the case & the documents filed by plaintiffs, it is main plea raised by the plaintiffs that they are class-I linear successors of the deft. No.1 and the said fact has been denied by the rival side. Of course, such type of application is to be supported by the affidavit, which has not been done so by the plaintiffs. Even whatever the case is put forth by the defts. has not been denied by the plaintiffs by way of filing counter-affidavit. Barring all these requirements, plaintiffs have relied upon the pedigree, but it is not pedigree prepared in presence of panchas before Talati-cum-Mantri, whatever is produced is an affidavit made by the plaintiffs before Notary. Therefore, at this juncture that document can not be seen. Now, other documents, i.e. leaving certificates of the plaintiffs [M-4/16 & 4/17] are produced by

the plaintiffs, wherein their father's name is shown 'Shankarbhai' and in the same way, death certificate of father of plaintiffs is produced at M-4/14, wherein father's name is written Mathurbhai Maganbhai, i.e. deft. No.1. Now, as per deed of divorce [M-4/15] it is specific written that on attaining major age, plaintiffs shall have right in their father's properties, i.e. Shankarbhai's properties. Of course, death certificate shows the name of deft. No.1 as the father's name of Shankarbhai. But, there is no any prima facie document which connects the Shankarbhai & deft. No.1. Mere death certificate is not any material value as the father of the plaintiffs died 09-02-2007 and their mother died on 30-09-2003, i.e. there were around about 4 years difference, no any action seems to be initiated during that time by the plaintiffs, because leaving certificates of the plaintiffs witness that plaintiffs became major in the year 2003 & 2006 respectively. Hence, all these facts create suspicious over the prima facie case of the plaintiffs. Because, whatever the defence is put forth by the defts. has not been explained by the plaintiffs. And, also after 11 years from the death of his father, plaintiffs rushed before the Court, which itself inspires to believe this Court that there is no any urgency or circumstances wherein any interim injunction would be passed. Hence, the plaintiffs have not proved any ingredients which ought to be proved for the relief as asked for in the present application.

- 8) Hence, with this discussion, plaintiff is not entitled to get relief as asked for, hence, I pass the following order in the interest of justice :-

:-: ORDER :-:

The application filed by the plaintiffs at Exh.5 for seeking temporary injunction w/O.39 R.1-2 & S.151 of the Code is hereby rejected.

Costs shall follow the final order of the suit.

Pronounced in open Court on 7th March, 2019.

Date : 07-03-2019
Bodeli

(PRAKASH KHUBCHAND KHANCHANDANI)
Principal Senior Civil Judge
Bodeli, Code : GJ00806

Court of Principal Sr. Civil Judge, Bodeli

Order below Exh.5 in Reg. Civil Suit No.16-2018