

SPL. C. S. NO. 200/2024**ORDER BELOW APPLICATION EXH-5**

1. The present application at Exh-5 is filed by the plaintiff under Order 39 Rules 1 and 2 of the Code of Civil Procedure, 1908, seeking a temporary injunction restraining defendants No.1 to 4, their agents, servants and representatives, from selling, transferring, mortgaging, alienating or in any other manner creating third-party rights over, or changing the nature and condition of, the suit land bearing Survey/Block No.227/1 of Moje Koba village, Taluka and District Gandhinagar, admeasuring 9292 sq.mtrs., pending final disposal of the suit.

2. Heard learned advocate for the plaintiff and learned advocates for the defendants. Perused the record of the case, including the plaint, application Exh-5, the written reply of defendant Nos.1 to 5 (Exh-21), the written reply of defendant Nos.6.1 and 6.2 (Exh-18), the written arguments filed by defendant Nos.1 to 5 (Exh-30) and also considered the documentary evidence produced by both the sides. The submissions of both sides are considered at the relevant place hereinafter.

3. **Points for determination:**

- (i) Whether the plaintiff has made out a prima facie case for grant of temporary injunction?

- (ii) Whether the balance of convenience lies in favour of the plaintiff?
- (iii) Whether the plaintiff would suffer irreparable loss and injury if the injunction, as prayed for, is refused?
- (iv) Whether the plaintiff is entitled to the relief claimed in application Exh-5?
- (v) What order?

4. Findings, in brief, on the above points, for the reasons recorded hereinafter, are as under:

- (i) In the affirmative.
- (ii) In favour of the plaintiff.
- (iii) In the affirmative.
- (iv) In the affirmative.
- (v) As per the final order.

5. **Case of the Plaintiff**

The plaintiff has instituted the present suit seeking declaration, permanent injunction and consequential reliefs in respect of the suit property. According to the plaintiff, the suit property originally belonged to late Dwarkabhai Magandas Patel, who died intestate, and the plaintiff claims to be one of his Class-I heirs through his predeceased daughter Lilaben. It is the case of the plaintiff that after the death of late Dwarkabhai, certain

revenue mutation entries came to be recorded in favour of defendant Nos.1 to 5 by suppressing the true pedigree and excluding the branch of late Lilaben. According to the plaintiff, the said mutation entries do not correctly reflect the succession to the estate of late Dwarkabhai. The plaintiff further contends that the notarised declaration relied upon by the defendants neither divests nor relinquishes the statutory rights, if any, accrued to the plaintiff under the provisions of the Hindu Succession Act, 1956.

It is further pleaded that defendant Nos.1 to 4 are attempting to transfer, alienate and create third-party rights over the suit property. Hence, pending the final adjudication of the suit, the plaintiff has sought interim protection of the suit property by filing the present application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure.

6. Defence of the Defendants

6.1 Defendant Nos.1 to 5

Defendant Nos.1 to 5 have resisted the application by filing their written reply at Exh.-21. They have denied the relationship pleaded by the plaintiff and have disputed the genealogy relied upon by him. It is their case that Mutation Entry No.2985 was duly certified after the death of late Dwarkabhai, followed by subsequent mutation entries including Entry No.4028 whereby defendant No.5 relinquished his interest in favour of defendant No.1. According to them, defendant Nos.1 to 4 have remained in continuous and exclusive possession of the suit property for several years and have also obtained Non-

Agricultural permissions from the competent authority. They have further contended that the plaintiff himself executed a notarised declaration dated 29.03.2024 acknowledging that he has no right, title or interest in the suit property. It is therefore contended that the suit is barred by limitation, delay, laches, acquiescence, estoppel and suppression of material facts.

6.2 Defendant Nos.6.1 and 6.2

Defendant Nos.6.1 and 6.2 have also filed their written reply at Exh.-18 opposing the application. They have substantially supported the stand taken by defendant Nos.1 to 5 and have disputed the plaintiff's entitlement to any interim relief. It is contended that the plaintiff has failed to establish any prima facie right over the suit property and, therefore, the application deserves to be rejected.

The written arguments produced at Exh.-30 reiterate that the plaintiff has neither established a prima facie case nor shown that the balance of convenience or irreparable injury lies in his favour.

7. Findings of the Court

7.1 The principles governing grant of temporary injunction are well settled. The Hon'ble Supreme Court in *Wander Ltd. and Another v. Antox India (P) Ltd., 1990 Supp SCC 727*, has held that grant of temporary injunction is an equitable and discretionary relief intended to preserve the subject matter of the litigation pending adjudication of the rights of the parties. Subsequently, in

Dalpat Kumar and Another v. Prahlad Singh and Others, (1992) 1 SCC 719, it has been held that before granting temporary injunction, the Court must be satisfied regarding the existence of (i) a prima facie case, (ii) balance of convenience in favour of the applicant, and (iii) likelihood of irreparable injury in the absence of interim protection. These three ingredients are cumulative and each must coexist before discretionary relief can be granted.

7.2 It is not in dispute, at least prima facie, that the suit property originally belonged to late Dwarkabhai Magandas Patel. The principal controversy between the parties relates to the succession to his estate and the correctness of the genealogy set up by the respective parties. The plaintiff claims to represent the branch of late Lilaben, whereas the defendants dispute such claim. These disputed questions of relationship, succession and inheritance can be finally adjudicated only after the parties adduce oral and documentary evidence during trial.

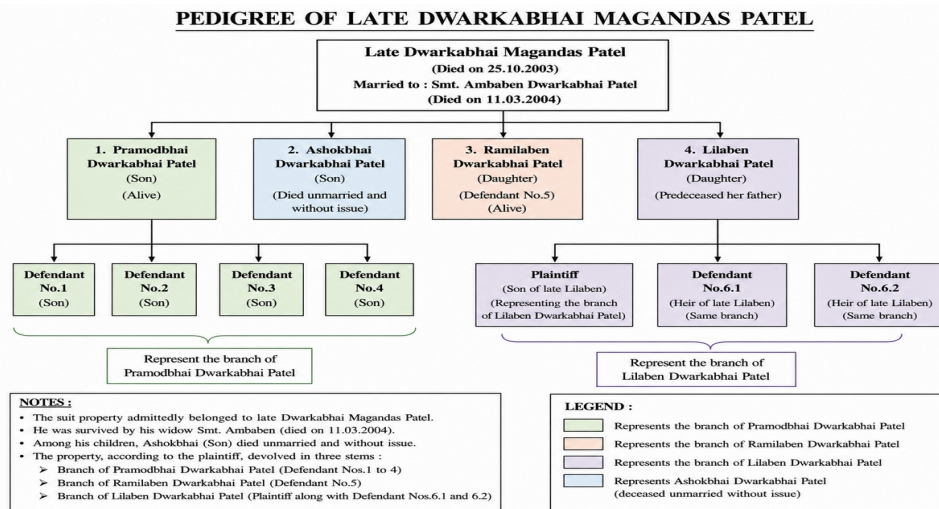
Prima facie, however, if the plaintiff succeeds in establishing the relationship pleaded in the plaint, he along with defendant Nos.6.1 and 6.2 would represent the branch of late Lilaben and would be entitled to claim such share, if any, as may ultimately be determined by the Court in accordance with the provisions of the Hindu Succession Act, 1956. At this interlocutory stage, the Court is not required to record any final finding regarding the precise extent of the respective shares of the parties.

7.3 The defendants have strongly relied upon the notarised declaration dated 29.03.2024 (Mark 19/16). Prima facie, however, the said document is neither a registered instrument nor does it, by itself, appear to satisfy the statutory requirements for relinquishment or extinguishment of rights in immovable property. Whether the said declaration was voluntarily executed, whether it is genuine, and whether it can otherwise operate as an estoppel against the plaintiff are all disputed questions requiring evidence. Therefore, at this interlocutory stage, the said document cannot be treated as conclusively determining the rights of the parties.

7.4 The defendants have further relied upon various revenue mutation entries (Mark 19/1 to 19/4) and the Non-Agricultural permissions obtained pursuant thereto. It is, however, a settled principle of law that mutation entries neither create nor extinguish title nor do they have any presumptive value regarding ownership. Reference may be made to *Sawarni v. Inder Kaur*, (1996) 6 SCC 223 and *Balwant Singh v. Daulat Singh*, (1997) 7 SCC 137. Consequently, the mutation entries relied upon by the defendants, though relevant for fiscal purposes, cannot by themselves conclusively determine the question of succession or title, particularly when the very basis of such entries is under challenge in the present suit.

7.5 Having considered the pleadings, documents and rival submissions, this Court is of the prima facie opinion that the plaintiff has been able to demonstrate a serious triable issue requiring adjudication during the course of trial. The claim raised

by the plaintiff cannot be said to be frivolous or vexatious at this stage. Accordingly, the first ingredient for grant of temporary injunction stands satisfied. For better understanding the Pedigree of late Dwarkabhai Magandas Patel is produced hereunder :-



7.6 The material on record further indicates that the suit property presently stands recorded in the names of defendant Nos.1 to 4 and that they are asserting exclusive rights therein. If, during the pendency of the suit, they are permitted to alienate the property or create third-party rights, complications may arise in execution of any decree that may ultimately be passed in favour of the plaintiff. On the other hand, by preserving the suit property during the pendency of the proceedings, no irreversible prejudice would be caused to the defendants. Maintenance of status quo regarding the title and nature of the suit property would, therefore, subserve the ends of justice. Consequently, the balance of convenience also lies in favour of the plaintiff and refusal of

interim protection is likely to cause irreparable injury which cannot be adequately compensated in monetary terms.

7.7 In view of the foregoing discussion, this Court is satisfied that the plaintiff has been able to establish all the three essential ingredients required for grant of temporary injunction, namely, a *prima facie* case, balance of convenience and likelihood of irreparable injury. The discretionary relief under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure is intended to preserve the subject matter of the litigation so that the rights of the parties, if ultimately adjudicated in favour of either side, are not rendered illusory by any intervening act of alienation or alteration of the property in dispute.

The apprehension expressed by the plaintiff that defendant Nos.1 to 4 may create third-party rights over the suit property cannot be said to be wholly unfounded, particularly when the defendants assert exclusive ownership over the property. If such alienation is permitted during the pendency of the suit, the litigation is likely to become more complicated by involving third parties, thereby giving rise to multiplicity of proceedings. On the contrary, grant of a temporary injunction would merely preserve the existing state of affairs without finally determining the rights of either party. Therefore, the balance of justice also tilts in favour of granting interim protection.

7.8 Before parting with the matter, it is clarified that the observations recorded herein are purely **prima facie** in nature and have been made only for the purpose of deciding the present application under Order XXXIX Rules 1 and 2 of the Code of

Civil Procedure. During the trial the suit shall be decided independently on the basis of the pleadings, evidence and applicable law, without being influenced by any observations made in this order regarding the merits of the rival claims.

Accordingly, Point Nos.1, 2 and 3 are answered in the affirmative. Consequently, Point No.4 is answered by holding that the plaintiff is entitled to interim protection of the suit property during the pendency of the suit.

ORDER

1. The application Exh.-5 preferred by the plaintiff under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 is **hereby allowed**.
2. Pending the final disposal of Special Civil Suit No.200 of 2024, defendant Nos.1 to 4, their agents, servants, representatives or any person claiming through or under them are hereby **restrained from selling, transferring, alienating, mortgaging, assigning, gifting, leasing, creating any charge, encumbrance or third-party rights or interest in respect of the suit land bearing Survey/Block No.227/1 of Moje Koba, Taluka and District Gandhinagar, admeasuring 9292 Sq. Mtrs., or any part thereof, and from changing the nature, character or condition of the said property, till the final disposal of the suit.**
3. It is further clarified that the observations made in this order are only for deciding the present interlocutory

application and shall not be construed as an expression of opinion on the merits of the suit. The rights and contentions of all the parties are expressly kept open for adjudication at the trial.

4. No order as to costs.

Pronounced in open Court on this **19th day of August, 2026.**

Date :- 19.08.2026
Place :- Gandhinagar

(MEHUL GIRISHBHAI SHAH)
Judge Code-GJ00962
Principal Senior Civil Judge,
Gandhinagar

J.V.Soni