

In the Court of Additional Civil Judge, At Dehgam.

Plaintiff:-

Zala Balusinh Somsinh
Age. Adult,
Res. at. Khakhra, Ta. Dehgam,
Dist. Gandhinagar.

V/S

Defendants:-

1. Legal heirs of deceased Punjaji Jivaji Zala

1. Zala Madhusinh Punjaji

Age. Adult,
Res. at. Saheb ji na movada,
Ta. Dehgam, Dist. Gandhinagar.

2. Legal heirs of deceased Jasvatsinh Punjaji

1. Zala Jagatsinh Jasvantji

2. Zala Kansinh Jasvantji

Both are res. at. Sahebji na movada,
Ta. Dehgam, Dist. Gandhinagar.

3. Legal heirs of deceased Becharji Punjaji Zala

1. Zala Amratben widow of becharji pinjaji

2. Zala Manjiben Becharji

3. Kiranben Becharji

All are res.at. Rakhiyal,

Opp- Gujarati School, Fekariya Area,
Rakhiyal, Ta. Dehgam, Dist. Gandhinagar.

For Plaintiff :- Ld. Advocate Mr. G. M. Patel

For Defendant No.1/1 :- Ld. Advocate Mr. K. B. Patel

For remaining Defendants :- Ld. Advocate Mr. R. R. Patel

Order Below Exh. 5

1. That plaintiffs has filed the present suit for the purpose of declaration as well as perpetual injunction against the defendant herein. That, brief fact of the present suit are, Agriculture land bearing revenue survey No. 94 ad-measuring 0-97-13 situated at. Kalyanji Na muvada, Ta. Dehgam, Dist. Gandhinagar purchased by the plaintiff from the legal heirs of deceased Punjaji Jivaji Specifically from the present defendant No. 1/2 & 1/3 by executing the registered sale deed vide No. 272 on 02/04/1987 for the consideration a sum of Rs. 9,999/-. That plaintiff has considered the present land as a suit property (For the sake of convenience herein after referred to as “suit property”) for the present suit as well as for the present application. That said transaction has been registered in the revenue record vide Entry No. 199 on 07/08/1990 which has been sanctioned by the competent officer on 04/06/1991. Since than plaintiff herein became lawfull owner of the present suit property as well as lawfully enjoying the possession of the same. Later on plaintiff has obtained loan over the present suit property to purchase tractor from the Gujarat Co-op. Bank Dehgam for the sum of Rs. 2,00,000/- which transaction has also been registered in the revenue

record vide Entry N.232 on 05/11/1998 as well as obtained loan for the sum of Rs. 4,00,000/- from the Bank of Baroda which transaction also been registered in the revenue record vide Entry No.364. Plaintiff herein contended that, said entry has not been challenged till today but due to some mistake name of the plaintiff was removed and name of the pinjaji Jivaji was again entered into the revenue record. Hence, plaintiff has again applied to enter his name on 29/03/2011 vide Entry No.353 but due to inconsistency with the revenue record said entry was rejected. Later on plaintiff herein again applied to enter his name based on the registered sale deed on 15/05/2012 vide Entry 398 wherein defendants has taken objection, hence the said was registered as takrari case No.115/12, wherein the said entry was rejected by the Mamlatdar shri. Plaintiff herein contended that, due to mistake in the revenue record defendants herein entered their name in the revenue record of the present suit property vide succession entry No. 402 and based on the same defendants herein tried to sale out the present suit property, hence in order to sought declaration that, plaintiff is an owner as well as in law full possession with respect to the present suit property by virtue of registered sale deed No.272 as well ass to sought perpetual injunction against the defendants herein with respect to the present suit property, plaintiff has filed the present suit. That during the pendency of the present suit in order to sought interim protection with respect to the present suit property, plaintiff has filed the present application under the provision of O.39, R. 1 & 2 of C.P.C. Wherein plaintiff has contended that, he is having a prima facie case, balance of convenience is also in his favor and if injunction as prayed for is not granted than he is likely to be caused with irreparable loss. Hence, finally plaintiff herein pray to allow the present application. Plaintiff has submitted documents vide list of

documents Exh. 3 in support of the present application.

2. That, defendants has been served with the summons of the present suit as well as notice under the present application. Wherein Defendant No. 1/1 has filed his reply vide Exh. 26. Remaining defendants has filed their reply vide Exh. 24. Basically pleadings & defence of all the defendants are same hence in order to avoid the repetitions it is hereby discussing together. Present defendants by specifically denying the pleadings of the plaint contended that, present suit is not sustainable due to non-joinder of necessary parties; due to without any cause of action; due to barred by law of limitation. Present defendants by specifically denying the pleadings of the plaint contended that, originally punjaji Jivaji was possessing the present suit property, who expired in the year 1970 who left his widow, defendant No.1, Kesharben daughter of punjaji, defendant no.1/2, Baijiji daughter of punjaji, defendant No.1/3 as a legal heirs. Out of which punjiben was expired on 23/12/80, kesharba was expired o 04/06/83, Baijijiben was expired on 08/05/86. Finally present defendant No. 1/1 to 1/3 only remain surviving legal heirs of deceased punjaji and possessing present suit property by succession. That all the defendants possessing equal right and share into the present suit property, but at the relevant time their names were not entered into the revenue record but now their name has been entered into the revenue record of the present suit property vide Entry No. 402 on 02/06/12. Present defendants contended that, no physical partition was ever took place among them till today and plaintiff has fabricated the false sale deed with respect to the present suit property by fabricating the signature of defendant No. $\frac{1}{2}$ & $\frac{1}{4}$. Present defendants contended that, revenue record with respect to the

present suit property are running in their name and plaintiff has filed the present false suit based on the fabricated false sale deed. Further present defendants contended that, plaintiff herein do not have prima facie case; balance of convenience is not in favor of the plaintiff and plaintiff herein is not likely to be suffered with any kind of loss or damages if present application be disallowed. Finally present defendants pray to disallow the present application. That defendants has submitted documents vide list of documents Exh. 27 in support of their defence.

3. Under the present application heard Ld. Advocates on both the side. Finally considering the pleadings and documents produce on record, following issues has been raised before this court in order to determine the present application,

ISSUE

- A) Whether plaintiff prove that, plaintiff have a prima facie case?
- B) Whether plaintiff prove that, balance of convenience is in their favor ?
- C) Whether plaintiff prove that, plaintiffs are likely to be caused with irreparable loss if injunction as prayed for is not granted in their favor?
- D) What order

That answer of the above issues are as under,

- A) “ Affirmative “
- B) “ Affirmative “
- C) “ Affirmative “
- D) “ As per final order”

4. That reasons for the answer of the above issues are discussed and determined in detail as under,

4.1) Issue No. A :- Before determining the present issue, it is pertinent to discuss the settled principle of law so far as the present provision is concern under which present application has been filed. That it is the settled principle of law that, present provision is based on the principle of Equity, no parties to any suit are entitle to get the relief under the present provision as a matter of right. That relief under the present provision is purely within the discretion of the court. In order to get the relief under the present provision, concern party has to establish three basic criteria - prima casie case; balance of convenience and irreparable loss, based on his own pleadings and documents. Now, keep in mind the said settled principle of law, if the present issue be determined than, first of all documents produce by the plaintiff herein vide list of document Exh. 3 are important to be determined. First of document vide Mark 3/1 is a document of registered sale deed of the present suit property registered on 02/04/1987 vide registered No. 272, executed by the present defendant No. 1/2 & 1/3 in favor of the plaintiff herein. That perusing the first para vide page No.3 & 2 it specifically stipulated that, by executing the present sale deed present defendant No. 1/2 & 1/3 has accepting the final consideration for the sum of Rs. 9,999/- by selling the present suit property handed over the possession of the same. That Mark 3/2 is index copy of the Mark 3/1. It is pertinent to note here that, present sale deed is registered sale deed in view of sec. 17 of The Registration Act, 1908 and in order to determined the title as well as possession present document being the best evidence. Unless the present document not being declared to be null & void or otherwise set a side by the competent court of law, said document can not be denied as well as title conveyed by the same can also not be denied. Except the present document both the parties has submitted the revenue record with

respect to the present suit property and with respect to the same, parties dispute are still pending before the competent revenue authority. It is pertinent to note here that, in order to determine the title registered sale deed is the best evidence. Against the registered sale deed revenue record possess no value at all. Specifically revenue record always being maintained in order to access the govt. revenue with respect to the concern land from the person named in the concern revenue record. Revenue record can never be used in order to determine the title. Hence, against the present registered sale deed vide Mark 3/1 all the revenue record produced by both the parties possess no value in the eyes of law. Hence, at this juncture considering the record it appears that, plaintiff herein lawfully purchased the present suit property from the present defendant No. 1/2 & 1/3 by executing the registered sale deed vide Mark 3/1 in the year 1987 and since then he became a lawful owner as well as enjoyed lawful possession of the present suit property. As no contrary reliable evidence is available on record which can contradict the record of the registered sale deed vide Mark 3/1, hence no reason appears to disbelieve the same as well as legal title conveyed there from. Hence, considering the discussions as made herein above it appears that plaintiff herein remain succeed to prove his prima facie case and considering the whole record no reason appears to disbelieve the same. Hence, considering the discussions as made herein above present **Issue No. A** hereby answer in “ **Affirmative** ”.

4.2) Issue No. B and C :- That considering the discussions as made in Issue No. A and without prejudice with the same, at this juncture it appears crystal clear that, plaintiff's herein remain succeed to prove the facts with which they have filed the present suit as well as present

application and accordingly remain succeed to prove their prima facie case. So far as the remaining both the issues are concern, Considering the record it appears that since the execution of the registered sale deed vide Mark 3/1 in the year 1987 plaintiff herein became lawfull owner as well as enjoyed legal possession of the present suit property. On the contrary defendants herein succeed to muted the revenue record of the present suit property in their own name based on the old revenue record. In the eyes of law registered sale deed possess more value against the revenue record so far as the title as well as possession is concern. It is pertinent to note here that, present registered sale deed vide Mark 3/1 has executed by the present defendant No. 1/2 & 1/3. Until the present registered sale deed not being declared null & void or otherwise not been set a side by the competent court of law, its legality can not be denied. It is pertinent to note here that, present sale deed executed by the present defendant No. 1/2 & 1/3, hence neither defendant No. 1/2 & 1/3 nor their legal heirs can deny the same as well as they all are prevented to deny the same by virtue of principle of estoppel. Perusing the sale deed vide Mark 3/1 it is clear that possession of the present suit property was handed over by the present defendant No. 1/2 & 1/3 in favor of the plaintiff. Now considering the whole record no record is available which can show that, said possession was ever conveyed or pass on to the present defendants from the plaintiff's herein. Hence, at this juncture considering the whole record it appears that, since the execution of the sale deed vide Mark 3/1 possession with respect to the present suit property was kept by the plaintiff herein till today. But some how revenue record is muted in the name of the defendant's herein in spite of knowing that they do not possess the same and due to which plaintiff herein has to entered into the multiplicity of

litigation before this court as well as before the revenue authority. On the contrary based on the revenue record defendants herein claiming their possession as well as their right & share into the present suit property and in order to sought the same no counter claim has been sought by them under the present suit. Hence, if at this juncture defendants herein not been prevented from dealing with the present suit property based on the revenue record and if they succeed to deal with the suit property based on the revenue record that, certainly plaintiff's herein would have to suffer with lot of hardship and would have to entered into the multiplicity of litigation as well as plaintiff herein would be suffered with irreparable loss. Hence, consideration the discussion as made herein above at this juncture it appears that, balance of convenience is appears to be in favor of the plaintiff herein as well as if defendants herein would not be restrained from dealing with the present suit property based on the revenue record that, certainly plaintiff herein would be suffered with irreparable loss and considering the whole record no reason appears to deny the same. Hence, considering the discussions as made herein above present both the **Issue No. B and C** hereby answer in “ **Affirmative** ”.

4.3) Issue No. D :- That considering the discussions as made in Issue No. A to C at this juncture it appears crystal clear that, plaintiff's herein remain absolutely succeed to prove all the basic elements of the O. 39 R. 1 & 2 of C.P.C. Hence, certainly plaintiff's herein appears to be entitle to get the relief as prayed for in the present application. Before coming to the conclusion portion, at this juncture it is pertinent to note here that, all these observations made at this juncture, are purely made, based on the pleadings and documents produced on record and without

prejudice with the subject matter of evidence. Hence, with this clarification considering the discussions as made herein above, this court is of the certain view to pass the final order below the present application as under,

FINAL ORDER

(I) present application hereby order to be allowed.

(II) Present defendants hereby restrained directly and indirectly from dealing with (by any mode of transfer as envisaged by the Transfer of property Act, 1882) the present suit property as well as restrained from interfering directly and indirectly with the possession of the plaintiff's herein with respect to the present suit property till the final disposal of the present suit.

(III) No order as to cost.

Present order declared in the open court today on this 11th day of April, 2016.

Date :- 11/04/2016

Dehgam.

(Raja Ranchhodbhai Patel)

(Additional Civil Judge, Dehgam)

GJ00922