

In the Court of Additional Civil Judge, At Dehgam.

Plaintiffs :-

Legal heirs of deceased Mahijiji Amraji Solanki

1) Legal heirs of deceased Ranchhodji Mahijiji Solanki

1. Baluben Ranchhodji

2. Deenaben Ranchhodji

3. Ratansinh Ranchhodji

4. Legal heirs of deceased Popatsing Ranchhodji

1. Hemlataben Popatji

2. Minor Chetankumar Popatji

3. Varshaben Popatji

5. Bhagvatsinh Ranchhodji

6. Nishaben Ranchhodji

2) Solanki Umedji Mahijiji

3) Solanki Gagiben Mahijiji

4) Solanki Jiviben Mahijiji

5) Solanki Rajiben Mahijiji

6) Legal heirs of deceased Badarji Mahijiji Solanki

1. Solanki Kalaji Badarji

Age. Adult,

2. Solanki Andarji Badarji

Age. Adult,

All are res. at. Antoli,

Ta. Dehgam, Dist. Gandhinagar.

V/S

Defendants :-

Legal heirs of deceased Muljibhai Bhuptaji

1. Legal heirs of deceased Udaji Muljiji Solanki

1. Solanki Somaji Udaji

2. Solanki Shardaben Udaji

2. Solanki Kalaji Muljiji

Age. Adult,

3. Legal heirs of deceased Badsinh Muljiji

1. Solanki Kadiben Badsinh

Age. Adult,

2. Solanki Rameshji Badsinh

Age. Adult,

3. Solanki Govindji Badsinh

Age. Adult,

4. Solanki Santokben widow of badsinh

Age. Adult,

4. Solanki Hakuben Mudjiji

Age. Adult,

5. Solanki Surajben Mudjiji

Age. Adult,

6. Solanki Lakshmanji Nathaji

Age. Adult,

7. Solanki Fataji Nathaji

Age. Adult,

8. Solanki Rataji Nathaji

Age. Adult,

All are Res. at. Antoli,

Ta. Dehgam, Dist. Gandhinagar.

For Plaintiffs :- Ld. Advocate Mr. A. K. Mansuri

For Defendant No. 1 to 5 :- Ld. Advocate Mr. D. C. Mehta

For Defendant No. 6,7,8 :- Ld. Advocate Mr. H. M. 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. Brief fact of the present suit are, plaintiffs ancestor Mahijji Amraji was possessing agriculture land bearing revenue survey No. 154 ad-measuring 1-84-32 situated at. Mauje Antoli, Ta. Dehgam, Dist. Gandhinagar. Plaintiffs herein contended that, their ancestor were cultivating the suit property and after his life time the same came into the hand of the plaintiff's herein as well as till today they are cultivating the same. Plaintiffs herein contended that, they had issued notice to the defendant No. 6 to 8 to call upon them that, if they are being an owner of the said revenue survey No. 154

paiki 1 Akar – 11 Guntha land, than they may submit their respective sale deed and according to the plaintiff's defendant No. 6 to 8 had been served with the said notice on 30/04/11, but they remain failed to submit any record in order to show their respective ownership. Hence, plaintiff's herein declared that, defendant No. 6 to 8 herein do not have any concern with the said portion of land. Plaintiff's herein further contended that, name of the ancestor of defendant No. 1 to 5 Muljiji Bhuptaji was entered into the revenue survey No. 154 vide Tenancy case No. 27 and since than plaintiff's ancestor as well as ancestor of defendant No. 1 to 5 were enjoying the said revenue survey No. 154 jointly and cultivated the same jointly and after the life time of their ancestor, they are holding the same jointly. Plaintiff's herein considered the said land as a suit property (For the sake convenience herein after referred to as “suit property”) for the present suit as well as for the present application. Plaintiff's herein further contended that, they along with the defendant No. 1 to 5 cultivating & holding the suit property jointly since the life time of their ancestor, but as the price of agriculture land goes high, hence in order to vacate the possession of plaintiff's portion, defendants herein given threat to the plaintiff's herein, but plaintiff's herein requested them to have physical partition of the suit property, but defendants herein did not co-operated. Hence, finally plaintiff's herein has

filed the present suit. During the pendency of the present suit in order to sought interim relief, plaintiff's has filed the present application under the provision of O.39, R.1 & 2 of C.P.C. Wherein plaintiffs herein contended that, they are having a prima facie case; balance of convenience is also in their favor and if injunction as prayed for is not granted than they are likely to be caused with irreparable loss. Hence, finally plaintiffs herein pray to allow the present application. In support of the present application plaintiffs herein submitted documents vide list of documents Exh. 3 and 74.

2. That defendants herein has been served with the summons of the present suit as well as notice under the present application. Wherein defendants herein appeared before this court through their Ld. Advocates. Defendant No. 6 to 8 has filed their reply vide Exh.30, wherein they have specifically deny the pleadings of the plaint and submitted that, their ancestor were possessing & cultivating the revenue survey No. 154 paiki 2 Akar – 11 Guntha land since 1950 and after the life time of their ancestor they are possessing as well as cultivating the same. Present defendants submitted that, since last 70 years they are being an owner of the said portion of land and they are cultivated the same by making physical partition over the same. Present defendants submitted that, plaintiff's herein has filed the

present false suit against them only in order to appropriate the said land as well as in order to obtained illegal possession of the said land. Present defendants herein further submitted that, plaintiff's herein do not have prima facie case; balance of convenience is also not in favor of the plaintiff's and if injunction as prayed for is not granted than also plaintiff's herein are not likely to be caused with any kind of loss or damages. Finally present defendants pray to disallow the present application. Defendant No. 1 to 5 has filed their reply vide Exh. 34, wherein they have specifically deny the pleadings of the plaint and submitted that, their ancestor were possessing the present suit property as well as cultivated the same and after the life time of their ancestor they are possessing as well as cultivated the same. Present defendants submitted that, they had made physical partition over the present suit property into three portion, wherein they are cultivating the same. Present defendants submitted that, plaintiff's herein do not have any concern with respect to the present suit property, but as price of the agriculture land goes high, hence in order to appropriate the same as well as in order to obtained illegal possession of the suit property, plaintiff's herein has filed the present false suit against them. Present defendants submitted that, plaintiff's herein do not have prima facie case; balance of convenience is also not in favor of the plaintiff's and if injunction as prayed for

is not granted than also plaintiff's herein are not likely to be caused with any kind of loss or damages. Finally present defendants pray to disallow the present application. Against the reply of all the defendants plaintiff's herein has filed their counter affidavit vide Exh. 39 wherein they had specifically deny the pleadings of the defendants herein.

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
4. That answer of the above issues are as under,
- A) "Negative"
 - B) "Negative"
 - C) "Negative"

D) “ As per final order”

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

5.1) 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 it is the case of the plaintiff's herein that, plaintiff's and defendant No. 1 to 5 are possessing as well as cultivated the present suit property jointly since the life time of their ancestor and defendant No. 6 to 8 do not have any concern in the same. That present fact has been specifically denied by the defendant No. 1 to 5 and they has submitted that, they are being exclusive owner as well as enjoying the exclusive possession of the present suit property since the life time of their ancestor and

after that they are enjoying the same. Where as defendant No. 6 to 8 by specifically denying the pleadings of the plaint submitted that, they are being an owner of the revenue survey No. 154 paiki 2 Akar – 11 Guntha land of the suit property since 1950 during the life time of their ancestor and after that they are enjoying the same. Considering the pleadings of all the parties it appears that,, all are claiming their respective possession and ownership since last 70 years and the same being contradictory to each other. So far as the plaintiff's are concern they are purely relied upon the documents vide Mark 3/1 and 3/2, but perusing the said revenue record, it appears that name of all the parties are appears in the revenue record with respect to the present suit property. It is the burden of the plaintiff's herein to prove the facts with which they have filed the present application and accordingly it is being the duty of the plaintiff's to prove their possession with the defendant No. 1 to 5. But as said fact has been specifically denied by the defendant No. 1 to 5 and except the present revenue record, plaintiff's herein has not produce any evidence to prove their possession over the present suit property either exclusive or jointly with defendant No. 1 to 5. So far as the revenue record are concern, at this juncture in the absence of other evidence, it shows that name of all the parties are running in the revenue record of the present suit property. In the absence of other

evidence reason appears to believe that, all the parties are holding the present suit property jointly and the same has not been physically partitioned. So far as the affidavits vide Mark 74/1 to 74/11 are concern, it is pertinent to note here that, at this juncture it would be unjust to rely upon the version of the present affidavits without providing an opportunity to the other side to cross-examine the concern witnesses who had filed the present affidavit in order to test the veracity of the fact contained therein. Specifically in the absence of the reliable evidence with respect to the facts as alleged by the plaintiff's herein, at this juncture no reason appears to rely upon the facts as stated in the present affidavits without testifying the veracity of the same. Hence, at this juncture looking to the record suit property appears to be in the name of all the parties jointly and except the revenue record as no evidence is available, it is therefore this court left with no option except to determine the disputed facts amongst the parties, based on the said revenue record. Hence, considering the discussions as made herein above at this juncture it appears that, revenue record with respect to the present suit property are running in the name of all the parties and it is therefore in the absence of other reliable evidence plaintiff's herein appears to be failed to prove the facts with which plaintiff's has filed the present suit as well as present application 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 “**Negative**”.

5.2) Issue No. B and C :- considering the discussions as made in Issue No. A it appears crystal clear that, plaintiff's herein remain failed to prove their prima facie case. So far as the remaining both the issues are concern, considering the record it appears that, revenue record with respect to the present suit property are running in the name of all the parties and at this juncture no other reliable evidence is available in order to determine the disputed facts of the parties. Hence, in such a situation considering the disputed facts amongst the parties, looking to the record no balance of convenience can be considered exclusively in favor of the plaintiff's herein as well as no reason appears to believe that, if injunction as prayed for is not granted than plaintiff's herein are likely to be caused with any kind of loss or damages of any kind and considering the whole record no reason appears to disbelieve the same. It is therefore considering the discussions as made herein above present both the **Issue No. B and C** are hereby answer in “**Negative**”.

5.3) 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 failed to prove the essential ingredients of the provision of O.39 R. 1 & 2 of C.P.C Hence, certainly plaintiff's herein do not 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 disallow.

(II) No order as to cost.

Present order declared in an open court today on this 27th day of May, 2016.

Date :- 27/05/2016

Dehgam.

(Raja Ranchhodbhai Patel)
(Additional Civil Judge, Dehgam)

GJ00922