

:- IN REGULAR CIVIL SUIT NO. 17/2004 :-

ORDER BELOW EXHIBIT - 147

1. Present is an interlocutory application on behalf of the plaintiff filed under the provisions of Order 39 praying interim injunction and stating that during the pendency of the suit the suit property has been sold multiple times and consequently 73 new defendants have been added by an order of this court. It is claimed that the plaintiff Babiben is the direct descendant of the original owner Dahyaji. Even the sale deed executed in 2015 mentions that the name of Babiben has not come on record. It is prayed that *status quo* may be allowed to be granted so that the litigation does not become endless.
2. Per contra the defendants filed their replies. The learned advocate on behalf of defendant no. 46, 49, 61, 64 and 65 has filed reply to the application at exhibit 159. The learned advocate Mr. S.L Thakor has vehemently argued before this court has to consider the three principles first being *prima facie case*, next being the *balance of convenience* and lastly, *irreparable loss*. It is claimed after weighing these three circumstances and analysing the same the court earlier rejected the application of plaintiff below exhibit 5. Further it is stated that plaintiff Babiben herself relinquished her right from the suit properties. As per Mark 157/1 the name of the defendants are there and the first ever sale deed was executed in the year 1998 and the same sale deed has not been challenged or the purchaser has not even been made a party to the suit. As per Article 113 the plaintiff should have filed suit within 12 years for partition. When the suit itself is time



barred then there cannot be said that there was any prima facie case in favour of the plaintiff. Further, it is mentioned that defendants mentioned above have purchased the suit property after incurring a loan from the bank and if application is allowed then they shall suffer great losses. The learned advocate has relied upon the following judgements:

1. M/s Best Sellers Retail (I) P. Ltd. vs. M/s Aditya Birla Nuvo Ltd. & Ors. AIR 2012 SUPREME COURT 2448
2. Surinder Pratapsingh and Anr. vs. < 20 Apr 2023
3. Paramkhrupa Enterprises vs. Kunverben Chaturdas Patel 15 Apr 2014
4. Somiben Chimiben and Anr. Ukabhai Naranbhai Patel karta of HUF and Ors. (2009) 11 GUJ CK 0105

3. The learned advocate on behalf of defendant no. 20 and 21 have adopted the arguments mentioned above.
4. The learned advocate on behalf of defendant no. 1, 2, 3 and 4, Mr R.K Punjabi has argued orally. The learned advocate has mentioned that the plaint itself clearly testifies that the suit property was sold in 1997 and the plaintiff relinquished her right in 1997 itself and she challenged it before the revenue authorities. She always had knowledge yet she chose to file the present suit in the year 2004 which is way beyond period of limitation; further when the property was sold the plaintiff herself made an affidavit; also it is mentioned that part of suit property actually belonged to Keshaji Dahyaji and not the father of the

plaintiff in which the plaintiff has no right. Hence there is no prima facie case hence the application must be rejected.

5. This court has heard the arguments by the learned advocate on behalf of the plaintiff as well as the defendants. It is admitted that the matter is of the year 2004 and previously the court allowed the status quo to be maintained until further order of this court. Just like any temporary injunction application this court has to determine following issues which are as follows:
- (1) Whether the plaintiffs prove that they are having a prima facie case ?
 - (2) Whether the plaintiffs prove a balance of convenience in their favour ?
 - (3) Whether the plaintiffs prove that if injunction as prayed is not granted then they will suffer an irreparable loss which cannot be compensated in the terms of money ?
 - (4) What order ?
6. My finding regarding the above issues are as follows :
- 1) In affirmative.
 - 2) In affirmative.
 - 3) In affirmative.
 - 4) As per final order.

:- Reasons :-

Point No.1 to 3

7. Since the issues are interconnected the discussion is done in a conjoint

manner. It is an admitted fact that the temporary injunction application once has been rejected before this but court believes that there are change of circumstances in the facts of the present case, hence it is pertinent to decide the present application. The suit property has been sold in parts multiple times during the pendency of the suit. Earlier my learned predecessor held that the plaintiff does not remain the family member of her father after her marriage and hence application was rejected. However the circumstances are different. The amendment of 2005 in Hindu Succssion Act, is applicable to all coparcnery properties in which no partition had taken place prior to 20.12.2004. In the present situation the suit property was never really partitioned. The term *partition* has been explained in the explanation of sub section 5 of Section 6 of The Hindu Succession Act which is as under:

Explanation.--For the purposes of this section partition means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908) or partition effected by a decree of a court.

8. Admittedly in the present situation, the partition is neither through any registered deed or decree of court. Further, the pedigree submitted by the plaintiff testifies to the fact that she is the daughter of Dahyaji. The argument that the part of suit property actually belonged to Keshaji is on the basis of a revenue entry produced as a xerox copy that too of block no. 226, however in the reply at exhibit 22 the defendants never advanced the argument of block nol. 226 being alone in the name of Keshaji and the so- called affidavit also does not appear to be trust

worthy document. Although this court is not denying the triability of this question but it is a matter of evidence. The fact that Babiben was lawful daughter of Dahyaji and the relinquishment entry made by her is disputed and challenged coupled with the discussion above qualifies for the condition of *prima facie case*. And also the question of limitation needs to be considered while appreciating the evidence.

9. Further this court has to examine the *balance of Convenience* as well as *irreparable loss*. It is the argument of the learned advocate on behalf of the defendants that the last purchasers have taken loan on the suit property. It is to be noted that these defendants purchased the suit property during the pendency of the present suit, hence by conducting a reasonable inquiry they could have gained the knowledge of the present suit, hence they are not bona fide purchasers by any stretch of imagination. Hence, the balance of convenience definitely does not lie in their favour. Further, if the status quo is not allowed the litigation of the plaintiff shall never come to an end and this court will never be able to decide the rights of the plaintiff on merits. This court is of the view that the present matter is of 2004 and there are higher chances of multiple proceedings to follow along with great delays if status quo is not ordered to be maintained by the parties. Now the question to be determined is what loss shall the defendants suffer if status quo is allowed. Even though the defendants had purchased the suit property on loan, they will not be removed from their possession till final order is made. Drawing this analogy the plaintiff would suffer great hardship and irreparable loss if application is not granted.



10. The judgements M/s Best sellers and Surinder Pratap Singh relied by the learned advocate above would not be applicable as the discussion above clearly lays down that three ingredients are correctly satisfied in the present case. The judgement of Pramukhkrupa Enterprise as well as Somiben is also not applicable as the question of delay in the present case cannot be decided at this stage without appreciating the evidence of both sides. Hence in the interest of justice following final order is passed:


FINAL ORDER

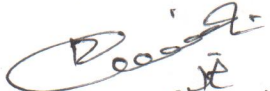
1. All parties are ordered to maintain status quo of the present suit.
2. The plaintiff is directed to proceed with the suit without delay and without seeking any adjournment, failure of which would be subject to be looked into by this court for interference with the present order.
3. No order as to costs.


Pronounced and signed today on this 7th day of February in 2025 in open court.

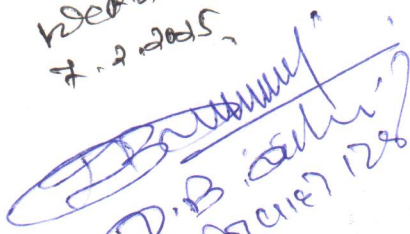
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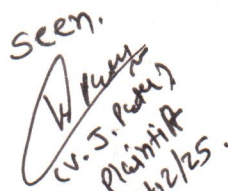
Kalol.


(Manishika A. Kaushik)
2nd Addl. Civil Judge
Kalol at Gandhinagar
Judge Code: GJ01585

seen

M. H. Dave
Advocate
7.2.2025

Seen

M. H. Dave
Advocate
7.2.2025


D. B. Kaushik
7.2.2025

seen.

cv. J. P. (P. M.)
for Plaintiff
Dt: 07/02/25.