

::: ORDER BELOW EXH. - 5 :::

APPEARANCE :::-

Ld. advocate Mr. V. C. MAVADHIYA - for the plaintiff.

Ld. advocate Mr. H. N. SHAH - for the defendant No. 1 to 5 & 6/1 to 6/5.

Ld. advocate Mr. D. S. PARMAR - for the defendant No. 7 & 8.

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[1] The Plaintiff has filed the present application under Order 39, Rule 1 & 2 of the Code of Civil Procedure, 1908 against the defendants to get the interim injunction with the prayer that the defendant No. 7 (1) be prevented from making any change in the revenue record by selling, mortgaging, etc. the property in question either personally or through her agent, servant, etc. and (2) be ordered not to stop the plaintiff from entering into the property in question till final disposal of the suit.

[2] Read the present application submitted by the plaintiff-side. Heard the Learned advocate for the plaintiff on record. As the learned advocates for the defendants have not even

appeared before the Court for their respective argument, their right to argue has been ordered to be closed.

- [3] Later on, on service of the summon/notice upon the defendants, out of total defendants, defendant No. 1 to 5 and 6/1 to 6/5 have not filed their reply and consequently their right to file reply has been ordered to be closed. On the other side, the defendants No. 7 & 8 have filed their written reply of the present application vide Exh. - 14. Read the reply submitted by the concerned defendants.
- [4] Further, the plaintiff had submitted her written argument vide Exh. - 20 and her learned advocate had orally submitted encircling the facts and circumstances stated in the plaint as well as in written argument. And lastly, requested the Court to grant the interim injunction application.
- [5] On the other side, the learned advocates for the defendants have not even appeared to argue out the application, their right to argue has been ordered to be closed.
- [6] In the suit on hand, the plaintiff side has filed Documentary Evidence vide Exh.- 4.

Whereas the defendants No. 7 & 8 have also submitted his Documentary evidence vide Exh. - 22. This court has gone through the same.

[7] To decide the present application, following issues arise for the determination.

[1] Whether the Plaintiff proves that her case is prima facie ?

[2] Whether the plaintiff proves that the Balance of Convenience is in her favour ?

[3] Whether the Plaintiff proves that she will suffer irreparable Loss unless interim injunction is granted ?

[4] What Order ?

[8] The decisions as to the above issues are such.

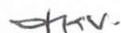
[1] In Affirmative

[2] In Affirmative

[3] In Affirmative

[4] As per Final Order.

[9] The reasons for the above decisions are as under.



[9.1] **PRIMA FACIE CASE :-**

This is the most important ingredient to be considered before granting temporary injunction. **It is mandatory for every party who is seeking injunction, to establish his/her prima-facie case for obtaining injunction.**

[9.2] Now, It has been the stand of the plaintiff that she is the daughter of the late Bhagvanbhai Babar; that the defendants No. 1 and 4 are her real brother; that the defendants No. 2, 3 & 5 are her real sisters; that the defendants No. 6/1 to 6/5 are legal heirs of her deceased brother Mr. Punabhai; that the defendant No. 7 is the purchaser of the property in question whereas the defendant No. 8 is the person giving consent for the sale deed in question. It is further stated that there exists her ancestral property in form of agricultural land bearing Survey No. 246/1 in Khata No. 86 located in Village Motha, Tal. Una, Dist. Gir Somnath. It is further stated that though the said property is an ancestral property and she had not given any power-of-attorney to the defendant No. 1, the defendant No. 1, by making fabricated power of attorney, had sold the property in question to the defendant No. 7 wherein the defendant No. 8 had consented and thereby the defendant No. 1 had

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illegally sold out the property in question. Though she had given notice in this regard to the defendants to cancel the registered sale deed on Dt. 30.01.2019, but as the defendants had not done anything in this regard, she had to come to the Court to file the suit.

[9.3.1] Now, on perusal of the papers placed before the Court by the plaintiff side, it transpires from copy of village form No. 8-a, 7/12 and 6 submitted vide Mark 4/1 to 4/3 that there exists the name of the plaintiff as on 12.09.2012. In the entry No. 1984 (enclosed as part of documents submitted vide Mark 4/3), the name of the plaintiff is also shown as on Dt. 12.09.2012. Subsequently, the village form No. 8-a and 7/12 submitted vide Mark 4/4 & 4/5 reflects the name of the defendant No. 7 as on Dt. 31.05.2018. It also reflects from the record that the Entry No. 2744 (following the sale deed in question) was certified on Dt. 29.05.2018. The copy of written objections of Dt. 26.06.2013 filed by the plaintiff before the Sub-Registrar is produced vide Mark 4/7. The death certificates of the mother of the plaintiff as well as one unmarried brother Mr. Punabhai are submitted vide Mark 4/8 & 4/9 respectively. The copy of the sale deed in question i.e. Reg. Sale deed No. 733 is

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produced vide Mark 4/10 which seems to be executed on Dt. 04.05.2013.

[9.3.2] At the relevant time, it is also advantageous for this Court to refer the dates in chronological manner to consider the incidents that took place. On perusal of the record, it clearly transpires that the mother of the plaintiff Laduben had died on Dt. 09.07.2015; the unmarried brother of the plaintiff Mr. Punabhai had died on Dt. 21.06.2017; the questioned sale deed was executed and registered vide R.Sale Deed No. 733, Dt. 04.05.2013; the competent authority issued notice to the concerned parties on Dt. 01.06.2013; the plaintiff submitted her written objections as to the notice of the competent authority on Dt. 26.06.2013 wherein it is categorically stated that she had not given any power in favour of Mr. Nanjibhai (the defendant No. 1) and had also not consented for the sale in question.

[9.3.3] On the other side, it reveals from the copy of the documents submitted vide Mark 4/11, that the plaintiff had also preseed her thumb impression in confirmation of service of notice dated 20.04.2018.



[9.3.4] Now, considering all the relevant aspects, in connection to the stand of the plaintiff that she had not given any power to Mr. Nanjibhai (the defendant No. 1) and he, by creating a fabricated power of attorney, sold the property in question is concerned, it has come on record, that after execution of sale deed in question, the plaintiff had on Dt. 26.06.2013 sent written objections to the competent authority stating the facts stated in the plaint regarding power not given to the defendant No. 1. Eventhough, it seems from the record, that the necessary entry No. 2744 came to be certified on Dt. 29.05.2018.

[9.3.5] It also reflects from the record and not even disputed by the defendants that the plaintiff is the daughter of the deceased Bhagvanbhai Babar in whose name the property in question was in existance. It is not even disputed by any party on record that the property in question was an ancestral property.

[9.4] On the other hand, it has been the stand of the defendants No. 7 & 8 that deceased Bhagvanbhai sold the property in question to the defendant No. 8 but as the defendant No. 8 was not an account holding farmer (*Khatedar Khedut*), subsequently, the sale deed in

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question came to be executed in favour of the defendant No. 7 wherein the defendant No.8 consented for the same. The possession of the property in question is with the defendant No. 7 & 8 since the property in question was sold by the deceased Bhagvanbhai to the defendant No. 8.

[9.5] Now, on bear perusal of the record, it is also clear that whether the defendant No. 1 executed a fabricated power of attorney without consent of the plaintiff, can better be decided after recording of evidence of both the sides.

[9.6] Thus, Under these circumstances and in view of the above discussion, this court is of the opinion, on the basis of the material available on record, that when prima faice the name of the plaintiff was shown as legal heir of the deceased Bhagbanbhai on Dt. 12.09.2012 vide Entry No. 1984; that the sale deed executed on the basis of the power of attorney which itself is at question; the plaintiff also sent her objections regarding the execution of the sale deed in question on Dt. 26.06.2013 to the competent authority; the relevant entry following the execution of the sale deed came to be certified on Dt. 29.05.2018 vide Entry No. 2744, the plaintiff has succeeded in

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establishing her prima facie case. Hence, issue No. 1 is decided accordingly.

[10] BALANCE OF CONVINIENCE AND IRREPAIRABLE LOSS::-

[10.1] These are also equally important aspects to be considered at the time of deciding application of interim injunction. It is necessary for the plaintiff to establish that balance of convenience lies in his/her favour and he/she would suffer irreparable loss if the injunction is not granted.

[10.2] Considering the material available on record, as discussed above, it is clear that prima facie it raises the question as to the execution of the power of attorney on the basis of which the sale deed in question came to be executed by the defendant No. 1. Moreover, if the interim injunction application is not allowed, the plaintiff would suffer more injury as compare to the defendant as the property in question is an ancestral property and being legal heir of the deceased Bhagvanbhai Babar, the plaintiff has her legal right in the property in question. Moreover, if the interim injunction is not granted, it may lead to multiplicity of the proceedings. Thus, if the

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injunction is not granted and thereby the defendant No. 7 is not restrained from making any change in the revenue record by selling, mortgaging, etc. personally or through her agent, servant, etc. till final disposal of the suit, it would result in irreparable loss to plaintiff. On the other side, this Court has also considered the fact that after execution of the sale deed in question, the possession is with the defendant No. 7 & 8. Thus, when the plaintiff has, prima facie, proved her case in her favour, this Court under such circumstances, is of the opinion that the plaintiff also succeeds to prove the point of balance of convenience and that of irreparable loss in her favour. Hence, issue No. 2 and 3 are decided accordingly.

[11] Hence, in view of the aforesaid discussion, this court passes following final order.

--: O R D E R :--

[A] The present application filed at Exh. - 5 by the plaintiff under Order XXXIX, Rule 1 & 2 and Sec. 151 of the Code of Civil Procedure 1908, to get interim injunction **stands partly allowed.**

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[B] The defendant No. 7 is ordered to be prevented from making any change in the revenue record by selling, mortgaging, etc. the property in question either personally or through her agent, servant, etc. till final disposal of the suit.

[C] The cost shall follow the final order of the suit.

[D] Further, the plaintiff side is hereby ordered to serve the copy of this order upon the defendants by Reg. A. D. Post and to bear the cost thereof with direction to submit necessary receipt of the same within 15 (Fifteen) days from the date of the order, and in turn the acknowledgement to that effect as well.

Seen by
The Hon.
J.P.
(I.P. R. 1104)

Pronounced today on 06th January, 2024 in the open court.

Una.

Dt. : 06.01.2024.

[Hardiv Kiritkumar Vachharajani]
2nd Additional Senior Civil Judge

Una. [Dist. Gir Somnath]

[GJ01231]