

:: ORDER BELOW EXH. - 5 ::

APPEARANCE ::-

Ld. advocate Mr. M. M. VAID - for the plaintiffs.

Ld. advocate Mr. N. J. MEVADA - for the defendants

No. 1 to 9.

For the defendants No. 10 to 19 - Ex-partee.

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[1] The Plaintiff side 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 to order the defendants not to transfer, sell, mortgage, gift, etc. either personally or through their agent, servant, etc., the land in question bearing S. No. 23/4/*paiki* 2, 23/4/*paiki*/1 and 29 (Block - B) located at village Una, Tal. Una, Dist. Gir Somnath till final disposal of the suit & to direct the defendants to pay the proportionate amount earned by way of *mesne profit* for their maintenance.

[2] Read the present application submitted by the plaintiff-side. Heard the Learned advocates for the parties on record.

[3] Later on, on service of the notice upon the defendants, the defendant No.1 to 9 had appeared before the Court and submitted their joint reply to the suit as well as interim injunction application vide Exh. 14. However, even after service of summon and notice, the defendants No. 10 to 19 had not even appeared before the Court, and consequently their right to submit reply was ordered to be closed and proceeded ex-parte against them. Read the reply filed by the concerned defendants. At the same time, the plaintiff side had submitted his Counter affidavit vide Exh. 15. The plaintiff side as well as the concerned defendants have also submitted their written arguments vide Exh. 18 & 20 respectively. The Court had also considered the same as well.

[4] Further, the learned advocates appearing for the parties on record have orally submitted encircling the facts and circumstances stated in the written arguments submitted by them and lastly, the plaintiff side has requested the Court to grant the interim injunction application whereas the defendants' side has requested the Court to reject the application on hand.

[5] In the suit on hand, the plaintiff side has filed Documentary Evidence vide Exh. 4. Whereas the defendant side had not submitted any documentary evidence. This court has gone through the same as well.

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

[1] Whether the Plaintiffs prove that their case is prima facie ?

{2} Whether the plaintiffs prove that the Balance of Convenience is in their favour ?

[3] Whether the Plaintiffs prove that they will suffer irreparable Loss unless interim injunction is granted ?

[4] What Order ?

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

[1] **In Affirmative**

[2] **In Affirmative**

[3] **In Affirmative**

[4] **As per Final Order.**

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

[8.1] **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.

[8.2] Now, it has been contended by the plaintiff side that the lands in question was received by the father in law of the plaintiff No. 1 - deceased Bhimabhai Devashibhai Rathod in whose name the properties in question were devolved upon from his deceased father - Devashibhai Virabhai Rathod; Mr. Balabhai Bhimabhai Rathod died on Dt. 09.02.1989; they are the legal heirs of the deceased Balabhai Bhimabhai Rathod and consequently, they have their 1/9th share in the properties in question; they ask the defendants to give their share in the said properties, but as the said talk did not ended positively, they have to file the suit.

[8.3] To support his stand, the plaintiff side had produced copies of Village Form NO. 6, 7, 12 & 8 - A vide Mark 4/1 to Mark 4/8 which shows the name of the plaintiff side as on Dt. 17.03.2021.

[8.4] On the other hand, it has been the stand of the defendants that the properties in question

was in the name of the deceased Bhimabhai Devashibhai Rathod; they have incurred expenses of marriage of the plaintiffs No. 2 & 3; the properties in question are ancestral properties.

[8.5] Thus, from the bear perusal of the entire record, it has become clear that the properties in question were of deceased Bhimabhai Devashibhai Rathod who is father in law of the plaintiff No. 1. Moreover, the defendants have not even raised any objections as to the plaintiffs are legal heirs of the deceased Balabhai Bhimabhai Rathod. Now, prima facie, when the plaintiff side has proved that they are the legal heirs of the deceased Bhimabhai Devashibhai Rathod who is the son of the deceased Bhimabhai Devashibhai Rathod; the properties in question are an ancestral properties of late Mr. Bhimabhai Devashibhai Rathod; there exists thier shares in the properties in question,etc., this Court is of the clear view that the plaintiffs have succeded in establishing their prima facie case. Hence, issue No. 1 is decided accordingly.

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

[9.1] 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.

[9.2] Considering the material available on record, as discussed above, it is clear that the properties in question are ancestral propertis whose possession is with the defendants. Hence, it becomes clear that if the interim injunction application is not allowed, the plaintiffs would suffer more injury as compare to the defendants. Moreover, considering the prayer sought by the plaintiffs, if the interim injunction is not granted, it may invite multiplicity of proceedings. Thus, the plaintiffs have succeeded to show that if the interim injunction is not granted, they would face serious injury/loss as compare to the defendants. Besides, if the injunction is not granted, it would cause more harm or injury or loss to the plaintiffs than the defendants as the defendants have possession of the properties in question. Thus, when the plaintiffs have, prima facie, proved the case in their favour, this Court under such circumstances, is of the opinion that the plaintiffs also succeed to prove the point of balance of convenience and

that of irreparable loss in their favour. Hence, issue No. 2 and 3 are decided accordingly.

[10] Thus, 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 plaintiffs under Order XXXIX, Rule 1 & 2 and Sec. 151 of the Code of Civil Procedure 1908, to get interim injunction stands allowed.

[B] The defendants to the suit are ordered not to transfer, sell, mortgage, gift, etc. either personally or through their agent, servant, etc., the properties in question bearing S. No. 23/4/paiki 2, 23/4/paiki/1 and 29 (Block - B) located at village Una, Tal. Una, Dist. Gir Somnath till final disposal of the suit.

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

Pronounced today on 17th February, 2025 in the open court.

Una.

Dt. : 17.02.2025. [Hardiv Kiritkumar Vachharajani]
Additional Senior Civil Judge
Una. [Dist. Gir Somnath]
[GJ01231]