

GJGS040045012024



R.C.S. No. 247/2024

ORDER ON APPLICATION FILED U/O 39 R 1&2 CPC AT**EXH.05**

1. The plaintiff has instituted the present suit seeking declaration and permanent injunction for cancellation and invalidation of the registered sale deed No. 1786 dated 10.09.1984 in respect of Plot No. 5 of Final Plot No. 67 of T.P. Scheme No. 2, Una. Along with the suit, the plaintiff has filed the present application under Order XXXIX Rules 1 and 2 read with Sections 94 and 151 of the Code of Civil Procedure seeking temporary injunction. The plaintiff contends that the suit land was originally joint ancestral property inherited from his grandfather late Rambhai Jinabhai Bambhaniya. It is stated that after conversion of the land into non-agricultural use and plotting, the names of nine heirs, including the plaintiffs, were entered in Village Form No. 2. The plaintiff asserts that at the relevant time he was a minor and no permission of any competent court was obtained for alienation of his share. It is further contended that a power of attorney dated 24.01.1984 was executed by adult heirs without the plaintiffs being parties thereto. Taking undue advantage thereof, Plot No. 5 admeasuring 388 sq. meters was sold on 10.09.1984 without the knowledge or consent of the plaintiffs and was subsequently re-

sold on 01.05.1993. It is alleged that mutation entries were effected through incomplete and defective applications without issuing notice to the plaintiffs, causing serious prejudice to their rights. The plaintiff asserts that the impugned transactions are void ab initio as they violate the legal protection afforded to a minor's property. It is further stated that the mutation proceedings have been challenged before the Deputy Collector, Una. According to the plaintiff, if interim relief is not granted, the defendants may further transfer, encumber or carry out construction over the suit plot, thereby defeating the very purpose of the suit and causing irreparable loss. On these averments, the plaintiff claims existence of a prima facie case, balance of convenience in his favour and likelihood of irreparable injury, and accordingly prays for an order restraining the defendants from interfering with the suit property, from alienating or creating third-party rights therein, and from carrying out any construction pending final disposal of the suit.

2. The defendants Nos. 1 to 3 have filed their reply and objections to the plaint and the application for temporary injunction at Exh.7. They contend that the suit has been instituted by suppressing material facts and by making false and misleading statements. According to them, the suit is liable to be dismissed at the threshold. They deny that the plaintiff became the owner, occupier or agent of the land bearing Revenue Survey No. 538 of Una city, situated in T.P. Scheme No. 2, Original Plot No. 62 and Final Plot No. 67 admeasuring 14,547 sq. meters, merely by inheritance. However, they admit that the said land was

converted into non-agricultural land for residential purposes. It is specifically asserted that Sub-Plot No. 5 admeasuring 388 sq. meters was lawfully purchased by defendant No. 1 vide registered sale deed No. 1786 dated 10.09.1984 from Dayabhai Atabhai Solanki, an heir of Rambhai Jinabhai Bambhaniya. It is further stated that the said plot was validly sold to defendants Nos. 2 and 3 vide registered sale deed No. 580 dated 01.05.1993 for a consideration of Rs. 75,000/-. Since then, defendants Nos. 2 and 3 have been in continuous, open and peaceful possession and ownership of the said plot. Mutation entries have also been duly recorded in their favour in Village Form No. 2 under Notes Nos. 2787 and 2788. The defendants deny all allegations of fraud or illegality. They assert that the plaintiff was aware of the sale transactions from the very beginning. It is contended that several other plots from the same land were sold and mutated in a similar manner. They further state that the plaintiff himself had earlier facilitated such mutation entries by executing affidavits for consideration. It is specifically contended that the plea of minority raised by the plaintiff is untenable. According to the defendants, the sale was effected through a duly authorized guardian and power of attorney executed in the year 1984. They submit that the plaintiff attained majority in the year 1991 and that, under Article 60 of the Limitation Act, any challenge to the sale deed ought to have been filed within three years thereafter. The present suit filed in the year 2024 is therefore stated to be hopelessly barred by limitation. It is further averred that defendants Nos. 2 and 3 have obtained due permission from the Una Municipality and have commenced lawful construction on

the suit plot. The possession of the property has always remained with them. The defendants assert that the pending revenue appeals before the Deputy Collector do not confer any right upon the plaintiff. It is contended that the plaintiff has neither a prima facie case nor balance of convenience in his favour and would suffer no irreparable loss. On the contrary, the suit is alleged to be motivated with an intent to extort money and is also bad for non-joinder of necessary parties. On these grounds, the defendants pray for dismissal of the suit as well as the application for temporary injunction with exemplary costs.

3. The learned advocate for the plaintiffs, Mr. Chandrakant B. Bambhaniya, has filed written arguments at Exh. 12. He submits that after the death of the plaintiffs' grandfather on 08.01.1984, a power of attorney dated 24.01.1984 was executed only by adult heirs, as the plaintiffs were minors. He contends that taking undue advantage of the said power of attorney, Sub-Plot No. 5 admeasuring 388 sq. meters was sold on 10.09.1984 without the knowledge or consent of the plaintiffs, and the same was further sold in the year 1993. It is argued that mutation entries were effected through incomplete and defective proceedings without issuing notice to the plaintiffs, and that the plaintiffs came to know about the said transactions only in December 2023 upon obtaining certified copies from the Mamlatdar, whereupon they preferred appeals before the Deputy Collector, Una. The plaintiffs assert that the impugned sale deeds are void ab initio, as no permission of the competent court was obtained for alienation of a minor's property and the transactions were

executed with the intention to defeat the plaintiffs' lawful share. It is further contended that the objections raised by the defendants are false and fabricated and have already been disbelieved by this Court while rejecting the defendants' application under Order VII Rule 11(d) CPC. The plaintiffs submit that they have produced relevant documentary evidence and affidavits in support of their case. According to the plaintiffs, a strong prima facie case is made out, the balance of convenience lies in their favour, and irreparable loss would be caused if interim protection is refused, as the defendants may alienate the suit plot or raise construction thereon. On these grounds, the plaintiffs pray for an order restraining the defendants from interfering with the plaintiffs' possession and enjoyment of Plot No. 5, from transferring or encumbering the same, and from carrying out any construction thereon, along with such other reliefs as this Court may deem fit.

4. The learned advocate for the defendants, Mr. Jatinkumar N. Bhatt, has filed written arguments at Exh. 13. He submits that the plaintiff has filed a suit seeking declaration to invalidate the registered sale deed No. 1786 dated 10.09.1984 and has simultaneously sought a temporary injunction. He contends that the plaintiff has failed to produce any documentary evidence to establish his possession over Plot No. 5. On the contrary, the documents produced by the plaintiff himself at Mark 4/6, 4/7, 4/11, 4/12, 4/13 and 4/14 clearly indicate that possession of Plot No. 5 is with defendants Nos. 2 and 3. It is further submitted that the land bearing R.S. No. 538 originally stood in the name of

Rambhai Jinabhai Bambhaniya and others and was lawfully converted into non-agricultural land for residential purposes pursuant to an order of the District Panchayat, Junagadh. It is argued that Sub-Plot No. 5 admeasuring 388 sq. meters was validly purchased by defendant No. 1 vide registered sale deed dated 10.09.1984 and thereafter lawfully purchased by defendants Nos. 2 and 3 vide registered sale deed No. 580 dated 01.05.1993 for valuable consideration. Since then, defendants Nos. 2 and 3 have remained in continuous, open and peaceful possession and ownership of the said plot. It is emphasized that defendants Nos. 2 and 3 have obtained due permission from the Una Municipality and have commenced construction on the suit plot, supported by sanctioned plans and permissions produced at Mark 8/4 and 8/5. It is further pointed out that the plot stands mutated in the names of defendants Nos. 2 and 3 in Village Form No. 2 under Notes Nos. 2787 and 2788, though revenue appeals filed by the plaintiff against the said entries are pending before the Deputy Collector, Una. It is asserted that the suit and the injunction application have been filed after an inordinate delay of more than three decades. It is contended that the plaintiff has neither a prima facie case nor balance of convenience in his favour and would suffer no irreparable loss if injunction is refused. On the contrary, grant of injunction would cause serious prejudice to defendants Nos. 2 and 3 who are in settled possession and would enable the plaintiff to misuse the interim order to disturb their lawful possession. Reliance is placed on settled principles laid down by the Hon'ble Supreme Court that an injunction cannot be granted against a lawful owner in

possession. On these grounds, the defendants pray for dismissal of the plaintiff's Application with costs.

5. I have heard the learned advocate for both parties at length, perused the material placed on record.
6. Upon a careful and judicious consideration of the pleadings and the documentary evidence placed on record by both sides, it is, at the very outset, necessary to note that the present application has been preferred under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure seeking grant of a temporary injunction pending the final adjudication of the suit instituted for declaration and cancellation of the impugned sale deeds. At the stage of interim relief, the Court is not required to adjudicate finally upon the validity of the impugned transactions, but only to examine whether the plaintiff has been able to satisfy the well-settled triad of principles, namely, existence of a prima facie case, balance of convenience, and likelihood of irreparable injury.
7. The plaintiff has primarily founded his claim on the allegation that fraud was played upon him in execution of the registered sale deeds during his minority and thereafter. Even assuming, for the purpose of interim consideration, that such allegation raises a triable issue, it is well settled that a plea of fraud by itself does not automatically entitle a party to interim injunction. Allegations of fraud primarily go to the validity of title and are matters to be conclusively determined after evidence is led at trial. At the interlocutory stage, such allegations cannot be treated as established facts so as to displace long-standing

possession or undo completed transactions by way of temporary injunction.

8. On careful examination of the plaint, injunction application and written arguments, it clearly emerges that the plaintiff has not pleaded nor demonstrated that he is in actual physical possession of the suit property, namely Plot No. 5. The pleadings, taken as a whole, indicate that the plaintiff claims title and challenges the sale deeds, but does not assert settled possession as on the date of filing of the suit. On the contrary, the tenor of the pleadings shows that the plaintiff came to know of the mutation entries only recently and seeks to restrain the defendants from construction and alienation, which itself implies that possession is not with the plaintiff.
9. On the other hand, the defendants have consistently pleaded that defendant No. 1 purchased the suit plot in the year 1984 and defendants Nos. 2 and 3 purchased the same in the year 1993 by registered sale deed, and that since then they have remained in continuous, open and peaceful possession of the suit plot. The defendants have further pleaded that municipal permissions for construction have been obtained and construction activity has commenced. The documentary material placed on record at this stage prima facie supports the plea of possession of defendants Nos. 2 and 3.
10. It is a settled principle of law that a suit for declaration and cancellation of sale deed primarily concerns adjudication of title, whereas an injunction under Order XXXIX Rules 1 and 2 CPC is

ordinarily granted to protect possession. A person who is not in possession cannot ordinarily seek an injunction against a person who is in settled possession, unless the possession of the defendant is prima facie unlawful or that of a rank trespasser. In the present case, the defendants are registered purchasers and their possession is traceable to registered documents and revenue entries, which cannot be brushed aside at the interim stage.

11. The balance of convenience also does not tilt in favour of the plaintiff. If an injunction is granted restraining construction or enjoyment of the suit property, the defendants, who are in possession since decades, would suffer immediate and serious prejudice, including stoppage of construction and loss which may not be easily restituted. On the other hand, if the injunction is refused, the plaintiff's rights are not rendered illusory, as in the event of success in the suit, appropriate reliefs including possession, mesne profits, or other consequential reliefs can be granted. Thus, comparative hardship clearly leans in favour of the defendants.

12. The injury alleged by the plaintiff is essentially proprietary in nature and can be adequately compensated or redressed by final relief, if the plaintiff ultimately succeeds. No material has been placed on record to show that refusal of injunction would result in irreparable injury incapable of compensation. Conversely, granting injunction would cause irreparable prejudice to the defendants by interfering with their settled possession and lawful use of the property.

13. It is also relevant to note that the impugned transactions are of the years 1984 and 1993, whereas the present suit has been instituted after several decades. While limitation and validity of transactions are matters for trial, such long delay is a relevant factor at the stage of interim relief, particularly when the defendants are in long-standing possession. Equity does not favour grant of discretionary interim relief in such circumstances.
14. This Court is conscious that in appropriate cases, limited protection such as restraint on creation of third-party rights may be considered to preserve the subject matter of the suit. However, even such limited relief is discretionary and cannot be granted as a matter of course, especially when the plaintiff has failed to establish possession or imminent threat to a legally protectable right. In the facts of the present case, even such restraint does not appear warranted.
15. The learned advocate for the plaintiff has laid considerable emphasis on the fact that this Court has earlier rejected the defendants' application under Order VII Rule 11 CPC and has sought to contend that such rejection amounts to a finding in favour of the plaintiff. This contention cannot be accepted. The scope and object of an application under Order VII Rule 11 CPC are fundamentally different from those governing an application for temporary injunction under Order XXXIX Rules 1 and 2 CPC. While considering an application under Order VII Rule 11, the Court is confined to the averments made in the plaint alone and is only required to examine whether the suit is liable to be rejected at the threshold on the grounds enumerated therein,

without embarking upon an assessment of evidence or the merits of the rival claims. Rejection of such an application merely signifies that the plaint discloses a triable cause of action and does not amount to a finding on the existence of a prima facie case, possession, or entitlement to interim relief. In contrast, while dealing with an application under Order XXXIX Rules 1 and 2 CPC, the Court is required to assess the material placed on record to ascertain whether the plaintiff has satisfied the well-settled triad of principles, namely, prima facie case, balance of convenience, and irreparable injury. Thus, though this Court did not find it a fit case to reject the plaint at the threshold under Order VII Rule 11 CPC, upon an independent and objective consideration of the pleadings and documents for the purpose of interim relief, this Court does not find that the plaintiff has been able to satisfy the essential requirements for grant of temporary injunction under Order XXXIX Rules 1 and 2 CPC.

16. In view of the above discussion, this Court finds that the plaintiff has failed to establish a prima facie case for grant of temporary injunction, the balance of convenience does not lie in his favour, and no irreparable injury is demonstrated. Mere allegations of fraud, in the absence of possession and in the face of long-standing registered ownership and possession of the defendants, do not justify grant of interim injunction under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure. Hence, in the interest of justice, the court proceeds to pass the following order :

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FINAL ORDER

1. Accordingly, the application filed at Exh. 5 for temporary injunction/interim relief is hereby rejected.
2. It is clarified that the observations made herein are confined solely to the adjudication of the present interim application and shall not prejudice the rights and contentions of either party at the stage of final hearing of the suit.
3. Costs shall be costs in the cause.

Pronounced in open Court on this 19th day of January, 2026.

Date- 19/01/2026

Place- Una

(Mr. Neeraj Kumar Yadav)
2nd Additional Senior Civil Judge, Una
GJ 01409