

Order below Exhibit-5

1. This is an application for seeking temporary injunction filed by the plaintiff under order-39, rule-1 & 2 read with Section-151 of the Code of Civil Procedure, 1908 to restrain the defendants, cultivating, taking produce, selling, alienating, or transferring possession of the suit property to third parties pending disposal of the suit.

2. The summons/notices were issued against the defendant and were duly served to them. The defendant has appeared through the Ld. Advocate. The defendants have submitted their written statement vide exhibit-14.

3. Heard the Ld. Adv. - Mr.P.U.Jogadiya for the plaintiff. He has submitted as per his oral arguments that the defendant should be prevented from doing so and temporary injunction be granted in favour of the plaintiffs. He further contended that there is prima facie case in favour of the plaintiffs and the balance of convenience is also in favour of the plaintiff and if the temporary injunction would not be granted in favour of the plaintiff, the plaintiff will have to suffer irreparable loss which cannot be compensated in terms of money. Hence, he prayed for temporary injunction.

The plaintiffs assert a strong prima facie case, with the balance of convenience in their favor, and seek a temporary injunction during the pendency of the suit to prevent irreparable harm. Without such relief, the plaintiffs will suffer significant hardship, whereas granting the injunction will cause no prejudice to the defendants.

4. In their written statement of exhibit-14 as well as the written arguments of exhibit-17, the learned Advocate of the defendant submitted and deny the plaintiff's claims, asserting that the suit land is the self-acquired property of Defendant No. 1, solely in his name as per revenue records, and not

ancestral. They contend that a portion of Survey No. 24/1 paiki 2 00-92-07 is not ancestral and Survey No. 49 Paiki 2 (admeasuring approx. 2-14-18 Sq.M.) and thus total 03-06-55 Sq.M. land and out of them only land of Revenue Survey No. 24/Paiki 1/ paiki 2 is remaining and other land was sold prior to the suit to discharge a bank loan of Rs. 10,00,000/- plus interest amounting to Rs. 14,38,900/- availed on 13.12.2017, as well as expenses for the deceased son's illness, the plaintiff's mother's illness who died in 2014, the plaintiff's upbringing, and her marriage in 2020-2021. The defendants argue that the plaintiff has no right during the lifetime of Defendant No. 1 under Hindu law, as the property is not coparcenary, and invoke Section 41 of the Specific Relief Act, 1963, to urge refusal of injunction. They further claim that Defendants Nos. 2 and 3 are improperly joined, as their names are not on the revenue records, and seek compensatory costs of Rs. 25,000/- each under Section 35A CPC for vexatious litigation. The defendants emphasize that Defendant No. 1 depends solely on the remaining land Survey No. 24/1 Paiki 2 admeasuring 0-92-07 H.A.Sq.M. for livelihood, and granting injunction would cause irreparable harm to them.

5. Heard the Ld. Adv. – Mr.M.H.Bambhaniya for the defendants. As per their oral argument that the suit of the plaintiff should be dismissed with cost along with application for temporary injunction since it does not disclose any cause of action in favour of the plaintiff against the present defendant. They further contended that the plaintiff has failed to prove prima facie case in his favour and the balance of convenience is also not in his favour. They further contended that if the temporary injunction would be granted in favour of the plaintiff, the defendant will have to suffer irreparable loss which would not be

compensated in terms of money. Hence, they prayed for rejection of application for temporary injunction.

6. On perusal of the whole record for final adjudication of the present application, following issues have been arisen:

1. Whether the plaintiffs establish prima facie case?
2. Whether the plaintiffs establish the balance of convenience in his favour?
3. Whether the plaintiffs establish that irreparable loss would be caused to them if injunction would not be granted?
4. What order?

7. My finding for above issues is as follows,

1. In positive.
2. In positive.
3. In positive.
4. As per final order.

:- REASONS :-

8. Issues No.1 to 3.

Since Issue No.1 to 3 are inter connected with each other for the sake of avoiding repetition I am discussing them together.

9. This is an application for temporary injunction and there are three basic principles for granting injunction i.e. Prima facie case in favour of the party seeking injunction, Balance of convenience in favour of such person and last there must be a irreparable loss which are likely to be caused to party if injunction is not granted to such person. Thus an injunction being an equitable remedy is always at the discretion of the court. However, such discretion must be based on sound judicial principles and guided by rules of Equity and the

peculiar facts and circumstances of the case. In addition to this three basic principles for granting or refusing to grant injunction, the conduct of the person seeking injunction should also be taken in to consideration because the granting of injunction is an equitable relief and is drastic or serious order and there are two basic maxims of equity which are important to be consider at the time of deciding injunction application which are “He who seeks equity must do equity” and “He comes to equity must come with clean hand”.

10. Now, the plaintiff in the application on hand have stated and submitted that and as per the say of the plaintiff, the Plaintiff is in joint possession of the suit lands along with the Defendant. There has been no partition of the suit lands by metes and bounds or otherwise. The suit lands are ancestral properties acquired by the common ancestors/elders of the parties and have devolved jointly upon the Plaintiff and the Defendant as co-sharers/legal heirs. The Plaintiff therefore holds an undivided share and joint rights, title and interest in the suit lands. The Defendant, with intent to defeat the Plaintiff's legitimate share, is attempting to dispossess the Plaintiff, encroach upon the Plaintiff's joint possession and trample upon the Plaintiff's rights and interests in the suit lands. The Defendant has no right, title or interest in the suit lands beyond his own undivided share. Grant of injunction will cause no prejudice or irreparable injury to the Defendant. On the contrary, if the Defendant is not restrained, the Plaintiff will be dispossessed from his peaceful joint possession and will suffer irreparable loss and injury which cannot be compensated in terms of money. The Plaintiff has a strong prima facie case. The balance of convenience lies entirely in favour of the Plaintiff. Refusal of injunction will cause irreparable loss and injury to the Plaintiff. In the facts and circumstances of the case and in the interest of justice, the Plaintiff is entitled to an ad-interim

as well as interim injunction restraining the Defendant, his servants, agents or any person claiming through him from interfering with the Plaintiff's peaceful joint possession and enjoyment of the suit lands or from dispossessing the Plaintiff or creating any third-party interest therein, pending final disposal of the suit.

Now, on the other hand, the defendant has submitted and stated that the Plaintiff has no right, title, interest or cause of action to file the present suit. The suit is liable to be dismissed in limine. The suit is bad for misjoinder of Defendants No.2 and 3, who are unnecessary parties and have been wrongly impleaded. They have suffered undue harassment and loss. The relief of permanent injunction claimed under Sections 34 and 38 of the Specific Relief Act, 1963 is not maintainable, as the Plaintiff has no legal character or share in the suit property. The Court has no jurisdiction to entertain the suit. The suit lands situated at Village: Moje Kodiya, Taluka: Girgadhada, District: Gir Somnath, Gujarat are self-acquired properties standing exclusively in the name and possession of Defendant No.1. They are not ancestral nor acquired by any common elders. The Plaintiff, being the son of Defendant No.1, has no right, title or interest in the self-acquired property of his father during the latter's lifetime under the Hindu Succession Act, 1956. There is no joint family property or joint possession. The land bearing Survey No. 24/1 Paiki/2 admeasuring 0 Ha. 92 A. 07 sq.m. is in the exclusive name, ownership and possession of Defendant No.1. The remaining land of Survey No.49 admeasuring 2 Ha. 14 A. 48 sq.m. was sold by Defendant No.1 prior to filing of the suit to repay a bank loan of ₹10,00,000/- outstanding ₹14,38,900/- since 13-12-2017 and to meet family expenses, including medical expenses of the Plaintiff's mother deceased 2014, expenses on Plaintiff's maintenance and

habits, and Plaintiff's marriage in 2020-21 at Jhundvadli village. Defendant No.1's another son, Manubhai Dudabhai, expired on 24-05-2015. Defendant No.1 is in peaceful, exclusive possession and cultivates the remaining land for his livelihood. The Plaintiff has deliberately not specified any share or boundaries and has made false allegations of joint rights. All allegations regarding notice dated 10-12-2024, limitation, joint family rights and any intention to defeat the Plaintiff's rights are false. No cause of action has arisen in favour of the Plaintiff.

11. The grant of a temporary injunction under Order 39 Rules 1 and 2 of the CPC is governed by the following principles:

Relevant Provisions of Law

1. **Order 39 Rules 1 and 2, CPC:** These provisions empower the court to grant a temporary injunction where:
 - Any property in dispute is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree (Rule 1(a)).
 - The defendant threatens or intends to remove or dispose of their property with a view to defrauding creditors (Rule 1(b)).
 - The defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to the property in dispute (Rule 2).
2. **Section 38, Specific Relief Act, 1963:** Governs the grant of perpetual injunctions, applicable by analogy to temporary injunctions, requiring that the plaintiff demonstrate a legal right and actual or threatened invasion thereof.

Legal Principles

1. **Prima Facie Case:** In the judgement of *American Cyanamid Co. v. Ethicon Ltd.*, [1975] AC 396; *Gujarat Bottling Co. Ltd. v. Coca Cola Co.*, AIR 1995 SC 2372 the Hon'ble Supreme Court held that the plaintiff must show a strong initial case with a probability of success at trial
 2. **Balance of Convenience:** In the judgment of *Wander Ltd. v. Antox India Pvt. Ltd.*, 1990 Supp SCC 727 the Hon'ble Supreme Court held that the court must assess which party would suffer greater inconvenience if the injunction is granted or refused.
 3. **Irreparable Injury:** In the judgement of *Dalpat Kumar v. Prahlad Singh*, AIR 1993 SC 276 the Hon'ble Supreme Court held that the plaintiff must demonstrate that denial of the injunction would cause harm that cannot be adequately compensated by damages.
12. Now, so far for the present application on hand, the plaintiff has made out a strong prima facie case. The revenue records prima facie indicate the suit land in the name of Defendant No. 1, but the plaintiff's unchallenged assertion that it was acquired by elders Bhagwanbhai Dyabhai Baraiya suggests it may be ancestral/coparcenary property under Mitakshara law, governed by Section 6 of the Hindu Succession Act, 1956. Upon the death of Manubhai plaintiff's father in 2015, a notional partition occurred, vesting the plaintiff with an undivided interest as a Class-I heir daughter of predeceased son. The 2005 Amendment to Section 6 confers coparcenary rights on daughters, applicable here as the succession opened post-amendment as the judgement of Vineeta Sharma v. Rakesh Sharma, (2020) 9 SCC 1, the Hon'ble S.C. holding the amendment retrospective. The defendants' claim of self-acquisition lacks documentary evidence at this stage, and the alleged sale of part of Survey No.

49 is disputed without proof of registration under Section 17 of the Registration Act, 1908. Thus, a prima facie case exists for the plaintiff's undivided 1/4th share, and the suit is maintainable under Sections 22, 34, and 38 of the Specific Relief Act, 1963, for declaration, partition, and injunction.

Further, the balance of convenience tilts in favour of the Plaintiff. The suit land is agricultural, and the plaintiff claims joint possession. Granting status quo would prevent alienation, preserving the lis pendens under Section 52 of the Transfer of Property Act, 1882. The defendants' dependence on the land for livelihood can be mitigated by allowing joint cultivation, but refusal of injunction risks irreversible transfer to third parties, tilting convenience in the plaintiff's favor.

Further, the Plaintiff will suffer irreparable injury which cannot be compensated in terms of money if the construction is permitted to continue. If the defendants alienate or encumber the suit land, the plaintiff's inheritance rights would be irreparably prejudiced, as monetary compensation may not suffice for ancestral property as held in the case of *Mandali Ranganna v. T. Ramachandra*, (2008) 11 SCC 1 by the Hon'ble S.C. The defendants' alleged prior sale is unproven, and no injury to them outweighs this risk.

Further, the defendants' plea under Section 41(h) of the Specific Relief Act, 1963 (injunction not grantable when equally efficacious relief available) is inapplicable, as partition suits warrant interim protection. The joinder of Defendants Nos. 2 and 3 is proper as co-sharers in the joint family. No case for compensatory costs under Section 35A CPC is made out, as the suit appears bona fide.

13. Having considered the pleadings, arguments, and documentary evidence, this Court finds that the plaintiff has established a prima facie case based on the documentary evidence submitted. Even, the balance of convenience lies in favor of the plaintiff, and irreparable injury would result if the injunction is not granted. Now, as discussed above, at this stage, the decisions of the above issues number-1 to 3 are decided "in the affirmative" and in the interest of justice, the following final order is made regarding issue number-4.

-:: Order ::-

- (1)..** The present application is hereby **PARTLY ALLOWED.**
- (2)..** The defendants, their agents, servants, or assigns are restrained from selling, transferring, alienating, encumbering, or parting with possession of the suit land to any third party, and from exclusively cultivating or taking produce therefrom without the plaintiff's participation till the final disposal of the suit.
- (3)..** The defendants to furnish an undertaking within 7 days affirming no prior alienation post-notice dated 10.12.2024.
- (4)..** The costs of this application will follow the outcome of the suit.

Pronounced in open Court on this day of 02nd March, 2026.

Gir Gadhada.
Date : 02.03.2026

(H.M.Vaishnav)
Principal Civil Judge &
J.M.F.C., Gir Gadhada.
(Code No. GJ01530)