



**IN THE COURT OF PRINCIPAL CIVIL JUDGE, GIRGADHADA**

Nirmalaben Nathubhai Bambhaniya,  
Resident of Sonpara, Ta. Girgadhada.

::: Plaintiff

Versus

1) Mehulbhai Nathubhai Bambhaniya,  
Resident of Girgadhada, Ta. Girgadhada.

::: Defendant

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**Order Below Exh. 5, an Applications filed under the provisions of  
Order-39, Rule-1-2- Temporary Injunction**

1) The present application has been filed by the plaintiff vide Exh.5 for temporary injunction under the provisions of Order-39, Rule-1 of the Civil Procedure Code, 1908. The present suit has been filed by the plaintiff against the defendant for obey of contract, Declaration and Permanent Injunction.

**Facts of the case :-**

2) The short fact of the case is that the Defendant is the brother of the Plaintiff and both the parents of the Plaintiff have been died. Mother of both the parties was having agricultural land bearing R.S.No.74/2 at Jargali Village. Further, Father of both the parties was having agricultural land bearing R.S.No.100/2 at Jargali Village. After the death of both the parents names of Plaintiff as well as Defendant were entered in Revenue Record as heirs of deceased. In presence of mother of both the parties it was decided to partitioned the agricultural land in to three equal parts, it was oral contract. The Another Brother is agreed to the oral contract and hence he is not joined as party to this

Suit. The Plaintiff, Defendant and another brother have jointly prepared contract on 08.12.2004 and it was decided to give land of R.S.No.100/2 to the Plaintiff and in case of failure to the contract the legal action can be taken. Though the defendant has cultivated the land of R.S.No.100/2 which is the land of Plaintiff and defendant wants to take away the land from the Plaintiff. The Plaintiff has given notice to the defendant, the notice was served upon defendant though he has not given any reply to the notice. The Plaintiff came to know that the defendant is trying to sell out the land to some other persons and the Right of Plaintiff will be taken away. The Plaintiff has also given notice to the defendant and to informed him to enter the name of Plaintiff as only owner in Revenue Record. But, the defendant is not doing the same. Plaintiff has filed present Suit to give direction to the defendant to obey the conditions of contract and the land which was agreed to give Plaintiff is to be given to the Plaintiff. The Plaintiff has prayed to direct the defendant to obey the Contract, to hand over the possession of the Suit Property to the Plaintiff, to draw preliminary decree and the name of Plaintiff be entered into the Revenue Record.

**Proceedings of the Suit:**

3) The present suit has been filed with application of temporary injunction. The Notice was issued upon the defendant. The notices were served upon defendant and the defendant has remained present through his Advocate. The defendant has filed his Reply to the plaint as well as present injunction application. The defendant have categorically denied all the averments made by the planitiff in his reply to the plaint as well as interim application filed vide Exh.12. The defendant has submitted that the suit filed by the plaintiff is liable to

be rejected on the grounds that the Suit is barred by law not joining necessary parties, for not having cause of action, Suit is barred by law. The Plaintiff is relying on the contract which is not registered. The Contract is notarized and not tenable in Court of Law. The Suit is filed to get possession of the land and insufficient Court fee is paid. The Plaintiff has not joined his another brother and hence the Suit is filed in colusion. The defendant has clearly denied the oral contract as well as notarized contract. The defendant has submitted that he has not executed any contract in favor of plaintiff. Defendant has submitted that he has constructed well by doing expense of Rs. 4 lac and loan of Rs.6 lakhs is taken on the Suit Property. The Plaintiff is joint co owner in the Suit Property and she wants to take away the Suit Property on her name and hence present false suit has been filed which is required to be rejected.

4) The plaintiff has submitted oral arguments in support of his application at Exh.5 for temporary injunction. Ld. Advocate of Plaintiff has relied upon the documents produced by him along-with the Suit. He has repeated the facts mentioned in the Plaint and submitted that the Plaintiff, Defendant and another brother have jointly prepared contract on 08.12.2004 and it was decided to give land of R.S.No.100/2 to the Plaintiff and in case of failure to the contract the legal action can be taken. Though the defendant has cultivated the land of R.S.No.100/2 which is the land of Plaintiff and defendant wants to take away the land from the Plaintiff. The Plaintiff has given notice to the defendant, the notice was served upon defendant though he has not given any reply to the notice. The Plaintiff came to know that the defendant is trying to sell out the land to some other persons and the Right of Plaintiff will be taken away. The Plaintiff has also

given notice to the defendant and to informed him to enter the name of Plaintiff as co-owner in Revenue Record. But, the defendant is not doing the same. Plaintiff has filed present Suit to give direction to the defendant to obey the conditions of contract and the land which was agreed to give Plaintiff is to be given to the Plaintiff. The Plaintiff has prayed to direct the defendant to obey the Contract, to hand over the possession of the Suit Property to the Plaintiff, to draw preliminary decree and the name of Plaintiff be entered into the Revenue Record. Therefore, until final decision of this case, Plaintiff has prayed to passed an ad-interim injunction in favour of plaintiff.

**Documentary Evidence produced on behalf of plaintiff:**

5) The plaintiff has submitted documentary evidence along-with his plaint at Exh.3, the details of the same is as under:

| Sr. No. | Particulars                                                     | Mark |
|---------|-----------------------------------------------------------------|------|
| 01.     | Copy of Village Form No.8-A of R.S.No.100/2 of Jargalli Village | 3/1  |
| 02.     | Copy of Village Form No.7 of R.S.No.100/2 of Jargalli Village   | 3/2  |
| 03.     | Copy of Village Form No.12 of R.S.No.100/2 of Jargalli Village  | 3/3  |
| 04.     | Copy of Village Statement of Right                              | 3/4  |
| 05.     | Copy of Legal Notice given to Defendant.                        | 3/5  |
| 06.     | Acknowledgement of Notice given to Defendant.                   | 3/6  |
| 07.     | Status Report of Notice.                                        | 3/7  |
| 08.     | Copy of Contract dated 08.12.2024.                              | 3/8  |

5.1) The plaintiff has submitted documentary evidence vide Mark-3/1 to 3/8 are details showing the ownership of land of Jargali Village. Looking to the documents produced at Mark-3/1 to 3/4 it shows that the Land of R.S.No.100/2 is joint ownership land of Plaintiff as well Defendant.While other documents is showing that the Plaintiff has given notice to defendant which was served upon him and contract which was agreed upon by all the parties.

6) The defendants have submitted written arguments vide Exh.14 in support of their Reply. Ld. Advocate of defendants has submitted the facts mentioned in the Reply to the Plaint. He has argued that the defendant has submitted that the suit filed by the plaintiff is liable to be rejected on the grounds that the Suit is barred by law not joining necessary parties, for not having cause of action, Suit is barred by law. The Plaintiff is relying on the contract which is not registered. The Contract is notarized and not tenable in Court of Law. The Suit is filed to get possession of the land and insufficient Court fee is paid. The Plaintiff has not joined his another brother and hence the Suit is filed in colusion. The defendant has clearly denied the oral contract as well as notarized contract. The defendant has submitted that he has not executed any contract in favor of plaintiff. Defendant has submitted that he has constructed well by doing expense of Rs. 4 lac and loan of Rs.6 lakhs is taken on the Suit Property. The Plaintiff is joint co owner in the Suit Property and she wants to take away the Suit Property on her name and hence present false suit has been filed which is required to be rejected.

**Documentary Evidence produced on behalf of defendants:**

7) The defendants have submitted documentary evidence along-with their Reply & Counter Claim, the details of the same is as under:

| Sr. No. | Particulars                                                    | Mark |
|---------|----------------------------------------------------------------|------|
| 01.     | Copy of Village Form No.8-A of R.S.No.74/2 of Jargalli Village | 13/1 |
| 02.     | Copy of Village Form No.7 of R.S.No.74/2 of Jargalli Village   | 13/2 |
|         | Copy of Village Form No.12 of R.S.No.74/2 of Jargalli Village  | 13/2 |
| 03.     | Copy of Village Form No.8-A of R.S.No100/2 of Jargalli Village | 13/3 |
| 04.     | Copy of Village Form No.7 of R.S.No100/2 of Jargalli Village   | 13/4 |
|         | Copy of Village Form No.12 of R.S.No100/2 of Jargalli Village  | 13/4 |

6.1) The defendant has submitted documentary evidence vide Mark-13/1 to 14/4, which shows that there were two lands i.e. R.S.No.74/2 and 100/2 which are on the joint name of Plaintiff, defendant and his brother.

8) Before deciding present application, below mentioned issues are required to be adjudicated.

- 1) Whether the prima-facie case is in favour of plaintiff or in favour of defendant ?
- 2) Whether the irreparable loss will occur to plaintiff or to defendant if the injunction is not granted in their favour ?
- 3) Whether the balance of convenience is in favour of plaintiff or in favour of defendant ?
- 4) What order ?

8) Decision of above mentioned Issues are as under:

Issue No.1 Negative

Issue No.2 Negative

Issue No.3 Negative

Issue No.4 As per the final order.

## **REASONS:**

### **9) Common discussion of Issue Nos.1 to 4 :**

In reply of Issue No.1 the prima facie case must be proved before granting injunction in favour of plaintiff. In the present case, plaintiffs have filed present suit and prayed to direct the defendant to obey the Contract and to give the possession of the Suit Property to the Plaintiff of her share and Declaration and Permanent Injunction. The Plaintiffs have submitted that on the basis of the oral contract which was executed by the mother of the Plaintiff as well as Defendant and also on the basis of contract which was agreed by the Plaintiff as

well as Defendant and another brother. The Plaintiff wants that the her share of the Suit Property. On the other hand the defendant has clearly denied that no Oral contract was performed by his mother. He has also denied to the written contract which is produced and relied by the Plaintiff. Both the parties i.e. Plaintiff and defendant have agreed that the Suit Property was on the name of their parents and their names have been entered into the Revenue Record on the basis of heirs of their parent. One thing is required to be consider that the Plaintiff has not joined another brother as party to the Suit. The Plaintiff has submitted that the another brother is in agreement with the written contract and hence he has not been joined as party to this Suit. But, the plaintiff has not submitted any evidence to proove that her brother is in agreement with the contract. Further, the contract on which the Plaintiff is relying is not registered Constract, further the defendant who is the party to the contract has challenged the said contract by saying that he has not executed any such contract. Further, looking to the documents produced by the Plaintiff as well defendant, one thing is clear that the names of all three heirs have been joined as co-owner of the Suit Property. So, as per the say of the Plaintiff the defendant is not in a position to sell out the Suit Property without taking consent of the Plaintiff. Further, the Plaintiff has prayed for partition of the Suit Property and issue direction to the defendant that the possession of the land of the Plaintiff's share is to be handed over to the Plaintiff. But, for the purpose of patition of Suit Property all the heirs must be brought before this Court and in present case one brother is not joined as party to this Suit. Hence, on above discussion, the plaintiff has failed to show prima-facie case in her favour for granting ad-interim injunction. In view of the

discussion above and looking to the facts of the case and documents produced on behalf of both the sides, this Court believes that prima-facie case is not in favour of plaintiff for granting ad-inerim injunction. Hence, reply of Issue No.1 above is in Negative.

So far as Irreparable loss is concerned the plaintiff has submitted that the Suit Property is ancestral property and defendant is having illegal possession of the Suit Property with him. If the Suit Property is not handed over to the Plaintiff then she could have bear the irreparable loss which cannot compensate in terms of money. But, looking to the facts and documents produced in the case, the Defendant is in agreement that the Suit Property is ancestral property and Plaintiff is also having right in it. Further, the name of plaintiff is also included as co-owner in the Revenue Record. Plaintiff has submitted that the defendant will sell out the Suit Property and she could have bear the huge loss. But, looking to the legal condition, the defendant is not in a position to sell out the Suit Property legally to any other person without obtaining consent-signature of the Plaintiff. Hence, if the Suit Property is not handed over to the Plaintiff instantly then she will not bear a loss which cannot be compensated in terms of money. This Court is also of the view that the irreparable loss is not in favour of plaintiff. Hence, reply of Issue No.2 above is in Negative.

So far as Issue No.3 is concerned the balance of convenience is also not in favour of plaintiff. It is the case of the Plaintiff that she is having her share in the Suit Property. The defendant is also accepting that the Plaintiff is his sister and her name is entered into the Revenue Record of the Suit Property and she is

also a joint owner of the Suit Property. Plaintiff has to prove her case regarding Oral Contract of her mother, written contract which is executed by both the parties and without proving of her case, grant of interim injunction will amount to grant permanent injunction and that it without taking evidence. The Plaintiff has prayed for interim injunction and submitted that there is possibility that the defendant will sell out the Suit Property and the Right of Plaintiff will be vanished. But, looking to the facts of the case and documents submitted by both the parties, the name of Plaintiff is also entered into the Revenue Record as co-owner and legally defendant is not in a position to sell out the Suit Property without obtaining consent-signature of the Plaintiff. This Court has not find anything which shows that if the temporary injunction is not granted in favour of plaintiff then she will have to suffer a loss. Hence, this Court is of the view that the balance of convenience is not in favour of plaintiff and hence the answer of Issue No.3 is in Negative.

(10) Thus, in view of aforesaid discussions and reasons it transpires to this Court that the plaintiff had failed to establish prima facie case in her favor. Therefore, considering the well settled law of interim injunction it is clear that when the person has failed to establish prima-facie case then no interim injunction can be granted even if the balance of convenience and irreparable injury is in his favour. Furthermore, in this connection, it has been held by the Hon'ble Apex court in para-13 of its pronouncement in ***"Kashi Math Samsthan v. Srimad Sudhindra Thirtha Swamy"*** reported in AIR 2010 SUPREME COURT 296 that *"It is well settled that in order to obtain an order of injunction, the party who seeks for grant of such injunction has to prove that he has made out a prima*

*facie case to go for trial, the balance of convenience is also in his favour and he will suffer irreparable loss and injury if injunction is not granted. But it is equally well settled that when a party fails to prove prima facie case to go for trial, question of considering the balance of convenience or irreparable loss and injury to the party concerned would not be material at all, that is to say, if that party fails to prove prima facie case to go for trial, it is not open to the Court to grant injunction in his favour even if, he has made out a case of balance of convenience being in his favour and would suffer irreparable loss and injury if no injunction order is granted".* So in view of aforesaid reasons, the application for interim injunction filed by the plaintiff is liable to be rejected. Under such circumstances, I hereby pass following order in the interest of justice.

**ORDER**

- 1) The Application for Interim Injunction filed by the plaintiff at Exh.5 is hereby rejected.
- 2) Cost shall be the cost in the cause of the suit.

Signed and pronounced in the open Court today on this 9<sup>th</sup> day of May, 2025.

Ahmedabad  
Date: 09 / 05 /2025

**(H.J.Vasavada)**  
Principal Civil Judge,  
Girgadhada.  
Judge Code: GJ01386