

REGULAR CIVIL SUIT NO.36/2023.
ORDER BELOW EXH.5.

- [1] During the pendency of the suit, the plaintiffs have filed an application under Order 39, Rule 1 and 2 and Section 151 of the Civil Procedure Code at Exh.5. Plaintiffs have filed this suit for Declaration, injunction and cancellation of document. As per the say of the plaintiffs, they are resident of Hadiyana Village, Jodiya Tehsil and currently residing at Dhrol, and defendants are residents of Hadiyana Village of Jodiya and of Rajkot. Plaintiffs land is situated at Hadiyana village bearing Survey no. 70 (Old Survey no. 16/2) admeasuring Hec – Are – Sq – Mtr: 01 – 06 – 72, and Survey no. 72 (Old Survey no. 17/2) admeasuring Hec – Are – Sq – Mtr: 00 – 53 – 74 and total land admeasuring 1 – 60 – 46 of *Khata* No. 253. The said property is inserted in revenue record and is ancestral property. Plaintiffs had given the disputed suit property to their relative Satvara Gordhanbhai Keshabhai and Murjibhai Keshabhai Sonagra for cultivation and property maintenance. We plaintiffs occasionally used to visit our native and our farms. Later on, Murjibhai Keshabhai Sonagra died and recently defendant no. 1 Satvara Gordhanbhai Keshabhai also passed away and plaintiff no.4' s father Jivrajibhai Pragjibhai also died on dated 17.03.2001. Further, the procedure of obtaining electricity connection of Survey No. 16/2 in 2002 was initiated by our father Nathalal Pragjibhai Nakum and charge for the same was also paid by him and he was given receipt vide outward no. 1992 of dated 31.12.2002 and plaintiffs still have the consumer connection no. 82316014160. The plaintiffs have brought this suit as defendants are trying to obtain

the disputed suit property illegally from plaintiffs by the way of using forged documents. Plaintiffs have prayed to grant temporary injunction that defendants shall not enter either by themselves or by their hired people.

[2] On the service of summons of the suit, Ld. Adv. has appeared on behalf of defendants and have filed written statement of plaint and of interim application vide Ex – 87. Defendants have contended that the plaintiffs have no right or title in disputed suit property and disputed suit property was sold by Nathalal Pragjibhai and jivrajibhai Pragjibhai to Gordhan Kesha and Murji Kesha vide registered sale deed no. 89 on 04/02/1981 and no. 658 on 19/05/1981. Thus, all the contentions made by the plaintiffs are hereby denied and prayed to reject this interim application with cost.

[3] I have gone through the pleadings of the parties and to decide present application, following points have been raised for final determination:-

1.	Whether there is a prima facie case of Plaintiffs ?
2.	Whether plaintiffs prove that, balance of convenience is in their favour?
3.	Whether plaintiffs prove that, if the injunction as prayed for is not granted in their favour, they would suffer irreparable loss, which would not be compensated in monetary terms ?
4.	What order ?

[4] Above mentioned points are decided as follows :-

1.	In Partly Affirmative
2.	In Partly Affirmative
3.	In Partly Affirmative
4.	As per final order

**MY REASONS FOR ABOVE POINTS ARE DISCUSSED AS
FOLLOWS:-**

[5] Heard learned advocates appearing on behalf of both the parties, gone through the applications and evidences produced in supports of the application. Following are my findings on this application:

[6] It is a judicial concept of court, under O.39, R.1-2 of CPC., and discretionary power have been granted to the court, which should be exercised by the court in judicial manner, that too, considering the facts and circumstances of each case. Further, the parties should come before the court with clean hands. Further, this court believes that while deciding the injunction application, it is well settled principle of law that plaintiff must satisfy that he has a prima-facie case, that does not mean that the court should examine the merits of case closely and come to a conclusion that plaintiff has a case in which he is likely to succeed. It is enough if plaintiff shows a fair question which can be raised at trial. At the same time, all these points are inter-connected with each other; therefore, they are discussed and decided together for the sake of convenience and

brevity.

[7] **Temporary injunction may be granted in following cases:**

- (a) Where in property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree; or
- (b) Where a defendant threatens, or intends to remove or dispose of his property with a view to defrauding his creditors; or
- (c) Where a defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit; or
- (d) Where a defendant is about to commit a breach of contract, or other injury of any kind; or
- (e) Where a court is of opinion that the interest of justice is so requires.

[8] The power to grant a temporary injunction is at the discretion of the court. This discretion, however, should be exercised reasonably, judiciously and on sound legal principles. Injunction should not be lightly granted as it adversely affects the other side. The grant of injunction is in the nature of equitable relief, and the court has undoubtedly power to impose such terms and conditions as it thinks fit. Such conditions; however, must be reasonable so as not to make it impossible for the party to comply with the same and thereby virtually denying the relief which he would otherwise be ordinarily entitled to.

[9] The first rule is that the applicant must make out a *prima facie* case in support of the right claimed by him. The court must be satisfied that there is a *bona - fide* dispute raised by the applicant, that there

is an arguable case for trial which needs investigation and a decision on merits and on the facts before the court there is a probability of the applicant being entitled to the relief claimed by him. The existence of the prima facie right and infraction of such right is a condition precedent for grant of temporary injunction.

[10] On consideration of arguments of both the parties and by looking at the record of the case, it has been observed that the suit has been filed for declaration, permanent injunction and cancellation of document. Here at this stage, while deciding any issues of the said suit, this is necessary to observe carefully, whether there is a prima facie case of the party or not, instead of deciding the case on merits. Therefore it is not justifiable to decide any issue of law or issue of fact on merits of the case, while considering all the evidences produced in this case at this stage. Therefore, after perusal of the record of the case of both plaintiffs as well as defendants, I decide issue No. 1 in Partly affirmative.

[11] The second condition for granting interim injunction is that the balance of convenience must be in favour of the applicant. In other words, the court must be satisfied that the comparative mischief, hardship or inconvenience which is likely to be caused to the applicant by refusing the injunction will be greater than that which is likely to be caused to the opposite party by granting it. The court while exercising discretion in granting or refusing injunction should exercise sound judicial discretion and should attempt to weigh substantial mischief or injury likely to be caused to the parties, if the injunction is refused, and compare it with that which is likely to be caused to the opposite party if the injunction is

granted. If on weighing conflicting probabilities, the court is of the opinion that the balance of convenience is in favour of applicant, it would grant injunction, otherwise refuse to grant it. The applicant must further satisfy the court about the third condition by showing that he will suffer irreparable loss if the injunction as prayed is not granted, and that there is no other remedy open to him by which he can protect himself from the consequences of apprehended injury. The expression irreparable loss doesn't mean that there should be no possibility of repairing the injury. It only means that the injury must be material one, i.e. which cannot be adequately compensated by damages. An injury will be regarded as irreparable where there exists no specific or fixed pecuniary standards for measuring damages. Here, plaintiff has prayed for the aforesaid relief, hence it could be concluded that there is a balance of convenience and irreparable loss can be suffered by plaintiffs if the injunction would not be granted in favour of plaintiff, Hence, there is a strong possibility to suffer irreparable loss by plaintiffs. Therefore, I decide issue no. 2 & 3 as partly affirmative.

[12] On the perusal of the record of the case, it is pertinent that, plaintiffs have claimed for interim injunction in the said disputed suit. Therefore, I decide issue No. 4 as per final order, hence; following order is passed in the interest of justice.

ORDER

1. The application of plaintiff u/O-39, R-1 & 2 is hereby **Partly Allowed**.
2. The prayer of plaintiff mentioned in 9(A) of Exhibit – 5 as to “defendants either themselves or through any third parties shall not give possession of the disputed suit property and shall not make any changes in revenue records”, is hereby granted.
3. No order as to costs.

Pronounced in an open Court today on 7th April, 2026

Date : 07.04.2026
Place: Jodiya

[M. H. Makwana]
Principal Civil Judge
Jodiya
GJ 001523

(TYPED BY: SELF)