

**RCS No. 11/2023**  
**Order Below Exhibit-5**

- (1.) As the present order is being passed in connection with the plaintiff's application Exhibit-5 for interim injunction, the facts of the application are not reiterated. The defendants have filed their objections and reply from Exhibit-19 onwards, and the plaintiff has filed a counter-affidavit at Exhibit-23, and oral submissions in respect of the present application have been advanced accordingly. The documents produced by the plaintiff from Mark 4/1 to 4/5 and those produced by the defendants from Mark 20/1 to 20/4, as well as the rojkam regarding the site condition at Mark 25/1, have been taken into consideration. As none appeared on behalf of Defendant Nos. 2/1 to 2/4 and 3, their right to file reply was closed. The plaintiff has filed written submissions at Exhibit-35, and oral submissions were heard accordingly, as well as the oral submissions of the defendants.
- (2.) For the purpose of deciding the application for interim injunction, the following issues have arisen:

**-:: ISSUES ::-**

- a. Whether the plaintiff has a prima facie case?
- b. Whether the balance of convenience is in favour of the plaintiff?

- c. Whether, if the interim injunction as prayed for is not granted, the plaintiff would suffer such loss as cannot be compensated in terms of money?
- d. What order should be passed?

**-:: FINDINGS ::-**

2. The findings on the above-mentioned issues and the reasons for the same are as follows.
  - a. **In Affirmative:**
  - b. **Negative:**
  - c. **Negative:**
  - d. **As per Final Order**

**-:: REASONS ::-**

**Issues No. 1 to 3 –**

- (3.) Before deciding the above three issues, it is necessary to note that the relief of interim injunction is an equitable relief, and therefore the plaintiff cannot claim such relief as a matter of right. Granting or refusing an interim injunction depends upon the discretionary jurisdiction of the Court, to be exercised on the basis of merits. Keeping this principle in mind, while discussing the above issues, it is first required that the plaintiff establish before the Court, on the basis of pleadings and documentary evidence, the existence of a prima facie case.

- (4.) According to the case of the plaintiffs, the agricultural land bearing Revenue Survey No. 196 admeasuring Hectare-Are 3-55-11, situated at village Khodada, Taluka Mangrol, recorded in Khata No. 135 in the Kharo area in the name of “Pa”, is in the joint ownership and possession of the plaintiffs. The said land is ancestral property. The plaintiffs and Defendant Nos. 1 to 3 are real brothers and sisters. Defendant Nos. 2/2 to 2/4 are the children of the plaintiffs’ sisters. The land in question was purchased in the year 1980 by the plaintiffs’ deceased father, Siya Veera, from Rajput Kanaji Bharamji and others of village Khodada. After the demise of the plaintiffs’ father, the said land came into the joint ownership and possession of the plaintiffs and the defendants. The plaintiffs’ mother, Rajiben, passed away in the year 2013. The plaintiffs’ sister, Raniben Siyabhai Galchar, also passed away in the year 2012, and Defendant Nos. 2/1 to 2/4 are her legal heirs. It is stated that the land had been previously partitioned, wherein Plaintiff No. 1 was allotted the middle portion, Plaintiff No. 2 was allotted the eastern first portion, and Defendant No. 1 was allotted the western portion. However, upon measurement of the land allotted to the plaintiffs, it was found that there was a deficiency in area. Therefore, the plaintiffs requested Defendant No. 1 to hand over the deficit land, totaling five vighas. Defendant No. 1 orally assured that he would vacate and hand over the said land within two months. However, even after expiry of two months, Defendant No. 1 did not return the encroached portion of the plaintiffs’ land. Despite issuance of notice by the plaintiffs, the defendants, instead of handing over possession of the five vighas of land, submitted a false reply stating that about 32 years ago the land had been partitioned through a family settlement and that equal shares of 22 vighas and 3 gunthas each had been allotted. However, apart from their equal shares, Defendant No. 1 is in possession of an

additional five vighas of land comprising 2½ vighas each from the shares of Plaintiff Nos. 1 and 2. The defendants have neither handed over possession of the said five vighas of land to the plaintiffs nor are willing to do so, and have quarreled with and threatened the plaintiffs. The plaintiff has also lodged a police complaint against Defendant No. 1 on 13/12/2022. Therefore, the plaintiffs have filed the present injunction application seeking the following reliefs: (a) To grant an interim injunction restraining the defendants from mortgaging, gifting, transferring, or otherwise creating any third-party rights in respect of the total five vighas of land, comprising 2½ vighas each from the shares of Plaintiff Nos. 1 and 2, forming part of the total land admeasuring 22 vighas and 3 gunthas out of Revenue Survey No. 196 admeasuring Hectare-Are 3-55-11 situated at village Khodada, Taluka Mangrol, as described in paragraph 4 of the plaint; (b) To grant such other appropriate relief as may be deemed just and proper.

- (5.) Considering the submissions made by the defendants, they have denied all the allegations made in the plaint and in the application for interim injunction, except those facts which have been specifically admitted. It is contended that the plaintiffs have not approached the Court with clean hands and have suppressed true and material facts. It is further submitted that more than thirty years have passed since the family partition took place, and after such an inordinate delay, the plaintiffs have filed a false suit along with an application for interim injunction based on incorrect facts. Therefore, the suit as well as the interim injunction application is barred by limitation, and the defendants have prayed for dismissal of the injunction application. The defendants have denied the allegation that the land bearing Revenue Survey No. 196 of

Khata No. 135 situated at village Khodada is in the joint ownership and possession of the plaintiffs alone. It is stated that the said land is jointly held by both the plaintiffs and the defendants. It is admitted that the suit land is ancestral property and that in the year 1980 it was purchased by the deceased father of the parties, Siyabhai Veerabhai Garchar. It is also admitted that after the purchase, the land remained in his ownership and possession during his lifetime. However, the defendants state that during the lifetime and in the presence of the deceased parents, and with the consent of all concerned parties, a family settlement and partition had taken place about thirty-two years ago between Plaintiff Nos. 1 and 2 and Defendant No. 1. The said partition was effected by mutual consent in the presence of respectable persons, namely Rabari Ghundabhai Dayabhai Garchar, Rabari Rama Ganga Garchar of village Khodada, and Devrajbhai Samat Chavda (maternal uncle of the plaintiffs and Defendant Nos. 1 and 3), resident of Pankava, Taluka Maliya Hatina. By virtue of such family settlement, the suit land was divided into three shares — one share each was allotted to Plaintiff No. 1, Plaintiff No. 2, and Defendant No. 1 — and since then, each party has been in possession of the land allotted to his respective share for the past thirty-two years. The defendants further state that the land which has fallen to the share of Defendant No. 1 includes the portion alleged by the plaintiffs to be “excess land.” However, that portion of land was inferior in quality, being prone to river submergence, sandy, uneven, and waterlogged, and was not suitable for cultivation. Compared to the plaintiffs’ shares, the land allotted to Defendant No. 1 was of inferior quality. Over the past thirty-two years, Defendant No. 1 has incurred substantial expenditure and labour to level and improve the said land. It is further submitted that after the demise of the parents, the names of all legal heirs, including the defendants,

have been entered in the revenue records. However, even after the demise of the parents, the plaintiffs have been retaining the agricultural produce from the land which was set apart for the livelihood of the parents and have neither given any share of the produce nor rendered accounts to the defendants. This material fact, according to the defendants, has been suppressed by the plaintiffs in the suit. The defendants have also denied the correctness of the measurement allegedly conducted by the plaintiffs through a private surveyor. It is stated that the defendants have duly replied to the notice issued by the plaintiffs. With regard to the relief sought in Paragraph 9 of the interim injunction application, the defendants submit that since the revenue record (Khata) is joint, no individual co-holder can mortgage, transfer, or otherwise alienate the entire land or any specific portion thereof independently. Therefore, according to the defendants, the application for interim injunction is misconceived and deserves to be rejected.

- (6.) Thus, upon considering the submissions of both parties and the documents produced by the plaintiffs, it appears that the present suit has been filed in respect of the disputed land. From the documents produced at Mark 4/1 to 4/5, the names of the plaintiffs as well as Defendant Nos. 1 to 3 are reflected as holders of the suit land. From the pleadings, it also emerges that both sides are close family members and that the names of both parties are jointly recorded in respect of the suit property. Therefore, prima facie, it appears that the suit property stands in the joint names of both parties. The principal dispute raised by the plaintiffs is that, in the earlier partition of the suit land, each of the plaintiffs received 2½ vighas less than their due share, and that the defendants have failed to hand over the deficit land. On the other hand, the defendants contend that the

land was partitioned about 32 years ago and that, pursuant to such partition, each party has been in possession of the land allotted to his respective share since then. The defendants further contend that the land alleged by the plaintiffs to be “excess land” in the possession of Defendant No. 1 was, in fact, inferior land prone to river submergence, sandy, uneven, and waterlogged, and that no agricultural produce could be grown thereon. Compared to the plaintiffs’ shares, the land allotted to Defendant No. 1 was of inferior quality, and substantial expenditure was incurred by Defendant No. 1 over the years to level and improve the same. Considering the rival submissions, the question as to whether the land was partitioned in the manner alleged, and whether the plaintiffs have in fact received a lesser share, cannot be conclusively determined at this stage without proper appreciation of cogent evidence. The truthfulness of the alleged partition and the exact extent of land falling to each party’s share can only be decided after full-fledged trial and appreciation of evidence in accordance with law. Further, from the record of the suit, it appears that the names of the plaintiffs and defendants are jointly recorded in respect of the suit property. Therefore, in the event of any lawful agreement, deed, or transfer concerning the suit property, signatures of all concerned parties would be required, and any party having objection may raise the same.

In view of the above, since both the plaintiffs and the defendants are co-possessors of the suit property, it can be held, to some extent, that the plaintiffs have established a prima facie case in respect of the suit property. However, merely because a prima facie case exists in favour of the plaintiffs, an order of injunction cannot automatically be granted. At this stage, it is incumbent upon the plaintiffs to

further establish that the balance of convenience lies in their favour and that they are likely to suffer irreparable loss which cannot be compensated in terms of money if the injunction is not granted.

In this regard, the Hon'ble Supreme Court, in the case of *Ambalal Sarabhai Enterprise Limited v. KS Infraspace LLP Limited and Another*, reported in AIR 2020 SC 307, has made certain observations concerning grant of interim injunction, particularly in paragraphs 16 and 23, which are relevant to the present case.

16. The cardinal principles for grant of temporary injunction were considered in **Dalpat Kumar vs Prahlad Singh, (1992) 1 SCC 719**, observing as follows Satisfaction that there is a prima facie:

“5... Satisfaction that there is prima facie case by itself is not sufficient to grant injunction The Court further has to satisfy that non-interference by the Court would result in “irreparable injury” to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession Irreparable injury however does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one namely one that cannot be adequately compensated by way of damages The third condition also is that “the balance of convenience” must be in favour of granting injunction The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is 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 other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject matter should be maintained in status quo, an injunction would be issued. Thus the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit.”

23. Wander Ltd. (supra) prescribes a rule of prudence only. Much will depend on the facts of a case. It fell for consideration again in Gujarat Bottling Co Ltd vs. Coca Cola Co. (1995) 5 SCC 545, observing as follows: “47.... 39 Under Order of the Code of Civil Procedure, jurisdiction of the Court to interfere, with an order of interlocutory or temporary injunction is purely equitable and, therefore, the Court, on being approached, will, apart from other considerations, also look to the conduct of the party invoking the jurisdiction of the Court, and may refuse to interfere unless his conduct was free from blame. Since the relief is wholly equitable in nature the party invoking the jurisdiction of the Court has to show that he himself was not at fault and that he himself was not responsible for bringing about the state of things complained of and that he was not unfair or inequitable in his dealings with the party against whom he was seeking relief His conduct should be fair and honest....”

- (6.1) Further, upon considering the pleadings and submissions of the parties, the question regarding the correctness of the alleged partition of the disputed land, as asserted by the plaintiffs, cannot be established at this stage merely on the basis of the measurement sheet at Mark 25/1, without recording evidence and without commencing full-fledged trial proceedings. Moreover, the truthfulness of the facts as to when the partition of the suit property allegedly took place and when the family settlement was effected cannot be determined at this stage without proper scrutiny of cogent evidence. All such issues can be decided only after recording appropriate evidence and conducting due trial in accordance with law.
- (6.2) Thus, considering the facts of the case and the documentary evidence available on record at this stage, it appears that the plaintiffs have established a prima facie case. However, along with the existence of a prima facie case, it is also necessary that the balance of convenience and the element of irreparable loss not compensable in terms of money must operate in favour of the plaintiffs. From the record of the present case, it is evident that the names of the plaintiffs and Defendant Nos. 1 to 3 are jointly recorded in respect of the immovable properties forming part of the suit property. Therefore, for any lawful agreement, writing, or document concerning the said properties, consent of all concerned parties would be necessary. In case any party has objection or dispute, the same can also be raised at the appropriate stage. Hence, even if the injunction as prayed for is not granted, the suit properties cannot be alienated or taken away from the plaintiffs without their signatures or consent. In the event of any such situation arising, the plaintiffs would be at liberty to avail appropriate legal remedies and raise their objections in accordance with

law. Accordingly, it does not appear that the balance of convenience lies in favour of the plaintiffs, nor does it appear that they would suffer irreparable loss incapable of being compensated in monetary terms. In view of the above discussion and considering the documentary evidence produced along with the plaint, it does not appear just, proper, or equitable to grant the relief sought in the present application at this stage. Therefore, Issue Nos. 2 and 3 are answered in the negative against the plaintiffs. As regards Issue No. 4, the following final order is passed.

**-:: FINAL ORDER ::-**

1. The present application of Exb-5 filed by the plaintiff is hereby **rejected/dismissed**.
2. The cost of the present application shall be determined based on the final outcome of the suit.

**Pronounced and signed in open court today on 12<sup>th</sup>  
February, 2026.**

**Date : 12/02/2026  
Mangrol, Junagadh.**

**(Anand M. Mehta)  
Principal Civil Judge  
Mangrol  
Judge Code : GJ01673**

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