

**RCS No. 78/2023**  
**Order Below Exhibit-5**

- (1.) As the present order is passed in connection with the plaintiff's application Exhibit-5 for interim injunction, the facts of the application are not reiterated. The defendant side has filed objections and reply from Exhibit-13 onwards and has made oral submissions accordingly in relation to the present application. The documents produced by the plaintiff side at Mark 4/1 to 4/21 have been taken into consideration. The documents produced by the defendant side at Mark 14/1 to 14/6 have also been taken into consideration. The oral/written arguments of both the parties have been heard.
- (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. **Negative:**
  - 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.) As per the dispute raised by the plaintiffs, the plaintiffs are the legal heirs of Gigabhai Pujabhai Garefa. In village Phulrama of Mangrol Taluka, agricultural lands bearing Revenue Survey Nos. 112, 114, 241, and 258, along with. 24 No. (Wado), thus comprising five (5) survey numbers, stood jointly recorded in

the names of Koli Dhana Pujabhai Gareja, Kadva Pujabhai Gareja, Sidibhai Pujabhai Gareja, and Gigabhai Pujabhai Gareja under Record of Rights Entry No. 57. The said lands are ancestral properties. Upon the death of Dhanabhai Pujabhai, inheritance entry was effected in respect of lands bearing Revenue Survey Nos. 112, 114, 241, and 258 by Entry No. 291, whereby the heirs of the deceased Dhanabhai Pujabhai Gareja were recorded. The land falling to the share of the ancestors of the defendants is situated on the western side of Survey No. 114 (Paiki) adjoining the Kalegi–Miti road, whereas the land falling to the share of the ancestors of the plaintiffs is situated further west of the defendants' land. The defendants' land is located in a fertile and productive portion, whereas the land allotted to the plaintiffs is inferior, stony, and garden-type land. Due to the passing of the Miti–Kalegi road, a portion of Survey No. 114 (Paiki) was acquired, and this acquired portion was deducted from the land falling to the share of the plaintiffs. Consequently, the plaintiffs are in possession of approximately 4½ vighas less land on the site. Therefore, about 35 years ago, the defendants gave the plaintiffs 4½ vighas of land from Survey No. 114 (Paiki) by way of exchange. The said 4½ vighas of land has been jointly cultivated by the plaintiffs for approximately the last 35 years, and they have been taking agricultural produce therefrom. The defendants in this case intend to illegally usurp the lawful land of the plaintiffs. The defendants have made several illegal attempts to trespass upon the plaintiffs' land and, in the absence of the plaintiffs, have caused serious damage to the standing crops. Despite the plaintiffs being lawful owners and possessors of 4½ vighas of land bearing Survey No. 114 (Paiki), the defendants are taking undue advantage of the joint revenue record and, under one pretext or another, including by citing the Fragmentation Act, are deliberately not executing

sale documents. Hence, the plaintiffs have prayed for the following reliefs: (a) To grant an injunction restraining the defendants from interfering with, obstructing, or disturbing the possession or ownership rights of the plaintiffs over 4½ vighas of land situated towards the southern side out of Survey No. 114/Paiki 1/Paiki 2 of village Phulrama, Taluka Mangrol, which land was allotted to the ancestors of the plaintiffs by partition; and further restraining the defendants from entering upon the said land, from causing obstruction in agricultural operations, and from transferring, mortgaging, or gifting the said land to any third party on the basis of revenue records. (b) To grant such other appropriate and consequential reliefs as may be deemed just and proper.

- (5.) Considering the submissions made on behalf of the defendants, it is true, as stated in the plaintiffs' application for interim injunction, that Punja Gareja had four sons, namely Dhana, Kadvo, Gigo, and Sidi. However, the disputed land bearing Survey No. 114/Paiki originally belonged to Punja Gareja. Therefore, the total land of Punja Gareja was liable to be divided equally among his heirs. The plaintiffs have not joined, as parties to this suit, the heirs of Dhana Punja Gareja and Sidi Punja Gareja, who are co-sharers of the original joint holding. In the year 1977, partition of the disputed land was effected among the heirs of Punjabhai Gareja, and the entry regarding such partition was recorded in Village Form No. 6, Record of Rights Entry No. 534 of the year 1977. As per the revenue record, i.e., Record of Rights Entry No. 534 dated 08/05/1977, and even as per the plaintiffs' own averments, from the disputed agricultural land bearing Survey No. 114/Paiki of village Phulrama, an area admeasuring 0-08-36 gunthas fell to the share of the plaintiffs' father Giga Punja,

and an area admeasuring 0-08-35 gunthas fell to the share of the defendants' father Kadva Punja. Accordingly, each party took possession of the land falling to their respective shares in the year 1977. Thereafter, no changes whatsoever have taken place in the said agricultural holding. The plaintiffs have suppressed the true facts and have acted cleverly in order to avoid the bar of limitation. Since the partition of the disputed land in 1977, the defendants' forefathers and thereafter the defendants themselves have continuously cultivated and possessed the said land. Hence, the possession, enjoyment, and ownership of the disputed land have been with the defendants' forefathers and thereafter with the defendants. At the time of partition of Survey No. 114 in the year 1977, there was no issue under the Fragmentation Act, and the land claimed by the plaintiffs does not exist separately. The plaintiffs have not approached the Hon'ble Court with clean hands. By suppressing true facts, practicing deceit, creating false grounds, and relying upon falsehood, the plaintiffs are attempting to fulfill their mala fide intentions. Even the revenue records show that since 1977, the ownership, possession, and enjoyment of the disputed land have been with the defendants. There is, therefore, no question of obstruction or interference. Accordingly, the defendants have prayed for dismissal of the plaintiffs' application.

- (6.) Thus, considering the submissions made by both parties and the documents produced by the plaintiff, upon examining the revenue records / city survey records of the disputed property, the names of the defendants in the present matter are found recorded therein. Further, as stated in the plaintiff's

application, it does not appear from the records that the possession of the disputed land has been with the plaintiff since the year 1977. Moreover, the plaintiffs have not carried out any spot inspection (panchnama) or site inspection proceedings, nor any rojkam, so as to establish that they are in possession of the disputed land as on date. Thus, considering the submissions of both sides and the documents produced by the plaintiff, it is evident that, as per the plaintiff's own case, the partition of the land took place in the year 1977, and more than about 45 years have elapsed since then. Further, whether the defendants have obstructed or interfered with the possession or ownership rights of the plaintiffs in respect of the land admeasuring 4½ vighas situated towards the southern side from Survey No. 114/Paiki 1/Paiki 2 of village Phulrama, Taluka Mangrol, or have entered upon the land, obstructed agricultural operations, or have transferred, mortgaged, or gifted the land to third parties on the basis of the revenue records—these facts cannot be decided at the present stage and can be determined only after recording evidence. At present, no strong evidence is forthcoming to show that the plaintiffs are in possession of the land. Further, the plaintiffs' contention that the defendants are misusing their names recorded in the revenue records of the disputed survey number, despite the land being in the plaintiffs' ownership and possession, is not proved from the record. At this stage, without recording

documentary evidence and without initiating a full adjudicatory process, such facts cannot be established. Since the revenue records presently stand in the names of the defendants, the plaintiffs' facts cannot be proved merely on the basis of allegations. Moreover, if the relief sought in the present application is granted without recording evidence in this matter, there is a likelihood of multiplicity of proceedings. Therefore, at this stage, all these facts can be clearly determined only after recording evidence. Thus, the plaintiff has failed to establish a prima facie case. Consequently, granting the relief sought in the plaintiff's application would not be proper, appropriate, or just.

Moreover, considering the principles laid down in important judgments of the Hon'ble Apex Court in respect of the above issue, in **Kashi Math Samsthan Versus Srimad Sudhindra Thirtha Swamy, AIR 2010 Supreme Court 296**, **it has been held that:**

“It is well settled that in order to obtain an order of injunction, the party who seeks the grant of such injunction has to prove that he has made out a prima facie case to go for trial, that the balance of convenience is also in his favour, and that 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 a prima facie case to go for trial, the 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 the party fails to prove a 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.”

(7.) Thus, considering all the aforesaid facts as well as the documentary record produced, it is my opinion that the plaintiff has failed to establish a prima facie case. The contention that the plaintiff would suffer loss which cannot be compensated in terms of money is also not found to be acceptable. Therefore, for all the aforesaid discussions and reasons, Issues Nos. 1 to 3 are answered in the negative, and with respect to Issue No. 4, the following 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 13<sup>th</sup> March, 2026.**

**Date : 13/03/2026  
Mangrol, Junagadh.**

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

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