

Order below exhibit 6

1. The brief facts of the plaintiffs' application are as under:
That, the plaintiff and defendant are real brothers. That, the land bearing survey no. 109/P.2 of Chudva village, Manavadar Taluka is their ancestral property. The said land is in joint name in the revenue records. The said property was in the name of their mother, and upon her death, the said property has come to them and, therefore, it is their ancestral property wherein both of them have half share. That, in the presence of elders of their family, half portion from the east of the said land was agreed to be given to the plaintiff's share. However, on being asked, the defendant denied the same and stated that he will not be given any share in the suit property. The suit property is being cultivated by the defendant and its benefits are also being taken by him. If the said land is transferred to any third person or any right of third person is created over the same or, any obstruction is offered in farming the plaintiff's share, it would amount to civil death to the Plaintiff. Hence, the present suit is filed seeking his rights and present application is filed seeking interim injunction that the defendant should be restrained from cultivating half portion of the suit property from the eastern side and also be restrained from transferring the same to any person during the pendency of the present suit.

2. The defendant has been served through summons, he appeared before the court and filed written statement and reply at exhibit 18. He has stated that the allegations made in the plaint are false. The fact that the property was in the name of their mother and plaintiff is his brother are true. However, the plaintiff has no right or interest in the suit property. He also has no possession of the suit property. Having name in the revenue records does not create any right in the same. The defendant is the sole owner of the property as per the years old agreement between them. The possession of the land is with the defendant since many years and he would suffer great inconvenience if he is restrained from cultivating the suit land. He has been earning his livelihood from agricultural earnings of the said land. The plaintiff has been in a habit of creating fight in the house. He had sold two lands belonging to their father and the consideration of the said sales Rs. 5.66,000/- and 2,90,000/- were taken by the plaintiff. Hence, in this way, the plaintiff has no right in the suit property. The plaintiff has got his share two years ago and, therefore, he has no right in the present suit property.

3. Following documents are produced by the plaintiff in support of the application.

Sr.No.	Description of documents	Mark
1.	AADHAR of plaintiff	5/1
2.	Village form no. 8-A of suit land.	5/2
3.	Village form no. 7/12 of suit land.	5/3
4.	Copy of the village form no. 6 of the suit land.	5/4

4. Documents have been produced by the defendants: Nil.

5. From the pleadings of the plaintiff and defendants, documents produced by both the parties and facts of the case, following points are required to be determined for adjudication of this application:-

- (1) Whether the plaintiffs prove that they have a prima facie case ?
- (2) Whether the plaintiffs prove that balance of convenience is in their favour ?
- (3) Whether irreparable loss will cause to the plaintiffs if interim injunction is not granted?
- (4) What order ?

6. My findings to the aforesaid points are as under:-

- (1) In the affirmative.
- (2) In the negative.
- (3) In the negative.
- (4) As per final order.

-:: REASONS ::-

7. **Issue no.1.**

Now, taking into consideration the facts alleged in the matter, it is admitted fact that the suit property is ancestral property of plaintiff and defendant. However, the defendant claims that the plaintiff has already been given his share

and the suit land is in his exclusive ownership. The plaintiff had sold two lands which were in the name of their father and has taken the whole amount of sale consideration. Therefore, he has no right in the suit property anymore. However, there is nothing on record to show or support the above statement of defendant. what was the nature of those two lands which were allegedly been sold by plaintiff and who took the consideration of the same are the questions which are to be proved in the suit. At this juncture, there is nothing on record which would enable the court to even prima facie believe the said contention of defendant. Furthermore, the fact that the plaintiff has sold some property of the father and took away the whole of the consideration money is no ground to disentitle him from the other ancestral properties in the absence of any agreement to that effect. Here, presently, there is no such agreement produced in the suit. The document produced in support of the plaint shows that the suit land has come in the name of plaintiff and defendants in succession on the death of their mother. Hence, the plaintiff has proved the existence of prima facie case to go for trial as there are question which requires determination by the court. Now, the question which is needed to be decided by this court is that whether injunction should be granted because the plaintiff has prima facie case? The provision of Order 39 rule 1 of the CPC provides that:

1. Where in any suit it is proved by affidavit or otherwise— (a) that any 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) that the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors, (c) that the defendant threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property 1 [or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the Court thinks fit, until the disposal of the suit or until further orders."

Thus, there has to be an existing threat that the 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. The plaintiff has stated that if the defendant would sell or transfer the suit property, he would suffer great loss. On the other hand, the defendant has not stated to have any such intention. In fact, he has stated that he has been cultivating the said land since long and is dependent upon the income from the said land. In the case of G.E.B. vs R.K. Rayon, Dyeing And Printing Mills, Hon'ble Gujarat High Court held:

"8. Grant of temporary injunction under Order 39, Rule 1 and 2, C.P.C., 1908, is discretionary relief in equitable jurisdiction of the civil Court and no litigant can claim interim injunction in its favour as a matter of rule or right. The learned trial Court may or may not grant temporary injunction in a given case even where it finds that the plaintiff has a strong prima-facie case in its favour where it finds that declining of interim injunction will not cause any irreparable injury which cannot be compensated in terms of money to the litigant praying for the same and secondly where the balance of convenience also does not favour for grant of temporary injunction. In the matter of grant of temporary injunction, the conduct of litigant is also equally very relevant and important. In case where the conduct of the plaintiff is of such a nature which dis-entitles him from getting any temporary injunction from the Court, it may decline to grant the same. Looking into this nature of jurisdiction of the learned trial Court the appellate Court has also very very limited powers of judicial review in these matters."

Hence, the jurisdiction to grant temporary injunction under Order 39 of the C.P.C. is discretionary and the court is not obliged to grant the same merely because it is lawful to do so or the plaintiffs prove prima facie case to go for trial. There is nothing on record to show that the defendant entertains any such intention to transfer the suit property prejudicially to the interest of plaintiff. There has not been any such overt act of defendant in the past years or even recently. Even if the property is sold, it would not cause any irreparable loss to the plaintiff as in that case he could always recover the value of his respective share. Even it is not the plaintiff's claim that he is

cultivating any portion of the suit land and the defendant has been obstructing him. The plaintiff has not sought any protection that the defendant should be restrained from stopping the plaintiff from entering the suit land or cultivating any portion of the said land. The interim protection sought is that the defendant should be restrained from cultivating eastern half portion of the said property. The plaintiff has not been cultivating the said land and there is no statement either that he wishes to cultivate any portion of the said land this year. Hence, there does not arise question of convenience and inconvenience to the parties. Therefore, issue no.1 is decided in the affirmative but issues no. 2 and 3 are decided in the negative. Following final order is passed in respect of issue no. 4:

Order

- The present application is hereby rejected.
- The parties shall bear their own costs.

Pronounced in the open court today on 08th of May, 2026.

Date:08/05/26

(Anubhav Pandey)
Principal Sr. Civil Judge,
Vanthali, Junagadh.
Code:GJ01133.